

1                   A bill to be entitled  
2     An act relating to rules and rulemaking; amending s.  
3     120.52, F.S.; redefining the term "invalid exercise of  
4     delegated legislative authority"; defining the terms "law  
5     implemented" and "rulemaking authority"; amending s.  
6     120.536, F.S.; revising guidelines for the construction of  
7     statutory language granting rulemaking authority; amending  
8     s. 120.54, F.S.; prescribing limits and guidelines with  
9     respect to incorporation of material by reference;  
10    prescribing requirements for materials being incorporated  
11    by reference; providing for rules; providing that  
12    specified rulemaking responsibilities of an agency head  
13    may not be delegated or transferred; revising information  
14    to be included in notices of proposed actions; amending s.  
15    120.545, F.S.; authorizing the Administrative Procedures  
16    Committee to request from agencies information to examine  
17    unadopted agency statements; amending s. 120.55, F.S.;  
18    requiring the Department of State to prescribe by rule  
19    content requirements for rules, notices, and other  
20    materials submitted for filing; expanding the required  
21    user capabilities of the Florida Administrative Weekly  
22    Internet website; requiring electronic publication of the  
23    Florida Administrative Code; prescribing requirements with  
24    respect to content of such electronic publication;  
25    providing for filing information incorporated by reference  
26    in electronic form; amending s. 120.569, F.S.; requiring  
27    that certain administrative proceedings be terminated and  
28    subsequently reinstated under different provisions of

29 state law if a disputed issue of material fact arises  
 30 during such a proceeding; providing for the waiver of such  
 31 termination; revising a cross-reference; amending s.  
 32 120.74, F.S.; revising reporting requirements for agency  
 33 heads; amending ss. 120.80, 120.81, 409.175, 420.9072, and  
 34 420.9075, F.S.; correcting cross-references; providing an  
 35 appropriation; providing effective dates.

36  
 37 Be It Enacted by the Legislature of the State of Florida:

38  
 39 Section 1. Subsection (8) of section 120.52, Florida  
 40 Statutes, is amended, present subsections (9) through (15) of  
 41 that section are renumbered as subsections (10) through (16),  
 42 respectively, present subsections (16) through (19) of that  
 43 section are renumbered as subsections (18) through (21),  
 44 respectively, and new subsections (9) and (17) are added to that  
 45 section, to read:

46 120.52 Definitions.--As used in this act:

47 (8) "Invalid exercise of delegated legislative authority"  
 48 means action that ~~which~~ goes beyond the powers, functions, and  
 49 duties delegated by the Legislature. A proposed or existing rule  
 50 is an invalid exercise of delegated legislative authority if any  
 51 one of the following applies:

52 (a) The agency has materially failed to follow the  
 53 applicable rulemaking procedures or requirements set forth in  
 54 this chapter;

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

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

60 (d) The rule is vague, fails to establish adequate  
61 standards for agency decisions, or vests unbridled discretion in  
62 the agency;

63 (e) The rule is arbitrary or capricious. A rule is  
64 arbitrary if it is not supported by logic or the necessary  
65 facts; a rule is capricious if it is adopted without thought or  
66 reason or is irrational; or

67 (f) The rule imposes regulatory costs on the regulated  
68 person, county, or city which could be reduced by the adoption  
69 of less costly alternatives that substantially accomplish the  
70 statutory objectives.

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

85 the specific powers and duties conferred ~~by the same statute.~~

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

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

92 Section 2. Subsection (1) of section 120.536, Florida  
 93 Statutes, is amended to read:

94 120.536 Rulemaking authority; repeal; challenge.--

95 (1) A grant of rulemaking authority is necessary but not  
 96 sufficient to allow an agency to adopt a rule; a specific law to  
 97 be implemented is also required. An agency may adopt only rules  
 98 that implement or interpret the specific powers and duties  
 99 granted by the enabling statute. No agency shall have authority  
 100 to adopt a rule only because it is reasonably related to the  
 101 purpose of the enabling legislation and is not arbitrary and  
 102 capricious or is within the agency's class of powers and duties,  
 103 nor shall an agency have the authority to implement statutory  
 104 provisions setting forth general legislative intent or policy.  
 105 Statutory language granting rulemaking authority or generally  
 106 describing the powers and functions of an agency shall be  
 107 construed to extend no further than implementing or interpreting  
 108 the specific powers and duties conferred ~~by the same statute.~~

