

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative(s) Homan offered the following:

2

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. This act may be cited as "The Open Government
6 Act."

7 Section 2. Subsection (8) of section 120.52, Florida
8 Statutes, is amended, present subsections (9) through (15) of
9 that section are renumbered as subsections (10) through (16),
10 respectively, present subsections (16), (17), (18), and (19) of
11 that section are renumbered as subsections (18), (19), (21), and
12 (22), respectively, and new subsections (9), (17), and (20) are
13 added to that section, to read:

14 120.52 Definitions.--As used in this act:

15 (8) "Invalid exercise of delegated legislative authority"

16 means action that ~~which~~ goes beyond the powers, functions, and
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17 | duties delegated by the Legislature. A proposed or existing rule
18 | is an invalid exercise of delegated legislative authority if any
19 | one of the following applies:

20 | (a) The agency has materially failed to follow the
21 | applicable rulemaking procedures or requirements set forth in
22 | this chapter;

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

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

28 | (d) The rule is vague, fails to establish adequate
29 | standards for agency decisions, or vests unbridled discretion in
30 | the agency;

31 | (e) The rule is arbitrary or capricious. A rule is
32 | arbitrary if it is not supported by logic or the necessary
33 | facts; a rule is capricious if it is adopted without thought or
34 | reason or is irrational; or

35 | (f) The rule imposes regulatory costs on the regulated
36 | person, county, or city which could be reduced by the adoption
37 | of less costly alternatives that substantially accomplish the
38 | statutory objectives.

39 |
40 | A grant of rulemaking authority is necessary but not sufficient
41 | to allow an agency to adopt a rule; a specific law to be
42 | implemented is also required. An agency may adopt only rules
43 | that implement or interpret the specific powers and duties
44 | granted by the enabling statute. No agency shall have authority
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45 to adopt a rule only because it is reasonably related to the
46 purpose of the enabling legislation and is not arbitrary and
47 capricious or is within the agency's class of powers and duties,
48 nor shall an agency have the authority to implement statutory
49 provisions setting forth general legislative intent or policy.
50 Statutory language granting rulemaking authority or generally
51 describing the powers and functions of an agency shall be
52 construed to extend no further than implementing or interpreting
53 the specific powers and duties conferred ~~by the same statute.~~

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

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

60 (20) "Unadopted rule" means an agency statement that meets
61 the definition of the term "rule" but has not been adopted
62 pursuant to the requirements of s. 120.54.

63 Section 3. Subsection (1) of section 120.536, Florida
64 Statutes, is amended to read:

65 120.536 Rulemaking authority; repeal; challenge.--

66 (1) A grant of rulemaking authority is necessary but not
67 sufficient to allow an agency to adopt a rule; a specific law to
68 be implemented is also required. An agency may adopt only rules
69 that implement or interpret the specific powers and duties
70 granted by the enabling statute. No agency shall have authority
71 to adopt a rule only because it is reasonably related to the
72 purpose of the enabling legislation and is not arbitrary and
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73 capricious or is within the agency's class of powers and duties,
74 nor shall an agency have the authority to implement statutory
75 provisions setting forth general legislative intent or policy.
76 Statutory language granting rulemaking authority or generally
77 describing the powers and functions of an agency shall be
78 construed to extend no further than implementing or interpreting
79 the specific powers and duties conferred ~~by the same statute.~~

80 Section 4. Paragraph (i) of subsection (1), paragraphs (a),
81 (c), and (e) of subsection (3), paragraph (a) of subsection (4),
82 and subsection (7) of section 120.54, Florida Statutes, are
83 amended, and paragraph (k) is added to subsection (1) of that
84 section, to read:

85 120.54 Rulemaking.--

86 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
87 EMERGENCY RULES.--

88 (i)1. A rule may incorporate material by reference but
89 only as the material exists on the date the rule is adopted. For
90 purposes of the rule, changes in the material are not effective
91 unless the rule is amended to incorporate the changes. Material
92 incorporated by reference in a rule may not incorporate
93 additional material by reference unless the rule specifically
94 identifies the additional material.

95 2. An agency rule that incorporates by specific reference
96 another rule of that agency automatically incorporates
97 subsequent amendments to the referenced rule, unless a contrary
98 intent is clearly indicated in the referencing rule. Any notice
99 of amendments to a rule that has been incorporated by specific

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100 reference in other rules of that agency must explain the effect
101 of the amendments on the referencing rules.

102 3. In rules adopted after December 31, 2009, material may
103 not be incorporated by reference unless:

104 a. The material has been submitted in the prescribed
105 electronic format to the Department of State and the full text
106 of the material can be made available for free public access
107 through an electronic hyperlink from the rule in the Florida
108 Administrative Code making the reference; or

109 b. The agency has determined that posting of the material
110 on the Internet for purposes of public examination and
111 inspection would constitute a violation of federal copyright
112 law, in which case a statement to that effect, along with the
113 address of locations at the Department of State and the agency
114 at which the material is available for public inspection and
115 examination, is included in the notice required by subparagraph
116 (3) (a) 1.

117 4. A rule may not be amended by reference only. Amendments
118 must set out the amended rule in full in the same manner as
119 required by the State Constitution for laws. ~~The Department of~~
120 ~~State may prescribe by rule requirements for incorporating~~
121 ~~materials by reference pursuant to this paragraph.~~

122 5.2. Notwithstanding any contrary provision in this
123 section, when an adopted rule of the Department of Environmental
124 Protection or a water management district is incorporated by
125 reference in the other agency's rule to implement a provision of
126 part IV of chapter 373, subsequent amendments to the rule are
127 not effective as to the incorporating rule unless the agency
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128 incorporating by reference notifies the committee and the
129 Department of State of its intent to adopt the subsequent
130 amendment, publishes notice of such intent in the Florida
131 Administrative Weekly, and files with the Department of State a
132 copy of the amended rule incorporated by reference. Changes in
133 the rule incorporated by reference are effective as to the other
134 agency 20 days after the date of the published notice and filing
135 with the Department of State. The Department of State shall
136 amend the history note of the incorporating rule to show the
137 effective date of such change. Any substantially affected person
138 may, within 14 days after the date of publication of the notice
139 of intent in the Florida Administrative Weekly, file an
140 objection to rulemaking with the agency. The objection shall
141 specify the portions of the rule incorporated by reference to
142 which the person objects and the reasons for the objection. The
143 agency shall not have the authority under this subparagraph to
144 adopt those portions of the rule specified in such objection.
145 The agency shall publish notice of the objection and of its
146 action in response in the next available issue of the Florida
147 Administrative Weekly.

148 6. The Department of State may prescribe by rule
149 requirements for incorporating materials pursuant to this
150 paragraph.

151 (k) Rulemaking responsibilities of an agency head under
152 subparagraph (3)(a)1., subparagraph (3)(e)1., or subparagraph
153 (3)(e)6. may not be delegated or transferred.

154 (3) ADOPTION PROCEDURES.--

155 (a) Notices.--

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156 1. Prior to the adoption, amendment, or repeal of any rule
157 other than an emergency rule, an agency, upon approval of the
158 agency head, shall give notice of its intended action, setting
159 forth a short, plain explanation of the purpose and effect of
160 the proposed action; the full text of the proposed rule or
161 amendment and a summary thereof; a reference to the grant of
162 ~~specific~~ rulemaking authority pursuant to which the rule is
163 adopted; and a reference to the section or subsection of the
164 Florida Statutes or the Laws of Florida being implemented or,
165 ~~interpreted, or made specific~~. The notice shall include a
166 summary of the agency's statement of the estimated regulatory
167 costs, if one has been prepared, based on the factors set forth
168 in s. 120.541(2), and a statement that any person who wishes to
169 provide the agency with information regarding the statement of
170 estimated regulatory costs, or to provide a proposal for a lower
171 cost regulatory alternative as provided by s. 120.541(1), must
172 do so in writing within 21 days after publication of the notice.
173 The notice must state the procedure for requesting a public
174 hearing on the proposed rule. Except when the intended action is
175 the repeal of a rule, the notice shall include a reference both
176 to the date on which and to the place where the notice of rule
177 development that is required by subsection (2) appeared.

