

1 agency's refusal to respond to committee
2 objections; amending s. 120.55, F.S.; requiring
3 electronic publication of the Florida
4 Administrative Code; prescribing requirements
5 with respect to content of such electronic
6 publication; providing for filing information
7 incorporated by reference in electronic form;
8 conforming a cross-reference; amending s.
9 120.56, F.S.; revising notice requirements with
10 respect to challenges of proposed rules;
11 requiring an agency to discontinue reliance on
12 a statement when an administrative
13 determination is sought with respect to the
14 statement; allowing continued reliance on a
15 statement when an administrative law judge
16 determines that the inability to rely on it
17 would constitute an immediate danger; deleting
18 certain provisions relating to actions before a
19 final hearing is held; amending s. 120.569,
20 F.S.; requiring that certain administrative
21 proceedings be terminated and subsequently
22 reinstated under different provisions of state
23 law if a disputed issue of material fact arises
24 during such a proceeding; providing for the
25 waiver of such termination; revising a
26 cross-reference; amending s. 120.57, F.S.;
27 prescribing procedures with respect to
28 challenges to unadopted rules; amending s.
29 120.595, F.S.; increasing maximum attorney's
30 fees; revising guidelines for award of
31 attorney's fees in challenges to agency action;

1 providing for attorney's fees and costs in
2 certain circumstances; amending s. 120.74,
3 F.S.; revising reporting requirements for
4 agency heads; providing an appropriation;
5 providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

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

11 Section 2. Subsection (8) of section 120.52, Florida
12 Statutes, is amended, present subsections (9) through (15) of
13 that section are renumbered as subsections (10) through (16),
14 respectively, present subsections (16) through (19) of that
15 section are renumbered as subsections (19) through (22),
16 respectively, and new subsections (9), (17), and (18) are
17 added to that section, to read:

18 120.52 Definitions.--As used in this act:

19 (8) "Invalid exercise of delegated legislative
20 authority" means action that ~~which~~ goes beyond the powers,
21 functions, and duties delegated by the Legislature. A proposed
22 or existing rule is an invalid exercise of delegated
23 legislative authority if any one of the following applies:

24 (a) The agency has materially failed to follow the
25 applicable rulemaking procedures or requirements set forth in
26 this chapter;

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

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

1 (d) The rule is vague, fails to establish adequate
2 standards for agency decisions, or vests unbridled discretion
3 in the agency;

4 (e) The rule is arbitrary or capricious. A rule is
5 arbitrary if it is not supported by logic or the necessary
6 facts; a rule is capricious if it is adopted without thought
7 or reason or is irrational; or

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

12
13 A grant of rulemaking authority is necessary but not
14 sufficient to allow an agency to adopt a rule; a specific law
15 to be implemented is also required. An agency may adopt only
16 rules that implement or interpret the specific powers and
17 duties granted by the enabling statute. No agency shall have
18 authority to adopt a rule only because it is reasonably
19 related to the purpose of the enabling legislation and is not
20 arbitrary and capricious or is within the agency's class of
21 powers and duties, nor shall an agency have the authority to
22 implement statutory provisions setting forth general
23 legislative intent or policy. Statutory language granting
24 rulemaking authority or generally describing the powers and
25 functions of an agency shall be construed to extend no further
26 than implementing or interpreting the specific powers and
27 duties conferred ~~by the same statute.~~

28 (9) "Law implemented" means the statutory language
29 being carried out or interpreted by an agency through
30 rulemaking.

31

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

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

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

10 120.536 Rulemaking authority; repeal; challenge.--

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

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

31 120.54 Rulemaking.--

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

3 (i)1. A rule may incorporate material by reference but
4 only as the material exists on the date the rule is adopted.
5 For purposes of the rule, changes in the material are not
6 effective unless the rule is amended to incorporate the
7 changes. Material incorporated by reference in a rule may not
8 incorporate additional material by reference unless the rule
9 specifically identifies the additional material.