109 Section 3. Paragraph (i) of subsection (1), paragraphs (a)  
 110 and (e) of subsection (3), and paragraph (a) of subsection (4)  
 111 of section 120.54, Florida Statutes, are amended, and paragraph  
 112 (k) is added to subsection (1) of that section, to read:

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113 120.54 Rulemaking.--

114 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
115 EMERGENCY RULES.--

116 (i)1. A rule may incorporate material by reference but  
117 only as the material exists on the date the rule is adopted. For  
118 purposes of the rule, changes in the material are not effective  
119 unless the rule is amended to incorporate the changes. Material  
120 incorporated by reference in a rule may not incorporate  
121 additional material by reference unless the rule specifically  
122 identifies the additional material.

123 2. An agency rule that incorporates by specific reference  
124 another rule of that agency automatically incorporates  
125 subsequent amendments to the referenced rule, unless a contrary  
126 intent is clearly indicated in the referencing rule. Any notice  
127 of amendments to a rule that has been incorporated by specific  
128 reference in other rules of that agency must explain the effect  
129 of the amendments on the referencing rules.

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

132 a. The material has been submitted in the prescribed  
133 electronic format to the Department of State and the full text  
134 of the material can be made available for free public access  
135 through an electronic hyperlink from the rule in the Florida  
136 Administrative Code making the reference; or

137 b. The agency has determined that posting of the material  
138 on the Internet for purposes of public examination and  
139 inspection would constitute a violation of federal copyright  
140 law, in which case a statement to that effect, along with the

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141 address of locations at the Department of State and the agency  
142 at which the material is available for public inspection and  
143 examination, is included in the notice required by subparagraph  
144 (3) (a) 1.

145 4. A rule may not be amended by reference only. Amendments  
146 must set out the amended rule in full in the same manner as  
147 required by the State Constitution for laws. ~~The Department of~~  
148 ~~State may prescribe by rule requirements for incorporating~~  
149 ~~materials by reference pursuant to this paragraph.~~

150 ~~5.2.~~ Notwithstanding any contrary provision in this  
151 section, when an adopted rule of the Department of Environmental  
152 Protection or a water management district is incorporated by  
153 reference in the other agency's rule to implement a provision of  
154 part IV of chapter 373, subsequent amendments to the rule are  
155 not effective as to the incorporating rule unless the agency  
156 incorporating by reference notifies the committee and the  
157 Department of State of its intent to adopt the subsequent  
158 amendment, publishes notice of such intent in the Florida  
159 Administrative Weekly, and files with the Department of State a  
160 copy of the amended rule incorporated by reference. Changes in  
161 the rule incorporated by reference are effective as to the other  
162 agency 20 days after the date of the published notice and filing  
163 with the Department of State. The Department of State shall  
164 amend the history note of the incorporating rule to show the  
165 effective date of such change. Any substantially affected person  
166 may, within 14 days after the date of publication of the notice  
167 of intent in the Florida Administrative Weekly, file an  
168 objection to rulemaking with the agency. The objection shall

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169 specify the portions of the rule incorporated by reference to  
170 which the person objects and the reasons for the objection. The  
171 agency does ~~shall~~ not have the authority under this subparagraph  
172 to adopt those portions of the rule specified in such objection.  
173 The agency shall publish notice of the objection and of its  
174 action in response in the next available issue of the Florida  
175 Administrative Weekly.

176 6. The Department of State may prescribe by rule  
177 requirements for incorporating materials pursuant to this  
178 paragraph.