178 2. The notice shall be published in the Florida
179 Administrative Weekly not less than 28 days prior to the
180 intended action. The proposed rule shall be available for
181 inspection and copying by the public at the time of the
182 publication of notice.

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183 3. The notice shall be mailed to all persons named in the
184 proposed rule and to all persons who, at least 14 days prior to
185 such mailing, have made requests of the agency for advance
186 notice of its proceedings. The agency shall also give such
187 notice as is prescribed by rule to those particular classes of
188 persons to whom the intended action is directed.

189 4. The adopting agency shall file with the committee, at
190 least 21 days prior to the proposed adoption date, a copy of
191 each rule it proposes to adopt; a copy of any material
192 incorporated by reference in the rule; a detailed written
193 statement of the facts and circumstances justifying the proposed
194 rule; a copy of any statement of estimated regulatory costs that
195 has been prepared pursuant to s. 120.541; a statement of the
196 extent to which the proposed rule relates to federal standards
197 or rules on the same subject; and the notice required by
198 subparagraph 1.

199 (c) Hearings.--

200 1. If the intended action concerns any rule other than one
201 relating exclusively to procedure or practice, the agency shall,
202 on the request of any affected person received within 21 days
203 after the date of publication of the notice of intended agency
204 action, give affected persons an opportunity to present evidence
205 and argument on all issues under consideration. The agency may
206 schedule a public hearing on the rule and, if requested by any
207 affected person, shall schedule a public hearing on the rule. If
208 the agency head is a board or other collegial body created under
209 s. 20.165(4) or s. 20.43(3) (g), the board or other collegial
210 body shall conduct the requested public hearing itself and may

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211 not delegate this responsibility without the consent of those
212 persons requesting the public hearing. Any material pertinent to
213 the issues under consideration submitted to the agency within 21
214 days after the date of publication of the notice or submitted at
215 a public hearing shall be considered by the agency and made a
216 part of the record of the rulemaking proceeding.

217 2. Rulemaking proceedings shall be governed solely by the
218 provisions of this section unless a person timely asserts that
219 the person's substantial interests will be affected in the
220 proceeding and affirmatively demonstrates to the agency that the
221 proceeding does not provide adequate opportunity to protect
222 those interests. If the agency determines that the rulemaking
223 proceeding is not adequate to protect the person's interests, it
224 shall suspend the rulemaking proceeding and convene a separate
225 proceeding under the provisions of ss. 120.569 and 120.57.

226 Similarly situated persons may be requested to join and
227 participate in the separate proceeding. Upon conclusion of the
228 separate proceeding, the rulemaking proceeding shall be resumed.

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

230 1. If the adopting agency is required to publish its rules
231 in the Florida Administrative Code, the agency, upon approval of
232 the agency head, it shall file with the Department of State
233 three certified copies of the rule it proposes to adopt; one
234 copy of any material incorporated by reference in the rule,
235 certified by the agency; a summary of the rule; a summary of
236 any hearings held on the rule; and a detailed written statement
237 of the facts and circumstances justifying the rule. Agencies not
238 required to publish their rules in the Florida Administrative

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239 Code shall file one certified copy of the proposed rule, and the
240 other material required by this subparagraph, in the office of
241 the agency head, and such rules shall be open to the public.

242 2. A rule may not be filed for adoption less than 28 days
243 or more than 90 days after the notice required by paragraph (a),
244 until 21 days after the notice of change required by paragraph
245 (d), until 14 days after the final public hearing, until 21 days
246 after ~~preparation of~~ a statement of estimated regulatory costs
247 required under s. 120.541 has been provided to all persons who
248 submitted a lower cost regulatory alternative and made available
249 to the public, or until the administrative law judge has
250 rendered a decision under s. 120.56(2), whichever applies. When
251 a required notice of change is published prior to the expiration
252 of the time to file the rule for adoption, the period during
253 which a rule must be filed for adoption is extended to 45 days
254 after the date of publication. If notice of a public hearing is
255 published prior to the expiration of the time to file the rule
256 for adoption, the period during which a rule must be filed for
257 adoption is extended to 45 days after adjournment of the final
258 hearing on the rule, 21 days after receipt of all material
259 authorized to be submitted at the hearing, or 21 days after
260 receipt of the transcript, if one is made, whichever is latest.
261 The term "public hearing" includes any public meeting held by
262 any agency at which the rule is considered. If a petition for an
263 administrative determination under s. 120.56(2) is filed, the
264 period during which a rule must be filed for adoption is
265 extended to 60 days after the administrative law judge files the

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266 final order with the clerk or until 60 days after subsequent
267 judicial review is complete.

268 3. At the time a rule is filed, the agency shall certify
269 that the time limitations prescribed by this paragraph have been
270 complied with, that all statutory rulemaking requirements have
271 been met, and that there is no administrative determination
272 pending on the rule.

273 4. At the time a rule is filed, the committee shall
274 certify whether the agency has responded in writing to all
275 material and timely written comments or written inquiries made
276 on behalf of the committee. The department shall reject any rule
277 not filed within the prescribed time limits; that does not
278 comply with ~~satisfy~~ all statutory rulemaking requirements and
279 rules of the department; upon which an agency has not responded
280 in writing to all material and timely written inquiries or
281 written comments; upon which an administrative determination is
282 pending; or which does not include a statement of estimated
283 regulatory costs, if required.

284 5. If a rule has not been adopted within the time limits
285 imposed by this paragraph or has not been adopted in compliance
286 with all statutory rulemaking requirements, the agency proposing
287 the rule shall withdraw the rule and give notice of its action
288 in the next available issue of the Florida Administrative
289 Weekly.

290 6. The proposed rule shall be adopted on being filed with
291 the Department of State and become effective 20 days after being
292 filed, on a later date specified in the rule, or on a date
293 required by statute. Rules not required to be filed with the
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294 Department of State shall become effective when adopted by the
295 agency head or on a later date specified by rule or statute. If
296 the committee notifies an agency that an objection to a rule is
297 being considered, the agency may postpone the adoption of the
298 rule to accommodate review of the rule by the committee. When an
299 agency postpones adoption of a rule to accommodate review by the
300 committee, the 90-day period for filing the rule is tolled until
301 the committee notifies the agency that it has completed its
302 review of the rule.

303

304 For the purposes of this paragraph, the term "administrative
305 determination" does not include subsequent judicial review.

306 (4) EMERGENCY RULES.--

307 (a) If an agency finds that an immediate danger to the
308 public health, safety, or welfare requires emergency action, the
309 agency may adopt any rule necessitated by the immediate danger.
310 The agency may adopt a rule by any procedure which is fair under
311 the circumstances if:

312 1. The procedure provides at least the procedural
313 protection given by other statutes, the State Constitution, or
314 the United States Constitution.

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

317 3. The agency publishes in writing at the time of, or
318 prior to, its action the specific facts and reasons for finding
319 an immediate danger to the public health, safety, or welfare and
320 its reasons for concluding that the procedure used is fair under
321 the circumstances. In any event, notice of emergency rules,

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322 other than those of educational units or units of government
323 with jurisdiction in only one or a part of one county, including
324 the full text of the rules, shall be published in the first
325 available issue of the Florida Administrative Weekly and
326 provided to the committee along with any material incorporated
327 by reference in the rules. The agency's findings of immediate
328 danger, necessity, and procedural fairness shall be judicially
329 reviewable.

330 (7) PETITION TO INITIATE RULEMAKING.--

331 ~~(a)~~ Any person regulated by an agency or having
332 substantial interest in an agency rule may petition an agency to
333 adopt, amend, or repeal a rule or to provide the minimum public
334 information required by this chapter. The petition shall specify
335 the proposed rule and action requested. Not later than 30
336 calendar days following the date of filing a petition, the
337 agency shall initiate rulemaking proceedings under this chapter,
338 otherwise comply with the requested action, or deny the petition
339 with a written statement of its reasons for the denial.

