

1 A bill to be entitled
2 An act relating to exemptions from the
3 requirements of ch. 120, F.S.; amending s.
4 120.569, F.S.; requiring that the state provide
5 prior notice if it intends to offer certain
6 evidence in an administrative hearing;
7 providing procedures for administrative
8 hearings involving allegations of sexual
9 misconduct by a licensed professional; amending
10 s. 120.57, F.S., relating to hearings involving
11 disputed issues of material fact; eliminating
12 certain procedures when the state offers
13 evidence involving past acts or evidence to
14 prove bad character or propensity; conforming
15 cross-references; amending s. 120.80, F.S.;
16 exempting judges of compensation claims from
17 the requirements for notice and a hearing under
18 ss. 120.569 and 120.57, F.S., when adjudicating
19 workers' compensation claims; providing that
20 judges of compensation claims are subject to
21 the rulemaking procedures of ch. 120, F.S.;
22 providing for the Office of Appeal Hearings
23 within the Department of Children and Family
24 Services rather than an administrative law
25 judge to conduct certain hearings concerning
26 the benefits provided under state public
27 assistance programs; requiring that such
28 hearings comply with certain rules of
29 procedure; deleting a requirement that
30 appellate jurisdiction for the Florida Public
31 Service Commission conform to the

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

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

1 telephone or video teleconference; deleting
2 provisions authorizing certain administrative
3 hearings under ch. 120, F.S.; requiring the
4 agency to adopt certain procedures governing
5 client services provided by service providers;
6 amending s. 408.039, F.S.; deleting provisions
7 requiring that the court, under certain
8 circumstances, affirm a final order by the
9 Agency for Health Care Administration when
10 reviewing a disputed decision involving a
11 certificate of need; amending s. 409.285, F.S.;
12 clarifying that a final administrative decision
13 regarding a public assistance program is issued
14 in the name of the state agency that
15 administers the program; defining the term
16 "public assistance"; amending s. 440.021, F.S.,
17 relating to enforcement activities of the
18 Division of Workers' Compensation in the
19 Department of Financial Services; eliminating
20 obsolete provisions with respect to
21 communications resulting from investigations by
22 the department; eliminating obsolete provisions
23 relating to interest and penalty assessments;
24 amending s. 456.073, F.S.; providing that the
25 proceedings of a probable cause panel of a
26 board within the Department of Health which
27 meets to reconsider the original finding of
28 probable cause is subject to public-meetings
29 requirements; amending s. 458.345, F.S.;
30 clarifying provisions that subject resident
31 physicians, assistant resident physicians,

1 | house physicians, interns, and fellows in
2 | fellowship training to discipline by the Board
3 | of Medicine; amending s. 459.021, F.S.;
4 | clarifying provisions that subject resident
5 | physicians, assistant resident physicians,
6 | house physicians, interns, and fellows in
7 | fellowship training to discipline by the Board
8 | of Osteopathic Medicine; amending s. 497.153,
9 | F.S., relating to the regulation of funeral,
10 | cemetery, and consumer services by the
11 | Department of Financial Services; deleting
12 | provisions exempting certain decisions by the
13 | department concerning investigations and
14 | disciplinary matters from review under ch. 120,
15 | F.S.; amending s. 538.11, F.S., relating to
16 | recordkeeping requirements for secondhand
17 | dealers and secondary metals recyclers;
18 | deleting obsolete provisions providing for the
19 | adoption of emergency rules; amending s.
20 | 548.07, F.S., relating to the regulation of
21 | pugilistic exhibitions by the Florida State
22 | Boxing Commission; clarifying duties of the
23 | commission with respect to the protection of
24 | the public; repealing s. 548.073, F.S.,
25 | relating to authorization for the commission to
26 | conduct hearings; amending s. 1002.33, F.S.;
27 | requiring that the decision by the State Board
28 | of Education directing a district school board
29 | to approve or deny an application for a charter
30 | school include written findings of fact;
31 | amending s. 1002.335, F.S.; requiring that the

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

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (g) of subsection (2) of section
 19 120.569, Florida Statutes, is amended to read:

20 120.569 Decisions which affect substantial
 21 interests.--

22 (2)

23 (g)1. Irrelevant, immaterial, or unduly repetitious
 24 evidence shall be excluded, but all other evidence of a type
 25 commonly relied upon by reasonably prudent persons in the
 26 conduct of their affairs shall be admissible, whether or not
 27 such evidence would be admissible in a trial in the courts of
 28 Florida. Any part of the evidence may be received in written
 29 form, and all testimony of parties and witnesses shall be made
 30 under oath.

31

1 2. Notwithstanding subparagraph 1., similar fact
2 evidence of other violations, wrongs, or acts is admissible
3 when relevant to prove a material fact in issue, such as proof
4 of motive, opportunity, intent, preparation, plan, knowledge,
5 identity, or absence of mistake or accident, but it is
6 inadmissible when the evidence is relevant solely to prove bad
7 character or propensity. When, in an administrative
8 proceeding, the state intends to offer evidence of other acts
9 or offenses under this subparagraph, the state shall furnish
10 to the party whose substantial interests are being determined
11 and whose other acts or offenses will be the subject of such
12 evidence, not less than 10 days before commencement of the
13 proceeding, a written statement of the acts or offenses it
14 intends to offer which describes them and the evidence the
15 state intends to offer with particularity. Notice is not
16 required for evidence of acts or offenses which is used for
17 impeachment or on rebuttal.

18 3. Notwithstanding subparagraph 1., in a proceeding
19 against a licensed professional or in a proceeding for
20 licensure of an applicant for professional licensure which
21 involves allegations of sexual misconduct:

22 a. The testimony of the victim of the sexual
23 misconduct need not be corroborated.

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

27 (I) It is first established to the administrative law
28 judge in a proceeding in camera that the victim of the sexual
29 misconduct is mistaken as to the identity of the perpetrator
30 of the sexual misconduct; or

31

1 (II) If consent by the victim of the sexual misconduct
2 is at issue and it is first established to the administrative
3 law judge in a proceeding in camera that such evidence tends
4 to establish a pattern of conduct or behavior on the part of
5 such victim which is so similar to the conduct or behavior in
6 the case that it is relevant to the issue of consent.

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

9 Section 2. Present paragraphs (e) through (n) of
10 subsection (1) of section 120.57, Florida Statutes, are
11 redesignated as paragraphs (d) through (m), respectively, and
12 present paragraphs (d) and (e) of that subsection are amended,
13 to read:

14 120.57 Additional procedures for particular cases.--

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

17 ~~(d) Notwithstanding s. 120.569(2)(g), similar fact~~
18 ~~evidence of other violations, wrongs, or acts is admissible~~
19 ~~when relevant to prove a material fact in issue, such as proof~~
20 ~~of motive, opportunity, intent, preparation, plan, knowledge,~~
21 ~~identity, or absence of mistake or accident, but it is~~
22 ~~inadmissible when the evidence is relevant solely to prove bad~~
23 ~~character or propensity. When the state in an administrative~~
24 ~~proceeding intends to offer evidence of other acts or offenses~~
25 ~~under this paragraph, the state shall furnish to the party~~
26 ~~whose substantial interests are being determined and whose~~
27 ~~other acts or offenses will be the subject of such evidence,~~
28 ~~no fewer than 10 days before commencement of the proceeding, a~~
29 ~~written statement of the acts or offenses it intends to offer,~~
30 ~~describing them and the evidence the state intends to offer~~

1 ~~with particularity. Notice is not required for evidence of~~
 2 ~~acts or offenses which is used for impeachment or on rebuttal.~~

3 (d)~~(e)~~1. Any agency action that determines the
 4 substantial interests of a party and that is based on an
 5 unadopted rule is subject to de novo review by an
 6 administrative law judge.

