

By Senators Bennett and Gaetz

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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" to
5 remove a limitation on the construction of statutory
6 language granting rulemaking authority; defining the terms
7 "law implemented," "rulemaking authority," and "unadopted
8 rule"; amending s. 120.536, F.S.; revising guidelines for
9 the construction of statutory language granting rulemaking
10 authority; amending s. 120.54, F.S.; prescribing limits
11 and guidelines with respect to the incorporation of
12 material by reference; prescribing requirements for
13 material being incorporated by reference; prohibiting an
14 agency head from delegating or transferring certain
15 specified rulemaking responsibilities; revising the
16 information required in notices of proposed actions;
17 providing additional procedures for rule-adoption
18 hearings; revising requirements for filing rules;
19 requiring that material incorporated by reference be
20 published by the agency when adopting emergency rules;
21 revising provisions with respect to petitions to initiate
22 rulemaking; amending s. 120.545, F.S.; revising duties and
23 procedures of the Administrative Procedures Committee and
24 agencies with respect to review of agency rules;
25 authorizing the committee to request from an agency
26 information to examine unadopted agency statements;
27 providing procedures for an agency following an objection
28 to an unadopted rule of an agency; deleting procedures for
29 agency election to modify, withdraw, amend, or repeal a

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30 proposed rule; providing for the effect of the failure of
31 an agency to respond to a committee objection to a
32 statement of estimated regulatory costs or to a committee
33 objection to an unadopted rule within the time prescribed;
34 deleting a requirement that the Department of State
35 publish final legislative action; amending s. 120.55,
36 F.S.; requiring the department to prescribe by rule the
37 content requirements for rules, notices, and other
38 materials; revising for a specified period the limit for
39 the unencumbered balance in the Records Management Trust
40 Fund at the beginning of the fiscal year for fees
41 collected under ch. 120, F.S.; providing for the transfer
42 of excess funds; requiring electronic publication of the
43 Florida Administrative Code; prescribing requirements with
44 respect to the content of such electronic publication;
45 providing for filing information incorporated by reference
46 in electronic form; providing requirements for the Florida
47 Administrative Weekly Internet website; amending s.
48 120.56, F.S., relating to challenges to rules; conforming
49 a cross-reference; revising procedures for administrative
50 determinations of the invalidity of rules; requiring an
51 agency to discontinue reliance on a statement under
52 certain circumstances; providing an exception; deleting
53 certain provisions relating to actions before a final
54 hearing is held; amending s. 120.57, F.S.; revising
55 procedures applicable to hearings involving disputed
56 issues of material fact; prohibiting enforcement of
57 unadopted agency rules under certain circumstances;
58 amending s. 120.595, F.S.; increasing the limitation on

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59 attorney's fees in challenges to proposed agency rules or
60 existing agency rules; providing for an award of
61 reasonable costs and attorney's fees accrued by a
62 petitioner under certain circumstances; providing for an
63 award of fees and costs if the agency prevails and a party
64 participated for an improper purpose; amending s. 120.569,
65 F.S.; requiring that certain administrative proceedings be
66 terminated and subsequently reinstated under different
67 provisions of law if a disputed issue of material fact
68 arises during the proceeding; conforming a cross-
69 reference; amending s. 120.74, F.S.; revising reporting
70 requirement for agency heads; amending ss. 120.80, 120.81,
71 409.175, 420.9072, and 420.9075, F.S.; conforming cross-
72 references; providing an appropriation; providing
73 effective dates.

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

76
77 Section 1. This act may be cited as the "Open Government
78 Act."

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

86 120.52 Definitions.--As used in this act:

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

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

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

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

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

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

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

111
112 A grant of rulemaking authority is necessary but not sufficient
113 to allow an agency to adopt a rule; a specific law to be
114 implemented is also required. An agency may adopt only rules that
115 implement or interpret the specific powers and duties granted by

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

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

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

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

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

137 120.536 Rulemaking authority; repeal; challenge.--

138 (1) A grant of rulemaking authority is necessary but not
139 sufficient to allow an agency to adopt a rule; a specific law to
140 be implemented is also required. An agency may adopt only rules
141 that implement or interpret the specific powers and duties
142 granted by the enabling statute. No agency shall have authority
143 to adopt a rule only because it is reasonably related to the
144 purpose of the enabling legislation and is not arbitrary and

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145 | capricious or is within the agency's class of powers and duties,
146 | nor shall an agency have the authority to implement statutory
147 | provisions setting forth general legislative intent or policy.
148 | Statutory language granting rulemaking authority or generally
149 | describing the powers and functions of an agency shall be
150 | construed to extend no further than implementing or interpreting
151 | the specific powers and duties conferred ~~by the same statute.~~

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

157 | 120.54 Rulemaking.--

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

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

167 | 2. An agency rule that incorporates by specific reference
168 | another rule of that agency automatically incorporates subsequent
169 | amendments to the referenced rule unless a contrary intent is
170 | clearly indicated in the referencing rule. A notice of amendments
171 | to a rule that has been incorporated by specific reference in
172 | other rules of that agency must explain the effect of those
173 | amendments on the referencing rules.