340 ~~(b) If the petition filed under this subsection is~~
341 ~~directed to an existing rule which the agency has not adopted by~~
342 ~~the rulemaking procedures or requirements set forth in this~~
343 ~~chapter, the agency shall, not later than 30 days following the~~
344 ~~date of filing a petition, initiate rulemaking, or provide~~
345 ~~notice in the Florida Administrative Weekly that the agency will~~
346 ~~hold a public hearing on the petition within 30 days after~~
347 ~~publication of the notice. The purpose of the public hearing is~~
348 ~~to consider the comments of the public directed to the agency~~
349 ~~rule which has not been adopted by the rulemaking procedures or~~
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350 ~~requirements of this chapter, its scope and application, and to~~
351 ~~consider whether the public interest is served adequately by the~~
352 ~~application of the rule on a case by case basis, as contrasted~~
353 ~~with its adoption by the rulemaking procedures or requirements~~
354 ~~set forth in this chapter.~~

355 ~~(c) Within 30 days following the public hearing provided~~
356 ~~for by paragraph (b), if the agency does not initiate rulemaking~~
357 ~~or otherwise comply with the requested action, the agency shall~~
358 ~~publish in the Florida Administrative Weekly a statement of its~~
359 ~~reasons for not initiating rulemaking or otherwise complying~~
360 ~~with the requested action, and of any changes it will make in~~
361 ~~the scope or application of the unadopted rule. The agency shall~~
362 ~~file the statement with the committee. The committee shall~~
363 ~~forward a copy of the statement to the substantive committee~~
364 ~~with primary oversight jurisdiction of the agency in each house~~
365 ~~of the Legislature. The committee or the committee with primary~~
366 ~~oversight jurisdiction may hold a hearing directed to the~~
367 ~~statement of the agency. The committee holding the hearing may~~
368 ~~recommend to the Legislature the introduction of legislation~~
369 ~~making the rule a statutory standard or limiting or otherwise~~
370 ~~modifying the authority of the agency.~~

371 Section 5. Section 120.545, Florida Statutes, is amended
372 to read:

373 120.545 Committee review of agency rules.--

374 (1) As a legislative check on legislatively created
375 authority, the committee shall examine each proposed rule,
376 except for those proposed rules exempted by s. 120.81(1)(e) and
377 (2), and its accompanying material, and each emergency rule, and
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378 may examine any existing rule, for the purpose of determining
379 whether:

380 (a) The rule is an invalid exercise of delegated
381 legislative authority.

382 (b) The statutory authority for the rule has been
383 repealed.

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

385 (d) The rule is in proper form.

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

388 (f) The rule is consistent with expressed legislative
389 intent pertaining to the specific provisions of law which the
390 rule implements.

391 (g) The rule is necessary to accomplish the apparent or
392 expressed objectives of the specific provision of law which the
393 rule implements.

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

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

399 (j) The rule's statement of estimated regulatory costs
400 complies with the requirements of s. 120.541 and whether the
401 rule does not impose regulatory costs on the regulated person,
402 county, or city which could be reduced by the adoption of less
403 costly alternatives that substantially accomplish the statutory
404 objectives.

405 (k) The rule will require additional appropriations.

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406 (1) If the rule is an emergency rule, there exists an
407 emergency justifying the adoption ~~promulgation~~ of such rule, the
408 agency is within ~~has exceeded the scope of~~ its statutory
409 authority, and the rule was adopted ~~promulgated~~ in compliance
410 with the requirements and limitations of s. 120.54(4).

411 (2) The committee may request from an agency such
412 information as is reasonably necessary for examination of a rule
413 as required by subsection (1) or for examination of an unadopted
414 agency statement. The committee shall consult with legislative
415 standing committees having ~~with~~ jurisdiction over the subject
416 areas. If the committee objects to ~~an emergency rule or a~~
417 ~~proposed or existing~~ rule, the committee ~~it~~ shall, within 5 days
418 after ~~of~~ the objection, certify that fact to the agency whose
419 rule has been examined and include with the certification a
420 statement detailing its objections with particularity. The
421 committee shall notify the Speaker of the House of
422 Representatives and the President of the Senate of any objection
423 to an agency rule concurrent with certification of that fact to
424 the agency. Such notice shall include a copy of the rule and the
425 statement detailing the committee's objections to the rule.

426 (3) Within 30 days after ~~of~~ receipt of the objection, if
427 the agency is headed by an individual, or within 45 days after
428 ~~of~~ receipt of the objection, if the agency is headed by a
429 collegial body, the agency shall:

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

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

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

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

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

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

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

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

448 (c) If the ~~rule is either an existing or a proposed rule~~
449 ~~and the~~ objection is to the statement of estimated regulatory
450 costs:

451 1. Prepare a corrected statement of estimated regulatory
452 costs, give notice of the availability of the corrected
453 statement in the first available issue of the Florida
454 Administrative Weekly, and file a copy of the corrected
455 statement with the committee; or

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

458 (d) If the rule is unadopted:

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

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461 2. File notice for publication in the Florida
462 Administrative Weekly that the agency has abandoned all reliance
463 upon the statement or any substantially similar statement as a
464 basis for agency action; or

465 3. Notify the committee in writing that the agency refuses
466 to adopt the rule or to abandon all reliance upon the statement
467 or any substantially similar statement as a basis for agency
468 action.

469 ~~(4) If the agency elects to modify a proposed rule to meet~~
470 ~~the committee's objection, it shall make only such modifications~~
471 ~~as are necessary to meet the objection and shall resubmit the~~
472 ~~rule to the committee. The agency shall give notice of its~~
473 ~~election to modify a proposed rule to meet the committee's~~
474 ~~objection by publishing a notice of change in the first~~
475 ~~available issue of the Florida Administrative Weekly, but shall~~
476 ~~not be required to conduct a public hearing. If the agency~~
477 ~~elects to amend an existing rule to meet the committee's~~
478 ~~objection, it shall notify the committee in writing and shall~~
479 ~~initiate the amendment procedure by giving notice in the next~~
480 ~~available issue of the Florida Administrative Weekly. The~~
481 ~~committee shall give priority to rules so modified or amended~~
482 ~~when setting its agenda.~~

483 ~~(5) If the agency elects to withdraw a proposed rule as a~~
484 ~~result of a committee objection, it shall notify the committee,~~
485 ~~in writing, of its election and shall give notice of the~~
486 ~~withdrawal in the next available issue of the Florida~~
487 ~~Administrative Weekly. The rule shall be withdrawn without a~~
488 ~~public hearing, effective upon publication of the notice in the~~

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489 ~~Florida Administrative Weekly. If the agency elects to repeal an~~
490 ~~existing rule as a result of a committee objection, it shall~~
491 ~~notify the committee, in writing, of its election and shall~~
492 ~~initiate rulemaking procedures for that purpose by giving notice~~
493 ~~in the next available issue of the Florida Administrative~~
494 ~~Weekly.~~

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

499 ~~(4)-(7)~~ Failure of the agency to respond to a committee
500 objection to a ~~proposed~~ rule that is not yet in effect within
501 the time prescribed in subsection (3) constitutes ~~shall~~
502 ~~constitute~~ withdrawal of the rule in its entirety. In this
503 event, the committee shall notify the Department of State that
504 the agency, by its failure to respond to a committee objection,
505 has elected to withdraw the ~~proposed~~ rule. Upon receipt of the
506 committee's notice, the Department of State shall publish a
507 notice to that effect in the next available issue of the Florida
508 Administrative Weekly. Upon publication of the notice, the
509 ~~proposed~~ rule shall be stricken from the files of the Department
510 of State and the files of the agency.

511 ~~(5)-(8)~~ Failure of the agency to respond to a committee
512 objection to a ~~an-existing~~ rule that is in effect within the
513 time prescribed in subsection (3) constitutes ~~shall constitute~~ a
514 refusal to amend or repeal the rule.

