



1 different provisions of state law if a disputed  
2 issue of material fact arises during such a  
3 proceeding; providing for the waiver of such  
4 termination; revising a cross-reference;  
5 amending s. 120.595, F.S.; providing for  
6 attorney's fees and costs in certain  
7 circumstances; amending s. 120.74, F.S.;  
8 revising reporting requirements for agency  
9 heads; providing effective dates.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Subsection (8) of section 120.52, Florida  
14 Statutes, is amended, present subsections (9) through (15) of  
15 that section are renumbered as subsections (10) through (16),  
16 respectively, present subsections (16) through (19) of that  
17 section are renumbered as subsections (18) through (21),  
18 respectively, and new subsections (9) and (17) are added to  
19 that section, to read:

20

120.52 Definitions.--As used in this act:

21

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

26

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

29

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

31

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

4 (d) The rule is vague, fails to establish adequate  
5 standards for agency decisions, or vests unbridled discretion  
6 in the agency;

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

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

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

31

1           (9) "Law implemented" means the statutory language  
2 being carried out or interpreted by an agency through  
3 rulemaking.

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

8           Section 2. 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 3. Paragraph (i) of subsection (1), paragraphs  
27 (a), (c), and (e) of subsection (3), and paragraph (a) of  
28 subsection (4) of section 120.54, Florida Statutes, are  
29 amended, and paragraph (k) is added to subsection (1) of that  
30 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, or  
16 until the administrative law judge has rendered a decision  
17 under s. 120.56(2), whichever applies. When a required notice  
18 of change is published prior to the expiration of the time to  
19 file the rule for adoption, the period during which a rule  
20 must be filed for adoption is extended to 45 days after the  
21 date of publication. If notice of a public hearing is  
22 published prior to the expiration of the time to file the rule  
23 for adoption, the period during which a rule must be filed for  
24 adoption is extended to 45 days after adjournment of the final  
25 hearing on the rule, 21 days after receipt of all material  
26 authorized to be submitted at the hearing, or 21 days after  
27 receipt of the transcript, if one is made, whichever is  
28 latest. The term "public hearing" includes any public meeting  
29 held by any agency at which the rule is considered. If a  
30 petition for an administrative determination under s.  
31 120.56(2) is filed, the period during which a rule must be

1 | filed for adoption is extended to 60 days after the  
2 | administrative law judge files the final order with the clerk  
3 | or until 60 days after subsequent judicial review is complete.

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

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

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

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

1 rule or statute. If the committee notifies an agency that an  
2 objection to a rule is being considered, the agency may  
3 postpone the adoption of the rule to accommodate review of the  
4 rule by the committee. When an agency postpones adoption of a  
5 rule to accommodate review by the committee, the 90-day period  
6 for filing the rule is tolled until the committee notifies the  
7 agency that it has completed its review of the rule.

8  
9 For the purposes of this paragraph, the term "administrative  
10 determination" does not include subsequent judicial review.

11 (4) EMERGENCY RULES.--

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

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

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

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

1 any material incorporated by reference in the rules. The  
2 agency's findings of immediate danger, necessity, and  
3 procedural fairness shall be judicially reviewable.

4 Section 4. Subsection (2) of section 120.545, Florida  
5 Statutes, is amended to read:

6 120.545 Committee review of agency rules.--

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  
21 copy of the rule and the statement detailing the committee's  
22 objections to the rule.

23 Section 5. Paragraph (c) of subsection (1) and  
24 subsection (3) of section 120.55, Florida Statutes, are  
25 amended to read:

26 120.55 Publication.--

27 (1) The Department of State shall:

28 (c) Prescribe by rule the style, ~~and~~ and form and content  
29 requirements required for rules, notices, and other materials  
30 submitted for filing ~~and establish the form for their~~  
31 certification.

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

7           Section 6. Effective December 31, 2007, paragraph (d)  
8 of subsection (1) and subsections (2) and (5) of section  
9 120.55, Florida Statutes, as amended by section 4 of chapter  
10 2006-82, Laws of Florida, are amended to read:

11           120.55 Publication.--

12           (1) The Department of State shall:

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

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

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

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

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

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

31           (e) Comment on proposed rules.

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

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

11           120.55 Publication.--

12           (1) The Department of State shall:

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

1 often as practicable, but at least monthly. The printed ~~This~~  
2 publication shall be the official compilation of the  
3 administrative rules of this state. The Department of State  
4 shall retain the copyright over the Florida Administrative  
5 Code.

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

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

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



1 120.54(3)(a) after December 31, 2007, must clearly display the  
2 number, title, and effective date of the form and the number  
3 of the rule in which the form is incorporated.

