

Bill No. SB 1592

Barcode 204534

CHAMBER ACTION

Senate

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The Committee on Judiciary (Gaetz) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Open Government Act."

Section 2. Present subsections (18) and (19) of section 120.52, Florida Statutes, are renumbered as subsections (19) and (20), respectively, and a new subsection (18) is added to that section to read:

120.52 Definitions.--As used in this act:

(18) "Unadopted rule" means an agency statement that meets the definition of "rule" but has not been adopted pursuant to the requirements of s. 120.54.

Section 3. Paragraphs (c) and (e) of subsection (3) and subsection (7) of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking.--

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1 (3) ADOPTION PROCEDURES.--

2 (c) Hearings.--

3 1. If the intended action concerns any rule other than  
4 one relating exclusively to procedure or practice, the agency  
5 shall, on the request of any affected person received within  
6 21 days after the date of publication of the notice of  
7 intended agency action, give affected persons an opportunity  
8 to present evidence and argument on all issues under  
9 consideration. The agency may schedule a public hearing on the  
10 rule and, if requested by any affected person, shall schedule  
11 a public hearing on the rule. If the agency head is a board or  
12 other collegial body, other than one comprised of the Governor  
13 and Cabinet, the board or other collegial body shall conduct  
14 the requested public hearing itself and may not delegate this  
15 responsibility without the consent of the persons requesting  
16 the public hearing. Any material pertinent to the issues under  
17 consideration submitted to the agency within 21 days after the  
18 date of publication of the notice or submitted at a public  
19 hearing shall be considered by the agency and made a part of  
20 the record of the rulemaking proceeding.

21 2. Rulemaking proceedings shall be governed solely by  
22 the provisions of this section unless a person timely asserts  
23 that the person's substantial interests will be affected in  
24 the proceeding and affirmatively demonstrates to the agency  
25 that the proceeding does not provide adequate opportunity to  
26 protect those interests. If the agency determines that the  
27 rulemaking proceeding is not adequate to protect the person's  
28 interests, it shall suspend the rulemaking proceeding and  
29 convene a separate proceeding under the provisions of ss.  
30 120.569 and 120.57. Similarly situated persons may be  
31 requested to join and participate in the separate proceeding.

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1 Upon conclusion of the separate proceeding, the rulemaking  
2 proceeding shall be resumed.

3 (e) Filing for final adoption; effective date.--

4 1. If the adopting agency is required to publish its  
5 rules in the Florida Administrative Code, it shall file with  
6 the Department of State three certified copies of the rule it  
7 proposes to adopt, a summary of the rule, a summary of any  
8 hearings held on the rule, and a detailed written statement of  
9 the facts and circumstances justifying the rule. Agencies not  
10 required to publish their rules in the Florida Administrative  
11 Code shall file one certified copy of the proposed rule, and  
12 the other material required by this subparagraph, in the  
13 office of the agency head, and such rules shall be open to the  
14 public.

15 2. A rule may not be filed for adoption less than 28  
16 days or more than 90 days after the notice required by  
17 paragraph (a), until 21 days after the notice of change  
18 required by paragraph (d), until 14 days after the final  
19 public hearing, until 21 days after ~~preparation of~~ a statement  
20 of estimated regulatory costs required under s. 120.541 has  
21 been provided to all persons who submitted a lower cost  
22 regulatory alternative and made available to the public, or  
23 until the administrative law judge has rendered a decision  
24 under s. 120.56(2), whichever applies. When a required notice  
25 of change is published prior to the expiration of the time to  
26 file the rule for adoption, the period during which a rule  
27 must be filed for adoption is extended to 45 days after the  
28 date of publication. If notice of a public hearing is  
29 published prior to the expiration of the time to file the rule  
30 for adoption, the period during which a rule must be filed for  
31 adoption is extended to 45 days after adjournment of the final

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1 hearing on the rule, 21 days after receipt of all material  
 2 authorized to be submitted at the hearing, or 21 days after  
 3 receipt of the transcript, if one is made, whichever is  
 4 latest. The term "public hearing" includes any public meeting  
 5 held by any agency at which the rule is considered. If a  
 6 petition for an administrative determination under s.  
 7 120.56(2) is filed, the period during which a rule must be  
 8 filed for adoption is extended to 60 days after the  
 9 administrative law judge files the final order with the clerk  
 10 or until 60 days after subsequent judicial review is complete.

11         3. At the time a rule is filed, the agency shall  
 12 certify that the time limitations prescribed by this paragraph  
 13 have been complied with, that all statutory rulemaking  
 14 requirements have been met, and that there is no  
 15 administrative determination pending on the rule.

16         4. At the time a rule is filed, the committee shall  
 17 certify whether the agency has responded in writing to all  
 18 material and timely written comments or written inquiries made  
 19 on behalf of the committee. The department shall reject any  
 20 rule not filed within the prescribed time limits; that does  
 21 not satisfy all statutory rulemaking requirements; upon which  
 22 an agency has not responded in writing to all material and  
 23 timely written inquiries or written comments; upon which an  
 24 administrative determination is pending; or which does not  
 25 include a statement of estimated regulatory costs, if  
 26 required.

27         5. If a rule has not been adopted within the time  
 28 limits imposed by this paragraph or has not been adopted in  
 29 compliance with all statutory rulemaking requirements, the  
 30 agency proposing the rule shall withdraw the rule and give  
 31 notice of its action in the next available issue of the

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1 Florida Administrative Weekly.