515 (6) Failure of the agency to respond to a committee
516 objection to a statement of estimated regulatory costs within

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517 the time prescribed in subsection (3) constitutes a refusal to
518 prepare a corrected statement of estimated regulatory costs.

519 (7) Failure of the agency to respond to a committee
520 objection to an unadopted rule within the time prescribed in
521 subsection (3) constitutes a refusal to adopt the rule and a
522 refusal to abandon all reliance upon the statement or any
523 substantially similar statement as a basis for agency action.

524 (8)~~(9)~~ If the committee objects to a ~~proposed or existing~~
525 rule and the agency refuses to adopt, abandon, modify, amend,
526 withdraw, or repeal the rule, the committee shall file with the
527 Department of State a notice of the objection, detailing with
528 particularity the committee's ~~its~~ objection to the rule. The
529 Department of State shall publish this notice in the Florida
530 Administrative Weekly. If the rule is published and shall
531 ~~publish, as a history note to the rule~~ in the Florida
532 Administrative Code, a reference to the committee's objection
533 and to the issue of the Weekly in which the full text thereof
534 appears shall be recorded in a history note.

535 (9)~~(10)~~(a) If the committee objects to a ~~proposed or~~
536 ~~existing~~ rule, or portion of a rule thereof, and the agency
537 fails to initiate administrative action to adopt, abandon,
538 modify, amend, withdraw, or repeal the rule consistent with the
539 objection within 60 days after the objection, or thereafter
540 fails to proceed in good faith to complete such action, the
541 committee may submit to the President of the Senate and the
542 Speaker of the House of Representatives a recommendation that
543 legislation be introduced to address the committee objection

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544 ~~modify or suspend the adoption of the proposed rule, or amend or~~
545 ~~repeal the rule, or portion thereof.~~

546 (b)1. If the committee votes to recommend the introduction
547 of legislation to address the committee objection ~~modify or~~
548 ~~suspend the adoption of a proposed rule, or amend or repeal a~~
549 ~~rule,~~ the committee shall, within 5 days after this
550 determination, certify that fact to the agency whose rule or
551 proposed rule has been examined. The committee may request that
552 the agency temporarily suspend the rule or suspend the adoption
553 of the proposed rule, or suspend all reliance upon the statement
554 or any substantially similar statement as a basis for agency
555 action, pending consideration of proposed legislation during the
556 next regular session of the Legislature.

557 2. Within 30 days after receipt of the certification, if
558 the agency is headed by an individual, or within 45 days after
559 receipt of the certification, if the agency is headed by a
560 collegial body, the agency shall ~~either~~:

561 a. Temporarily suspend the rule, ~~or~~ suspend the adoption
562 of the proposed rule, or suspend all reliance upon the statement
563 or any substantially similar statement as a basis for agency
564 action; or

565 b. Notify the committee in writing that the agency ~~it~~
566 ~~refuses to temporarily suspend the rule, or~~ suspend the adoption
567 of the proposed rule, or suspend all reliance upon the statement
568 or any substantially similar statement as a basis for agency
569 action.

570 3. If the agency elects to temporarily suspend the rule,
571 ~~or~~ suspend the adoption of the proposed rule, or suspend all
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572 reliance upon the statement or any substantially similar
573 statement as a basis for agency action, the agency ~~it~~ shall give
574 notice of the suspension in the Florida Administrative Weekly.
575 The rule or the rule adoption process shall be suspended upon
576 publication of the notice. An agency may ~~shall~~ not base any
577 agency action on a suspended rule, ~~or~~ suspended proposed rule,
578 or suspended statement or any substantially similar statement,
579 or portion of such rule or statement thereof, prior to
580 expiration of the suspension. A suspended rule, ~~or~~ suspended
581 proposed rule, or suspended statement or any substantially
582 similar statement, or portion of such rule or statement thereof,
583 continues to be subject to administrative determination and
584 judicial review as provided by law.

585 4. Failure of an agency to respond to committee
586 certification within the time prescribed by subparagraph 2.
587 constitutes a refusal to suspend the rule, ~~or to suspend the~~
588 adoption of the proposed rule, or suspend all reliance upon the
589 statement or any substantially similar statement as a basis for
590 agency action.

591 (c) The committee shall prepare proposed legislation bills
592 to address the committee objection ~~modify or suspend the~~
593 ~~adoption of the proposed rule or amend or repeal the rule, or~~
594 ~~portion thereof,~~ in accordance with the rules of the Senate and
595 the House of Representatives for prefiling and introduction in
596 the next regular session of the Legislature. The proposed
597 legislation bill shall be presented to the President of the
598 Senate and the Speaker of the House of Representatives with the
599 committee recommendation.

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600 (d) If proposed legislation addressing the committee
601 objection a bill to suspend the adoption of a proposed rule is
602 enacted into law, the proposed rule is suspended until specific
603 delegated legislative authority for the proposed rule has been
604 enacted. If a bill to suspend the adoption of a proposed rule
605 fails to become law, any temporary agency suspension of the rule
606 shall expire. If a bill to modify a proposed rule or amend a
607 rule is enacted into law, the suspension shall expire upon
608 publication of notice of modification or amendment in the
609 Florida Administrative Weekly. If a bill to repeal a rule is
610 enacted into law, the suspension shall remain in effect until
611 notification of repeal of the rule is published in the Florida
612 Administrative Weekly.

613 ~~(e) The Department of State shall publish in the next~~
614 ~~available issue of the Florida Administrative Weekly the final~~
615 ~~legislative action taken. If a bill to modify or suspend the~~
616 ~~adoption of the proposed rule or amend or repeal the rule, or~~
617 ~~portion thereof, is enacted into law, the Department of State~~
618 ~~shall conform the rule or portion of the rule to the provisions~~
619 ~~of the law in the Florida Administrative Code and publish a~~
620 ~~reference to the law as a history note to the rule.~~

621 Section 6. Paragraphs (a) and (c) of subsection (1) and
622 subsection (3) of section 120.55, Florida Statutes, are amended
623 to read:

624 120.55 Publication.--

625 (1) The Department of State shall:

626 (a)1. Through a continuous revision system, compile and
627 publish the "Florida Administrative Code." The Florida

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628 Administrative Code shall contain all rules adopted by each
629 agency, citing the specific rulemaking authority pursuant to
630 which each rule was adopted, all history notes as authorized in
631 s. 120.545(8)~~(9)~~, and complete indexes to all rules contained in
632 the code. Supplementation shall be made as often as practicable,
633 but at least monthly. The department may contract with a
634 publishing firm for the publication, in a timely and useful
635 form, of the Florida Administrative Code; however, the
636 department shall retain responsibility for the code as provided
637 in this section. This publication shall be the official
638 compilation of the administrative rules of this state. The
639 Department of State shall retain the copyright over the Florida
640 Administrative Code.

641 2. Rules general in form but applicable to only one school
642 district, community college district, or county, or a part
643 thereof, or state university rules relating to internal
644 personnel or business and finance shall not be published in the
645 Florida Administrative Code. Exclusion from publication in the
646 Florida Administrative Code shall not affect the validity or
647 effectiveness of such rules.

648 3. At the beginning of the section of the code dealing
649 with an agency that files copies of its rules with the
650 department, the department shall publish the address and
651 telephone number of the executive offices of each agency, the
652 manner by which the agency indexes its rules, a listing of all
653 rules of that agency excluded from publication in the code, and
654 a statement as to where those rules may be inspected.

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655 4. Forms shall not be published in the Florida
656 Administrative Code; but any form which an agency uses in its
657 dealings with the public, along with any accompanying
658 instructions, shall be filed with the committee before it is
659 used. Any form or instruction which meets the definition of
660 "rule" provided in s. 120.52 shall be incorporated by reference
661 into the appropriate rule. The reference shall specifically
662 state that the form is being incorporated by reference and shall
663 include the number, title, and effective date of the form and an
664 explanation of how the form may be obtained.