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

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

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

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

193 5.2. Notwithstanding any contrary provision in this
194 section, when an adopted rule of the Department of Environmental
195 Protection or a water management district is incorporated by
196 reference in the other agency's rule to implement a provision of
197 part IV of chapter 373, subsequent amendments to the rule are not
198 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

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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 amend
207 | the history note of the incorporating rule to show the effective
208 | date of such change. Any substantially affected person may,
209 | within 14 days after the date of publication of the notice of
210 | intent in the Florida Administrative Weekly, file an objection to
211 | rulemaking with the agency. The objection shall specify the
212 | portions of the rule incorporated by reference to which the
213 | person objects and the reasons for the objection. The agency
214 | shall not have the authority under this subparagraph to adopt
215 | those portions of the rule specified in such objection. The
216 | agency shall publish notice of the objection and of its action in
217 | response in the next available issue of the Florida
218 | Administrative Weekly.

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

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

224 | (3) ADOPTION PROCEDURES.--

225 | (a) Notices.--

226 | 1. Prior to the adoption, amendment, or repeal of any rule
227 | other than an emergency rule, an agency, upon approval of the
228 | agency head, shall give notice of its intended action, setting
229 | forth a short, plain explanation of the purpose and effect of the
230 | proposed action; the full text of the proposed rule or amendment
231 | and a summary thereof; a reference to the grant of specific

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232 rulemaking authority pursuant to which the rule is adopted; and a
233 reference to the section or subsection of the Florida Statutes or
234 the Laws of Florida being implemented or, interpreted, ~~or made~~
235 ~~specific~~. The notice must ~~shall~~ include a summary of the agency's
236 statement of the estimated regulatory costs, if one has been
237 prepared, based on the factors set forth in s. 120.541(2), and a
238 statement that any person who wishes to provide the agency with
239 information regarding the statement of estimated regulatory
240 costs, or to provide a proposal for a lower cost regulatory
241 alternative as provided by s. 120.541(1), must do so in writing
242 within 21 days after publication of the notice. The notice must
243 state the procedure for requesting a public hearing on the
244 proposed rule. Except when the intended action is the repeal of a
245 rule, the notice must ~~shall~~ include a reference both to the date
246 on which and to the place where the notice of rule development
247 that is required by subsection (2) appeared.

248 2. The notice shall be published in the Florida
249 Administrative Weekly not less than 28 days prior to the intended
250 action. The proposed rule shall be available for inspection and
251 copying by the public at the time of the publication of notice.

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

258 4. The adopting agency shall file with the committee, at
259 least 21 days prior to the proposed adoption date, a copy of each
260 rule it proposes to adopt; a copy of any material incorporated by

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261 reference in the rule; a detailed written statement of the facts
262 and circumstances justifying the proposed rule; a copy of any
263 statement of estimated regulatory costs that has been prepared
264 pursuant to s. 120.541; a statement of the extent to which the
265 proposed rule relates to federal standards or rules on the same
266 subject; and the notice required by subparagraph 1.

267 (c) Hearings.--

268 1. If the intended action concerns any rule other than one
269 relating exclusively to procedure or practice, the agency shall,
270 on the request of any affected person received within 21 days
271 after the date of publication of the notice of intended agency
272 action, give affected persons an opportunity to present evidence
273 and argument on all issues under consideration. The agency may
274 schedule a public hearing on the rule and, if requested by any
275 affected person, shall schedule a public hearing on the rule. If
276 the agency head is a board or other collegial body created under
277 s. 20.165(4) or s. 20.43(3)(g), the board or other collegial body
278 shall conduct the requested public hearing itself and may not
279 delegate this responsibility without the consent of those persons
280 requesting the public hearing. Any material pertinent to the
281 issues under consideration submitted to the agency within 21 days
282 after the date of publication of the notice or submitted at a
283 public hearing shall be considered by the agency and made a part
284 of the record of the rulemaking proceeding.

