

1 A bill to be entitled
2 An act relating to administrative procedures; providing a
3 short title; amending s. 120.52, F.S.; redefining the term
4 "invalid exercise of delegated legislative authority";
5 defining the terms "law implemented," "rulemaking
6 authority," and "unadopted rule"; amending s. 120.536,
7 F.S.; revising guidelines for the construction of
8 statutory language granting rulemaking authority; amending
9 s. 120.54, F.S.; prescribing limits and guidelines with
10 respect to incorporation of material by reference;
11 prescribing requirements for materials being incorporated
12 by reference; providing for rules; providing that
13 specified rulemaking responsibilities of an agency head
14 may not be delegated or transferred; revising information
15 to be included in notices of proposed actions; providing
16 additional procedures for rule adoption hearings; revising
17 requirements for filing rules; revising provisions with
18 respect to petitions to initiate rulemaking; amending s.
19 120.545, F.S.; revising duties and procedures of the
20 Administrative Procedures Committee and agencies with
21 respect to review of agency rules; authorizing the
22 Administrative Procedures Committee to request from
23 agencies information to examine unadopted agency
24 statements; deleting procedures for agency election to
25 modify, withdraw, amend, or repeal a proposed rule;
26 providing for a legislative committee to request agency
27 information for examination of an unadopted rule;
28 prescribing responses that may be made by an agency to a

29 | committee objection to a rule or statement of estimated
30 | regulatory costs; prescribing presumptions resulting from
31 | an agency's refusal to respond to committee objections;
32 | amending s. 120.55, F.S.; conforming a cross-reference;
33 | requiring the Department of State to prescribe by rule
34 | content requirements for rules, notices, and other
35 | materials submitted for filing; revising for a specified
36 | period the limit for the unencumbered balance in the
37 | Records Management Trust Fund at the beginning of each
38 | fiscal year for fees collected pursuant to chapter 120;
39 | providing for transfer of excess funds; providing for
40 | expiration of provisions; expanding the required user
41 | capabilities of the Florida Administrative Weekly Internet
42 | website; revising for a specified period the limit for the
43 | unencumbered balance in the Records Management Trust Fund
44 | at the beginning of each fiscal year for fees collected
45 | pursuant to chapter 120; providing for transfer of excess
46 | funds; providing for expiration of provisions; requiring
47 | electronic publication of the Florida Administrative Code;
48 | prescribing requirements with respect to content of such
49 | electronic publication; providing for filing information
50 | incorporated by reference in electronic form; amending s.
51 | 120.56, F.S.; revising procedures for administrative
52 | determinations of invalidity of proposed rules; requiring
53 | an agency to discontinue reliance on a statement under
54 | certain circumstances; allowing continued reliance on a
55 | statement under certain circumstances; deleting certain
56 | provisions relating to actions before a final hearing is

57 held; amending s. 120.57, F.S.; revising procedures
58 applicable to hearings involving disputed issues of
59 material fact; prohibiting enforcement of unadopted agency
60 rules under certain circumstances; amending s. 120.595,
61 F.S.; revising guidelines for award of attorney's fees and
62 reasonable costs in certain challenges to agency actions;
63 amending s. 120.569, F.S.; requiring that certain
64 administrative proceedings be terminated and subsequently
65 reinstated under different provisions of state law if a
66 disputed issue of material fact arises during such a
67 proceeding; providing for the waiver of such termination;
68 revising a cross-reference; amending s. 120.74, F.S.;
69 revising reporting requirements for agency heads; amending
70 ss. 120.80, 120.81, 409.175, 420.9072, and 420.9075, F.S.;
71 correcting cross-references; providing an appropriation;
72 providing effective dates.

73
74 Be It Enacted by the Legislature of the State of Florida:

75
76 Section 1. This act may be cited as "The Open Government
77 Act."

78 Section 2. Subsection (8) of section 120.52, Florida
79 Statutes, is amended, present subsections (9) through (15) of
80 that section are renumbered as subsections (10) through (16),
81 respectively, present subsections (16), (17), (18), and (19) of
82 that section are renumbered as subsections (18), (19), (21), and
83 (22), respectively, and new subsections (9), (17), and (20) are
84 added to that section, to read:

85 120.52 Definitions.--As used in this act:

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

91 (a) The agency has materially failed to follow the
 92 applicable rulemaking procedures or requirements set forth in
 93 this chapter;

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

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

99 (d) The rule is vague, fails to establish adequate
 100 standards for agency decisions, or vests unbridled discretion in
 101 the agency;

102 (e) The rule is arbitrary or capricious. A rule is
 103 arbitrary if it is not supported by logic or the necessary
 104 facts; a rule is capricious if it is adopted without thought or
 105 reason or is irrational; or

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

110

111 A grant of rulemaking authority is necessary but not sufficient
 112 to allow an agency to adopt a rule; a specific law to be

113 implemented is also required. An agency may adopt only rules
 114 that implement or interpret the specific powers and duties
 115 granted by the enabling statute. No agency shall have authority
 116 to adopt a rule only because it is reasonably related to the
 117 purpose of the enabling legislation and is not arbitrary and
 118 capricious or is within the agency's class of powers and duties,
 119 nor shall an agency have the authority to implement statutory
 120 provisions setting forth general legislative intent or policy.
 121 Statutory language granting rulemaking authority or generally
 122 describing the powers and functions of an agency shall be
 123 construed to extend no further than implementing or interpreting
 124 the specific powers and duties conferred ~~by the same statute.~~

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

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

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

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

136 120.536 Rulemaking authority; repeal; challenge.--

137 (1) A grant of rulemaking authority is necessary but not
 138 sufficient to allow an agency to adopt a rule; a specific law to
 139 be implemented is also required. An agency may adopt only rules
 140 that implement or interpret the specific powers and duties

141 granted by the enabling statute. No agency shall have authority
 142 to adopt a rule only because it is reasonably related to the
 143 purpose of the enabling legislation and is not arbitrary and
 144 capricious or is within the agency's class of powers and duties,
 145 nor shall an agency have the authority to implement statutory
 146 provisions setting forth general legislative intent or policy.
 147 Statutory language granting rulemaking authority or generally
 148 describing the powers and functions of an agency shall be
 149 construed to extend no further than implementing or interpreting
 150 the specific powers and duties conferred ~~by the same statute.~~

151 Section 4. Paragraph (i) of subsection (1), paragraphs (a),
 152 (c), and (e) of subsection (3), paragraph (a) of subsection (4),
 153 and subsection (7) of section 120.54, Florida Statutes, are
 154 amended, and paragraph (k) is added to subsection (1) of that
 155 section, to read:

156 120.54 Rulemaking.--

157 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
 158 EMERGENCY RULES.--

159 (i)1. A rule may incorporate material by reference but
 160 only as the material exists on the date the rule is adopted. For
 161 purposes of the rule, changes in the material are not effective
 162 unless the rule is amended to incorporate the changes. Material
 163 incorporated by reference in a rule may not incorporate
 164 additional material by reference unless the rule specifically
 165 identifies the additional material.

166 2. An agency rule that incorporates by specific reference
 167 another rule of that agency automatically incorporates
 168 subsequent amendments to the referenced rule, unless a contrary

169 intent is clearly indicated in the referencing rule. Any notice
 170 of amendments to a rule that has been incorporated by specific
 171 reference in other rules of that agency must explain the effect
 172 of the amendments on the referencing rules.

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

175 a. The material has been submitted in the prescribed
 176 electronic format to the Department of State and the full text
 177 of the material can be made available for free public access
 178 through an electronic hyperlink from the rule in the Florida
 179 Administrative Code making the reference; or

180 b. The agency has determined that posting of the material
 181 on the Internet for purposes of public examination and
 182 inspection would constitute a violation of federal copyright
 183 law, in which case a statement to that effect, along with the
 184 address of locations at the Department of State and the agency
 185 at which the material is available for public inspection and
 186 examination, is included in the notice required by subparagraph
 187 (3) (a) 1.

