

## ENROLLED

HB 7183, Engrossed 1

2007 Legislature

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

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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

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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:

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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

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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

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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

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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

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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.



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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

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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

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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

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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

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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

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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,

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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~~

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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



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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.

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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;

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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

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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~~

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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

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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.~~

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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

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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 pre-filing 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~~



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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

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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

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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

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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

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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

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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

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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

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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



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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

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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

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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.

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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~~

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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).~~

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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

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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),

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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



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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

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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.

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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.

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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

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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

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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:

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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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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.