2           6. The proposed rule shall be adopted on being filed  
3 with the Department of State and become effective 20 days  
4 after being filed, on a later date specified in the rule, or  
5 on a date required by statute. Rules not required to be filed  
6 with the Department of State shall become effective when  
7 adopted by the agency head or on a later date specified by  
8 rule or statute. If the committee notifies an agency that an  
9 objection to a rule is being considered, the agency may  
10 postpone the adoption of the rule to accommodate review of the  
11 rule by the committee. When an agency postpones adoption of a  
12 rule to accommodate review by the committee, the 90-day period  
13 for filing the rule is tolled until the committee notifies the  
14 agency that it has completed its review of the rule.

15

16 For the purposes of this paragraph, the term "administrative  
17 determination" does not include subsequent judicial review.

18           (7) PETITION TO INITIATE RULEMAKING.--

19           (a) Any person regulated by an agency or having  
20 substantial interest in an agency rule may petition an agency  
21 to adopt, amend, or repeal a rule or to provide the minimum  
22 public information required by this chapter. The petition  
23 shall specify the proposed rule and action requested. Not  
24 later than 30 calendar days following the date of filing a  
25 petition, the agency shall initiate rulemaking proceedings  
26 under this chapter, otherwise comply with the requested  
27 action, or deny the petition with a written statement of its  
28 reasons for the denial.

29           ~~(b) If the petition filed under this subsection is~~  
30 ~~directed to an existing rule which the agency has not adopted~~  
31 ~~by the rulemaking procedures or requirements set forth in this~~

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1 ~~chapter, the agency shall, not later than 30 days following~~  
2 ~~the date of filing a petition, initiate rulemaking, or provide~~  
3 ~~notice in the Florida Administrative Weekly that the agency~~  
4 ~~will hold a public hearing on the petition within 30 days~~  
5 ~~after publication of the notice. The purpose of the public~~  
6 ~~hearing is to consider the comments of the public directed to~~  
7 ~~the agency rule which has not been adopted by the rulemaking~~  
8 ~~procedures or requirements of this chapter, its scope and~~  
9 ~~application, and to consider whether the public interest is~~  
10 ~~served adequately by the application of the rule on a~~  
11 ~~case-by-case basis, as contrasted with its adoption by the~~  
12 ~~rulemaking procedures or requirements set forth in this~~  
13 ~~chapter.~~

14 ~~(c) Within 30 days following the public hearing~~  
15 ~~provided for by paragraph (b), if the agency does not initiate~~  
16 ~~rulemaking or otherwise comply with the requested action, the~~  
17 ~~agency shall publish in the Florida Administrative Weekly a~~  
18 ~~statement of its reasons for not initiating rulemaking or~~  
19 ~~otherwise complying with the requested action, and of any~~  
20 ~~changes it will make in the scope or application of the~~  
21 ~~unadopted rule. The agency shall file the statement with the~~  
22 ~~committee. The committee shall forward a copy of the~~  
23 ~~statement to the substantive committee with primary oversight~~  
24 ~~jurisdiction of the agency in each house of the Legislature.~~  
25 ~~The committee or the committee with primary oversight~~  
26 ~~jurisdiction may hold a hearing directed to the statement of~~  
27 ~~the agency. The committee holding the hearing may recommend~~  
28 ~~to the Legislature the introduction of legislation making the~~  
29 ~~rule a statutory standard or limiting or otherwise modifying~~  
30 ~~the authority of the agency.~~

31 Section 4. Section 120.545, Florida Statutes, is

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1 amended to read:

2 120.545 Committee review of agency rules.--

3 (1) As a legislative check on legislatively created  
4 authority, the committee shall examine each proposed rule,  
5 except for those proposed rules exempted by s. 120.81(1)(e)  
6 and (2), and its accompanying material, and each emergency  
7 rule, and may examine any existing rule, for the purpose of  
8 determining whether:

9 (a) The rule is an invalid exercise of delegated  
10 legislative authority.

11 (b) The statutory authority for the rule has been  
12 repealed.

13 (c) The rule reiterates or paraphrases statutory  
14 material.

15 (d) The rule is in proper form.

16 (e) The notice given prior to its adoption was  
17 sufficient to give adequate notice of the purpose and effect  
18 of the rule.

19 (f) The rule is consistent with expressed legislative  
20 intent pertaining to the specific provisions of law which the  
21 rule implements.

22 (g) The rule is necessary to accomplish the apparent  
23 or expressed objectives of the specific provision of law which  
24 the rule implements.

25 (h) The rule is a reasonable implementation of the law  
26 as it affects the convenience of the general public or persons  
27 particularly affected by the rule.

28 (i) The rule could be made less complex or more easily  
29 comprehensible to the general public.

30 (j) The rule's statement of estimated regulatory costs  
31 complies with the requirements of s. 120.541 and the rule does

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1 not impose regulatory costs on the regulated person, county,  
2 or city which could be reduced by the adoption of less costly  
3 alternatives that substantially accomplish the statutory  
4 objectives.

5 (k) The rule will require additional appropriations.

6 (1) If the rule is an emergency rule, there exists an  
7 emergency justifying the adoption ~~promulgation~~ of such rule,  
8 the agency is within ~~has exceeded the scope of~~ its statutory  
9 authority, and the rule was adopted ~~promulgated~~ in compliance  
10 with the requirements and limitations of s. 120.54(4).