10 2. An agency rule that incorporates by specific
11 reference another rule of that agency automatically
12 incorporates subsequent amendments to the referenced rule,
13 unless a contrary intent is clearly indicated in the
14 referencing rule. Any notice of amendments to a rule that has
15 been incorporated by specific reference in other rules of that
16 agency must explain the effect of the amendments on the
17 referencing rules.

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

20 a. The material has been submitted in the prescribed
21 electronic format to the Department of State and can be made
22 available for free public access through an electronic
23 hyperlink from the rule in the Florida Administrative Code
24 making the reference; or

25 b. The agency has determined that posting the material
26 on the Internet for purposes of public examination and
27 inspection would constitute a violation of federal copyright
28 law, in which case a statement to that effect, along with the
29 address of locations at the Department of State and the agency
30 at which the material is available for public examination and
31

1 inspection, is included in the notice required by subparagraph
2 (3)(a)1.

3 4. A rule may not be amended by reference only.
4 Amendments must set out the amended rule in full in the same
5 manner as required by the State Constitution for laws. ~~The~~
6 ~~Department of State may prescribe by rule requirements for~~
7 ~~incorporating materials by reference pursuant to this~~
8 ~~paragraph.~~

9 ~~5.2.~~ Notwithstanding any contrary provision in this
10 section, when an adopted rule of the Department of
11 Environmental Protection or a water management district is
12 incorporated by reference in the other agency's rule to
13 implement a provision of part IV of chapter 373, subsequent
14 amendments to the rule are not effective as to the
15 incorporating rule unless the agency incorporating by
16 reference notifies the committee and the Department of State
17 of its intent to adopt the subsequent amendment, publishes
18 notice of such intent in the Florida Administrative Weekly,
19 and files with the Department of State a copy of the amended
20 rule incorporated by reference. Changes in the rule
21 incorporated by reference are effective as to the other agency
22 20 days after the date of the published notice and filing with
23 the Department of State. The Department of State shall amend
24 the history note of the incorporating rule to show the
25 effective date of such change. Any substantially affected
26 person may, within 14 days after the date of publication of
27 the notice of intent in the Florida Administrative Weekly,
28 file an objection to rulemaking with the agency. The objection
29 shall specify the portions of the rule incorporated by
30 reference to which the person objects and the reasons for the
31 objection. The agency does ~~shall~~ not have the authority under

1 this subparagraph to adopt those portions of the rule
2 specified in such objection. The agency shall publish notice
3 of the objection and of its action in response in the next
4 available issue of the Florida Administrative Weekly.

5 6. The Department of State may prescribe by rule
6 requirements for incorporating materials pursuant to this
7 paragraph.

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

11 (3) ADOPTION PROCEDURES.--

12 (a) Notices.--

13 1. Prior to the adoption, amendment, or repeal of any
14 rule other than an emergency rule, an agency, upon approval of
15 the agency head, shall give notice of its intended action,
16 setting forth a short, plain explanation of the purpose and
17 effect of the proposed action; the full text of the proposed
18 rule or amendment and a summary thereof; a reference to the
19 grant of specific rulemaking authority pursuant to which the
20 rule is adopted; and a reference to the section or subsection
21 of the Florida Statutes or the Laws of Florida being
22 implemented or, interpreted, ~~or made specific~~. The notice must
23 ~~shall~~ include a summary of the agency's statement of the
24 estimated regulatory costs, if one has been prepared, based on
25 the factors set forth in s. 120.541(2), and a statement that
26 any person who wishes to provide the agency with information
27 regarding the statement of estimated regulatory costs, or to
28 provide a proposal for a lower cost regulatory alternative as
29 provided by s. 120.541(1), must do so in writing within 21
30 days after publication of the notice. The notice must state
31 the procedure for requesting a public hearing on the proposed

1 rule. Except when the intended action is the repeal of a rule,
2 the notice ~~must shall~~ include a reference both to the date on
3 which and to the place where the notice of rule development
4 that is required by subsection (2) appeared.

5 2. The notice shall be published in the Florida
6 Administrative Weekly not less than 28 days prior to the
7 intended action. The proposed rule shall be available for
8 inspection and copying by the public at the time of the
9 publication of notice.