665 (c) Prescribe by rule the style, ~~and form, and content~~
666 requirements required for rules, notices, and other materials
667 submitted for filing ~~and establish the form for their~~
668 ~~certification.~~

669 (3) Any publication of a proposed rule promulgated by an
670 agency, whether published in the Florida Administrative Code or
671 elsewhere, shall include, along with the rule, the name of the
672 person or persons originating such rule, the name of the agency
673 head supervisor or person who approved the rule, and the date
674 upon which the rule was approved.

675 Section 7. Effective December 31, 2007, paragraphs (a) and
676 (d) of subsection (1) and subsections (2) and (5) of section
677 120.55, Florida Statutes, as amended by section 4 of chapter
678 2006-82, Laws of Florida, are amended to read:

679 120.55 Publication.--

680 (1) The Department of State shall:

681 (a)

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682 1. Through a continuous revision system, compile and
683 publish the "Florida Administrative Code." The Florida
684 Administrative Code shall contain all rules adopted by each
685 agency, citing the specific rulemaking authority pursuant to
686 which each rule was adopted, all history notes as authorized in
687 s. 120.545(8)(9), and complete indexes to all rules contained in
688 the code. Supplementation shall be made as often as practicable,
689 but at least monthly. The department may contract with a
690 publishing firm for the publication, in a timely and useful
691 form, of the Florida Administrative Code; however, the
692 department shall retain responsibility for the code as provided
693 in this section. This publication shall be the official
694 compilation of the administrative rules of this state. The
695 Department of State shall retain the copyright over the Florida
696 Administrative Code.

697 2. Rules general in form but applicable to only one school
698 district, community college district, or county, or a part
699 thereof, or state university rules relating to internal
700 personnel or business and finance shall not be published in the
701 Florida Administrative Code. Exclusion from publication in the
702 Florida Administrative Code shall not affect the validity or
703 effectiveness of such rules.

704 3. At the beginning of the section of the code dealing
705 with an agency that files copies of its rules with the
706 department, the department shall publish the address and
707 telephone number of the executive offices of each agency, the
708 manner by which the agency indexes its rules, a listing of all

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709 rules of that agency excluded from publication in the code, and
710 a statement as to where those rules may be inspected.

711 4. Forms shall not be published in the Florida
712 Administrative Code; but any form which an agency uses in its
713 dealings with the public, along with any accompanying
714 instructions, shall be filed with the committee before it is
715 used. Any form or instruction which meets the definition of
716 "rule" provided in s. 120.52 shall be incorporated by reference
717 into the appropriate rule. The reference shall specifically
718 state that the form is being incorporated by reference and shall
719 include the number, title, and effective date of the form and an
720 explanation of how the form may be obtained. Each form created
721 by an agency which is incorporated by reference in a rule notice
722 of which is given under s. 120.54(3)(a) after December 31, 2007,
723 must clearly display the number, title, and effective date of
724 the form and the number of the rule in which the form is
725 incorporated.

726 (d) Prescribe by rule the style, ~~and form, and content~~
727 requirements required for rules, notices, and other materials
728 submitted for filing ~~and establish the form for their~~
729 ~~certification.~~

730 (2) The Florida Administrative Weekly Internet website
731 must allow users to:

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

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

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

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

744 (e) Comment on proposed rules.

745 (5) Any publication of a proposed rule promulgated by an
746 agency, whether published in the Florida Administrative Code or
747 elsewhere, shall include, along with the rule, the name of the
748 person or persons originating such rule, the name of the agency
749 head supervisor or person who approved the rule, and the date
750 upon which the rule was approved.

751 Section 8. Effective December 31, 2008, paragraph (a) of
752 subsection (1) of section 120.55, Florida Statutes, as amended
753 by section 4 of chapter 2006-82, Laws of Florida, is amended to
754 read:

755 120.55 Publication.--

756 (1) The Department of State shall:

757 (a)1. Through a continuous revision system, compile and
758 publish electronically the "Florida Administrative Code-" on an
759 Internet website managed by the department. The Florida
760 Administrative Code shall contain all rules adopted by each
761 agency, citing the grant of specific rulemaking authority and
762 the specific law implemented pursuant to which each rule was
763 adopted, all history notes as authorized in s. 120.545(9), ~~and~~
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764 complete indexes to all rules contained in the code, and any
765 other material required or authorized by law or deemed useful by
766 the department. The electronic code shall display each rule
767 chapter currently in effect in browse mode and allow full text
768 search of the code and each rule chapter. ~~Supplementation shall~~
769 ~~be made as often as practicable, but at least monthly.~~ The
770 department shall publish a printed version of the Florida
771 Administrative Code and may contract with a publishing firm for
772 such printed the publication, in a timely and useful form, of
773 ~~the Florida Administrative Code~~; however, the department shall
774 retain responsibility for the code as provided in this section.
775 Supplementation of the printed code shall be made as often as
776 practicable, but at least monthly. The printed ~~This~~ publication
777 shall be the official compilation of the administrative rules of
778 this state. The Department of State shall retain the copyright
779 over the Florida Administrative Code.

780 2. Rules general in form but applicable to only one school
781 district, community college district, or county, or a part
782 thereof, or state university rules relating to internal
783 personnel or business and finance shall not be published in the
784 Florida Administrative Code. Exclusion from publication in the
785 Florida Administrative Code shall not affect the validity or
786 effectiveness of such rules.

787 3. At the beginning of the section of the code dealing
788 with an agency that files copies of its rules with the
789 department, the department shall publish the address and
790 telephone number of the executive offices of each agency, the
791 manner by which the agency indexes its rules, a listing of all
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792 rules of that agency excluded from publication in the code, and
793 a statement as to where those rules may be inspected.

794 4. Forms shall not be published in the Florida
795 Administrative Code; but any form which an agency uses in its
796 dealings with the public, along with any accompanying
797 instructions, shall be filed with the committee before it is
798 used. Any form or instruction which meets the definition of
799 "rule" provided in s. 120.52 shall be incorporated by reference
800 into the appropriate rule. The reference shall specifically
801 state that the form is being incorporated by reference and shall
802 include the number, title, and effective date of the form and an
803 explanation of how the form may be obtained. Each form created
804 by an agency which is incorporated by reference in a rule notice
805 of which is given under s. 120.54(3)(a) after December 31, 2007,
806 must clearly display the number, title, and effective date of
807 the form and the number of the rule in which the form is
808 incorporated.

809 5. The department shall allow material incorporated by
810 reference to be filed in electronic form as prescribed by
811 department rule. When a rule is filed for adoption with
812 incorporated material in electronic form, the department's
813 publication of the Florida Administrative Code on its Internet
814 website must contain a hyperlink from the incorporating
815 reference in the rule directly to that material. The department
816 may not allow hyperlinks from rules in the Florida
817 Administrative Code to any material other than that filed with
818 and maintained by the department, but it may allow additional

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819 hyperlinks to incorporated material maintained by the department
820 from the adopting agency's website or other sites.

821 Section 9. Paragraph (a) of subsection (2) of section
822 120.56, Florida Statutes, and, effective January 1, 2008,
823 subsection (4) of that section, are amended to read:

824 120.56 Challenges to rules.--

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

826 (a) Any substantially affected person may seek an
827 administrative determination of the invalidity of any proposed
828 rule by filing a petition seeking such a determination with the
829 division within 21 days after the date of publication of the
830 notice required by s. 120.54(3)(a), within 10 days after the
831 final public hearing is held on the proposed rule as provided by
832 s. 120.54(3) (e)2.~~(e)~~, within 20 days after the ~~preparation of a~~
833 statement of estimated regulatory costs required pursuant to s.
834 120.541, if applicable, has been provided to all persons who
835 submitted a lower cost regulatory alternative and made available
836 to the public, or within 20 days after the date of publication
837 of the notice required by s. 120.54(3)(d). The petition shall
838 state with particularity the objections to the proposed rule and
839 the reasons that the proposed rule is an invalid exercise of
840 delegated legislative authority. The petitioner has the burden
841 of going forward. The agency then has the burden to prove by a
842 preponderance of the evidence that the proposed rule is not an
843 invalid exercise of delegated legislative authority as to the
844 objections raised. Any person who is substantially affected by a
845 change in the proposed rule may seek a determination of the
846 validity of such change. Any person not substantially affected

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847 by the proposed rule as initially noticed, but who is
848 substantially affected by the rule as a result of a change, may
849 challenge any provision of the rule and is not limited to
850 challenging the change to the proposed rule.

