



122210

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/25/2008	.	
	.	
	.	

1 The Committee on Judiciary (Gaetz) recommended the following
 2 **amendment:**

3
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
 6 and insert:

7
 8 Section 1. This act may be cited as the "Open Government
 9 Act."

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

17 120.52 Definitions.--As used in this act:



122210

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

23 (a) The agency has materially failed to follow the
24 applicable rulemaking procedures or requirements set forth in
25 this chapter;

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

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

31 (d) The rule is vague, fails to establish adequate
32 standards for agency decisions, or vests unbridled discretion in
33 the agency;

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

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

42
43 A grant of rulemaking authority is necessary but not sufficient
44 to allow an agency to adopt a rule; a specific law to be
45 implemented is also required. An agency may adopt only rules that
46 implement or interpret the specific powers and duties granted by
47 the enabling statute. No agency shall have authority to adopt a



122210

48 rule only because it is reasonably related to the purpose of the
49 enabling legislation and is not arbitrary and capricious or is
50 within the agency's class of powers and duties, nor shall an
51 agency have the authority to implement statutory provisions
52 setting forth general legislative intent or policy. Statutory
53 language granting rulemaking authority or generally describing
54 the powers and functions of an agency shall be construed to
55 extend no further than implementing or interpreting the specific
56 powers and duties conferred by the enabling statute ~~by the same~~
57 ~~statute~~.

58 (9) "Law implemented" means the language of the enabling
59 statute being carried out or interpreted by an agency through
60 rulemaking.

61 (17) "Rulemaking authority" means statutory language that
62 explicitly authorizes or requires an agency to adopt, develop,
63 establish, or otherwise create any statement coming within the
64 definition of the term "rule."

65 (20) "Unadopted rule" means an agency statement that meets
66 the definition of the term "rule," but that has not been adopted
67 pursuant to the requirements of s. 120.54.

68 Section 3. Paragraph (a) of subsection (2) of section
69 120.53, Florida Statutes, is amended to read:

70 120.53 Maintenance of orders; indexing; listing;
71 organizational information.--

72 (2) (a) An agency may comply with subparagraphs (1) (a) 1. and
73 2. by designating an official reporter to publish and index by
74 subject matter each agency order that must be indexed and made
75 available to the public, or by electronically transmitting to the
76 division a copy of such orders for posting on the division's
77 website. An agency is in compliance with subparagraph (1) (a) 3. if

Bill No. SB 704



122210

78 | it publishes in its designated reporter a list of each agency
79 | final order that must be listed and preserves each listed order
80 | and makes it available for public inspection and copying.

81 | Section 4. Subsection (1) of section 120.536, Florida
82 | Statutes, is amended to read:

83 | 120.536 Rulemaking authority; repeal; challenge.--

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

99 | Section 5. Paragraph (i) of subsection (1), paragraphs (a),
100 | (c), and (e) of subsection (3), paragraph (a) of subsection (4),
101 | and subsection (7) of section 120.54, Florida Statutes, are
102 | amended, and paragraph (k) is added to subsection (1) of that
103 | section, to read:

104 | 120.54 Rulemaking.--

105 | (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
106 | EMERGENCY RULES.--



122210

107 (i)1. A rule may incorporate material by reference but only
108 as the material exists on the date the rule is adopted. For
109 purposes of the rule, changes in the material are not effective
110 unless the rule is amended to incorporate the changes.

111 2. An agency rule that incorporates by specific reference
112 another rule of that agency automatically incorporates subsequent
113 amendments to the referenced rule unless a contrary intent is
114 clearly indicated in the referencing rule. A notice of amendments
115 to a rule that has been incorporated by specific reference in
116 other rules of that agency must explain the effect of those
117 amendments on the referencing rules.

118 3. In rules adopted after December 31, 2010, material may
119 not be incorporated by reference unless:

120 a. The material has been submitted in the prescribed
121 electronic format to the Department of State and the full text of
122 the material can be made available for free public access through
123 an electronic hyperlink from the rule making the reference in the
124 Florida Administrative Code; or

125 b. The agency has determined that posting the material on
126 the Internet for purposes of public examination and inspection
127 would constitute a violation of federal copyright law, in which
128 case a statement to that effect, along with the address of
129 locations at the Department of State and the agency at which the
130 material is available for public inspection and examination, must
131 be included in the notice required by subparagraph (3)(a)1.

132 4. A rule may not be amended by reference only. Amendments
133 must set out the amended rule in full in the same manner as
134 required by the State Constitution for laws. ~~The Department of~~
135 ~~State may prescribe by rule requirements for incorporating~~
136 ~~materials by reference pursuant to this paragraph.~~



122210

137 5.2. Notwithstanding any contrary provision in this
138 section, when an adopted rule of the Department of Environmental
139 Protection or a water management district is incorporated by
140 reference in the other agency's rule to implement a provision of
141 part IV of chapter 373, subsequent amendments to the rule are not
142 effective as to the incorporating rule unless the agency
143 incorporating by reference notifies the committee and the
144 Department of State of its intent to adopt the subsequent
145 amendment, publishes notice of such intent in the Florida
146 Administrative Weekly, and files with the Department of State a
147 copy of the amended rule incorporated by reference. Changes in
148 the rule incorporated by reference are effective as to the other
149 agency 20 days after the date of the published notice and filing
150 with the Department of State. The Department of State shall amend
151 the history note of the incorporating rule to show the effective
152 date of such change. Any substantially affected person may,
153 within 14 days after the date of publication of the notice of
154 intent in the Florida Administrative Weekly, file an objection to
155 rulemaking with the agency. The objection shall specify the
156 portions of the rule incorporated by reference to which the
157 person objects and the reasons for the objection. The agency
158 shall not have the authority under this subparagraph to adopt
159 those portions of the rule specified in such objection. The
160 agency shall publish notice of the objection and of its action in
161 response in the next available issue of the Florida
162 Administrative Weekly.

163 6. The Department of State may adopt by rule requirements
164 for incorporating materials pursuant to this paragraph.

165 (k) An agency head may delegate the authority to initiate
166 rule development under subsection (2); however, rulemaking



122210

167 responsibilities of an agency head under subparagraph (3)(a)1.,
168 subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be
169 delegated or transferred.

170 (3) ADOPTION PROCEDURES.--

171 (a) Notices.--

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

194 2. The notice shall be published in the Florida
195 Administrative Weekly not less than 28 days prior to the intended

Bill No. SB 704



122210

196 action. The proposed rule shall be available for inspection and
197 copying by the public at the time of the publication of notice.

198 3. The notice shall be mailed to all persons named in the
199 proposed rule and to all persons who, at least 14 days prior to
200 such mailing, have made requests of the agency for advance notice
201 of its proceedings. The agency shall also give such notice as is
202 prescribed by rule to those particular classes of persons to whom
203 the intended action is directed.

204 4. The adopting agency shall file with the committee, at
205 least 21 days prior to the proposed adoption date, a copy of each
206 rule it proposes to adopt; a copy of any material incorporated by
207 reference in the rule; a detailed written statement of the facts
208 and circumstances justifying the proposed rule; a copy of any
209 statement of estimated regulatory costs that has been prepared
210 pursuant to s. 120.541; a statement of the extent to which the
211 proposed rule relates to federal standards or rules on the same
212 subject; and the notice required by subparagraph 1.

213 (c) Hearings.--

214 1. If the intended action concerns any rule other than one
215 relating exclusively to procedure or practice, the agency shall,
216 on the request of any affected person received within 21 days
217 after the date of publication of the notice of intended agency
218 action, give affected persons an opportunity to present evidence
219 and argument on all issues under consideration. The agency may
220 schedule a public hearing on the rule and, if requested by any
221 affected person, shall schedule a public hearing on the rule. If
222 the agency head is a board or other collegial body created under
223 s. 20.165(4) or s. 20.43(3)(g), and one or more requested public
224 hearings is scheduled, the board or other collegial body shall
225 conduct at least one of the public hearings itself and may not



122210

226 delegate this responsibility without the consent of those persons
227 requesting the public hearing. Any material pertinent to the
228 issues under consideration submitted to the agency within 21 days
229 after the date of publication of the notice or submitted at a
230 public hearing shall be considered by the agency and made a part
231 of the record of the rulemaking proceeding.