188 4. A rule may not be amended by reference only. Amendments
 189 must set out the amended rule in full in the same manner as
 190 required by the State Constitution for laws. ~~The Department of~~
 191 ~~State may prescribe by rule requirements for incorporating~~
 192 ~~materials by reference pursuant to this paragraph.~~

193 5.2. Notwithstanding any contrary provision in this
 194 section, when an adopted rule of the Department of Environmental
 195 Protection or a water management district is incorporated by
 196 reference in the other agency's rule to implement a provision of

197 part IV of chapter 373, subsequent amendments to the rule are
198 not effective as to the incorporating rule unless the agency
199 incorporating by reference notifies the committee and the
200 Department of State of its intent to adopt the subsequent
201 amendment, publishes notice of such intent in the Florida
202 Administrative Weekly, and files with the Department of State a
203 copy of the amended rule incorporated by reference. Changes in
204 the rule incorporated by reference are effective as to the other
205 agency 20 days after the date of the published notice and filing
206 with the Department of State. The Department of State shall
207 amend the history note of the incorporating rule to show the
208 effective date of such change. Any substantially affected person
209 may, within 14 days after the date of publication of the notice
210 of intent in the Florida Administrative Weekly, file an
211 objection to rulemaking with the agency. The objection shall
212 specify the portions of the rule incorporated by reference to
213 which the person objects and the reasons for the objection. The
214 agency shall not have the authority under this subparagraph to
215 adopt those portions of the rule specified in such objection.
216 The agency shall publish notice of the objection and of its
217 action in response in the next available issue of the Florida
218 Administrative Weekly.

219 6. The Department of State may prescribe by rule
220 requirements for incorporating materials pursuant to this
221 paragraph.

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

225 (3) ADOPTION PROCEDURES.--

226 (a) Notices.--

227 1. Prior to the adoption, amendment, or repeal of any rule

228 other than an emergency rule, an agency, upon approval of the

229 agency head, shall give notice of its intended action, setting

230 forth a short, plain explanation of the purpose and effect of

231 the proposed action; the full text of the proposed rule or

232 amendment and a summary thereof; a reference to the grant of

233 ~~specific~~ rulemaking authority pursuant to which the rule is

234 adopted; and a reference to the section or subsection of the

235 Florida Statutes or the Laws of Florida being implemented or

236 ~~interpreted, or made specific~~. The notice shall include a

237 summary of the agency's statement of the estimated regulatory

238 costs, if one has been prepared, based on the factors set forth

239 in s. 120.541(2), and a statement that any person who wishes to

240 provide the agency with information regarding the statement of

241 estimated regulatory costs, or to provide a proposal for a lower

242 cost regulatory alternative as provided by s. 120.541(1), must

243 do so in writing within 21 days after publication of the notice.

244 The notice must state the procedure for requesting a public

245 hearing on the proposed rule. Except when the intended action is

246 the repeal of a rule, the notice shall include a reference both

247 to the date on which and to the place where the notice of rule

248 development that is required by subsection (2) appeared.

249 2. The notice shall be published in the Florida

250 Administrative Weekly not less than 28 days prior to the

251 intended action. The proposed rule shall be available for

252 inspection and copying by the public at the time of the

253 publication of notice.

254 3. The notice shall be mailed to all persons named in the
255 proposed rule and to all persons who, at least 14 days prior to
256 such mailing, have made requests of the agency for advance
257 notice of its proceedings. The agency shall also give such
258 notice as is prescribed by rule to those particular classes of
259 persons to whom the intended action is directed.

260 4. The adopting agency shall file with the committee, at
261 least 21 days prior to the proposed adoption date, a copy of
262 each rule it proposes to adopt; a copy of any material
263 incorporated by reference in the rule; a detailed written
264 statement of the facts and circumstances justifying the proposed
265 rule; a copy of any statement of estimated regulatory costs that
266 has been prepared pursuant to s. 120.541; a statement of the
267 extent to which the proposed rule relates to federal standards
268 or rules on the same subject; and the notice required by
269 subparagraph 1.

270 (c) Hearings.--

271 1. If the intended action concerns any rule other than one
272 relating exclusively to procedure or practice, the agency shall,
273 on the request of any affected person received within 21 days
274 after the date of publication of the notice of intended agency
275 action, give affected persons an opportunity to present evidence
276 and argument on all issues under consideration. The agency may
277 schedule a public hearing on the rule and, if requested by any
278 affected person, shall schedule a public hearing on the rule. If
279 the agency head is a board or other collegial body created under
280 s. 20.165(4) or s. 20.43(3)(g), the board or other collegial

281 body shall conduct the requested public hearing itself and may
282 not delegate this responsibility without the consent of those
283 persons requesting the public hearing. Any material pertinent to
284 the issues under consideration submitted to the agency within 21
285 days after the date of publication of the notice or submitted at
286 a public hearing shall be considered by the agency and made a
287 part of the record of the rulemaking proceeding.

288 2. Rulemaking proceedings shall be governed solely by the
289 provisions of this section unless a person timely asserts that
290 the person's substantial interests will be affected in the
291 proceeding and affirmatively demonstrates to the agency that the
292 proceeding does not provide adequate opportunity to protect
293 those interests. If the agency determines that the rulemaking
294 proceeding is not adequate to protect the person's interests, it
295 shall suspend the rulemaking proceeding and convene a separate
296 proceeding under the provisions of ss. 120.569 and 120.57.
297 Similarly situated persons may be requested to join and
298 participate in the separate proceeding. Upon conclusion of the
299 separate proceeding, the rulemaking proceeding shall be resumed.

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

301 1. If the adopting agency is required to publish its rules
302 in the Florida Administrative Code, the agency, upon approval of
303 the agency head, ~~it~~ shall file with the Department of State
304 three certified copies of the rule it proposes to adopt; one
305 copy of any material incorporated by reference in the rule,
306 certified by the agency; a summary of the rule; a summary of
307 any hearings held on the rule; and a detailed written statement
308 of the facts and circumstances justifying the rule. Agencies not

309 required to publish their rules in the Florida Administrative
310 Code shall file one certified copy of the proposed rule, and the
311 other material required by this subparagraph, in the office of
312 the agency head, and such rules shall be open to the public.

313 2. A rule may not be filed for adoption less than 28 days
314 or more than 90 days after the notice required by paragraph (a),
315 until 21 days after the notice of change required by paragraph
316 (d), until 14 days after the final public hearing, until 21 days
317 after ~~preparation of~~ a statement of estimated regulatory costs
318 required under s. 120.541 has been provided to all persons who
319 submitted a lower cost regulatory alternative and made available
320 to the public, or until the administrative law judge has
321 rendered a decision under s. 120.56(2), whichever applies. When
322 a required notice of change is published prior to the expiration
323 of the time to file the rule for adoption, the period during
324 which a rule must be filed for adoption is extended to 45 days
325 after the date of publication. If notice of a public hearing is
326 published prior to the expiration of the time to file the rule
327 for adoption, the period during which a rule must be filed for
328 adoption is extended to 45 days after adjournment of the final
329 hearing on the rule, 21 days after receipt of all material
330 authorized to be submitted at the hearing, or 21 days after
331 receipt of the transcript, if one is made, whichever is latest.
332 The term "public hearing" includes any public meeting held by
333 any agency at which the rule is considered. If a petition for an
334 administrative determination under s. 120.56(2) is filed, the
335 period during which a rule must be filed for adoption is
336 extended to 60 days after the administrative law judge files the

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

339 3. At the time a rule is filed, the agency shall certify
340 that the time limitations prescribed by this paragraph have been
341 complied with, that all statutory rulemaking requirements have
342 been met, and that there is no administrative determination
343 pending on the rule.

344 4. At the time a rule is filed, the committee shall
345 certify whether the agency has responded in writing to all
346 material and timely written comments or written inquiries made
347 on behalf of the committee. The department shall reject any rule
348 not filed within the prescribed time limits; that does not
349 comply with ~~satisfy~~ all statutory rulemaking requirements and
350 rules of the department; upon which an agency has not responded
351 in writing to all material and timely written inquiries or
352 written comments; upon which an administrative determination is
353 pending; or which does not include a statement of estimated
354 regulatory costs, if required.

355 5. If a rule has not been adopted within the time limits
356 imposed by this paragraph or has not been adopted in compliance
357 with all statutory rulemaking requirements, the agency proposing
358 the rule shall withdraw the rule and give notice of its action
359 in the next available issue of the Florida Administrative
360 Weekly.