851 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
852 SPECIAL PROVISIONS.--

853 (a) Any person substantially affected by an agency
854 statement may seek an administrative determination that the
855 statement violates s. 120.54(1)(a). The petition shall include
856 the text of the statement or a description of the statement and
857 shall state with particularity facts sufficient to show that the
858 statement constitutes a rule under s. 120.52 and that the agency
859 has not adopted the statement by the rulemaking procedure
860 provided by s. 120.54. Upon the filing of a petition for an
861 administrative determination under this paragraph, the agency
862 shall immediately discontinue all reliance upon the statement or
863 any substantially similar statement as a basis for agency action
864 until:

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

867 2. The statement is adopted and becomes effective as a
868 rule;

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

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

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875 (b) If the administrative law judge determines that the
876 agency's inability to rely upon the statement during the
877 proceeding under paragraph (a) would constitute an immediate
878 danger to the public health, safety, or welfare, the
879 administrative law judge shall grant an agency petition to allow
880 application of the statement until the proceeding is concluded.

881 ~~(c)-(b)~~ The administrative law judge may extend the hearing
882 date beyond 30 days after assignment of the case for good cause.
883 If a hearing is held and the petitioner proves the allegations
884 of the petition, the agency shall have the burden of proving
885 that rulemaking is not feasible or not ~~and~~ practicable under s.
886 120.54(1)(a).

887 ~~(d)-(e)~~ The administrative law judge may determine whether
888 all or part of a statement violates s. 120.54(1)(a). The
889 decision of the administrative law judge shall constitute a
890 final order. The division shall transmit a copy of the final
891 order to the Department of State and the committee. The
892 Department of State shall publish notice of the final order in
893 the first available issue of the Florida Administrative Weekly.

894 ~~(d) When an administrative law judge enters a final order~~
895 ~~that all or part of an agency statement violates s.~~
896 ~~120.54(1)(a), the agency shall immediately discontinue all~~
897 ~~reliance upon the statement or any substantially similar~~
898 ~~statement as a basis for agency action.~~

899 ~~(e)1. If, prior to a final hearing to determine whether~~
900 ~~all or part of any agency statement violates s. 120.54(1)(a), an~~
901 ~~agency publishes, pursuant to s. 120.54(3)(a), proposed rules~~
902 ~~that address the statement, then for purposes of this section, a~~

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903 ~~presumption is created that the agency is acting expeditiously~~
904 ~~and in good faith to adopt rules that address the statement, and~~
905 ~~the agency shall be permitted to rely upon the statement or a~~
906 ~~substantially similar statement as a basis for agency action if~~
907 ~~the statement meets the requirements of s. 120.57(1)(e).~~

908 ~~2. If, prior to the final hearing to determine whether all~~
909 ~~or part of an agency statement violates s. 120.54(1)(a), an~~
910 ~~agency publishes a notice of rule development which addresses~~
911 ~~the statement pursuant to s. 120.54(2), or certifies that such a~~
912 ~~notice has been transmitted to the Florida Administrative Weekly~~
913 ~~for publication, then such publication shall constitute good~~
914 ~~cause for the granting of a stay of the proceedings and a~~
915 ~~continuance of the final hearing for 30 days. If the agency~~
916 ~~publishes proposed rules within this 30 day period or any~~
917 ~~extension of that period granted by an administrative law judge~~
918 ~~upon showing of good cause, then the administrative law judge~~
919 ~~shall place the case in abeyance pending the outcome of~~
920 ~~rulemaking and any proceedings involving challenges to proposed~~
921 ~~rules pursuant to subsection (2).~~

922 ~~3. If, following the commencement of the final hearing and~~
923 ~~prior to entry of a final order that all or part of an agency~~
924 ~~statement violates s. 120.54(1)(a), an agency publishes,~~
925 ~~pursuant to s. 120.54(3)(a), proposed rules that address the~~
926 ~~statement and proceeds expeditiously and in good faith to adopt~~
927 ~~rules that address the statement, the agency shall be permitted~~
928 ~~to rely upon the statement or a substantially similar statement~~
929 ~~as a basis for agency action if the statement meets the~~
930 ~~requirements of s. 120.57(1)(e).~~

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931 ~~4. If an agency fails to adopt rules that address the~~
932 ~~statement within 180 days after publishing proposed rules, for~~
933 ~~purposes of this subsection, a presumption is created that the~~
934 ~~agency is not acting expeditiously and in good faith to adopt~~
935 ~~rules. If the agency's proposed rules are challenged pursuant to~~
936 ~~subsection (2), the 180 day period for adoption of rules is~~
937 ~~tolled until a final order is entered in that proceeding.~~

938 ~~5. If the proposed rules addressing the challenged~~
939 ~~statement are determined to be an invalid exercise of delegated~~
940 ~~legislative authority as defined in s. 120.52(8)(b)-(f), the~~
941 ~~agency must immediately discontinue reliance on the statement~~
942 ~~and any substantially similar statement until the rules~~
943 ~~addressing the subject are properly adopted.~~

944 ~~(e)-(f)~~ All proceedings to determine a violation of s.
945 120.54(1)(a) shall be brought pursuant to this subsection. A
946 proceeding pursuant to this subsection may be consolidated with
947 a proceeding under subsection (3) or under any other section of
948 this chapter. Nothing in this paragraph shall be construed to
949 prevent a party whose substantial interests have been determined
950 by an agency action from bringing a proceeding pursuant to s.
951 120.57(1)(e).

952 Section 10. Effective January 1, 2008, paragraph (e) of
953 subsection (1) of section 120.57, Florida Statutes, is amended
954 to read:

955 120.57 Additional procedures for particular cases.--

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

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958 (e)1. ~~Any~~ Agency action that determines the substantial
959 interests of a party may not be and that is based on an agency
960 statement that violates s. 120.54(1)(a). An agency or an
961 administrative law judge may not enforce any agency policy that
962 constitutes an unadopted rule when the agency fails to prove
963 that rulemaking is not feasible or practicable. This
964 subparagraph does not preclude application of adopted rules and
965 applicable provisions of law to the facts ~~unadopted rule is~~
966 ~~subject to de novo review by an administrative law judge.~~

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

969 a. ~~Is within the powers, functions, and duties delegated~~
970 ~~by the Legislature or, if the agency is operating pursuant to~~
971 ~~authority derived from the State Constitution, is within that~~
972 ~~authority;~~

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

975 c. ~~Is not vague, establishes adequate standards for agency~~
976 ~~decisions, or does not vest unbridled discretion in the agency;~~

977 d. ~~Is not arbitrary or capricious. A rule is arbitrary if~~
978 ~~it is not supported by logic or the necessary facts; a rule is~~
979 ~~capricious if it is adopted without thought or reason or is~~
980 ~~irrational;~~

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

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

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985 ~~2.3-~~ The recommended and final orders in any proceeding
986 shall be governed by the provisions of paragraphs (k) and (l),
987 except that the administrative law judge's determination
988 regarding the unadopted rule shall not be rejected by the agency
989 unless the agency first determines from a review of the complete
990 record, and states with particularity in the order, that such
991 determination is clearly erroneous or does not comply with
992 essential requirements of law. In any proceeding for review
993 under s. 120.68, if the court finds that the agency's rejection
994 of the determination regarding the unadopted rule does not
995 comport with the provisions of this subparagraph, the agency
996 action shall be set aside and the court shall award to the
997 prevailing party the reasonable costs and a reasonable
998 attorney's fee for the initial proceeding and the proceeding for
999 review.