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

16 4. The adopting agency shall file with the committee,
17 at least 21 days prior to the proposed adoption date, a copy
18 of each rule it proposes to adopt; a copy of any material
19 incorporated by reference in the rule; a detailed written
20 statement of the facts and circumstances justifying the
21 proposed rule; a copy of any statement of estimated regulatory
22 costs that has been prepared pursuant to s. 120.541; a
23 statement of the extent to which the proposed rule relates to
24 federal standards or rules on the same subject; and the notice
25 required by subparagraph 1.

26 (c) Hearings.--

27 1. If the intended action concerns any rule other than
28 one relating exclusively to procedure or practice, the agency
29 shall, on the request of any affected person received within
30 21 days after the date of publication of the notice of
31 intended agency action, give affected persons an opportunity

1 to present evidence and argument on all issues under
2 consideration. The agency may schedule a public hearing on the
3 rule and, if requested by any affected person, shall schedule
4 a public hearing on the rule. If the agency head is a board or
5 other collegial body created under s. 20.165(4) or s.
6 20.43(3)(g), the board or other collegial body shall conduct
7 the requested public hearing itself and may not delegate this
8 responsibility without the consent of the persons requesting
9 the public hearing. Any material pertinent to the issues under
10 consideration submitted to the agency within 21 days after the
11 date of publication of the notice or submitted at a public
12 hearing shall be considered by the agency and made a part of
13 the record of the rulemaking proceeding.

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

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

28 1. If the adopting agency is required to publish its
29 rules in the Florida Administrative Code, the agency, upon
30 approval of the agency head, ~~it~~ shall file with the Department
31 of State three certified copies of the rule it proposes to

1 adopt; one copy of any material incorporated by reference in
2 the rule, certified by the agency; a summary of the rule; a
3 summary of any hearings held on the rule; and a detailed
4 written statement of the facts and circumstances justifying
5 the rule. Agencies not required to publish their rules in the
6 Florida Administrative Code shall file one certified copy of
7 the proposed rule, and the other material required by this
8 subparagraph, in the office of the agency head, and such rules
9 shall be open to the public.

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

1 petition for an administrative determination under s.
2 120.56(2) is filed, the period during which a rule must be
3 filed for adoption is extended to 60 days after the
4 administrative law judge files the final order with the clerk
5 or until 60 days after subsequent judicial review is complete.

6 3. At the time a rule is filed, the agency shall
7 certify that the time limitations prescribed by this paragraph
8 have been complied with, that all statutory rulemaking
9 requirements have been met, and that there is no
10 administrative determination pending on the rule.

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

22 5. If a rule has not been adopted within the time
23 limits imposed by this paragraph or has not been adopted in
24 compliance with all statutory rulemaking requirements, the
25 agency proposing the rule shall withdraw the rule and give
26 notice of its action in the next available issue of the
27 Florida Administrative Weekly.

28 6. The proposed rule shall be adopted on being filed
29 with the Department of State and become effective 20 days
30 after being filed, on a later date specified in the rule, or
31 on a date required by statute. Rules not required to be filed

1 with the Department of State shall become effective when
2 adopted by the agency head or on a later date specified by
3 rule or statute. If the committee notifies an agency that an
4 objection to a rule is being considered, the agency may
5 postpone the adoption of the rule to accommodate review of the
6 rule by the committee. When an agency postpones adoption of a
7 rule to accommodate review by the committee, the 90-day period
8 for filing the rule is tolled until the committee notifies the
9 agency that it has completed its review of the rule.

10
11 For the purposes of this paragraph, the term "administrative
12 determination" does not include subsequent judicial review.

13 (4) EMERGENCY RULES.--

14 (a) If an agency finds that an immediate danger to the
15 public health, safety, or welfare requires emergency action,
16 the agency may adopt any rule necessitated by the immediate
17 danger. The agency may adopt a rule by any procedure which is
18 fair under the circumstances if:

19 1. The procedure provides at least the procedural
20 protection given by other statutes, the State Constitution, or
21 the United States Constitution.

