

Bill No. CS for SB 1592

Barcode 785202

CHAMBER ACTION

Senate

House

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The Committee on Transportation and Economic Development  
Appropriations (Margolis) 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. Subsection (8) of section 120.52, Florida  
Statutes, is amended, present subsections (9) through (15) of  
that section are renumbered as subsections (10) through (16),  
respectively, present subsections (16) through (19) of that  
section are renumbered as subsections (19) through (22),  
respectively, and new subsections (9), (17), and (18) are  
added to that section, to read:

120.52 Definitions.--As used in this act:

(8) "Invalid exercise of delegated legislative  
authority" means action that ~~which~~ goes beyond the powers,  
functions, and duties delegated by the Legislature. A proposed  
or existing rule is an invalid exercise of delegated

Bill No. CS for SB 1592

Barcode 785202

1 legislative authority if any one of the following applies:

2 (a) The agency has materially failed to follow the  
3 applicable rulemaking procedures or requirements set forth in  
4 this chapter;

5 (b) The agency has exceeded its grant of rulemaking  
6 authority, citation to which is required by s. 120.54(3)(a)1.;

7 (c) The rule enlarges, modifies, or contravenes the  
8 specific provisions of law implemented, citation to which is  
9 required by s. 120.54(3)(a)1.;

10 (d) The rule is vague, fails to establish adequate  
11 standards for agency decisions, or vests unbridled discretion  
12 in the agency;

13 (e) The rule is arbitrary or capricious. A rule is  
14 arbitrary if it is not supported by logic or the necessary  
15 facts; a rule is capricious if it is adopted without thought  
16 or reason or is irrational; or

17 (f) The rule imposes regulatory costs on the regulated  
18 person, county, or city which could be reduced by the adoption  
19 of less costly alternatives that substantially accomplish the  
20 statutory objectives.

21  
22 A grant of rulemaking authority is necessary but not  
23 sufficient to allow an agency to adopt a rule; a specific law  
24 to be implemented is also required. An agency may adopt only  
25 rules that implement or interpret the specific powers and  
26 duties granted by the enabling statute. No agency shall have  
27 authority to adopt a rule only because it is reasonably  
28 related to the purpose of the enabling legislation and is not  
29 arbitrary and capricious or is within the agency's class of  
30 powers and duties, nor shall an agency have the authority to  
31 implement statutory provisions setting forth general

Bill No. CS for SB 1592

Barcode 785202

1 legislative intent or policy. Statutory language granting  
2 rulemaking authority or generally describing the powers and  
3 functions of an agency shall be construed to extend no further  
4 than implementing or interpreting the specific powers and  
5 duties conferred ~~by the same statute.~~

6 (9) "Law implemented" means the statutory language  
7 being carried out or interpreted by an agency through  
8 rulemaking.

9 (17) "Rulemaking authority" means statutory language  
10 that explicitly authorizes or requires an agency to adopt,  
11 develop, establish, or otherwise create any statement coming  
12 within the definition of "rule."

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

16 Section 3. Subsection (1) of section 120.536, Florida  
17 Statutes, is amended to read:

18 120.536 Rulemaking authority; repeal; challenge.--

19 (1) A grant of rulemaking authority is necessary but  
20 not sufficient to allow an agency to adopt a rule; a specific  
21 law to be implemented is also required. An agency may adopt  
22 only rules that implement or interpret the specific powers and  
23 duties granted by the enabling statute. No agency shall have  
24 authority to adopt a rule only because it is reasonably  
25 related to the purpose of the enabling legislation and is not  
26 arbitrary and capricious or is within the agency's class of  
27 powers and duties, nor shall an agency have the authority to  
28 implement statutory provisions setting forth general  
29 legislative intent or policy. Statutory language granting  
30 rulemaking authority or generally describing the powers and  
31 functions of an agency shall be construed to extend no further

Bill No. CS for SB 1592

Barcode 785202

1 than implementing or interpreting the specific powers and  
2 duties conferred ~~by the same statute.~~

3 Section 4. Paragraph (i) of subsection (1), paragraphs  
4 (a), (c), and (e) of subsection (3), paragraph (a) of  
5 subsection (4), and subsection (7) of section 120.54, Florida  
6 Statutes, are amended, and paragraph (k) is added to  
7 subsection (1) of that section, to read:

8 120.54 Rulemaking.--

9 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER  
10 THAN EMERGENCY RULES.--

11 (i)1. A rule may incorporate material by reference but  
12 only as the material exists on the date the rule is adopted.  
13 For purposes of the rule, changes in the material are not  
14 effective unless the rule is amended to incorporate the  
15 changes. Material incorporated by reference in a rule may not  
16 incorporate additional material by reference unless the rule  
17 specifically identifies the additional material.

18 2. An agency rule that incorporates by specific  
19 reference another rule of that agency automatically  
20 incorporates subsequent amendments to the referenced rule,  
21 unless a contrary intent is clearly indicated in the  
22 referencing rule. Any notice of amendments to a rule that has  
23 been incorporated by specific reference in other rules of that  
24 agency must explain the effect of the amendments on the  
25 referencing rules.

26 3. In rules adopted after December 31, 2009, material  
27 may not be incorporated by reference unless:

28 a. The material has been submitted in the prescribed  
29 electronic format to the Department of State and can be made  
30 available for free public access through an electronic  
31 hyperlink from the rule in the Florida Administrative Code

Bill No. CS for SB 1592

Barcode 785202

1 making the reference; or

2 b. The agency has determined that posting the material  
3 on the Internet for purposes of public examination and  
4 inspection would constitute a violation of federal copyright  
5 law, in which case a statement to that effect, along with the  
6 address of locations at the Department of State and the agency  
7 at which the material is available for public examination and  
8 inspection, is included in the notice required by subparagraph  
9 (3)(a)1.

