

1 assistance programs; requiring that such
2 hearings comply with certain rules of
3 procedure; deleting a requirement that
4 appellate jurisdiction for the Florida Public
5 Service Commission conform to the
6 Telecommunications Act of 1996; removing the
7 exemption from ch. 120, F.S., provided for
8 disqualification reviews of certified nurse
9 assistant programs; requiring that a formal
10 hearing be conducted by a hearing officer;
11 eliminating the authority of the Department of
12 Health to contract with the Department of
13 Children and Family Services for hearing
14 officers to conduct hearings on matters
15 involving certain federal programs administered
16 by the Department of Health; amending s.
17 120.81, F.S.; authorizing the Parole Commission
18 to require that a prisoner submit written
19 statements concerning intended action by the
20 commission rather than be publicly heard;
21 eliminating certain requirements for testimony
22 and evidence in an administrative hearing
23 involving the allegation of sexual misconduct
24 by a licensed professional; amending ss.
25 120.56, 120.65, 388.4111, 403.788, 403.9415,
26 and 627.0612, F.S., relating to challenges to
27 rules, administrative law judges, public lands,
28 final orders, disposition of applications, and
29 rating determinations; conforming
30 cross-references; amending s. 163.3177, F.S. ;
31 deleting provisions exempting from review under

1 ch. 120, F.S., rules adopted by the state land
2 planning agency establishing criteria for
3 reviewing local comprehensive plans; deleting a
4 requirement that such rules be reviewed by the
5 Legislature; deleting obsolete provisions;
6 amending s. 186.508, F.S.; revising the
7 exemption for certain rules adopted by a
8 regional planning council from rule challenge
9 or drawout proceedings under ch. 120, F.S.;
10 amending s. 370.26, F.S.; deleting a provision
11 requiring the Department of Environmental
12 Protection to develop a process for
13 consolidating certain aquaculture permits;
14 amending s. 373.421, F.S.; clarifying
15 provisions relating to final agency action with
16 respect to wetlands delineation; amending s.
17 380.06, F.S.; deleting provisions exempting
18 from review under ch. 120, F.S., certain rules
19 adopted by the state land planning agency
20 authorizing the assessment and collection of
21 fees; amending s. 393.0661, F.S.; deleting the
22 authority of the Agency for Health Care
23 Administration to adopt rules under certain
24 circumstances governing fees, reimbursement
25 rates, lengths of stay, number of visits,
26 number of services, or enrollment limits for
27 the home and community-based services delivery
28 system of the Agency for Persons with
29 Disabilities; amending s. 393.125, F.S.;
30 requiring that the Agency for Persons with
31 Disabilities adopt rules establishing

1 guidelines for administrative hearings;
2 authorizing witnesses to appear on behalf of a
3 party by telephone or video teleconference;
4 deleting provisions authorizing certain
5 administrative hearings under ch. 120, F.S.;
6 requiring the agency to adopt certain
7 procedures governing client services provided
8 by service providers; amending s. 408.039,
9 F.S.; deleting provisions requiring that the
10 court, under certain circumstances, affirm a
11 final order by the Agency for Health Care
12 Administration when reviewing a disputed
13 decision involving a certificate of need;
14 amending s. 409.285, F.S.; clarifying that a
15 final administrative decision regarding a
16 public assistance program is issued in the name
17 of the state agency that administers the
18 program; defining the term "public assistance";
19 amending s. 440.021, F.S., relating to
20 enforcement activities of the Division of
21 Workers' Compensation in the Department of
22 Financial Services; eliminating obsolete
23 provisions with respect to communications
24 resulting from investigations by the
25 department; eliminating obsolete provisions
26 relating to interest and penalty assessments;
27 amending s. 456.073, F.S.; providing that the
28 proceedings of a probable cause panel of a
29 board within the Department of Health which
30 meets to reconsider the original finding of
31 probable cause is subject to public-meetings

1 requirements; amending s. 458.345, F.S.;
2 clarifying provisions that subject resident
3 physicians, assistant resident physicians,
4 house physicians, interns, and fellows in
5 fellowship training to discipline by the Board
6 of Medicine; amending s. 459.021, F.S.;
7 clarifying provisions that subject resident
8 physicians, assistant resident physicians,
9 house physicians, interns, and fellows in
10 fellowship training to discipline by the Board
11 of Osteopathic Medicine; amending s. 497.153,
12 F.S., relating to the regulation of funeral,
13 cemetery, and consumer services by the
14 Department of Financial Services; deleting
15 provisions exempting certain decisions by the
16 department concerning investigations and
17 disciplinary matters from review under ch. 120,
18 F.S.; amending s. 538.11, F.S., relating to
19 recordkeeping requirements for secondhand
20 dealers and secondary metals recyclers;
21 deleting obsolete provisions providing for the
22 adoption of emergency rules; amending s.
23 548.07, F.S., relating to the regulation of
24 pugilistic exhibitions by the Florida State
25 Boxing Commission; clarifying duties of the
26 commission with respect to the protection of
27 the public; repealing s. 548.073, F.S.,
28 relating to authorization for the commission to
29 conduct hearings; amending s. 1002.33, F.S.;
30 requiring that the decision by the State Board
31 of Education directing a district school board

1 to approve or deny an application for a charter
2 school include written findings of fact;
3 amending s. 1002.335, F.S.; requiring that the
4 decision by the State Board of Education to
5 grant a district school board exclusive
6 authority to authorize charter schools within
7 the school district include written findings of
8 fact; requiring that a decision by the Florida
9 Schools of Excellence Commission to deny an
10 application for a charter school or revoke
11 approval of a cosponsor of a charter school
12 include written findings of fact; amending s.
13 1002.34, F.S.; requiring that the decision by
14 the State Board of Education to approve or deny
15 an application for a charter technical career
16 center include written findings of fact;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (1) of section 24.109, Florida
22 Statutes, is amended to read:

23 24.109 Administrative procedure.--

24 (1) The department may at any time adopt emergency
25 rules pursuant to s. 120.54. The Legislature finds that such
26 emergency rulemaking power is necessary for the preservation
27 of the rights and welfare of the people in order to provide
28 additional funds to benefit the public. The Legislature
29 further finds that the unique nature of state lottery
30 operations requires, from time to time, that the department
31 respond as quickly as is practicable to changes in the

1 marketplace. Therefore, in adopting such emergency rules, the
2 department need not make the findings required by s.
3 120.54(4)(a). Emergency rules adopted under this section
4 relating to the operation of lottery games are exempt from s.
5 120.54(4)(c) and shall remain in effect until replaced by
6 other emergency rules or by rules adopted under the
7 nonemergency rulemaking procedures of the Administrative
8 Procedure Act.

9 Section 2. Paragraph (g) of subsection (2) of section
10 120.569, Florida Statutes, is amended to read:

11 120.569 Decisions which affect substantial
12 interests.--

13 (2)

14 (g)1. Irrelevant, immaterial, or unduly repetitious
15 evidence shall be excluded, but all other evidence of a type
16 commonly relied upon by reasonably prudent persons in the
17 conduct of their affairs shall be admissible, whether or not
18 such evidence would be admissible in a trial in the courts of
19 Florida. Any part of the evidence may be received in written
20 form, and all testimony of parties and witnesses shall be made
21 under oath.

22 2. Notwithstanding subparagraph 1., similar fact
23 evidence of other violations, wrongs, or acts is admissible
24 when relevant to prove a material fact in issue, such as proof
25 of motive, opportunity, intent, preparation, plan, knowledge,
26 identity, or absence of mistake or accident, but it is
27 inadmissible when the evidence is relevant solely to prove bad
28 character or propensity. When, in an administrative
29 proceeding, the state intends to offer evidence of other acts
30 or offenses under this subparagraph, the state shall furnish
31 to the party whose substantial interests are being determined

1 and whose other acts or offenses will be the subject of such
2 evidence, not less than 10 days before commencement of the
3 proceeding, a written statement of the acts or offenses it
4 intends to offer which describes them and the evidence the
5 state intends to offer with particularity. Notice is not
6 required for evidence of acts or offenses which is used for
7 impeachment or on rebuttal.

8 3. Notwithstanding subparagraph 1., in a proceeding
9 against a licensed professional or in a proceeding for
10 licensure of an applicant for professional licensure which
11 involves allegations of sexual misconduct:

12 a. The testimony of the victim of the sexual
13 misconduct need not be corroborated.

14 b. Specific instances of prior consensual sexual
15 activity between the victim of the sexual misconduct and any
16 person other than the offender is inadmissible, unless:

17 (I) It is first established to the administrative law
18 judge in a proceeding in camera that the victim of the sexual
19 misconduct is mistaken as to the identity of the perpetrator
20 of the sexual misconduct; or

21 (II) If consent by the victim of the sexual misconduct
22 is at issue and it is first established to the administrative
23 law judge in a proceeding in camera that such evidence tends
24 to establish a pattern of conduct or behavior on the part of
25 such victim which is so similar to the conduct or behavior in
26 the case that it is relevant to the issue of consent.