232 2. Rulemaking proceedings shall be governed solely by the
233 provisions of this section unless a person timely asserts that
234 the person's substantial interests will be affected in the
235 proceeding and affirmatively demonstrates to the agency that the
236 proceeding does not provide adequate opportunity to protect those
237 interests. If the agency determines that the rulemaking
238 proceeding is not adequate to protect the person's interests, it
239 shall suspend the rulemaking proceeding and convene a separate
240 proceeding under the provisions of ss. 120.569 and 120.57.
241 Similarly situated persons may be requested to join and
242 participate in the separate proceeding. Upon conclusion of the
243 separate proceeding, the rulemaking proceeding shall be resumed.

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

245 1. If the adopting agency is required to publish its rules
246 in the Florida Administrative Code, the agency, upon approval of
247 the agency head, it shall file with the Department of State three
248 certified copies of the rule it proposes to adopt; one copy of
249 any material incorporated by reference in the rule, certified by
250 the agency; a summary of the rule; a summary of any hearings
251 held on the rule; and a detailed written statement of the facts
252 and circumstances justifying the rule. Agencies not required to
253 publish their rules in the Florida Administrative Code shall file
254 one certified copy of the proposed rule, and the other material



122210

255 required by this subparagraph, in the office of the agency head,
256 and such rules shall be open to the public.

257 2. A rule may not be filed for adoption less than 28 days
258 or more than 90 days after the notice required by paragraph (a),
259 until 21 days after the notice of change required by paragraph
260 (d), until 14 days after the final public hearing, until 21 days
261 after ~~preparation of~~ a statement of estimated regulatory costs
262 required under s. 120.541 has been provided to all persons who
263 submitted a lower cost regulatory alternative and made available
264 to the public, or until the administrative law judge has rendered
265 a decision under s. 120.56(2), whichever applies. When a required
266 notice of change is published prior to the expiration of the time
267 to file the rule for adoption, the period during which a rule
268 must be filed for adoption is extended to 45 days after the date
269 of publication. If notice of a public hearing is published prior
270 to the expiration of the time to file the rule for adoption, the
271 period during which a rule must be filed for adoption is extended
272 to 45 days after adjournment of the final hearing on the rule, 21
273 days after receipt of all material authorized to be submitted at
274 the hearing, or 21 days after receipt of the transcript, if one
275 is made, whichever is latest. The term "public hearing" includes
276 any public meeting held by any agency at which the rule is
277 considered. If a petition for an administrative determination
278 under s. 120.56(2) is filed, the period during which a rule must
279 be filed for adoption is extended to 60 days after the
280 administrative law judge files the final order with the clerk or
281 until 60 days after subsequent judicial review is complete.

282 3. At the time a rule is filed, the agency shall certify
283 that the time limitations prescribed by this paragraph have been
284 complied with, that all statutory rulemaking requirements have



122210

285 | been met, and that there is no administrative determination
286 | pending on the rule.

287 | 4. At the time a rule is filed, the committee shall certify
288 | whether the agency has responded in writing to all material and
289 | timely written comments or written inquiries made on behalf of
290 | the committee. The department shall reject any rule that is not
291 | filed within the prescribed time limits; that does not comply
292 | with ~~satisfy~~ all statutory rulemaking requirements and rules of
293 | the department; upon which an agency has not responded in writing
294 | to all material and timely written inquiries or written comments;
295 | upon which an administrative determination is pending; or which
296 | does not include a statement of estimated regulatory costs, if
297 | required.

298 | 5. If a rule has not been adopted within the time limits
299 | imposed by this paragraph or has not been adopted in compliance
300 | with all statutory rulemaking requirements, the agency proposing
301 | the rule shall withdraw the rule and give notice of its action in
302 | the next available issue of the Florida Administrative Weekly.

303 | 6. The proposed rule shall be adopted on being filed with
304 | the Department of State and become effective 20 days after being
305 | filed, on a later date specified in the rule, or on a date
306 | required by statute. Rules not required to be filed with the
307 | Department of State shall become effective when adopted by the
308 | agency head or on a later date specified by rule or statute. If
309 | the committee notifies an agency that an objection to a rule is
310 | being considered, the agency may postpone the adoption of the
311 | rule to accommodate review of the rule by the committee. When an
312 | agency postpones adoption of a rule to accommodate review by the
313 | committee, the 90-day period for filing the rule is tolled until



122210

314 the committee notifies the agency that it has completed its
315 review of the rule.

316

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

319 (4) EMERGENCY RULES.--

320 (a) If an agency finds that an immediate danger to the
321 public health, safety, or welfare requires emergency action, the
322 agency may adopt any rule necessitated by the immediate danger.
323 The agency may adopt a rule by any procedure which is fair under
324 the circumstances if:

325 1. The procedure provides at least the procedural
326 protection given by other statutes, the State Constitution, or
327 the United States Constitution.

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

330 3. The agency publishes in writing at the time of, or prior
331 to, its action the specific facts and reasons for finding an
332 immediate danger to the public health, safety, or welfare and its
333 reasons for concluding that the procedure used is fair under the
334 circumstances. In any event, notice of emergency rules, other
335 than those of educational units or units of government with
336 jurisdiction in only one or a part of one county, including the
337 full text of the rules, shall be published in the first available
338 issue of the Florida Administrative Weekly and provided to the
339 committee along with any material incorporated by reference in
340 the rules. The agency's findings of immediate danger, necessity,
341 and procedural fairness shall be judicially reviewable.

342 (7) PETITION TO INITIATE RULEMAKING.--



122210

343 (a) Any person regulated by an agency or having substantial
344 interest in an agency rule may petition an agency to adopt,
345 amend, or repeal a rule or to provide the minimum public
346 information required by this chapter. The petition shall specify
347 the proposed rule and action requested. Not later than 30
348 calendar days following the date of filing a petition, the agency
349 shall initiate rulemaking proceedings under this chapter,
350 otherwise comply with the requested action, or deny the petition
351 with a written statement of its reasons for the denial.

352 (b) If the petition filed under this subsection is directed
353 to an unadopted ~~existing~~ rule ~~which the agency has not adopted by~~
354 ~~the rulemaking procedures or requirements set forth in this~~
355 ~~chapter~~, the agency shall, not later than 30 days following the
356 date of filing a petition, initiate rulemaking, or provide notice
357 in the Florida Administrative Weekly that the agency will hold a
358 public hearing on the petition within 30 days after publication
359 of the notice. The purpose of the public hearing is to consider
360 the comments of the public directed to the agency rule which has
361 not been adopted by the rulemaking procedures or requirements of
362 this chapter, its scope and application, and to consider whether
363 the public interest is served adequately by the application of
364 the rule on a case-by-case basis, as contrasted with its adoption
365 by the rulemaking procedures or requirements set forth in this
366 chapter.

367 (c) Within 30 days following the public hearing provided
368 for by paragraph (b), if the agency does not initiate rulemaking
369 or otherwise comply with the requested action, the agency shall
370 publish in the Florida Administrative Weekly a statement of its
371 reasons for not initiating rulemaking or otherwise complying with
372 the requested action, and of any changes it will make in the

Bill No. SB 704



122210

373 scope or application of the unadopted rule. The agency shall file
374 the statement with the committee. The committee shall forward a
375 copy of the statement to the substantive committee with primary
376 oversight jurisdiction of the agency in each house of the
377 Legislature. The committee or the committee with primary
378 oversight jurisdiction may hold a hearing directed to the
379 statement of the agency. The committee holding the hearing may
380 recommend to the Legislature the introduction of legislation
381 making the rule a statutory standard or limiting or otherwise
382 modifying the authority of the agency.

