

1 A bill to be entitled
2 An act relating to administrative procedures;
3 amending s. 120.52, F.S.; redefining the term
4 "invalid exercise of delegated legislative
5 authority"; defining the terms "law
6 implemented," "rulemaking authority," and
7 "unadopted rule"; amending s. 120.536, F.S.;
8 revising guidelines for the construction of
9 statutory language granting rulemaking
10 authority; amending s. 120.54, F.S.;
11 prescribing limits and guidelines with respect
12 to incorporation of material by reference;
13 prescribing requirements for materials being
14 incorporated by reference; providing for rules;
15 revising information to be included in notices
16 of proposed actions; requiring that specified
17 rulemaking responsibilities of an agency head,
18 including those relating to conducting a public
19 hearing, may not be delegated or transferred;
20 revising dates for filing rules for adoption;
21 revising provisions with respect to petitions
22 to initiate rulemaking; amending s. 120.545,
23 F.S.; revising duties of the Administrative
24 Procedures Committee and agencies with respect
25 to review of agency rules; providing for a
26 legislative committee to request agency
27 information for examination of an unadopted
28 rule; prescribing responses that may be made by
29 an agency to a committee objection to a rule or
30 statement of estimated regulatory costs;
31 prescribing presumptions resulting from an

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; revising for a
9 specified period the limit for the unencumbered
10 balance in the Records Management Trust Fund at
11 the beginning of each fiscal year for fees
12 collected pursuant to chapter 120; providing
13 for transfer of excess funds; providing for
14 expiration of provisions; amending s. 120.56,
15 F.S.; revising notice requirements with respect
16 to challenges of proposed rules; requiring an
17 agency to discontinue reliance on a statement
18 when an administrative determination is sought
19 with respect to the statement; allowing
20 continued reliance on a statement when an
21 administrative law judge determines that the
22 inability to rely on it would constitute an
23 immediate danger; deleting certain provisions
24 relating to actions before a final hearing is
25 held; amending s. 120.569, F.S.; requiring that
26 certain administrative proceedings be
27 terminated and subsequently reinstated under
28 different provisions of state law if a disputed
29 issue of material fact arises during such a
30 proceeding; providing for the waiver of such
31 termination; revising a cross-reference;

1 amending s. 120.57, F.S.; prescribing
2 procedures with respect to challenges to
3 unadopted rules; amending s. 120.595, F.S.;
4 increasing maximum attorney's fees; revising
5 guidelines for award of attorney's fees in
6 challenges to agency action; providing for
7 attorney's fees and costs in certain
8 circumstances; amending s. 120.74, F.S.;
9 revising reporting requirements for agency
10 heads; providing an appropriation; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. This act may be cited as the "Open
16 Government Act."

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

24 120.52 Definitions.--As used in this act:

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

30
31

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

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

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

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

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

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

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

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

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

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

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

17 120.536 Rulemaking authority; repeal; challenge.--

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

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

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

8 120.54 Rulemaking.--

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

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

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

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

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

1 hyperlink from the rule in the Florida Administrative Code
2 making the reference; or

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

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

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

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

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

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

19 (3) ADOPTION PROCEDURES.--

20 (a) Notices.--

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

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

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

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

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

1 federal standards or rules on the same subject; and the notice
2 required by subparagraph 1.

3 (c) Hearings.--

4 1. If the intended action concerns any rule other than
5 one relating exclusively to procedure or practice, the agency
6 shall, on the request of any affected person received within
7 21 days after the date of publication of the notice of
8 intended agency action, give affected persons an opportunity
9 to present evidence and argument on all issues under
10 consideration. The agency may schedule a public hearing on the
11 rule and, if requested by any affected person, shall schedule
12 a public hearing on the rule. If the agency head is a board or
13 other collegial body created under s. 20.165(4) or s.
14 20.43(3)(g), the board or other collegial body shall conduct
15 the requested public hearing itself and may not delegate this
16 responsibility without the consent of the persons requesting
17 the public hearing. Any material pertinent to the issues under
18 consideration submitted to the agency within 21 days after the
19 date of publication of the notice or submitted at a public
20 hearing shall be considered by the agency and made a part of
21 the record of the rulemaking proceeding.

