

1 A bill to be entitled
2 An act relating to administrative procedures; providing a
3 short title; amending s. 120.52, F.S.; defining the term
4 "unadopted rule"; amending s. 120.54, F.S.; providing
5 additional procedures for rule adoption hearings; revising
6 requirements for filing rules; revising provisions with
7 respect to petitions to initiate rulemaking; amending s.
8 120.545, F.S.; revising duties and procedures of the
9 Administrative Procedures Committee and agencies with
10 respect to review of agency rules; deleting procedures for
11 agency election to modify, withdraw, amend, or repeal a
12 proposed rule; providing for a legislative committee to
13 request agency information for examination of an unadopted
14 rule; prescribing responses that may be made by an agency
15 to a committee objection to a rule or statement of
16 estimated regulatory costs; prescribing presumptions
17 resulting from an agency's refusal to respond to committee
18 objections; amending s. 120.55, F.S.; conforming a cross-
19 reference; amending s. 120.56, F.S.; revising procedures
20 for administrative determinations of invalidity of
21 proposed rules; requiring an agency to discontinue
22 reliance on a statement under certain circumstances;
23 allowing continued reliance on a statement under certain
24 circumstances; deleting certain provisions relating to
25 actions before a final hearing is held; amending s.
26 120.57, F.S.; revising procedures applicable to hearings
27 involving disputed issues of material fact; prohibiting
28 enforcement of unadopted agency rules under certain

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29 | circumstances; amending s. 120.595, F.S.; revising
 30 | guidelines for award of attorney's fees and reasonable
 31 | costs in certain challenges to agency actions; providing
 32 | effective dates.

34 | Be It Enacted by the Legislature of the State of Florida:

36 | Section 1. This act may be cited as "The Open Government
 37 | Act."

38 | Section 2. Subsections (18) and (19) of section 120.52,
 39 | Florida Statutes, are renumbered as subsections (19) and (20),
 40 | respectively, and new subsection (18) is added to that section,
 41 | to read:

42 | 120.52 Definitions.--As used in this act:

43 | (18) "Unadopted rule" means an agency statement that meets
 44 | the definition of the term "rule" but has not been adopted
 45 | pursuant to the requirements of s. 120.54.

46 | Section 3. Paragraphs (c) and (e) of subsection (3) and
 47 | subsection (7) of section 120.54, Florida Statutes, are amended
 48 | to read:

49 | 120.54 Rulemaking.--

50 | (3) ADOPTION PROCEDURES.--

51 | (c) Hearings.--

52 | 1. If the intended action concerns any rule other than one
 53 | relating exclusively to procedure or practice, the agency shall,
 54 | on the request of any affected person received within 21 days
 55 | after the date of publication of the notice of intended agency
 56 | action, give affected persons an opportunity to present evidence

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57 and argument on all issues under consideration. The agency may
58 schedule a public hearing on the rule and, if requested by any
59 affected person, shall schedule a public hearing on the rule. If
60 the agency head is a board or other collegial body, other than
61 one comprised of the Governor and Cabinet, the board or other
62 collegial body shall conduct the requested public hearing itself
63 and may not delegate this responsibility without the consent of
64 those persons requesting the public hearing. Any material
65 pertinent to the issues under consideration submitted to the
66 agency within 21 days after the date of publication of the
67 notice or submitted at a public hearing shall be considered by
68 the agency and made a part of the record of the rulemaking
69 proceeding.

70 2. Rulemaking proceedings shall be governed solely by the
71 provisions of this section unless a person timely asserts that
72 the person's substantial interests will be affected in the
73 proceeding and affirmatively demonstrates to the agency that the
74 proceeding does not provide adequate opportunity to protect
75 those interests. If the agency determines that the rulemaking
76 proceeding is not adequate to protect the person's interests, it
77 shall suspend the rulemaking proceeding and convene a separate
78 proceeding under the provisions of ss. 120.569 and 120.57.
79 Similarly situated persons may be requested to join and
80 participate in the separate proceeding. Upon conclusion of the
81 separate proceeding, the rulemaking proceeding shall be resumed.

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

83 1. If the adopting agency is required to publish its rules
84 in the Florida Administrative Code, it shall file with the

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85 Department of State three certified copies of the rule it
86 proposes to adopt, a summary of the rule, a summary of any
87 hearings held on the rule, and a detailed written statement of
88 the facts and circumstances justifying the rule. Agencies not
89 required to publish their rules in the Florida Administrative
90 Code shall file one certified copy of the proposed rule, and the
91 other material required by this subparagraph, in the office of
92 the agency head, and such rules shall be open to the public.

