

By Senator Bennett

21-444A-07

1 A bill to be entitled

2 An act relating to administrative procedures;

3 amending s. 120.52, F.S.; defining the term

4 "unadopted rule"; amending s. 120.54, F.S.;

5 revising standards for determining when

6 rulemaking is presumed feasible; revising

7 provisions with respect to petitions to

8 initiate rulemaking; amending s. 120.545, F.S.;

9 revising duties of the Administrative

10 Procedures Committee and agencies with respect

11 to review of agency rules; providing for a

12 legislative committee to request agency

13 information for examination of an unadopted

14 rule; prescribing responses that may be made by

15 an agency to a committee objection to a rule or

16 statement of estimated regulatory costs;

17 prescribing presumptions resulting from an

18 agency's refusal to respond to committee

19 objections; amending s. 120.56, F.S.; requiring

20 an agency to discontinue reliance on a

21 statement when an administrative determination

22 is sought with respect to the statement;

23 allowing continued reliance on a statement when

24 an administrative law judge determines that the

25 inability to rely on it would constitute an

26 immediate danger; deleting certain provisions

27 relating to actions before a final hearing is

28 held; amending s. 120.57, F.S.; prescribing

29 procedures with respect to challenges to

30 unadopted rules; amending s. 120.595, F.S.;

31 revising guidelines for award of attorney's

1 fees in challenges to agency action; amending
2 s. 120.55, F.S.; conforming a cross-reference;
3 providing effective dates.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Present subsections (18) and (19) of
8 section 120.52, Florida Statutes, are renumbered as
9 subsections (19) and (20), respectively, and a new subsection
10 (18) is added to that section to read:

11 120.52 Definitions.--As used in this act:

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

15 Section 2. Paragraph (a) of subsection (1) and
16 subsection (7) of section 120.54, Florida Statutes, are
17 amended to read:

18 120.54 Rulemaking.--

19 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER
20 THAN EMERGENCY RULES.--

21 (a) Rulemaking is not a matter of agency discretion.
22 Each agency statement defined as a rule by s. 120.52 shall be
23 adopted by the rulemaking procedure provided by this section
24 as soon as feasible and practicable.

25 1. Rulemaking shall be presumed feasible unless the
26 agency proves that:

27 a. The agency has not had sufficient time to acquire
28 the knowledge and experience reasonably necessary to address a
29 statement by rulemaking; or

30 b. Related matters are not sufficiently resolved to
31 enable the agency to address a statement by rulemaking. ~~;~~ ~~or~~

1 ~~e. The agency is currently using the rulemaking~~
2 ~~procedure expeditiously and in good faith to adopt rules which~~
3 ~~address the statement.~~

4 2. Rulemaking shall be presumed practicable to the
5 extent necessary to provide fair notice to affected persons of
6 relevant agency procedures and applicable principles,
7 criteria, or standards for agency decisions unless the agency
8 proves that:

9 a. Detail or precision in the establishment of
10 principles, criteria, or standards for agency decisions is not
11 reasonable under the circumstances; or

12 b. The particular questions addressed are of such a
13 narrow scope that more specific resolution of the matter is
14 impractical outside of an adjudication to determine the
15 substantial interests of a party based on individual
16 circumstances.

17 (7) PETITION TO INITIATE RULEMAKING.--

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

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

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

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

30 Section 3. Section 120.545, Florida Statutes, is
31 amended to read:

1 | 120.545 Committee review of agency rules.--

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

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

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

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

14 | (d) The rule is in proper form.

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

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

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

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

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

29 | (j) The rule does not impose regulatory costs on the
30 | regulated person, county, or city which could be reduced by
31 |

1 the adoption of less costly alternatives that substantially
2 accomplish the statutory objectives.

3 (k) The rule will require additional appropriations.

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

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

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

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

- 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), without
30 prior notice of rule development, of intent to adopt the rule;
31

1 2. File notice for publication in the Florida
2 Administrative Weekly that the agency has abandoned all
3 reliance upon the statement or any substantially similar
4 statement as a basis for agency action; or

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

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

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

1 ~~shall initiate rulemaking procedures for that purpose by~~
2 ~~giving notice in the next available issue of the Florida~~
3 ~~Administrative Weekly.~~

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

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

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

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

28 (7) Failure of the agency to respond to a committee
29 objection to an unadopted rule within the time prescribed in
30 subsection (3) constitutes a refusal to adopt the rule and a
31

1 refusal to abandon all reliance upon the statement or any
2 substantially similar statement as a basis for agency action.