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

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

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

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

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

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

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

26 3. The recommended and final orders in any proceeding
 27 shall be governed by the provisions of paragraphs (j)~~(k)~~ and
 28 (k)~~(l)~~, except that the administrative law judge's
 29 determination regarding the unadopted rule shall not be
 30 rejected by the agency unless the agency first determines from
 31 a review of the complete record, and states with particularity

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

10 Section 3. Paragraph (b) of subsection (1) and
 11 subsections (7), (13), and (15) of section 120.80, Florida
 12 Statutes, are amended to read:

13 120.80 Exceptions and special requirements;
 14 agencies.--

15 (1) DIVISION OF ADMINISTRATIVE HEARINGS.--

16 (b) Workers' compensation.--~~Notwithstanding s.~~
 17 ~~120.52(1)~~, A judge of compensation claims is exempt from the
 18 requirements for notice and a hearing under ss. 120.569 and
 19 120.57 when, in adjudicating matters under chapter 440, but is
 20 subject to the rulemaking procedures in is not an agency or
 21 part of an agency for purposes of this chapter.

22 (7) DEPARTMENT OF CHILDREN AND FAMILY

23 SERVICES.--Section 120.57(1) notwithstanding, hearings
 24 required by ss. 120.569 and 120.57 concerning the denial,
 25 reduction, suspension, or termination of benefits under a
 26 public assistance program, as defined in s. 409.285, need not
 27 be conducted by an administrative law judge assigned by the
 28 division unless required otherwise by a specific law. The
 29 Office of Appeal Hearings within the Department of Children
 30 and Family Services may provide the hearings required by ss.
 31 120.569 and 120.57 for all public assistance programs,

1 regardless of which state agency administers the program, if
 2 the public assistance program is administered by the
 3 department or the department has a formal interagency
 4 agreement with the state agency that administers the program
 5 to conduct the hearings. Hearings conducted under this
 6 subsection must comply with the requirements of ss. 120.569
 7 and 120.57 and the uniform rules of procedure, except to the
 8 extent that the department has adopted rules pursuant to s.
 9 409.28 and has been granted exceptions to the uniform rules of
 10 procedure as provided in s. 120.54. Notwithstanding s.
 11 ~~120.57(1)(a), hearings conducted within the Department of~~
 12 ~~Children and Family Services in the execution of those social~~
 13 ~~and economic programs administered by the former Division of~~
 14 ~~Family Services of the former Department of Health and~~
 15 ~~Rehabilitative Services prior to the reorganization effected~~
 16 ~~by chapter 75-48, Laws of Florida, need not be conducted by an~~
 17 ~~administrative law judge assigned by the division.~~

18 (13) FLORIDA PUBLIC SERVICE COMMISSION.--

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

23 (b) Notwithstanding ss. 120.569 and 120.57, a hearing
 24 on an objection to proposed action of the Florida Public
 25 Service Commission may only address the issues in dispute.
 26 Issues in the proposed action which are not in dispute are
 27 deemed stipulated.

28 (c) The Florida Public Service Commission is exempt
 29 from the time limitations in s. 120.60(1) when issuing a
 30 license.

31

1 (d) Notwithstanding the provisions of this chapter, in
 2 implementing the Telecommunications Act of 1996, Pub. L. No.
 3 104-104, the Public Service Commission is authorized to employ
 4 procedures consistent with that act.

5 ~~(e) Notwithstanding the provisions of this chapter, s.~~
 6 ~~350.128, or s. 364.381, appellate jurisdiction for Public~~
 7 ~~Service Commission decisions that implement the~~
 8 ~~Telecommunications Act of 1996, Pub. L. No. 104-104, shall be~~
 9 ~~consistent with the provisions of that act.~~

10 (e)(f) Notwithstanding any provision of this chapter,
 11 all public utilities and companies regulated by the Public
 12 Service Commission shall be entitled to proceed under the
 13 interim rate provisions of chapter 364 or the procedures for
 14 interim rates contained in chapter 74-195, Laws of Florida, or
 15 as otherwise provided by law.

16 (15) DEPARTMENT OF HEALTH.--Notwithstanding s.
 17 120.57(1)(a), formal hearings may not be conducted by the
 18 Secretary of Health, the Secretary of Health Care
 19 Administration, or a board or member of a board within the
 20 Department of Health or the Agency for Health Care
 21 Administration for matters relating to the regulation of
 22 professions, as defined by chapter 456. Notwithstanding s.
 23 120.57(1)(a), hearings conducted within the Department of
 24 Health in execution of the Special Supplemental Nutrition
 25 Program for Women, Infants, and Children; Child Care Food
 26 Program; Children's Medical Services Program; and the Brain
 27 and Spinal Cord Injury Program; ~~and the exemption from~~
 28 ~~disqualification reviews for certified nurse assistants~~
 29 ~~program~~ need not be conducted by an administrative law judge
 30 assigned by the division. ~~The Department of Health may~~
 31

1 ~~contract with the Department of Children and Family Services~~
 2 ~~for a hearing officer in these matters.~~

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

8 120.81 Exceptions and special requirements; general
 9 areas.--

10 (3) PRISONERS AND PAROLEES.--

11 (a) Notwithstanding s. 120.52(12), prisoners, as
 12 defined by s. 944.02, shall not be considered parties in any
 13 proceedings other than those under s. 120.54(3)(c) or (7), and
 14 may not seek judicial review under s. 120.68 of any other
 15 agency action. Prisoners are not eligible to seek an
 16 administrative determination of an agency statement under s.
 17 120.56(4). Parolees shall not be considered parties for
 18 purposes of agency action or judicial review when the
 19 proceedings relate to the rescission or revocation of parole.

20 (b) Notwithstanding s. 120.54(3)(c), prisoners, as
 21 defined by s. 944.02, may be limited by the Department of
 22 Corrections or the Parole Commission to an opportunity to
 23 present evidence and argument on issues under consideration by
 24 submission of written statements concerning intended action on
 25 any department or commission rule.