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

182 (3) ADOPTION PROCEDURES.--

183 (a) Notices.--

184 1. Prior to the adoption, amendment, or repeal of any rule  
185 other than an emergency rule, an agency, upon approval of the  
186 agency head, shall give notice of its intended action, setting  
187 forth a short, plain explanation of the purpose and effect of  
188 the proposed action; the full text of the proposed rule or  
189 amendment and a summary thereof; a reference to the grant of  
190 ~~specific~~ rulemaking authority pursuant to which the rule is  
191 adopted; and a reference to the section or subsection of the  
192 Florida Statutes or the Laws of Florida being implemented or  
193 ~~interpreted, or made specific~~. The notice must ~~shall~~ include a  
194 summary of the agency's statement of the estimated regulatory  
195 costs, if one has been prepared, based on the factors set forth  
196 in s. 120.541(2), and a statement that any person who wishes to

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197 provide the agency with information regarding the statement of  
198 estimated regulatory costs, or to provide a proposal for a lower  
199 cost regulatory alternative as provided by s. 120.541(1), must  
200 do so in writing within 21 days after publication of the notice.  
201 The notice must state the procedure for requesting a public  
202 hearing on the proposed rule. Except when the intended action is  
203 the repeal of a rule, the notice must ~~shall~~ include a reference  
204 both to the date on which and to the place where the notice of  
205 rule development that is required by subsection (2) appeared.

206 2. The notice shall be published in the Florida  
207 Administrative Weekly not less than 28 days prior to the  
208 intended action. The proposed rule shall be available for  
209 inspection and copying by the public at the time of the  
210 publication of notice.

211 3. The notice shall be mailed to all persons named in the  
212 proposed rule and to all persons who, at least 14 days prior to  
213 such mailing, have made requests of the agency for advance  
214 notice of its proceedings. The agency shall also give such  
215 notice as is prescribed by rule to those particular classes of  
216 persons to whom the intended action is directed.

217 4. The adopting agency shall file with the committee, at  
218 least 21 days prior to the proposed adoption date, a copy of  
219 each rule it proposes to adopt; a copy of any material  
220 incorporated by reference in the rule; a detailed written  
221 statement of the facts and circumstances justifying the proposed  
222 rule; a copy of any statement of estimated regulatory costs that  
223 has been prepared pursuant to s. 120.541; a statement of the  
224 extent to which the proposed rule relates to federal standards



225 or rules on the same subject; and the notice required by  
 226 subparagraph 1.

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

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

240 2. A rule may not be filed for adoption less than 28 days  
 241 or more than 90 days after the notice required by paragraph (a),  
 242 until 21 days after the notice of change required by paragraph  
 243 (d), until 14 days after the final public hearing, until 21 days  
 244 after preparation of a statement of estimated regulatory costs  
 245 required under s. 120.541, or until the administrative law judge  
 246 has rendered a decision under s. 120.56(2), whichever applies.  
 247 When a required notice of change is published prior to the  
 248 expiration of the time to file the rule for adoption, the period  
 249 during which a rule must be filed for adoption is extended to 45  
 250 days after the date of publication. If notice of a public  
 251 hearing is published prior to the expiration of the time to file  
 252 the rule for adoption, the period during which a rule must be

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253 filed for adoption is extended to 45 days after adjournment of  
254 the final hearing on the rule, 21 days after receipt of all  
255 material authorized to be submitted at the hearing, or 21 days  
256 after receipt of the transcript, if one is made, whichever is  
257 latest. The term "public hearing" includes any public meeting  
258 held by any agency at which the rule is considered. If a  
259 petition for an administrative determination under s. 120.56(2)  
260 is filed, the period during which a rule must be filed for  
261 adoption is extended to 60 days after the administrative law  
262 judge files the final order with the clerk or until 60 days  
263 after subsequent judicial review is complete.

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

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

280 5. If a rule has not been adopted within the time limits

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281 imposed by this paragraph or has not been adopted in compliance  
282 with all statutory rulemaking requirements, the agency proposing  
283 the rule shall withdraw the rule and give notice of its action  
284 in the next available issue of the Florida Administrative  
285 Weekly.