93 2. A rule may not be filed for adoption less than 28 days
94 or more than 90 days after the notice required by paragraph (a),
95 until 21 days after the notice of change required by paragraph
96 (d), until 14 days after the final public hearing, until 21 days
97 after ~~preparation of~~ a statement of estimated regulatory costs
98 required under s. 120.541 has been provided to all persons who
99 submitted a lower cost regulatory alternative and made available
100 to the public, or until the administrative law judge has
101 rendered a decision under s. 120.56(2), whichever applies. When
102 a required notice of change is published prior to the expiration
103 of the time to file the rule for adoption, the period during
104 which a rule must be filed for adoption is extended to 45 days
105 after the date of publication. If notice of a public hearing is
106 published prior to the expiration of the time to file the rule
107 for adoption, the period during which a rule must be filed for
108 adoption is extended to 45 days after adjournment of the final
109 hearing on the rule, 21 days after receipt of all material
110 authorized to be submitted at the hearing, or 21 days after
111 receipt of the transcript, if one is made, whichever is latest.
112 The term "public hearing" includes any public meeting held by

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113 any agency at which the rule is considered. If a petition for an
114 administrative determination under s. 120.56(2) is filed, the
115 period during which a rule must be filed for adoption is
116 extended to 60 days after the administrative law judge files the
117 final order with the clerk or until 60 days after subsequent
118 judicial review is complete.

119 3. At the time a rule is filed, the agency shall certify
120 that the time limitations prescribed by this paragraph have been
121 complied with, that all statutory rulemaking requirements have
122 been met, and that there is no administrative determination
123 pending on the rule.

124 4. At the time a rule is filed, the committee shall
125 certify whether the agency has responded in writing to all
126 material and timely written comments or written inquiries made
127 on behalf of the committee. The department shall reject any rule
128 not filed within the prescribed time limits; that does not
129 satisfy all statutory rulemaking requirements; upon which an
130 agency has not responded in writing to all material and timely
131 written inquiries or written comments; upon which an
132 administrative determination is pending; or which does not
133 include a statement of estimated regulatory costs, if required.

134 5. If a rule has not been adopted within the time limits
135 imposed by this paragraph or has not been adopted in compliance
136 with all statutory rulemaking requirements, the agency proposing
137 the rule shall withdraw the rule and give notice of its action
138 in the next available issue of the Florida Administrative
139 Weekly.

140 6. The proposed rule shall be adopted on being filed with
 141 the Department of State and become effective 20 days after being
 142 filed, on a later date specified in the rule, or on a date
 143 required by statute. Rules not required to be filed with the
 144 Department of State shall become effective when adopted by the
 145 agency head or on a later date specified by rule or statute. If
 146 the committee notifies an agency that an objection to a rule is
 147 being considered, the agency may postpone the adoption of the
 148 rule to accommodate review of the rule by the committee. When an
 149 agency postpones adoption of a rule to accommodate review by the
 150 committee, the 90-day period for filing the rule is tolled until
 151 the committee notifies the agency that it has completed its
 152 review of the rule.

153
 154 For the purposes of this paragraph, the term "administrative
 155 determination" does not include subsequent judicial review.

156 (7) PETITION TO INITIATE RULEMAKING.--

157 ~~(a)~~ Any person regulated by an agency or having
 158 substantial interest in an agency rule may petition an agency to
 159 adopt, amend, or repeal a rule or to provide the minimum public
 160 information required by this chapter. The petition shall specify
 161 the proposed rule and action requested. Not later than 30
 162 calendar days following the date of filing a petition, the
 163 agency shall initiate rulemaking proceedings under this chapter,
 164 otherwise comply with the requested action, or deny the petition
 165 with a written statement of its reasons for the denial.

166 ~~(b) If the petition filed under this subsection is~~
 167 ~~directed to an existing rule which the agency has not adopted by~~

168 ~~the rulemaking procedures or requirements set forth in this~~
169 ~~chapter, the agency shall, not later than 30 days following the~~
170 ~~date of filing a petition, initiate rulemaking, or provide~~
171 ~~notice in the Florida Administrative Weekly that the agency will~~
172 ~~hold a public hearing on the petition within 30 days after~~
173 ~~publication of the notice. The purpose of the public hearing is~~
174 ~~to consider the comments of the public directed to the agency~~
175 ~~rule which has not been adopted by the rulemaking procedures or~~
176 ~~requirements of this chapter, its scope and application, and to~~
177 ~~consider whether the public interest is served adequately by the~~
178 ~~application of the rule on a case-by-case basis, as contrasted~~
179 ~~with its adoption by the rulemaking procedures or requirements~~
180 ~~set forth in this chapter.~~

181 ~~(c) Within 30 days following the public hearing provided~~
182 ~~for by paragraph (b), if the agency does not initiate rulemaking~~
183 ~~or otherwise comply with the requested action, the agency shall~~
184 ~~publish in the Florida Administrative Weekly a statement of its~~
185 ~~reasons for not initiating rulemaking or otherwise complying~~
186 ~~with the requested action, and of any changes it will make in~~
187 ~~the scope or application of the unadopted rule. The agency shall~~
188 ~~file the statement with the committee. The committee shall~~
189 ~~forward a copy of the statement to the substantive committee~~
190 ~~with primary oversight jurisdiction of the agency in each house~~
191 ~~of the Legislature. The committee or the committee with primary~~
192 ~~oversight jurisdiction may hold a hearing directed to the~~
193 ~~statement of the agency. The committee holding the hearing may~~
194 ~~recommend to the Legislature the introduction of legislation~~

195 ~~making the rule a statutory standard or limiting or otherwise~~
 196 ~~modifying the authority of the agency.~~

197 Section 4. Section 120.545, Florida Statutes, is amended
 198 to read:

199 120.545 Committee review of agency rules.--

200 (1) As a legislative check on legislatively created
 201 authority, the committee shall examine each proposed rule,
 202 except for those proposed rules exempted by s. 120.81(1)(e) and
 203 (2), and its accompanying material, and each emergency rule, and
 204 may examine any existing rule, for the purpose of determining
 205 whether:

206 (a) The rule is an invalid exercise of delegated
 207 legislative authority.