11 (2) The committee may request from an agency such  
12 information as is reasonably necessary for examination of a  
13 rule as required by subsection (1) or for examination of an  
14 unadopted agency statement. The committee shall consult with  
15 legislative standing committees having ~~with~~ jurisdiction over  
16 the subject areas. If the committee objects to ~~an emergency~~  
17 ~~rule or a proposed or existing~~ rule, it shall, within 5 days  
18 after ~~of~~ the objection, certify that fact to the agency whose  
19 rule has been examined and include with the certification a  
20 statement detailing its objections with particularity. The  
21 committee shall notify the Speaker of the House of  
22 Representatives and the President of the Senate of any  
23 objection to an agency rule concurrent with certification of  
24 that fact to the agency. Such notice shall include a copy of  
25 the rule and the statement detailing the committee's  
26 objections to the rule.

27 (3) Within 30 days after ~~of~~ receipt of the objection,  
28 if the agency is headed by an individual, or within 45 days  
29 after ~~of~~ receipt of the objection, if the agency is headed by  
30 a collegial body, the agency shall:

31 (a) If the rule is not yet in effect ~~a proposed rule~~:



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1           1. File notice pursuant to s. 120.54(3)(d) of only  
2 such modifications as are necessary to address ~~Modify the rule~~  
3 ~~to meet~~ the committee's objection;

4           2. File notice pursuant to s. 120.54(3)(d) of  
5 withdrawal of ~~Withdraw~~ the rule ~~in its entirety~~; or

6           3. Notify the committee in writing that it refuses  
7 ~~Refuse~~ to modify or withdraw the rule.

8           (b) If the rule is in effect ~~an existing rule~~:

9           1. File notice pursuant to s. 120.54(3)(a), without  
10 prior notice of rule development, ~~Notify the committee that it~~  
11 ~~has elected~~ to amend the rule to address ~~meet~~ the committee's  
12 objection ~~and initiate the amendment procedure~~;

13           2. File notice pursuant to s. 120.54(3)(a) ~~Notify the~~  
14 ~~committee that it has elected~~ to repeal the rule ~~and initiate~~  
15 ~~the repeal procedure~~; or

16           3. Notify the committee in writing that it refuses to  
17 amend or repeal the rule.

18           (c) If the ~~rule is either an existing or a proposed~~  
19 ~~rule and the~~ objection is to the statement of estimated  
20 regulatory costs:

21           1. Prepare a corrected statement of estimated  
22 regulatory costs, give notice of the availability of the  
23 corrected statement in the first available issue of the  
24 Florida Administrative Weekly, and file a copy of the  
25 corrected statement with the committee; or

26           2. Notify the committee that it refuses to prepare a  
27 corrected statement of estimated regulatory costs.

28           (d) If the rule is unadopted:

29           1. File notice pursuant to s. 120.54(3)(a) of intent  
30 to adopt the rule;

31           2. File notice for publication in the Florida

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1 Administrative Weekly that the agency has abandoned all  
2 reliance upon the statement or any substantially similar  
3 statement as a basis for agency action; or

4 3. Notify the committee in writing that it refuses to  
5 adopt the rule or to abandon all reliance upon the statement  
6 or any substantially similar statement as a basis for agency  
7 action.

8 ~~(4) If the agency elects to modify a proposed rule to~~  
9 ~~meet the committee's objection, it shall make only such~~  
10 ~~modifications as are necessary to meet the objection and shall~~  
11 ~~resubmit the rule to the committee. The agency shall give~~  
12 ~~notice of its election to modify a proposed rule to meet the~~  
13 ~~committee's objection by publishing a notice of change in the~~  
14 ~~first available issue of the Florida Administrative Weekly,~~  
15 ~~but shall not be required to conduct a public hearing. If the~~  
16 ~~agency elects to amend an existing rule to meet the~~  
17 ~~committee's objection, it shall notify the committee in~~  
18 ~~writing and shall initiate the amendment procedure by giving~~  
19 ~~notice in the next available issue of the Florida~~  
20 ~~Administrative Weekly. The committee shall give priority to~~  
21 ~~rules so modified or amended when setting its agenda.~~

22 ~~(5) If the agency elects to withdraw a proposed rule~~  
23 ~~as a result of a committee objection, it shall notify the~~  
24 ~~committee, in writing, of its election and shall give notice~~  
25 ~~of the withdrawal in the next available issue of the Florida~~  
26 ~~Administrative Weekly. The rule shall be withdrawn without a~~  
27 ~~public hearing, effective upon publication of the notice in~~  
28 ~~the Florida Administrative Weekly. If the agency elects to~~  
29 ~~repeal an existing rule as a result of a committee objection,~~  
30 ~~it shall notify the committee, in writing, of its election and~~  
31 ~~shall initiate rulemaking procedures for that purpose by~~

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1 ~~giving notice in the next available issue of the Florida~~  
2 ~~Administrative Weekly.~~

3 ~~(6) If an agency elects to amend or repeal an existing~~  
4 ~~rule as a result of a committee objection, it shall complete~~  
5 ~~the process within 90 days after giving notice in the Florida~~  
6 ~~Administrative Weekly.~~

7 ~~(4)(7)~~ Failure of the agency to respond to a committee  
8 objection to a ~~proposed~~ rule that is not yet in effect within  
9 the time prescribed in subsection (3) ~~constitutes shall~~  
10 ~~constitute~~ withdrawal of the rule in its entirety. In this  
11 event, the committee shall notify the Department of State that  
12 the agency, by its failure to respond to a committee  
13 objection, has elected to withdraw the ~~proposed~~ rule. Upon  
14 receipt of the committee's notice, the Department of State  
15 shall publish a notice to that effect in the next available  
16 issue of the Florida Administrative Weekly. Upon publication  
17 of the notice, the ~~proposed~~ rule shall be stricken from the  
18 files of the Department of State and the files of the agency.