10 4. A rule may not be amended by reference only.  
11 Amendments must set out the amended rule in full in the same  
12 manner as required by the State Constitution for laws. ~~The~~  
13 ~~Department of State may prescribe by rule requirements for~~  
14 ~~incorporating materials by reference pursuant to this~~  
15 ~~paragraph.~~

16 5.2. Notwithstanding any contrary provision in this  
17 section, when an adopted rule of the Department of  
18 Environmental Protection or a water management district is  
19 incorporated by reference in the other agency's rule to  
20 implement a provision of part IV of chapter 373, subsequent  
21 amendments to the rule are not effective as to the  
22 incorporating rule unless the agency incorporating by  
23 reference notifies the committee and the Department of State  
24 of its intent to adopt the subsequent amendment, publishes  
25 notice of such intent in the Florida Administrative Weekly,  
26 and files with the Department of State a copy of the amended  
27 rule incorporated by reference. Changes in the rule  
28 incorporated by reference are effective as to the other agency  
29 20 days after the date of the published notice and filing with  
30 the Department of State. The Department of State shall amend  
31 the history note of the incorporating rule to show the

Bill No. CS for SB 1592

Barcode 785202

1 effective date of such change. Any substantially affected  
 2 person may, within 14 days after the date of publication of  
 3 the notice of intent in the Florida Administrative Weekly,  
 4 file an objection to rulemaking with the agency. The objection  
 5 shall specify the portions of the rule incorporated by  
 6 reference to which the person objects and the reasons for the  
 7 objection. The agency does ~~shall~~ not have the authority under  
 8 this subparagraph to adopt those portions of the rule  
 9 specified in such objection. The agency shall publish notice  
 10 of the objection and of its action in response in the next  
 11 available issue of the Florida Administrative Weekly.

12 6. The Department of State may prescribe by rule  
 13 requirements for incorporating materials pursuant to this  
 14 paragraph.

15 (k) Rulemaking responsibilities of an agency head  
 16 under subparagraph (3)(a)1., subparagraph (3)(e)1., or  
 17 subparagraph (3)(e)6. may not be delegated or transferred.

18 (3) ADOPTION PROCEDURES.--

19 (a) Notices.--

20 1. Prior to the adoption, amendment, or repeal of any  
 21 rule other than an emergency rule, an agency, upon approval of  
 22 the agency head, shall give notice of its intended action,  
 23 setting forth a short, plain explanation of the purpose and  
 24 effect of the proposed action; the full text of the proposed  
 25 rule or amendment and a summary thereof; a reference to the  
 26 grant of ~~specific~~ rulemaking authority pursuant to which the  
 27 rule is adopted; and a reference to the section or subsection  
 28 of the Florida Statutes or the Laws of Florida being  
 29 implemented or, ~~interpreted, or made specific~~. The notice must  
 30 ~~shall~~ include a summary of the agency's statement of the  
 31 estimated regulatory costs, if one has been prepared, based on

Bill No. CS for SB 1592

Barcode 785202

1 the factors set forth in s. 120.541(2), and a statement that  
2 any person who wishes to provide the agency with information  
3 regarding the statement of estimated regulatory costs, or to  
4 provide a proposal for a lower cost regulatory alternative as  
5 provided by s. 120.541(1), must do so in writing within 21  
6 days after publication of the notice. The notice must state  
7 the procedure for requesting a public hearing on the proposed  
8 rule. Except when the intended action is the repeal of a rule,  
9 the notice must ~~shall~~ include a reference both to the date on  
10 which and to the place where the notice of rule development  
11 that is required by subsection (2) appeared.

12         2. The notice shall be published in the Florida  
13 Administrative Weekly not less than 28 days prior to the  
14 intended action. The proposed rule shall be available for  
15 inspection and copying by the public at the time of the  
16 publication of notice.

17         3. The notice shall be mailed to all persons named in  
18 the proposed rule and to all persons who, at least 14 days  
19 prior to such mailing, have made requests of the agency for  
20 advance notice of its proceedings. The agency shall also give  
21 such notice as is prescribed by rule to those particular  
22 classes of persons to whom the intended action is directed.

23         4. The adopting agency shall file with the committee,  
24 at least 21 days prior to the proposed adoption date, a copy  
25 of each rule it proposes to adopt; a copy of any material  
26 incorporated by reference in the rule; a detailed written  
27 statement of the facts and circumstances justifying the  
28 proposed rule; a copy of any statement of estimated regulatory  
29 costs that has been prepared pursuant to s. 120.541; a  
30 statement of the extent to which the proposed rule relates to  
31 federal standards or rules on the same subject; and the notice

Bill No. CS for SB 1592

Barcode 785202

1 required by subparagraph 1.

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 created under s. 20.165(4) or s.  
13 20.43(3)(g), 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.



Bill No. CS for SB 1592

Barcode 785202

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

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

Bill No. CS for SB 1592

Barcode 785202

1 for adoption, the period during which a rule must be filed for  
2 adoption is extended to 45 days after adjournment of the final  
3 hearing on the rule, 21 days after receipt of all material  
4 authorized to be submitted at the hearing, or 21 days after  
5 receipt of the transcript, if one is made, whichever is  
6 latest. The term "public hearing" includes any public meeting  
7 held by any agency at which the rule is considered. If a  
8 petition for an administrative determination under s.  
9 120.56(2) is filed, the period during which a rule must be  
10 filed for adoption is extended to 60 days after the  
11 administrative law judge files the final order with the clerk  
12 or until 60 days after subsequent judicial review is complete.

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

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

29         5. If a rule has not been adopted within the time  
30 limits imposed by this paragraph or has not been adopted in  
31 compliance with all statutory rulemaking requirements, the

Bill No. CS for SB 1592

Barcode 785202

1 agency proposing the rule shall withdraw the rule and give  
2 notice of its action in the next available issue of the  
3 Florida Administrative Weekly.

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

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

20           (4) EMERGENCY RULES.--

21           (a) If an agency finds that an immediate danger to the  
22 public health, safety, or welfare requires emergency action,  
23 the agency may adopt any rule necessitated by the immediate  
24 danger. The agency may adopt a rule by any procedure which is  
25 fair under the circumstances if:

26           1. The procedure provides at least the procedural  
27 protection given by other statutes, the State Constitution, or  
28 the United States Constitution.

29           2. The agency takes only that action necessary to  
30 protect the public interest under the emergency procedure.