383 Section 6. Effective January 1, 2009, paragraph (a) of
384 subsection (1) of section 120.54, Florida Statutes, is amended to
385 read:

386 120.54 Rulemaking.--

387 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
388 EMERGENCY RULES.--

389 (a) Rulemaking is not a matter of agency discretion. Each
390 agency statement defined as a rule by s. 120.52 shall be adopted
391 by the rulemaking procedure provided by this section as soon as
392 feasible and practicable.

393 1. Rulemaking shall be presumed feasible unless the agency
394 proves that:

395 a. The agency has not had sufficient time to acquire the
396 knowledge and experience reasonably necessary to address a
397 statement by rulemaking;

398 b. Related matters are not sufficiently resolved to enable
399 the agency to address a statement by rulemaking; or

400 ~~c. The agency is currently using the rulemaking procedure~~
401 ~~expeditiously and in good faith to adopt rules which address the~~
402 ~~statement.~~



122210

403 2. Rulemaking shall be presumed practicable to the extent
404 necessary to provide fair notice to affected persons of relevant
405 agency procedures and applicable principles, criteria, or
406 standards for agency decisions unless the agency proves that:

407 a. Detail or precision in the establishment of principles,
408 criteria, or standards for agency decisions is not reasonable
409 under the circumstances; or

410 b. The particular questions addressed are of such a narrow
411 scope that more specific resolution of the matter is impractical
412 outside of an adjudication to determine the substantial interests
413 of a party based on individual circumstances.

414 Section 7. Section 120.545, Florida Statutes, is amended to
415 read:

416 120.545 Committee review of agency rules.--

417 (1) As a legislative check on legislatively created
418 authority, the committee shall examine each proposed rule, except
419 for those proposed rules exempted by s. 120.81(1)(e) and (2), and
420 its accompanying material, and each emergency rule, and may
421 examine any existing rule, for the purpose of determining
422 whether:

423 (a) The rule is an invalid exercise of delegated
424 legislative authority.

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

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

427 (d) The rule is in proper form.

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

430 (f) The rule is consistent with expressed legislative
431 intent pertaining to the specific provisions of law which the
432 rule implements.



122210

433 (g) The rule is necessary to accomplish the apparent or
434 expressed objectives of the specific provision of law which the
435 rule implements.

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

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

441 (j) The rule's statement of estimated regulatory costs
442 complies with the requirements of s. 120.541 and whether the rule
443 does not impose regulatory costs on the regulated person, county,
444 or city which could be reduced by the adoption of less costly
445 alternatives that substantially accomplish the statutory
446 objectives.

447 (k) The rule will require additional appropriations.

448 (l) If the rule is an emergency rule, there exists an
449 emergency justifying the adoption ~~promulgation~~ of such rule, the
450 agency is within ~~has exceeded the scope of~~ its statutory
451 authority, and the rule was adopted ~~promulgated~~ in compliance
452 with the requirements and limitations of s. 120.54(4).

453 (2) The committee may request from an agency such
454 information as is reasonably necessary for examination of a rule
455 as required by subsection (1). The committee shall consult with
456 legislative standing committees having ~~with~~ jurisdiction over the
457 subject areas. If the committee objects to ~~an emergency rule or a~~
458 ~~proposed or existing~~ rule, the committee ~~it~~ shall, within 5 days
459 after ~~of~~ the objection, certify that fact to the agency whose
460 rule has been examined and include with the certification a
461 statement detailing its objections with particularity. The
462 committee shall notify the Speaker of the House of



122210

463 Representatives and the President of the Senate of any objection
464 to an agency rule concurrent with certification of that fact to
465 the agency. Such notice shall include a copy of the rule and the
466 statement detailing the committee's objections to the rule.

467 (3) Within 30 days after ~~of~~ receipt of the objection, if
468 the agency is headed by an individual, or within 45 days after ~~of~~
469 receipt of the objection, if the agency is headed by a collegial
470 body, the agency shall:

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

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

475 2. File notice pursuant to s. 120.54(3)(d) of withdrawal of
476 ~~withdraw~~ the rule ~~in its entirety~~; or

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

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

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

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

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

489 (c) ~~If the rule is either an existing or a proposed rule~~
490 ~~and~~ the objection is to the statement of estimated regulatory
491 costs:



122210

492 1. Prepare a corrected statement of estimated regulatory
493 costs, give notice of the availability of the corrected statement
494 in the first available issue of the Florida Administrative
495 Weekly, and file a copy of the corrected statement with the
496 committee; or

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

499 ~~(4) If the agency elects to modify a proposed rule to meet
500 the committee's objection, it shall make only such modifications
501 as are necessary to meet the objection and shall resubmit the
502 rule to the committee. The agency shall give notice of its
503 election to modify a proposed rule to meet the committee's
504 objection by publishing a notice of change in the first available
505 issue of the Florida Administrative Weekly, but shall not be
506 required to conduct a public hearing. If the agency elects to
507 amend an existing rule to meet the committee's objection, it
508 shall notify the committee in writing and shall initiate the
509 amendment procedure by giving notice in the next available issue
510 of the Florida Administrative Weekly. The committee shall give
511 priority to rules so modified or amended when setting its agenda.~~

512 ~~(5) If the agency elects to withdraw a proposed rule as a
513 result of a committee objection, it shall notify the committee,
514 in writing, of its election and shall give notice of the
515 withdrawal in the next available issue of the Florida
516 Administrative Weekly. The rule shall be withdrawn without a
517 public hearing, effective upon publication of the notice in the
518 Florida Administrative Weekly. If the agency elects to repeal an
519 existing rule as a result of a committee objection, it shall
520 notify the committee, in writing, of its election and shall~~



122210

521 ~~initiate rulemaking procedures for that purpose by giving notice~~
522 ~~in the next available issue of the Florida Administrative Weekly.~~

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

527 ~~(4)(7)~~ Failure of the agency to respond to a committee
528 objection to a ~~proposed~~ rule that is not yet in effect within the
529 time prescribed in subsection (3) constitutes ~~shall constitute~~
530 withdrawal of the rule in its entirety. In this event, the
531 committee shall notify the Department of State that the agency,
532 by its failure to respond to a committee objection, has elected
533 to withdraw the ~~proposed~~ rule. Upon receipt of the committee's
534 notice, the Department of State shall publish a notice to that
535 effect in the next available issue of the Florida Administrative
536 Weekly. Upon publication of the notice, the ~~proposed~~ rule shall
537 be stricken from the files of the Department of State and the
538 files of the agency.

539 ~~(5)(8)~~ Failure of the agency to respond to a committee
540 objection to a an-existing rule that is in effect within the time
541 prescribed in subsection (3) constitutes ~~shall constitute~~ a
542 refusal to amend or repeal the rule.

543 (6) Failure of the agency to respond to a committee
544 objection to a statement of estimated regulatory costs within the
545 time prescribed in subsection (3) constitutes a refusal to
546 prepare a corrected statement of estimated regulatory costs.

547 ~~(7)(9)~~ If the committee objects to a ~~proposed or existing~~
548 rule and the agency refuses to modify, amend, withdraw, or repeal
549 the rule, the committee shall file with the Department of State a
550 notice of the objection, detailing with particularity the



122210

551 committee's ~~its~~ objection to the rule. The Department of State
552 shall publish this notice in the Florida Administrative Weekly.
553 If the rule is published and shall publish, as a history note to
554 ~~the rule~~ in the Florida Administrative Code, a reference to the
555 committee's objection and to the issue of the Florida
556 Administrative Weekly in which the full text thereof appears
557 shall be recorded in a history note.