19 ~~(5)(8)~~ Failure of the agency to respond to a committee  
20 objection to a an existing rule that is in effect within the  
21 time prescribed in subsection (3) ~~constitutes shall constitute~~  
22 a refusal to amend or repeal the rule.

23 ~~(6)~~ Failure of the agency to respond to a committee  
24 objection to a statement of estimated regulatory costs within  
25 the time prescribed in subsection (3) constitutes a refusal to  
26 prepare a corrected statement of estimated regulatory costs.

27 ~~(7)~~ Failure of the agency to respond to a committee  
28 objection to an unadopted rule within the time prescribed in  
29 subsection (3) constitutes a refusal to adopt the rule and a  
30 refusal to abandon all reliance upon the statement or any  
31 substantially similar statement as a basis for agency action.

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1           ~~(8)(9)~~ If the committee objects to a ~~proposed or~~  
2 ~~existing~~ rule and the agency refuses to adopt, abandon,  
3 modify, amend, withdraw, or repeal it ~~the rule~~, the committee  
4 shall file with the Department of State a notice of the  
5 objection, detailing with particularity its objection to the  
6 rule. The Department of State shall publish this notice in  
7 the Florida Administrative Weekly. If the rule is published  
8 ~~and shall publish, as a history note to the rule in the~~  
9 Florida Administrative Code, a reference to the committee's  
10 objection and to the issue of the Weekly in which the full  
11 text thereof appears shall be recorded in a history note.

12           ~~(9)(10)~~(a) If the committee objects to a ~~proposed or~~  
13 ~~existing~~ rule, or portion thereof, and the agency fails to  
14 initiate administrative action to adopt, abandon, modify,  
15 amend, withdraw, or repeal the rule consistent with the  
16 objection within 60 days after the objection, or thereafter  
17 fails to proceed in good faith to complete such action, the  
18 committee may submit to the President of the Senate and the  
19 Speaker of the House of Representatives a recommendation that  
20 legislation be introduced to address the committee objection  
21 ~~modify or suspend the adoption of the proposed rule, or amend~~  
22 ~~or repeal the rule, or portion thereof.~~

23           (b)1. If the committee votes to recommend the  
24 introduction of legislation to address the committee objection  
25 ~~modify or suspend the adoption of a proposed rule, or amend or~~  
26 ~~repeal a rule~~, the committee shall, within 5 days after this  
27 determination, certify that fact to the agency whose rule or  
28 proposed rule has been examined. The committee may request  
29 that the agency temporarily suspend the rule, ~~or~~ suspend the  
30 adoption of the proposed rule, or suspend all reliance upon  
31 the statement or any substantially similar statement as a

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1 basis for agency action, pending consideration of proposed  
2 legislation during the next regular session of the  
3 Legislature.

4         2. Within 30 days after receipt of the certification,  
5 if the agency is headed by an individual, or within 45 days  
6 after receipt of the certification, if the agency is headed by  
7 a collegial body, the agency shall ~~either~~:

8             a. Temporarily suspend the rule, ~~or~~ suspend the  
9 adoption of the proposed rule, or suspend all reliance upon  
10 the statement or any substantially similar statement as a  
11 basis for agency action; or

12             b. Notify the committee in writing that it refuses to  
13 temporarily suspend the rule, ~~or~~ suspend the adoption of the  
14 proposed rule, or suspend all reliance upon the statement or  
15 any substantially similar statement as a basis for agency  
16 action.

17         3. If the agency elects to temporarily suspend the  
18 rule, ~~or~~ suspend the adoption of the proposed rule, or suspend  
19 all reliance upon the statement or any substantially similar  
20 statement as a basis for agency action, it shall give notice  
21 of the suspension in the Florida Administrative Weekly. The  
22 rule or the rule adoption process shall be suspended upon  
23 publication of the notice. An agency may ~~shall~~ not base any  
24 agency action on a suspended rule, ~~or~~ suspended proposed rule,  
25 or suspended statement or any substantially similar statement,  
26 or portion thereof, prior to expiration of the suspension. A  
27 suspended rule, or suspended proposed rule, or suspended  
28 statement or any substantially similar statement, or portion  
29 thereof, continues to be subject to administrative  
30 determination and judicial review as provided by law.

31         4. Failure of an agency to respond to committee

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1 certification within the time prescribed by subparagraph 2.  
 2 constitutes a refusal to suspend the rule, ~~or to suspend the~~  
 3 adoption of the proposed rule, or suspend all reliance upon  
 4 the statement or any substantially similar statement as a  
 5 basis for agency action.

6 (c) The committee shall prepare bills to address the  
 7 committee objection ~~modify or suspend the adoption of the~~  
 8 ~~proposed rule or amend or repeal the rule, or portion thereof,~~  
 9 in accordance with the rules of the Senate and the House of  
 10 Representatives for prefiling and introduction in the next  
 11 regular session of the Legislature. The proposed bill shall be  
 12 presented to the President of the Senate and the Speaker of  
 13 the House of Representatives with the committee  
 14 recommendation.