31           3. The agency publishes in writing at the time of, or

Bill No. CS for SB 1592

Barcode 785202

1 prior to, its action the specific facts and reasons for  
2 finding an immediate danger to the public health, safety, or  
3 welfare and its reasons for concluding that the procedure used  
4 is fair under the circumstances. In any event, notice of  
5 emergency rules, other than those of educational units or  
6 units of government with jurisdiction in only one or a part of  
7 one county, including the full text of the rules, shall be  
8 published in the first available issue of the Florida  
9 Administrative Weekly and provided to the committee along with  
10 any material incorporated by reference in the rules. The  
11 agency's findings of immediate danger, necessity, and  
12 procedural fairness shall be judicially reviewable.

13 (7) PETITION TO INITIATE RULEMAKING.--

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

24 ~~(b) If the petition filed under this subsection is~~  
25 ~~directed to an existing rule which the agency has not adopted~~  
26 ~~by the rulemaking procedures or requirements set forth in this~~  
27 ~~chapter, the agency shall, not later than 30 days following~~  
28 ~~the date of filing a petition, initiate rulemaking, or provide~~  
29 ~~notice in the Florida Administrative Weekly that the agency~~  
30 ~~will hold a public hearing on the petition within 30 days~~  
31 ~~after publication of the notice. The purpose of the public~~

Bill No. CS for SB 1592

Barcode 785202

1 ~~hearing is to consider the comments of the public directed to~~  
2 ~~the agency rule which has not been adopted by the rulemaking~~  
3 ~~procedures or requirements of this chapter, its scope and~~  
4 ~~application, and to consider whether the public interest is~~  
5 ~~served adequately by the application of the rule on a~~  
6 ~~case-by-case basis, as contrasted with its adoption by the~~  
7 ~~rulemaking procedures or requirements set forth in this~~  
8 ~~chapter.~~

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

26       Section 5. Section 120.545, Florida Statutes, is  
27 amended to read:

28       120.545 Committee review of agency rules.--

29       (1) As a legislative check on legislatively created  
30 authority, the committee shall examine each proposed rule,  
31 except for those proposed rules exempted by s. 120.81(1)(e)

Bill No. CS for SB 1592

Barcode 785202

1 and (2), and its accompanying material, and each emergency  
2 rule, and may examine any existing rule, for the purpose of  
3 determining whether:

4 (a) The rule is an invalid exercise of delegated  
5 legislative authority.

6 (b) The statutory authority for the rule has been  
7 repealed.

8 (c) The rule reiterates or paraphrases statutory  
9 material.

10 (d) The rule is in proper form.

11 (e) The notice given prior to its adoption was  
12 sufficient to give adequate notice of the purpose and effect  
13 of the rule.

14 (f) The rule is consistent with expressed legislative  
15 intent pertaining to the specific provisions of law which the  
16 rule implements.

17 (g) The rule is necessary to accomplish the apparent  
18 or expressed objectives of the specific provision of law which  
19 the rule implements.

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

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

25 (j) The rule's statement of estimated regulatory costs  
26 complies with the requirements of s. 120.541 and the rule does  
27 not impose regulatory costs on the regulated person, county,  
28 or city which could be reduced by the adoption of less costly  
29 alternatives that substantially accomplish the statutory  
30 objectives.

31 (k) The rule will require additional appropriations.

Bill No. CS for SB 1592

Barcode 785202

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

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

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

- 26           (a) If the rule is not yet in effect ~~a proposed rule~~:
- 27           1. File notice pursuant to s. 120.54(3)(d) of only
  - 28 such modifications as are necessary to address ~~Modify the rule~~
  - 29 ~~to meet~~ the committee's objection;
  - 30           2. File notice pursuant to s. 120.54(3)(d) of
  - 31 withdrawal of ~~Withdraw~~ the rule ~~in its entirety~~; or

Bill No. CS for SB 1592

Barcode 785202

- 1           3. Notify the committee in writing that it refuses
- 2 ~~Refuse~~ to modify or withdraw the rule.
- 3           (b) If the rule is in effect ~~an existing rule~~:
- 4           1. File notice pursuant to s. 120.54(3)(a), without
- 5 prior notice of rule development, ~~Notify the committee that it~~
- 6 ~~has elected~~ to amend the rule to address ~~meet~~ the committee's
- 7 objection ~~and initiate the amendment procedure~~;
- 8           2. File notice pursuant to s. 120.54(3)(a) ~~Notify the~~
- 9 ~~committee that it has elected~~ to repeal the rule ~~and initiate~~
- 10 ~~the repeal procedure~~; or
- 11           3. Notify the committee in writing that it refuses to
- 12 amend or repeal the rule.
- 13           (c) If the ~~rule is either an existing or a proposed~~
- 14 ~~rule and the~~ objection is to the statement of estimated
- 15 regulatory costs:
- 16           1. Prepare a corrected statement of estimated
- 17 regulatory costs, give notice of the availability of the
- 18 corrected statement in the first available issue of the
- 19 Florida Administrative Weekly, and file a copy of the
- 20 corrected statement with the committee; or
- 21           2. Notify the committee that it refuses to prepare a
- 22 corrected statement of estimated regulatory costs.
- 23           (d) If the rule is unadopted:
- 24           1. File notice pursuant to s. 120.54(3)(a) of intent
- 25 to adopt the rule;
- 26           2. File notice for publication in the Florida
- 27 Administrative Weekly that the agency has abandoned all
- 28 reliance upon the statement or any substantially similar
- 29 statement as a basis for agency action; or
- 30           3. Notify the committee in writing that it refuses to
- 31 adopt the rule or to abandon all reliance upon the statement



Bill No. CS for SB 1592

Barcode 785202

1 or any substantially similar statement as a basis for agency  
2 action.