361 6. The proposed rule shall be adopted on being filed with
362 the Department of State and become effective 20 days after being
363 filed, on a later date specified in the rule, or on a date
364 required by statute. Rules not required to be filed with the

365 Department of State shall become effective when adopted by the
366 agency head or on a later date specified by rule or statute. If
367 the committee notifies an agency that an objection to a rule is
368 being considered, the agency may postpone the adoption of the
369 rule to accommodate review of the rule by the committee. When an
370 agency postpones adoption of a rule to accommodate review by the
371 committee, the 90-day period for filing the rule is tolled until
372 the committee notifies the agency that it has completed its
373 review of the rule.

374

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

377 (4) EMERGENCY RULES.--

378 (a) If an agency finds that an immediate danger to the
379 public health, safety, or welfare requires emergency action, the
380 agency may adopt any rule necessitated by the immediate danger.
381 The agency may adopt a rule by any procedure which is fair under
382 the circumstances if:

383 1. The procedure provides at least the procedural
384 protection given by other statutes, the State Constitution, or
385 the United States Constitution.

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

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

393 other than those of educational units or units of government
394 with jurisdiction in only one or a part of one county, including
395 the full text of the rules, shall be published in the first
396 available issue of the Florida Administrative Weekly and
397 provided to the committee along with any material incorporated
398 by reference in the rules. The agency's findings of immediate
399 danger, necessity, and procedural fairness shall be judicially
400 reviewable.

401 (7) PETITION TO INITIATE RULEMAKING.--

402 (a) Any person regulated by an agency or having
403 substantial interest in an agency rule may petition an agency to
404 adopt, amend, or repeal a rule or to provide the minimum public
405 information required by this chapter. The petition shall specify
406 the proposed rule and action requested. Not later than 30
407 calendar days following the date of filing a petition, the
408 agency shall initiate rulemaking proceedings under this chapter,
409 otherwise comply with the requested action, or deny the petition
410 with a written statement of its reasons for the denial.

411 ~~(b) If the petition filed under this subsection is~~
412 ~~directed to an existing rule which the agency has not adopted by~~
413 ~~the rulemaking procedures or requirements set forth in this~~
414 ~~chapter, the agency shall, not later than 30 days following the~~
415 ~~date of filing a petition, initiate rulemaking, or provide~~
416 ~~notice in the Florida Administrative Weekly that the agency will~~
417 ~~hold a public hearing on the petition within 30 days after~~
418 ~~publication of the notice. The purpose of the public hearing is~~
419 ~~to consider the comments of the public directed to the agency~~
420 ~~rule which has not been adopted by the rulemaking procedures or~~

421 ~~requirements of this chapter, its scope and application, and to~~
422 ~~consider whether the public interest is served adequately by the~~
423 ~~application of the rule on a case-by-case basis, as contrasted~~
424 ~~with its adoption by the rulemaking procedures or requirements~~
425 ~~set forth in this chapter.~~

426 ~~(c) Within 30 days following the public hearing provided~~
427 ~~for by paragraph (b), if the agency does not initiate rulemaking~~
428 ~~or otherwise comply with the requested action, the agency shall~~
429 ~~publish in the Florida Administrative Weekly a statement of its~~
430 ~~reasons for not initiating rulemaking or otherwise complying~~
431 ~~with the requested action, and of any changes it will make in~~
432 ~~the scope or application of the unadopted rule. The agency shall~~
433 ~~file the statement with the committee. The committee shall~~
434 ~~forward a copy of the statement to the substantive committee~~
435 ~~with primary oversight jurisdiction of the agency in each house~~
436 ~~of the Legislature. The committee or the committee with primary~~
437 ~~oversight jurisdiction may hold a hearing directed to the~~
438 ~~statement of the agency. The committee holding the hearing may~~
439 ~~recommend to the Legislature the introduction of legislation~~
440 ~~making the rule a statutory standard or limiting or otherwise~~
441 ~~modifying the authority of the agency.~~

442 Section 5. Section 120.545, Florida Statutes, is amended
443 to read:

444 120.545 Committee review of agency rules.--

445 (1) As a legislative check on legislatively created
446 authority, the committee shall examine each proposed rule,
447 except for those proposed rules exempted by s. 120.81(1)(e) and
448 (2), and its accompanying material, and each emergency rule, and

449 | may examine any existing rule, for the purpose of determining
 450 | whether:

451 | (a) The rule is an invalid exercise of delegated
 452 | legislative authority.

453 | (b) The statutory authority for the rule has been
 454 | repealed.

455 | (c) The rule reiterates or paraphrases statutory material.

456 | (d) The rule is in proper form.

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

459 | (f) The rule is consistent with expressed legislative
 460 | intent pertaining to the specific provisions of law which the
 461 | rule implements.

462 | (g) The rule is necessary to accomplish the apparent or
 463 | expressed objectives of the specific provision of law which the
 464 | rule implements.

465 | (h) The rule is a reasonable implementation of the law as
 466 | it affects the convenience of the general public or persons
 467 | particularly affected by the rule.

468 | (i) The rule could be made less complex or more easily
 469 | comprehensible to the general public.

470 | (j) The rule's statement of estimated regulatory costs
 471 | complies with the requirements of s. 120.541 and whether the
 472 | rule does not impose regulatory costs on the regulated person,
 473 | county, or city which could be reduced by the adoption of less
 474 | costly alternatives that substantially accomplish the statutory
 475 | objectives.

476 | (k) The rule will require additional appropriations.

477 (1) If the rule is an emergency rule, there exists an
 478 emergency justifying the adoption ~~promulgation~~ of such rule, the
 479 agency is within ~~has exceeded the scope of~~ its statutory
 480 authority, and the rule was adopted ~~promulgated~~ in compliance
 481 with the requirements and limitations of s. 120.54(4).

482 (2) The committee may request from an agency such
 483 information as is reasonably necessary for examination of a rule
 484 as required by subsection (1) or for examination of an unadopted
 485 agency statement. The committee shall consult with legislative
 486 standing committees having ~~with~~ jurisdiction over the subject
 487 areas. If the committee objects to ~~an emergency rule or a~~
 488 ~~proposed or existing~~ rule, the committee ~~it~~ shall, within 5 days
 489 after ~~of~~ the objection, certify that fact to the agency whose
 490 rule has been examined and include with the certification a
 491 statement detailing its objections with particularity. The
 492 committee shall notify the Speaker of the House of
 493 Representatives and the President of the Senate of any objection
 494 to an agency rule concurrent with certification of that fact to
 495 the agency. Such notice shall include a copy of the rule and the
 496 statement detailing the committee's objections to the rule.

497 (3) Within 30 days after ~~of~~ receipt of the objection, if
 498 the agency is headed by an individual, or within 45 days after
 499 ~~of~~ receipt of the objection, if the agency is headed by a
 500 collegial body, the agency shall:

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

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

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

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

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

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

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

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

519 (c) ~~If the rule is either an existing or a proposed rule~~
 520 ~~and the~~ objection is to the statement of estimated regulatory
 521 costs:

522 1. Prepare a corrected statement of estimated regulatory
 523 costs, give notice of the availability of the corrected
 524 statement in the first available issue of the Florida
 525 Administrative Weekly, and file a copy of the corrected
 526 statement with the committee; or

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

529 (d) If the rule is unadopted:

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

532 2. File notice for publication in the Florida

533 Administrative Weekly that the agency has abandoned all reliance
534 upon the statement or any substantially similar statement as a
535 basis for agency action; or

536 3. Notify the committee in writing that the agency refuses
537 to adopt the rule or to abandon all reliance upon the statement
538 or any substantially similar statement as a basis for agency
539 action.