208 (b) The statutory authority for the rule has been
 209 repealed.

210 (c) The rule reiterates or paraphrases statutory material.

211 (d) The rule is in proper form.

212 (e) The notice given prior to its adoption was sufficient
 213 to give adequate notice of the purpose and effect of the rule.

214 (f) The rule is consistent with expressed legislative
 215 intent pertaining to the specific provisions of law which the
 216 rule implements.

217 (g) The rule is necessary to accomplish the apparent or
 218 expressed objectives of the specific provision of law which the
 219 rule implements.

220 (h) The rule is a reasonable implementation of the law as
 221 it affects the convenience of the general public or persons
 222 particularly affected by the rule.

223 (i) The rule could be made less complex or more easily
 224 comprehensible to the general public.

225 (j) The rule's statement of estimated regulatory costs
 226 complies with the requirements of s. 120.541 and whether the
 227 rule does not impose regulatory costs on the regulated person,
 228 county, or city which could be reduced by the adoption of less
 229 costly alternatives that substantially accomplish the statutory
 230 objectives.

231 (k) The rule will require additional appropriations.

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

237 (2) The committee may request from an agency such
 238 information as is reasonably necessary for examination of a rule
 239 as required by subsection (1) or for examination of an unadopted
 240 agency statement. The committee shall consult with legislative
 241 standing committees having ~~with~~ jurisdiction over the subject
 242 areas. If the committee objects to ~~an emergency rule or a~~
 243 ~~proposed or existing~~ rule, the committee ~~it~~ shall, within 5 days
 244 after ~~of~~ the objection, certify that fact to the agency whose
 245 rule has been examined and include with the certification a
 246 statement detailing its objections with particularity. The
 247 committee shall notify the Speaker of the House of
 248 Representatives and the President of the Senate of any objection
 249 to an agency rule concurrent with certification of that fact to

250 the agency. Such notice shall include a copy of the rule and the
 251 statement detailing the committee's objections to the rule.

252 (3) Within 30 days after ~~of~~ receipt of the objection, if
 253 the agency is headed by an individual, or within 45 days after
 254 ~~of~~ receipt of the objection, if the agency is headed by a
 255 collegial body, the agency shall:

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

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

260 2. File notice pursuant to s. 120.54(3)(d) of withdrawal
 261 of ~~Withdraw~~ the rule ~~in its entirety~~; or

262 3. Notify the committee in writing that it refuses ~~Refuse~~
 263 to modify or withdraw the rule.

264 (b) If the rule is in effect ~~an existing rule~~:

265 1. File notice pursuant to s. 120.54(3)(a), without prior
 266 notice of rule development, ~~Notify the committee that it has~~
 267 ~~elected~~ to amend the rule to address ~~meet~~ the committee's
 268 objection ~~and initiate the amendment procedure~~;

269 2. File notice pursuant to s. 120.54(3)(a) ~~Notify the~~
 270 ~~committee that it has elected~~ to repeal the rule ~~and initiate~~
 271 ~~the repeal procedure~~; or

272 3. Notify the committee in writing that the agency ~~it~~
 273 refuses to amend or repeal the rule.

274 (c) If the ~~rule is either an existing or a proposed rule~~
 275 ~~and the~~ objection is to the statement of estimated regulatory
 276 costs:

277 1. Prepare a corrected statement of estimated regulatory
 278 costs, give notice of the availability of the corrected
 279 statement in the first available issue of the Florida
 280 Administrative Weekly, and file a copy of the corrected
 281 statement with the committee; or

282 2. Notify the committee that it refuses to prepare a
 283 corrected statement of estimated regulatory costs.

284 (d) If the rule is unadopted:

285 1. File notice pursuant to s. 120.54(3)(a) of intent to
 286 adopt the rule;

287 2. File notice for publication in the Florida
 288 Administrative Weekly that the agency has abandoned all reliance
 289 upon the statement or any substantially similar statement as a
 290 basis for agency action; or

291 3. Notify the committee in writing that the agency refuses
 292 to adopt the rule or to abandon all reliance upon the statement
 293 or any substantially similar statement as a basis for agency
 294 action.