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

299  
300 For the purposes of this paragraph, the term "administrative  
301 determination" does not include subsequent judicial review.

302 (4) EMERGENCY RULES.--

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

308 1. The procedure provides at least the procedural

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309 protection given by other statutes, the State Constitution, or  
310 the United States Constitution.

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

313 3. The agency publishes in writing at the time of, or  
314 prior to, its action the specific facts and reasons for finding  
315 an immediate danger to the public health, safety, or welfare and  
316 its reasons for concluding that the procedure used is fair under  
317 the circumstances. In any event, notice of emergency rules,  
318 other than those of educational units or units of government  
319 with jurisdiction in only one or a part of one county, including  
320 the full text of the rules, shall be published in the first  
321 available issue of the Florida Administrative Weekly and  
322 provided to the committee along with any material incorporated  
323 by reference in the rules. The agency's findings of immediate  
324 danger, necessity, and procedural fairness shall be judicially  
325 reviewable.

326 Section 4. Subsection (2) of section 120.545, Florida  
327 Statutes, is amended to read:

328 120.545 Committee review of agency rules.--

329 (2) The committee may request from an agency such  
330 information as is reasonably necessary for examination of a rule  
331 as required by subsection (1) or for examination of an unadopted  
332 agency statement. The committee shall consult with legislative  
333 standing committees having ~~with~~ jurisdiction over the subject  
334 areas. If the committee objects to an emergency rule or a  
335 proposed or existing rule, it shall, within 5 days after ~~of~~ the  
336 objection, certify that fact to the agency whose rule has been

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337 examined and include with the certification a statement  
338 detailing its objections with particularity. The committee shall  
339 notify the Speaker of the House of Representatives and the  
340 President of the Senate of any objection to an agency rule  
341 concurrent with certification of that fact to the agency. Such  
342 notice must ~~shall~~ include a copy of the rule and the statement  
343 detailing the committee's objections to the rule.

344 Section 5. Paragraph (c) of subsection (1) and subsection  
345 (3) of section 120.55, Florida Statutes, are amended to read:

346 120.55 Publication.--

347 (1) The Department of State shall:

348 (c) Prescribe by rule the style, and form, and content  
349 requirements required for rules, notices, and other materials  
350 submitted for filing ~~and establish the form for their~~  
351 certification.

352 (3) Any publication of a proposed rule promulgated by an  
353 agency, whether published in the Florida Administrative Code or  
354 elsewhere, shall include, along with the rule, the name of the  
355 person or persons originating such rule, the name of the agency  
356 head supervisor or person who approved the rule, and the date  
357 upon which the rule was approved.

358 Section 6. Effective December 31, 2007, paragraph (d) of  
359 subsection (1) and subsections (2) and (5) of section 120.55,  
360 Florida Statutes, as amended by section 4 of chapter 2006-82,  
361 Laws of Florida, are amended to read:

362 120.55 Publication.--

363 (1) The Department of State shall:

364 (d) Prescribe by rule the style, and form, and content

365 requirements ~~required~~ for rules, notices, and other materials  
 366 submitted for filing ~~and establish the form for their~~  
 367 ~~certification~~.

368 (2) The Florida Administrative Weekly Internet website  
 369 must allow users to:

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

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

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

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

382 (e) Comment on proposed rules.

383 (5) Any publication of a proposed rule promulgated by an  
 384 agency, whether published in the Florida Administrative Code or  
 385 elsewhere, shall include, along with the rule, the name of the  
 386 person or persons originating such rule, the name of the agency  
 387 head ~~supervisor or person~~ who approved the rule, and the date  
 388 upon which the rule was approved.