27 c. Reputation evidence relating to the prior sexual
28 conduct of a victim of sexual misconduct is inadmissible.

29 Section 3. Present paragraphs (e) through (n) of
30 subsection (1) of section 120.57, Florida Statutes, are
31 redesignated as paragraphs (d) through (m), respectively, and

1 present paragraphs (d) and (e) of that subsection are amended,
2 to read:

3 120.57 Additional procedures for particular cases.--

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

6 ~~(d) Notwithstanding s. 120.569(2)(g), similar fact~~
7 ~~evidence of other violations, wrongs, or acts is admissible~~
8 ~~when relevant to prove a material fact in issue, such as proof~~
9 ~~of motive, opportunity, intent, preparation, plan, knowledge,~~
10 ~~identity, or absence of mistake or accident, but it is~~
11 ~~inadmissible when the evidence is relevant solely to prove bad~~
12 ~~character or propensity. When the state in an administrative~~
13 ~~proceeding intends to offer evidence of other acts or offenses~~
14 ~~under this paragraph, the state shall furnish to the party~~
15 ~~whose substantial interests are being determined and whose~~
16 ~~other acts or offenses will be the subject of such evidence,~~
17 ~~no fewer than 10 days before commencement of the proceeding, a~~
18 ~~written statement of the acts or offenses it intends to offer,~~
19 ~~describing them and the evidence the state intends to offer~~
20 ~~with particularity. Notice is not required for evidence of~~
21 ~~acts or offenses which is used for impeachment or on rebuttal.~~

22 (d)(e)1. Any agency action that determines the
23 substantial interests of a party and that is based on an
24 unadopted rule is subject to de novo review by an
25 administrative law judge.

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

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

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

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

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

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

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

14 3. The recommended and final orders in any proceeding
15 shall be governed by the provisions of paragraphs ~~(j)(k)~~ and
16 (k)(1), except that the administrative law judge's
17 determination regarding the unadopted rule shall not be
18 rejected by the agency unless the agency first determines from
19 a review of the complete record, and states with particularity
20 in the order, that such determination is clearly erroneous or
21 does not comply with essential requirements of law. In any
22 proceeding for review under s. 120.68, if the court finds that
23 the agency's rejection of the determination regarding the
24 unadopted rule does not comport with the provisions of this
25 subparagraph, the agency action shall be set aside and the
26 court shall award to the prevailing party the reasonable costs
27 and a reasonable attorney's fee for the initial proceeding and
28 the proceeding for review.

29 Section 4. Paragraph (b) of subsection (1) and
30 subsections (7), (13), and (15) of section 120.80, Florida
31 Statutes, are amended to read:

1 120.80 Exceptions and special requirements;
2 agencies.--
3 (1) DIVISION OF ADMINISTRATIVE HEARINGS.--
4 (b) Workers' compensation.--~~Notwithstanding s.~~
5 ~~120.52(1),~~ A judge of compensation claims is exempt from the
6 requirements for notice and a hearing under ss. 120.569 and
7 120.57 when, in adjudicating matters under chapter 440, but is
8 subject to the rulemaking procedures in ~~is not an agency or~~
9 ~~part of an agency for purposes of this chapter.~~
10 (7) DEPARTMENT OF CHILDREN AND FAMILY
11 SERVICES.--Section 120.57(1) notwithstanding, hearings
12 required by ss. 120.569 and 120.57 concerning the denial,
13 reduction, suspension, or termination of benefits under a
14 public assistance program, as defined in s. 409.285, need not
15 be conducted by an administrative law judge assigned by the
16 division unless required otherwise by a specific law. The
17 Office of Appeal Hearings within the Department of Children
18 and Family Services may provide the hearings required by ss.
19 120.569 and 120.57 for all public assistance programs,
20 regardless of which state agency administers the program, if
21 the public assistance program is administered by the
22 department or the department has a formal interagency
23 agreement with the state agency that administers the program
24 to conduct the hearings. Hearings conducted under this
25 subsection must comply with the requirements of ss. 120.569
26 and 120.57 and the uniform rules of procedure, except to the
27 extent that the department has adopted rules pursuant to s.
28 409.28 and has been granted exceptions to the uniform rules of
29 procedure as provided in s. 120.54. ~~Notwithstanding s.~~
30 ~~120.57(1)(a), hearings conducted within the Department of~~
31 ~~Children and Family Services in the execution of those social~~

1 ~~and economic programs administered by the former Division of~~
2 ~~Family Services of the former Department of Health and~~
3 ~~Rehabilitative Services prior to the reorganization effected~~
4 ~~by chapter 75 48, Laws of Florida, need not be conducted by an~~
5 ~~administrative law judge assigned by the division.~~

6 (13) FLORIDA PUBLIC SERVICE COMMISSION.--

7 (a) Agency statements that relate to cost-recovery
8 clauses, factors, or mechanisms implemented pursuant to
9 chapter 366, relating to public utilities, are exempt from the
10 provisions of s. 120.54(1)(a).

11 (b) Notwithstanding ss. 120.569 and 120.57, a hearing
12 on an objection to proposed action of the Florida Public
13 Service Commission may only address the issues in dispute.
14 Issues in the proposed action which are not in dispute are
15 deemed stipulated.

16 (c) The Florida Public Service Commission is exempt
17 from the time limitations in s. 120.60(1) when issuing a
18 license.

19 (d) Notwithstanding the provisions of this chapter, in
20 implementing the Telecommunications Act of 1996, Pub. L. No.
21 104-104, the Public Service Commission is authorized to employ
22 procedures consistent with that act.

23 ~~(e) Notwithstanding the provisions of this chapter, s.~~
24 ~~350.128, or s. 364.381, appellate jurisdiction for Public~~
25 ~~Service Commission decisions that implement the~~
26 ~~Telecommunications Act of 1996, Pub. L. No. 104 104, shall be~~
27 ~~consistent with the provisions of that act.~~

28 (e)(f) Notwithstanding any provision of this chapter,
29 all public utilities and companies regulated by the Public
30 Service Commission shall be entitled to proceed under the
31 interim rate provisions of chapter 364 or the procedures for

1 interim rates contained in chapter 74-195, Laws of Florida, or
2 as otherwise provided by law.

3 (15) DEPARTMENT OF HEALTH.--Notwithstanding s.
4 120.57(1)(a), formal hearings may not be conducted by the
5 Secretary of Health, the Secretary of Health Care
6 Administration, or a board or member of a board within the
7 Department of Health or the Agency for Health Care
8 Administration for matters relating to the regulation of
9 professions, as defined by chapter 456. Notwithstanding s.
10 120.57(1)(a), hearings conducted within the Department of
11 Health in execution of the Special Supplemental Nutrition
12 Program for Women, Infants, and Children; Child Care Food
13 Program; Children's Medical Services Program; and the Brain
14 and Spinal Cord Injury Program; ~~and the exemption from~~
15 ~~disqualification reviews for certified nurse assistants~~
16 ~~program~~ need not be conducted by an administrative law judge
17 assigned by the division. ~~The Department of Health may~~
18 ~~contract with the Department of Children and Family Services~~
19 ~~for a hearing officer in these matters.~~

20 Section 5. Subsection (3) of section 120.81, Florida
21 Statutes, is amended, present subsections (5) and (6) of that
22 section are redesignated as subsections (4) and (5),
23 respectively, and present subsection (4) of that section is
24 amended, to read:

25 120.81 Exceptions and special requirements; general
26 areas.--

27 (3) PRISONERS AND PAROLEES.--

28 (a) Notwithstanding s. 120.52(12), prisoners, as
29 defined by s. 944.02, shall not be considered parties in any
30 proceedings other than those under s. 120.54(3)(c) or (7), and
31 may not seek judicial review under s. 120.68 of any other

1 agency action. Prisoners are not eligible to seek an
2 administrative determination of an agency statement under s.
3 120.56(4). Parolees shall not be considered parties for
4 purposes of agency action or judicial review when the
5 proceedings relate to the rescission or revocation of parole.

6 (b) Notwithstanding s. 120.54(3)(c), prisoners, as
7 defined by s. 944.02, may be limited by the Department of
8 Corrections or the Parole Commission to an opportunity to
9 present evidence and argument on issues under consideration by
10 submission of written statements concerning intended action on
11 any department or commission rule.

12 (c) Notwithstanding ss. 120.569 and 120.57, in a
13 preliminary hearing for revocation of parole, no less than 7
14 days' notice of hearing shall be given.