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

29 ~~(4) REGULATION OF PROFESSIONS. Notwithstanding s.~~
 30 ~~120.569(2)(g), in a proceeding against a licensed professional~~
 31 ~~or in a proceeding for licensure of an applicant for~~

1 ~~professional licensure which involves allegations of sexual~~
 2 ~~misconduct;~~

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

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

8 ~~1. It is first established to the administrative law~~
 9 ~~judge in a proceeding in camera that the victim of the sexual~~
 10 ~~misconduct is mistaken as to the identity of the perpetrator~~
 11 ~~of the sexual misconduct; or~~

12 ~~2. If consent by the victim of the sexual misconduct~~
 13 ~~is at issue and it is first established to the administrative~~
 14 ~~law judge in a proceeding in camera that such evidence tends~~
 15 ~~to establish a pattern of conduct or behavior on the part of~~
 16 ~~such victim which is so similar to the conduct or behavior in~~
 17 ~~the case that it is relevant to the issue of consent.~~

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

20 Section 5. Paragraphs (e) and (f) of subsection (4) of
 21 section 120.56, Florida Statutes, are amended to read:

22 120.56 Challenges to rules.--

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

25 (e)1. If, prior to a final hearing to determine
 26 whether all or part of any agency statement violates s.
 27 120.54(1)(a), an agency publishes, pursuant to s.
 28 120.54(3)(a), proposed rules that address the statement, then
 29 for purposes of this section, a presumption is created that
 30 the agency is acting expeditiously and in good faith to adopt
 31 rules that address the statement, and the agency shall be

1 permitted to rely upon the statement or a substantially
2 similar statement as a basis for agency action if the
3 statement meets the requirements of s. 120.57(1)(d) ~~s.~~
4 ~~120.57(1)(e)~~.

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

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

30 4. If an agency fails to adopt rules that address the
31 statement within 180 days after publishing proposed rules, for

1 purposes of this subsection, a presumption is created that the
 2 agency is not acting expeditiously and in good faith to adopt
 3 rules. If the agency's proposed rules are challenged pursuant
 4 to subsection (2), the 180-day period for adoption of rules is
 5 tolled until a final order is entered in that proceeding.

6 5. If the proposed rules addressing the challenged
 7 statement are determined to be an invalid exercise of
 8 delegated legislative authority as defined in s.
 9 120.52(8)(b)-(f), the agency must immediately discontinue
 10 reliance on the statement and any substantially similar
 11 statement until the rules addressing the subject are properly
 12 adopted.

13 (f) All proceedings to determine a violation of s.
 14 120.54(1)(a) shall be brought pursuant to this subsection. A
 15 proceeding pursuant to this subsection may be consolidated
 16 with a proceeding under any other section of this chapter.
 17 Nothing in this paragraph shall be construed to prevent a
 18 party whose substantial interests have been determined by an
 19 agency action from bringing a proceeding pursuant to s.
 20 120.57(1)(d) ~~s. 120.57(1)(e)~~.

21 Section 6. Paragraph (d) of subsection (10) of section
 22 120.65, Florida Statutes, is amended to read:

23 120.65 Administrative law judges.--

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

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

30 Section 7. Paragraph (c) of subsection (2) of section
 31 388.4111, Florida Statutes, is amended to read:

1 388.4111 Public lands; arthropod control.--
2 (2)
3 (c) If the land management agency and the local
4 arthropod control agency are unable to agree on a public lands
5 control plan, the Florida Coordinating Council on Mosquito
6 Control may recommend a control plan to the department, which
7 shall propose a recommended public lands control plan. If the
8 land management agency and the local arthropod control agency
9 fail to agree to such recommended public lands control plan
10 within 30 days of the rendering of such plan, either agency
11 may petition the Land and Water Adjudicatory Commission to
12 determine whether the proposed control plan employs methods
13 which are the minimum necessary and economically feasible to
14 abate a public health or nuisance problem and which impose the
15 least hazard to fish, wildlife, and other natural resources
16 protected or managed in such areas. Unless both parties waive
17 their right to a hearing, the Land and Water Adjudicatory
18 Commission shall direct a hearing officer to hold a hearing
19 within the jurisdiction of the local arthropod control agency
20 pursuant to the provisions of ss. 120.569 and 120.57 and
21 submit a recommended order. The commission shall, within 60
22 days of receipt of the recommended order, issue a final order
23 adopting a public lands control plan. Consistent with s.
24 120.57(1)(k) ~~s. 120.57(1)(l)~~, the commission may adopt or
25 modify the proposed control plan. The commission shall adopt
26 rules on the conduct of appeals before the commission.
27 Section 8. Subsection (1) of section 403.788, Florida
28 Statutes, is amended to read:
29 403.788 Final disposition of application.--
30 (1) For the purposes of issuing a final order, the
31 board shall serve as the agency head. Within 45 days after

1 receipt of the administrative law judge's recommended order,
2 the board shall issue a final order as provided by s.
3 120.57(1)(k) ~~s. 120.57(1)(l)~~, approving the application in
4 whole, approving the application with such modifications or
5 conditions as the board deems appropriate, or denying the
6 issuance of a certification and stating the reasons for
7 issuance or denial.

8 Section 9. Subsection (4) of section 403.9415, Florida
9 Statutes, is amended to read:

10 403.9415 Final disposition of application.--

11 (4) In determining whether an application should be
12 approved in whole, approved with modifications or conditions,
13 or denied, the board shall consider whether, and the extent to
14 which, the location of the natural gas transmission pipeline
15 corridor and the construction and maintenance of the natural
16 gas transmission pipeline will effect a reasonable balance
17 between the need for the natural gas transmission pipeline as
18 a means of providing natural gas energy and the impact upon
19 the public and the environment resulting from the location of
20 the natural gas transmission pipeline corridor and the
21 construction, operation, and maintenance of the natural gas
22 transmission pipeline. In effecting this balance, the board
23 shall consider, based on all relevant, competent and
24 substantial evidence in the record, subject to s. 120.57(1)(k)
25 ~~s. 120.57(1)(l)~~, whether and the extent to which the project
26 will:

27 (a) Ensure natural gas delivery reliability and
28 integrity;

29 (b) Meet the natural gas energy needs of the state in
30 an orderly and timely fashion;

31

1 (c) Comply with the nonprocedural requirements of
2 agencies;

3 (d) Adversely affect historical sites and the natural
4 environment;

5 (e) Adversely affect the health, safety, and welfare
6 of the residents of the affected local government
7 jurisdictions;

8 (f) Be consistent with applicable local government
9 comprehensive plans and land development regulations; and

10 (g) Avoid densely populated areas to the maximum
11 extent feasible. If densely populated areas cannot be
12 avoided, locate, to the maximum extent feasible, within
13 existing utility corridors or rights-of-way.

14 Section 10. Section 627.0612, Florida Statutes, is
15 amended to read:

16 627.0612 Administrative proceedings in rating
17 determinations.--In any proceeding to determine whether rates,
18 rating plans, or other matters governed by this part comply
19 with the law, the appellate court shall set aside a final
20 order of the office if the office has violated s. 120.57(1)(j)
21 ~~s. 120.57(1)(k)~~ by substituting its findings of fact for
22 findings of an administrative law judge which were supported
23 by competent substantial evidence.