389 Section 7. Effective December 31, 2008, paragraph (a) of  
 390 subsection (1) of section 120.55, Florida Statutes, as amended  
 391 by section 4 of chapter 2006-82, Laws of Florida, is amended to  
 392 read:

393 120.55 Publication.--

394 (1) The Department of State shall:

395 (a)1. Through a continuous revision system, compile and

396 publish electronically the "Florida Administrative Code-" on an

397 Internet website managed by the department. The Florida

398 Administrative Code shall contain all rules adopted by each

399 agency, citing the grant of specific rulemaking authority and

400 the specific law implemented pursuant to which each rule was

401 adopted, all history notes as authorized in s. 120.545(9), and

402 complete indexes to all rules contained in the code, and any

403 other material required or authorized by law or deemed useful by

404 the department. The electronic code shall display each rule

405 chapter currently in effect in browse mode and allow full text

406 search of the code and each rule chapter. ~~Supplementation shall~~

407 ~~be made as often as practicable, but at least monthly.~~ The

408 department shall publish a printed version of the Florida

409 Administrative Code and may contract with a publishing firm for

410 such printed the publication, ~~in a timely and useful form, of~~

411 ~~the Florida Administrative Code;~~ however, the department shall

412 retain responsibility for the code as provided in this section.

413 Supplementation of the printed code shall be made as often as

414 practicable, but at least monthly. The printed ~~This~~ publication

415 shall be the official compilation of the administrative rules of

416 this state. The Department of State shall retain the copyright

417 over the Florida Administrative Code.

418 2. Rules general in form but applicable to only one school

419 district, community college district, or county, or a part

420 thereof, or state university rules relating to internal

421 personnel or business and finance shall not be published in the  
422 Florida Administrative Code. Exclusion from publication in the  
423 Florida Administrative Code shall not affect the validity or  
424 effectiveness of such rules.

425 3. At the beginning of the section of the code dealing  
426 with an agency that files copies of its rules with the  
427 department, the department shall publish the address and  
428 telephone number of the executive offices of each agency, the  
429 manner by which the agency indexes its rules, a listing of all  
430 rules of that agency excluded from publication in the code, and  
431 a statement as to where those rules may be inspected.

432 4. Forms shall not be published in the Florida  
433 Administrative Code; but any form which an agency uses in its  
434 dealings with the public, along with any accompanying  
435 instructions, shall be filed with the committee before it is  
436 used. Any form or instruction which meets the definition of  
437 "rule" provided in s. 120.52 shall be incorporated by reference  
438 into the appropriate rule. The reference shall specifically  
439 state that the form is being incorporated by reference and shall  
440 include the number, title, and effective date of the form and an  
441 explanation of how the form may be obtained. Each form created  
442 by an agency which is incorporated by reference in a rule notice  
443 of which is given under s. 120.54(3)(a) after December 31, 2007,  
444 must clearly display the number, title, and effective date of  
445 the form and the number of the rule in which the form is  
446 incorporated.

447 5. The department shall allow material incorporated by  
448 reference to be filed in electronic form as prescribed by



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449 department rule. When a rule is filed for adoption with  
450 incorporated material in electronic form, the department's  
451 publication of the Florida Administrative Code on its Internet  
452 website must contain a hyperlink from the incorporating  
453 reference in the rule directly to that material. The department  
454 may not allow hyperlinks from rules in the Florida  
455 Administrative Code to any material other than that filed with  
456 and maintained by the department, but it may allow additional  
457 hyperlinks to incorporated material maintained by the department  
458 from the adopting agency's website or other sites.

459 Section 8. Subsection (1) and paragraph (c) of subsection  
460 (2) of section 120.569, Florida Statutes, are amended to read:

461 120.569 Decisions which affect substantial interests.--

462 (1) The provisions of this section apply in all  
463 proceedings in which the substantial interests of a party are  
464 determined by an agency, unless the parties are proceeding under  
465 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
466 120.57(1) applies whenever the proceeding involves a disputed  
467 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
468 applies in all other cases. If a disputed issue of material fact  
469 arises during a proceeding under s. 120.57(2), then, unless  
470 waived by all parties, the proceeding under s. 120.57(2) shall  
471 be terminated and a proceeding under s. 120.57(1) shall be  
472 conducted. Parties shall be notified of any order, including a  
473 final order. Unless waived, a copy of the order shall be  
474 delivered or mailed to each party or the party's attorney of  
475 record at the address of record. Each notice shall inform the  
476 recipient of any administrative hearing or judicial review that

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477 is available under this section, s. 120.57, or s. 120.68; shall  
 478 indicate the procedure which must be followed to obtain the  
 479 hearing or judicial review; and shall state the time limits  
 480 which apply.