558 (8) ~~(10)~~ (a) If the committee objects to a ~~proposed or~~
559 ~~existing~~ rule, or portion of a rule ~~thereof~~, and the agency fails
560 to initiate administrative action to modify, amend, withdraw, or
561 repeal the rule consistent with the objection within 60 days
562 after the objection, or thereafter fails to proceed in good faith
563 to complete such action, the committee may submit to the
564 President of the Senate and the Speaker of the House of
565 Representatives a recommendation that legislation be introduced
566 to address the committee's objection ~~modify or suspend the~~
567 ~~adoption of the proposed rule, or amend or repeal the rule, or~~
568 ~~portion thereof.~~

569 (b)1. If the committee votes to recommend the introduction
570 of legislation to address the committee's objection ~~modify or~~
571 ~~suspend the adoption of a proposed rule, or amend or repeal a~~
572 ~~rule~~, the committee shall, within 5 days after this
573 determination, certify that fact to the agency whose rule or
574 proposed rule has been examined. The committee may request that
575 the agency temporarily suspend the rule or suspend the adoption
576 of the proposed rule, pending consideration of proposed
577 legislation during the next regular session of the Legislature.

578 2. Within 30 days after receipt of the certification, if
579 the agency is headed by an individual, or within 45 days after

Bill No. SB 704



122210

580 receipt of the certification, if the agency is headed by a
581 collegial body, the agency shall ~~either~~:

582 a. Temporarily suspend the rule or suspend the adoption of
583 the proposed rule; or

584 b. Notify the committee in writing that the agency ~~it~~
585 refuses to temporarily suspend the rule or suspend the adoption
586 of the proposed rule.

587 3. If the agency elects to temporarily suspend the rule or
588 suspend the adoption of the proposed rule, the agency ~~it~~ shall
589 give notice of the suspension in the Florida Administrative
590 Weekly. The rule or the rule adoption process shall be suspended
591 upon publication of the notice. An agency may ~~shall~~ not base any
592 agency action on a suspended rule or suspended proposed rule, or
593 portion of such rule ~~thereof~~, prior to expiration of the
594 suspension. A suspended rule or suspended proposed rule, or
595 portion of such rule ~~thereof~~, continues to be subject to
596 administrative determination and judicial review as provided by
597 law.

598 4. Failure of an agency to respond to committee
599 certification within the time prescribed by subparagraph 2.
600 constitutes a refusal to suspend the rule or to suspend the
601 adoption of the proposed rule.

602 (c) The committee shall prepare proposed legislation ~~bills~~
603 to address the committee's objection ~~modify or suspend the~~
604 ~~adoption of the proposed rule or amend or repeal the rule, or~~
605 ~~portion thereof~~, in accordance with the rules of the Senate and
606 the House of Representatives for prefiling and introduction in
607 the next regular session of the Legislature. The proposed
608 legislation ~~bill~~ shall be presented to the President of the

Bill No. SB 704



122210

609 Senate and the Speaker of the House of Representatives with the
610 committee recommendation.

611 (d) If proposed legislation addressing the committee's
612 objection a bill to suspend the adoption of a proposed rule is
613 enacted into law, the proposed rule is suspended until specific
614 delegated legislative authority for the proposed rule has been
615 enacted. If a bill to suspend the adoption of a proposed rule
616 fails to become law, any temporary agency suspension of the rule
617 shall expire. If a bill to modify a proposed rule or amend a rule
618 is enacted into law, the suspension shall expire upon publication
619 of notice of modification or amendment in the Florida
620 Administrative Weekly. If a bill to repeal a rule is enacted into
621 law, the suspension shall remain in effect until notification of
622 repeal of the rule is published in the Florida Administrative
623 Weekly.

624 ~~(c) The Department of State shall publish in the next~~
625 ~~available issue of the Florida Administrative Weekly the final~~
626 ~~legislative action taken. If a bill to modify or suspend the~~
627 ~~adoption of the proposed rule or amend or repeal the rule, or~~
628 ~~portion thereof, is enacted into law, the Department of State~~
629 ~~shall conform the rule or portion of the rule to the provisions~~
630 ~~of the law in the Florida Administrative Code and publish a~~
631 ~~reference to the law as a history note to the rule.~~

632 Section 8. Paragraphs (a) and (d) of subsection (1) and
633 subsection (5) of section 120.55, Florida Statutes, are amended
634 to read:

635 120.55 Publication.--

636 (1) The Department of State shall:

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



122210

639 Administrative Code shall contain all rules adopted by each
640 agency, citing the grant of specific rulemaking authority and the
641 specific law implemented pursuant to which each rule was adopted,
642 all history notes as authorized in s. 120.545(8) ~~s. 120.545(9)~~,
643 and complete indexes to all rules contained in the code.

644 Supplementation shall be made as often as practicable, but at
645 least monthly. The department may contract with a publishing firm
646 for the publication, in a timely and useful form, of the Florida
647 Administrative Code; however, the department shall retain
648 responsibility for the code as provided in this section. This
649 publication shall be the official compilation of the
650 administrative rules of this state. The Department of State shall
651 retain the copyright over the Florida Administrative Code.

652 2. Rules general in form but applicable to only one school
653 district, community college district, or county, or a part
654 thereof, or state university rules relating to internal personnel
655 or business and finance shall not be published in the Florida
656 Administrative Code. Exclusion from publication in the Florida
657 Administrative Code shall not affect the validity or
658 effectiveness of such rules.

659 3. At the beginning of the section of the code dealing with
660 an agency that files copies of its rules with the department, the
661 department shall publish the address and telephone number of the
662 executive offices of each agency, the manner by which the agency
663 indexes its rules, a listing of all rules of that agency excluded
664 from publication in the code, and a statement as to where those
665 rules may be inspected.

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



122210

669 instructions, shall be filed with the committee before it is
670 used. Any form or instruction which meets the definition of
671 "rule" provided in s. 120.52 shall be incorporated by reference
672 into the appropriate rule. The reference shall specifically state
673 that the form is being incorporated by reference and shall
674 include the number, title, and effective date of the form and an
675 explanation of how the form may be obtained. Each form created by
676 an agency which is incorporated by reference in a rule notice of
677 which is given under s. 120.54(3)(a) after December 31, 2007,
678 must clearly display the number, title, and effective date of the
679 form and the number of the rule in which the form is
680 incorporated.

681 (d) Prescribe by rule the style and form required for
682 rules, notices, and other materials submitted for filing ~~and~~
683 ~~establish the form for their certification.~~

684 (5) Any publication of a proposed rule promulgated by an
685 agency, whether published in the Florida Administrative Code or
686 elsewhere, shall include, along with the rule, the name of the
687 person or persons originating such rule, the name of the agency
688 head supervisor or person who approved the rule, and the date
689 upon which the rule was approved.

690 Section 9. For the 2009-2010 fiscal year only and
691 notwithstanding s. 120.55(8)(b), Florida Statutes, the
692 unencumbered balance in the Records Management Trust Fund for
693 fees collected pursuant to chapter 120, Florida Statutes, may not
694 exceed \$500,000 at the beginning of the fiscal year, and any
695 excess shall be transferred to the General Revenue Fund.

696 Section 10. Effective July 1, 2010, paragraph (a) of
697 subsection (1) and subsection (2) of section 120.55, Florida
698 Statutes, as amended by this act, are amended to read:

Bill No. SB 704



122210

699 | 120.55 Publication.--

700 | (1) The Department of State shall:

701 | (a)1. Through a continuous revision system, compile and
702 | publish electronically, on an Internet website managed by the
703 | department, the "Florida Administrative Code." The Florida
704 | Administrative Code shall contain all rules adopted by each
705 | agency, citing the grant of rulemaking authority and the specific
706 | law implemented pursuant to which each rule was adopted, all
707 | history notes as authorized in s. 120.545(8), ~~and complete~~
708 | indexes to all rules contained in the code, and any other
709 | material required or authorized by law or deemed useful by the
710 | department. The electronic code shall display each rule chapter
711 | currently in effect in browse mode and allow full text search of
712 | the code and each rule chapter. ~~Supplementation shall be made as~~
713 | ~~often as practicable, but at least monthly.~~ The department shall
714 | publish a printed version of the Florida Administrative Code and
715 | may contract with a publishing firm for such printed the
716 | ~~publication, in a timely and useful form, of the Florida~~
717 | ~~Administrative Code;~~ however, the department shall retain
718 | responsibility for the code as provided in this section.
719 | Supplementation of the printed code shall be made as often as
720 | practicable, but at least monthly. The printed ~~This~~ publication
721 | shall be the official compilation of the administrative rules of
722 | this state. The Department of State shall retain the copyright
723 | over the Florida Administrative Code.