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

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

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

1 adoption of the proposed rule, or suspend all reliance upon
2 the statement or any substantially similar statement as a
3 basis for agency action, pending consideration of proposed
4 legislation during the next regular session of the
5 Legislature.

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

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

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

19 3. If the agency elects to temporarily suspend the
20 rule, ~~or~~ suspend the adoption of the proposed rule, or suspend
21 all reliance upon the statement or any substantially similar
22 statement as a basis for agency action, it shall give notice
23 of the suspension in the Florida Administrative Weekly. The
24 rule or the rule adoption process shall be suspended upon
25 publication of the notice. An agency ~~may shall~~ not base any
26 agency action on a suspended rule, ~~or~~ suspended proposed rule,
27 or suspended statement or any substantially similar statement,
28 or portion thereof, prior to expiration of the suspension. A
29 suspended rule, ~~or~~ suspended proposed rule, or suspended
30 statement or any substantially similar statement, or portion
31

1 | thereof, continues to be subject to administrative
2 | determination and judicial review as provided by law.

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

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

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

31 |

1 ~~(c) The Department of State shall publish in the next~~
2 ~~available issue of the Florida Administrative Weekly the final~~
3 ~~legislative action taken. If a bill to modify or suspend the~~
4 ~~adoption of the proposed rule or amend or repeal the rule, or~~
5 ~~portion thereof, is enacted into law, the Department of State~~
6 ~~shall conform the rule or portion of the rule to the~~
7 ~~provisions of the law in the Florida Administrative Code and~~
8 ~~publish a reference to the law as a history note to the rule.~~

9 Section 4. Effective January 1, 2008, subsection (4)
10 of section 120.56, Florida Statutes, is amended to read:

11 120.56 Challenges to rules.--

12 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
13 SPECIAL PROVISIONS.--

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

26 1. The proceeding is dismissed;

27 2. The statement is adopted and becomes effective as a
28 rule;

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

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

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

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

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

25 ~~(d) When an administrative law judge enters a final~~
26 ~~order that all or part of an agency statement violates s.~~
27 ~~120.54(1)(a), the agency shall immediately discontinue all~~
28 ~~reliance upon the statement or any substantially similar~~
29 ~~statement as a basis for agency action.~~

30 ~~(e)1. If, prior to a final hearing to determine~~
31 ~~whether all or part of any agency statement violates s.~~

1 ~~120.54(1)(a), an agency publishes, pursuant to s.~~
2 ~~120.54(3)(a), proposed rules that address the statement, then~~
3 ~~for purposes of this section, a presumption is created that~~
4 ~~the agency is acting expeditiously and in good faith to adopt~~
5 ~~rules that address the statement, and the agency shall be~~
6 ~~permitted to rely upon the statement or a substantially~~
7 ~~similar statement as a basis for agency action if the~~
8 ~~statement meets the requirements of s. 120.57(1)(c).~~

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

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

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

10 ~~5. If the proposed rules addressing the challenged~~
11 ~~statement are determined to be an invalid exercise of~~
12 ~~delegated legislative authority as defined in s.~~
13 ~~120.52(8)(b) (f), the agency must immediately discontinue~~
14 ~~reliance on the statement and any substantially similar~~
15 ~~statement until the rules addressing the subject are properly~~
16 ~~adopted.~~

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

25 Section 5. Effective January 1, 2008, paragraph (e) of
26 subsection (1) of section 120.57, Florida Statutes, is amended
27 to read:

28 120.57 Additional procedures for particular cases.--

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

31

1 (e)1. ~~Any~~ Agency action that determines the
2 substantial interests of a party may not be ~~and that is~~ based
3 on an agency statement that violates s. 120.54(1)(a). Neither
4 an agency nor an administrative law judge has authority to
5 enforce agency policy that constitutes an unadopted rule when
6 the agency fails to prove that rulemaking is not feasible or
7 not practicable. This subparagraph does not preclude
8 application of adopted rules and applicable statutes to the
9 facts ~~unadopted rule is subject to de novo review by an~~
10 ~~administrative law judge.~~

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

13 ~~a. Is within the powers, functions, and duties~~
14 ~~delegated by the Legislature or, if the agency is operating~~
15 ~~pursuant to authority derived from the State Constitution, is~~
16 ~~within that authority;~~

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

19 ~~c. Is not vague, establishes adequate standards for~~
20 ~~agency decisions, or does not vest unbridled discretion in the~~
21 ~~agency;~~

