

585-539A-07

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. 380.06, F.S.; deleting provisions  
6 exempting from review under ch. 120, F.S.,  
7 certain rules adopted by the state land  
8 planning agency authorizing the assessment and  
9 collection of fees; amending s. 393.0661, F.S.;  
10 deleting the authority of the Agency for Health  
11 Care Administration to adopt rules under  
12 certain circumstances governing fees,  
13 reimbursement rates, lengths of stay, number of  
14 visits, number of services, or enrollment  
15 limits for the home and community-based  
16 services delivery system of the Agency for  
17 Persons with Disabilities; amending s. 393.125,  
18 F.S.; requiring that the Agency for Persons  
19 with Disabilities adopt rules establishing  
20 guidelines for administrative hearings;  
21 authorizing witnesses to appear on behalf of a  
22 party by telephone or video teleconference;  
23 deleting provisions authorizing certain  
24 administrative hearings under ch. 120, F.S.;  
25 requiring the agency to adopt certain  
26 procedures governing client services provided  
27 by service providers; amending s. 408.039,  
28 F.S.; deleting provisions requiring that the  
29 court, under certain circumstances, affirm a  
30 final order by the Agency for Health Care  
31 Administration when reviewing a disputed

1 decision involving a certificate of need;  
2 amending s. 409.285, F.S.; clarifying that a  
3 final administrative decision regarding a  
4 public assistance program is issued in the name  
5 of the state agency that administers the  
6 program; defining the term "public assistance";  
7 amending s. 456.073, F.S.; providing that the  
8 proceedings of a probable cause panel of a  
9 board within the Department of Health which  
10 meets to reconsider the original finding of  
11 probable cause is subject to public-meetings  
12 requirements; amending s. 458.345, F.S.;  
13 clarifying provisions that subject resident  
14 physicians, assistant resident physicians,  
15 house physicians, interns, and fellows in  
16 fellowship training to discipline by the Board  
17 of Medicine; amending s. 459.021, F.S.;  
18 clarifying provisions that subject resident  
19 physicians, assistant resident physicians,  
20 house physicians, interns, and fellows in  
21 fellowship training to discipline by the Board  
22 of Osteopathic Medicine; amending s. 1002.33,  
23 F.S.; requiring that the decision by the State  
24 Board of Education directing a district school  
25 board to approve or deny an application for a  
26 charter school include written findings of  
27 fact; amending s. 1002.335, F.S.; requiring  
28 that the decision by the State Board of  
29 Education to grant a district school board  
30 exclusive authority to authorize charter  
31 schools within the school district include

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

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

13  
14 Section 1. Paragraph (g) of subsection (2) of section  
15 120.569, Florida Statutes, is amended to read:

16 120.569 Decisions which affect substantial  
17 interests.--

18 (2)

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

27 2. Notwithstanding subparagraph 1., similar fact  
28 evidence of other violations, wrongs, or acts is admissible  
29 when relevant to prove a material fact in issue, such as proof  
30 of motive, opportunity, intent, preparation, plan, knowledge,  
31 identity, or absence of mistake or accident, but it is

1 inadmissible when the evidence is relevant solely to prove bad  
2 character or propensity. When, in an administrative  
3 proceeding, the state intends to offer evidence of other acts  
4 or offenses under this subparagraph, the state shall furnish  
5 to the party whose substantial interests are being determined  
6 and whose other acts or offenses will be the subject of such  
7 evidence, not less than 10 days before commencement of the  
8 proceeding, a written statement of the acts or offenses it  
9 intends to offer which describes them and the evidence the  
10 state intends to offer with particularity. Notice is not  
11 required for evidence of acts or offenses which is used for  
12 impeachment or on rebuttal.

13 3. Notwithstanding subparagraph 1., in a proceeding  
14 against a licensed professional or in a proceeding for  
15 licensure of an applicant for professional licensure which  
16 involves allegations of sexual misconduct:

17 a. The testimony of the victim of the sexual  
18 misconduct need not be corroborated.