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

24 3. The agency publishes in writing at the time of, or
25 prior to, its action the specific facts and reasons for
26 finding an immediate danger to the public health, safety, or
27 welfare and its reasons for concluding that the procedure used
28 is fair under the circumstances. In any event, notice of
29 emergency rules, other than those of educational units or
30 units of government with jurisdiction in only one or a part of
31 one county, including the full text of the rules, shall be

1 published in the first available issue of the Florida
2 Administrative Weekly and provided to the committee along with
3 any material incorporated by reference in the rules. The
4 agency's findings of immediate danger, necessity, and
5 procedural fairness shall be judicially reviewable.

6 (7) PETITION TO INITIATE RULEMAKING.--

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

17 ~~(b) If the petition filed under this subsection is~~
18 ~~directed to an existing rule which the agency has not adopted~~
19 ~~by the rulemaking procedures or requirements set forth in this~~
20 ~~chapter, the agency shall, not later than 30 days following~~
21 ~~the date of filing a petition, initiate rulemaking, or provide~~
22 ~~notice in the Florida Administrative Weekly that the agency~~
23 ~~will hold a public hearing on the petition within 30 days~~
24 ~~after publication of the notice. The purpose of the public~~
25 ~~hearing is to consider the comments of the public directed to~~
26 ~~the agency rule which has not been adopted by the rulemaking~~
27 ~~procedures or requirements of this chapter, its scope and~~
28 ~~application, and to consider whether the public interest is~~
29 ~~served adequately by the application of the rule on a~~
30 ~~case by case basis, as contrasted with its adoption by the~~

1 ~~rulemaking procedures or requirements set forth in this~~
2 ~~chapter.~~

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

20 Section 5. Section 120.545, Florida Statutes, is
21 amended to read:

22 120.545 Committee review of agency rules.--

23 (1) As a legislative check on legislatively created
24 authority, the committee shall examine each proposed rule,
25 except for those proposed rules exempted by s. 120.81(1)(e)
26 and (2), and its accompanying material, and each emergency
27 rule, and may examine any existing rule, for the purpose of
28 determining whether:

29 (a) The rule is an invalid exercise of delegated
30 legislative authority.

31

1 (b) The statutory authority for the rule has been
2 repealed.

3 (c) The rule reiterates or paraphrases statutory
4 material.

5 (d) The rule is in proper form.

6 (e) The notice given prior to its adoption was
7 sufficient to give adequate notice of the purpose and effect
8 of the rule.

9 (f) The rule is consistent with expressed legislative
10 intent pertaining to the specific provisions of law which the
11 rule implements.

12 (g) The rule is necessary to accomplish the apparent
13 or expressed objectives of the specific provision of law which
14 the rule implements.

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

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

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

26 (k) The rule will require additional appropriations.

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

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

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

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

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

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

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

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

30 1. File notice pursuant to s. 120.54(3)(a), without
31 prior notice of rule development, ~~Notify the committee that it~~

1 ~~has elected~~ to amend the rule to address ~~meet~~ the committee's
2 objection ~~and initiate the amendment procedure;~~

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

6 3. Notify the committee in writing that it refuses to
7 amend or repeal the rule.

8 (c) If the ~~rule is either an existing or a proposed~~
9 ~~rule and the~~ objection is to the statement of estimated
10 regulatory costs:

11 1. Prepare a corrected statement of estimated
12 regulatory costs, give notice of the availability of the
13 corrected statement in the first available issue of the
14 Florida Administrative Weekly, and file a copy of the
15 corrected statement with the committee; or

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

18 (d) If the rule is unadopted:

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

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

25 3. Notify the committee in writing that it refuses to
26 adopt the rule or to abandon all reliance upon the statement
27 or any substantially similar statement as a basis for agency
28 action.