24 Section 11. Subsections (9) and (10) of section
25 163.3177, Florida Statutes, are amended to read:

26 163.3177 Required and optional elements of
27 comprehensive plan; studies and surveys.--

28 (9) The state land planning agency shall, ~~by February~~
29 ~~15, 1986,~~ adopt by rule minimum criteria for the review and
30 determination of compliance of the local government
31 comprehensive plan elements required by this act. ~~Such rules~~

1 ~~shall not be subject to rule challenges under s. 120.56(2) or~~
2 ~~to drawout proceedings under s. 120.54(3)(c)2. Such rules~~
3 ~~shall become effective only after they have been submitted to~~
4 ~~the President of the Senate and the Speaker of the House of~~
5 ~~Representatives for review by the Legislature no later than 30~~
6 ~~days prior to the next regular session of the Legislature. In~~
7 ~~its review the Legislature may reject, modify, or take no~~
8 ~~action relative to the rules. The agency shall conform the~~
9 ~~rules to the changes made by the Legislature, or, if no action~~
10 ~~was taken, the agency rules shall become effective. The rule~~
11 shall include criteria for determining whether:

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

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

16 (c) The local government comprehensive plan elements
17 are consistent with the state comprehensive plan and the
18 appropriate regional policy plan pursuant to s. 186.508.

19 (d) Certain bays, estuaries, and harbors that fall
20 under the jurisdiction of more than one local government are
21 managed in a consistent and coordinated manner in the case of
22 local governments required to include a coastal management
23 element in their comprehensive plans pursuant to paragraph
24 (6)(g).

25 (e) Proposed elements identify the mechanisms and
26 procedures for monitoring, evaluating, and appraising
27 implementation of the plan. Specific measurable objectives
28 are included to provide a basis for evaluating effectiveness
29 as required by s. 163.3191.

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

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

3 (h) Proposed elements identify the need for and the
4 processes and procedures to ensure coordination of all
5 development activities and services with other units of local
6 government, regional planning agencies, water management
7 districts, and state and federal agencies as appropriate.

8
9 The state land planning agency may adopt procedural rules that
10 are consistent with this section and chapter 120 for the
11 review of local government comprehensive plan elements
12 required under this section. The state land planning agency
13 shall provide model plans and ordinances and, upon request,
14 other assistance to local governments in the adoption and
15 implementation of their revised local government comprehensive
16 plans. ~~The review and comment provisions applicable prior to~~
17 ~~October 1, 1985, shall continue in effect until the criteria~~
18 ~~for review and determination are adopted pursuant to this~~
19 ~~subsection and the comprehensive plans required by s.~~
20 ~~163.3167(2) are due.~~

21 (10) The Legislature recognizes the importance and
22 significance of chapter 9J-5, Florida Administrative Code, the
23 Minimum Criteria for Review of Local Government Comprehensive
24 Plans and Determination of Compliance of the Department of
25 Community Affairs that will be used to determine compliance of
26 local comprehensive plans. The Legislature reserved unto
27 itself the right to review chapter 9J-5, Florida
28 Administrative Code, and to reject, modify, or take no action
29 relative to this rule. Therefore, pursuant to subsection (9),
30 the Legislature hereby has reviewed chapter 9J-5, Florida

31

1 Administrative Code, and expresses the following legislative
2 intent:

3 (a) The Legislature finds that in order for the
4 department to review local comprehensive plans, it is
5 necessary to define the term "consistency." Therefore, for the
6 purpose of determining whether local comprehensive plans are
7 consistent with the state comprehensive plan and the
8 appropriate regional policy plan, a local plan shall be
9 consistent with such plans if the local plan is "compatible
10 with" and "furthers" such plans. The term "compatible with"
11 means that the local plan is not in conflict with the state
12 comprehensive plan or appropriate regional policy plan. The
13 term "furthers" means to take action in the direction of
14 realizing goals or policies of the state or regional plan.
15 For the purposes of determining consistency of the local plan
16 with the state comprehensive plan or the appropriate regional
17 policy plan, the state or regional plan shall be construed as
18 a whole and no specific goal and policy shall be construed or
19 applied in isolation from the other goals and policies in the
20 plans.

21 (b) Each local government shall review all the state
22 comprehensive plan goals and policies and shall address in its
23 comprehensive plan the goals and policies which are relevant
24 to the circumstances or conditions in its jurisdiction. The
25 decision regarding which particular state comprehensive plan
26 goals and policies will be furthered by the expenditure of a
27 local government's financial resources in any given year is a
28 decision which rests solely within the discretion of the local
29 government. Intergovernmental coordination, as set forth in
30 paragraph (6)(h), shall be utilized to the extent required to
31

1 carry out the provisions of chapter 9J-5, Florida
2 Administrative Code.

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

7 (d) Chapter 9J-5, Florida Administrative Code, does
8 not mandate the creation, limitation, or elimination of
9 regulatory authority, nor does it authorize the adoption or
10 require the repeal of any rules, criteria, or standards of any
11 local, regional, or state agency.

12 (e) It is the Legislature's intent that support data
13 or summaries thereof shall not be subject to the compliance
14 review process, but the Legislature intends that goals and
15 policies be clearly based on appropriate data. The department
16 may utilize support data or summaries thereof to aid in its
17 determination of compliance and consistency. The Legislature
18 intends that the department may evaluate the application of a
19 methodology utilized in data collection or whether a
20 particular methodology is professionally accepted. However,
21 the department shall not evaluate whether one accepted
22 methodology is better than another. Chapter 9J-5, Florida
23 Administrative Code, shall not be construed to require
24 original data collection by local governments; however, local
25 governments are not to be discouraged from utilizing original
26 data so long as methodologies are professionally accepted.

27 (f) The Legislature recognizes that under this
28 section, local governments are charged with setting levels of
29 service for public facilities in their comprehensive plans in
30 accordance with which development orders and permits will be
31 issued pursuant to s. 163.3202(2)(g). Nothing herein shall

1 supersede the authority of state, regional, or local agencies
2 as otherwise provided by law.

3 (g) Definitions contained in chapter 9J-5, Florida
4 Administrative Code, are not intended to modify or amend the
5 definitions utilized for purposes of other programs or rules
6 or to establish or limit regulatory authority. Local
7 governments may establish alternative definitions in local
8 comprehensive plans, as long as such definitions accomplish
9 the intent of this chapter, and chapter 9J-5, Florida
10 Administrative Code.

11 (h) It is the intent of the Legislature that public
12 facilities and services needed to support development shall be
13 available concurrent with the impacts of such development in
14 accordance with s. 163.3180. In meeting this intent, public
15 facility and service availability shall be deemed sufficient
16 if the public facilities and services for a development are
17 phased, or the development is phased, so that the public
18 facilities and those related services which are deemed
19 necessary by the local government to operate the facilities
20 necessitated by that development are available concurrent with
21 the impacts of the development. The public facilities and
22 services, unless already available, are to be consistent with
23 the capital improvements element of the local comprehensive
24 plan as required by paragraph (3)(a) or guaranteed in an
25 enforceable development agreement. This shall include
26 development agreements pursuant to this chapter or in an
27 agreement or a development order issued pursuant to chapter
28 380. Nothing herein shall be construed to require a local
29 government to address services in its capital improvements
30 plan or to limit a local government's ability to address any
31

1 service in its capital improvements plan that it deems
2 necessary.