15 ~~(4) REGULATION OF PROFESSIONS. Notwithstanding s.~~
16 ~~120.569(2)(g), in a proceeding against a licensed professional~~
17 ~~or in a proceeding for licensure of an applicant for~~
18 ~~professional licensure which involves allegations of sexual~~
19 ~~misconduct:~~

20 ~~(a) The testimony of the victim of the sexual~~
21 ~~misconduct need not be corroborated.~~

22 ~~(b) Specific instances of prior consensual sexual~~
23 ~~activity between the victim of the sexual misconduct and any~~
24 ~~person other than the offender is inadmissible, unless:~~

25 ~~1. It is first established to the administrative law~~
26 ~~judge in a proceeding in camera that the victim of the sexual~~
27 ~~misconduct is mistaken as to the identity of the perpetrator~~
28 ~~of the sexual misconduct; or~~

29 ~~2. If consent by the victim of the sexual misconduct~~
30 ~~is at issue and it is first established to the administrative~~
31 ~~law judge in a proceeding in camera that such evidence tends~~

1 ~~to establish a pattern of conduct or behavior on the part of~~
2 ~~such victim which is so similar to the conduct or behavior in~~
3 ~~the case that it is relevant to the issue of consent.~~

4 ~~(c) Reputation evidence relating to the prior sexual~~
5 ~~conduct of a victim of sexual misconduct is inadmissible.~~

6 Section 6. Paragraphs (e) and (f) of subsection (4) of
7 section 120.56, Florida Statutes, are amended to read:

8 120.56 Challenges to rules.--

9 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
10 SPECIAL PROVISIONS.--

11 (e)1. If, prior to a final hearing to determine
12 whether all or part of any agency statement violates s.
13 120.54(1)(a), an agency publishes, pursuant to s.
14 120.54(3)(a), proposed rules that address the statement, then
15 for purposes of this section, a presumption is created that
16 the agency is acting expeditiously and in good faith to adopt
17 rules that address the statement, and the agency shall be
18 permitted to rely upon the statement or a substantially
19 similar statement as a basis for agency action if the
20 statement meets the requirements of s. 120.57(1)(d) ~~s.~~
21 ~~120.57(1)(e)~~.

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

1 administrative law judge upon showing of good cause, then the
2 administrative law judge shall place the case in abeyance
3 pending the outcome of rulemaking and any proceedings
4 involving challenges to proposed rules pursuant to subsection
5 (2).

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

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

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

30 (f) All proceedings to determine a violation of s.
31 120.54(1)(a) shall be brought pursuant to this subsection. A

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

7 Section 7. Paragraph (d) of subsection (10) of section
8 120.65, Florida Statutes, is amended to read:

9 120.65 Administrative law judges.--

10 (10) Not later than February 1 of each year, the
11 division shall issue a written report to the Administrative
12 Procedures Committee and the Administration Commission,
13 including at least the following information:

14 (d) A report regarding each agency's compliance with
15 the filing requirement in s. 120.57(1)(l) ~~s. 120.57(1)(m)~~.

16 Section 8. Paragraph (c) of subsection (2) of section
17 388.4111, Florida Statutes, is amended to read:

18 388.4111 Public lands; arthropod control.--

19 (2)

20 (c) If the land management agency and the local
21 arthropod control agency are unable to agree on a public lands
22 control plan, the Florida Coordinating Council on Mosquito
23 Control may recommend a control plan to the department, which
24 shall propose a recommended public lands control plan. If the
25 land management agency and the local arthropod control agency
26 fail to agree to such recommended public lands control plan
27 within 30 days of the rendering of such plan, either agency
28 may petition the Land and Water Adjudicatory Commission to
29 determine whether the proposed control plan employs methods
30 which are the minimum necessary and economically feasible to
31 abate a public health or nuisance problem and which impose the

1 | least hazard to fish, wildlife, and other natural resources
2 | protected or managed in such areas. Unless both parties waive
3 | their right to a hearing, the Land and Water Adjudicatory
4 | Commission shall direct a hearing officer to hold a hearing
5 | within the jurisdiction of the local arthropod control agency
6 | pursuant to the provisions of ss. 120.569 and 120.57 and
7 | submit a recommended order. The commission shall, within 60
8 | days of receipt of the recommended order, issue a final order
9 | adopting a public lands control plan. Consistent with s.
10 | 120.57(1)(k) ~~s. 120.57(1)(l)~~, the commission may adopt or
11 | modify the proposed control plan. The commission shall adopt
12 | rules on the conduct of appeals before the commission.

13 | Section 9. Subsection (1) of section 403.788, Florida
14 | Statutes, is amended to read:

15 | 403.788 Final disposition of application.--

16 | (1) For the purposes of issuing a final order, the
17 | board shall serve as the agency head. Within 45 days after
18 | receipt of the administrative law judge's recommended order,
19 | the board shall issue a final order as provided by s.
20 | 120.57(1)(k) ~~s. 120.57(1)(l)~~, approving the application in
21 | whole, approving the application with such modifications or
22 | conditions as the board deems appropriate, or denying the
23 | issuance of a certification and stating the reasons for
24 | issuance or denial.

25 | Section 10. Subsection (4) of section 403.9415,
26 | Florida Statutes, is amended to read:

27 | 403.9415 Final disposition of application.--

28 | (4) In determining whether an application should be
29 | approved in whole, approved with modifications or conditions,
30 | or denied, the board shall consider whether, and the extent to
31 | which, the location of the natural gas transmission pipeline

1 | corridor and the construction and maintenance of the natural
2 | gas transmission pipeline will effect a reasonable balance
3 | between the need for the natural gas transmission pipeline as
4 | a means of providing natural gas energy and the impact upon
5 | the public and the environment resulting from the location of
6 | the natural gas transmission pipeline corridor and the
7 | construction, operation, and maintenance of the natural gas
8 | transmission pipeline. In effecting this balance, the board
9 | shall consider, based on all relevant, competent and
10 | substantial evidence in the record, subject to s. 120.57(1)(k)
11 | ~~s. 120.57(1)(l)~~, whether and the extent to which the project
12 | will:

- 13 | (a) Ensure natural gas delivery reliability and
- 14 | integrity;
- 15 | (b) Meet the natural gas energy needs of the state in
- 16 | an orderly and timely fashion;
- 17 | (c) Comply with the nonprocedural requirements of
- 18 | agencies;
- 19 | (d) Adversely affect historical sites and the natural
- 20 | environment;
- 21 | (e) Adversely affect the health, safety, and welfare
- 22 | of the residents of the affected local government
- 23 | jurisdictions;
- 24 | (f) Be consistent with applicable local government
- 25 | comprehensive plans and land development regulations; and
- 26 | (g) Avoid densely populated areas to the maximum
- 27 | extent feasible. If densely populated areas cannot be
- 28 | avoided, locate, to the maximum extent feasible, within
- 29 | existing utility corridors or rights-of-way.

30 | Section 11. Section 627.0612, Florida Statutes, is
31 | amended to read:

1 627.0612 Administrative proceedings in rating
2 determinations.--In any proceeding to determine whether rates,
3 rating plans, or other matters governed by this part comply
4 with the law, the appellate court shall set aside a final
5 order of the office if the office has violated s. 120.57(1)(j)
6 ~~s. 120.57(1)(k)~~ by substituting its findings of fact for
7 findings of an administrative law judge which were supported
8 by competent substantial evidence.

9 Section 12. Subsections (9) and (10) of section
10 163.3177, Florida Statutes, are amended to read:

11 163.3177 Required and optional elements of
12 comprehensive plan; studies and surveys.--

13 (9) The state land planning agency shall, ~~by February~~
14 ~~15, 1986,~~ adopt by rule minimum criteria for the review and
15 determination of compliance of the local government
16 comprehensive plan elements required by this act. ~~Such rules~~
17 ~~shall not be subject to rule challenges under s. 120.56(2) or~~
18 ~~to drawout proceedings under s. 120.54(3)(c)2. Such rules~~
19 ~~shall become effective only after they have been submitted to~~
20 ~~the President of the Senate and the Speaker of the House of~~
21 ~~Representatives for review by the Legislature no later than 30~~
22 ~~days prior to the next regular session of the Legislature. In~~
23 ~~its review the Legislature may reject, modify, or take no~~
24 ~~action relative to the rules. The agency shall conform the~~
25 ~~rules to the changes made by the Legislature, or, if no action~~
26 ~~was taken, the agency rules shall become effective. The rule~~
27 shall include criteria for determining whether:

28 (a) Proposed elements are in compliance with the
29 requirements of part II, as amended by this act.

30 (b) Other elements of the comprehensive plan are
31 related to and consistent with each other.