22 ~~d. Is not arbitrary or capricious. A rule is arbitrary~~
23 ~~if it is not supported by logic or the necessary facts; a rule~~
24 ~~is capricious if it is adopted without thought or reason or is~~
25 ~~irrational;~~

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

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

30 ~~2.3.~~ The recommended and final orders in any
31 proceeding shall be governed by the provisions of paragraphs

1 | (k) and (l), except that the administrative law judge's
2 | determination regarding the unadopted rule shall not be
3 | rejected by the agency unless the agency first determines from
4 | a review of the complete record, and states with particularity
5 | in the order, that such determination is clearly erroneous or
6 | does not comply with essential requirements of law. In any
7 | proceeding for review under s. 120.68, if the court finds that
8 | the agency's rejection of the determination regarding the
9 | unadopted rule does not comport with the provisions of this
10 | subparagraph, the agency action shall be set aside and the
11 | court shall award to the prevailing party the reasonable costs
12 | and a reasonable attorney's fee for the initial proceeding and
13 | the proceeding for review.

14 | Section 6. Effective January 1, 2008, subsections (2)
15 | and (3) and paragraph (a) of subsection (4) of section
16 | 120.595, Florida Statutes, are amended to read:

17 | 120.595 Attorney's fees.--

18 | (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
19 | SECTION 120.56(2).--If the court or administrative law judge
20 | declares a proposed rule or portion of a proposed rule invalid
21 | pursuant to s. 120.56(2), a judgment or order shall be
22 | rendered against the agency for reasonable costs and
23 | reasonable attorney's fees, unless the agency demonstrates
24 | that its actions were substantially justified or special
25 | circumstances exist which would make the award unjust. An
26 | agency's actions are "substantially justified" if there was a
27 | reasonable basis in law and fact at the time the actions were
28 | taken by the agency. If the agency prevails in the
29 | proceedings, the court or administrative law judge shall award
30 | reasonable costs and reasonable attorney's fees against a
31 | party if the court or administrative law judge determines that

1 a party participated in the proceedings for an improper
2 purpose as defined by paragraph (1)(e). ~~No award of attorney's~~
3 ~~fees as provided by this subsection shall exceed \$15,000.~~

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

21 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
22 120.56(4).--

23 (a) A judgment or final order shall be rendered
24 against the agency for ~~Upon entry of a final order that all or~~
25 ~~part of an agency statement violates s. 120.54(1)(a), the~~
26 ~~administrative law judge shall award~~ reasonable costs and
27 reasonable attorney's fees for a proceeding under s. 120.56(4)
28 ~~to the petitioner, unless:~~

- 29 1. The proceeding is dismissed;
30
31

1 2. The judgment or final order contains a
2 determination that the petitioner failed to prove that the
3 statement constituted a rule under s. 120.52;

4 3. The judgment or final order contains a
5 determination that rulemaking is not feasible or not
6 practicable under s. 120.54(1)(a); or

7 4. The agency demonstrates that the statement is
8 required by the Federal Government to implement or retain a
9 delegated or approved program or to meet a condition to
10 receipt of federal funds.

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

18 Section 7. Paragraph (a) of subsection (1) of section
19 120.55, Florida Statutes, is amended to read:

20 120.55 Publication.--

21 (1) The Department of State shall:

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

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

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

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

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

31 |

1 Section 8. Effective December 31, 2007, paragraph (a)
2 of subsection (1) of section 120.55, Florida Statutes, as
3 amended by section 4 of chapter 2006-82, Florida Statutes, is
4 amended to read:

5 120.55 Publication.--

6 (1) The Department of State shall:

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

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

29 3. At the beginning of the section of the code dealing
30 with an agency that files copies of its rules with the
31 department, the department shall publish the address and

1 telephone number of the executive offices of each agency, the
2 manner by which the agency indexes its rules, a listing of all
3 rules of that agency excluded from publication in the code,
4 and a statement as to where those rules may be inspected.

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

20 Section 9. Except as otherwise expressly provided in
21 this act, this act shall take effect July 1, 2007.

22
23 *****

24 SENATE SUMMARY

25 Revises a variety of statutes dealing with unadopted
26 rules and rule adoption, including petitions to initiate
27 rulemaking, Administrative Procedures Committee review of
28 rules and agency actions with respect thereto, and
29 challenges to agency statements and consequences of such
30 challenges. (See bill for details.)
31