285 2. Rulemaking proceedings shall be governed solely by the
286 provisions of this section unless a person timely asserts that
287 the person's substantial interests will be affected in the
288 proceeding and affirmatively demonstrates to the agency that the
289 proceeding does not provide adequate opportunity to protect those

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290 interests. If the agency determines that the rulemaking
291 proceeding is not adequate to protect the person's interests, it
292 shall suspend the rulemaking proceeding and convene a separate
293 proceeding under the provisions of ss. 120.569 and 120.57.

294 Similarly situated persons may be requested to join and
295 participate in the separate proceeding. Upon conclusion of the
296 separate proceeding, the rulemaking proceeding shall be resumed.

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

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

310 2. A rule may not be filed for adoption less than 28 days
311 or more than 90 days after the notice required by paragraph (a),
312 until 21 days after the notice of change required by paragraph
313 (d), until 14 days after the final public hearing, until 21 days
314 after ~~preparation of~~ a statement of estimated regulatory costs
315 required under s. 120.541 has been provided to all persons who
316 submitted a lower cost regulatory alternative and made available
317 to the public, or until the administrative law judge has rendered
318 a decision under s. 120.56(2), whichever applies. When a required

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319 notice of change is published prior to the expiration of the time
320 to file the rule for adoption, the period during which a rule
321 must be filed for adoption is extended to 45 days after the date
322 of publication. If notice of a public hearing is published prior
323 to the expiration of the time to file the rule for adoption, the
324 period during which a rule must be filed for adoption is extended
325 to 45 days after adjournment of the final hearing on the rule, 21
326 days after receipt of all material authorized to be submitted at
327 the hearing, or 21 days after receipt of the transcript, if one
328 is made, whichever is latest. The term "public hearing" includes
329 any public meeting held by any agency at which the rule is
330 considered. If a petition for an administrative determination
331 under s. 120.56(2) is filed, the period during which a rule must
332 be filed for adoption is extended to 60 days after the
333 administrative law judge files the final order with the clerk or
334 until 60 days after subsequent judicial review is complete.

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

340 4. At the time a rule is filed, the committee shall certify
341 whether the agency has responded in writing to all material and
342 timely written comments or written inquiries made on behalf of
343 the committee. The department shall reject any rule that is not
344 filed within the prescribed time limits; that does not comply
345 with ~~satisfy~~ all statutory rulemaking requirements and rules of
346 the department; upon which an agency has not responded in writing
347 to all material and timely written inquiries or written comments;

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348 upon which an administrative determination is pending; or which
349 does not include a statement of estimated regulatory costs, if
350 required.

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

356 6. The proposed rule shall be adopted on being filed with
357 the Department of State and become effective 20 days after being
358 filed, on a later date specified in the rule, or on a date
359 required by statute. Rules not required to be filed with the
360 Department of State shall become effective when adopted by the
361 agency head or on a later date specified by rule or statute. If
362 the committee notifies an agency that an objection to a rule is
363 being considered, the agency may postpone the adoption of the
364 rule to accommodate review of the rule by the committee. When an
365 agency postpones adoption of a rule to accommodate review by the
366 committee, the 90-day period for filing the rule is tolled until
367 the committee notifies the agency that it has completed its
368 review of the rule.

369

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

372 (4) EMERGENCY RULES.--

373 (a) If an agency finds that an immediate danger to the
374 public health, safety, or welfare requires emergency action, the
375 agency may adopt any rule necessitated by the immediate danger.

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376 The agency may adopt a rule by any procedure which is fair under
377 the circumstances if:

378 1. The procedure provides at least the procedural
379 protection given by other statutes, the State Constitution, or
380 the United States Constitution.

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

383 3. The agency publishes in writing at the time of, or prior
384 to, its action the specific facts and reasons for finding an
385 immediate danger to the public health, safety, or welfare and its
386 reasons for concluding that the procedure used is fair under the
387 circumstances. In any event, notice of emergency rules, other
388 than those of educational units or units of government with
389 jurisdiction in only one or a part of one county, including the
390 full text of the rules, shall be published in the first available
391 issue of the Florida Administrative Weekly and provided to the
392 committee along with any material incorporated by reference in
393 the rules. The agency's findings of immediate danger, necessity,
394 and procedural fairness shall be judicially reviewable.