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

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

29 ~~(6) If an agency elects to amend or repeal an existing~~  
30 ~~rule as a result of a committee objection, it shall complete~~  
31 ~~the process within 90 days after giving notice in the Florida~~

Bill No. CS for SB 1592

Barcode 785202

1 ~~Administrative Weekly.~~

2       ~~(4)(7)~~ Failure of the agency to respond to a committee  
3 objection to a ~~proposed~~ rule that is not yet in effect within  
4 the time prescribed in subsection (3) constitutes ~~shall~~  
5 ~~constitute~~ withdrawal of the rule in its entirety. In this  
6 event, the committee shall notify the Department of State that  
7 the agency, by its failure to respond to a committee  
8 objection, has elected to withdraw the ~~proposed~~ rule. Upon  
9 receipt of the committee's notice, the Department of State  
10 shall publish a notice to that effect in the next available  
11 issue of the Florida Administrative Weekly. Upon publication  
12 of the notice, the ~~proposed~~ rule shall be stricken from the  
13 files of the Department of State and the files of the agency.

14       ~~(5)(8)~~ Failure of the agency to respond to a committee  
15 objection to a ~~an existing~~ rule that is in effect within the  
16 time prescribed in subsection (3) constitutes ~~shall constitute~~  
17 a refusal to amend or repeal the rule.

18       ~~(6)~~ Failure of the agency to respond to a committee  
19 objection to a statement of estimated regulatory costs within  
20 the time prescribed in subsection (3) constitutes a refusal to  
21 prepare a corrected statement of estimated regulatory costs.

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

27       ~~(8)(9)~~ If the committee objects to a ~~proposed or~~  
28 ~~existing~~ rule and the agency refuses to adopt, abandon,  
29 modify, amend, withdraw, or repeal it ~~the rule~~, the committee  
30 shall file with the Department of State a notice of the  
31 objection, detailing with particularity its objection to the

Bill No. CS for SB 1592

Barcode 785202

1 rule. The Department of State shall publish this notice in  
2 the Florida Administrative Weekly. If the rule is published  
3 ~~and shall publish, as a history note to the rule in the~~  
4 Florida Administrative Code, a reference to the committee's  
5 objection and to the issue of the Weekly in which the full  
6 text thereof appears shall be recorded in a history note.

7 ~~(9)(10)~~(a) If the committee objects to a ~~proposed or~~  
8 ~~existing~~ rule, or portion thereof, and the agency fails to  
9 initiate administrative action to adopt, abandon, modify,  
10 amend, withdraw, or repeal the rule consistent with the  
11 objection within 60 days after the objection, or thereafter  
12 fails to proceed in good faith to complete such action, the  
13 committee may submit to the President of the Senate and the  
14 Speaker of the House of Representatives a recommendation that  
15 legislation be introduced to address the committee objection  
16 ~~modify or suspend the adoption of the proposed rule, or amend~~  
17 ~~or repeal the rule, or portion thereof.~~

18 (b)1. If the committee votes to recommend the  
19 introduction of legislation to address the committee objection  
20 ~~modify or suspend the adoption of a proposed rule, or amend or~~  
21 ~~repeal a rule,~~ the committee shall, within 5 days after this  
22 determination, certify that fact to the agency whose rule or  
23 proposed rule has been examined. The committee may request  
24 that the agency temporarily suspend the rule, ~~or~~ suspend the  
25 adoption of the proposed rule, or suspend all reliance upon  
26 the statement or any substantially similar statement as a  
27 basis for agency action, pending consideration of proposed  
28 legislation during the next regular session of the  
29 Legislature.

30 2. Within 30 days after receipt of the certification,  
31 if the agency is headed by an individual, or within 45 days

Bill No. CS for SB 1592

Barcode 785202

1 after receipt of the certification, if the agency is headed by  
2 a collegial body, the agency shall ~~either~~:

3 a. Temporarily suspend the rule, ~~or~~ suspend the  
4 adoption of the proposed rule, or suspend all reliance upon  
5 the statement or any substantially similar statement as a  
6 basis for agency action; or

7 b. Notify the committee in writing that it refuses to  
8 temporarily suspend the rule, ~~or~~ suspend the adoption of the  
9 proposed rule, or suspend all reliance upon the statement or  
10 any substantially similar statement as a basis for agency  
11 action.

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

26 4. Failure of an agency to respond to committee  
27 certification within the time prescribed by subparagraph 2.  
28 constitutes a refusal to suspend the rule, ~~or to~~ suspend the  
29 adoption of the proposed rule, or suspend all reliance upon  
30 the statement or any substantially similar statement as a  
31 basis for agency action.

Bill No. CS for SB 1592

Barcode 785202

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

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

23           ~~(e) The Department of State shall publish in the next~~  
24 ~~available issue of the Florida Administrative Weekly the final~~  
25 ~~legislative action taken. If a bill to modify or suspend the~~  
26 ~~adoption of the proposed rule or amend or repeal the rule, or~~  
27 ~~portion thereof, is enacted into law, the Department of State~~  
28 ~~shall conform the rule or portion of the rule to the~~  
29 ~~provisions of the law in the Florida Administrative Code and~~  
30 ~~publish a reference to the law as a history note to the rule.~~

31           Section 6. Paragraphs (a) and (c) of subsection (1)

Bill No. CS for SB 1592

Barcode 785202

1 and subsection (3) of section 120.55, Florida Statutes, are  
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

Bill No. CS for SB 1592

Barcode 785202

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.

14 (c) Prescribe by rule the style, ~~and form and content~~  
15 requirements required for rules, notices, and other materials  
16 submitted for filing ~~and establish the form for their~~  
17 certification.

18 (3) Any publication of a proposed rule promulgated by  
19 an agency, whether published in the Florida Administrative  
20 Code or elsewhere, shall include, along with the rule, the  
21 name of the person or persons originating such rule, the name  
22 of the agency head ~~supervisor or person~~ who approved the rule,  
23 and the date upon which the rule was approved.

24 Section 7. Effective December 31, 2007, paragraphs (a)  
25 and (d) of subsection (1) and subsections (2) and (5) of  
26 section 120.55, Florida Statutes, as amended by section 4 of  
27 chapter 2006-82, Laws of Florida, are amended to read:

28 120.55 Publication.--

29 (1) The Department of State shall:

30 (a)1. Through a continuous revision system, compile  
31 and publish the "Florida Administrative Code." The Florida

Bill No. CS for SB 1592

Barcode 785202

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

14         2. Rules general in form but applicable to only one  
 15 school district, community college district, or county, or a  
 16 part thereof, or state university rules relating to internal  
 17 personnel or business and finance shall not be published in  
 18 the Florida Administrative Code. Exclusion from publication in  
 19 the Florida Administrative Code shall not affect the validity  
 20 or effectiveness of such rules.