724 | 2. Rules general in form but applicable to only one school
725 | district, community college district, or county, or a part
726 | thereof, or state university rules relating to internal personnel
727 | or business and finance shall not be published in the Florida
728 | Administrative Code. Exclusion from publication in the Florida

Bill No. SB 704



122210

729 Administrative Code shall not affect the validity or
730 effectiveness of such rules.

731 3. At the beginning of the section of the code dealing with
732 an agency that files copies of its rules with the department, the
733 department shall publish the address and telephone number of the
734 executive offices of each agency, the manner by which the agency
735 indexes its rules, a listing of all rules of that agency excluded
736 from publication in the code, and a statement as to where those
737 rules may be inspected.

738 4. Forms shall not be published in the Florida
739 Administrative Code; but any form which an agency uses in its
740 dealings with the public, along with any accompanying
741 instructions, shall be filed with the committee before it is
742 used. Any form or instruction which meets the definition of
743 "rule" provided in s. 120.52 shall be incorporated by reference
744 into the appropriate rule. The reference shall specifically state
745 that the form is being incorporated by reference and shall
746 include the number, title, and effective date of the form and an
747 explanation of how the form may be obtained. Each form created by
748 an agency which is incorporated by reference in a rule notice of
749 which is given under s. 120.54(3)(a) after December 31, 2007,
750 must clearly display the number, title, and effective date of the
751 form and the number of the rule in which the form is
752 incorporated.

753 5. The department shall allow material incorporated by
754 reference to be filed in electronic form as prescribed by
755 department rule. When a rule is filed for adoption with
756 incorporated material in electronic form, the department's
757 publication of the Florida Administrative Code on its Internet
758 website must contain a hyperlink from the incorporating reference



122210

759 in the rule directly to that material. The department may not
760 allow hyperlinks from rules in the Florida Administrative Code to
761 any material other than that filed with and maintained by the
762 department, but may allow hyperlinks to incorporated material
763 maintained by the department from the adopting agency's website
764 or other sites.

765 (2) The Florida Administrative Weekly Internet website must
766 allow users to:

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

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

771 (c) Subscribe to an automated e-mail notification of
772 selected notices to be sent out before or concurrently with
773 weekly publication of the printed and electronic Florida
774 Administrative Weekly. Such notification must include in the text
775 of the e-mail a summary of the content of each notice;

776 (d) View agency forms and other materials submitted to the
777 department in electronic form and incorporated by reference in
778 proposed rules; and

779 (e) Comment on proposed rules.

780 Section 11. Paragraphs (a) and (b) of subsection (2) of
781 section 120.56, Florida Statutes, are amended to read:

782 120.56 Challenges to rules.--

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

784 (a) Any substantially affected person may seek an
785 administrative determination of the invalidity of any proposed
786 rule by filing a petition seeking such a determination with the
787 division within 21 days after the date of publication of the
788 notice required by s. 120.54(3) (a), within 10 days after the



122210

789 final public hearing is held on the proposed rule as provided by
790 s. 120.54(3)(e)2. ~~s. 120.54(3)(e)~~, within 20 days after the
791 ~~preparation of a~~ statement of estimated regulatory costs required
792 pursuant to s. 120.541, if applicable, has been provided to all
793 persons who submitted a lower cost regulatory alternative and
794 made available to the public, or within 20 days after the date of
795 publication of the notice required by s. 120.54(3)(d). The
796 petition shall state with particularity the objections to the
797 proposed rule and the reasons that the proposed rule is an
798 invalid exercise of delegated legislative authority. The
799 petitioner has the burden of going forward. The agency then has
800 the burden to prove by a preponderance of the evidence that the
801 proposed rule is not an invalid exercise of delegated legislative
802 authority as to the objections raised. Any person who is
803 substantially affected by a change in the proposed rule may seek
804 a determination of the validity of such change. Any person not
805 substantially affected by the proposed rule as initially noticed,
806 but who is substantially affected by the rule as a result of a
807 change, may challenge any provision of the rule and is not
808 limited to challenging the change to the proposed rule.

809 (b) The administrative law judge may declare the proposed
810 rule wholly or partly invalid. Unless the decision of the
811 administrative law judge is reversed on appeal, the proposed rule
812 or provision of a proposed rule declared invalid shall not be
813 adopted. After a petition for administrative determination has
814 been filed ~~However,~~ the agency may proceed with all other steps
815 in the rulemaking process, including the holding of a factfinding
816 hearing. In the event part of a proposed rule is declared
817 invalid, the adopting agency may, in its sole discretion,
818 withdraw the proposed rule in its entirety. The agency whose

Bill No. SB 704



122210

819 | proposed rule has been declared invalid in whole or part shall
820 | give notice of the decision in the first available issue of the
821 | Florida Administrative Weekly.

822 | Section 12. Effective January 1, 2009, subsection (4) of
823 | section 120.56, Florida Statutes, is amended to read:

824 | 120.56 Challenges to rules.--

825 | (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL
826 | PROVISIONS.--

827 | (a) Any person substantially affected by an agency
828 | statement may seek an administrative determination that the
829 | statement violates s. 120.54(1)(a). The petition shall include
830 | the text of the statement or a description of the statement and
831 | shall state with particularity facts sufficient to show that the
832 | statement constitutes a rule under s. 120.52 and that the agency
833 | has not adopted the statement by the rulemaking procedure
834 | provided by s. 120.54.

835 | (b) The administrative law judge may extend the hearing
836 | date beyond 30 days after assignment of the case for good cause.
837 | Upon notification to the administrative law judge provided before
838 | the final hearing that the agency has published a notice of
839 | rulemaking under s. 120.54(3), such notice shall automatically
840 | operate as a stay of proceedings pending adoption of the
841 | statement as a rule. The administrative law judge may vacate the
842 | stay for good cause shown. A stay of proceedings pending
843 | rulemaking shall remain in effect so long as the agency is
844 | proceeding expeditiously and in good faith to adopt the statement
845 | as a rule. If a hearing is held and the petitioner proves the
846 | allegations of the petition, the agency shall have the burden of
847 | proving that rulemaking is not feasible or not ~~and~~ practicable
848 | under s. 120.54(1)(a).



122210

849 (c) The administrative law judge may determine whether all
850 or part of a statement violates s. 120.54(1)(a). The decision of
851 the administrative law judge shall constitute a final order. The
852 division shall transmit a copy of the final order to the
853 Department of State and the committee. The Department of State
854 shall publish notice of the final order in the first available
855 issue of the Florida Administrative Weekly.

856 (d) ~~If~~ ~~When~~ an administrative law judge enters a final
857 order that all or part of an agency statement violates s.
858 120.54(1)(a), the agency shall immediately discontinue all
859 reliance upon the statement or any substantially similar
860 statement as a basis for agency action. This paragraph shall not
861 be construed to impair the obligation of contracts existing at
862 the time the final order is entered.