1 (c) The local government comprehensive plan elements
2 are consistent with the state comprehensive plan and the
3 appropriate regional policy plan pursuant to s. 186.508.

4 (d) Certain bays, estuaries, and harbors that fall
5 under the jurisdiction of more than one local government are
6 managed in a consistent and coordinated manner in the case of
7 local governments required to include a coastal management
8 element in their comprehensive plans pursuant to paragraph
9 (6)(g).

10 (e) Proposed elements identify the mechanisms and
11 procedures for monitoring, evaluating, and appraising
12 implementation of the plan. Specific measurable objectives
13 are included to provide a basis for evaluating effectiveness
14 as required by s. 163.3191.

15 (f) Proposed elements contain policies to guide future
16 decisions in a consistent manner.

17 (g) Proposed elements contain programs and activities
18 to ensure that comprehensive plans are implemented.

19 (h) Proposed elements identify the need for and the
20 processes and procedures to ensure coordination of all
21 development activities and services with other units of local
22 government, regional planning agencies, water management
23 districts, and state and federal agencies as appropriate.

24
25 The state land planning agency may adopt procedural rules that
26 are consistent with this section and chapter 120 for the
27 review of local government comprehensive plan elements
28 required under this section. The state land planning agency
29 shall provide model plans and ordinances and, upon request,
30 other assistance to local governments in the adoption and
31 implementation of their revised local government comprehensive

1 | ~~plans. The review and comment provisions applicable prior to~~
2 | ~~October 1, 1985, shall continue in effect until the criteria~~
3 | ~~for review and determination are adopted pursuant to this~~
4 | ~~subsection and the comprehensive plans required by s.~~
5 | ~~163.3167(2) are due.~~

6 | (10) The Legislature recognizes the importance and
7 | significance of chapter 9J-5, Florida Administrative Code, the
8 | Minimum Criteria for Review of Local Government Comprehensive
9 | Plans and Determination of Compliance of the Department of
10 | Community Affairs that will be used to determine compliance of
11 | local comprehensive plans. The Legislature reserved unto
12 | itself the right to review chapter 9J-5, Florida
13 | Administrative Code, and to reject, modify, or take no action
14 | relative to this rule. Therefore, pursuant to subsection (9),
15 | the Legislature hereby has reviewed chapter 9J-5, Florida
16 | Administrative Code, and expresses the following legislative
17 | intent:

18 | (a) The Legislature finds that in order for the
19 | department to review local comprehensive plans, it is
20 | necessary to define the term "consistency." Therefore, for the
21 | purpose of determining whether local comprehensive plans are
22 | consistent with the state comprehensive plan and the
23 | appropriate regional policy plan, a local plan shall be
24 | consistent with such plans if the local plan is "compatible
25 | with" and "furthers" such plans. The term "compatible with"
26 | means that the local plan is not in conflict with the state
27 | comprehensive plan or appropriate regional policy plan. The
28 | term "furthers" means to take action in the direction of
29 | realizing goals or policies of the state or regional plan.
30 | For the purposes of determining consistency of the local plan
31 | with the state comprehensive plan or the appropriate regional

1 | policy plan, the state or regional plan shall be construed as
2 | a whole and no specific goal and policy shall be construed or
3 | applied in isolation from the other goals and policies in the
4 | plans.

5 | (b) Each local government shall review all the state
6 | comprehensive plan goals and policies and shall address in its
7 | comprehensive plan the goals and policies which are relevant
8 | to the circumstances or conditions in its jurisdiction. The
9 | decision regarding which particular state comprehensive plan
10 | goals and policies will be furthered by the expenditure of a
11 | local government's financial resources in any given year is a
12 | decision which rests solely within the discretion of the local
13 | government. Intergovernmental coordination, as set forth in
14 | paragraph (6)(h), shall be utilized to the extent required to
15 | carry out the provisions of chapter 9J-5, Florida
16 | Administrative Code.

17 | (c) The Legislature declares that if any portion of
18 | chapter 9J-5, Florida Administrative Code, is found to be in
19 | conflict with this part, the appropriate statutory provision
20 | shall prevail.

21 | (d) Chapter 9J-5, Florida Administrative Code, does
22 | not mandate the creation, limitation, or elimination of
23 | regulatory authority, nor does it authorize the adoption or
24 | require the repeal of any rules, criteria, or standards of any
25 | local, regional, or state agency.

26 | (e) It is the Legislature's intent that support data
27 | or summaries thereof shall not be subject to the compliance
28 | review process, but the Legislature intends that goals and
29 | policies be clearly based on appropriate data. The department
30 | may utilize support data or summaries thereof to aid in its
31 | determination of compliance and consistency. The Legislature

1 intends that the department may evaluate the application of a
2 methodology utilized in data collection or whether a
3 particular methodology is professionally accepted. However,
4 the department shall not evaluate whether one accepted
5 methodology is better than another. Chapter 9J-5, Florida
6 Administrative Code, shall not be construed to require
7 original data collection by local governments; however, local
8 governments are not to be discouraged from utilizing original
9 data so long as methodologies are professionally accepted.

10 (f) The Legislature recognizes that under this
11 section, local governments are charged with setting levels of
12 service for public facilities in their comprehensive plans in
13 accordance with which development orders and permits will be
14 issued pursuant to s. 163.3202(2)(g). Nothing herein shall
15 supersede the authority of state, regional, or local agencies
16 as otherwise provided by law.

17 (g) Definitions contained in chapter 9J-5, Florida
18 Administrative Code, are not intended to modify or amend the
19 definitions utilized for purposes of other programs or rules
20 or to establish or limit regulatory authority. Local
21 governments may establish alternative definitions in local
22 comprehensive plans, as long as such definitions accomplish
23 the intent of this chapter, and chapter 9J-5, Florida
24 Administrative Code.

25 (h) It is the intent of the Legislature that public
26 facilities and services needed to support development shall be
27 available concurrent with the impacts of such development in
28 accordance with s. 163.3180. In meeting this intent, public
29 facility and service availability shall be deemed sufficient
30 if the public facilities and services for a development are
31 phased, or the development is phased, so that the public

1 facilities and those related services which are deemed
2 necessary by the local government to operate the facilities
3 necessitated by that development are available concurrent with
4 the impacts of the development. The public facilities and
5 services, unless already available, are to be consistent with
6 the capital improvements element of the local comprehensive
7 plan as required by paragraph (3)(a) or guaranteed in an
8 enforceable development agreement. This shall include
9 development agreements pursuant to this chapter or in an
10 agreement or a development order issued pursuant to chapter
11 380. Nothing herein shall be construed to require a local
12 government to address services in its capital improvements
13 plan or to limit a local government's ability to address any
14 service in its capital improvements plan that it deems
15 necessary.

16 (i) The department shall take into account the factors
17 delineated in rule 9J-5.002(2), Florida Administrative Code,
18 as it provides assistance to local governments and applies the
19 rule in specific situations with regard to the detail of the
20 data and analysis required.

21 ~~(j) Chapter 9J 5, Florida Administrative Code, has~~
22 ~~become effective pursuant to subsection (9). The Legislature~~
23 ~~hereby directs the department to adopt amendments as necessary~~
24 ~~which conform chapter 9J 5, Florida Administrative Code, with~~
25 ~~the requirements of this legislative intent by October 1,~~
26 ~~1986.~~

27 ~~(k) So that local governments are able to prepare and~~
28 ~~adopt comprehensive plans with knowledge of the rules that~~
29 ~~will be applied to determine consistency of the plans with~~
30 ~~provisions of this part, it is the intent of the Legislature~~
31 ~~that there should be no doubt as to the legal standing of~~

1 ~~chapter 9J 5, Florida Administrative Code, at the close of the~~
2 ~~1986 legislative session. Therefore, the Legislature declares~~
3 ~~that changes made to chapter 9J 5, Florida Administrative~~
4 ~~Code, prior to October 1, 1986, shall not be subject to rule~~
5 ~~challenges under s. 120.56(2), or to drawout proceedings under~~
6 ~~s. 120.54(3)(c)2. The entire chapter 9J 5, Florida~~
7 ~~Administrative Code, as amended, shall be subject to rule~~
8 ~~challenges under s. 120.56(3), as nothing herein shall be~~
9 ~~construed to indicate approval or disapproval of any portion~~
10 ~~of chapter 9J 5, Florida Administrative Code, not specifically~~
11 ~~addressed herein. No challenge pursuant to s. 120.56(3) may~~
12 ~~be filed from July 1, 1987, through April 1, 1993. Any~~
13 ~~amendments to chapter 9J 5, Florida Administrative Code,~~
14 ~~exclusive of the amendments adopted prior to October 1, 1986,~~
15 ~~pursuant to this act, shall be subject to the full chapter 120~~
16 ~~process. All amendments shall have effective dates as~~
17 ~~provided in chapter 120 and submission to the President of the~~
18 ~~Senate and Speaker of the House of Representatives shall not~~
19 ~~be required.~~

20 (j)(1) The state land planning agency shall consider
21 land use compatibility issues in the vicinity of all airports
22 in coordination with the Department of Transportation and
23 adjacent to or in close proximity to all military
24 installations in coordination with the Department of Defense.