295 ~~(4) If the agency elects to modify a proposed rule to meet~~
 296 ~~the committee's objection, it shall make only such modifications~~
 297 ~~as are necessary to meet the objection and shall resubmit the~~
 298 ~~rule to the committee. The agency shall give notice of its~~
 299 ~~election to modify a proposed rule to meet the committee's~~
 300 ~~objection by publishing a notice of change in the first~~
 301 ~~available issue of the Florida Administrative Weekly, but shall~~
 302 ~~not be required to conduct a public hearing. If the agency~~
 303 ~~elects to amend an existing rule to meet the committee's~~
 304 ~~objection, it shall notify the committee in writing and shall~~

305 ~~initiate the amendment procedure by giving notice in the next~~
306 ~~available issue of the Florida Administrative Weekly. The~~
307 ~~committee shall give priority to rules so modified or amended~~
308 ~~when setting its agenda.~~

309 ~~(5) If the agency elects to withdraw a proposed rule as a~~
310 ~~result of a committee objection, it shall notify the committee,~~
311 ~~in writing, of its election and shall give notice of the~~
312 ~~withdrawal in the next available issue of the Florida~~
313 ~~Administrative Weekly. The rule shall be withdrawn without a~~
314 ~~public hearing, effective upon publication of the notice in the~~
315 ~~Florida Administrative Weekly. If the agency elects to repeal an~~
316 ~~existing rule as a result of a committee objection, it shall~~
317 ~~notify the committee, in writing, of its election and shall~~
318 ~~initiate rulemaking procedures for that purpose by giving notice~~
319 ~~in the next available issue of the Florida Administrative~~
320 ~~Weekly.~~

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

325 ~~(4)-(7)~~ Failure of the agency to respond to a committee
326 objection to a ~~proposed~~ rule that is not yet in effect within
327 the time prescribed in subsection (3) constitutes ~~shall~~
328 ~~constitute~~ withdrawal of the rule in its entirety. In this
329 event, the committee shall notify the Department of State that
330 the agency, by its failure to respond to a committee objection,
331 has elected to withdraw the ~~proposed~~ rule. Upon receipt of the
332 committee's notice, the Department of State shall publish a

333 notice to that effect in the next available issue of the Florida
 334 Administrative Weekly. Upon publication of the notice, the
 335 ~~proposed~~ rule shall be stricken from the files of the Department
 336 of State and the files of the agency.

337 (5)~~(8)~~ Failure of the agency to respond to a committee
 338 objection to a an-existing rule that is in effect within the
 339 time prescribed in subsection (3) constitutes ~~shall constitute~~ a
 340 refusal to amend or repeal the rule.

341 (6) Failure of the agency to respond to a committee
 342 objection to a statement of estimated regulatory costs within
 343 the time prescribed in subsection (3) constitutes a refusal to
 344 prepare a corrected statement of estimated regulatory costs.

345 (7) Failure of the agency to respond to a committee
 346 objection to an unadopted rule within the time prescribed in
 347 subsection (3) constitutes a refusal to adopt the rule and a
 348 refusal to abandon all reliance upon the statement or any
 349 substantially similar statement as a basis for agency action.

350 (8)~~(9)~~ If the committee objects to a ~~proposed or existing~~
 351 rule and the agency refuses to adopt, abandon, modify, amend,
 352 withdraw, or repeal the rule, the committee shall file with the
 353 Department of State a notice of the objection, detailing with
 354 particularity the committee's its objection to the rule. The
 355 Department of State shall publish this notice in the Florida
 356 Administrative Weekly. If the rule is published and shall
 357 publish, as a history note to the rule in the Florida
 358 Administrative Code, a reference to the committee's objection
 359 and to the issue of the Weekly in which the full text thereof
 360 appears shall be recorded in a history note.

361 (9) ~~(10)~~ (a) If the committee objects to a ~~proposed or~~
 362 ~~existing~~ rule, or portion of a rule ~~thereof~~, and the agency
 363 fails to initiate administrative action to adopt, abandon,
 364 modify, amend, withdraw, or repeal the rule consistent with the
 365 objection within 60 days after the objection, or thereafter
 366 fails to proceed in good faith to complete such action, the
 367 committee may submit to the President of the Senate and the
 368 Speaker of the House of Representatives a recommendation that
 369 legislation be introduced to address the committee objection
 370 ~~modify or suspend the adoption of the proposed rule, or amend or~~
 371 ~~repeal the rule, or portion thereof.~~

372 (b)1. If the committee votes to recommend the introduction
 373 of legislation to address the committee objection ~~modify or~~
 374 ~~suspend the adoption of a proposed rule, or amend or repeal a~~
 375 ~~rule~~, the committee shall, within 5 days after this
 376 determination, certify that fact to the agency whose rule or
 377 proposed rule has been examined. The committee may request that
 378 the agency temporarily suspend the rule or suspend the adoption
 379 of the proposed rule, or suspend all reliance upon the statement
 380 or any substantially similar statement as a basis for agency
 381 action, pending consideration of proposed legislation during the
 382 next regular session of the Legislature.

383 2. Within 30 days after receipt of the certification, if
 384 the agency is headed by an individual, or within 45 days after
 385 receipt of the certification, if the agency is headed by a
 386 collegial body, the agency shall ~~either~~:

387 a. Temporarily suspend the rule, ~~or~~ suspend the adoption
 388 of the proposed rule, or suspend all reliance upon the statement

389 or any substantially similar statement as a basis for agency
390 action; or

391 b. Notify the committee in writing that the agency ~~it~~
392 refuses to temporarily suspend the rule, ~~or~~ suspend the adoption
393 of the proposed rule, or suspend all reliance upon the statement
394 or any substantially similar statement as a basis for agency
395 action.