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

8 ~~(j) Chapter 9J-5, Florida Administrative Code, has~~
9 ~~become effective pursuant to subsection (9). The Legislature~~
10 ~~hereby directs the department to adopt amendments as necessary~~
11 ~~which conform chapter 9J-5, Florida Administrative Code, with~~
12 ~~the requirements of this legislative intent by October 1,~~
13 ~~1986.~~

14 ~~(k) So that local governments are able to prepare and~~
15 ~~adopt comprehensive plans with knowledge of the rules that~~
16 ~~will be applied to determine consistency of the plans with~~
17 ~~provisions of this part, it is the intent of the Legislature~~
18 ~~that there should be no doubt as to the legal standing of~~
19 ~~chapter 9J-5, Florida Administrative Code, at the close of the~~
20 ~~1986 legislative session. Therefore, the Legislature declares~~
21 ~~that changes made to chapter 9J-5, Florida Administrative~~
22 ~~Code, prior to October 1, 1986, shall not be subject to rule~~
23 ~~challenges under s. 120.56(2), or to drawout proceedings under~~
24 ~~s. 120.54(3)(c)2. The entire chapter 9J-5, Florida~~
25 ~~Administrative Code, as amended, shall be subject to rule~~
26 ~~challenges under s. 120.56(3), as nothing herein shall be~~
27 ~~construed to indicate approval or disapproval of any portion~~
28 ~~of chapter 9J-5, Florida Administrative Code, not specifically~~
29 ~~addressed herein. No challenge pursuant to s. 120.56(3) may~~
30 ~~be filed from July 1, 1987, through April 1, 1993. Any~~
31 ~~amendments to chapter 9J-5, Florida Administrative Code,~~

1 ~~exclusive of the amendments adopted prior to October 1, 1986,~~
 2 ~~pursuant to this act, shall be subject to the full chapter 120~~
 3 ~~process. All amendments shall have effective dates as~~
 4 ~~provided in chapter 120 and submission to the President of the~~
 5 ~~Senate and Speaker of the House of Representatives shall not~~
 6 ~~be required.~~

7 (j)(1) The state land planning agency shall consider
 8 land use compatibility issues in the vicinity of all airports
 9 in coordination with the Department of Transportation and
 10 adjacent to or in close proximity to all military
 11 installations in coordination with the Department of Defense.

12 Section 12. Subsection (1) of section 186.508, Florida
 13 Statutes, is amended to read:

14 186.508 Strategic regional policy plan adoption;
 15 consistency with state comprehensive plan.--

16 (1) Each regional planning council shall submit to the
 17 Executive Office of the Governor its proposed strategic
 18 regional policy plan on a schedule established by the
 19 Executive Office of the Governor to coordinate implementation
 20 of the strategic regional policy plans with the evaluation and
 21 appraisal reports required by s. 163.3191. The Executive
 22 Office of the Governor, or its designee, shall review the
 23 proposed strategic regional policy plan to ensure consistency
 24 with the adopted state comprehensive plan and shall, within 60
 25 days, provide any recommended revisions. The Governor's
 26 recommended revisions shall be included in the plans in a
 27 comment section. However, nothing herein shall preclude a
 28 regional planning council from adopting or rejecting any or
 29 all of the revisions as a part of its plan prior to the
 30 effective date of the plan. The rules of a regional planning
 31 council adopting its first ~~the~~ strategic regional policy plan

1 ~~are shall~~ not ~~be~~ subject to rule challenge under s. 120.56(2)
2 or to drawout proceedings under s. 120.54(3)(c)2., but, once
3 adopted, shall be subject to an invalidity challenge under s.
4 120.56(3) by substantially affected persons, including the
5 Executive Office of the Governor. The rules shall be adopted
6 by the regional planning councils, and shall become effective
7 upon filing with the Department of State, notwithstanding the
8 provisions of s. 120.54(3)(e)6.

9 Section 13. Section 370.26, Florida Statutes, is
10 amended to read:

11 370.26 Aquaculture definitions; marine aquaculture
12 products, producers, and facilities.--

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

14 (a) "Marine aquaculture facility" means a facility
15 built and operated for the purpose of producing marine
16 aquaculture products. Marine aquaculture facilities contain
17 culture systems such as, but not limited to, ponds, tanks,
18 raceways, cages, and bags used for commercial production,
19 propagation, growout, or product enhancement of marine
20 products. Marine aquaculture facilities specifically do not
21 include:

22 1. Facilities that maintain marine aquatic organisms
23 exclusively for the purpose of shipping, distribution,
24 marketing, or wholesale and retail sales;

25 2. Facilities that maintain marine aquatic organisms
26 for noncommercial, education, exhibition, or scientific
27 purposes;

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

30 4. Facilities used by marine aquarium hobbyists.
31

1 (b) "Marine aquaculture producer" means a person
2 holding an aquaculture certificate pursuant to s. 597.004 to
3 produce marine aquaculture products.

4 (c) "Marine aquaculture product" means any product
5 derived from marine aquatic organisms that are owned and
6 propagated, grown, or produced under controlled conditions by
7 a person holding an aquaculture certificate pursuant to s.
8 597.004. Such product does not include organisms harvested
9 from the wild for depuration, wet storage, or relayed for the
10 purpose of controlled purification. Marine aquaculture
11 products are considered saltwater products for the purposes of
12 this chapter, except the holder of an aquaculture certificate
13 is not required to purchase and possess a saltwater products
14 license in order to possess, transport, or sell marine
15 aquaculture products pursuant to s. 370.06. To renew an
16 existing restricted species endorsement, marine aquaculture
17 producers possessing a valid saltwater products license with a
18 restricted species endorsement may apply income from the sales
19 of marine aquaculture products to licensed wholesale dealers.
20 Income from the sales of marine aquaculture products shall not
21 be eligible for the purpose of acquiring a new restricted
22 species endorsement. The holder of an aquaculture certificate
23 must purchase and possess a saltwater products license in
24 order to possess, transport, or sell saltwater products not
25 specifically provided for in s. 597.004.

26 ~~(2) The Department of Environmental Protection shall~~
27 ~~encourage the development of aquaculture and the production of~~
28 ~~aquaculture products. The department shall develop a process~~
29 ~~consistent with this section that would consolidate permits,~~
30 ~~general permits, and other regulatory requirements to~~
31 ~~streamline the permitting process and result in effective~~

1 ~~regulation of aquaculture activities. This process shall~~
2 ~~provide for a single application and application fee for~~
3 ~~marine aquaculture activities which are regulated by the~~
4 ~~department. Procedures to consolidate permitting actions under~~
5 ~~this section do not constitute rules within the meaning of s.~~
6 ~~120.52.~~

7 (2)~~(3)~~ Until aquaculture general permits under s.
8 403.814 can be expanded and developed, the department shall
9 establish criteria to temporarily permit aquaculture
10 activities that may be presumed not to result in adverse
11 environmental impacts. The criteria developed pursuant to this
12 subsection do not constitute rules within the meaning of s.
13 120.52. Permit application fees under this subsection shall be
14 no more than that established for a general permit. The
15 department may delegate to the water management districts the
16 regulatory authority for aquaculture facilities subject to the
17 temporary general permitting criteria of this subsection.
18 During the period prior to development of a general permit
19 under s. 403.814, the department shall establish a compliance
20 plan based on monitoring results that will assist in the
21 development of the general permit.

22 (3)~~(4)~~ The department shall request that the
23 Aquaculture Review Council identify a working group of
24 industry representatives who can provide technical assistance
25 in developing aquaculture general permits. The industry
26 representatives shall come from the segment of the industry to
27 be affected by the specific general permit to be developed.
28 The working group shall be included in all phases of
29 developing the aquaculture general permits.