1000 Section 11. Effective January 1, 2008, subsections (2),
1001 (3), and (4) of section 120.595, Florida Statutes, are amended
1002 to read:

1003 120.595 Attorney's fees.--

1004 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
1005 SECTION 120.56(2).--If the court or administrative law judge
1006 declares a proposed rule or portion of a proposed rule invalid
1007 pursuant to s. 120.56(2), a judgment or order shall be rendered
1008 against the agency for reasonable costs and reasonable
1009 attorney's fees, unless the agency demonstrates that its actions
1010 were substantially justified or special circumstances exist
1011 which would make the award unjust. An agency's actions are
1012 "substantially justified" if there was a reasonable basis in law
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1013 and fact at the time the actions were taken by the agency. If
1014 the agency prevails in the proceedings, the court or
1015 administrative law judge shall award reasonable costs and
1016 reasonable attorney's fees against a party if the court or
1017 administrative law judge determines that a party participated in
1018 the proceedings for an improper purpose as defined by paragraph
1019 (1) (e). No award of attorney's fees as provided by this
1020 subsection shall exceed \$50,000 ~~\$15,000~~.

1021 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
1022 SECTION 120.56(3) AND (5).--If the court or administrative law
1023 judge declares a rule or portion of a rule invalid pursuant to
1024 s. 120.56(3) or (5), a judgment or order shall be rendered
1025 against the agency for reasonable costs and reasonable
1026 attorney's fees, unless the agency demonstrates that its actions
1027 were substantially justified or special circumstances exist
1028 which would make the award unjust. An agency's actions are
1029 "substantially justified" if there was a reasonable basis in law
1030 and fact at the time the actions were taken by the agency. If
1031 the agency prevails in the proceedings, the court or
1032 administrative law judge shall award reasonable costs and
1033 reasonable attorney's fees against a party if the court or
1034 administrative law judge determines that a party participated in
1035 the proceedings for an improper purpose as defined by paragraph
1036 (1) (e). No award of attorney's fees as provided by this
1037 subsection shall exceed \$50,000 ~~\$15,000~~.

1038 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
1039 120.56(4).--

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1040 (a) Upon entry of a final order that all or part of an
1041 agency statement violates s. 120.54(1)(a), the administrative
1042 law judge shall award reasonable costs and reasonable attorney's
1043 fees to the petitioner, unless the agency demonstrates that the
1044 statement is required by the Federal Government to implement or
1045 retain a delegated or approved program or to meet a condition to
1046 receipt of federal funds.

1047 (b) If prior to the final hearing the agency initiates
1048 rulemaking under s 120.54 and requests a stay of the proceedings
1049 pending rulemaking, the administrative law judge shall award
1050 reasonable costs and reasonable attorney's fees accrued by the
1051 petitioner prior to the date the agency filed its request for a
1052 stay pending rulemaking, provided the agency adopts the
1053 statement as a rule. A request for a stay shall be granted when
1054 the petitioner and the agency agree to the stay. If the
1055 petitioner objects to the stay, the stay may be denied if the
1056 petitioner establishes that good cause exists to deny the stay.
1057 A stay granted under this paragraph shall remain in effect until
1058 either the statement has been adopted as a rule and has become
1059 effective or the proposed rule has been withdrawn. A request
1060 for attorney's fees and costs under this paragraph shall be
1061 granted only upon a finding that the agency knew or should have
1062 known at the time the petition was filed that the agency
1063 statement was an unadopted rule, and no award of attorney's fees
1064 as provided by this paragraph shall exceed \$50,000.

1065 (c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an
1066 award shall be paid from the budget entity of the secretary,
1067 executive director, or equivalent administrative officer of the
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1068 agency, and the agency shall not be entitled to payment of an
1069 award or reimbursement for payment of an award under any
1070 provision of law.

1071 (d) If the agency prevails in the proceedings, the court
1072 or administrative law judge shall award reasonable costs and
1073 attorney's fees against a party if the court or administrative
1074 law judge determines that the party participated in the
1075 proceedings for an improper purpose as defined in paragraph
1076 (1) (e).

1077 Section 12. Subsection (1) and paragraph (c) of subsection
1078 (2) of section 120.569, Florida Statutes, are amended to read:

1079 120.569 Decisions which affect substantial interests.--

1080 (1) The provisions of this section apply in all
1081 proceedings in which the substantial interests of a party are
1082 determined by an agency, unless the parties are proceeding under
1083 s. 120.573 or s. 120.574. Unless waived by all parties, s.
1084 120.57(1) applies whenever the proceeding involves a disputed
1085 issue of material fact. Unless otherwise agreed, s. 120.57(2)
1086 applies in all other cases. If a disputed issue of material fact
1087 arises during a proceeding under s. 120.57(2), then, unless
1088 waived by all parties, the proceeding under s. 120.57(2) shall
1089 be terminated and a proceeding under s. 120.57(1) shall be
1090 conducted. Parties shall be notified of any order, including a
1091 final order. Unless waived, a copy of the order shall be
1092 delivered or mailed to each party or the party's attorney of
1093 record at the address of record. Each notice shall inform the
1094 recipient of any administrative hearing or judicial review that
1095 is available under this section, s. 120.57, or s. 120.68; shall
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1096 indicate the procedure which must be followed to obtain the
1097 hearing or judicial review; and shall state the time limits
1098 which apply.

1099 (2)

1100 (c) Unless otherwise provided by law, a petition or
1101 request for hearing shall include those items required by the
1102 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~
1103 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for
1104 hearing, the agency shall carefully review the petition to
1105 determine if it contains all of the required information. A
1106 petition shall be dismissed if it is not in substantial
1107 compliance with these requirements or it has been untimely
1108 filed. Dismissal of a petition shall, at least once, be without
1109 prejudice to petitioner's filing a timely amended petition
1110 curing the defect, unless it conclusively appears from the face
1111 of the petition that the defect cannot be cured. The agency
1112 shall promptly give written notice to all parties of the action
1113 taken on the petition, shall state with particularity its
1114 reasons if the petition is not granted, and shall state the
1115 deadline for filing an amended petition if applicable. This
1116 paragraph does not eliminate the availability of equitable
1117 tolling as a defense to the untimely filing of a petition.

1118 Section 13. Subsection (2) of section 120.74, Florida
1119 Statutes, is amended to read:

1120 120.74 Agency review, revision, and report.--

1121 (2) Beginning October 1, 1997, and by October 1 of every
1122 ~~other~~ year thereafter, the head of each agency shall file a
1123 report with the President of the Senate, the Speaker of the

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1124 House of Representatives, and the committee, with a copy to each
1125 appropriate standing committee of the Legislature, which
1126 certifies that the agency has complied with the requirements of
1127 this section ~~subsection~~. The report must specify any changes
1128 made to its rules as a result of the review and, when
1129 appropriate, recommend statutory changes that will promote
1130 efficiency, reduce paperwork, or decrease costs to government
1131 and the private sector. The report must identify the types of
1132 cases or disputes in which the agency is involved which should
1133 be conducted under the summary hearing process described in s.
1134 120.574.

1135 Section 14. Subsection (11) of section 120.80, Florida
1136 Statutes, is amended to read:

1137 120.80 Exceptions and special requirements; agencies.--

1138 (11) NATIONAL GUARD.--Notwithstanding s. 120.52 (16) ~~(15)~~,
1139 the enlistment, organization, administration, equipment,
1140 maintenance, training, and discipline of the militia, National
1141 Guard, organized militia, and unorganized militia, as provided
1142 by s. 2, Art. X of the State Constitution, are not rules as
1143 defined by this chapter.

1144 Section 15. Paragraph (c) of subsection (1) and paragraph
1145 (a) of subsection (3) of section 120.81, Florida Statutes, are
1146 amended to read:

1147 120.81 Exceptions and special requirements; general
1148 areas.--

1149 (1) EDUCATIONAL UNITS.--

1150 (c) Notwithstanding s. 120.52 (16) ~~(15)~~, any tests, test
1151 scoring criteria, or testing procedures relating to student
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1152 assessment which are developed or administered by the Department
1153 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or
1154 s. 1008.25, or any other statewide educational tests required by
1155 law, are not rules.