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

22 (I) It is first established to the administrative law  
23 judge in a proceeding in camera that the victim of the sexual  
24 misconduct is mistaken as to the identity of the perpetrator  
25 of the sexual misconduct; or

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

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

3 Section 2. Present paragraphs (e) through (n) of  
4 subsection (1) of section 120.57, Florida Statutes, are  
5 redesignated as paragraphs (d) through (m), respectively, and  
6 present paragraphs (d) and (e) of that subsection are amended,  
7 to read:

8 120.57 Additional procedures for particular cases.--

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

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

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

31

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

3 a. Is within the powers, functions, and duties  
4 delegated by the Legislature or, if the agency is operating  
5 pursuant to authority derived from the State Constitution, is  
6 within that authority;

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

9 c. Is not vague, establishes adequate standards for  
10 agency decisions, or does not vest unbridled discretion in the  
11 agency;

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

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

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

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



1 court shall award to the prevailing party the reasonable costs  
2 and a reasonable attorney's fee for the initial proceeding and  
3 the proceeding for review.

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

7 120.80 Exceptions and special requirements;  
8 agencies.--

9 (1) DIVISION OF ADMINISTRATIVE HEARINGS.--

10 (b) Workers' compensation.--~~Notwithstanding s.~~  
11 ~~120.52(1),~~ A judge of compensation claims is exempt from the  
12 requirements for notice and a hearing under ss. 120.569 and  
13 120.57 when, in adjudicating matters under chapter 440, but is  
14 subject to the rulemaking procedures in ~~is not an agency or~~  
15 ~~part of an agency for purposes of this chapter.~~

16 (7) DEPARTMENT OF CHILDREN AND FAMILY

17 SERVICES.--Section 120.57(1) notwithstanding, hearings  
18 required by ss. 120.569 and 120.57 concerning the denial,  
19 reduction, suspension, or termination of benefits under a  
20 public assistance program, as defined in s. 409.285, need not  
21 be conducted by an administrative law judge assigned by the  
22 division unless required otherwise by a specific law. The  
23 Office of Appeal Hearings within the Department of Children  
24 and Family Services may provide the hearings required by ss.  
25 120.569 and 120.57 for all public assistance programs,  
26 regardless of which state agency administers the program, if  
27 the public assistance program is administered by the  
28 department or the department has a formal interagency  
29 agreement with the state agency that administers the program  
30 to conduct the hearings. Hearings conducted under this  
31 subsection must comply with the requirements of ss. 120.569

1 and 120.57 and the uniform rules of procedure, except to the  
2 extent that the department has adopted rules pursuant to s.  
3 409.28 and has been granted exceptions to the uniform rules of  
4 procedure as provided in s. 120.54. Notwithstanding s.  
5 120.57(1)(a), hearings conducted within the Department of  
6 Children and Family Services in the execution of those social  
7 and economic programs administered by the former Division of  
8 Family Services of the former Department of Health and  
9 Rehabilitative Services prior to the reorganization effected  
10 by chapter 75-48, Laws of Florida, need not be conducted by an  
11 administrative law judge assigned by the division.

12 (13) FLORIDA PUBLIC SERVICE COMMISSION.--

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

17 (b) Notwithstanding ss. 120.569 and 120.57, a hearing  
18 on an objection to proposed action of the Florida Public  
19 Service Commission may only address the issues in dispute.  
20 Issues in the proposed action which are not in dispute are  
21 deemed stipulated.

22 (c) The Florida Public Service Commission is exempt  
23 from the time limitations in s. 120.60(1) when issuing a  
24 license.

25 (d) Notwithstanding the provisions of this chapter, in  
26 implementing the Telecommunications Act of 1996, Pub. L. No.  
27 104-104, the Public Service Commission is authorized to employ  
28 procedures consistent with that act.

29 ~~(e) Notwithstanding the provisions of this chapter, s.~~  
30 ~~350.128, or s. 364.381, appellate jurisdiction for Public~~  
31 ~~Service Commission decisions that implement the~~

1 ~~Telecommunications Act of 1996, Pub. L. No. 104-104, shall be~~  
2 ~~consistent with the provisions of that act.~~

3 ~~(e)(f)~~ Notwithstanding any provision of this chapter,  
4 all public utilities and companies regulated by the Public  
5 Service Commission shall be entitled to proceed under the  
6 interim rate provisions of chapter 364 or the procedures for  
7 interim rates contained in chapter 74-195, Laws of Florida, or  
8 as otherwise provided by law.