30 (4)~~(5)~~ The department shall:
31

1 (a) Coordinate with the Aquaculture Review Council,
2 the Aquaculture Interagency Coordinating Council, and the
3 Department of Agriculture and Consumer Services when
4 developing criteria for aquaculture general permits.

5 (b) Permit experimental technologies to collect and
6 evaluate data necessary to reduce or mitigate environmental
7 concerns.

8 (c) Provide technical expertise and promote the
9 transfer of information that would be beneficial to the
10 development of aquaculture.

11 ~~(5)(6)~~ The Fish and Wildlife Conservation Commission
12 shall encourage the development of aquaculture in the state
13 through the following:

14 (a) Providing assistance in developing technologies
15 applicable to aquaculture activities, evaluating practicable
16 production alternatives, and providing management agreements
17 to develop innovative culture practices.

18 (b) Facilitating aquaculture research on life
19 histories, stock enhancement, and alternative species, and
20 providing research results that would assist in the
21 evaluation, development, and commercial production of
22 candidate species for aquaculture, including:

23 1. Providing eggs, larvae, fry, and fingerlings to
24 aquaculturists when excess cultured stocks are available from
25 the commission's facilities and the culture activities are
26 consistent with the commission's stock enhancement projects.
27 Such stocks may be obtained by reimbursing the commission for
28 the cost of production on a per-unit basis. Revenues resulting
29 from the sale of stocks shall be deposited into the trust fund
30 used to support the production of such stocks.

31

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

3 3. Encouraging the private production of marine fish
4 and shellfish stocks for the purpose of providing such stocks
5 for statewide stock enhancement programs. When such stocks
6 become available, the commission shall reduce or eliminate
7 duplicative production practices that would result in direct
8 competition with private commercial producers.

9 4. Developing a working group, in cooperation with the
10 Department of Agriculture and Consumer Services, the
11 Aquaculture Review Council, and the Aquaculture Interagency
12 Coordinating Council, to plan and facilitate the development
13 of private marine fish and nonfish hatcheries and to encourage
14 private/public partnerships to promote the production of
15 marine aquaculture products.

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

19 ~~(6)(7)~~ The Fish and Wildlife Conservation Commission
20 shall coordinate with the Aquaculture Review Council and the
21 Department of Agriculture and Consumer Services to establish
22 and implement grant programs to provide funding for projects
23 and programs that are identified in the state's aquaculture
24 plan, pending legislative appropriations. The commission and
25 the Department of Agriculture and Consumer Services shall
26 establish and implement a grant program to make grants
27 available to qualified nonprofit, educational, and research
28 entities or local governments to fund infrastructure,
29 planning, practical and applied research, development
30 projects, production economic analysis, and training and stock
31 enhancement projects, and to make grants available to

1 | counties, municipalities, and other state and local entities
 2 | for applied aquaculture projects that are directed to economic
 3 | development, pending legislative appropriations.

4 | ~~(7)(8)~~ The Fish and Wildlife Conservation Commission
 5 | shall provide assistance to the Department of Agriculture and
 6 | Consumer Services in the development of an aquaculture plan
 7 | for the state.

8 | Section 14. Subsections (5) and (6) of section
 9 | 373.421, Florida Statutes, are amended to read:

10 | 373.421 Delineation methods; formal determinations.--

11 | (5) A formal determination obtained under this section
 12 | is ~~final agency action and is~~ in lieu of a declaratory
 13 | statement of jurisdiction obtainable under s. 120.565 and is
 14 | final agency action unless a timely and sufficient petition
 15 | for an administrative hearing under ss. Sections 120.569 and
 16 | 120.57 is filed ~~apply to formal determinations under this~~
 17 | ~~section.~~

18 | (6) The district or the department may also issue
 19 | nonbinding informal determinations or otherwise institute
 20 | determinations on its own initiative as provided by law. A
 21 | nonbinding informal determination of the extent of surface
 22 | waters and wetlands issued by the South Florida Water
 23 | Management District or the Southwest Florida Water Management
 24 | District, between July 1, 1989, and the effective date of the
 25 | methodology ratified in s. 373.4211, shall be validated by the
 26 | district if a petition to validate the nonbinding informal
 27 | determination is filed with the district on or before October
 28 | 1, 1994, provided:

29 | (a) The petitioner submits the documentation prepared
 30 | by the agency, and signed by an agency employee in the course
 31 | of the employee's official duties, at the time the nonbinding

1 informal determination was issued, showing the boundary of the
2 surface waters or wetlands;

3 (b) The request is accompanied by the appropriate fee
4 in accordance with the fee schedule established by district
5 rule;

6 (c) Any supplemental information, such as aerial
7 photographs and soils maps, is provided as necessary to ensure
8 an accurate determination;

9 (d) District staff verify the delineated surface water
10 or wetland boundary through site inspection; and

11 (e) Following district verification, and adjustment if
12 necessary, of the boundary of surface waters or wetlands, the
13 petitioner submits a survey certified pursuant to chapter 472,
14 which depicts the surface water or wetland boundaries. The
15 certified survey shall contain a legal description of, and the
16 acreage contained within, the boundaries of the property for
17 which the determination is sought. The boundaries must be
18 witnessed to the property boundaries and must be capable of
19 being mathematically reproduced from the survey.

20
21 Validated informal nonbinding determinations issued by the
22 South Florida Water Management District and the Southwest
23 Florida Water Management District shall remain valid for a
24 period of 5 years from the date of validation by the district,
25 as long as physical conditions on the property do not change
26 so as to alter the boundaries of surface waters or wetlands. A
27 validation obtained under this section is final agency action
28 unless a timely and sufficient petition for an administrative
29 hearing under ss. Sections 120.569 and 120.57 is filed ~~apply~~
30 ~~to validations under this section.~~

31

1 Section 15. Paragraph (d) of subsection (23) of
2 section 380.06, Florida Statutes, is amended to read:

3 380.06 Developments of regional impact.--

4 (23) ADOPTION OF RULES BY STATE LAND PLANNING
5 AGENCY.--

6 (d) Regional planning agencies that perform
7 development-of-regional-impact and Florida Quality Development
8 review are authorized to assess and collect fees to fund the
9 costs, direct and indirect, of conducting the review process.

10 The state land planning agency shall adopt rules to provide
11 uniform criteria for the assessment and collection of such
12 fees. ~~The rules providing uniform criteria shall not be~~
13 ~~subject to rule challenge under s. 120.56(2) or to drawout~~
14 ~~proceedings under s. 120.54(3)(c)2., but, once adopted, shall~~
15 ~~be subject to an invalidity challenge under s. 120.56(3) by~~
16 ~~substantially affected persons. Until the state land planning~~
17 ~~agency adopts a rule implementing this paragraph, rules of the~~
18 ~~regional planning councils currently in effect regarding fees~~
19 ~~shall remain in effect.~~ Fees may vary in relation to the type
20 and size of a proposed project, but shall not exceed \$75,000,
21 unless the state land planning agency, after reviewing any
22 disputed expenses charged by the regional planning agency,
23 determines that said expenses were reasonable and necessary
24 for an adequate regional review of the impacts of a project.