863 ~~(e)1. If, prior to a final hearing to determine whether all~~
864 ~~or part of any agency statement violates s. 120.54(1)(a), an~~
865 ~~agency publishes, pursuant to s. 120.54(3)(a), proposed rules~~
866 ~~that address the statement, then for purposes of this section, a~~
867 ~~presumption is created that the agency is acting expeditiously~~
868 ~~and in good faith to adopt rules that address the statement, and~~
869 ~~the agency shall be permitted to rely upon the statement or a~~
870 ~~substantially similar statement as a basis for agency action if~~
871 ~~the statement meets the requirements of s. 120.57(1)(e).~~

872 ~~2. If, prior to the final hearing to determine whether all~~
873 ~~or part of an agency statement violates s. 120.54(1)(a), an~~
874 ~~agency publishes a notice of rule development which addresses the~~
875 ~~statement pursuant to s. 120.54(2), or certifies that such a~~
876 ~~notice has been transmitted to the Florida Administrative Weekly~~
877 ~~for publication, then such publication shall constitute good~~
878 ~~cause for the granting of a stay of the proceedings and a~~



122210

879 ~~continuance of the final hearing for 30 days. If the agency~~
880 ~~publishes proposed rules within this 30-day period or any~~
881 ~~extension of that period granted by an administrative law judge~~
882 ~~upon showing of good cause, then the administrative law judge~~
883 ~~shall place the case in abeyance pending the outcome of~~
884 ~~rulemaking and any proceedings involving challenges to proposed~~
885 ~~rules pursuant to subsection (2).~~

886 ~~3. If, following the commencement of the final hearing and~~
887 ~~prior to entry of a final order that all or part of an agency~~
888 ~~statement violates s. 120.54(1)(a), an agency publishes, pursuant~~
889 ~~to s. 120.54(3)(a), proposed rules that address the statement and~~
890 ~~proceeds expeditiously and in good faith to adopt rules that~~
891 ~~address the statement, the agency shall be permitted to rely upon~~
892 ~~the statement or a substantially similar statement as a basis for~~
893 ~~agency action if the statement meets the requirements of s.~~
894 ~~120.57(1)(c).~~

895 ~~4. If an agency fails to adopt rules that address the~~
896 ~~statement within 180 days after publishing proposed rules, for~~
897 ~~purposes of this subsection, a presumption is created that the~~
898 ~~agency is not acting expeditiously and in good faith to adopt~~
899 ~~rules. If the agency's proposed rules are challenged pursuant to~~
900 ~~subsection (2), the 180-day period for adoption of rules is~~
901 ~~tolled until a final order is entered in that proceeding.~~

902 ~~(e)5. If the proposed rules addressing the challenged~~
903 ~~statement are determined to be an invalid exercise of delegated~~
904 ~~legislative authority as defined in s. 120.52(8)(b)-(f), the~~
905 ~~agency must immediately discontinue reliance on the statement and~~
906 ~~any substantially similar statement until the rules addressing~~
907 ~~the subject are properly adopted, and the administrative law~~
908 ~~judge shall enter a final order to that effect.~~



122210

909 (f) All proceedings to determine a violation of s.
910 120.54(1) (a) shall be brought pursuant to this subsection. A
911 proceeding pursuant to this subsection may be consolidated with a
912 proceeding under subsection (3) or under any other section of
913 this chapter. ~~Nothing in~~ This paragraph does not shall be
914 ~~construed to~~ prevent a party whose substantial interests have
915 been determined by an agency action from bringing a proceeding
916 pursuant to s. 120.57(1) (e).

917 Section 13. Effective January 1, 2009, paragraph (e) of
918 subsection (1) of section 120.57, Florida Statutes, is amended to
919 read:

920 120.57 Additional procedures for particular cases.--

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

923 (e)1. An agency or an administrative law judge may not base
924 ~~Any~~ agency action that determines the substantial interests of a
925 party ~~and that is based~~ on an unadopted rule. The administrative
926 law judge shall determine whether an agency statement constitutes
927 an unadopted rule. This subparagraph does not preclude
928 application of adopted rules and applicable provisions of law to
929 the facts ~~unadopted rule is subject to de novo review by an~~
930 ~~administrative law judge~~.

931 2. Notwithstanding subparagraph 1., if an agency
932 demonstrates that the statute being implemented directs it to
933 adopt rules, that the agency has not had time to adopt those
934 rules because the requirement was so recently enacted, and that
935 the agency has initiated rulemaking and is proceeding
936 expeditiously and in good faith to adopt the required rules, then
937 the agency's action may be based upon those unadopted rules,
938 subject to de novo review by the administrative law judge. The



122210

939 | agency action shall not be presumed valid or invalid. The agency
940 | must demonstrate that the unadopted rule:

941 | a. Is within the powers, functions, and duties delegated by
942 | the Legislature or, if the agency is operating pursuant to
943 | authority derived from the State Constitution, is within that
944 | authority;

945 | b. Does not enlarge, modify, or contravene the specific
946 | provisions of law implemented;

947 | c. Is not vague, establishes adequate standards for agency
948 | decisions, or does not vest unbridled discretion in the agency;

949 | d. Is not arbitrary or capricious. A rule is arbitrary if
950 | it is not supported by logic or the necessary facts; a rule is
951 | capricious if it is adopted without thought or reason or is
952 | irrational;

953 | e. Is not being applied to the substantially affected party
954 | without due notice; and

955 | f. Does not impose excessive regulatory costs on the
956 | regulated person, county, or city.

957 | 3. The recommended and final orders in any proceeding shall
958 | be governed by the provisions of paragraphs (k) and (l), except
959 | that the administrative law judge's determination regarding an
960 | ~~the~~ unadopted rule under subparagraph 1. or 2. shall not be
961 | rejected by the agency unless the agency first determines from a
962 | review of the complete record, and states with particularity in
963 | the order, that such determination is clearly erroneous or does
964 | not comply with essential requirements of law. In any proceeding
965 | for review under s. 120.68, if the court finds that the agency's
966 | rejection of the determination regarding the unadopted rule does
967 | not comport with the provisions of this subparagraph, the agency
968 | action shall be set aside and the court shall award to the



122210

969 prevailing party the reasonable costs and a reasonable attorney's
970 fee for the initial proceeding and the proceeding for review.

971 Section 14. Effective January 1, 2009, subsections (2),
972 (3), and (4) of section 120.595, Florida Statutes, are amended to
973 read:

974 120.595 Attorney's fees.--

975 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
976 120.56(2).--If the appellate court or administrative law judge
977 declares a proposed rule or portion of a proposed rule invalid
978 pursuant to s. 120.56(2), a judgment or order shall be rendered
979 against the agency for reasonable costs and reasonable attorney's
980 fees, unless the agency demonstrates that its actions were
981 substantially justified or special circumstances exist which
982 would make the award unjust. An agency's actions are
983 "substantially justified" if there was a reasonable basis in law
984 and fact at the time the actions were taken by the agency. If the
985 agency prevails in the proceedings, the appellate court or
986 administrative law judge shall award reasonable costs and
987 reasonable attorney's fees against a party if the appellate court
988 or administrative law judge determines that a party participated
989 in the proceedings for an improper purpose as defined by
990 paragraph (1)(e). No award of attorney's fees as provided by this
991 subsection shall exceed \$50,000 ~~\$15,000~~.

992 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
993 120.56(3) AND (5).--If the appellate court or administrative law
994 judge declares a rule or portion of a rule invalid pursuant to s.
995 120.56(3) or s. 120.56(5), a judgment or order shall be rendered
996 against the agency for reasonable costs and reasonable attorney's
997 fees, unless the agency demonstrates that its actions were
998 substantially justified or special circumstances exist which



122210

999 would make the award unjust. An agency's actions are
1000 "substantially justified" if there was a reasonable basis in law
1001 and fact at the time the actions were taken by the agency. If the
1002 agency prevails in the proceedings, the appellate court or
1003 administrative law judge shall award reasonable costs and
1004 reasonable attorney's fees against a party if the appellate court
1005 or administrative law judge determines that a party participated
1006 in the proceedings for an improper purpose as defined by
1007 paragraph (1)(e). No award of attorney's fees as provided by this
1008 subsection shall exceed \$50,000 ~~\$15,000~~.