15 (d) If a bill to address the committee objection  
 16 ~~suspend the adoption of a proposed rule is enacted into law,~~  
 17 ~~the proposed rule is suspended until specific delegated~~  
 18 ~~legislative authority for the proposed rule has been enacted.~~  
 19 ~~If a bill to suspend the adoption of a proposed rule fails to~~  
 20 ~~become law, any temporary agency suspension of the rule shall~~  
 21 ~~expire. If a bill to modify a proposed rule or amend a rule~~  
 22 ~~is enacted into law, the suspension shall expire upon~~  
 23 ~~publication of notice of modification or amendment in the~~  
 24 ~~Florida Administrative Weekly. If a bill to repeal a rule is~~  
 25 ~~enacted into law, the suspension shall remain in effect until~~  
 26 ~~notification of repeal of the rule is published in the Florida~~  
 27 ~~Administrative Weekly.~~

28 ~~(e) The Department of State shall publish in the next~~  
 29 ~~available issue of the Florida Administrative Weekly the final~~  
 30 ~~legislative action taken. If a bill to modify or suspend the~~  
 31 ~~adoption of the proposed rule or amend or repeal the rule, or~~

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1 ~~portion thereof, is enacted into law, the Department of State~~  
 2 ~~shall conform the rule or portion of the rule to the~~  
 3 ~~provisions of the law in the Florida Administrative Code and~~  
 4 ~~publish a reference to the law as a history note to the rule.~~

5 Section 5. Paragraph (a) of subsection (2) and,  
 6 effective January 1, 2008, subsection (4) of section 120.56,  
 7 Florida Statutes, is amended to read:

8 120.56 Challenges to rules.--

9 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--

10 (a) Any substantially affected person may seek an  
 11 administrative determination of the invalidity of any proposed  
 12 rule by filing a petition seeking such a determination with  
 13 the division within 21 days after the date of publication of  
 14 the notice required by s. 120.54(3)(a), within 10 days after  
 15 the final public hearing is held on the proposed rule as  
 16 provided by s. 120.54(3)(e)2. ~~s. 120.54(3)(c)~~, within 20 days  
 17 after ~~the preparation of~~ a statement of estimated regulatory  
 18 costs required pursuant to s. 120.541, if applicable, has been  
 19 provided to all persons who submitted a lower cost regulatory  
 20 alternative and made available to the public or within 20 days  
 21 after the date of publication of the notice required by s.  
 22 120.54(3)(d). The petition shall state with particularity the  
 23 objections to the proposed rule and the reasons that the  
 24 proposed rule is an invalid exercise of delegated legislative  
 25 authority. The petitioner has the burden of going forward. The  
 26 agency then has the burden to prove by a preponderance of the  
 27 evidence that the proposed rule is not an invalid exercise of  
 28 delegated legislative authority as to the objections raised.  
 29 Any person who is substantially affected by a change in the  
 30 proposed rule may seek a determination of the validity of such  
 31 change. Any person not substantially affected by the proposed

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1 rule as initially noticed, but who is substantially affected  
 2 by the rule as a result of a change, may challenge any  
 3 provision of the rule and is not limited to challenging the  
 4 change to the proposed rule.

5 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;  
 6 SPECIAL PROVISIONS.--

7 (a) Any person substantially affected by an agency  
 8 statement may seek an administrative determination that the  
 9 statement violates s. 120.54(1)(a). The petition must ~~shall~~  
 10 include the text of the statement or a description of the  
 11 statement and shall state with particularity facts sufficient  
 12 to show that the statement constitutes a rule under s. 120.52  
 13 and that the agency has not adopted the statement by the  
 14 rulemaking procedure provided by s. 120.54. Upon the filing of  
 15 a petition for an administrative determination under this  
 16 subsection, the agency shall immediately discontinue all  
 17 reliance upon the statement or any substantially similar  
 18 statement as a basis for agency action until:

19 1. The proceeding is dismissed for any reason other  
 20 than initiation of rulemaking under s. 120.54;

21 2. The statement is adopted and becomes effective as a  
 22 rule;

23 3. A final order is issued which contains a  
 24 determination that the petitioner failed to prove that the  
 25 statement constitutes a rule under s. 120.52; or

26 4. A final order is issued which contains a  
 27 determination that rulemaking is not feasible under s.  
 28 120.54(1)(a)1.a. or b. or not practicable under s.  
 29 120.54(1)(a)2.

30 (b) If the administrative law judge determines that  
 31 the agency's inability to rely upon the statement during the



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1 proceeding under this subsection would constitute an immediate  
 2 danger to the public health, safety, or welfare, the  
 3 administrative law judge shall grant an agency petition to  
 4 allow application of the statement until the proceeding is  
 5 concluded.

6       ~~(c)(b)~~ The administrative law judge may extend the  
 7 hearing date beyond 30 days after assignment of the case for  
 8 good cause. If a hearing is held and the petitioner proves the  
 9 allegations of the petition, the agency shall have the burden  
 10 of proving that rulemaking is not feasible or not ~~and~~  
 11 practicable under s. 120.54(1)(a).

12       ~~(d)(c)~~ The administrative law judge may determine  
 13 whether all or part of a statement violates s. 120.54(1)(a).  
 14 The decision of the administrative law judge shall constitute  
 15 a final order. The division shall transmit a copy of the final  
 16 order to the Department of State and the committee. The  
 17 Department of State shall publish notice of the final order in  
 18 the first available issue of the Florida Administrative  
 19 Weekly.