21         3. At the beginning of the section of the code dealing  
 22 with an agency that files copies of its rules with the  
 23 department, the department shall publish the address and  
 24 telephone number of the executive offices of each agency, the  
 25 manner by which the agency indexes its rules, a listing of all  
 26 rules of that agency excluded from publication in the code,  
 27 and a statement as to where those rules may be inspected.

28         4. Forms shall not be published in the Florida  
 29 Administrative Code; but any form which an agency uses in its  
 30 dealings with the public, along with any accompanying  
 31 instructions, shall be filed with the committee before it is



Bill No. CS for SB 1592

Barcode 785202

1 used. Any form or instruction which meets the definition of  
 2 "rule" provided in s. 120.52 shall be incorporated by  
 3 reference into the appropriate rule. The reference shall  
 4 specifically state that the form is being incorporated by  
 5 reference and shall include the number, title, and effective  
 6 date of the form and an explanation of how the form may be  
 7 obtained. Each form created by an agency which is incorporated  
 8 by reference in a rule notice of which is given under s.  
 9 120.54(3)(a) after December 31, 2007, must clearly display the  
 10 number, title, and effective date of the form and the number  
 11 of the rule in which the form is incorporated.

12 (d) Prescribe by rule the style, ~~and form, and content~~  
 13 requirements required for rules, notices, and other materials  
 14 submitted for filing ~~and establish the form for their~~  
 15 certification.

16 (2) The Florida Administrative Weekly Internet website  
 17 must allow users to:

18 (a) Search for notices by type, publication date, rule  
 19 number, word, subject, and agency;

20 (b) Search a database that makes available all notices  
 21 published on the website for a period of at least 5 years;

22 (c) Subscribe to an automated e-mail notification of  
 23 selected notices to be sent out prior to or concurrently with  
 24 weekly publication of the printed and electronic Florida  
 25 Administrative Weekly. Such notification must include in the  
 26 text of the e-mail a summary of the content of each notice;

27 (d) View agency forms and other materials that have  
 28 been submitted to the department in electronic form and that  
 29 are being incorporated by reference in proposed rules; and

30 (e) Comment on proposed rules.

31 (5) Any publication of a proposed rule promulgated by

Bill No. CS for SB 1592

Barcode 785202

1 an agency, whether published in the Florida Administrative  
 2 Code or elsewhere, shall include, along with the rule, the  
 3 name of the person or persons originating such rule, the name  
 4 of the agency head ~~supervisor or person~~ who approved the rule,  
 5 and the date upon which the rule was approved.

6 Section 8. Effective December 31, 2008, paragraph (a)  
 7 of subsection (1) of section 120.55, Florida Statutes, as  
 8 amended by section 4 of chapter 2006-82, Laws of Florida, and  
 9 by this act, is amended to read:

10 120.55 Publication.--

11 (1) The Department of State shall:

12 (a) 1. Through a continuous revision system, compile  
 13 and publish electronically the "Florida Administrative Code"  
 14 on an Internet website managed by the department. The Florida  
 15 Administrative Code shall contain all rules adopted by each  
 16 agency, citing the grant of ~~specific~~ rulemaking authority and  
 17 the specific law implemented pursuant to which each rule was  
 18 adopted, all history notes as authorized in s. 120.545(8), ~~and~~  
 19 complete indexes to all rules contained in the code, and any  
 20 other material required or authorized by law or deemed useful  
 21 by the department. The electronic code shall display each rule  
 22 chapter currently in effect in browse mode and allow full text  
 23 search of the code and each rule chapter. ~~Supplementation~~  
 24 ~~shall be made as often as practicable, but at least monthly.~~  
 25 The department shall publish a printed version of the Florida  
 26 Administrative Code and may contract with a publishing firm  
 27 for such printed ~~the publication, in a timely and useful form,~~  
 28 ~~of the Florida Administrative Code;~~ however, the department  
 29 shall retain responsibility for the code as provided in this  
 30 section. Supplementation of the printed code shall be made as  
 31 often as practicable, but at least monthly. ~~The printed This~~

Bill No. CS for SB 1592

Barcode 785202

1 publication shall be the official compilation of the  
 2 administrative rules of this state. The Department of State  
 3 shall retain the copyright over the Florida Administrative  
 4 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. Each form created by an agency which is incorporated  
 30 by reference in a rule notice of which is given under s.

31 120.54(3)(a) after December 31, 2007, must clearly display the

Bill No. CS for SB 1592

Barcode 785202

1 number, title, and effective date of the form and the number  
2 of the rule in which the form is incorporated.

3 5. The department shall allow material incorporated by  
4 reference to be filed in electronic form as prescribed by  
5 department rule. When a rule is filed for adoption with  
6 incorporated material in electronic form, the department's  
7 publication of the Florida Administrative Code on its Internet  
8 website must contain a hyperlink from the incorporating  
9 reference in the rule directly to that material. The  
10 department may not allow hyperlinks from rules in the Florida  
11 Administrative Code to any material other than that filed with  
12 and maintained by the department, but it may allow additional  
13 hyperlinks to incorporated material maintained by the  
14 department from the adopting agency's website or other sites.

15 Section 9. Paragraph (a) of subsection (2) and,  
16 effective January 1, 2008, subsection (4) of section 120.56,  
17 Florida Statutes, is amended to read:

18 120.56 Challenges to rules.--

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

20 (a) Any substantially affected person may seek an  
21 administrative determination of the invalidity of any proposed  
22 rule by filing a petition seeking such a determination with  
23 the division within 21 days after the date of publication of  
24 the notice required by s. 120.54(3)(a), within 10 days after  
25 the final public hearing is held on the proposed rule as  
26 provided by s. 120.54(3)(e)2. ~~s. 120.54(3)(c)~~, within 20 days  
27 after ~~the preparation of~~ a statement of estimated regulatory  
28 costs required pursuant to s. 120.541, if applicable, has been  
29 provided to all persons who submitted a lower cost regulatory  
30 alternative and made available to the public or within 20 days  
31 after the date of publication of the notice required by s.