25 Section 13. Subsection (1) of section 186.508, Florida
26 Statutes, is amended to read:

27 186.508 Strategic regional policy plan adoption;
28 consistency with state comprehensive plan.--

29 (1) Each regional planning council shall submit to the
30 Executive Office of the Governor its proposed strategic
31 regional policy plan on a schedule established by the

1 Executive Office of the Governor to coordinate implementation
2 of the strategic regional policy plans with the evaluation and
3 appraisal reports required by s. 163.3191. The Executive
4 Office of the Governor, or its designee, shall review the
5 proposed strategic regional policy plan to ensure consistency
6 with the adopted state comprehensive plan and shall, within 60
7 days, provide any recommended revisions. The Governor's
8 recommended revisions shall be included in the plans in a
9 comment section. However, nothing herein shall preclude a
10 regional planning council from adopting or rejecting any or
11 all of the revisions as a part of its plan prior to the
12 effective date of the plan. The rules of a regional planning
13 council adopting its first ~~the~~ strategic regional policy plan
14 are shall ~~not be~~ subject to rule challenge under s. 120.56(2)
15 or to drawout proceedings under s. 120.54(3)(c)2., but, once
16 adopted, shall be subject to an invalidity challenge under s.
17 120.56(3) by substantially affected persons, including the
18 Executive Office of the Governor. The rules shall be adopted
19 by the regional planning councils, and shall become effective
20 upon filing with the Department of State, notwithstanding the
21 provisions of s. 120.54(3)(e)6.

22 Section 14. Section 370.26, Florida Statutes, is
23 amended to read:

24 370.26 Aquaculture definitions; marine aquaculture
25 products, producers, and facilities.--

26 (1) As used in this section, the term:

27 (a) "Marine aquaculture facility" means a facility
28 built and operated for the purpose of producing marine
29 aquaculture products. Marine aquaculture facilities contain
30 culture systems such as, but not limited to, ponds, tanks,
31 raceways, cages, and bags used for commercial production,

1 propagation, growout, or product enhancement of marine
2 products. Marine aquaculture facilities specifically do not
3 include:

4 1. Facilities that maintain marine aquatic organisms
5 exclusively for the purpose of shipping, distribution,
6 marketing, or wholesale and retail sales;

7 2. Facilities that maintain marine aquatic organisms
8 for noncommercial, education, exhibition, or scientific
9 purposes;

10 3. Facilities in which the activity does not require
11 an aquaculture certification pursuant to s. 597.004; or

12 4. Facilities used by marine aquarium hobbyists.

13 (b) "Marine aquaculture producer" means a person
14 holding an aquaculture certificate pursuant to s. 597.004 to
15 produce marine aquaculture products.

16 (c) "Marine aquaculture product" means any product
17 derived from marine aquatic organisms that are owned and
18 propagated, grown, or produced under controlled conditions by
19 a person holding an aquaculture certificate pursuant to s.
20 597.004. Such product does not include organisms harvested
21 from the wild for depuration, wet storage, or relayed for the
22 purpose of controlled purification. Marine aquaculture
23 products are considered saltwater products for the purposes of
24 this chapter, except the holder of an aquaculture certificate
25 is not required to purchase and possess a saltwater products
26 license in order to possess, transport, or sell marine
27 aquaculture products pursuant to s. 370.06. To renew an
28 existing restricted species endorsement, marine aquaculture
29 producers possessing a valid saltwater products license with a
30 restricted species endorsement may apply income from the sales
31 of marine aquaculture products to licensed wholesale dealers.

1 | Income from the sales of marine aquaculture products shall not
2 | be eligible for the purpose of acquiring a new restricted
3 | species endorsement. The holder of an aquaculture certificate
4 | must purchase and possess a saltwater products license in
5 | order to possess, transport, or sell saltwater products not
6 | specifically provided for in s. 597.004.

7 | ~~(2) The Department of Environmental Protection shall~~
8 | ~~encourage the development of aquaculture and the production of~~
9 | ~~aquaculture products. The department shall develop a process~~
10 | ~~consistent with this section that would consolidate permits,~~
11 | ~~general permits, and other regulatory requirements to~~
12 | ~~streamline the permitting process and result in effective~~
13 | ~~regulation of aquaculture activities. This process shall~~
14 | ~~provide for a single application and application fee for~~
15 | ~~marine aquaculture activities which are regulated by the~~
16 | ~~department. Procedures to consolidate permitting actions under~~
17 | ~~this section do not constitute rules within the meaning of s.~~
18 | ~~120.52.~~

19 | (2)(3) Until aquaculture general permits under s.
20 | 403.814 can be expanded and developed, the department shall
21 | establish criteria to temporarily permit aquaculture
22 | activities that may be presumed not to result in adverse
23 | environmental impacts. The criteria developed pursuant to this
24 | subsection do not constitute rules within the meaning of s.
25 | 120.52. Permit application fees under this subsection shall be
26 | no more than that established for a general permit. The
27 | department may delegate to the water management districts the
28 | regulatory authority for aquaculture facilities subject to the
29 | temporary general permitting criteria of this subsection.
30 | During the period prior to development of a general permit
31 | under s. 403.814, the department shall establish a compliance

1 plan based on monitoring results that will assist in the
2 development of the general permit.

3 ~~(3)~~(4) The department shall request that the
4 Aquaculture Review Council identify a working group of
5 industry representatives who can provide technical assistance
6 in developing aquaculture general permits. The industry
7 representatives shall come from the segment of the industry to
8 be affected by the specific general permit to be developed.
9 The working group shall be included in all phases of
10 developing the aquaculture general permits.

11 ~~(4)~~(5) The department shall:

12 (a) Coordinate with the Aquaculture Review Council,
13 the Aquaculture Interagency Coordinating Council, and the
14 Department of Agriculture and Consumer Services when
15 developing criteria for aquaculture general permits.

16 (b) Permit experimental technologies to collect and
17 evaluate data necessary to reduce or mitigate environmental
18 concerns.

19 (c) Provide technical expertise and promote the
20 transfer of information that would be beneficial to the
21 development of aquaculture.

22 ~~(5)~~(6) The Fish and Wildlife Conservation Commission
23 shall encourage the development of aquaculture in the state
24 through the following:

25 (a) Providing assistance in developing technologies
26 applicable to aquaculture activities, evaluating practicable
27 production alternatives, and providing management agreements
28 to develop innovative culture practices.

29 (b) Facilitating aquaculture research on life
30 histories, stock enhancement, and alternative species, and
31 providing research results that would assist in the

1 evaluation, development, and commercial production of
2 candidate species for aquaculture, including:

3 1. Providing eggs, larvae, fry, and fingerlings to
4 aquaculturists when excess cultured stocks are available from
5 the commission's facilities and the culture activities are
6 consistent with the commission's stock enhancement projects.
7 Such stocks may be obtained by reimbursing the commission for
8 the cost of production on a per-unit basis. Revenues resulting
9 from the sale of stocks shall be deposited into the trust fund
10 used to support the production of such stocks.

11 2. Conducting research programs to evaluate candidate
12 species when funding and staff are available.

13 3. Encouraging the private production of marine fish
14 and shellfish stocks for the purpose of providing such stocks
15 for statewide stock enhancement programs. When such stocks
16 become available, the commission shall reduce or eliminate
17 duplicative production practices that would result in direct
18 competition with private commercial producers.

19 4. Developing a working group, in cooperation with the
20 Department of Agriculture and Consumer Services, the
21 Aquaculture Review Council, and the Aquaculture Interagency
22 Coordinating Council, to plan and facilitate the development
23 of private marine fish and nonfish hatcheries and to encourage
24 private/public partnerships to promote the production of
25 marine aquaculture products.

26 (c) Coordinating with public and private research
27 institutions within the state to advance the aquaculture
28 production and sale of sturgeon as a food fish.

29 ~~(6)(7)~~ The Fish and Wildlife Conservation Commission
30 shall coordinate with the Aquaculture Review Council and the
31 Department of Agriculture and Consumer Services to establish

1 and implement grant programs to provide funding for projects
2 and programs that are identified in the state's aquaculture
3 plan, pending legislative appropriations. The commission and
4 the Department of Agriculture and Consumer Services shall
5 establish and implement a grant program to make grants
6 available to qualified nonprofit, educational, and research
7 entities or local governments to fund infrastructure,
8 planning, practical and applied research, development
9 projects, production economic analysis, and training and stock
10 enhancement projects, and to make grants available to
11 counties, municipalities, and other state and local entities
12 for applied aquaculture projects that are directed to economic
13 development, pending legislative appropriations.