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

26 Section 4. Subsection (3) of section 120.81, Florida  
27 Statutes, is amended, present subsections (5) and (6) of that  
28 section are redesignated as subsections (4) and (5),  
29 respectively, and present subsection (4) of that section is  
30 amended, to read:  
31

1 120.81 Exceptions and special requirements; general  
2 areas.--

3 (3) PRISONERS AND PAROLEES.--

4 (a) Notwithstanding s. 120.52(12), prisoners, as  
5 defined by s. 944.02, shall not be considered parties in any  
6 proceedings other than those under s. 120.54(3)(c) or (7), and  
7 may not seek judicial review under s. 120.68 of any other  
8 agency action. Prisoners are not eligible to seek an  
9 administrative determination of an agency statement under s.  
10 120.56(4). Parolees shall not be considered parties for  
11 purposes of agency action or judicial review when the  
12 proceedings relate to the rescission or revocation of parole.

13 (b) Notwithstanding s. 120.54(3)(c), prisoners, as  
14 defined by s. 944.02, may be limited by the Department of  
15 Corrections or the Parole Commission to an opportunity to  
16 present evidence and argument on issues under consideration by  
17 submission of written statements concerning intended action on  
18 any department or commission rule.

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

22 ~~(4) REGULATION OF PROFESSIONS. Notwithstanding s.~~  
23 ~~120.569(2)(g), in a proceeding against a licensed professional~~  
24 ~~or in a proceeding for licensure of an applicant for~~  
25 ~~professional licensure which involves allegations of sexual~~  
26 ~~misconduct:~~

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

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

1 ~~1. It is first established to the administrative law~~  
2 ~~judge in a proceeding in camera that the victim of the sexual~~  
3 ~~misconduct is mistaken as to the identity of the perpetrator~~  
4 ~~of the sexual misconduct; or~~

5 ~~2. If consent by the victim of the sexual misconduct~~  
6 ~~is at issue and it is first established to the administrative~~  
7 ~~law judge in a proceeding in camera that such evidence tends~~  
8 ~~to establish a pattern of conduct or behavior on the part of~~  
9 ~~such victim which is so similar to the conduct or behavior in~~  
10 ~~the case that it is relevant to the issue of consent.~~

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

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

15 120.56 Challenges to rules.--

16 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;  
17 SPECIAL PROVISIONS.--

18 (e)1. If, prior to a final hearing to determine  
19 whether all or part of any agency statement violates s.  
20 120.54(1)(a), an agency publishes, pursuant to s.  
21 120.54(3)(a), proposed rules that address the statement, then  
22 for purposes of this section, a presumption is created that  
23 the agency is acting expeditiously and in good faith to adopt  
24 rules that address the statement, and the agency shall be  
25 permitted to rely upon the statement or a substantially  
26 similar statement as a basis for agency action if the  
27 statement meets the requirements of s. 120.57(1)(d) ~~s.~~  
28 ~~120.57(1)(e)~~.

29 2. If, prior to the final hearing to determine whether  
30 all or part of an agency statement violates s. 120.54(1)(a),  
31 an agency publishes a notice of rule development which

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

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

23 4. If an agency fails to adopt rules that address the  
24 statement within 180 days after publishing proposed rules, for  
25 purposes of this subsection, a presumption is created that the  
26 agency is not acting expeditiously and in good faith to adopt  
27 rules. If the agency's proposed rules are challenged pursuant  
28 to subsection (2), the 180-day period for adoption of rules is  
29 tolled until a final order is entered in that proceeding.

30 5. If the proposed rules addressing the challenged  
31 statement are determined to be an invalid exercise of

1 delegated legislative authority as defined in s.  
2 120.52(8)(b)-(f), the agency must immediately discontinue  
3 reliance on the statement and any substantially similar  
4 statement until the rules addressing the subject are properly  
5 adopted.

6 (f) All proceedings to determine a violation of s.  
7 120.54(1)(a) shall be brought pursuant to this subsection. A  
8 proceeding pursuant to this subsection may be consolidated  
9 with a proceeding under any other section of this chapter.  
10 Nothing in this paragraph shall be construed to prevent a  
11 party whose substantial interests have been determined by an  
12 agency action from bringing a proceeding pursuant to s.  
13 120.57(1)(d) ~~s. 120.57(1)(e)~~.