25 Section 16. Subsection (3) of section 393.0661,
26 Florida Statutes, is amended to read:

27 393.0661 Home and community-based services delivery
28 system; comprehensive redesign.--The Legislature finds that
29 the home and community-based services delivery system for
30 persons with developmental disabilities and the availability
31 of appropriated funds are two of the critical elements in

1 making services available. Therefore, it is the intent of the
2 Legislature that the Agency for Persons with Disabilities
3 shall develop and implement a comprehensive redesign of the
4 system.

5 ~~(3) Pending the adoption of rate methodologies~~
6 ~~pursuant to nonemergency rulemaking under s. 120.54, The~~
7 ~~Agency for Health Care Administration may, at any time, adopt~~
8 ~~emergency rules under s. 120.54(4) in order to comply with~~
9 ~~subsection (4). In adopting such emergency rules, the agency~~
10 ~~need not make the findings required by s. 120.54(4)(a), and~~
11 ~~such rules shall be exempt from time limitations provided in~~
12 ~~s. 120.54(4)(c) and shall remain in effect until replaced by~~
13 ~~another emergency rule or the nonemergency adoption of the~~
14 ~~rate methodology.~~

15 Section 17. Section 393.125, Florida Statutes, is
16 amended to read:

17 393.125 Hearings on appeal of adverse agency action;
18 rulemaking authority Hearing rights.--

19 (1) Fair hearings related to issues before the Agency
20 for Persons with Disabilities shall be held before the
21 Division of Administrative Hearings.

22 (2) The agency shall adopt rules to establish
23 guidelines for administrative hearings which are relevant to
24 the termination, suspension, reduction, or denial of client
25 services. The rules must ensure that the due process rights of
26 the clients of the agency are consistent with Medicaid law.
27 The rules shall also ensure that witnesses appearing on behalf
28 of any party are permitted to appear by telephone or video
29 teleconference.

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

31

1 ~~(a) Any developmental services applicant or client, or~~
2 ~~his or her parent, guardian, guardian advocate, or authorized~~
3 ~~representative, who has any substantial interest determined by~~
4 ~~the agency, has the right to request an administrative hearing~~
5 ~~pursuant to ss. 120.569 and 120.57.~~

6 ~~(b) Notice of the right to an administrative hearing~~
7 ~~shall be given, both verbally and in writing, to the applicant~~
8 ~~or client, and his or her parent, guardian, guardian advocate,~~
9 ~~or authorized representative, at the same time that the agency~~
10 ~~gives the applicant or client notice of the agency's action.~~
11 ~~The notice shall be given, both verbally and in writing, in~~
12 ~~the language of the client or applicant and in English.~~

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

16 ~~(3)(2) REVIEW OF PROVIDER DECISIONS.~~—The agency shall
17 adopt rules to establish uniform procedures ~~guidelines~~ for the
18 agency and service providers relevant to termination,
19 suspension, or reduction of client services by the service
20 provider. ~~The rules shall ensure the due process rights of~~
21 ~~service providers and clients.~~

22 Section 18. Subsection (6) of section 408.039, Florida
23 Statutes, is amended to read:

24 408.039 Review process.--The review process for
25 certificates of need shall be as follows:

26 (6) JUDICIAL REVIEW.--

27 (a) A party to an administrative hearing for an
28 application for a certificate of need has the right, within
29 not more than 30 days after the date of the final order, to
30 seek judicial review in the District Court of Appeal pursuant
31

1 to s. 120.68. The agency shall be a party in any such
2 proceeding.

3 ~~(b) In such judicial review, the court shall affirm~~
4 ~~the final order of the agency, unless the decision is~~
5 ~~arbitrary, capricious, or not in compliance with ss.~~
6 ~~408.031-408.045.~~

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

11 Section 19. Section 409.285, Florida Statutes, is
12 amended to read:

13 409.285 Opportunity for hearing and appeal.--

14 (1) If an application for public assistance is not
15 acted upon within a reasonable time after the filing of the
16 application, or is denied in whole or in part, or if an
17 assistance payment is modified or canceled, the applicant or
18 recipient may appeal the decision to the Department of
19 Children and Family Services in the manner and form prescribed
20 by the department.

21 (2) The hearing authority may be the Secretary of
22 Children and Family Services, a panel of department officials,
23 or a hearing officer appointed for that purpose. The hearing
24 authority is responsible for a final administrative decision
25 in the name of the state agency administering the public
26 assistance program ~~department~~ on all issues that have been the
27 subject of a hearing. With regard to the state agency
28 administering the public assistance program ~~department~~, the
29 decision of the hearing authority is final and binding. The
30 state agency administering the public assistance program
31

1 ~~department~~ is responsible for seeing that the decision is
2 carried out promptly.

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

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

15 Section 20. Section 440.021, Florida Statutes, is
16 amended to read:

17 440.021 Exemption of workers' compensation from
18 chapter 120.--Workers' compensation adjudications by judges of
19 compensation claims are exempt from chapter 120, and no judge
20 of compensation claims shall be considered an agency or a part
21 thereof. ~~Communications of the result of investigations by the~~
22 ~~department pursuant to s. 440.185(4) are exempt from chapter~~
23 ~~120. In all instances in which the department institutes~~
24 ~~action to collect a penalty or interest which may be due~~
25 ~~pursuant to this chapter, the penalty or interest shall be~~
26 ~~assessed without hearing, and the party against which such~~
27 ~~penalty or interest is assessed shall be given written notice~~
28 ~~of such assessment and shall have the right to protest within~~
29 ~~20 days of such notice. Upon receipt of a timely notice of~~
30 ~~protest and after such investigation as may be necessary, the~~
31 ~~department shall, if it agrees with such protest, notify the~~

1 ~~protesting party that the assessment has been revoked. If the~~
2 ~~department does not agree with the protest, it shall refer the~~
3 ~~matter to the judge of compensation claims for determination~~
4 ~~pursuant to s. 440.25(2) (5). Such action of the department~~
5 ~~is exempt from the provisions of chapter 120.~~

6 Section 21. Subsection (4) of section 456.073, Florida
7 Statutes, is amended to read:

8 456.073 Disciplinary proceedings.--Disciplinary
9 proceedings for each board shall be within the jurisdiction of
10 the department.