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

16 Section 8. Subsection (1) and paragraph (c) of  
17 subsection (2) of section 120.569, Florida Statutes, are  
18 amended to read:

19 120.569 Decisions which affect substantial  
20 interests.--

21 (1) The provisions of this section apply in all  
22 proceedings in which the substantial interests of a party are  
23 determined by an agency, unless the parties are proceeding  
24 under s. 120.573 or s. 120.574. Unless waived by all parties,  
25 s. 120.57(1) applies whenever the proceeding involves a  
26 disputed issue of material fact. Unless otherwise agreed, s.  
27 120.57(2) applies in all other cases. If a disputed issue of  
28 material fact arises during a proceeding under s. 120.57(2),  
29 unless waived by all parties, the proceeding under s.  
30 120.57(2) shall be terminated and a proceeding under s.  
31 120.57(1) shall be conducted. Parties shall be notified of any

1 order, including a final order. Unless waived, a copy of the  
2 order shall be delivered or mailed to each party or the  
3 party's attorney of record at the address of record. Each  
4 notice shall inform the recipient of any administrative  
5 hearing or judicial review that is available under this  
6 section, s. 120.57, or s. 120.68; shall indicate the procedure  
7 which must be followed to obtain the hearing or judicial  
8 review; and shall state the time limits which apply.

9 (2)

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

29 Section 9. Present paragraph (b) of subsection (4) of  
30 section 120.595, Florida Statutes, is redesignated as  
31

1 paragraph (c), and a new paragraph (b) is added to that  
2 subsection, to read:

3 120.595 Attorney's fees.--

4 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
5 120.56(4).--

6 (b) If prior to the final hearing the agency initiates  
7 rulemaking under s. 120.54 and requests a stay of the  
8 proceedings pending rulemaking, the administrative law judge  
9 shall award reasonable costs and reasonable attorney's fees  
10 accrued by the petitioner prior to the date the agency filed  
11 its request for a stay pending rulemaking provided the agency  
12 adopts the statement as a rule. A request for a stay shall be  
13 granted when the petitioner and the agency agree to the stay.  
14 If the petitioner objects to the stay, the stay may be denied  
15 if the petitioner establishes good cause exists to deny the  
16 stay. A stay granted under this paragraph shall remain in  
17 effect until either the statement has been adopted as a rule  
18 and has become effective or the proposed rule has been  
19 withdrawn. A request for attorney's fees and costs under this  
20 paragraph shall be granted only upon a finding that the agency  
21 knew or should have known at the time the petition was filed  
22 that the agency statement was an unadopted rule, and no award  
23 of attorney's fees as provided by this paragraph may exceed  
24 \$50,000.

25 Section 10. Subsection (2) of section 120.74, Florida  
26 Statutes, is amended to read:

27 120.74 Agency review, revision, and report.--

28 (2) Beginning October 1, 1997, and by October 1 of  
29 every ~~other~~ year thereafter, the head of each agency shall  
30 file a report with the President of the Senate, the Speaker of  
31 the House of Representatives, and the committee, with a copy

1 | to each appropriate standing committee of the Legislature,  
2 | which certifies that the agency has complied with the  
3 | requirements of this section ~~subsection~~. The report must  
4 | specify any changes made to its rules as a result of the  
5 | review and, when appropriate, recommend statutory changes that  
6 | will promote efficiency, reduce paperwork, or decrease costs  
7 | to government and the private sector. The report must identify  
8 | the types of cases or disputes in which the agency is involved  
9 | which should be conducted under the summary hearing process  
10 | described in s. 120.574.

11 |           Section 11. Except as otherwise expressly provided in  
12 | this act, this act shall take effect July 1, 2007.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   SB 1594

4 The committee substitute:

- 5 -- Revises the definition of "rulemaking authority."  
6 -- Provides that an agency does not have to provide free  
7 public access to incorporated materials on the Florida  
8 Administrative Code website if posting the material on  
9 the website would constitute a violation of federal  
10 copyright law, as long as a statement to that effect and  
11 the address where the material is available are included  
12 in the notice of intended action.  
13 -- Provides that certain rulemaking responsibilities of an  
14 agency head cannot be delegated or transferred.  
15 -- Provides that if an agency head is a board or other  
16 collegial body, then the agency head may not delegate the  
17 responsibility to conduct requested public hearings.  
18 -- Requires the termination of an informal administrative  
19 hearing and the commencement of a formal hearing upon the  
20 determination of the existence of a disputed issue of  
21 material fact, unless the right to a formal hearing is  
22 waived by all parties.  
23 -- Provides an award of attorney's fees, capped at \$50,000,  
24 to the petitioner in an unadopted rule challenge, if the  
25 agency initiates rulemaking prior to the final hearing  
26 and the agency knew or should have known that the agency  
27 statement was an unadopted rule.  
28 -- Provides that if, prior to a final hearing in an  
29 unadopted rule challenge, an agency initiates rulemaking  
30 and requests a stay, the administrative law judge must  
31 grant the stay as long as the petitioner agrees. The stay  
may be denied upon a showing of good cause by the  
petitioner.