14 Section 6. Paragraph (d) of subsection (10) of section  
15 120.65, Florida Statutes, is amended to read:

16 120.65 Administrative law judges.--

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

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

23 Section 7. Paragraph (c) of subsection (2) of section  
24 388.4111, Florida Statutes, is amended to read:

25 388.4111 Public lands; arthropod control.--

26 (2)

27 (c) If the land management agency and the local  
28 arthropod control agency are unable to agree on a public lands  
29 control plan, the Florida Coordinating Council on Mosquito  
30 Control may recommend a control plan to the department, which  
31 shall propose a recommended public lands control plan. If the

1 land management agency and the local arthropod control agency  
2 fail to agree to such recommended public lands control plan  
3 within 30 days of the rendering of such plan, either agency  
4 may petition the Land and Water Adjudicatory Commission to  
5 determine whether the proposed control plan employs methods  
6 which are the minimum necessary and economically feasible to  
7 abate a public health or nuisance problem and which impose the  
8 least hazard to fish, wildlife, and other natural resources  
9 protected or managed in such areas. Unless both parties waive  
10 their right to a hearing, the Land and Water Adjudicatory  
11 Commission shall direct a hearing officer to hold a hearing  
12 within the jurisdiction of the local arthropod control agency  
13 pursuant to the provisions of ss. 120.569 and 120.57 and  
14 submit a recommended order. The commission shall, within 60  
15 days of receipt of the recommended order, issue a final order  
16 adopting a public lands control plan. Consistent with s.  
17 120.57(1)(k) ~~s. 120.57(1)(l)~~, the commission may adopt or  
18 modify the proposed control plan. The commission shall adopt  
19 rules on the conduct of appeals before the commission.

20 Section 8. Subsection (1) of section 403.788, Florida  
21 Statutes, is amended to read:

22 403.788 Final disposition of application.--

23 (1) For the purposes of issuing a final order, the  
24 board shall serve as the agency head. Within 45 days after  
25 receipt of the administrative law judge's recommended order,  
26 the board shall issue a final order as provided by s.  
27 120.57(1)(k) ~~s. 120.57(1)(l)~~, approving the application in  
28 whole, approving the application with such modifications or  
29 conditions as the board deems appropriate, or denying the  
30 issuance of a certification and stating the reasons for  
31 issuance or denial.



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

3 403.9415 Final disposition of application.--

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

20 (a) Ensure natural gas delivery reliability and  
21 integrity;

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

24 (c) Comply with the nonprocedural requirements of  
25 agencies;

26 (d) Adversely affect historical sites and the natural  
27 environment;

28 (e) Adversely affect the health, safety, and welfare  
29 of the residents of the affected local government  
30 jurisdictions;

31

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

3 (g) Avoid densely populated areas to the maximum  
4 extent feasible. If densely populated areas cannot be  
5 avoided, locate, to the maximum extent feasible, within  
6 existing utility corridors or rights-of-way.

7 Section 10. Section 627.0612, Florida Statutes, is  
8 amended to read:

9 627.0612 Administrative proceedings in rating  
10 determinations.--In any proceeding to determine whether rates,  
11 rating plans, or other matters governed by this part comply  
12 with the law, the appellate court shall set aside a final  
13 order of the office if the office has violated s. 120.57(1)(j)  
14 ~~s. 120.57(1)(k)~~ by substituting its findings of fact for  
15 findings of an administrative law judge which were supported  
16 by competent substantial evidence.

17 Section 11. Subsections (9) and (10) of section  
18 163.3177, Florida Statutes, are amended to read:

19 163.3177 Required and optional elements of  
20 comprehensive plan; studies and surveys.--

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

1 ~~action relative to the rules. The agency shall conform the~~  
2 ~~rules to the changes made by the Legislature, or, if no action~~  
3 ~~was taken, the agency rules shall become effective.~~ The rule  
4 shall include criteria for determining whether:

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

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

9 (c) The local government comprehensive plan elements  
10 are consistent with the state comprehensive plan and the  
11 appropriate regional policy plan pursuant to s. 186.508.