29 ~~(4) If the agency elects to modify a proposed rule to~~
30 ~~meet the committee's objection, it shall make only such~~
31 ~~modifications as are necessary to meet the objection and shall~~

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

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

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

28 ~~(4)(7)~~ Failure of the agency to respond to a committee
29 objection to a ~~proposed~~ rule that is not yet in effect within
30 the time prescribed in subsection (3) constitutes ~~shall~~
31 ~~constitute~~ withdrawal of the rule in its entirety. In this

1 event, the committee shall notify the Department of State that
2 the agency, by its failure to respond to a committee
3 objection, has elected to withdraw the ~~proposed~~ rule. Upon
4 receipt of the committee's notice, the Department of State
5 shall publish a notice to that effect in the next available
6 issue of the Florida Administrative Weekly. Upon publication
7 of the notice, the ~~proposed~~ rule shall be stricken from the
8 files of the Department of State and the files of the agency.

9 ~~(5)(8)~~ Failure of the agency to respond to a committee
10 objection to a an-existing rule that is in effect within the
11 time prescribed in subsection (3) constitutes shall constitute
12 a refusal to amend or repeal the rule.

13 (6) Failure of the agency to respond to a committee
14 objection to a statement of estimated regulatory costs within
15 the time prescribed in subsection (3) constitutes a refusal to
16 prepare a corrected statement of estimated regulatory costs.

17 (7) Failure of the agency to respond to a committee
18 objection to an unadopted rule within the time prescribed in
19 subsection (3) constitutes a refusal to adopt the rule and a
20 refusal to abandon all reliance upon the statement or any
21 substantially similar statement as a basis for agency action.

22 ~~(8)(9)~~ If the committee objects to a ~~proposed or~~
23 ~~existing~~ rule and the agency refuses to adopt, abandon,
24 modify, amend, withdraw, or repeal it the rule, the committee
25 shall file with the Department of State a notice of the
26 objection, detailing with particularity its objection to the
27 rule. The Department of State shall publish this notice in
28 the Florida Administrative Weekly. If the rule is published
29 ~~and shall publish, as a history note to the rule in the~~
30 Florida Administrative Code, a reference to the committee's
31

1 objection and to the issue of the Weekly in which the full
2 text thereof appears shall be recorded in a history note.

3 ~~(9)(10)~~(a) If the committee objects to a ~~proposed or~~
4 ~~existing~~ rule, or portion thereof, and the agency fails to
5 initiate administrative action to adopt, abandon, modify,
6 amend, withdraw, or repeal the rule consistent with the
7 objection within 60 days after the objection, or thereafter
8 fails to proceed in good faith to complete such action, the
9 committee may submit to the President of the Senate and the
10 Speaker of the House of Representatives a recommendation that
11 legislation be introduced to address the committee objection
12 ~~modify or suspend the adoption of the proposed rule, or amend~~
13 ~~or repeal the rule, or portion thereof.~~

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

26 2. Within 30 days after receipt of the certification,
27 if the agency is headed by an individual, or within 45 days
28 after receipt of the certification, if the agency is headed by
29 a collegial body, the agency shall ~~either~~:

30 a. Temporarily suspend the rule, ~~or~~ suspend the
31 adoption of the proposed rule, or suspend all reliance upon

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

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

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

22 4. Failure of an agency to respond to committee
23 certification within the time prescribed by subparagraph 2.
24 constitutes a refusal to suspend the rule, ~~or to~~ 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.

28 (c) The committee shall prepare bills to address the
29 committee objection ~~modify or suspend the adoption of the~~
30 ~~proposed rule or amend or repeal the rule, or portion thereof,~~
31 in accordance with the rules of the Senate and the House of

1 Representatives for prefiling and introduction in the next
2 regular session of the Legislature. The proposed bill shall be
3 presented to the President of the Senate and the Speaker of
4 the House of Representatives with the committee
5 recommendation.

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

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

27 Section 6. Paragraphs (a) and (c) of subsection (1)
28 and subsection (3) of section 120.55, Florida Statutes, are
29 amended to read:

30 120.55 Publication.--

31 (1) The Department of State shall:

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

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

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

30 4. Forms shall not be published in the Florida
31 Administrative Code; but any form which an agency uses in its

1 | dealings with the public, along with any accompanying
2 | instructions, shall be filed with the committee before it is
3 | used. Any form or instruction which meets the definition of
4 | "rule" provided in s. 120.52 shall be incorporated by
5 | reference into the appropriate rule. The reference shall
6 | specifically state that the form is being incorporated by
7 | reference and shall include the number, title, and effective
8 | date of the form and an explanation of how the form may be
9 | obtained.