1009 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
1010 120.56(4).--

1011 (a) If the appellate court or administrative law judge
1012 determines ~~Upon entry of a final order~~ that all or part of an
1013 agency statement violates s. 120.54(1)(a), or that the agency
1014 must immediately discontinue reliance on the statement and any
1015 substantially similar statement pursuant to s. 120.56(4)(e), a
1016 judgment or order shall be entered against the agency for ~~the~~
1017 ~~administrative law judge shall award~~ reasonable costs and
1018 reasonable attorney's fees ~~to the petitioner~~, unless the agency
1019 demonstrates that the statement is required by the Federal
1020 Government to implement or retain a delegated or approved program
1021 or to meet a condition to receipt of federal funds.

1022 (b) Upon notification to the administrative law judge
1023 provided before the final hearing that the agency has published a
1024 notice of rulemaking under s. 120.54(3)(a), such notice shall
1025 automatically operate as a stay of proceedings pending
1026 rulemaking. The administrative law judge may vacate the stay for
1027 good cause shown. A stay of proceedings under this paragraph
1028 remains in effect so long as the agency is proceeding

Bill No. SB 704



122210

1029 expeditiously and in good faith to adopt the statement as a rule.
1030 The administrative law judge shall award reasonable costs and
1031 reasonable attorney's fees accrued by the petitioner prior to the
1032 date the notice was published, unless the agency proves to the
1033 administrative law judge that it did not know and should not have
1034 known that the statement was an unadopted rule. Attorneys' fees
1035 and costs under paragraphs (a) and (b) shall be awarded only upon
1036 a finding that the agency received notice that the statement may
1037 constitute an unadopted rule at least 30 days before a petition
1038 under s. 120.56(4) was filed and that the agency failed to
1039 publish the required notice of rulemaking pursuant to s.
1040 120.54(3) that addresses the statement within that 30-day period.
1041 Notice to the agency may be satisfied by its receipt of a copy of
1042 the s. 120.56(4) petition, a notice or other paper containing
1043 substantially the same information, or a petition filed pursuant
1044 to s. 120.54(7). An award of attorney's fees as provided by this
1045 paragraph may not exceed \$50,000.

1046 (c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an
1047 award shall be paid from the budget entity of the secretary,
1048 executive director, or equivalent administrative officer of the
1049 agency, and the agency shall not be entitled to payment of an
1050 award or reimbursement for payment of an award under any
1051 provision of law.

1052 (d) If the agency prevails in the proceedings, the
1053 appellate court or administrative law judge shall award
1054 reasonable costs and attorney's fees against a party if the
1055 appellate court or administrative law judge determines that the
1056 party participated in the proceedings for an improper purpose as
1057 defined in paragraph (1) (e) or that the party or the party's
1058 attorney knew or should have known that a claim was not supported



122210

1059 by the material facts necessary to establish the claim or would
1060 not be supported by the application of then-existing law to those
1061 material facts.

1062 Section 15. Subsection (1) and paragraph (c) of subsection
1063 (2) of section 120.569, Florida Statutes, are amended to read:

1064 120.569 Decisions which affect substantial interests.--

1065 (1) The provisions of this section apply in all proceedings
1066 in which the substantial interests of a party are determined by
1067 an agency, unless the parties are proceeding under s. 120.573 or
1068 s. 120.574. Unless waived by all parties, s. 120.57(1) applies
1069 whenever the proceeding involves a disputed issue of material
1070 fact. Unless otherwise agreed, s. 120.57(2) applies in all other
1071 cases. If a disputed issue of material fact arises during a
1072 proceeding under s. 120.57(2), then, unless waived by all
1073 parties, the proceeding under s. 120.57(2) shall be terminated
1074 and a proceeding under s. 120.57(1) shall be conducted. Parties
1075 shall be notified of any order, including a final order. Unless
1076 waived, a copy of the order shall be delivered or mailed to each
1077 party or the party's attorney of record at the address of record.
1078 Each notice shall inform the recipient of any administrative
1079 hearing or judicial review that is available under this section,
1080 s. 120.57, or s. 120.68; shall indicate the procedure which must
1081 be followed to obtain the hearing or judicial review; and shall
1082 state the time limits which apply.

1083 (2)

1084 (c) Unless otherwise provided by law, a petition or request
1085 for hearing shall include those items required by the uniform
1086 rules adopted pursuant to s. 120.54(5)(b) ~~s. 120.54(5)(b)~~4. Upon
1087 the receipt of a petition or request for hearing, the agency
1088 shall carefully review the petition to determine if it contains



122210

1089 | all of the required information. A petition shall be dismissed if
1090 | it is not in substantial compliance with these requirements or it
1091 | has been untimely filed. Dismissal of a petition shall, at least
1092 | once, be without prejudice to petitioner's filing a timely
1093 | amended petition curing the defect, unless it conclusively
1094 | appears from the face of the petition that the defect cannot be
1095 | cured. The agency shall promptly give written notice to all
1096 | parties of the action taken on the petition, shall state with
1097 | particularity its reasons if the petition is not granted, and
1098 | shall state the deadline for filing an amended petition if
1099 | applicable. This paragraph does not eliminate the availability of
1100 | equitable tolling as a defense to the untimely filing of a
1101 | petition.

1102 | Section 16. Subsection (2) of section 120.74, Florida
1103 | Statutes, is amended to read:

1104 | 120.74 Agency review, revision, and report.--

1105 | (2) Beginning October 1, 1997, and by October 1 of every
1106 | other year thereafter, the head of each agency shall file a
1107 | report with the President of the Senate, the Speaker of the House
1108 | of Representatives, and the committee, with a copy to each
1109 | appropriate standing committee of the Legislature, which
1110 | certifies that the agency has complied with the requirements of
1111 | this section ~~subsection~~. The report must specify any changes made
1112 | to its rules as a result of the review and, when appropriate,
1113 | recommend statutory changes that will promote efficiency, reduce
1114 | paperwork, or decrease costs to government and the private
1115 | sector. The report must identify the types of cases or disputes
1116 | in which the agency is involved which should be conducted under
1117 | the summary hearing process described in s. 120.574.

Bill No. SB 704



122210

1118 Section 17. Subsection (11) of section 120.80, Florida
1119 Statutes, is amended to read:

1120 120.80 Exceptions and special requirements; agencies.--

1121 (11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s.~~
1122 ~~120.52(15)~~, the enlistment, organization, administration,
1123 equipment, maintenance, training, and discipline of the militia,
1124 National Guard, organized militia, and unorganized militia, as
1125 provided by s. 2, Art. X of the State Constitution, are not rules
1126 as defined by this chapter.

1127 Section 18. Paragraph (c) of subsection (1) and paragraph
1128 (a) of subsection (3) of section 120.81, Florida Statutes, are
1129 amended to read:

1130 120.81 Exceptions and special requirements; general
1131 areas.--

1132 (1) EDUCATIONAL UNITS.--

1133 (c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any tests,
1134 test scoring criteria, or testing procedures relating to student
1135 assessment which are developed or administered by the Department
1136 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or
1137 s. 1008.25, or any other statewide educational tests required by
1138 law, are not rules.

1139 (3) PRISONERS AND PAROLEES.--

1140 (a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~, prisoners,
1141 as defined by s. 944.02, shall not be considered parties in any
1142 proceedings other than those under s. 120.54(3)(c) or (7), and
1143 may not seek judicial review under s. 120.68 of any other agency
1144 action. Prisoners are not eligible to seek an administrative
1145 determination of an agency statement under s. 120.56(4). Parolees
1146 shall not be considered parties for purposes of agency action or

Bill No. SB 704



122210

1147 | judicial review when the proceedings relate to the rescission or
1148 | revocation of parole.