395 (7) PETITION TO INITIATE RULEMAKING.--

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

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405 ~~(b) If the petition filed under this subsection is directed~~
406 ~~to an existing rule which the agency has not adopted by the~~
407 ~~rulemaking procedures or requirements set forth in this chapter,~~
408 ~~the agency shall, not later than 30 days following the date of~~
409 ~~filing a petition, initiate rulemaking, or provide notice in the~~
410 ~~Florida Administrative Weekly that the agency will hold a public~~
411 ~~hearing on the petition within 30 days after publication of the~~
412 ~~notice. The purpose of the public hearing is to consider the~~
413 ~~comments of the public directed to the agency rule which has not~~
414 ~~been adopted by the rulemaking procedures or requirements of this~~
415 ~~chapter, its scope and application, and to consider whether the~~
416 ~~public interest is served adequately by the application of the~~
417 ~~rule on a case-by-case basis, as contrasted with its adoption by~~
418 ~~the rulemaking procedures or requirements set forth in this~~
419 ~~chapter.~~

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

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434 ~~making the rule a statutory standard or limiting or otherwise~~
435 ~~modifying the authority of the agency.~~

436 Section 5. Section 120.545, Florida Statutes, is amended to
437 read:

438 120.545 Committee review of agency rules.--

439 (1) As a legislative check on legislatively created
440 authority, the committee shall examine each proposed rule, except
441 for those proposed rules exempted by s. 120.81(1)(e) and (2), and
442 its accompanying material, and each emergency rule, and may
443 examine any existing rule, for the purpose of determining
444 whether:

445 (a) The rule is an invalid exercise of delegated
446 legislative authority.

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

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

449 (d) The rule is in proper form.

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

452 (f) The rule is consistent with expressed legislative
453 intent pertaining to the specific provisions of law which the
454 rule implements.

455 (g) The rule is necessary to accomplish the apparent or
456 expressed objectives of the specific provision of law which the
457 rule implements.

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

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

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463 (j) The rule's statement of estimated regulatory costs
464 complies with the requirements of s. 120.541 and whether the rule
465 does not impose regulatory costs on the regulated person, county,
466 or city which could be reduced by the adoption of less costly
467 alternatives that substantially accomplish the statutory
468 objectives.

469 (k) The rule will require additional appropriations.

470 (1) If the rule is an emergency rule, there exists an
471 emergency justifying the adoption ~~promulgation~~ of such rule, the
472 agency is within ~~has exceeded the scope of~~ its statutory
473 authority, and the rule was adopted ~~promulgated~~ in compliance
474 with the requirements and limitations of s. 120.54(4).

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

490 (3) Within 30 days after ~~of~~ receipt of the objection, if
491 the agency is headed by an individual, or within 45 days after ~~of~~

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492 receipt of the objection, if the agency is headed by a collegial
493 body, the agency shall:

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

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

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

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

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

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

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

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

512 (c) If ~~the rule is either an existing or a proposed rule~~
513 ~~and~~ the objection is to the statement of estimated regulatory
514 costs:

515 1. Prepare a corrected statement of estimated regulatory
516 costs, give notice of the availability of the corrected statement
517 in the first available issue of the Florida Administrative
518 Weekly, and file a copy of the corrected statement with the
519 committee; or

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

522 (d) If the rule is unadopted:

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

525 2. File notice for publication in the Florida
526 Administrative Weekly that the agency has abandoned all reliance
527 upon the statement or any substantially similar statement as a
528 basis for agency action; or

529 3. Notify the committee in writing that the agency refuses
530 to adopt the rule or to abandon all reliance upon the statement
531 or any substantially similar statement as a basis for agency
532 action.

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

546 ~~(5) If the agency elects to withdraw a proposed rule as a~~
547 ~~result of a committee objection, it shall notify the committee,~~
548 ~~in writing, of its election and shall give notice of the~~

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549 ~~withdrawal in the next available issue of the Florida~~
550 ~~Administrative Weekly. The rule shall be withdrawn without a~~
551 ~~public hearing, effective upon publication of the notice in the~~
552 ~~Florida Administrative Weekly. If the agency elects to repeal an~~
553 ~~existing rule as a result of a committee objection, it shall~~
554 ~~notify the committee, in writing, of its election and shall~~
555 ~~initiate rulemaking procedures for that purpose by giving notice~~
556 ~~in the next available issue of the Florida Administrative Weekly.~~

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

561 ~~(4)~~ ~~(7)~~ Failure of the agency to respond to a committee
562 objection to a ~~proposed~~ rule that is not yet in effect within the
563 time prescribed in subsection (3) constitutes ~~shall constitute~~
564 withdrawal of the rule in its entirety. In this event, the
565 committee shall notify the Department of State that the agency,
566 by its failure to respond to a committee objection, has elected
567 to withdraw the ~~proposed~~ rule. Upon receipt of the committee's
568 notice, the Department of State shall publish a notice to that
569 effect in the next available issue of the Florida Administrative
570 Weekly. Upon publication of the notice, the ~~proposed~~ rule shall
571 be stricken from the files of the Department of State and the
572 files of the agency.