10 | (c) Prescribe by rule the style, ~~and form~~ and content
11 | requirements ~~required~~ for rules, notices, and other materials
12 | submitted for filing ~~and establish the form for their~~
13 | ~~certification.~~

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

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

24 | 120.55 Publication.--

25 | (1) The Department of State shall:

26 | (a)1. Through a continuous revision system, compile
27 | and publish the "Florida Administrative Code." The Florida
28 | Administrative Code shall contain all rules adopted by each
29 | agency, citing the specific rulemaking authority pursuant to
30 | which each rule was adopted, all history notes as authorized
31 | in s. 120.545(8) ~~s. 120.545(9)~~, and complete indexes to all

1 rules contained in the code. Supplementation shall be made as
2 often as practicable, but at least monthly. The department
3 may contract with a publishing firm for the publication, in a
4 timely and useful form, of the Florida Administrative Code;
5 however, the department shall retain responsibility for the
6 code as provided in this section. This publication shall be
7 the official compilation of the administrative rules of this
8 state. The Department of State shall retain the copyright over
9 the Florida Administrative Code.

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

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

24 4. Forms shall not be published in the Florida
25 Administrative Code; but any form which an agency uses in its
26 dealings with the public, along with any accompanying
27 instructions, shall be filed with the committee before it is
28 used. Any form or instruction which meets the definition of
29 "rule" provided in s. 120.52 shall be incorporated by
30 reference into the appropriate rule. The reference shall
31 specifically state that the form is being incorporated by

1 reference and shall include the number, title, and effective
2 date of the form and an explanation of how the form may be
3 obtained. Each form created by an agency which is incorporated
4 by reference in a rule notice of which is given under s.
5 120.54(3)(a) after December 31, 2007, must clearly display the
6 number, title, and effective date of the form and the number
7 of the rule in which the form is incorporated.

8 (d) Prescribe by rule the style, ~~and form, and content~~
9 requirements required for rules, notices, and other materials
10 submitted for filing ~~and establish the form for their~~
11 certification.

12 (2) The Florida Administrative Weekly Internet website
13 must allow users to:

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

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

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

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

26 (e) Comment on proposed rules.

27 (5) Any publication of a proposed rule promulgated by
28 an agency, whether published in the Florida Administrative
29 Code or elsewhere, shall include, along with the rule, the
30 name of the person or persons originating such rule, the name
31

1 of the agency head ~~supervisor or person~~ who approved the rule,
2 and the date upon which the rule was approved.

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

7 120.55 Publication.--

8 (1) The Department of State shall:

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

1 shall retain the copyright over the Florida Administrative
2 Code.

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

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

17 4. Forms shall not be published in the Florida
18 Administrative Code; but any form which an agency uses in its
19 dealings with the public, along with any accompanying
20 instructions, shall be filed with the committee before it is
21 used. Any form or instruction which meets the definition of
22 "rule" provided in s. 120.52 shall be incorporated by
23 reference into the appropriate rule. The reference shall
24 specifically state that the form is being incorporated by
25 reference and shall include the number, title, and effective
26 date of the form and an explanation of how the form may be
27 obtained. Each form created by an agency which is incorporated
28 by reference in a rule notice of which is given under s.
29 120.54(3)(a) after December 31, 2007, must clearly display the
30 number, title, and effective date of the form and the number
31 of the rule in which the form is incorporated.