1149 | Section 19. Paragraph (f) of subsection (2) of section
1150 | 409.175, Florida Statutes, is amended to read:

1151 | 409.175 Licensure of family foster homes, residential
1152 | child-caring agencies, and child-placing agencies; public records
1153 | exemption.--

1154 | (2) As used in this section, the term:

1155 | (f) "License" means "license" as defined in s. 120.52(10)
1156 | ~~s. 120.52(9)~~. A license under this section is issued to a family
1157 | foster home or other facility and is not a professional license
1158 | of any individual. Receipt of a license under this section shall
1159 | not create a property right in the recipient. A license under
1160 | this act is a public trust and a privilege, and is not an
1161 | entitlement. This privilege must guide the finder of fact or
1162 | trier of law at any administrative proceeding or court action
1163 | initiated by the department.

1164 | Section 20. Paragraph (a) of subsection (1) of section
1165 | 420.9072, Florida Statutes, is amended to read:

1166 | 420.9072 State Housing Initiatives Partnership
1167 | Program.--The State Housing Initiatives Partnership Program is
1168 | created for the purpose of providing funds to counties and
1169 | eligible municipalities as an incentive for the creation of local
1170 | housing partnerships, to expand production of and preserve
1171 | affordable housing, to further the housing element of the local
1172 | government comprehensive plan specific to affordable housing, and
1173 | to increase housing-related employment.

1174 | (1)(a) In addition to the legislative findings set forth in
1175 | s. 420.6015, the Legislature finds that affordable housing is
1176 | most effectively provided by combining available public and



122210

1177 private resources to conserve and improve existing housing and
1178 provide new housing for very-low-income households, low-income
1179 households, and moderate-income households. The Legislature
1180 intends to encourage partnerships in order to secure the benefits
1181 of cooperation by the public and private sectors and to reduce
1182 the cost of housing for the target group by effectively combining
1183 all available resources and cost-saving measures. The Legislature
1184 further intends that local governments achieve this combination
1185 of resources by encouraging active partnerships between
1186 government, lenders, builders and developers, real estate
1187 professionals, advocates for low-income persons, and community
1188 groups to produce affordable housing and provide related
1189 services. Extending the partnership concept to encompass
1190 cooperative efforts among small counties as defined in s.
1191 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities
1192 is specifically encouraged. Local governments are also intended
1193 to establish an affordable housing advisory committee to
1194 recommend monetary and nonmonetary incentives for affordable
1195 housing as provided in s. 420.9076.

1196 Section 21. Subsection (7) of section 420.9075, Florida
1197 Statutes, is amended to read:

1198 420.9075 Local housing assistance plans; partnerships.--

1199 (7) The moneys deposited in the local housing assistance
1200 trust fund shall be used to administer and implement the local
1201 housing assistance plan. The cost of administering the plan may
1202 not exceed 5 percent of the local housing distribution moneys and
1203 program income deposited into the trust fund. A county or an
1204 eligible municipality may not exceed the 5-percent limitation on
1205 administrative costs, unless its governing body finds, by
1206 resolution, that 5 percent of the local housing distribution plus



122210

1207 | 5 percent of program income is insufficient to adequately pay the
 1208 | necessary costs of administering the local housing assistance
 1209 | plan. The cost of administering the program may not exceed 10
 1210 | percent of the local housing distribution plus 5 percent of
 1211 | program income deposited into the trust fund, except that small
 1212 | counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~, and eligible
 1213 | municipalities receiving a local housing distribution of up to
 1214 | \$350,000 may use up to 10 percent of program income for
 1215 | administrative costs.

1216 | Section 22. For the 2008-2009 fiscal year, the nonrecurring
 1217 | sum of \$50,000 is appropriated from the Records Management Trust
 1218 | Fund to the Department of State, and for the 2009-2010 fiscal
 1219 | year, the nonrecurring sum of \$401,000 is appropriated from the
 1220 | Records Management Trust Fund to the Department of State for the
 1221 | purposes of carrying out the provisions of this act.

1222 | Section 23. Except as otherwise expressly provided in this
 1223 | act, this act shall take effect July 1, 2008.

1224 |
 1225 | ===== T I T L E A M E N D M E N T =====

1226 | And the title is amended as follows:

1227 | Delete everything before the enacting clause
 1228 | and insert:

1229 | A bill to be entitled
 1230 | An act relating to administrative procedures; providing
 1231 | a short title; amending s. 120.52, F.S.; redefining the
 1232 | term "invalid exercise of delegated legislative
 1233 | authority" to remove a limitation on the construction
 1234 | of statutory language granting rulemaking authority;
 1235 | defining the terms "law implemented," "rulemaking
 1236 | authority," and "unadopted rule"; amending s. 120.53,

Bill No. SB 704



122210

1237 F.S.; authorizing agencies to transmit agency orders
1238 electronically to the Division of Administrative
1239 Hearings; amending s. 120.536, F.S.; revising
1240 guidelines for the construction of statutory language
1241 granting rulemaking authority; amending s. 120.54,
1242 F.S.; prescribing limits and guidelines with respect to
1243 the incorporation of material by reference; prescribing
1244 requirements for material being incorporated by
1245 reference; prohibiting an agency head from delegating
1246 or transferring certain specified rulemaking
1247 responsibilities; revising the information required in
1248 notices of proposed actions; providing additional
1249 procedures for rule-adoption hearings; revising
1250 requirements for filing rules; requiring that material
1251 incorporated by reference be published by the agency
1252 when adopting emergency rules; revising provisions with
1253 respect to petitions to initiate rulemaking; amending
1254 s. 120.545, F.S.; revising duties and procedures of the
1255 Administrative Procedures Committee and agencies with
1256 respect to review of agency rules; deleting procedures
1257 for agency election to modify, withdraw, amend, or
1258 repeal a proposed rule; providing for the effect of the
1259 failure of an agency to respond to a committee
1260 objection to a statement of estimated regulatory costs
1261 within the time prescribed; deleting a requirement that
1262 the Department of State publish final legislative
1263 action; amending s. 120.55, F.S.; requiring the
1264 department to prescribe by rule the content
1265 requirements for rules, notices, and other materials;
1266 revising for a specified period the limit for the

Bill No. SB 704



122210

1267 unencumbered balance in the Records Management Trust
1268 Fund at the beginning of the fiscal year for fees
1269 collected under ch. 120, F.S.; providing for the
1270 transfer of excess funds; requiring electronic
1271 publication of the Florida Administrative Code;
1272 prescribing requirements with respect to the content of
1273 such electronic publication; providing for filing
1274 information incorporated by reference in electronic
1275 form; providing requirements for the Florida
1276 Administrative Weekly Internet website; amending s.
1277 120.56, F.S., relating to challenges to rules;
1278 conforming a cross-reference; revising procedures for
1279 administrative determinations of the invalidity of
1280 rules; requiring an agency to discontinue reliance on a
1281 statement under certain circumstances; providing an
1282 exception; deleting certain provisions relating to
1283 actions before a final hearing is held; amending s.
1284 120.57, F.S.; revising procedures applicable to
1285 hearings involving disputed issues of material fact;
1286 prohibiting enforcement of unadopted agency rules under
1287 certain circumstances; amending s. 120.595, F.S.;
1288 increasing the limitation on attorney's fees in
1289 challenges to proposed agency rules or existing agency
1290 rules; providing for an award of reasonable costs and
1291 attorney's fees accrued by a petitioner under certain
1292 circumstances; providing for an award of fees and costs
1293 if the agency prevails and a party participated for an
1294 improper purpose; amending s. 120.569, F.S.; requiring
1295 that certain administrative proceedings be terminated
1296 and subsequently reinstated under different provisions



122210

1297 | of law if a disputed issue of material fact arises
1298 | during the proceeding; conforming a cross-reference;
1299 | amending s. 120.74, F.S.; revising reporting
1300 | requirement for agency heads; amending ss. 120.80,
1301 | 120.81, 409.175, 420.9072, and 420.9075, F.S.;
1302 | conforming cross-references; providing an
1303 | appropriation; providing effective dates.