396 3. If the agency elects to temporarily suspend the rule,
397 ~~or~~ suspend the adoption of the proposed rule, or suspend all
398 reliance upon the statement or any substantially similar
399 statement as a basis for agency action, the agency ~~it~~ shall give
400 notice of the suspension in the Florida Administrative Weekly.
401 The rule or the rule adoption process shall be suspended upon
402 publication of the notice. An agency may ~~shall~~ not base any
403 agency action on a suspended rule, ~~or~~ suspended proposed rule,
404 or suspended statement or any substantially similar statement,
405 or portion of such rule or statement thereof, prior to
406 expiration of the suspension. A suspended rule, ~~or~~ suspended
407 proposed rule, or suspended statement or any substantially
408 similar statement, or portion of such rule or statement thereof,
409 continues to be subject to administrative determination and
410 judicial review as provided by law.

411 4. Failure of an agency to respond to committee
412 certification within the time prescribed by subparagraph 2.
413 constitutes a refusal to suspend the rule, ~~or to~~ suspend the
414 adoption of the proposed rule, or suspend all reliance upon the
415 statement or any substantially similar statement as a basis for
416 agency action.

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417 (c) The committee shall prepare proposed legislation bills
418 to address the committee objection ~~modify or suspend the~~
419 ~~adoption of the proposed rule or amend or repeal the rule, or~~
420 ~~portion thereof~~, in accordance with the rules of the Senate and
421 the House of Representatives for prefiling and introduction in
422 the next regular session of the Legislature. The proposed
423 legislation bill shall be presented to the President of the
424 Senate and the Speaker of the House of Representatives with the
425 committee recommendation.

426 (d) If proposed legislation addressing the committee
427 objection ~~a bill to suspend the adoption of a proposed rule is~~
428 ~~enacted into law, the proposed rule is suspended until specific~~
429 ~~delegated legislative authority for the proposed rule has been~~
430 ~~enacted. If a bill to suspend the adoption of a proposed rule~~
431 ~~fails to become law, any temporary agency suspension of the rule~~
432 ~~shall expire. If a bill to modify a proposed rule or amend a~~
433 ~~rule is enacted into law, the suspension shall expire upon~~
434 ~~publication of notice of modification or amendment in the~~
435 ~~Florida Administrative Weekly. If a bill to repeal a rule is~~
436 ~~enacted into law, the suspension shall remain in effect until~~
437 ~~notification of repeal of the rule is published in the Florida~~
438 ~~Administrative Weekly.~~

439 ~~(e) The Department of State shall publish in the next~~
440 ~~available issue of the Florida Administrative Weekly the final~~
441 ~~legislative action taken. If a bill to modify or suspend the~~
442 ~~adoption of the proposed rule or amend or repeal the rule, or~~
443 ~~portion thereof, is enacted into law, the Department of State~~
444 ~~shall conform the rule or portion of the rule to the provisions~~

445 ~~of the law in the Florida Administrative Code and publish a~~
 446 ~~reference to the law as a history note to the rule.~~

447 Section 5. Paragraph (a) of subsection (1) of section
 448 120.55, Florida Statutes, is amended to read:

449 120.55 Publication.--

450 (1) The Department of State shall:

451 (a)1. Through a continuous revision system, compile and
 452 publish the "Florida Administrative Code." The Florida
 453 Administrative Code shall contain all rules adopted by each
 454 agency, citing the specific rulemaking authority pursuant to
 455 which each rule was adopted, all history notes as authorized in
 456 s. 120.545(8)~~(9)~~, and complete indexes to all rules contained in
 457 the code. Supplementation shall be made as often as practicable,
 458 but at least monthly. The department may contract with a
 459 publishing firm for the publication, in a timely and useful
 460 form, of the Florida Administrative Code; however, the
 461 department shall retain responsibility for the code as provided
 462 in this section. This publication shall be the official
 463 compilation of the administrative rules of this state. The
 464 Department of State shall retain the copyright over the Florida
 465 Administrative Code.

466 2. Rules general in form but applicable to only one school
 467 district, community college district, or county, or a part
 468 thereof, or state university rules relating to internal
 469 personnel or business and finance shall not be published in the
 470 Florida Administrative Code. Exclusion from publication in the
 471 Florida Administrative Code shall not affect the validity or
 472 effectiveness of such rules.

473 3. At the beginning of the section of the code dealing
 474 with an agency that files copies of its rules with the
 475 department, the department shall publish the address and
 476 telephone number of the executive offices of each agency, the
 477 manner by which the agency indexes its rules, a listing of all
 478 rules of that agency excluded from publication in the code, and
 479 a statement as to where those rules may be inspected.

480 4. Forms shall not be published in the Florida
 481 Administrative Code; but any form which an agency uses in its
 482 dealings with the public, along with any accompanying
 483 instructions, shall be filed with the committee before it is
 484 used. Any form or instruction which meets the definition of
 485 "rule" provided in s. 120.52 shall be incorporated by reference
 486 into the appropriate rule. The reference shall specifically
 487 state that the form is being incorporated by reference and shall
 488 include the number, title, and effective date of the form and an
 489 explanation of how the form may be obtained.