540 ~~(4) If the agency elects to modify a proposed rule to meet~~
541 ~~the committee's objection, it shall make only such modifications~~
542 ~~as are necessary to meet the objection and shall resubmit the~~
543 ~~rule to the committee. The agency shall give notice of its~~
544 ~~election to modify a proposed rule to meet the committee's~~
545 ~~objection by publishing a notice of change in the first~~
546 ~~available issue of the Florida Administrative Weekly, but shall~~
547 ~~not be required to conduct a public hearing. If the agency~~
548 ~~elects to amend an existing rule to meet the committee's~~
549 ~~objection, it shall notify the committee in writing and shall~~
550 ~~initiate the amendment procedure by giving notice in the next~~
551 ~~available issue of the Florida Administrative Weekly. The~~
552 ~~committee shall give priority to rules so modified or amended~~
553 ~~when setting its agenda.~~

554 ~~(5) If the agency elects to withdraw a proposed rule as a~~
555 ~~result of a committee objection, it shall notify the committee,~~
556 ~~in writing, of its election and shall give notice of the~~
557 ~~withdrawal in the next available issue of the Florida~~
558 ~~Administrative Weekly. The rule shall be withdrawn without a~~
559 ~~public hearing, effective upon publication of the notice in the~~
560 ~~Florida Administrative Weekly. If the agency elects to repeal an~~

561 ~~existing rule as a result of a committee objection, it shall~~
562 ~~notify the committee, in writing, of its election and shall~~
563 ~~initiate rulemaking procedures for that purpose by giving notice~~
564 ~~in the next available issue of the Florida Administrative~~
565 ~~Weekly.~~

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

570 ~~(4)(7)~~ Failure of the agency to respond to a committee
571 objection to a ~~proposed~~ rule that is not yet in effect within
572 the time prescribed in subsection (3) constitutes ~~shall~~
573 ~~constitute~~ withdrawal of the rule in its entirety. In this
574 event, the committee shall notify the Department of State that
575 the agency, by its failure to respond to a committee objection,
576 has elected to withdraw the ~~proposed~~ rule. Upon receipt of the
577 committee's notice, the Department of State shall publish a
578 notice to that effect in the next available issue of the Florida
579 Administrative Weekly. Upon publication of the notice, the
580 ~~proposed~~ rule shall be stricken from the files of the Department
581 of State and the files of the agency.

582 ~~(5)(8)~~ Failure of the agency to respond to a committee
583 objection to a ~~an existing~~ rule that is in effect within the
584 time prescribed in subsection (3) constitutes ~~shall constitute~~ a
585 refusal to amend or repeal the rule.

586 (6) Failure of the agency to respond to a committee
587 objection to a statement of estimated regulatory costs within
588 the time prescribed in subsection (3) constitutes a refusal to

589 prepare a corrected statement of estimated regulatory costs.

590 (7) Failure of the agency to respond to a committee
591 objection to an unadopted rule within the time prescribed in
592 subsection (3) constitutes a refusal to adopt the rule and a
593 refusal to abandon all reliance upon the statement or any
594 substantially similar statement as a basis for agency action.

595 (8)~~(9)~~ If the committee objects to a ~~proposed or existing~~
596 rule and the agency refuses to adopt, abandon, modify, amend,
597 withdraw, or repeal the rule, the committee shall file with the
598 Department of State a notice of the objection, detailing with
599 particularity the committee's ~~its~~ objection to the rule. The
600 Department of State shall publish this notice in the Florida
601 Administrative Weekly. If the rule is published and shall
602 ~~publish, as a history note to the rule~~ in the Florida
603 Administrative Code, a reference to the committee's objection
604 and to the issue of the Weekly in which the full text thereof
605 appears shall be recorded in a history note.

606 (9)~~(10)~~(a) If the committee objects to a ~~proposed or~~
607 ~~existing~~ rule, or portion of a rule ~~thereof~~, and the agency
608 fails to initiate administrative action to adopt, abandon,
609 modify, amend, withdraw, or repeal the rule consistent with the
610 objection within 60 days after the objection, or thereafter
611 fails to proceed in good faith to complete such action, the
612 committee may submit to the President of the Senate and the
613 Speaker of the House of Representatives a recommendation that
614 legislation be introduced to address the committee objection
615 ~~modify or suspend the adoption of the proposed rule, or amend or~~
616 ~~repeal the rule, or portion thereof.~~

617 (b)1. If the committee votes to recommend the introduction
 618 of legislation to address the committee objection ~~modify or~~
 619 ~~suspend the adoption of a proposed rule, or amend or repeal a~~
 620 ~~rule~~, the committee shall, within 5 days after this
 621 determination, certify that fact to the agency whose rule or
 622 proposed rule has been examined. The committee may request that
 623 the agency temporarily suspend the rule or suspend the adoption
 624 of the proposed rule, or suspend all reliance upon the statement
 625 or any substantially similar statement as a basis for agency
 626 action, pending consideration of proposed legislation during the
 627 next regular session of the Legislature.

628 2. Within 30 days after receipt of the certification, if
 629 the agency is headed by an individual, or within 45 days after
 630 receipt of the certification, if the agency is headed by a
 631 collegial body, the agency shall ~~either~~:

632 a. Temporarily suspend the rule, ~~or~~ suspend the adoption
 633 of the proposed rule, or suspend all reliance upon the statement
 634 or any substantially similar statement as a basis for agency
 635 action; or

636 b. Notify the committee in writing that the agency ~~it~~
 637 ~~refuses to temporarily suspend the rule, or~~ suspend the adoption
 638 of the proposed rule, or suspend all reliance upon the statement
 639 or any substantially similar statement as a basis for agency
 640 action.

641 3. If the agency elects to temporarily suspend the rule,
 642 ~~or~~ suspend the adoption of the proposed rule, or suspend all
 643 reliance upon the statement or any substantially similar
 644 statement as a basis for agency action, the agency ~~it~~ shall give

645 notice of the suspension in the Florida Administrative Weekly.
 646 The rule or the rule adoption process shall be suspended upon
 647 publication of the notice. An agency may ~~shall~~ not base any
 648 agency action on a suspended rule, ~~or~~ suspended proposed rule,
 649 or suspended statement or any substantially similar statement,
 650 or portion of such rule or statement ~~thereof~~, prior to
 651 expiration of the suspension. A suspended rule, ~~or~~ suspended
 652 proposed rule, or suspended statement or any substantially
 653 similar statement, or portion of such rule or statement ~~thereof~~,
 654 continues to be subject to administrative determination and
 655 judicial review as provided by law.

656 4. Failure of an agency to respond to committee
 657 certification within the time prescribed by subparagraph 2.
 658 constitutes a refusal to suspend the rule, ~~or to~~ suspend the
 659 adoption of the proposed rule, or suspend all reliance upon the
 660 statement or any substantially similar statement as a basis for
 661 agency action.

662 (c) The committee shall prepare proposed legislation bills
 663 to address the committee objection ~~modify or suspend the~~
 664 ~~adoption of the proposed rule or amend or repeal the rule, or~~
 665 ~~portion thereof,~~ in accordance with the rules of the Senate and
 666 the House of Representatives for prefiling and introduction in
 667 the next regular session of the Legislature. The proposed
 668 legislation bill ~~bill~~ shall be presented to the President of the
 669 Senate and the Speaker of the House of Representatives with the
 670 committee recommendation.

671 (d) If proposed legislation addressing the committee
 672 objection ~~a bill to suspend the adoption of a proposed rule is~~

673 ~~enacted into law, the proposed rule is suspended until specific~~
674 ~~delegated legislative authority for the proposed rule has been~~
675 ~~enacted. If a bill to suspend the adoption of a proposed rule~~
676 ~~fails to become law, any temporary agency suspension of the rule~~
677 ~~shall expire. If a bill to modify a proposed rule or amend a~~
678 ~~rule is enacted into law, the suspension shall expire upon~~
679 ~~publication of notice of modification or amendment in the~~
680 ~~Florida Administrative Weekly. If a bill to repeal a rule is~~
681 ~~enacted into law, the suspension shall remain in effect until~~
682 ~~notification of repeal of the rule is published in the Florida~~
683 ~~Administrative Weekly.~~

684 ~~(c) The Department of State shall publish in the next~~
685 ~~available issue of the Florida Administrative Weekly the final~~
686 ~~legislative action taken. If a bill to modify or suspend the~~
687 ~~adoption of the proposed rule or amend or repeal the rule, or~~
688 ~~portion thereof, is enacted into law, the Department of State~~
689 ~~shall conform the rule or portion of the rule to the provisions~~
690 ~~of the law in the Florida Administrative Code and publish a~~
691 ~~reference to the law as a history note to the rule.~~

692 Section 6. Paragraphs (a) and (c) of subsection (1) and
693 subsections (3) and (5) of section 120.55, Florida Statutes, are
694 amended to read:

695 120.55 Publication.--

696 (1) The Department of State shall:

697 (a)1. Through a continuous revision system, compile and
698 publish the "Florida Administrative Code." The Florida
699 Administrative Code shall contain all rules adopted by each
700 agency, citing the specific rulemaking authority pursuant to

701 which each rule was adopted, all history notes as authorized in
702 s. 120.545(8)~~(9)~~, and complete indexes to all rules contained in
703 the code. Supplementation shall be made as often as practicable,
704 but at least monthly. The department may contract with a
705 publishing firm for the publication, in a timely and useful
706 form, of the Florida Administrative Code; however, the
707 department shall retain responsibility for the code as provided
708 in this section. This publication shall be the official
709 compilation of the administrative rules of this state. The
710 Department of State shall retain the copyright over the Florida
711 Administrative Code.