481 (2)

482 (c) Unless otherwise provided by law, a petition or  
 483 request for hearing shall include those items required by the  
 484 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~  
 485 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for  
 486 hearing, the agency shall carefully review the petition to  
 487 determine if it contains all of the required information. A  
 488 petition shall be dismissed if it is not in substantial  
 489 compliance with these requirements or it has been untimely  
 490 filed. Dismissal of a petition shall, at least once, be without  
 491 prejudice to petitioner's filing a timely amended petition  
 492 curing the defect, unless it conclusively appears from the face  
 493 of the petition that the defect cannot be cured. The agency  
 494 shall promptly give written notice to all parties of the action  
 495 taken on the petition, shall state with particularity its  
 496 reasons if the petition is not granted, and shall state the  
 497 deadline for filing an amended petition if applicable. This  
 498 paragraph does not eliminate the availability of equitable  
 499 tolling as a defense to the untimely filing of a petition.

500 Section 9. Subsection (2) of section 120.74, Florida  
 501 Statutes, is amended to read:

502 120.74 Agency review, revision, and report.--

503 (2) Beginning October 1, 1997, and by October 1 of every  
 504 ~~other~~ year thereafter, the head of each agency shall file a

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505 report with the President of the Senate, the Speaker of the  
 506 House of Representatives, and the committee, with a copy to each  
 507 appropriate standing committee of the Legislature, which  
 508 certifies that the agency has complied with the requirements of  
 509 this section ~~subsection~~. The report must specify any changes  
 510 made to its rules as a result of the review and, when  
 511 appropriate, recommend statutory changes that will promote  
 512 efficiency, reduce paperwork, or decrease costs to government  
 513 and the private sector. The report must identify the types of  
 514 cases or disputes in which the agency is involved which should  
 515 be conducted under the summary hearing process described in s.  
 516 120.574.

517 Section 10. Subsection (11) of section 120.80, Florida  
 518 Statutes, is amended to read:

519 120.80 Exceptions and special requirements; agencies.--

520 (11) NATIONAL GUARD.--Notwithstanding s. 120.52 (16) ~~(15)~~,  
 521 the enlistment, organization, administration, equipment,  
 522 maintenance, training, and discipline of the militia, National  
 523 Guard, organized militia, and unorganized militia, as provided  
 524 by s. 2, Art. X of the State Constitution, are not rules as  
 525 defined by this chapter.

526 Section 11. Paragraph (c) of subsection (1) and paragraph  
 527 (a) of subsection (3) of section 120.81, Florida Statutes, are  
 528 amended to read:

529 120.81 Exceptions and special requirements; general  
 530 areas.--

531 (1) EDUCATIONAL UNITS.--

532 (c) Notwithstanding s. 120.52 (16) ~~(15)~~, any tests, test  
 533 scoring criteria, or testing procedures relating to student  
 534 assessment which are developed or administered by the Department  
 535 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or  
 536 s. 1008.25, or any other statewide educational tests required by  
 537 law, are not rules.

538 (3) PRISONERS AND PAROLEES.--

539 (a) Notwithstanding s. 120.52 (13) ~~(12)~~, prisoners, as  
 540 defined by s. 944.02, shall not be considered parties in any  
 541 proceedings other than those under s. 120.54(3)(c) or (7), and  
 542 may not seek judicial review under s. 120.68 of any other agency  
 543 action. Prisoners are not eligible to seek an administrative  
 544 determination of an agency statement under s. 120.56(4).  
 545 Parolees shall not be considered parties for purposes of agency  
 546 action or judicial review when the proceedings relate to the  
 547 rescission or revocation of parole.