490 Section 6. Effective December 31, 2007, paragraph (a) of
 491 subsection (1) of section 120.55, Florida Statutes, as amended
 492 by section 4 of chapter 2006-82, Laws of Florida, is amended to
 493 read:

494 120.55 Publication.--

495 (1) The Department of State shall:

496 (a)

497 1. Through a continuous revision system, compile and
 498 publish the "Florida Administrative Code." The Florida
 499 Administrative Code shall contain all rules adopted by each
 500 agency, citing the specific rulemaking authority pursuant to

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501 which each rule was adopted, all history notes as authorized in
502 s. 120.545(8)~~(9)~~, and complete indexes to all rules contained in
503 the code. Supplementation shall be made as often as practicable,
504 but at least monthly. The department may contract with a
505 publishing firm for the publication, in a timely and useful
506 form, of the Florida Administrative Code; however, the
507 department shall retain responsibility for the code as provided
508 in this section. This publication shall be the official
509 compilation of the administrative rules of this state. The
510 Department of State shall retain the copyright over the Florida
511 Administrative Code.

512 2. Rules general in form but applicable to only one school
513 district, community college district, or county, or a part
514 thereof, or state university rules relating to internal
515 personnel or business and finance shall not be published in the
516 Florida Administrative Code. Exclusion from publication in the
517 Florida Administrative Code shall not affect the validity or
518 effectiveness of such rules.

519 3. At the beginning of the section of the code dealing
520 with an agency that files copies of its rules with the
521 department, the department shall publish the address and
522 telephone number of the executive offices of each agency, the
523 manner by which the agency indexes its rules, a listing of all
524 rules of that agency excluded from publication in the code, and
525 a statement as to where those rules may be inspected.

526 4. Forms shall not be published in the Florida
527 Administrative Code; but any form which an agency uses in its
528 dealings with the public, along with any accompanying

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529 instructions, shall be filed with the committee before it is
 530 used. Any form or instruction which meets the definition of
 531 "rule" provided in s. 120.52 shall be incorporated by reference
 532 into the appropriate rule. The reference shall specifically
 533 state that the form is being incorporated by reference and shall
 534 include the number, title, and effective date of the form and an
 535 explanation of how the form may be obtained. Each form created
 536 by an agency which is incorporated by reference in a rule notice
 537 of which is given under s. 120.54(3)(a) after December 31, 2007,
 538 must clearly display the number, title, and effective date of
 539 the form and the number of the rule in which the form is
 540 incorporated.

541 Section 7. Paragraph (a) of subsection (2) of section
 542 120.56, Florida Statutes, and, effective January 1, 2008,
 543 subsection (4) of that section, are amended to read:

544 120.56 Challenges to rules.--

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

546 (a) Any substantially affected person may seek an
 547 administrative determination of the invalidity of any proposed
 548 rule by filing a petition seeking such a determination with the
 549 division within 21 days after the date of publication of the
 550 notice required by s. 120.54(3)(a), within 10 days after the
 551 final public hearing is held on the proposed rule as provided by
 552 s. 120.54(3) (e)2. ~~(e)~~, within 20 days after the ~~preparation of a~~
 553 statement of estimated regulatory costs required pursuant to s.
 554 120.541, if applicable, has been provided to all persons who
 555 submitted a lower cost regulatory alternative and made available
 556 to the public, or within 20 days after the date of publication

557 of the notice required by s. 120.54(3)(d). The petition shall
 558 state with particularity the objections to the proposed rule and
 559 the reasons that the proposed rule is an invalid exercise of
 560 delegated legislative authority. The petitioner has the burden
 561 of going forward. The agency then has the burden to prove by a
 562 preponderance of the evidence that the proposed rule is not an
 563 invalid exercise of delegated legislative authority as to the
 564 objections raised. Any person who is substantially affected by a
 565 change in the proposed rule may seek a determination of the
 566 validity of such change. Any person not substantially affected
 567 by the proposed rule as initially noticed, but who is
 568 substantially affected by the rule as a result of a change, may
 569 challenge any provision of the rule and is not limited to
 570 challenging the change to the proposed rule.

571 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
 572 SPECIAL PROVISIONS.--

573 (a) Any person substantially affected by an agency
 574 statement may seek an administrative determination that the
 575 statement violates s. 120.54(1)(a). The petition shall include
 576 the text of the statement or a description of the statement and
 577 shall state with particularity facts sufficient to show that the
 578 statement constitutes a rule under s. 120.52 and that the agency
 579 has not adopted the statement by the rulemaking procedure
 580 provided by s. 120.54. Upon the filing of a petition for an
 581 administrative determination under this paragraph, the agency
 582 shall immediately discontinue all reliance upon the statement or
 583 any substantially similar statement as a basis for agency action
 584 until:

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

587 2. The statement is adopted and becomes effective as a
 588 rule;

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

592 4. A final order is issued which contains a determination
 593 that rulemaking is not feasible under s. 120.54(1)(a)1.a. or b.
 594 or not practicable under s. 120.54(1)(a)2.