20       ~~(d)~~ ~~When an administrative law judge enters a final~~  
 21 ~~order that all or part of an agency statement violates s.~~  
 22 ~~120.54(1)(a), the agency shall immediately discontinue all~~  
 23 ~~reliance upon the statement or any substantially similar~~  
 24 ~~statement as a basis for agency action.~~

25       ~~(e)1.~~ ~~If, prior to a final hearing to determine~~  
 26 ~~whether all or part of any agency statement violates s.~~  
 27 ~~120.54(1)(a), an agency publishes, pursuant to s.~~  
 28 ~~120.54(3)(a), proposed rules that address the statement, then~~  
 29 ~~for purposes of this section, a presumption is created that~~  
 30 ~~the agency is acting expeditiously and in good faith to adopt~~  
 31 ~~rules that address the statement, and the agency shall be~~

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1 ~~permitted to rely upon the statement or a substantially~~  
 2 ~~similar statement as a basis for agency action if the~~  
 3 ~~statement meets the requirements of s. 120.57(1)(e).~~

4       ~~2. If, prior to the final hearing to determine whether~~  
 5 ~~all or part of an agency statement violates s. 120.54(1)(a),~~  
 6 ~~an agency publishes a notice of rule development which~~  
 7 ~~addresses the statement pursuant to s. 120.54(2), or certifies~~  
 8 ~~that such a notice has been transmitted to the Florida~~  
 9 ~~Administrative Weekly for publication, then such publication~~  
 10 ~~shall constitute good cause for the granting of a stay of the~~  
 11 ~~proceedings and a continuance of the final hearing for 30~~  
 12 ~~days. If the agency publishes proposed rules within this~~  
 13 ~~30-day period or any extension of that period granted by an~~  
 14 ~~administrative law judge upon showing of good cause, then the~~  
 15 ~~administrative law judge shall place the case in abeyance~~  
 16 ~~pending the outcome of rulemaking and any proceedings~~  
 17 ~~involving challenges to proposed rules pursuant to subsection~~  
 18 ~~(2).~~

19       ~~3. If, following the commencement of the final hearing~~  
 20 ~~and prior to entry of a final order that all or part of an~~  
 21 ~~agency statement violates s. 120.54(1)(a), an agency~~  
 22 ~~publishes, pursuant to s. 120.54(3)(a), proposed rules that~~  
 23 ~~address the statement and proceeds expeditiously and in good~~  
 24 ~~faith to adopt rules that address the statement, the agency~~  
 25 ~~shall be permitted to rely upon the statement or a~~  
 26 ~~substantially similar statement as a basis for agency action~~  
 27 ~~if the statement meets the requirements of s. 120.57(1)(e).~~

28       ~~4. If an agency fails to adopt rules that address the~~  
 29 ~~statement within 180 days after publishing proposed rules, for~~  
 30 ~~purposes of this subsection, a presumption is created that the~~  
 31 ~~agency is not acting expeditiously and in good faith to adopt~~

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1 ~~rules. If the agency's proposed rules are challenged pursuant~~  
2 ~~to subsection (2), the 180-day period for adoption of rules is~~  
3 ~~tolled until a final order is entered in that proceeding.~~

4 ~~5. If the proposed rules addressing the challenged~~  
5 ~~statement are determined to be an invalid exercise of~~  
6 ~~delegated legislative authority as defined in s.~~  
7 ~~120.52(8)(b)-(f), the agency must immediately discontinue~~  
8 ~~reliance on the statement and any substantially similar~~  
9 ~~statement until the rules addressing the subject are properly~~  
10 ~~adopted.~~

11 ~~(e)(f)~~ All proceedings to determine a violation of s.  
12 120.54(1)(a) shall be brought pursuant to this subsection. A  
13 proceeding pursuant to this subsection may be consolidated  
14 with a proceeding under subsection (3) or under any other  
15 section of this chapter. Nothing in this paragraph shall be  
16 construed to prevent a party whose substantial interests have  
17 been determined by an agency action from bringing a proceeding  
18 pursuant to s. 120.57(1)(e).

19 Section 6. Effective January 1, 2008, paragraph (e) of  
20 subsection (1) of section 120.57, Florida Statutes, is amended  
21 to read:

22 120.57 Additional procedures for particular cases.--

23 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS  
24 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

25 (e)1. ~~Any~~ Agency action that determines the  
26 substantial interests of a party may not be ~~and that is~~ based  
27 on an agency statement that violates s. 120.54(1)(a). ~~Neither~~  
28 an agency nor an administrative law judge has authority to  
29 enforce agency policy that constitutes an unadopted rule when  
30 the agency fails to prove that rulemaking is not feasible or  
31 not practicable. This subparagraph does not preclude

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1 application of adopted rules and applicable statutes to the  
2 facts ~~unadopted rule is subject to de novo review by an~~  
3 ~~administrative law judge.~~

4 ~~2. The agency action shall not be presumed valid or~~  
5 ~~invalid. The agency must demonstrate that the unadopted rule:~~

6 ~~a. Is within the powers, functions, and duties~~  
7 ~~delegated by the Legislature or, if the agency is operating~~  
8 ~~pursuant to authority derived from the State Constitution, is~~  
9 ~~within that authority;~~

10 ~~b. Does not enlarge, modify, or contravene the~~  
11 ~~specific provisions of law implemented;~~

12 ~~c. Is not vague, establishes adequate standards for~~  
13 ~~agency decisions, or does not vest unbridled discretion in the~~  
14 ~~agency;~~

15 ~~d. Is not arbitrary or capricious. A rule is arbitrary~~  
16 ~~if it is not supported by logic or the necessary facts; a rule~~  
17 ~~is capricious if it is adopted without thought or reason or is~~  
18 ~~irrational;~~

19 ~~e. Is not being applied to the substantially affected~~  
20 ~~party without due notice; and~~

21 ~~f. Does not impose excessive regulatory costs on the~~  
22 ~~regulated person, county, or city.~~

23 2.3. The recommended and final orders in any  
24 proceeding shall be governed by the provisions of paragraphs  
25 (k) and (l), except that the administrative law judge's  
26 determination regarding the unadopted rule shall not be  
27 rejected by the agency unless the agency first determines from  
28 a review of the complete record, and states with particularity  
29 in the order, that such determination is clearly erroneous or  
30 does not comply with essential requirements of law. In any  
31 proceeding for review under s. 120.68, if the court finds that

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1 the agency's rejection of the determination regarding the  
 2 unadopted rule does not comport with the provisions of this  
 3 subparagraph, the agency action shall be set aside and the  
 4 court shall award to the prevailing party the reasonable costs  
 5 and a reasonable attorney's fee for the initial proceeding and  
 6 the proceeding for review.