712 2. Rules general in form but applicable to only one school
713 district, community college district, or county, or a part
714 thereof, or state university rules relating to internal
715 personnel or business and finance shall not be published in the
716 Florida Administrative Code. Exclusion from publication in the
717 Florida Administrative Code shall not affect the validity or
718 effectiveness of such rules.

719 3. At the beginning of the section of the code dealing
720 with an agency that files copies of its rules with the
721 department, the department shall publish the address and
722 telephone number of the executive offices of each agency, the
723 manner by which the agency indexes its rules, a listing of all
724 rules of that agency excluded from publication in the code, and
725 a statement as to where those rules may be inspected.

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

729 instructions, shall be filed with the committee before it is
730 used. Any form or instruction which meets the definition of
731 "rule" provided in s. 120.52 shall be incorporated by reference
732 into the appropriate rule. The reference shall specifically
733 state that the form is being incorporated by reference and shall
734 include the number, title, and effective date of the form and an
735 explanation of how the form may be obtained.

736 (c) Prescribe by rule the style, ~~and form,~~ and content
737 requirements required for rules, notices, and other materials
738 submitted for filing ~~and establish the form for their~~
739 ~~certification.~~

740 (3) Any publication of a proposed rule promulgated by an
741 agency, whether published in the Florida Administrative Code or
742 elsewhere, shall include, along with the rule, the name of the
743 person or persons originating such rule, the name of the agency
744 head supervisor or person who approved the rule, and the date
745 upon which the rule was approved.

746 (5) (a) All fees and moneys collected by the Department of
747 State under this chapter shall be deposited in the Records
748 Management Trust Fund for the purpose of paying for the
749 publication and distribution of the Florida Administrative Code
750 and the Florida Administrative Weekly and for associated costs
751 incurred by the department in carrying out this chapter.

752 (b) The unencumbered balance in the Records Management
753 Trust Fund for fees collected pursuant to this chapter shall not
754 exceed \$300,000 at the beginning of each fiscal year, and any
755 excess shall be transferred to the General Revenue Fund.

756 (c) It is the intent of the Legislature that the Florida

757 Administrative Weekly be supported entirely from funds collected
758 for subscriptions to and advertisements in the Florida
759 Administrative Weekly.

760 (d) For the 2007-2008 fiscal year only, notwithstanding
761 paragraph (b), the unencumbered balance in the Records
762 Management Trust Fund for fees collected pursuant to this
763 chapter shall not exceed \$400,000 at the beginning of each
764 fiscal year, and any excess shall be transferred to the General
765 Revenue Fund. This paragraph expires July 1, 2008.

766 Section 7. Effective December 31, 2007, paragraphs (a) and
767 (d) of subsection (1) and subsections (2), (5), and (8) of
768 section 120.55, Florida Statutes, as amended by section 4 of
769 chapter 2006-82, Laws of Florida, are amended to read:

770 120.55 Publication.--

771 (1) The Department of State shall:

772 (a)

773 1. Through a continuous revision system, compile and
774 publish the "Florida Administrative Code." The Florida
775 Administrative Code shall contain all rules adopted by each
776 agency, citing the specific rulemaking authority pursuant to
777 which each rule was adopted, all history notes as authorized in
778 s. 120.545(8)~~(9)~~, and complete indexes to all rules contained in
779 the code. Supplementation shall be made as often as practicable,
780 but at least monthly. The department may contract with a
781 publishing firm for the publication, in a timely and useful
782 form, of the Florida Administrative Code; however, the
783 department shall retain responsibility for the code as provided
784 in this section. This publication shall be the official

785 compilation of the administrative rules of this state. The
786 Department of State shall retain the copyright over the Florida
787 Administrative Code.

788 2. Rules general in form but applicable to only one school
789 district, community college district, or county, or a part
790 thereof, or state university rules relating to internal
791 personnel or business and finance shall not be published in the
792 Florida Administrative Code. Exclusion from publication in the
793 Florida Administrative Code shall not affect the validity or
794 effectiveness of such rules.

795 3. At the beginning of the section of the code dealing
796 with an agency that files copies of its rules with the
797 department, the department shall publish the address and
798 telephone number of the executive offices of each agency, the
799 manner by which the agency indexes its rules, a listing of all
800 rules of that agency excluded from publication in the code, and
801 a statement as to where those rules may be inspected.

802 4. Forms shall not be published in the Florida
803 Administrative Code; but any form which an agency uses in its
804 dealings with the public, along with any accompanying
805 instructions, shall be filed with the committee before it is
806 used. Any form or instruction which meets the definition of
807 "rule" provided in s. 120.52 shall be incorporated by reference
808 into the appropriate rule. The reference shall specifically
809 state that the form is being incorporated by reference and shall
810 include the number, title, and effective date of the form and an
811 explanation of how the form may be obtained. Each form created
812 by an agency which is incorporated by reference in a rule notice

813 of which is given under s. 120.54(3)(a) after December 31, 2007,
814 must clearly display the number, title, and effective date of
815 the form and the number of the rule in which the form is
816 incorporated.

817 (d) Prescribe by rule the style, and form, and content
818 requirements required for rules, notices, and other materials
819 submitted for filing ~~and establish the form for their~~
820 ~~certification~~.

821 (2) The Florida Administrative Weekly Internet website
822 must allow users to:

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

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

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

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

835 (e) Comment on proposed rules.

836 (5) Any publication of a proposed rule promulgated by an
837 agency, whether published in the Florida Administrative Code or
838 elsewhere, shall include, along with the rule, the name of the
839 person or persons originating such rule, the name of the agency
840 head supervisor or person who approved the rule, and the date

841 upon which the rule was approved.

842 (8)

843 (a) All fees and moneys collected by the Department of
 844 State under this chapter shall be deposited in the Records
 845 Management Trust Fund for the purpose of paying for costs
 846 incurred by the department in carrying out this chapter.

847 (b) The unencumbered balance in the Records Management
 848 Trust Fund for fees collected pursuant to this chapter may not
 849 exceed \$300,000 at the beginning of each fiscal year, and any
 850 excess shall be transferred to the General Revenue Fund.

851 (c) For the 2007-2008 fiscal year only, notwithstanding
 852 paragraph (b), the unencumbered balance in the Records
 853 Management Trust Fund for fees collected pursuant to this
 854 chapter shall not exceed \$400,000 at the beginning of each
 855 fiscal year, and any excess shall be transferred to the General
 856 Revenue Fund. This paragraph expires July 1, 2008.

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

861 120.55 Publication.--

862 (1) The Department of State shall:

863 (a)1. Through a continuous revision system, compile and
 864 publish electronically the "Florida Administrative Code-" on an
 865 Internet website managed by the department. The Florida
 866 Administrative Code shall contain all rules adopted by each
 867 agency, citing the grant of specific rulemaking authority and
 868 the specific law implemented pursuant to which each rule was

869 adopted, all history notes as authorized in s. 120.545(9), ~~and~~
 870 complete indexes to all rules contained in the code, and any
 871 other material required or authorized by law or deemed useful by
 872 the department. The electronic code shall display each rule
 873 chapter currently in effect in browse mode and allow full text
 874 search of the code and each rule chapter. ~~Supplementation shall~~
 875 ~~be made as often as practicable, but at least monthly.~~ The
 876 department shall publish a printed version of the Florida
 877 Administrative Code and may contract with a publishing firm for
 878 such printed the publication, in a timely and useful form, of
 879 ~~the Florida Administrative Code~~; however, the department shall
 880 retain responsibility for the code as provided in this section.
 881 Supplementation of the printed code shall be made as often as
 882 practicable, but at least monthly. The printed ~~This~~ publication
 883 shall be the official compilation of the administrative rules of
 884 this state. The Department of State shall retain the copyright
 885 over the Florida Administrative Code.