Bill No. CS for SB 1592

Barcode 785202

1 120.54(3)(d). The petition shall state with particularity the  
 2 objections to the proposed rule and the reasons that the  
 3 proposed rule is an invalid exercise of delegated legislative  
 4 authority. The petitioner has the burden of going forward. The  
 5 agency then has the burden to prove by a preponderance of the  
 6 evidence that the proposed rule is not an invalid exercise of  
 7 delegated legislative authority as to the objections raised.  
 8 Any person who is substantially affected by a change in the  
 9 proposed rule may seek a determination of the validity of such  
 10 change. Any person not substantially affected by the proposed  
 11 rule as initially noticed, but who is substantially affected  
 12 by the rule as a result of a change, may challenge any  
 13 provision of the rule and is not limited to challenging the  
 14 change to the proposed rule.

15 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;  
 16 SPECIAL PROVISIONS.--

17 (a) Any person substantially affected by an agency  
 18 statement may seek an administrative determination that the  
 19 statement violates s. 120.54(1)(a). The petition must ~~shall~~  
 20 include the text of the statement or a description of the  
 21 statement and shall state with particularity facts sufficient  
 22 to show that the statement constitutes a rule under s. 120.52  
 23 and that the agency has not adopted the statement by the  
 24 rulemaking procedure provided by s. 120.54. Upon the filing of  
 25 a petition for an administrative determination under this  
 26 subsection, the agency shall immediately discontinue all  
 27 reliance upon the statement or any substantially similar  
 28 statement as a basis for agency action until:

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

31 2. The statement is adopted and becomes effective as a

1 rule;

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

5           4. A final order is issued which contains a  
6 determination that rulemaking is not feasible under s.  
7 120.54(1)(a)1.a. or b. or not practicable under s.  
8 120.54(1)(a)2.

9           (b) If the administrative law judge determines that  
10 the agency's inability to rely upon the statement during the  
11 proceeding under this subsection would constitute an immediate  
12 danger to the public health, safety, or welfare, the  
13 administrative law judge shall grant an agency petition to  
14 allow application of the statement until the proceeding is  
15 concluded.

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

22           (d)(c) The administrative law judge may determine  
23 whether all or part of a statement violates s. 120.54(1)(a).  
24 The decision of the administrative law judge shall constitute  
25 a final order. The division shall transmit a copy of the final  
26 order to the Department of State and the committee. The  
27 Department of State shall publish notice of the final order in  
28 the first available issue of the Florida Administrative  
29 Weekly.

30           ~~(d) When an administrative law judge enters a final~~  
31 ~~order that all or part of an agency statement violates s.~~

Bill No. CS for SB 1592

Barcode 785202

1 ~~120.54(1)(a), the agency shall immediately discontinue all~~  
2 ~~reliance upon the statement or any substantially similar~~  
3 ~~statement as a basis for agency action.~~

4 ~~(e)1. If, prior to a final hearing to determine~~  
5 ~~whether all or part of any agency statement violates s.~~  
6 ~~120.54(1)(a), an agency publishes, pursuant to s.~~  
7 ~~120.54(3)(a), proposed rules that address the statement, then~~  
8 ~~for purposes of this section, a presumption is created that~~  
9 ~~the agency is acting expeditiously and in good faith to adopt~~  
10 ~~rules that address the statement, and the agency shall be~~  
11 ~~permitted to rely upon the statement or a substantially~~  
12 ~~similar statement as a basis for agency action if the~~  
13 ~~statement meets the requirements of s. 120.57(1)(e).~~

14 ~~2. If, prior to the final hearing to determine whether~~  
15 ~~all or part of an agency statement violates s. 120.54(1)(a),~~  
16 ~~an agency publishes a notice of rule development which~~  
17 ~~addresses the statement pursuant to s. 120.54(2), or certifies~~  
18 ~~that such a notice has been transmitted to the Florida~~  
19 ~~Administrative Weekly for publication, then such publication~~  
20 ~~shall constitute good cause for the granting of a stay of the~~  
21 ~~proceedings and a continuance of the final hearing for 30~~  
22 ~~days. If the agency publishes proposed rules within this~~  
23 ~~30-day period or any extension of that period granted by an~~  
24 ~~administrative law judge upon showing of good cause, then the~~  
25 ~~administrative law judge shall place the case in abeyance~~  
26 ~~pending the outcome of rulemaking and any proceedings~~  
27 ~~involving challenges to proposed rules pursuant to subsection~~  
28 ~~(2).~~

29 ~~3. If, following the commencement of the final hearing~~  
30 ~~and prior to entry of a final order that all or part of an~~  
31 ~~agency statement violates s. 120.54(1)(a), an agency~~

Bill No. CS for SB 1592

Barcode 785202

1 ~~publishes, pursuant to s. 120.54(3)(a), proposed rules that~~  
 2 ~~address the statement and proceeds expeditiously and in good~~  
 3 ~~faith to adopt rules that address the statement, the agency~~  
 4 ~~shall be permitted to rely upon the statement or a~~  
 5 ~~substantially similar statement as a basis for agency action~~  
 6 ~~if the statement meets the requirements of s. 120.57(1)(e).~~

7 ~~4. If an agency fails to adopt rules that address the~~  
 8 ~~statement within 180 days after publishing proposed rules, for~~  
 9 ~~purposes of this subsection, a presumption is created that the~~  
 10 ~~agency is not acting expeditiously and in good faith to adopt~~  
 11 ~~rules. If the agency's proposed rules are challenged pursuant~~  
 12 ~~to subsection (2), the 180-day period for adoption of rules is~~  
 13 ~~tolled until a final order is entered in that proceeding.~~

14 ~~5. If the proposed rules addressing the challenged~~  
 15 ~~statement are determined to be an invalid exercise of~~  
 16 ~~delegated legislative authority as defined in s.~~  
 17 ~~120.52(8)(b)-(f), the agency must immediately discontinue~~  
 18 ~~reliance on the statement and any substantially similar~~  
 19 ~~statement until the rules addressing the subject are properly~~  
 20 ~~adopted.~~

21 ~~(e)(f)~~ All proceedings to determine a violation of s.  
 22 120.54(1)(a) shall be brought pursuant to this subsection. A  
 23 proceeding pursuant to this subsection may be consolidated  
 24 with a proceeding under subsection (3) or under any other  
 25 section of this chapter. Nothing in this paragraph shall be  
 26 construed to prevent a party whose substantial interests have  
 27 been determined by an agency action from bringing a proceeding  
 28 pursuant to s. 120.57(1)(e).