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

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

16 120.56 Challenges to rules.--

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

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

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

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

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

27 | 1. The proceeding is dismissed for any reason other
28 | than initiation of rulemaking under s. 120.54;

29 | 2. The statement is adopted and becomes effective as a
30 | rule;

31 |

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

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

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

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

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

29 ~~(d) When an administrative law judge enters a final~~
30 ~~order that all or part of an agency statement violates s.~~
31 ~~120.54(1)(a), the agency shall immediately discontinue all~~

1 ~~reliance upon the statement or any substantially similar~~
2 ~~statement as a basis for agency action.~~

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

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

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

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

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

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

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

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

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

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

1 ~~pursuant to authority derived from the State Constitution, is~~
2 ~~within that authority;~~
3 ~~b. Does not enlarge, modify, or contravene the~~
4 ~~specific provisions of law implemented;~~
5 ~~c. Is not vague, establishes adequate standards for~~
6 ~~agency decisions, or does not vest unbridled discretion in the~~
7 ~~agency;~~
8 ~~d. Is not arbitrary or capricious. A rule is arbitrary~~
9 ~~if it is not supported by logic or the necessary facts; a rule~~
10 ~~is capricious if it is adopted without thought or reason or is~~
11 ~~irrational;~~
12 ~~e. Is not being applied to the substantially affected~~
13 ~~party without due notice; and~~
14 ~~f. Does not impose excessive regulatory costs on the~~
15 ~~regulated person, county, or city.~~
16 2.3. The recommended and final orders in any
17 proceeding shall be governed by the provisions of paragraphs
18 (k) and (l), except that the administrative law judge's
19 determination regarding the unadopted rule shall not be
20 rejected by the agency unless the agency first determines from
21 a review of the complete record, and states with particularity
22 in the order, that such determination is clearly erroneous or
23 does not comply with essential requirements of law. In any
24 proceeding for review under s. 120.68, if the court finds that
25 the agency's rejection of the determination regarding the
26 unadopted rule does not comport with the provisions of this
27 subparagraph, the agency action shall be set aside and the
28 court shall award to the prevailing party the reasonable costs
29 and a reasonable attorney's fee for the initial proceeding and
30 the proceeding for review.
31

1 Section 12. Effective January 1, 2008, subsections
2 (2), (3), and (4) of section 120.595, Florida Statutes, are
3 amended to read:

4 120.595 Attorney's fees.--

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

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

1 reasonable basis in law and fact at the time the actions were
2 taken by the agency. If the agency prevails in the
3 proceedings, the court or administrative law judge shall award
4 reasonable costs and reasonable attorney's fees against a
5 party if the court or administrative law judge determines that
6 a party participated in the proceedings for an improper
7 purpose as defined by paragraph (1)(e). No award of attorney's
8 fees as provided by this subsection shall exceed \$50,000
9 ~~\$15,000~~.

10 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
11 120.56(4).--

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

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

1 withdrawn. A request for attorney's fees and costs under this
2 paragraph shall be granted only upon a finding that the agency
3 knew or should have known at the time the petition was filed
4 that the agency statement was an unadopted rule, and no award
5 of attorney's fees as provided by this paragraph may exceed
6 \$50,000.

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

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

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

21 120.74 Agency review, revision, and report.--

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

1 to government and the private sector. The report must identify
2 the types of cases or disputes in which the agency is involved
3 which should be conducted under the summary hearing process
4 described in s. 120.574.

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

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

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 CS Senate Bill 1592

15 The committee substitute Senate Bill 1592 includes the
16 provisions in CS/SB 1594 addressing administrative rules and
17 rule making. The following provisions have been added to
18 CS/CS/SB 1592:

- 19 -- Provides definitions of the terms "law implemented" and
20 "rulemaking authority";
- 21 -- Provides additional requirements for the use of material
22 that is being incorporated by reference in rules;
- 23 -- Requires electronic publication of the Florida
24 Administrative Code (FAC);
- 25 -- Provides for material incorporated by reference to be
26 filed in electronic form, unless doing so would
27 constitute a violation of federal copyright law and
28 provides an appropriation to implement;
- 29 -- Provides that if an agency head is a board or other
30 collegial body, then the agency head may not delegate the
31 responsibility to conduct requested public hearings;
- Provides an award of attorney's fees to the petitioner in
an unadopted rule challenge if, prior to the final
hearing, the agency initiates rulemaking and the agency
knew or should have known that the agency statement was
an unadopted rule; and
- Provides the granting of a stay in an unadopted rule
challenge when certain conditions are met.