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

1 requested to join and participate in the separate proceeding.

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

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

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

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

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

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

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

30 5. If a rule has not been adopted within the time
31 limits imposed by this paragraph or has not been adopted in

1 compliance with all statutory rulemaking requirements, the
2 agency proposing the rule shall withdraw the rule and give
3 notice of its action in the next available issue of the
4 Florida Administrative Weekly.

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

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

21 (4) EMERGENCY RULES.--

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

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

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

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

14 (7) PETITION TO INITIATE RULEMAKING.--

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

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

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

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

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

29 120.545 Committee review of agency rules.--

30 (1) As a legislative check on legislatively created
31 authority, the committee shall examine each proposed rule,

1 | except for those proposed rules exempted by s. 120.81(1)(e)
2 | and (2), and its accompanying material, and each emergency
3 | rule, and may examine any existing rule, for the purpose of
4 | determining whether:

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

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

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

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

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

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

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

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

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

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

1 (k) The rule will require additional appropriations.

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

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

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

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

28 1. File notice pursuant to s. 120.54(3)(d) of only
29 such modifications as are necessary to address ~~Modify the rule~~
30 ~~to meet~~ the committee's objection;
31

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

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

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

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

31

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

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

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

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

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

30 ~~(8)(9)~~ If the committee objects to a ~~proposed or~~
31 ~~existing~~ rule and the agency refuses to adopt, abandon,

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

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

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

1 | legislation during the next regular session of the
2 | Legislature.

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

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

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

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

30 | 4. Failure of an agency to respond to committee
31 | certification within the time prescribed by subparagraph 2.

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

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

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

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

1 ~~shall conform the rule or portion of the rule to the~~
2 ~~provisions of the law in the Florida Administrative Code and~~
3 ~~publish a reference to the law as a history note to the rule.~~

4 Section 6. Paragraphs (a) and (c) of subsection (1)
5 and subsections (3) and (5) of section 120.55, Florida
6 Statutes, are 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 the "Florida Administrative Code." The Florida
11 Administrative Code shall contain all rules adopted by each
12 agency, citing the specific rulemaking authority pursuant to
13 which each rule was adopted, all history notes as authorized
14 in s. 120.545(8) ~~s. 120.545(9)~~, and complete indexes to all
15 rules contained in the code. Supplementation shall be made as
16 often as practicable, but at least monthly. The department
17 may contract with a publishing firm for the publication, in a
18 timely and useful form, of the Florida Administrative Code;
19 however, the department shall retain responsibility for the
20 code as provided in this section. This publication shall be
21 the official compilation of the administrative rules of this
22 state. The Department of State shall retain the copyright over
23 the Florida Administrative Code.

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

31

1 3. At the beginning of the section of the code dealing
2 with an agency that files copies of its rules with the
3 department, the department shall publish the address and
4 telephone number of the executive offices of each agency, the
5 manner by which the agency indexes its rules, a listing of all
6 rules of that agency excluded from publication in the code,
7 and a statement as to where those rules may be inspected.

8 4. Forms shall not be published in the Florida
9 Administrative Code; but any form which an agency uses in its
10 dealings with the public, along with any accompanying
11 instructions, shall be filed with the committee before it is
12 used. Any form or instruction which meets the definition of
13 "rule" provided in s. 120.52 shall be incorporated by
14 reference into the appropriate rule. The reference shall
15 specifically state that the form is being incorporated by
16 reference and shall include the number, title, and effective
17 date of the form and an explanation of how the form may be
18 obtained.