14 ~~(7)(8)~~ The Fish and Wildlife Conservation Commission
15 shall provide assistance to the Department of Agriculture and
16 Consumer Services in the development of an aquaculture plan
17 for the state.

18 Section 15. Subsections (5) and (6) of section
19 373.421, Florida Statutes, are amended to read:

20 373.421 Delineation methods; formal determinations.--
21 (5) A formal determination obtained under this section
22 is ~~final agency action and is~~ in lieu of a declaratory
23 statement of jurisdiction obtainable under s. 120.565 and is
24 final agency action unless a timely and sufficient petition
25 for an administrative hearing under ss. Sections 120.569 and
26 120.57 is filed ~~apply to formal determinations under this~~
27 ~~section.~~

28 (6) The district or the department may also issue
29 nonbinding informal determinations or otherwise institute
30 determinations on its own initiative as provided by law. A
31 nonbinding informal determination of the extent of surface

1 | waters and wetlands issued by the South Florida Water
2 | Management District or the Southwest Florida Water Management
3 | District, between July 1, 1989, and the effective date of the
4 | methodology ratified in s. 373.4211, shall be validated by the
5 | district if a petition to validate the nonbinding informal
6 | determination is filed with the district on or before October
7 | 1, 1994, provided:

8 | (a) The petitioner submits the documentation prepared
9 | by the agency, and signed by an agency employee in the course
10 | of the employee's official duties, at the time the nonbinding
11 | informal determination was issued, showing the boundary of the
12 | surface waters or wetlands;

13 | (b) The request is accompanied by the appropriate fee
14 | in accordance with the fee schedule established by district
15 | rule;

16 | (c) Any supplemental information, such as aerial
17 | photographs and soils maps, is provided as necessary to ensure
18 | an accurate determination;

19 | (d) District staff verify the delineated surface water
20 | or wetland boundary through site inspection; and

21 | (e) Following district verification, and adjustment if
22 | necessary, of the boundary of surface waters or wetlands, the
23 | petitioner submits a survey certified pursuant to chapter 472,
24 | which depicts the surface water or wetland boundaries. The
25 | certified survey shall contain a legal description of, and the
26 | acreage contained within, the boundaries of the property for
27 | which the determination is sought. The boundaries must be
28 | witnessed to the property boundaries and must be capable of
29 | being mathematically reproduced from the survey.

30 |
31 |

1 Validated informal nonbinding determinations issued by the
2 South Florida Water Management District and the Southwest
3 Florida Water Management District shall remain valid for a
4 period of 5 years from the date of validation by the district,
5 as long as physical conditions on the property do not change
6 so as to alter the boundaries of surface waters or wetlands. A
7 validation obtained under this section is final agency action
8 unless a timely and sufficient petition for an administrative
9 hearing under ss. Sections 120.569 and 120.57 is filed apply
10 ~~to validations under this section.~~

11 Section 16. Paragraph (d) of subsection (23) of
12 section 380.06, Florida Statutes, is amended to read:

13 380.06 Developments of regional impact.--

14 (23) ADOPTION OF RULES BY STATE LAND PLANNING
15 AGENCY.--

16 (d) Regional planning agencies that perform
17 development-of-regional-impact and Florida Quality Development
18 review are authorized to assess and collect fees to fund the
19 costs, direct and indirect, of conducting the review process.
20 The state land planning agency shall adopt rules to provide
21 uniform criteria for the assessment and collection of such
22 fees. ~~The rules providing uniform criteria shall not be~~
23 ~~subject to rule challenge under s. 120.56(2) or to drawout~~
24 ~~proceedings under s. 120.54(3)(c)2., but, once adopted, shall~~
25 ~~be subject to an invalidity challenge under s. 120.56(3) by~~
26 ~~substantially affected persons. Until the state land planning~~
27 ~~agency adopts a rule implementing this paragraph, rules of the~~
28 ~~regional planning councils currently in effect regarding fees~~
29 ~~shall remain in effect.~~ Fees may vary in relation to the type
30 and size of a proposed project, but shall not exceed \$75,000,
31 unless the state land planning agency, after reviewing any

1 | disputed expenses charged by the regional planning agency,
2 | determines that said expenses were reasonable and necessary
3 | for an adequate regional review of the impacts of a project.

4 | Section 17. Subsection (3) of section 393.0661,
5 | Florida Statutes, is amended to read:

6 | 393.0661 Home and community-based services delivery
7 | system; comprehensive redesign.--The Legislature finds that
8 | the home and community-based services delivery system for
9 | persons with developmental disabilities and the availability
10 | of appropriated funds are two of the critical elements in
11 | making services available. Therefore, it is the intent of the
12 | Legislature that the Agency for Persons with Disabilities
13 | shall develop and implement a comprehensive redesign of the
14 | system.

15 | ~~(3) Pending the adoption of rate methodologies~~
16 | ~~pursuant to nonemergency rulemaking under s. 120.54, The~~
17 | ~~Agency for Health Care Administration may, at any time, adopt~~
18 | ~~emergency rules under s. 120.54(4) in order to comply with~~
19 | ~~subsection (4). In adopting such emergency rules, the agency~~
20 | ~~need not make the findings required by s. 120.54(4)(a), and~~
21 | ~~such rules shall be exempt from time limitations provided in~~
22 | ~~s. 120.54(4)(c) and shall remain in effect until replaced by~~
23 | ~~another emergency rule or the nonemergency adoption of the~~
24 | ~~rate methodology.~~

25 | Section 18. Section 393.125, Florida Statutes, is
26 | amended to read:

27 | 393.125 Rulemaking authority for agency action Hearing
28 | rights.--

29 | (1) Fair hearings related to issues before the Agency
30 | for Persons with Disabilities shall be held before the
31 | Division of Administrative Hearings.

1 (a) The agency shall adopt rules to establish
2 guidelines for administrative hearings which are relevant to
3 the termination, suspension, reduction, or denial of client
4 services. The rules shall ensure the due-process rights of the
5 clients of the agency are consistent with Medicaid law.

6 (b) Witnesses appearing on behalf of any party shall
7 be permitted to appear by telephone or video teleconference.

8 ~~(1) REVIEW OF AGENCY DECISIONS.—~~

9 ~~(a) Any developmental services applicant or client, or~~
10 ~~his or her parent, guardian, guardian advocate, or authorized~~
11 ~~representative, who has any substantial interest determined by~~
12 ~~the agency, has the right to request an administrative hearing~~
13 ~~pursuant to ss. 120.569 and 120.57.~~

14 ~~(b) Notice of the right to an administrative hearing~~
15 ~~shall be given, both verbally and in writing, to the applicant~~
16 ~~or client, and his or her parent, guardian, guardian advocate,~~
17 ~~or authorized representative, at the same time that the agency~~
18 ~~gives the applicant or client notice of the agency's action.~~
19 ~~The notice shall be given, both verbally and in writing, in~~
20 ~~the language of the client or applicant and in English.~~

21 ~~(c) A request for a hearing under this section shall~~
22 ~~be made to the agency, in writing, within 30 days of the~~
23 ~~applicant's or client's receipt of the notice.~~

24 ~~(3)(2) REVIEW OF PROVIDER DECISIONS.—~~The agency shall
25 adopt rules to establish uniform procedures ~~guidelines~~ for the
26 agency and service providers relevant to termination,
27 suspension, or reduction of client services by the service
28 provider. ~~The rules shall ensure the due process rights of~~
29 ~~service providers and clients.~~

30 Section 19. Subsection (6) of section 408.039, Florida
31 Statutes, is amended to read:

1 408.039 Review process.--The review process for
2 certificates of need shall be as follows:

3 (6) JUDICIAL REVIEW.--

4 (a) A party to an administrative hearing for an
5 application for a certificate of need has the right, within
6 not more than 30 days after the date of the final order, to
7 seek judicial review in the District Court of Appeal pursuant
8 to s. 120.68. The agency shall be a party in any such
9 proceeding.

10 ~~(b) In such judicial review, the court shall affirm~~
11 ~~the final order of the agency, unless the decision is~~
12 ~~arbitrary, capricious, or not in compliance with ss.~~
13 ~~408.031-408.045.~~

14 (b)(c) The court, in its discretion, may award
15 reasonable attorney's fees and costs to the prevailing party
16 if the court finds that there was a complete absence of a
17 justiciable issue of law or fact raised by the losing party.