12 (d) Certain bays, estuaries, and harbors that fall  
13 under the jurisdiction of more than one local government are  
14 managed in a consistent and coordinated manner in the case of  
15 local governments required to include a coastal management  
16 element in their comprehensive plans pursuant to paragraph  
17 (6)(g).

18 (e) Proposed elements identify the mechanisms and  
19 procedures for monitoring, evaluating, and appraising  
20 implementation of the plan. Specific measurable objectives  
21 are included to provide a basis for evaluating effectiveness  
22 as required by s. 163.3191.

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

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

27 (h) Proposed elements identify the need for and the  
28 processes and procedures to ensure coordination of all  
29 development activities and services with other units of local  
30 government, regional planning agencies, water management  
31 districts, and state and federal agencies as appropriate.

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

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

26 (a) The Legislature finds that in order for the  
27 department to review local comprehensive plans, it is  
28 necessary to define the term "consistency." Therefore, for the  
29 purpose of determining whether local comprehensive plans are  
30 consistent with the state comprehensive plan and the  
31 appropriate regional policy plan, a local plan shall be

1 consistent with such plans if the local plan is "compatible  
2 with" and "furthers" such plans. The term "compatible with"  
3 means that the local plan is not in conflict with the state  
4 comprehensive plan or appropriate regional policy plan. The  
5 term "furthers" means to take action in the direction of  
6 realizing goals or policies of the state or regional plan.  
7 For the purposes of determining consistency of the local plan  
8 with the state comprehensive plan or the appropriate regional  
9 policy plan, the state or regional plan shall be construed as  
10 a whole and no specific goal and policy shall be construed or  
11 applied in isolation from the other goals and policies in the  
12 plans.

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

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

29 (d) Chapter 9J-5, Florida Administrative Code, does  
30 not mandate the creation, limitation, or elimination of  
31 regulatory authority, nor does it authorize the adoption or

1 require the repeal of any rules, criteria, or standards of any  
2 local, regional, or state agency.

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

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

25 (g) Definitions contained in chapter 9J-5, Florida  
26 Administrative Code, are not intended to modify or amend the  
27 definitions utilized for purposes of other programs or rules  
28 or to establish or limit regulatory authority. Local  
29 governments may establish alternative definitions in local  
30 comprehensive plans, as long as such definitions accomplish  
31

1 the intent of this chapter, and chapter 9J-5, Florida  
2 Administrative Code.

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

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

30 ~~(j) Chapter 9J-5, Florida Administrative Code, has~~  
31 ~~become effective pursuant to subsection (9). The Legislature~~

1 ~~hereby directs the department to adopt amendments as necessary~~  
2 ~~which conform chapter 9J 5, Florida Administrative Code, with~~  
3 ~~the requirements of this legislative intent by October 1,~~  
4 ~~1986.~~

5 ~~(k) So that local governments are able to prepare and~~  
6 ~~adopt comprehensive plans with knowledge of the rules that~~  
7 ~~will be applied to determine consistency of the plans with~~  
8 ~~provisions of this part, it is the intent of the Legislature~~  
9 ~~that there should be no doubt as to the legal standing of~~  
10 ~~chapter 9J 5, Florida Administrative Code, at the close of the~~  
11 ~~1986 legislative session. Therefore, the Legislature declares~~  
12 ~~that changes made to chapter 9J 5, Florida Administrative~~  
13 ~~Code, prior to October 1, 1986, shall not be subject to rule~~  
14 ~~challenges under s. 120.56(2), or to drawout proceedings under~~  
15 ~~s. 120.54(3)(c)2. The entire chapter 9J 5, Florida~~  
16 ~~Administrative Code, as amended, shall be subject to rule~~  
17 ~~challenges under s. 120.56(3), as nothing herein shall be~~  
18 ~~construed to indicate approval or disapproval of any portion~~  
19 ~~of chapter 9J 5, Florida Administrative Code, not specifically~~  
20 ~~addressed herein. No challenge pursuant to s. 120.56(3) may~~  
21 ~~be filed from July 1, 1987, through April 1, 1993. Any~~  
22 ~~amendments to chapter 9J 5, Florida Administrative Code,~~  
23 ~~exclusive of the amendments adopted prior to October 1, 1986,~~  
24 ~~pursuant to this act, shall be subject to the full chapter 120~~  
25 ~~process. All amendments shall have effective dates as~~  
26 ~~provided in chapter 120 and submission to the President of the~~  
27 ~~Senate and Speaker of the House of Representatives shall not~~  
28 ~~be required.~~

29 ~~(j)(1)~~ The state land planning agency shall consider  
30 land use compatibility issues in the vicinity of all airports  
31 in coordination with the Department of Transportation and



1 adjacent to or in close proximity to all military  
2 installations in coordination with the Department of Defense.