19 (c) Prescribe by rule the style, ~~and~~ form and content
20 requirements required for rules, notices, and other materials
21 submitted for filing ~~and establish the form for their~~
22 ~~certification.~~

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

29 (5)(a) All fees and moneys collected by the Department
30 of State under this chapter shall be deposited in the Records
31 Management Trust Fund for the purpose of paying for the

1 publication and distribution of the Florida Administrative
 2 Code and the Florida Administrative Weekly and for associated
 3 costs incurred by the department in carrying out this chapter.

4 (b) The unencumbered balance in the Records Management
 5 Trust Fund for fees collected pursuant to this chapter shall
 6 not exceed \$300,000 at the beginning of each fiscal year, and
 7 any excess shall be transferred to the General Revenue Fund.

8 (c) It is the intent of the Legislature that the
 9 Florida Administrative Weekly be supported entirely from funds
 10 collected for subscriptions to and advertisements in the
 11 Florida Administrative Weekly.

12 (d) For the 2007-2008 fiscal year only,
 13 notwithstanding paragraph (b), the unencumbered balance in the
 14 Records Management Trust Fund for fees collected pursuant to
 15 this chapter shall not exceed \$400,000 at the beginning of
 16 each fiscal year, and any excess shall be transferred to the
 17 General Revenue Fund. This paragraph expires July 1, 2008.

18 Section 7. Effective December 31, 2007, paragraphs (a)
 19 and (d) of subsection (1) and subsections (2), (5), and (8) of
 20 section 120.55, Florida Statutes, as amended by section 4 of
 21 chapter 2006-82, Laws of Florida, are amended to read:

22 120.55 Publication.--

23 (1) The Department of State shall:

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

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

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

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

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

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

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

10 (2) The Florida Administrative Weekly Internet website
11 must allow users to:

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

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

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

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

24 (e) Comment on proposed rules.

25 (5) Any publication of a proposed rule promulgated by
26 an agency, whether published in the Florida Administrative
27 Code or elsewhere, shall include, along with the rule, the
28 name of the person or persons originating such rule, the name
29 of the agency head ~~supervisor or person~~ who approved the rule,
30 and the date upon which the rule was approved.

31

1 (8)(a) All fees and moneys collected by the Department
2 of State under this chapter shall be deposited in the Records
3 Management Trust Fund for the purpose of paying for costs
4 incurred by the department in carrying out this chapter.

5 (b) The unencumbered balance in the Records Management
6 Trust Fund for fees collected pursuant to this chapter may not
7 exceed \$300,000 at the beginning of each fiscal year, and any
8 excess shall be transferred to the General Revenue Fund.

9 (c) For the 2007-2008 fiscal year only,
10 notwithstanding paragraph (b), the unencumbered balance in the
11 Records Management Trust Fund for fees collected pursuant to
12 this chapter shall not exceed \$400,000 at the beginning of
13 each fiscal year, and any excess shall be transferred to the
14 General Revenue Fund. This paragraph expires July 1, 2008.

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

19 120.55 Publication.--

20 (1) The Department of State shall:

21 (a) 1. Through a continuous revision system, compile
22 and publish electronically the "Florida Administrative Code--"
23 on an Internet website managed by the department. The Florida
24 Administrative Code shall contain all rules adopted by each
25 agency, citing the grant of ~~specific~~ rulemaking authority and
26 the specific law implemented pursuant to which each rule was
27 adopted, all history notes as authorized in s. 120.545(8), ~~and~~
28 complete indexes to all rules contained in the code, and any
29 other material required or authorized by law or deemed useful
30 by the department. The electronic code shall display each rule
31 chapter currently in effect in browse mode and allow full text

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

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

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

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

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

12 5. The department shall allow material incorporated by
13 reference to be filed in electronic form as prescribed by
14 department rule. When a rule is filed for adoption with
15 incorporated material in electronic form, the department's
16 publication of the Florida Administrative Code on its Internet
17 website must contain a hyperlink from the incorporating
18 reference in the rule directly to that material. The
19 department may not allow hyperlinks from rules in the Florida
20 Administrative Code to any material other than that filed with
21 and maintained by the department, but it may allow additional
22 hyperlinks to incorporated material maintained by the
23 department from the adopting agency's website or other sites.