548 Section 12. Paragraph (f) of subsection (2) of section  
 549 409.175, Florida Statutes, is amended to read:

550 409.175 Licensure of family foster homes, residential  
 551 child-caring agencies, and child-placing agencies; public  
 552 records exemption.--

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

554 (f) "License" means "license" as defined in s.  
 555 120.52 (10) ~~(9)~~. A license under this section is issued to a  
 556 family foster home or other facility and is not a professional  
 557 license of any individual. Receipt of a license under this  
 558 section shall not create a property right in the recipient. A  
 559 license under this act is a public trust and a privilege, and is

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560 not an entitlement. This privilege must guide the finder of fact  
561 or trier of law at any administrative proceeding or court action  
562 initiated by the department.

563 Section 13. Paragraph (a) of subsection (1) of section  
564 420.9072, Florida Statutes, is amended to read:

565 420.9072 State Housing Initiatives Partnership  
566 Program.--The State Housing Initiatives Partnership Program is  
567 created for the purpose of providing funds to counties and  
568 eligible municipalities as an incentive for the creation of  
569 local housing partnerships, to expand production of and preserve  
570 affordable housing, to further the housing element of the local  
571 government comprehensive plan specific to affordable housing,  
572 and to increase housing-related employment.

573 (1)(a) In addition to the legislative findings set forth  
574 in s. 420.6015, the Legislature finds that affordable housing is  
575 most effectively provided by combining available public and  
576 private resources to conserve and improve existing housing and  
577 provide new housing for very-low-income households, low-income  
578 households, and moderate-income households. The Legislature  
579 intends to encourage partnerships in order to secure the  
580 benefits of cooperation by the public and private sectors and to  
581 reduce the cost of housing for the target group by effectively  
582 combining all available resources and cost-saving measures. The  
583 Legislature further intends that local governments achieve this  
584 combination of resources by encouraging active partnerships  
585 between government, lenders, builders and developers, real  
586 estate professionals, advocates for low-income persons, and  
587 community groups to produce affordable housing and provide

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588 related services. Extending the partnership concept to encompass  
589 cooperative efforts among small counties as defined in s.  
590 120.52(19) ~~(17)~~, and among counties and municipalities is  
591 specifically encouraged. Local governments are also intended to  
592 establish an affordable housing advisory committee to recommend  
593 monetary and nonmonetary incentives for affordable housing as  
594 provided in s. 420.9076.

595 Section 14. Subsection (7) of section 420.9075, Florida  
596 Statutes, is amended to read:

597 420.9075 Local housing assistance plans; partnerships.--

598 (7) The moneys deposited in the local housing assistance  
599 trust fund shall be used to administer and implement the local  
600 housing assistance plan. The cost of administering the plan may  
601 not exceed 5 percent of the local housing distribution moneys  
602 and program income deposited into the trust fund. A county or an  
603 eligible municipality may not exceed the 5-percent limitation on  
604 administrative costs, unless its governing body finds, by  
605 resolution, that 5 percent of the local housing distribution  
606 plus 5 percent of program income is insufficient to adequately  
607 pay the necessary costs of administering the local housing  
608 assistance plan. The cost of administering the program may not  
609 exceed 10 percent of the local housing distribution plus 5  
610 percent of program income deposited into the trust fund, except  
611 that small counties, as defined in s. 120.52(19) ~~(17)~~, and  
612 eligible municipalities receiving a local housing distribution  
613 of up to \$350,000 may use up to 10 percent of program income for  
614 administrative costs.

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616           Section 15. For fiscal year 2007-2008, the nonrecurring  
617 sum of \$345,000 is appropriated from the Records Management  
618 Trust Fund to the Department of State for the purposes of  
619 carrying out the provisions of this act.

620           Section 16. Except as otherwise expressly provided in this  
621 act, this act shall take effect July 1, 2007.