18 Section 20. Section 409.285, Florida Statutes, is
19 amended to read:

20 409.285 Opportunity for hearing and appeal.--

21 (1) If an application for public assistance is not
22 acted upon within a reasonable time after the filing of the
23 application, or is denied in whole or in part, or if an
24 assistance payment is modified or canceled, the applicant or
25 recipient may appeal the decision to the Department of
26 Children and Family Services in the manner and form prescribed
27 by the department.

28 (2) The hearing authority may be the Secretary of
29 Children and Family Services, a panel of department officials,
30 or a hearing officer appointed for that purpose. The hearing
31 authority is responsible for a final administrative decision

1 in the name of the state agency administering the public
2 assistance program ~~department~~ on all issues that have been the
3 subject of a hearing. With regard to the state agency
4 administering the public assistance program ~~department~~, the
5 decision of the hearing authority is final and binding. The
6 state agency administering the public assistance program
7 ~~department~~ is responsible for seeing that the decision is
8 carried out promptly.

9 (3) The department may adopt rules to administer this
10 section. Rules for the Temporary Assistance for Needy Families
11 block grant programs must be similar to the federal
12 requirements for Medicaid programs.

13 (4) As used in this section, the term "public
14 assistance" means financial assistance paid to, or on the
15 behalf of, an individual based on Titles IV and XIX of the
16 Social Security Act, the temporary cash assistance program,
17 the food stamp program, the optional state supplementation
18 program, or any other program authorized in Florida Statutes
19 for the Department of Children and Family Services to provide
20 benefits to individuals.

21 Section 21. Section 440.021, Florida Statutes, is
22 amended to read:

23 440.021 Exemption of workers' compensation from
24 chapter 120.--Workers' compensation adjudications by judges of
25 compensation claims are exempt from chapter 120, and no judge
26 of compensation claims shall be considered an agency or a part
27 thereof. ~~Communications of the result of investigations by the~~
28 ~~department pursuant to s. 440.185(4) are exempt from chapter~~
29 ~~120. In all instances in which the department institutes~~
30 ~~action to collect a penalty or interest which may be due~~
31 ~~pursuant to this chapter, the penalty or interest shall be~~

1 ~~assessed without hearing, and the party against which such~~
2 ~~penalty or interest is assessed shall be given written notice~~
3 ~~of such assessment and shall have the right to protest within~~
4 ~~20 days of such notice. Upon receipt of a timely notice of~~
5 ~~protest and after such investigation as may be necessary, the~~
6 ~~department shall, if it agrees with such protest, notify the~~
7 ~~protesting party that the assessment has been revoked. If the~~
8 ~~department does not agree with the protest, it shall refer the~~
9 ~~matter to the judge of compensation claims for determination~~
10 ~~pursuant to s. 440.25(2) (5). Such action of the department~~
11 ~~is exempt from the provisions of chapter 120.~~

12 Section 22. Subsection (4) of section 456.073, Florida
13 Statutes, is amended to read:

14 456.073 Disciplinary proceedings.--Disciplinary
15 proceedings for each board shall be within the jurisdiction of
16 the department.

17 (4) The determination as to whether probable cause
18 exists shall be made by majority vote of a probable cause
19 panel of the board, or by the department, as appropriate. Each
20 regulatory board shall provide by rule that the determination
21 of probable cause shall be made by a panel of its members or
22 by the department. Each board may provide by rule for multiple
23 probable cause panels composed of at least two members. Each
24 board may provide by rule that one or more members of the
25 panel or panels may be a former board member. The length of
26 term or repetition of service of any such former board member
27 on a probable cause panel may vary according to the direction
28 of the board when authorized by board rule. Any probable cause
29 panel must include one of the board's former or present
30 consumer members, if one is available, is willing to serve,
31 and is authorized to do so by the board chair. Any probable

1 | cause panel must include a present board member. Any probable
2 | cause panel must include a former or present professional
3 | board member. However, any former professional board member
4 | serving on the probable cause panel must hold an active valid
5 | license for that profession. All proceedings of the panel are
6 | exempt from s. 286.011 until 10 days after probable cause has
7 | been found to exist by the panel or until the subject of the
8 | investigation waives his or her privilege of confidentiality;
9 | however, the proceedings of a probable cause panel that is
10 | convened to reconsider the original finding of probable cause
11 | is not exempt from s. 286.011. The probable cause panel may
12 | make a reasonable request, and upon such request the
13 | department shall provide such additional investigative
14 | information as is necessary to the determination of probable
15 | cause. A request for additional investigative information
16 | shall be made within 15 days after ~~from~~ the date of receipt by
17 | the probable cause panel of the investigative report of the
18 | department or the agency. The probable cause panel or the
19 | department, as may be appropriate, shall make its
20 | determination of probable cause within 30 days after receipt
21 | by it of the final investigative report of the department. The
22 | secretary may grant extensions of the 15-day and the 30-day
23 | time limits. In lieu of a finding of probable cause, the
24 | probable cause panel, or the department if there is no board,
25 | may issue a letter of guidance to the subject. If, within the
26 | 30-day time limit, as may be extended, the probable cause
27 | panel does not make a determination regarding the existence of
28 | probable cause or does not issue a letter of guidance in lieu
29 | of a finding of probable cause, the department must make a
30 | determination regarding the existence of probable cause within
31 | 10 days after the expiration of the time limit. If the

1 | probable cause panel finds that probable cause exists, it
2 | shall direct the department to file a formal complaint against
3 | the licensee. The department shall follow the directions of
4 | the probable cause panel regarding the filing of a formal
5 | complaint. If directed to do so, the department shall file a
6 | formal complaint against the subject of the investigation and
7 | prosecute that complaint pursuant to chapter 120. However, the
8 | department may decide not to prosecute the complaint if it
9 | finds that probable cause has been improvidently found by the
10 | panel. In such cases, the department shall refer the matter to
11 | the board. The board may then file a formal complaint and
12 | prosecute the complaint pursuant to chapter 120. The
13 | department shall also refer to the board any investigation or
14 | disciplinary proceeding not before the Division of
15 | Administrative Hearings pursuant to chapter 120 or otherwise
16 | completed by the department within 1 year after the filing of
17 | a complaint. The department, for disciplinary cases under its
18 | jurisdiction, must establish a uniform reporting system to
19 | quarterly refer to each board the status of any investigation
20 | or disciplinary proceeding that is not before the Division of
21 | Administrative Hearings or otherwise completed by the
22 | department within 1 year after the filing of the complaint.
23 | Annually, the department, in consultation with the applicable
24 | probable cause panel, must establish a plan to expedite or
25 | otherwise close any investigation or disciplinary proceeding
26 | that is not before the Division of Administrative Hearings or
27 | otherwise completed by the department within 1 year after the
28 | filing of the complaint. A probable cause panel or a board
29 | may retain independent legal counsel, employ investigators,
30 | and continue the investigation as it deems necessary; all
31 | costs thereof shall be paid from a trust fund used by the

1 department to implement this chapter. All proceedings of the
2 probable cause panel are exempt from s. 120.525.

3 Section 23. Subsection (5) of section 458.345, Florida
4 Statutes, is amended to read:

5 458.345 Registration of resident physicians, interns,
6 and fellows; list of hospital employees; prescribing of
7 medicinal drugs; penalty.--

8 (5) Notwithstanding any provision of this section ~~or~~
9 ~~s. 120.52~~ to the contrary, any person who is registered under
10 this section is subject to the provisions of s. 458.331.

11 Section 24. Subsection (8) of section 459.021, Florida
12 Statutes, is amended to read:

13 459.021 Registration of resident physicians, interns,
14 and fellows; list of hospital employees; penalty.--

15 (8) Notwithstanding any provision of this section ~~or~~
16 ~~s. 120.52~~ to the contrary, any person who is registered under
17 this section is subject to the provisions of s. 459.015.

18 Section 25. Subsection (9) of section 497.153, Florida
19 Statutes, is amended to read:

20 497.153 Disciplinary procedures and penalties.--

21 (9) DETERMINATIONS NOT SUBJECT TO CHAPTER 120.--The
22 following determinations shall not entitle any person to
23 proceedings under chapter 120:

24 ~~(a) A determination by the department to exercise its~~
25 ~~authority under this chapter to investigate, financially~~
26 ~~examine, or inspect any person or entity; or a determination~~
27 ~~by the department concerning how to conduct such~~
28 ~~investigation, financial examination, or inspection; or a~~
29 ~~determination by the department concerning the content of any~~
30 ~~report of investigation, financial examination, or inspection.~~

31

1 ~~(a)(b)~~ A determination by the department that there is
2 reasonable cause to believe that a licensee under this chapter
3 is subject to disciplinary action under this chapter and that
4 the matter should be presented to a probable cause panel of
5 the board, or that the licensee is not eligible for a citation
6 pursuant to criteria established by the board.