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

27 120.56 Challenges to rules.--

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

29 (a) Any substantially affected person may seek an
30 administrative determination of the invalidity of any proposed
31 rule by filing a petition seeking such a determination with

1 the division within 21 days after the date of publication of
2 the notice required by s. 120.54(3)(a), within 10 days after
3 the final public hearing is held on the proposed rule as
4 provided by s. 120.54(3)(e)2. ~~s. 120.54(3)(e)~~, within 20 days
5 after ~~the preparation of~~ a statement of estimated regulatory
6 costs required pursuant to s. 120.541, if applicable, has been
7 provided to all persons who submitted a lower cost regulatory
8 alternative and made available to the public or within 20 days
9 after the date of publication of the notice required by s.
10 120.54(3)(d). The petition shall state with particularity the
11 objections to the proposed rule and the reasons that the
12 proposed rule is an invalid exercise of delegated legislative
13 authority. The petitioner has the burden of going forward. The
14 agency then has the burden to prove by a preponderance of the
15 evidence that the proposed rule is not an invalid exercise of
16 delegated legislative authority as to the objections raised.
17 Any person who is substantially affected by a change in the
18 proposed rule may seek a determination of the validity of such
19 change. Any person not substantially affected by the proposed
20 rule as initially noticed, but who is substantially affected
21 by the rule as a result of a change, may challenge any
22 provision of the rule and is not limited to challenging the
23 change to the proposed rule.

24 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
25 SPECIAL PROVISIONS.--

26 (a) Any person substantially affected by an agency
27 statement may seek an administrative determination that the
28 statement violates s. 120.54(1)(a). The petition must ~~shall~~
29 include the text of the statement or a description of the
30 statement and shall state with particularity facts sufficient
31 to show that the statement constitutes a rule under s. 120.52

1 and that the agency has not adopted the statement by the
2 rulemaking procedure provided by s. 120.54. Upon the filing of
3 a petition for an administrative determination under this
4 subsection, the agency shall immediately discontinue all
5 reliance upon the statement or any substantially similar
6 statement as a basis for agency action until:

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

9 2. The statement is adopted and becomes effective as a
10 rule;

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

14 4. A final order is issued which contains a
15 determination that rulemaking is not feasible under s.
16 120.54(1)(a)1.a. or b. or not practicable under s.
17 120.54(1)(a)2.

18 (b) If the administrative law judge determines that
19 the agency's inability to rely upon the statement during the
20 proceeding under this subsection would constitute an immediate
21 danger to the public health, safety, or welfare, the
22 administrative law judge shall grant an agency petition to
23 allow application of the statement until the proceeding is
24 concluded.

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

31

1 (d)(e) The administrative law judge may determine
2 whether all or part of a statement violates s. 120.54(1)(a).
3 The decision of the administrative law judge shall constitute
4 a final order. The division shall transmit a copy of the final
5 order to the Department of State and the committee. The
6 Department of State shall publish notice of the final order in
7 the first available issue of the Florida Administrative
8 Weekly.

9 ~~(d) When an administrative law judge enters a final~~
10 ~~order that all or part of an agency statement violates s.~~
11 ~~120.54(1)(a), the agency shall immediately discontinue all~~
12 ~~reliance upon the statement or any substantially similar~~
13 ~~statement as a basis for agency action.~~

14 ~~(e)1. If, prior to a final hearing to determine~~
15 ~~whether all or part of any agency statement violates s.~~
16 ~~120.54(1)(a), an agency publishes, pursuant to s.~~
17 ~~120.54(3)(a), proposed rules that address the statement, then~~
18 ~~for purposes of this section, a presumption is created that~~
19 ~~the agency is acting expeditiously and in good faith to adopt~~
20 ~~rules that address the statement, and the agency shall be~~
21 ~~permitted to rely upon the statement or a substantially~~
22 ~~similar statement as a basis for agency action if the~~
23 ~~statement meets the requirements of s. 120.57(1)(e).~~