29 Section 10. Subsection (1) and paragraph (c) of  
 30 subsection (2) of section 120.569, Florida Statutes, are  
 31 amended to read:



Bill No. CS for SB 1592

Barcode 785202

1           120.569 Decisions which affect substantial  
2 interests.--

3           (1) The provisions of this section apply in all  
4 proceedings in which the substantial interests of a party are  
5 determined by an agency, unless the parties are proceeding  
6 under s. 120.573 or s. 120.574. Unless waived by all parties,  
7 s. 120.57(1) applies whenever the proceeding involves a  
8 disputed issue of material fact. Unless otherwise agreed, s.  
9 120.57(2) applies in all other cases. If a disputed issue of  
10 material fact arises during a proceeding under s. 120.57(2),  
11 unless waived by all parties, the proceeding under s.  
12 120.57(2) shall be terminated and a proceeding under s.  
13 120.57(1) shall be conducted. Parties shall be notified of any  
14 order, including a final order. Unless waived, a copy of the  
15 order shall be delivered or mailed to each party or the  
16 party's attorney of record at the address of record. Each  
17 notice shall inform the recipient of any administrative  
18 hearing or judicial review that is available under this  
19 section, s. 120.57, or s. 120.68; shall indicate the procedure  
20 which must be followed to obtain the hearing or judicial  
21 review; and shall state the time limits which apply.

22           (2)

23           (c) Unless otherwise provided by law, a petition or  
24 request for hearing shall include those items required by the  
25 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~  
26 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for  
27 hearing, the agency shall carefully review the petition to  
28 determine if it contains all of the required information. A  
29 petition shall be dismissed if it is not in substantial  
30 compliance with these requirements or it has been untimely  
31 filed. Dismissal of a petition shall, at least once, be

Bill No. CS for SB 1592

Barcode 785202

1 without prejudice to petitioner's filing a timely amended  
 2 petition curing the defect, unless it conclusively appears  
 3 from the face of the petition that the defect cannot be cured.  
 4 The agency shall promptly give written notice to all parties  
 5 of the action taken on the petition, shall state with  
 6 particularity its reasons if the petition is not granted, and  
 7 shall state the deadline for filing an amended petition if  
 8 applicable. This paragraph does not eliminate the availability  
 9 of equitable tolling as a defense to the untimely filing of a  
 10 petition.

11 Section 11. Effective January 1, 2008, paragraph (e)  
 12 of subsection (1) of section 120.57, Florida Statutes, is  
 13 amended to read:

14 120.57 Additional procedures for particular cases.--

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

17 (e)1. ~~Any~~ Agency action that determines the  
 18 substantial interests of a party ~~may not be~~ ~~and that is~~ based  
 19 on an agency statement that violates s. 120.54(1)(a). Neither  
 20 an agency nor an administrative law judge has authority to  
 21 enforce agency policy that constitutes an unadopted rule when  
 22 the agency fails to prove that rulemaking is not feasible or  
 23 not practicable. This subparagraph does not preclude  
 24 application of adopted rules and applicable statutes to the  
 25 facts ~~unadopted rule is subject to de novo review by an~~  
 26 ~~administrative law judge.~~

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

29 ~~a. Is within the powers, functions, and duties~~  
 30 ~~delegated by the Legislature or, if the agency is operating~~  
 31 ~~pursuant to authority derived from the State Constitution, is~~

Bill No. CS for SB 1592

Barcode 785202

1 ~~within that authority;~~

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

4 ~~c. Is not vague, establishes adequate standards for~~  
5 ~~agency decisions, or does not vest unbridled discretion in the~~  
6 ~~agency;~~

7 ~~d. Is not arbitrary or capricious. A rule is arbitrary~~  
8 ~~if it is not supported by logic or the necessary facts; a rule~~  
9 ~~is capricious if it is adopted without thought or reason or is~~  
10 ~~irrational;~~

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

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

15 2.3. The recommended and final orders in any  
16 proceeding shall be governed by the provisions of paragraphs  
17 (k) and (l), except that the administrative law judge's  
18 determination regarding the unadopted rule shall not be  
19 rejected by the agency unless the agency first determines from  
20 a review of the complete record, and states with particularity  
21 in the order, that such determination is clearly erroneous or  
22 does not comply with essential requirements of law. In any  
23 proceeding for review under s. 120.68, if the court finds that  
24 the agency's rejection of the determination regarding the  
25 unadopted rule does not comport with the provisions of this  
26 subparagraph, the agency action shall be set aside and the  
27 court shall award to the prevailing party the reasonable costs  
28 and a reasonable attorney's fee for the initial proceeding and  
29 the proceeding for review.

30 Section 12. Effective January 1, 2008, subsections  
31 (2), (3), and (4) of section 120.595, Florida Statutes, are

Bill No. CS for SB 1592

Barcode 785202

1 amended to read:

2 120.595 Attorney's fees.--

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

21 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO  
 22 SECTION 120.56(3) AND (5).--If the court or administrative law  
 23 judge declares a rule or portion of a rule invalid pursuant to  
 24 s. 120.56(3) or s. 120.56(5), a judgment or order shall be  
 25 rendered against the agency for reasonable costs and  
 26 reasonable attorney's fees, unless the agency demonstrates  
 27 that its actions were substantially justified or special  
 28 circumstances exist which would make the award unjust. An  
 29 agency's actions are "substantially justified" if there was a  
 30 reasonable basis in law and fact at the time the actions were  
 31 taken by the agency. If the agency prevails in the

Bill No. CS for SB 1592

Barcode 785202

1 proceedings, the court or administrative law judge shall award  
 2 reasonable costs and reasonable attorney's fees against a  
 3 party if the court or administrative law judge determines that  
 4 a party participated in the proceedings for an improper  
 5 purpose as defined by paragraph (1)(e). No award of attorney's  
 6 fees as provided by this subsection shall exceed \$50,000  
 7 ~~\$15,000~~.