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

5 186.508 Strategic regional policy plan adoption;  
6 consistency with state comprehensive plan.--

7 (1) Each regional planning council shall submit to the  
8 Executive Office of the Governor its proposed strategic  
9 regional policy plan on a schedule established by the  
10 Executive Office of the Governor to coordinate implementation  
11 of the strategic regional policy plans with the evaluation and  
12 appraisal reports required by s. 163.3191. The Executive  
13 Office of the Governor, or its designee, shall review the  
14 proposed strategic regional policy plan to ensure consistency  
15 with the adopted state comprehensive plan and shall, within 60  
16 days, provide any recommended revisions. The Governor's  
17 recommended revisions shall be included in the plans in a  
18 comment section. However, nothing herein shall preclude a  
19 regional planning council from adopting or rejecting any or  
20 all of the revisions as a part of its plan prior to the  
21 effective date of the plan. The rules of a regional planning  
22 council adopting its first ~~the~~ strategic regional policy plan  
23 are shall ~~not be~~ subject to rule challenge under s. 120.56(2)  
24 or to drawout proceedings under s. 120.54(3)(c)2., but, once  
25 adopted, shall be subject to an invalidity challenge under s.  
26 120.56(3) by substantially affected persons, including the  
27 Executive Office of the Governor. The rules shall be adopted  
28 by the regional planning councils, and shall become effective  
29 upon filing with the Department of State, notwithstanding the  
30 provisions of s. 120.54(3)(e)6.

31

1 Section 13. 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 14. 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 15. Section 393.125, Florida Statutes, is  
16 amended to read:

17 393.125 Rulemaking authority for agency action Hearing  
18 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 (a) 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 shall ensure the due-process rights of the  
26 clients of the agency are consistent with Medicaid law.

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

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

30 ~~(a) Any developmental services applicant or client, or~~  
31 ~~his or her parent, guardian, guardian advocate, or authorized~~

1 ~~representative, who has any substantial interest determined by~~  
2 ~~the agency, has the right to request an administrative hearing~~  
3 ~~pursuant to ss. 120.569 and 120.57.~~

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

9 ~~The notice shall be given, both verbally and in writing, in~~  
10 ~~the language of the client or applicant and in English.~~

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

14 ~~(3)(2) REVIEW OF PROVIDER DECISIONS.~~ The agency shall  
15 adopt rules to establish uniform procedures ~~guidelines~~ for the  
16 agency and service providers relevant to termination,  
17 suspension, or reduction of client services by the service  
18 provider. ~~The rules shall ensure the due process rights of~~  
19 ~~service providers and clients.~~

20 Section 16. Subsection (6) of section 408.039, Florida  
21 Statutes, is amended to read:

22 408.039 Review process.--The review process for  
23 certificates of need shall be as follows:

24 (6) JUDICIAL REVIEW.--

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

31

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

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

9 Section 17. Section 409.285, Florida Statutes, is  
10 amended to read:

11 409.285 Opportunity for hearing and appeal.--

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

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

31

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

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

13 Section 18. Subsection (4) of section 456.073, Florida  
14 Statutes, is amended to read:

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

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

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

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



1 costs thereof shall be paid from a trust fund used by the  
2 department to implement this chapter. All proceedings of the  
3 probable cause panel are exempt from s. 120.525.