7 ~~(b)(c)~~ A determination by a probable cause panel of
8 the board that probable cause does or does not exist, or a
9 determination by the department under paragraph (3)(b).

10 ~~(d) A determination by the department not to offer any~~
11 ~~settlement to a licensee concerning any disciplinary matter.~~

12 Section 26. Section 538.11, Florida Statutes, is
13 amended to read:

14 538.11 Powers and duties of department; rules.--The
15 same duties and privileges imposed by chapter 212 upon dealers
16 of tangible personal property respecting the keeping of books
17 and records and accounts and compliance with rules of the
18 department shall apply to and be binding upon all persons who
19 are subject to the provisions of this chapter. The department
20 shall administer, collect, and enforce the registration
21 authorized under this chapter pursuant to the same procedures
22 used in the administration, collection, and enforcement of the
23 general state sales tax imposed under chapter 212, except as
24 provided in this section. The provisions of chapter 212
25 regarding the keeping of records and books shall apply. The
26 department is authorized to employ persons and incur other
27 expenses for which funds are appropriated by the Legislature.
28 The department is empowered to adopt such rules, and shall
29 prescribe and publish such forms, as may be necessary to
30 effectuate the purposes of this chapter. ~~The Legislature~~
31 ~~hereby finds that the failure to promptly implement the~~

1 ~~provisions of this chapter would present an immediate threat~~
2 ~~to the welfare of the state. Therefore, the executive director~~
3 ~~of the department is hereby authorized to adopt emergency~~
4 ~~rules pursuant to s. 120.54(4), for purposes of implementing~~
5 ~~this chapter. Notwithstanding any other provision of law, such~~
6 ~~emergency rules shall remain effective for 6 months from the~~
7 ~~date of adoption. Other rules of the department related to and~~
8 ~~in furtherance of the orderly implementation of the chapter~~
9 ~~shall not be subject to a rule challenge under s. 120.56(2) or~~
10 ~~a drawout proceeding under s. 120.54(3)(c)2. but, once~~
11 ~~adopted, shall be subject to an invalidity challenge under s.~~
12 ~~120.56(3). Such rules shall be adopted by the Governor and~~
13 ~~Cabinet and shall become effective upon filing with the~~
14 ~~Department of State, notwithstanding the provisions of s.~~
15 ~~120.54(3)(c)6.~~

16 Section 27. Section 548.07, Florida Statutes, is
17 amended to read:

18 548.07 Suspension of license or permit by
19 commissioner; hearing.--

20 (1) Notwithstanding any provision of chapter 120, any
21 member of the commission may, upon her or his own motion or
22 upon the verified written complaint of any person charging a
23 licensee or permittee with violating this chapter, suspend any
24 license or permit until final determination by the commission
25 if such action is necessary to protect the health, safety, and
26 welfare of the public welfare and the best interests of the
27 sport.

28 (2) The commission shall hold a hearing within 10 days
29 after the date on which the license or permit is suspended.

30 Section 28. Section 548.073, Florida Statutes, is
31 repealed.

1 Section 29. Paragraph (c) of subsection (6) of section
2 1002.33, Florida Statutes, is amended to read:

3 1002.33 Charter schools.--

4 (6) APPLICATION PROCESS AND REVIEW.--Charter school
5 applications are subject to the following requirements:

6 (c) An applicant may appeal any denial of that
7 applicant's application or failure to act on an application to
8 the State Board of Education no later than 30 calendar days
9 after receipt of the district school board's decision or
10 failure to act and shall notify the district school board of
11 its appeal. Any response of the district school board shall be
12 submitted to the State Board of Education within 30 calendar
13 days after notification of the appeal. Upon receipt of
14 notification from the State Board of Education that a charter
15 school applicant is filing an appeal, the Commissioner of
16 Education shall convene a meeting of the Charter School Appeal
17 Commission to study and make recommendations to the State
18 Board of Education regarding its pending decision about the
19 appeal. The commission shall forward its recommendation to the
20 state board no later than 7 calendar days prior to the date on
21 which the appeal is to be heard. The State Board of Education
22 shall by majority vote accept or reject the decision of the
23 district school board no later than 90 calendar days after an
24 appeal is filed in accordance with State Board of Education
25 rule. The Charter School Appeal Commission may reject an
26 appeal submission for failure to comply with procedural rules
27 governing the appeals process. The rejection shall describe
28 the submission errors. The appellant may have up to 15
29 calendar days from notice of rejection to resubmit an appeal
30 that meets requirements of State Board of Education rule. An
31 application for appeal submitted subsequent to such rejection

1 shall be considered timely if the original appeal was filed
2 within 30 calendar days after receipt of notice of the
3 specific reasons for the district school board's denial of the
4 charter application. The State Board of Education shall remand
5 the application to the district school board with its written
6 decision that the district school board approve or deny the
7 application. The decision of the State Board of Education
8 shall include written findings of fact. The district school
9 board shall implement the decision of the State Board of
10 Education. The decision of the State Board of Education is not
11 subject to the provisions of the Administrative Procedure Act,
12 chapter 120.

13 Section 30. Paragraph (f) of subsection (5) and
14 paragraph (d) of subsection (6) of section 1002.335, Florida
15 Statutes, are amended to read:

16 1002.335 Florida Schools of Excellence Commission.--

17 (5) CHARTERING AUTHORITY.--

18 (f) The decision of the State Board of Education
19 pursuant to paragraph (e) shall not be subject to the
20 provisions of chapter 120 and shall be a final action subject
21 to judicial review by the district court of appeal. The
22 decision of the State Board of Education shall include written
23 findings of fact.

24 (6) APPROVAL OF COSPONSORS.--

25 (d) The commission's decision to deny an application
26 or to revoke approval of a cosponsor pursuant to subsection
27 (8) is not subject to chapter 120 and may be appealed to the
28 State Board of Education pursuant to s. 1002.33(6). The
29 decision of the commission shall include written findings of
30 fact.

31

1 Section 31. Paragraph (b) of subsection (6) of section
2 1002.34, Florida Statutes, is amended to read:

3 1002.34 Charter technical career centers.--

4 (6) SPONSOR.--A district school board or community
5 college board of trustees or a consortium of one or more of
6 each may sponsor a center in the county in which the board has
7 jurisdiction.

8 (b) An applicant may appeal any denial of its
9 application to the State Board of Education within 30 days
10 after the sponsor's denial and shall notify the sponsor of its
11 appeal. Any response of the sponsor must be submitted to the
12 state board within 30 days after notification of the appeal.
13 The State Board of Education must, by majority vote, accept or
14 reject the decision of the sponsor no later than 60 days after
15 an appeal is filed, pursuant to State Board of Education rule.
16 The State Board of Education may reject an appeal for failure
17 to comply with procedural rules governing the appeals process,
18 and the rejection must describe the submission errors. The
19 appellant may have up to 15 days after notice of rejection to
20 resubmit an appeal. An application for appeal submitted after
21 a rejection is timely if the original appeal was filed within
22 30 days after the sponsor's denial. The State Board of
23 Education shall remand the application to the sponsor with a
24 written recommendation that the sponsor approve or deny the
25 application, consistent with the state board's decision. The
26 decision of the State Board of Education shall include written
27 findings of fact. The decision of the State Board of Education
28 is not subject to the provisions of chapter 120.

29 Section 32. This act shall take effect July 1, 2007.
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1970
4 Limits an exemption relating to emergency rules adopted by the
5 Department of the Lottery.
6 Deletes an obsolete provision requiring the Department of
7 Environmental Protection to develop a process for
8 consolidating certain aquaculture permits.
9 Amends s. 373.421, F.S., to clarify that a formal
10 determination, or validated informal nonbinding determination,
11 is final agency action unless a timely and sufficient petition
12 for an administrative hearing is filed.
13 Amends s. 440.021, F.S., to repeal outdated provisions
14 relating to investigations and penalty and interest protests
15 in workers' compensation adjudications.
16 Amends s. 497.153, F.S., by repealing an unnecessary exemption
17 concerning DFS determinations relating to funeral and cemetery
18 services.
19 Amends s. 538.11, F.S., by repealing an obsolete provision
20 exempting Department of Revenue emergency rules regarding
21 secondhand dealers and secondary metals recyclers.
22 Amends s. 548.07, F.S., by clarifying that the Florida State
23 Boxing Commission may suspend any license or permit of any
24 person charged with violating the provisions of ch. 548, F.S.,
25 if such action is necessary to protect the health, safety and
26 welfare of the public.
27 Repeals s. 548.073, F.S., which allows any member of the
28 Florida State Boxing Commission to conduct a hearing under ch.
29 548, F.S.
30
31