8 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
 9 120.56(4).--

10 (a) Upon entry of a final order that all or part of an  
 11 agency statement violates s. 120.54(1)(a), the administrative  
 12 law judge shall award reasonable costs and reasonable  
 13 attorney's fees to the petitioner, unless the agency  
 14 demonstrates that the statement is required by the Federal  
 15 Government to implement or retain a delegated or approved  
 16 program or to meet a condition to receipt of federal funds.

17 (b) If prior to the final hearing the agency initiates  
 18 rulemaking under s. 120.54 and requests a stay of the  
 19 proceedings pending rulemaking, the administrative law judge  
 20 shall award reasonable costs and reasonable attorney's fees  
 21 accrued by the petitioner prior to the date the agency filed  
 22 its request for a stay pending rulemaking provided the agency  
 23 adopts the statement as a rule. A request for a stay shall be  
 24 granted when the petitioner and the agency agree to the stay.  
 25 If the petitioner objects to the stay, the stay may be denied  
 26 if the petitioner establishes good cause exists to deny the  
 27 stay. A stay granted under this paragraph shall remain in  
 28 effect until either the statement has been adopted as a rule  
 29 and has become effective or the proposed rule has been  
 30 withdrawn. A request for attorney's fees and costs under this  
 31 paragraph shall be granted only upon a finding that the agency

Bill No. CS for SB 1592

Barcode 785202

1 knew or should have known at the time the petition was filed  
 2 that the agency statement was an unadopted rule, and no award  
 3 of attorney's fees as provided by this paragraph may exceed  
 4 \$50,000.

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 13. Subsection (2) of section 120.74, Florida  
 18 Statutes, is amended to read:

19 120.74 Agency review, revision, and report.--

20 (2) Beginning October 1, 1997, and by October 1 of  
 21 every ~~other~~ year thereafter, the head of each agency shall  
 22 file a report with the President of the Senate, the Speaker of  
 23 the House of Representatives, and the committee, with a copy  
 24 to each appropriate standing committee of the Legislature,  
 25 which certifies that the agency has complied with the  
 26 requirements of this section ~~subsection~~. The report must  
 27 specify any changes made to its rules as a result of the  
 28 review and, when appropriate, recommend statutory changes that  
 29 will promote efficiency, reduce paperwork, or decrease costs  
 30 to government and the private sector. The report must identify  
 31 the types of cases or disputes in which the agency is involved

Bill No. CS for SB 1592

Barcode 785202

1 which should be conducted under the summary hearing process  
2 described in s. 120.574.

3 Section 14. For the 2007-2008 fiscal year, the  
4 nonrecurring sum of \$345,000 is appropriated from the Records  
5 Management Trust Fund to the Department of State for the  
6 purposes of carrying out the provisions of this act.

7 Section 15. Except as otherwise expressly provided in  
8 this act, this act shall take effect July 1, 2007.

9  
10

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

12 And the title is amended as follows:

13 Delete everything before the enacting clause

14

15 and insert:

16 A bill to be entitled  
17 An act relating to administrative procedures;  
18 amending s. 120.52, F.S.; redefining the term  
19 "invalid exercise of delegated legislative  
20 authority"; defining the terms "law  
21 implemented," "rulemaking authority," and  
22 "unadopted rule"; amending s. 120.536, F.S.;  
23 revising guidelines for the construction of  
24 statutory language granting rulemaking  
25 authority; amending s. 120.54, F.S.;  
26 prescribing limits and guidelines with respect  
27 to incorporation of material by reference;  
28 prescribing requirements for materials being  
29 incorporated by reference; providing for rules;  
30 revising information to be included in notices  
31 of proposed actions; requiring that specified

Bill No. CS for SB 1592

Barcode 785202

1 rulemaking responsibilities of an agency head,  
2 including those relating to conducting a public  
3 hearing, may not be delegated or transferred;  
4 revising dates for filing rules for adoption;  
5 revising provisions with respect to petitions  
6 to initiate rulemaking; amending s. 120.545,  
7 F.S.; revising duties of the Administrative  
8 Procedures Committee and agencies with respect  
9 to review of agency rules; providing for a  
10 legislative committee to request agency  
11 information for examination of an unadopted  
12 rule; prescribing responses that may be made by  
13 an agency to a committee objection to a rule or  
14 statement of estimated regulatory costs;  
15 prescribing presumptions resulting from an  
16 agency's refusal to respond to committee  
17 objections; amending s. 120.55, F.S.; requiring  
18 electronic publication of the Florida  
19 Administrative Code; prescribing requirements  
20 with respect to content of such electronic  
21 publication; providing for filing information  
22 incorporated by reference in electronic form;  
23 conforming a cross-reference; amending s.  
24 120.56, F.S.; revising notice requirements with  
25 respect to challenges of proposed rules;  
26 requiring an agency to discontinue reliance on  
27 a statement when an administrative  
28 determination is sought with respect to the  
29 statement; allowing continued reliance on a  
30 statement when an administrative law judge  
31 determines that the inability to rely on it



Bill No. CS for SB 1592

Barcode 785202

1 would constitute an immediate danger; deleting  
2 certain provisions relating to actions before a  
3 final hearing is held; amending s. 120.569,  
4 F.S.; requiring that certain administrative  
5 proceedings be terminated and subsequently  
6 reinstated under different provisions of state  
7 law if a disputed issue of material fact arises  
8 during such a proceeding; providing for the  
9 waiver of such termination; revising a  
10 cross-reference; amending s. 120.57, F.S.;  
11 prescribing procedures with respect to  
12 challenges to unadopted rules; amending s.  
13 120.595, F.S.; increasing maximum attorney's  
14 fees; revising guidelines for award of  
15 attorney's fees in challenges to agency action;  
16 providing for attorney's fees and costs in  
17 certain circumstances; amending s. 120.74,  
18 F.S.; revising reporting requirements for  
19 agency heads; providing an appropriation;  
20 providing an effective date.

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