24 ~~2. If, prior to the final hearing to determine whether~~
25 ~~all or part of an agency statement violates s. 120.54(1)(a),~~
26 ~~an agency publishes a notice of rule development which~~
27 ~~addresses the statement pursuant to s. 120.54(2), or certifies~~
28 ~~that such a notice has been transmitted to the Florida~~
29 ~~Administrative Weekly for publication, then such publication~~
30 ~~shall constitute good cause for the granting of a stay of the~~
31 ~~proceedings and a continuance of the final hearing for 30~~

1 ~~days. If the agency publishes proposed rules within this~~
2 ~~30 day period or any extension of that period granted by an~~
3 ~~administrative law judge upon showing of good cause, then the~~
4 ~~administrative law judge shall place the case in abeyance~~
5 ~~pending the outcome of rulemaking and any proceedings~~
6 ~~involving challenges to proposed rules pursuant to subsection~~
7 ~~(2).~~

8 ~~3. If, following the commencement of the final hearing~~
9 ~~and prior to entry of a final order that all or part of an~~
10 ~~agency statement violates s. 120.54(1)(a), an agency~~
11 ~~publishes, pursuant to s. 120.54(3)(a), proposed rules that~~
12 ~~address the statement and proceeds expeditiously and in good~~
13 ~~faith to adopt rules that address the statement, the agency~~
14 ~~shall be permitted to rely upon the statement or a~~
15 ~~substantially similar statement as a basis for agency action~~
16 ~~if the statement meets the requirements of s. 120.57(1)(c).~~

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

24 ~~5. If the proposed rules addressing the challenged~~
25 ~~statement are determined to be an invalid exercise of~~
26 ~~delegated legislative authority as defined in s.~~
27 ~~120.52(8)(b) (f), the agency must immediately discontinue~~
28 ~~reliance on the statement and any substantially similar~~
29 ~~statement until the rules addressing the subject are properly~~
30 ~~adopted.~~

31

1 ~~(e)(f)~~ All proceedings to determine a violation of s.
2 120.54(1)(a) shall be brought pursuant to this subsection. A
3 proceeding pursuant to this subsection may be consolidated
4 with a proceeding under subsection (3) or under any other
5 section of this chapter. Nothing in this paragraph shall be
6 construed to prevent a party whose substantial interests have
7 been determined by an agency action from bringing a proceeding
8 pursuant to s. 120.57(1)(e).

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

12 120.569 Decisions which affect substantial
13 interests.--

14 (1) The provisions of this section apply in all
15 proceedings in which the substantial interests of a party are
16 determined by an agency, unless the parties are proceeding
17 under s. 120.573 or s. 120.574. Unless waived by all parties,
18 s. 120.57(1) applies whenever the proceeding involves a
19 disputed issue of material fact. Unless otherwise agreed, s.
20 120.57(2) applies in all other cases. If a disputed issue of
21 material fact arises during a proceeding under s. 120.57(2),
22 unless waived by all parties, the proceeding under s.
23 120.57(2) shall be terminated and a proceeding under s.
24 120.57(1) shall be conducted. Parties shall be notified of any
25 order, including a final order. Unless waived, a copy of the
26 order shall be delivered or mailed to each party or the
27 party's attorney of record at the address of record. Each
28 notice shall inform the recipient of any administrative
29 hearing or judicial review that is available under this
30 section, s. 120.57, or s. 120.68; shall indicate the procedure
31

1 which must be followed to obtain the hearing or judicial
2 review; and shall state the time limits which apply.