7 Section 7. Effective January 1, 2008, subsections (2),  
 8 (3), and (4) of section 120.595, Florida Statutes, are amended  
 9 to read:

10 120.595 Attorney's fees.--

11 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO  
 12 SECTION 120.56(2).--If the court or administrative law judge  
 13 declares a proposed rule or portion of a proposed rule invalid  
 14 pursuant to s. 120.56(2), a judgment or order shall be  
 15 rendered against the agency for reasonable costs and  
 16 reasonable attorney's fees, unless the agency demonstrates  
 17 that its actions were substantially justified or special  
 18 circumstances exist which would make the award unjust. An  
 19 agency's actions are "substantially justified" if there was a  
 20 reasonable basis in law and fact at the time the actions were  
 21 taken by the agency. If the agency prevails in the  
 22 proceedings, the court or administrative law judge shall award  
 23 reasonable costs and reasonable attorney's fees against a  
 24 party if the court or administrative law judge determines that  
 25 a party participated in the proceedings for an improper  
 26 purpose as defined by paragraph (1)(e). No award of attorney's  
 27 fees as provided by this subsection shall exceed \$50,000  
 28 ~~\$15,000~~.

29 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO  
 30 SECTION 120.56(3) AND (5).--If the court or administrative law  
 31 judge declares a rule or portion of a rule invalid pursuant to

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1 s. 120.56(3) or s. 120.56(5), a judgment or order shall be  
 2 rendered against the agency for reasonable costs and  
 3 reasonable attorney's fees, unless the agency demonstrates  
 4 that its actions were substantially justified or special  
 5 circumstances exist which would make the award unjust. An  
 6 agency's actions are "substantially justified" if there was a  
 7 reasonable basis in law and fact at the time the actions were  
 8 taken by the agency. If the agency prevails in the  
 9 proceedings, the court or administrative law judge shall award  
 10 reasonable costs and reasonable attorney's fees against a  
 11 party if the court or administrative law judge determines that  
 12 a party participated in the proceedings for an improper  
 13 purpose as defined by paragraph (1)(e). No award of attorney's  
 14 fees as provided by this subsection shall exceed \$50,000  
 15 ~~\$15,000~~.

16 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
 17 120.56(4).--

18 (a) Upon entry of a final order that all or part of an  
 19 agency statement violates s. 120.54(1)(a), the administrative  
 20 law judge shall award reasonable costs and reasonable  
 21 attorney's fees to the petitioner, unless the agency  
 22 demonstrates that the statement is required by the Federal  
 23 Government to implement or retain a delegated or approved  
 24 program or to meet a condition to receipt of federal funds.

25 (b) If the agency initiates rulemaking under s. 120.54  
 26 during a rule challenge under s. 120.56(4) and the statement  
 27 is adopted and becomes effective as a rule, the administrative  
 28 law judge shall award reasonable costs and reasonable  
 29 attorney's fees accrued to the date the agency initiated  
 30 rulemaking upon a finding that the agency knew or should have  
 31 known that the agency statement was an unadopted rule. The

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1 administrative law judge may consider, among other factors,  
 2 whether or not the petitioner or other person had requested or  
 3 formally petitioned the agency to adopt the statement as a  
 4 rule prior to the filing of the s. 120.56(4) challenge.

5 (c)(b) Notwithstanding the provisions of chapter 284,  
 6 an award shall be paid from the budget entity of the  
 7 secretary, executive director, or equivalent administrative  
 8 officer of the agency, and the agency shall not be entitled to  
 9 payment of an award or reimbursement for payment of an award  
 10 under any provision of law.

11 (d) If the agency prevails in the proceedings, the  
 12 court or administrative law judge shall award reasonable costs  
 13 and reasonable attorney's fees against a party if the court or  
 14 administrative law judge determines that the party  
 15 participated in the proceedings for an improper purpose as  
 16 defined in paragraph (1)(e).

17 Section 8. Paragraph (a) of subsection (1) of section  
 18 120.55, Florida Statutes, is amended to read:

19 120.55 Publication.--

20 (1) The Department of State shall:

21 (a)1. Through a continuous revision system, compile  
 22 and publish the "Florida Administrative Code." The Florida  
 23 Administrative Code shall contain all rules adopted by each  
 24 agency, citing the specific rulemaking authority pursuant to  
 25 which each rule was adopted, all history notes as authorized  
 26 in s. 120.545(8) ~~s. 120.545(9)~~, and complete indexes to all  
 27 rules contained in the code. Supplementation shall be made as  
 28 often as practicable, but at least monthly. The department  
 29 may contract with a publishing firm for the publication, in a  
 30 timely and useful form, of the Florida Administrative Code;  
 31 however, the department shall retain responsibility for the

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1 code as provided in this section. This publication shall be  
 2 the official compilation of the administrative rules of this  
 3 state. The Department of State shall retain the copyright over  
 4 the Florida Administrative Code.

5         2. Rules general in form but applicable to only one  
 6 school district, community college district, or county, or a  
 7 part thereof, or state university rules relating to internal  
 8 personnel or business and finance shall not be published in  
 9 the Florida Administrative Code. Exclusion from publication in  
 10 the Florida Administrative Code shall not affect the validity  
 11 or effectiveness of such rules.