886 2. Rules general in form but applicable to only one school
 887 district, community college district, or county, or a part
 888 thereof, or state university rules relating to internal
 889 personnel or business and finance shall not be published in the
 890 Florida Administrative Code. Exclusion from publication in the
 891 Florida Administrative Code shall not affect the validity or
 892 effectiveness of such rules.

893 3. At the beginning of the section of the code dealing
 894 with an agency that files copies of its rules with the
 895 department, the department shall publish the address and
 896 telephone number of the executive offices of each agency, the

897 manner by which the agency indexes its rules, a listing of all
898 rules of that agency excluded from publication in the code, and
899 a statement as to where those rules may be inspected.

900 4. Forms shall not be published in the Florida
901 Administrative Code; but any form which an agency uses in its
902 dealings with the public, along with any accompanying
903 instructions, shall be filed with the committee before it is
904 used. Any form or instruction which meets the definition of
905 "rule" provided in s. 120.52 shall be incorporated by reference
906 into the appropriate rule. The reference shall specifically
907 state that the form is being incorporated by reference and shall
908 include the number, title, and effective date of the form and an
909 explanation of how the form may be obtained. Each form created
910 by an agency which is incorporated by reference in a rule notice
911 of which is given under s. 120.54(3)(a) after December 31, 2007,
912 must clearly display the number, title, and effective date of
913 the form and the number of the rule in which the form is
914 incorporated.

915 5. The department shall allow material incorporated by
916 reference to be filed in electronic form as prescribed by
917 department rule. When a rule is filed for adoption with
918 incorporated material in electronic form, the department's
919 publication of the Florida Administrative Code on its Internet
920 website must contain a hyperlink from the incorporating
921 reference in the rule directly to that material. The department
922 may not allow hyperlinks from rules in the Florida
923 Administrative Code to any material other than that filed with
924 and maintained by the department, but it may allow additional

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

927 Section 9. Paragraph (a) of subsection (2) of section
928 120.56, Florida Statutes, and, effective January 1, 2008,
929 subsection (4) of that section, are amended to read:

930 120.56 Challenges to rules.--

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

932 (a) Any substantially affected person may seek an
933 administrative determination of the invalidity of any proposed
934 rule by filing a petition seeking such a determination with the
935 division within 21 days after the date of publication of the
936 notice required by s. 120.54(3)(a), within 10 days after the
937 final public hearing is held on the proposed rule as provided by
938 s. 120.54(3) (e)2.~~(e)~~, within 20 days after the ~~preparation of a~~
939 statement of estimated regulatory costs required pursuant to s.
940 120.541, if applicable, has been provided to all persons who
941 submitted a lower cost regulatory alternative and made available
942 to the public, or within 20 days after the date of publication
943 of the notice required by s. 120.54(3)(d). The petition shall
944 state with particularity the objections to the proposed rule and
945 the reasons that the proposed rule is an invalid exercise of
946 delegated legislative authority. The petitioner has the burden
947 of going forward. The agency then has the burden to prove by a
948 preponderance of the evidence that the proposed rule is not an
949 invalid exercise of delegated legislative authority as to the
950 objections raised. Any person who is substantially affected by a
951 change in the proposed rule may seek a determination of the
952 validity of such change. Any person not substantially affected

953 by the proposed rule as initially noticed, but who is
 954 substantially affected by the rule as a result of a change, may
 955 challenge any provision of the rule and is not limited to
 956 challenging the change to the proposed rule.

957 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
 958 SPECIAL PROVISIONS.--

959 (a) Any person substantially affected by an agency
 960 statement may seek an administrative determination that the
 961 statement violates s. 120.54(1)(a). The petition shall include
 962 the text of the statement or a description of the statement and
 963 shall state with particularity facts sufficient to show that the
 964 statement constitutes a rule under s. 120.52 and that the agency
 965 has not adopted the statement by the rulemaking procedure
 966 provided by s. 120.54. Upon the filing of a petition for an
 967 administrative determination under this paragraph, the agency
 968 shall immediately discontinue all reliance upon the statement or
 969 any substantially similar statement as a basis for agency action
 970 until:

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

973 2. The statement is adopted and becomes effective as a
 974 rule;

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

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

981 (b) If the administrative law judge determines that the
982 agency's inability to rely upon the statement during the
983 proceeding under paragraph (a) would constitute an immediate
984 danger to the public health, safety, or welfare, the
985 administrative law judge shall grant an agency petition to allow
986 application of the statement until the proceeding is concluded.

987 ~~(c)-(b)~~ The administrative law judge may extend the hearing
988 date beyond 30 days after assignment of the case for good cause.
989 If a hearing is held and the petitioner proves the allegations
990 of the petition, the agency shall have the burden of proving
991 that rulemaking is not feasible or not ~~and~~ practicable under s.
992 120.54(1)(a).

993 ~~(d)-(e)~~ The administrative law judge may determine whether
994 all or part of a statement violates s. 120.54(1)(a). The
995 decision of the administrative law judge shall constitute a
996 final order. The division shall transmit a copy of the final
997 order to the Department of State and the committee. The
998 Department of State shall publish notice of the final order in
999 the first available issue of the Florida Administrative Weekly.

1000 ~~(d) When an administrative law judge enters a final order~~
1001 ~~that all or part of an agency statement violates s.~~
1002 ~~120.54(1)(a), the agency shall immediately discontinue all~~
1003 ~~reliance upon the statement or any substantially similar~~
1004 ~~statement as a basis for agency action.~~

1005 ~~(e)1. If, prior to a final hearing to determine whether~~
1006 ~~all or part of any agency statement violates s. 120.54(1)(a), an~~
1007 ~~agency publishes, pursuant to s. 120.54(3)(a), proposed rules~~
1008 ~~that address the statement, then for purposes of this section, a~~

1009 ~~presumption is created that the agency is acting expeditiously~~
1010 ~~and in good faith to adopt rules that address the statement, and~~
1011 ~~the agency shall be permitted to rely upon the statement or a~~
1012 ~~substantially similar statement as a basis for agency action if~~
1013 ~~the statement meets the requirements of s. 120.57(1)(e).~~

1014 ~~2. If, prior to the final hearing to determine whether all~~
1015 ~~or part of an agency statement violates s. 120.54(1)(a), an~~
1016 ~~agency publishes a notice of rule development which addresses~~
1017 ~~the statement pursuant to s. 120.54(2), or certifies that such a~~
1018 ~~notice has been transmitted to the Florida Administrative Weekly~~
1019 ~~for publication, then such publication shall constitute good~~
1020 ~~cause for the granting of a stay of the proceedings and a~~
1021 ~~continuance of the final hearing for 30 days. If the agency~~
1022 ~~publishes proposed rules within this 30 day period or any~~
1023 ~~extension of that period granted by an administrative law judge~~
1024 ~~upon showing of good cause, then the administrative law judge~~
1025 ~~shall place the case in abeyance pending the outcome of~~
1026 ~~rulemaking and any proceedings involving challenges to proposed~~
1027 ~~rules pursuant to subsection (2).~~

1028 ~~3. If, following the commencement of the final hearing and~~
1029 ~~prior to entry of a final order that all or part of an agency~~
1030 ~~statement violates s. 120.54(1)(a), an agency publishes,~~
1031 ~~pursuant to s. 120.54(3)(a), proposed rules that address the~~
1032 ~~statement and proceeds expeditiously and in good faith to adopt~~
1033 ~~rules that address the statement, the agency shall be permitted~~
1034 ~~to rely upon the statement or a substantially similar statement~~
1035 ~~as a basis for agency action if the statement meets the~~
1036 ~~requirements of s. 120.57(1)(e).~~

1037 ~~4. If an agency fails to adopt rules that address the~~
 1038 ~~statement within 180 days after publishing proposed rules, for~~
 1039 ~~purposes of this subsection, a presumption is created that the~~
 1040 ~~agency is not acting expeditiously and in good faith to adopt~~
 1041 ~~rules. If the agency's proposed rules are challenged pursuant to~~
 1042 ~~subsection (2), the 180 day period for adoption of rules is~~
 1043 ~~tolled until a final order is entered in that proceeding.~~

1044 ~~5. If the proposed rules addressing the challenged~~
 1045 ~~statement are determined to be an invalid exercise of delegated~~
 1046 ~~legislative authority as defined in s. 120.52(8)(b)-(f), the~~
 1047 ~~agency must immediately discontinue reliance on the statement~~
 1048 ~~and any substantially similar statement until the rules~~
 1049 ~~addressing the subject are properly adopted.~~

1050 (e) ~~(f)~~ All proceedings to determine a violation of s.
 1051 120.54(1)(a) shall be brought pursuant to this subsection. A
 1052 proceeding pursuant to this subsection may be consolidated with
 1053 a proceeding under subsection (3) or under any other section of
 1054 this chapter. Nothing in this paragraph shall be construed to
 1055 prevent a party whose substantial interests have been determined
 1056 by an agency action from bringing a proceeding pursuant to s.
 1057 120.57(1)(e).