595 (b) If the administrative law judge determines that the
 596 agency's inability to rely upon the statement during the
 597 proceeding under paragraph (a) would constitute an immediate
 598 danger to the public health, safety, or welfare, the
 599 administrative law judge shall grant an agency petition to allow
 600 application of the statement until the proceeding is concluded.

601 (c)~~(b)~~ The administrative law judge may extend the hearing
 602 date beyond 30 days after assignment of the case for good cause.
 603 If a hearing is held and the petitioner proves the allegations
 604 of the petition, the agency shall have the burden of proving
 605 that rulemaking is not feasible or not ~~and~~ practicable under s.
 606 120.54(1)(a).

607 (d)~~(e)~~ The administrative law judge may determine whether
 608 all or part of a statement violates s. 120.54(1)(a). The
 609 decision of the administrative law judge shall constitute a
 610 final order. The division shall transmit a copy of the final
 611 order to the Department of State and the committee. The

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612 Department of State shall publish notice of the final order in
613 the first available issue of the Florida Administrative Weekly.

614 ~~(d) When an administrative law judge enters a final order
615 that all or part of an agency statement violates s.
616 120.54(1)(a), the agency shall immediately discontinue all
617 reliance upon the statement or any substantially similar
618 statement as a basis for agency action.~~

619 ~~(e)1. If, prior to a final hearing to determine whether
620 all or part of any agency statement violates s. 120.54(1)(a), an
621 agency publishes, pursuant to s. 120.54(3)(a), proposed rules
622 that address the statement, then for purposes of this section, a
623 presumption is created that the agency is acting expeditiously
624 and in good faith to adopt rules that address the statement, and
625 the agency shall be permitted to rely upon the statement or a
626 substantially similar statement as a basis for agency action if
627 the statement meets the requirements of s. 120.57(1)(e).~~

628 ~~2. If, prior to the final hearing to determine whether all
629 or part of an agency statement violates s. 120.54(1)(a), an
630 agency publishes a notice of rule development which addresses
631 the statement pursuant to s. 120.54(2), or certifies that such a
632 notice has been transmitted to the Florida Administrative Weekly
633 for publication, then such publication shall constitute good
634 cause for the granting of a stay of the proceedings and a
635 continuance of the final hearing for 30 days. If the agency
636 publishes proposed rules within this 30 day period or any
637 extension of that period granted by an administrative law judge
638 upon showing of good cause, then the administrative law judge
639 shall place the case in abeyance pending the outcome of~~

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640 ~~rulemaking and any proceedings involving challenges to proposed~~
641 ~~rules pursuant to subsection (2).~~

642 ~~3. If, following the commencement of the final hearing and~~
643 ~~prior to entry of a final order that all or part of an agency~~
644 ~~statement violates s. 120.54(1)(a), an agency publishes,~~
645 ~~pursuant to s. 120.54(3)(a), proposed rules that address the~~
646 ~~statement and proceeds expeditiously and in good faith to adopt~~
647 ~~rules that address the statement, the agency shall be permitted~~
648 ~~to rely upon the statement or a substantially similar statement~~
649 ~~as a basis for agency action if the statement meets the~~
650 ~~requirements of s. 120.57(1)(e).~~

651 ~~4. If an agency fails to adopt rules that address the~~
652 ~~statement within 180 days after publishing proposed rules, for~~
653 ~~purposes of this subsection, a presumption is created that the~~
654 ~~agency is not acting expeditiously and in good faith to adopt~~
655 ~~rules. If the agency's proposed rules are challenged pursuant to~~
656 ~~subsection (2), the 180 day period for adoption of rules is~~
657 ~~tolled until a final order is entered in that proceeding.~~

658 ~~5. If the proposed rules addressing the challenged~~
659 ~~statement are determined to be an invalid exercise of delegated~~
660 ~~legislative authority as defined in s. 120.52(8)(b)-(f), the~~
661 ~~agency must immediately discontinue reliance on the statement~~
662 ~~and any substantially similar statement until the rules~~
663 ~~addressing the subject are properly adopted.~~

664 ~~(e)-(f)~~ All proceedings to determine a violation of s.
665 120.54(1)(a) shall be brought pursuant to this subsection. A
666 proceeding pursuant to this subsection may be consolidated with
667 a proceeding under subsection (3) or under any other section of

668 this chapter. Nothing in this paragraph shall be construed to
 669 prevent a party whose substantial interests have been determined
 670 by an agency action from bringing a proceeding pursuant to s.
 671 120.57(1)(e).