12         3. At the beginning of the section of the code dealing  
 13 with an agency that files copies of its rules with the  
 14 department, the department shall publish the address and  
 15 telephone number of the executive offices of each agency, the  
 16 manner by which the agency indexes its rules, a listing of all  
 17 rules of that agency excluded from publication in the code,  
 18 and a statement as to where those rules may be inspected.

19         4. Forms shall not be published in the Florida  
 20 Administrative Code; but any form which an agency uses in its  
 21 dealings with the public, along with any accompanying  
 22 instructions, shall be filed with the committee before it is  
 23 used. Any form or instruction which meets the definition of  
 24 "rule" provided in s. 120.52 shall be incorporated by  
 25 reference into the appropriate rule. The reference shall  
 26 specifically state that the form is being incorporated by  
 27 reference and shall include the number, title, and effective  
 28 date of the form and an explanation of how the form may be  
 29 obtained.

30         Section 9. Effective December 31, 2007, paragraph (a)  
 31 of subsection (1) of section 120.55, Florida Statutes, as



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1 amended by section 4 of chapter 2006-82, Laws of Florida, is  
2 amended to read:

3           120.55 Publication.--

4           (1) The Department of State shall:

5           (a)1. Through a continuous revision system, compile  
6 and publish the "Florida Administrative Code." The Florida  
7 Administrative Code shall contain all rules adopted by each  
8 agency, citing the specific rulemaking authority pursuant to  
9 which each rule was adopted, all history notes as authorized  
10 in s. 120.545(8) ~~s. 120.545(9)~~, and complete indexes to all  
11 rules contained in the code. Supplementation shall be made as  
12 often as practicable, but at least monthly. The department  
13 may contract with a publishing firm for the publication, in a  
14 timely and useful form, of the Florida Administrative Code;  
15 however, the department shall retain responsibility for the  
16 code as provided in this section. This publication shall be  
17 the official compilation of the administrative rules of this  
18 state. The Department of State shall retain the copyright over  
19 the Florida Administrative Code.

20           2. Rules general in form but applicable to only one  
21 school district, community college district, or county, or a  
22 part thereof, or state university rules relating to internal  
23 personnel or business and finance shall not be published in  
24 the Florida Administrative Code. Exclusion from publication in  
25 the Florida Administrative Code shall not affect the validity  
26 or effectiveness of such rules.

27           3. At the beginning of the section of the code dealing  
28 with an agency that files copies of its rules with the  
29 department, the department shall publish the address and  
30 telephone number of the executive offices of each agency, the  
31 manner by which the agency indexes its rules, a listing of all

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1 rules of that agency excluded from publication in the code,  
2 and a statement as to where those rules may be inspected.

3           4. Forms shall not be published in the Florida  
4 Administrative Code; but any form which an agency uses in its  
5 dealings with the public, along with any accompanying  
6 instructions, shall be filed with the committee before it is  
7 used. Any form or instruction which meets the definition of  
8 "rule" provided in s. 120.52 shall be incorporated by  
9 reference into the appropriate rule. The reference shall  
10 specifically state that the form is being incorporated by  
11 reference and shall include the number, title, and effective  
12 date of the form and an explanation of how the form may be  
13 obtained. Each form created by an agency which is incorporated  
14 by reference in a rule notice of which is given under s.  
15 120.54(3)(a) after December 31, 2007, must clearly display the  
16 number, title, and effective date of the form and the number  
17 of the rule in which the form is incorporated.

18           Section 10. Except as otherwise expressly provided in  
19 this act, this act shall take effect July 1, 2007.

20  
21

22 ===== T I T L E   A M E N D M E N T =====

23 And the title is amended as follows:

24           Delete everything before the enacting clause

25

26 and insert:

27                           A bill to be entitled  
28           An act relating to administrative procedures;  
29           amending s. 120.52, F.S.; defining the term  
30           "unadopted rule"; amending s. 120.54, F.S. ;  
31           prohibiting any agency from delegating

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1 responsibilities to conduct a public hearing;  
2 revising dates for filing rules for adoption;  
3 revising provisions with respect to petitions  
4 to initiate rulemaking; amending s. 120.545,  
5 F.S.; revising duties of the Administrative  
6 Procedures Committee and agencies with respect  
7 to review of agency rules; providing for a  
8 legislative committee to request agency  
9 information for examination of an unadopted  
10 rule; prescribing responses that may be made by  
11 an agency to a committee objection to a rule or  
12 statement of estimated regulatory costs;  
13 prescribing presumptions resulting from an  
14 agency's refusal to respond to committee  
15 objections; amending s. 120.56, F.S.; revising  
16 notice requirements with respect to challenges  
17 of proposed rules; requiring an agency to  
18 discontinue reliance on a statement when an  
19 administrative determination is sought with  
20 respect to the statement; allowing continued  
21 reliance on a statement when an administrative  
22 law judge determines that the inability to rely  
23 on it would constitute an immediate danger;  
24 deleting certain provisions relating to actions  
25 before a final hearing is held; amending s.  
26 120.57, F.S.; prescribing procedures with  
27 respect to challenges to unadopted rules;  
28 amending s. 120.595, F.S.; increasing maximum  
29 attorney's fees; revising guidelines for award  
30 of attorney's fees in challenges to agency  
31 action; providing for attorney's fees and costs

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1           in certain circumstances; amending s. 120.55,  
2           F.S.; conforming a cross-reference; providing  
3           effective dates.

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