1058 Section 10. Effective January 1, 2008, paragraph (e) of
 1059 subsection (1) of section 120.57, Florida Statutes, is amended
 1060 to read:

1061 120.57 Additional procedures for particular cases.--

1062 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
 1063 DISPUTED ISSUES OF MATERIAL FACT.--

1064 (e)1. ~~Any~~ Agency action that determines the substantial

1065 interests of a party may not be ~~and that is~~ based on an agency
 1066 statement that violates s. 120.54(1)(a). An agency or an
 1067 administrative law judge may not enforce any agency policy that
 1068 constitutes an unadopted rule when the agency fails to prove
 1069 that rulemaking is not feasible or practicable. This
 1070 subparagraph does not preclude application of adopted rules and
 1071 applicable provisions of law to the facts ~~unadopted rule is~~
 1072 ~~subject to de novo review by an administrative law judge.~~

1073 2. ~~The agency action shall not be presumed valid or~~
 1074 ~~invalid. The agency must demonstrate that the unadopted rule:~~

1075 a. ~~Is within the powers, functions, and duties delegated~~
 1076 ~~by the Legislature or, if the agency is operating pursuant to~~
 1077 ~~authority derived from the State Constitution, is within that~~
 1078 ~~authority;~~

1079 b. ~~Does not enlarge, modify, or contravene the specific~~
 1080 ~~provisions of law implemented;~~

1081 c. ~~Is not vague, establishes adequate standards for agency~~
 1082 ~~decisions, or does not vest unbridled discretion in the agency;~~

1083 d. ~~Is not arbitrary or capricious. A rule is arbitrary if~~
 1084 ~~it is not supported by logic or the necessary facts; a rule is~~
 1085 ~~capricious if it is adopted without thought or reason or is~~
 1086 ~~irrational;~~

1087 e. ~~Is not being applied to the substantially affected~~
 1088 ~~party without due notice; and~~

1089 f. ~~Does not impose excessive regulatory costs on the~~
 1090 ~~regulated person, county, or city.~~

1091 2.3- The recommended and final orders in any proceeding
 1092 shall be governed by the provisions of paragraphs (k) and (l),

1093 | except that the administrative law judge's determination
 1094 | regarding the unadopted rule shall not be rejected by the agency
 1095 | unless the agency first determines from a review of the complete
 1096 | record, and states with particularity in the order, that such
 1097 | determination is clearly erroneous or does not comply with
 1098 | essential requirements of law. In any proceeding for review
 1099 | under s. 120.68, if the court finds that the agency's rejection
 1100 | of the determination regarding the unadopted rule does not
 1101 | comport with the provisions of this subparagraph, the agency
 1102 | action shall be set aside and the court shall award to the
 1103 | prevailing party the reasonable costs and a reasonable
 1104 | attorney's fee for the initial proceeding and the proceeding for
 1105 | review.

1106 | Section 11. Effective January 1, 2008, subsections (2),
 1107 | (3), and (4) of section 120.595, Florida Statutes, are amended
 1108 | to read:

1109 | 120.595 Attorney's fees.--

1110 | (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
 1111 | SECTION 120.56(2).--If the court or administrative law judge
 1112 | declares a proposed rule or portion of a proposed rule invalid
 1113 | pursuant to s. 120.56(2), a judgment or order shall be rendered
 1114 | against the agency for reasonable costs and reasonable
 1115 | attorney's fees, unless the agency demonstrates that its actions
 1116 | were substantially justified or special circumstances exist
 1117 | which would make the award unjust. An agency's actions are
 1118 | "substantially justified" if there was a reasonable basis in law
 1119 | and fact at the time the actions were taken by the agency. If
 1120 | the agency prevails in the proceedings, the court or

1121 administrative law judge shall award reasonable costs and
 1122 reasonable attorney's fees against a party if the court or
 1123 administrative law judge determines that a party participated in
 1124 the proceedings for an improper purpose as defined by paragraph
 1125 (1) (e). No award of attorney's fees as provided by this
 1126 subsection shall exceed \$50,000 ~~\$15,000~~.

1127 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
 1128 SECTION 120.56(3) AND (5).--If the court or administrative law
 1129 judge declares a rule or portion of a rule invalid pursuant to
 1130 s. 120.56(3) or (5), a judgment or order shall be rendered
 1131 against the agency for reasonable costs and reasonable
 1132 attorney's fees, unless the agency demonstrates that its actions
 1133 were substantially justified or special circumstances exist
 1134 which would make the award unjust. An agency's actions are
 1135 "substantially justified" if there was a reasonable basis in law
 1136 and fact at the time the actions were taken by the agency. If
 1137 the agency prevails in the proceedings, the court or
 1138 administrative law judge shall award reasonable costs and
 1139 reasonable attorney's fees against a party if the court or
 1140 administrative law judge determines that a party participated in
 1141 the proceedings for an improper purpose as defined by paragraph
 1142 (1) (e). No award of attorney's fees as provided by this
 1143 subsection shall exceed \$50,000 ~~\$15,000~~.

1144 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 1145 120.56(4).--

1146 (a) Upon entry of a final order that all or part of an
 1147 agency statement violates s. 120.54(1) (a), the administrative
 1148 law judge shall award reasonable costs and reasonable attorney's

1149 fees to the petitioner, unless the agency demonstrates that the
 1150 statement is required by the Federal Government to implement or
 1151 retain a delegated or approved program or to meet a condition to
 1152 receipt of federal funds.

1153 (b) If prior to the final hearing the agency initiates
 1154 rulemaking under s 120.54 and requests a stay of the proceedings
 1155 pending rulemaking, the administrative law judge shall award
 1156 reasonable costs and reasonable attorney's fees accrued by the
 1157 petitioner prior to the date the agency filed its request for a
 1158 stay pending rulemaking, provided the agency adopts the
 1159 statement as a rule. A request for a stay shall be granted when
 1160 the petitioner and the agency agree to the stay. If the
 1161 petitioner objects to the stay, the stay may be denied if the
 1162 petitioner establishes that good cause exists to deny the stay.
 1163 A stay granted under this paragraph shall remain in effect
 1164 until either the statement has been adopted as a rule and has
 1165 become effective or the proposed rule has been withdrawn. A
 1166 request for attorney's fees and costs under this paragraph shall
 1167 be granted only upon a finding that the agency knew or should
 1168 have known at the time the petition was filed that the agency
 1169 statement was an unadopted rule, and no award of attorney's fees
 1170 as provided by this paragraph shall exceed \$50,000.

1171 (c)-(b) Notwithstanding the provisions of chapter 284, an
 1172 award shall be paid from the budget entity of the secretary,
 1173 executive director, or equivalent administrative officer of the
 1174 agency, and the agency shall not be entitled to payment of an
 1175 award or reimbursement for payment of an award under any
 1176 provision of law.

1177 (d) If the agency prevails in the proceedings, the court
1178 or administrative law judge shall award reasonable costs and
1179 attorney's fees against a party if the court or administrative
1180 law judge determines that the party participated in the
1181 proceedings for an improper purpose as defined in paragraph
1182 (1) (e).