672 Section 8. Effective January 1, 2008, paragraph (e) of
 673 subsection (1) of section 120.57, Florida Statutes, is amended
 674 to read:

675 120.57 Additional procedures for particular cases.--

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

678 (e)1. ~~Any~~ Agency action that determines the substantial
 679 interests of a party may not be ~~and that is~~ based on an agency
 680 statement that violates s. 120.54(1)(a). An agency or an
 681 administrative law judge may not enforce any agency policy that
 682 constitutes an unadopted rule when the agency fails to prove
 683 that rulemaking is not feasible or practicable. This
 684 subparagraph does not preclude application of adopted rules and
 685 applicable provisions of law to the facts ~~unadopted rule is~~
 686 ~~subject to de novo review by an administrative law judge.~~

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

689 ~~a. Is within the powers, functions, and duties delegated~~
 690 ~~by the Legislature or, if the agency is operating pursuant to~~
 691 ~~authority derived from the State Constitution, is within that~~
 692 ~~authority;~~

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

695 ~~e. Is not vague, establishes adequate standards for agency~~
 696 ~~decisions, or does not vest unbridled discretion in the agency;~~

697 ~~d. Is not arbitrary or capricious. A rule is arbitrary if~~
 698 ~~it is not supported by logic or the necessary facts; a rule is~~
 699 ~~capricious if it is adopted without thought or reason or is~~
 700 ~~irrational;~~

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

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

705 2.3. The recommended and final orders in any proceeding
 706 shall be governed by the provisions of paragraphs (k) and (l),
 707 except that the administrative law judge's determination
 708 regarding the unadopted rule shall not be rejected by the agency
 709 unless the agency first determines from a review of the complete
 710 record, and states with particularity in the order, that such
 711 determination is clearly erroneous or does not comply with
 712 essential requirements of law. In any proceeding for review
 713 under s. 120.68, if the court finds that the agency's rejection
 714 of the determination regarding the unadopted rule does not
 715 comport with the provisions of this subparagraph, the agency
 716 action shall be set aside and the court shall award to the
 717 prevailing party the reasonable costs and a reasonable
 718 attorney's fee for the initial proceeding and the proceeding for
 719 review.

720 Section 9. Effective January 1, 2008, subsections (2),
 721 (3), and (4) of section 120.595, Florida Statutes, are amended
 722 to read:

723 120.595 Attorney's fees.--

724 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
 725 SECTION 120.56(2).--If the court or administrative law judge
 726 declares a proposed rule or portion of a proposed rule invalid
 727 pursuant to s. 120.56(2), a judgment or order shall be rendered
 728 against the agency for reasonable costs and reasonable
 729 attorney's fees, unless the agency demonstrates that its actions
 730 were substantially justified or special circumstances exist
 731 which would make the award unjust. An agency's actions are
 732 "substantially justified" if there was a reasonable basis in law
 733 and fact at the time the actions were taken by the agency. If
 734 the agency prevails in the proceedings, the court or
 735 administrative law judge shall award reasonable costs and
 736 reasonable attorney's fees against a party if the court or
 737 administrative law judge determines that a party participated in
 738 the proceedings for an improper purpose as defined by paragraph
 739 (1) (e). No award of attorney's fees as provided by this
 740 subsection shall exceed \$50,000 ~~\$15,000~~.

741 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
 742 SECTION 120.56(3) AND (5).--If the court or administrative law
 743 judge declares a rule or portion of a rule invalid pursuant to
 744 s. 120.56(3) or (5), a judgment or order shall be rendered
 745 against the agency for reasonable costs and reasonable
 746 attorney's fees, unless the agency demonstrates that its actions
 747 were substantially justified or special circumstances exist
 748 which would make the award unjust. An agency's actions are
 749 "substantially justified" if there was a reasonable basis in law
 750 and fact at the time the actions were taken by the agency. If

751 the agency prevails in the proceedings, the court or
 752 administrative law judge shall award reasonable costs and
 753 reasonable attorney's fees against a party if the court or
 754 administrative law judge determines that a party participated in
 755 the proceedings for an improper purpose as defined by paragraph
 756 (1) (e). No award of attorney's fees as provided by this
 757 subsection shall exceed \$50,000 ~~\$15,000~~.

758 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 759 120.56(4).--

760 (a) Upon entry of a final order that all or part of an
 761 agency statement violates s. 120.54(1) (a), the administrative
 762 law judge shall award reasonable costs and reasonable attorney's
 763 fees to the petitioner, unless the agency demonstrates that the
 764 statement is required by the Federal Government to implement or
 765 retain a delegated or approved program or to meet a condition to
 766 receipt of federal funds.

767 (b) If the agency initiates rulemaking under s. 120.54
 768 during a rule challenge under s. 120.56(4) and the statement is
 769 adopted and becomes effective as a rule, the administrative law
 770 judge shall award reasonable costs and attorney's fees accrued
 771 to the date the agency initiated rulemaking, upon a finding that
 772 the agency knew or should have known that the agency statement
 773 was an unadopted rule. The administrative law judge may
 774 consider, among other factors, whether or not the petitioner or
 775 other person had requested or formally petitioned the agency to
 776 adopt the statement as a rule prior to the filing of the
 777 challenge under s. 120.56(4).

778 (c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an

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779 | award shall be paid from the budget entity of the secretary,
780 | executive director, or equivalent administrative officer of the
781 | agency, and the agency shall not be entitled to payment of an
782 | award or reimbursement for payment of an award under any
783 | provision of law.

784 | (d) If the agency prevails in the proceedings, the court
785 | or administrative law judge shall award reasonable costs and
786 | attorney's fees against a party if the court or administrative
787 | law judge determines that the party participated in the
788 | proceedings for an improper purpose as defined in paragraph
789 | (1) (e).

790 | Section 10. Except as otherwise expressly provided in this
791 | act, this act shall take effect July 1, 2007.