4 Section 19. Subsection (5) of section 458.345, Florida  
5 Statutes, is amended to read:

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

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

12 Section 20. Subsection (8) of section 459.021, Florida  
13 Statutes, is amended to read:

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

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

19 Section 21. Paragraph (c) of subsection (6) of section  
20 1002.33, Florida Statutes, is amended to read:

21 1002.33 Charter schools.--

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

24 (c) An applicant may appeal any denial of that  
25 applicant's application or failure to act on an application to  
26 the State Board of Education no later than 30 calendar days  
27 after receipt of the district school board's decision or  
28 failure to act and shall notify the district school board of  
29 its appeal. Any response of the district school board shall be  
30 submitted to the State Board of Education within 30 calendar  
31 days after notification of the appeal. Upon receipt of

1 notification from the State Board of Education that a charter  
2 school applicant is filing an appeal, the Commissioner of  
3 Education shall convene a meeting of the Charter School Appeal  
4 Commission to study and make recommendations to the State  
5 Board of Education regarding its pending decision about the  
6 appeal. The commission shall forward its recommendation to the  
7 state board no later than 7 calendar days prior to the date on  
8 which the appeal is to be heard. The State Board of Education  
9 shall by majority vote accept or reject the decision of the  
10 district school board no later than 90 calendar days after an  
11 appeal is filed in accordance with State Board of Education  
12 rule. The Charter School Appeal Commission may reject an  
13 appeal submission for failure to comply with procedural rules  
14 governing the appeals process. The rejection shall describe  
15 the submission errors. The appellant may have up to 15  
16 calendar days from notice of rejection to resubmit an appeal  
17 that meets requirements of State Board of Education rule. An  
18 application for appeal submitted subsequent to such rejection  
19 shall be considered timely if the original appeal was filed  
20 within 30 calendar days after receipt of notice of the  
21 specific reasons for the district school board's denial of the  
22 charter application. The State Board of Education shall remand  
23 the application to the district school board with its written  
24 decision that the district school board approve or deny the  
25 application. The decision of the State Board of Education  
26 shall include written findings of fact. The district school  
27 board shall implement the decision of the State Board of  
28 Education. The decision of the State Board of Education is not  
29 subject to the provisions of the Administrative Procedure Act,  
30 chapter 120.

31

1 Section 22. Paragraph (f) of subsection (5) and  
2 paragraph (d) of subsection (6) of section 1002.335, Florida  
3 Statutes, are amended to read:

4 1002.335 Florida Schools of Excellence Commission.--

5 (5) CHARTERING AUTHORITY.--

6 (f) The decision of the State Board of Education  
7 pursuant to paragraph (e) shall not be subject to the  
8 provisions of chapter 120 and shall be a final action subject  
9 to judicial review by the district court of appeal. The  
10 decision of the State Board of Education shall include written  
11 findings of fact.

12 (6) APPROVAL OF COSPONSORS.--

13 (d) The commission's decision to deny an application  
14 or to revoke approval of a cosponsor pursuant to subsection  
15 (8) is not subject to chapter 120 and may be appealed to the  
16 State Board of Education pursuant to s. 1002.33(6). The  
17 decision of the commission shall include written findings of  
18 fact.

19 Section 23. Paragraph (b) of subsection (6) of section  
20 1002.34, Florida Statutes, is amended to read:

21 1002.34 Charter technical career centers.--

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

26 (b) An applicant may appeal any denial of its  
27 application to the State Board of Education within 30 days  
28 after the sponsor's denial and shall notify the sponsor of its  
29 appeal. Any response of the sponsor must be submitted to the  
30 state board within 30 days after notification of the appeal.  
31 The State Board of Education must, by majority vote, accept or

1 reject the decision of the sponsor no later than 60 days after  
2 an appeal is filed, pursuant to State Board of Education rule.  
3 The State Board of Education may reject an appeal for failure  
4 to comply with procedural rules governing the appeals process,  
5 and the rejection must describe the submission errors. The  
6 appellant may have up to 15 days after notice of rejection to  
7 resubmit an appeal. An application for appeal submitted after  
8 a rejection is timely if the original appeal was filed within  
9 30 days after the sponsor's denial. The State Board of  
10 Education shall remand the application to the sponsor with a  
11 written recommendation that the sponsor approve or deny the  
12 application, consistent with the state board's decision. The  
13 decision of the State Board of Education shall include written  
14 findings of fact. The decision of the State Board of Education  
15 is not subject to the provisions of chapter 120.

16 Section 24. This act shall take effect July 1, 2007

17  
18 \*\*\*\*\*

19 SENATE SUMMARY

20 Revises and clarifies various provisions of law governing  
21 exemptions from the requirements of ch. 120, F.S., the  
22 Administrative Procedure Act. (See bill for details.)  
23  
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