1183 Section 12. Subsection (1) and paragraph (c) of subsection
1184 (2) of section 120.569, Florida Statutes, are amended to read:

1185 120.569 Decisions which affect substantial interests.--

1186 (1) The provisions of this section apply in all
1187 proceedings in which the substantial interests of a party are
1188 determined by an agency, unless the parties are proceeding under
1189 s. 120.573 or s. 120.574. Unless waived by all parties, s.
1190 120.57(1) applies whenever the proceeding involves a disputed
1191 issue of material fact. Unless otherwise agreed, s. 120.57(2)
1192 applies in all other cases. If a disputed issue of material fact
1193 arises during a proceeding under s. 120.57(2), then, unless
1194 waived by all parties, the proceeding under s. 120.57(2) shall
1195 be terminated and a proceeding under s. 120.57(1) shall be
1196 conducted. Parties shall be notified of any order, including a
1197 final order. Unless waived, a copy of the order shall be
1198 delivered or mailed to each party or the party's attorney of
1199 record at the address of record. Each notice shall inform the
1200 recipient of any administrative hearing or judicial review that
1201 is available under this section, s. 120.57, or s. 120.68; shall
1202 indicate the procedure which must be followed to obtain the
1203 hearing or judicial review; and shall state the time limits
1204 which apply.

1205 (2)

1206 (c) Unless otherwise provided by law, a petition or

1207 request for hearing shall include those items required by the

1208 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~

1209 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for

1210 hearing, the agency shall carefully review the petition to

1211 determine if it contains all of the required information. A

1212 petition shall be dismissed if it is not in substantial

1213 compliance with these requirements or it has been untimely

1214 filed. Dismissal of a petition shall, at least once, be without

1215 prejudice to petitioner's filing a timely amended petition

1216 curing the defect, unless it conclusively appears from the face

1217 of the petition that the defect cannot be cured. The agency

1218 shall promptly give written notice to all parties of the action

1219 taken on the petition, shall state with particularity its

1220 reasons if the petition is not granted, and shall state the

1221 deadline for filing an amended petition if applicable. This

1222 paragraph does not eliminate the availability of equitable

1223 tolling as a defense to the untimely filing of a petition.

1224 Section 13. Subsection (2) of section 120.74, Florida

1225 Statutes, is amended to read:

1226 120.74 Agency review, revision, and report.--

1227 (2) Beginning October 1, 1997, and by October 1 of every

1228 ~~other~~ year thereafter, the head of each agency shall file a

1229 report with the President of the Senate, the Speaker of the

1230 House of Representatives, and the committee, with a copy to each

1231 appropriate standing committee of the Legislature, which

1232 certifies that the agency has complied with the requirements of

1233 this section ~~subsection~~. The report must specify any changes
 1234 made to its rules as a result of the review and, when
 1235 appropriate, recommend statutory changes that will promote
 1236 efficiency, reduce paperwork, or decrease costs to government
 1237 and the private sector. The report must identify the types of
 1238 cases or disputes in which the agency is involved which should
 1239 be conducted under the summary hearing process described in s.
 1240 120.574.

1241 Section 14. Subsection (11) of section 120.80, Florida
 1242 Statutes, is amended to read:

1243 120.80 Exceptions and special requirements; agencies.--

1244 (11) NATIONAL GUARD.--Notwithstanding s. 120.52 (16) ~~(15)~~,
 1245 the enlistment, organization, administration, equipment,
 1246 maintenance, training, and discipline of the militia, National
 1247 Guard, organized militia, and unorganized militia, as provided
 1248 by s. 2, Art. X of the State Constitution, are not rules as
 1249 defined by this chapter.

1250 Section 15. Paragraph (c) of subsection (1) and paragraph
 1251 (a) of subsection (3) of section 120.81, Florida Statutes, are
 1252 amended to read:

1253 120.81 Exceptions and special requirements; general
 1254 areas.--

1255 (1) EDUCATIONAL UNITS.--

1256 (c) Notwithstanding s. 120.52 (16) ~~(15)~~, any tests, test
 1257 scoring criteria, or testing procedures relating to student
 1258 assessment which are developed or administered by the Department
 1259 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or
 1260 s. 1008.25, or any other statewide educational tests required by

1261 law, are not rules.

1262 (3) PRISONERS AND PAROLEES.--

1263 (a) Notwithstanding s. 120.52(13)(~~12~~), prisoners, as
 1264 defined by s. 944.02, shall not be considered parties in any
 1265 proceedings other than those under s. 120.54(3)(c) or (7), and
 1266 may not seek judicial review under s. 120.68 of any other agency
 1267 action. Prisoners are not eligible to seek an administrative
 1268 determination of an agency statement under s. 120.56(4).
 1269 Parolees shall not be considered parties for purposes of agency
 1270 action or judicial review when the proceedings relate to the
 1271 rescission or revocation of parole.

1272 Section 16. Paragraph (f) of subsection (2) of section
 1273 409.175, Florida Statutes, is amended to read:

1274 409.175 Licensure of family foster homes, residential
 1275 child-caring agencies, and child-placing agencies; public
 1276 records exemption.--

1277 (2) As used in this section, the term:

1278 (f) "License" means "license" as defined in s.
 1279 120.52(10)(~~9~~). A license under this section is issued to a
 1280 family foster home or other facility and is not a professional
 1281 license of any individual. Receipt of a license under this
 1282 section shall not create a property right in the recipient. A
 1283 license under this act is a public trust and a privilege, and is
 1284 not an entitlement. This privilege must guide the finder of fact
 1285 or trier of law at any administrative proceeding or court action
 1286 initiated by the department.

1287 Section 17. Paragraph (a) of subsection (1) of section
 1288 420.9072, Florida Statutes, is amended to read:

1289 420.9072 State Housing Initiatives Partnership
 1290 Program.--The State Housing Initiatives Partnership Program is
 1291 created for the purpose of providing funds to counties and
 1292 eligible municipalities as an incentive for the creation of
 1293 local housing partnerships, to expand production of and preserve
 1294 affordable housing, to further the housing element of the local
 1295 government comprehensive plan specific to affordable housing,
 1296 and to increase housing-related employment.

1297 (1) (a) In addition to the legislative findings set forth
 1298 in s. 420.6015, the Legislature finds that affordable housing is
 1299 most effectively provided by combining available public and
 1300 private resources to conserve and improve existing housing and
 1301 provide new housing for very-low-income households, low-income
 1302 households, and moderate-income households. The Legislature
 1303 intends to encourage partnerships in order to secure the
 1304 benefits of cooperation by the public and private sectors and to
 1305 reduce the cost of housing for the target group by effectively
 1306 combining all available resources and cost-saving measures. The
 1307 Legislature further intends that local governments achieve this
 1308 combination of resources by encouraging active partnerships
 1309 between government, lenders, builders and developers, real
 1310 estate professionals, advocates for low-income persons, and
 1311 community groups to produce affordable housing and provide
 1312 related services. Extending the partnership concept to encompass
 1313 cooperative efforts among small counties as defined in s.
 1314 120.52(19) ~~(17)~~, and among counties and municipalities is
 1315 specifically encouraged. Local governments are also intended to
 1316 establish an affordable housing advisory committee to recommend

1317 monetary and nonmonetary incentives for affordable housing as
 1318 provided in s. 420.9076.

1319 Section 18. Subsection (7) of section 420.9075, Florida
 1320 Statutes, is amended to read:

1321 420.9075 Local housing assistance plans; partnerships.--

1322 (7) The moneys deposited in the local housing assistance
 1323 trust fund shall be used to administer and implement the local
 1324 housing assistance plan. The cost of administering the plan may
 1325 not exceed 5 percent of the local housing distribution moneys
 1326 and program income deposited into the trust fund. A county or an
 1327 eligible municipality may not exceed the 5-percent limitation on
 1328 administrative costs, unless its governing body finds, by
 1329 resolution, that 5 percent of the local housing distribution
 1330 plus 5 percent of program income is insufficient to adequately
 1331 pay the necessary costs of administering the local housing
 1332 assistance plan. The cost of administering the program may not
 1333 exceed 10 percent of the local housing distribution plus 5
 1334 percent of program income deposited into the trust fund, except
 1335 that small counties, as defined in s. 120.52(19)~~(17)~~, and
 1336 eligible municipalities receiving a local housing distribution
 1337 of up to \$350,000 may use up to 10 percent of program income for
 1338 administrative costs.

1339 Section 19. For fiscal year 2007-2008, the nonrecurring
 1340 sum of \$345,000 is appropriated from the Records Management
 1341 Trust Fund to the Department of State for the purposes of
 1342 carrying out the provisions of this act.

1343 Section 20. Except as otherwise expressly provided in this
 1344 act, this act shall take effect July 1, 2007.