3 (2)

4 (c) Unless otherwise provided by law, a petition or
5 request for hearing shall include those items required by the
6 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~
7 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for
8 hearing, the agency shall carefully review the petition to
9 determine if it contains all of the required information. A
10 petition shall be dismissed if it is not in substantial
11 compliance with these requirements or it has been untimely
12 filed. Dismissal of a petition shall, at least once, be
13 without prejudice to petitioner's filing a timely amended
14 petition curing the defect, unless it conclusively appears
15 from the face of the petition that the defect cannot be cured.
16 The agency shall promptly give written notice to all parties
17 of the action taken on the petition, shall state with
18 particularity its reasons if the petition is not granted, and
19 shall state the deadline for filing an amended petition if
20 applicable. This paragraph does not eliminate the availability
21 of equitable tolling as a defense to the untimely filing of a
22 petition.

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

26 120.57 Additional procedures for particular cases.--

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

29 (e)1. ~~Any~~ Agency action that determines the
30 substantial interests of a party may not be ~~and that is~~ based
31 on an agency statement that violates s. 120.54(1)(a). ~~Neither~~

1 an agency nor an administrative law judge has authority to
2 enforce agency policy that constitutes an unadopted rule when
3 the agency fails to prove that rulemaking is not feasible or
4 not practicable. This subparagraph does not preclude
5 application of adopted rules and applicable statutes to the
6 facts unadopted rule is subject to de novo review by an
7 administrative law judge.

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

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

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

16 ~~c. Is not vague, establishes adequate standards for~~
17 ~~agency decisions, or does not vest unbridled discretion in the~~
18 ~~agency;~~

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

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

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

27 2.3. The recommended and final orders in any
28 proceeding shall be governed by the provisions of paragraphs
29 (k) and (l), except that the administrative law judge's
30 determination regarding the unadopted rule shall not be
31 rejected by the agency unless the agency first determines from

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

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

14 120.595 Attorney's fees.--

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

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

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

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

30 (b) If prior to the final hearing the agency initiates
31 rulemaking under s. 120.54 and requests a stay of the

1 proceedings pending rulemaking, the administrative law judge
2 shall award reasonable costs and reasonable attorney's fees
3 accrued by the petitioner prior to the date the agency filed
4 its request for a stay pending rulemaking provided the agency
5 adopts the statement as a rule. A request for a stay shall be
6 granted when the petitioner and the agency agree to the stay.
7 If the petitioner objects to the stay, the stay may be denied
8 if the petitioner establishes good cause exists to deny the
9 stay. A stay granted under this paragraph shall remain in
10 effect until either the statement has been adopted as a rule
11 and has become effective or the proposed rule has been
12 withdrawn. A request for attorney's fees and costs under this
13 paragraph shall be granted only upon a finding that the agency
14 knew or should have known at the time the petition was filed
15 that the agency statement was an unadopted rule, and no award
16 of attorney's fees as provided by this paragraph may exceed
17 \$50,000.

18 ~~(c)(b)~~ Notwithstanding the provisions of chapter 284,
19 an award shall be paid from the budget entity of the
20 secretary, executive director, or equivalent administrative
21 officer of the agency, and the agency shall not be entitled to
22 payment of an award or reimbursement for payment of an award
23 under any provision of law.

24 (d) If the agency prevails in the proceedings, the
25 court or administrative law judge shall award reasonable costs
26 and reasonable attorney's fees against a party if the court or
27 administrative law judge determines that the party
28 participated in the proceedings for an improper purpose as
29 defined in paragraph (1)(e).

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

1 120.74 Agency review, revision, and report.--
2 (2) Beginning October 1, 1997, and by October 1 of
3 every ~~other~~ year thereafter, the head of each agency shall
4 file a report with the President of the Senate, the Speaker of
5 the House of Representatives, and the committee, with a copy
6 to each appropriate standing committee of the Legislature,
7 which certifies that the agency has complied with the
8 requirements of this section ~~subsection~~. The report must
9 specify any changes made to its rules as a result of the
10 review and, when appropriate, recommend statutory changes that
11 will promote efficiency, reduce paperwork, or decrease costs
12 to government and the private sector. The report must identify
13 the types of cases or disputes in which the agency is involved
14 which should be conducted under the summary hearing process
15 described in s. 120.574.

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

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