11 (4) The determination as to whether probable cause
12 exists shall be made by majority vote of a probable cause
13 panel of the board, or by the department, as appropriate. Each
14 regulatory board shall provide by rule that the determination
15 of probable cause shall be made by a panel of its members or
16 by the department. Each board may provide by rule for multiple
17 probable cause panels composed of at least two members. Each
18 board may provide by rule that one or more members of the
19 panel or panels may be a former board member. The length of
20 term or repetition of service of any such former board member
21 on a probable cause panel may vary according to the direction
22 of the board when authorized by board rule. Any probable cause
23 panel must include one of the board's former or present
24 consumer members, if one is available, is willing to serve,
25 and is authorized to do so by the board chair. Any probable
26 cause panel must include a present board member. Any probable
27 cause panel must include a former or present professional
28 board member. However, any former professional board member
29 serving on the probable cause panel must hold an active valid
30 license for that profession. All proceedings of the panel are
31 exempt from s. 286.011 until 10 days after probable cause has

1 | been found to exist by the panel or until the subject of the
2 | investigation waives his or her privilege of confidentiality;
3 | however, the proceedings of a probable cause panel that is
4 | convened to reconsider the original finding of probable cause
5 | is not exempt from s. 286.011. The probable cause panel may
6 | make a reasonable request, and upon such request the
7 | department shall provide such additional investigative
8 | information as is necessary to the determination of probable
9 | cause. A request for additional investigative information
10 | shall be made within 15 days after ~~from~~ the date of receipt by
11 | the probable cause panel of the investigative report of the
12 | department or the agency. The probable cause panel or the
13 | department, as may be appropriate, shall make its
14 | determination of probable cause within 30 days after receipt
15 | by it of the final investigative report of the department. The
16 | secretary may grant extensions of the 15-day and the 30-day
17 | time limits. In lieu of a finding of probable cause, the
18 | probable cause panel, or the department if there is no board,
19 | may issue a letter of guidance to the subject. If, within the
20 | 30-day time limit, as may be extended, the probable cause
21 | panel does not make a determination regarding the existence of
22 | probable cause or does not issue a letter of guidance in lieu
23 | of a finding of probable cause, the department must make a
24 | determination regarding the existence of probable cause within
25 | 10 days after the expiration of the time limit. If the
26 | probable cause panel finds that probable cause exists, it
27 | shall direct the department to file a formal complaint against
28 | the licensee. The department shall follow the directions of
29 | the probable cause panel regarding the filing of a formal
30 | complaint. If directed to do so, the department shall file a
31 | formal complaint against the subject of the investigation and

1 prosecute that complaint pursuant to chapter 120. However, the
2 department may decide not to prosecute the complaint if it
3 finds that probable cause has been improvidently found by the
4 panel. In such cases, the department shall refer the matter to
5 the board. The board may then file a formal complaint and
6 prosecute the complaint pursuant to chapter 120. The
7 department shall also refer to the board any investigation or
8 disciplinary proceeding not before the Division of
9 Administrative Hearings pursuant to chapter 120 or otherwise
10 completed by the department within 1 year after the filing of
11 a complaint. The department, for disciplinary cases under its
12 jurisdiction, must establish a uniform reporting system to
13 quarterly refer to each board the status of any investigation
14 or disciplinary proceeding that is not before the Division of
15 Administrative Hearings or otherwise completed by the
16 department within 1 year after the filing of the complaint.
17 Annually, the department, in consultation with the applicable
18 probable cause panel, must establish a plan to expedite or
19 otherwise close any investigation or disciplinary proceeding
20 that is not before the Division of Administrative Hearings or
21 otherwise completed by the department within 1 year after the
22 filing of the complaint. A probable cause panel or a board
23 may retain independent legal counsel, employ investigators,
24 and continue the investigation as it deems necessary; all
25 costs thereof shall be paid from a trust fund used by the
26 department to implement this chapter. All proceedings of the
27 probable cause panel are exempt from s. 120.525.

28 Section 22. Subsection (5) of section 458.345, Florida
29 Statutes, is amended to read:

30
31

1 458.345 Registration of resident physicians, interns,
 2 and fellows; list of hospital employees; prescribing of
 3 medicinal drugs; penalty.--

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

7 Section 23. Subsection (8) of section 459.021, Florida
 8 Statutes, is amended to read:

9 459.021 Registration of resident physicians, interns,
 10 and fellows; list of hospital employees; penalty.--

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

14 Section 24. Subsection (9) of section 497.153, Florida
 15 Statutes, is amended to read:

16 497.153 Disciplinary procedures and penalties.--

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

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

27 (a)(b) A determination by the department that there is
 28 reasonable cause to believe that a licensee under this chapter
 29 is subject to disciplinary action under this chapter and that
 30 the matter should be presented to a probable cause panel of
 31

1 the board, or that the licensee is not eligible for a citation
2 pursuant to criteria established by the board.

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

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

8 Section 25. Section 538.11, Florida Statutes, is
9 amended to read:

10 538.11 Powers and duties of department; rules.--The
11 same duties and privileges imposed by chapter 212 upon dealers
12 of tangible personal property respecting the keeping of books
13 and records and accounts and compliance with rules of the
14 department shall apply to and be binding upon all persons who
15 are subject to the provisions of this chapter. The department
16 shall administer, collect, and enforce the registration
17 authorized under this chapter pursuant to the same procedures
18 used in the administration, collection, and enforcement of the
19 general state sales tax imposed under chapter 212, except as
20 provided in this section. The provisions of chapter 212
21 regarding the keeping of records and books shall apply. The
22 department is authorized to employ persons and incur other
23 expenses for which funds are appropriated by the Legislature.
24 The department is empowered to adopt such rules, and shall
25 prescribe and publish such forms, as may be necessary to
26 effectuate the purposes of this chapter. ~~The Legislature~~
27 ~~hereby finds that the failure to promptly implement the~~
28 ~~provisions of this chapter would present an immediate threat~~
29 ~~to the welfare of the state. Therefore, the executive director~~
30 ~~of the department is hereby authorized to adopt emergency~~
31 ~~rules pursuant to s. 120.54(4), for purposes of implementing~~

1 ~~this chapter. Notwithstanding any other provision of law, such~~
2 ~~emergency rules shall remain effective for 6 months from the~~
3 ~~date of adoption. Other rules of the department related to and~~
4 ~~in furtherance of the orderly implementation of the chapter~~
5 ~~shall not be subject to a rule challenge under s. 120.56(2) or~~
6 ~~a drawout proceeding under s. 120.54(3)(c)2. but, once~~
7 ~~adopted, shall be subject to an invalidity challenge under s.~~
8 ~~120.56(3). Such rules shall be adopted by the Governor and~~
9 ~~Cabinet and shall become effective upon filing with the~~
10 ~~Department of State, notwithstanding the provisions of s.~~
11 ~~120.54(3)(c)6.~~

12 Section 26. Section 548.07, Florida Statutes, is
13 amended to read:

14 548.07 Suspension of license or permit by
15 commissioner; hearing.--

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

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

26 Section 27. Section 548.073, Florida Statutes, is
27 repealed.

28 Section 28. Paragraph (c) of subsection (6) of section
29 1002.33, Florida Statutes, is amended to read:

30 1002.33 Charter schools.--

31

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

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

1 charter application. The State Board of Education shall remand
2 the application to the district school board with its written
3 decision that the district school board approve or deny the
4 application. The decision of the State Board of Education
5 shall include written findings of fact. The district school
6 board shall implement the decision of the State Board of
7 Education. The decision of the State Board of Education is not
8 subject to the provisions of the Administrative Procedure Act,
9 chapter 120.

10 Section 29. Paragraph (f) of subsection (5) and
11 paragraph (d) of subsection (6) of section 1002.335, Florida
12 Statutes, are amended to read:

13 1002.335 Florida Schools of Excellence Commission.--

14 (5) CHARTERING AUTHORITY.--

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

21 (6) APPROVAL OF COSPONSORS.--

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

28 Section 30. Paragraph (b) of subsection (6) of section
29 1002.34, Florida Statutes, is amended to read:

30 1002.34 Charter technical career centers.--

31

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

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

26 Section 31. This act shall take effect July 1, 2007.
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