1156 (3) PRISONERS AND PAROLEES.--

1157 (a) Notwithstanding s. 120.52(13)~~(12)~~, prisoners, as
1158 defined by s. 944.02, shall not be considered parties in any
1159 proceedings other than those under s. 120.54(3)(c) or (7), and
1160 may not seek judicial review under s. 120.68 of any other agency
1161 action. Prisoners are not eligible to seek an administrative
1162 determination of an agency statement under s. 120.56(4).

1163 Parolees shall not be considered parties for purposes of agency
1164 action or judicial review when the proceedings relate to the
1165 rescission or revocation of parole.

1166 Section 16. Paragraph (f) of subsection (2) of section
1167 409.175, Florida Statutes, is amended to read:

1168 409.175 Licensure of family foster homes, residential
1169 child-caring agencies, and child-placing agencies; public
1170 records exemption.--

1171 (2) As used in this section, the term:

1172 (f) "License" means "license" as defined in s.

1173 120.52(10)~~(9)~~. A license under this section is issued to a
1174 family foster home or other facility and is not a professional
1175 license of any individual. Receipt of a license under this
1176 section shall not create a property right in the recipient. A
1177 license under this act is a public trust and a privilege, and is
1178 not an entitlement. This privilege must guide the finder of fact

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1179 or trier of law at any administrative proceeding or court action
1180 initiated by the department.

1181 Section 17. Paragraph (a) of subsection (1) of section
1182 420.9072, Florida Statutes, is amended to read:

1183 420.9072 State Housing Initiatives Partnership
1184 Program.--The State Housing Initiatives Partnership Program is
1185 created for the purpose of providing funds to counties and
1186 eligible municipalities as an incentive for the creation of
1187 local housing partnerships, to expand production of and preserve
1188 affordable housing, to further the housing element of the local
1189 government comprehensive plan specific to affordable housing,
1190 and to increase housing-related employment.

1191 (1) (a) In addition to the legislative findings set forth
1192 in s. 420.6015, the Legislature finds that affordable housing is
1193 most effectively provided by combining available public and
1194 private resources to conserve and improve existing housing and
1195 provide new housing for very-low-income households, low-income
1196 households, and moderate-income households. The Legislature
1197 intends to encourage partnerships in order to secure the
1198 benefits of cooperation by the public and private sectors and to
1199 reduce the cost of housing for the target group by effectively
1200 combining all available resources and cost-saving measures. The
1201 Legislature further intends that local governments achieve this
1202 combination of resources by encouraging active partnerships
1203 between government, lenders, builders and developers, real
1204 estate professionals, advocates for low-income persons, and
1205 community groups to produce affordable housing and provide
1206 related services. Extending the partnership concept to encompass
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1207 cooperative efforts among small counties as defined in s.
1208 120.52(19) ~~(17)~~, and among counties and municipalities is
1209 specifically encouraged. Local governments are also intended to
1210 establish an affordable housing advisory committee to recommend
1211 monetary and nonmonetary incentives for affordable housing as
1212 provided in s. 420.9076.

1213 Section 18. Subsection (7) of section 420.9075, Florida
1214 Statutes, is amended to read:

1215 420.9075 Local housing assistance plans; partnerships.--

1216 (7) The moneys deposited in the local housing assistance
1217 trust fund shall be used to administer and implement the local
1218 housing assistance plan. The cost of administering the plan may
1219 not exceed 5 percent of the local housing distribution moneys
1220 and program income deposited into the trust fund. A county or an
1221 eligible municipality may not exceed the 5-percent limitation on
1222 administrative costs, unless its governing body finds, by
1223 resolution, that 5 percent of the local housing distribution
1224 plus 5 percent of program income is insufficient to adequately
1225 pay the necessary costs of administering the local housing
1226 assistance plan. The cost of administering the program may not
1227 exceed 10 percent of the local housing distribution plus 5
1228 percent of program income deposited into the trust fund, except
1229 that small counties, as defined in s. 120.52(19) ~~(17)~~, and
1230 eligible municipalities receiving a local housing distribution
1231 of up to \$350,000 may use up to 10 percent of program income for
1232 administrative costs.

1233 Section 19. For fiscal year 2007-2008, the nonrecurring
1234 sum of \$345,000 is appropriated from the Records Management
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1235 Trust Fund to the Department of State for the purposes of
1236 carrying out the provisions of this act.

1237 Section 20. Except as otherwise expressly provided in this
1238 act, this act shall take effect July 1, 2007.

1239

1240

1241 ===== T I T L E A M E N D M E N T =====

1242 Remove the entire title and insert:

1243

1244 A bill to be entitled

1245 An act relating to administrative procedures; providing a
1246 short title; amending s. 120.52, F.S.; redefining the term
1247 "invalid exercise of delegated legislative authority";
1248 defining the terms "law implemented," "rulemaking
1249 authority," and "unadopted rule"; amending s. 120.536,
1250 F.S.; revising guidelines for the construction of
1251 statutory language granting rulemaking authority; amending
1252 s. 120.54, F.S.; prescribing limits and guidelines with
1253 respect to incorporation of material by reference;
1254 prescribing requirements for materials being incorporated
1255 by reference; providing for rules; providing that
1256 specified rulemaking responsibilities of an agency head
1257 may not be delegated or transferred; revising information
1258 to be included in notices of proposed actions; providing
1259 additional procedures for rule adoption hearings; revising
1260 requirements for filing rules; revising provisions with
1261 respect to petitions to initiate rulemaking; amending s.
1262 120.545, F.S.; revising duties and procedures of the

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1263 Administrative Procedures Committee and agencies with
1264 respect to review of agency rules; authorizing the
1265 Administrative Procedures Committee to request from
1266 agencies information to examine unadopted agency
1267 statements; deleting procedures for agency election to
1268 modify, withdraw, amend, or repeal a proposed rule;
1269 providing for a legislative committee to request agency
1270 information for examination of an unadopted rule;
1271 prescribing responses that may be made by an agency to a
1272 committee objection to a rule or statement of estimated
1273 regulatory costs; prescribing presumptions resulting from
1274 an agency's refusal to respond to committee objections;
1275 amending s. 120.55, F.S.; conforming a cross-reference;
1276 requiring the Department of State to prescribe by rule
1277 content requirements for rules, notices, and other
1278 materials submitted for filing; expanding the required
1279 user capabilities of the Florida Administrative Weekly
1280 Internet website; requiring electronic publication of the
1281 Florida Administrative Code; prescribing requirements with
1282 respect to content of such electronic publication;
1283 providing for filing information incorporated by reference
1284 in electronic form; amending s. 120.56, F.S.; revising
1285 procedures for administrative determinations of invalidity
1286 of proposed rules; requiring an agency to discontinue
1287 reliance on a statement under certain circumstances;
1288 allowing continued reliance on a statement under certain
1289 circumstances; deleting certain provisions relating to
1290 actions before a final hearing is held; amending s.

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1291 120.57, F.S.; revising procedures applicable to hearings
1292 involving disputed issues of material fact; prohibiting
1293 enforcement of unadopted agency rules under certain
1294 circumstances; amending s. 120.595, F.S.; revising
1295 guidelines for award of attorney's fees and reasonable
1296 costs in certain challenges to agency actions; amending
1297 s. 120.569, F.S.; requiring that certain administrative
1298 proceedings be terminated and subsequently reinstated
1299 under different provisions of state law if a disputed
1300 issue of material fact arises during such a proceeding;
1301 providing for the waiver of such termination; revising a
1302 cross-reference; amending s. 120.74, F.S.; revising
1303 reporting requirements for agency heads; amending ss.
1304 120.80, 120.81, 409.175, 420.9072, and 420.9075, F.S.;
1305 correcting cross-references; providing an appropriation;
1306 providing effective dates.