573 ~~(5)~~ ~~(8)~~ Failure of the agency to respond to a committee
574 objection to a an-existing rule that is in effect within the time
575 prescribed in subsection (3) constitutes ~~shall constitute~~ a
576 refusal to amend or repeal the rule.

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577 (6) Failure of the agency to respond to a committee
578 objection to a statement of estimated regulatory costs within the
579 time prescribed in subsection (3) constitutes a refusal to
580 prepare a corrected statement of estimated regulatory costs.

581 (7) Failure of the agency to respond to a committee
582 objection to an unadopted rule within the time prescribed in
583 subsection (3) constitutes a refusal to adopt the rule and a
584 refusal to abandon all reliance upon the statement or any
585 substantially similar statement as a basis for agency action.

586 (8)-(9) If the committee objects to a ~~proposed or existing~~
587 rule and the agency refuses to adopt, abandon, modify, amend,
588 withdraw, or repeal the rule, the committee shall file with the
589 Department of State a notice of the objection, detailing with
590 particularity the committee's ~~its~~ objection to the rule. The
591 Department of State shall publish this notice in the Florida
592 Administrative Weekly. If the rule is published and shall
593 ~~publish, as a history note to the rule~~ in the Florida
594 Administrative Code, a reference to the committee's objection and
595 to the issue of the Florida Administrative Weekly in which the
596 full text thereof appears shall be recorded in a history note.

597 (9)-(10)(a) If the committee objects to a ~~proposed or~~
598 ~~existing~~ rule, or portion of a rule thereof, and the agency fails
599 to initiate administrative action to adopt, abandon, modify,
600 amend, withdraw, or repeal the rule consistent with the objection
601 within 60 days after the objection, or thereafter fails to
602 proceed in good faith to complete such action, the committee may
603 submit to the President of the Senate and the Speaker of the
604 House of Representatives a recommendation that legislation be
605 introduced to address the committee's objection ~~modify or suspend~~

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606 ~~the adoption of the proposed rule, or amend or repeal the rule,~~
607 ~~or portion thereof.~~

608 (b)1. If the committee votes to recommend the introduction
609 of legislation to address the committee's objection ~~modify or~~
610 ~~suspend the adoption of a proposed rule, or amend or repeal a~~
611 ~~rule,~~ the committee shall, within 5 days after this
612 determination, certify that fact to the agency whose rule or
613 proposed rule has been examined. The committee may request that
614 the agency temporarily suspend the rule or suspend the adoption
615 of the proposed rule, or suspend all reliance upon the statement
616 or any substantially similar statement as a basis for agency
617 action, pending consideration of proposed legislation during the
618 next regular session of the Legislature.

619 2. Within 30 days after receipt of the certification, if
620 the agency is headed by an individual, or within 45 days after
621 receipt of the certification, if the agency is headed by a
622 collegial body, the agency shall ~~either~~:

623 a. Temporarily suspend the rule, ~~or~~ suspend the adoption of
624 the proposed rule, or suspend all reliance upon the statement or
625 any substantially similar statement as a basis for agency action;
626 or

627 b. Notify the committee in writing that the agency ~~it~~
628 refuses to temporarily suspend the rule, ~~or~~ suspend the adoption
629 of the proposed rule, or suspend all reliance upon the statement
630 or any substantially similar statement as a basis for agency
631 action.

632 3. If the agency elects to temporarily suspend the rule, ~~or~~
633 suspend the adoption of the proposed rule, or suspend all
634 reliance upon the statement or any substantially similar

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635 statement as a basis for agency action, the agency ~~it~~ shall give
636 notice of the suspension in the Florida Administrative Weekly.
637 The rule or the rule adoption process shall be suspended upon
638 publication of the notice. An agency may ~~shall~~ not base any
639 agency action on a suspended rule, ~~or~~ suspended proposed rule, or
640 suspended statement or any substantially similar statement, or
641 portion of such rule or statement thereof, prior to expiration of
642 the suspension. A suspended rule, ~~or~~ suspended proposed rule, or
643 suspended statement or any substantially similar statement, or
644 portion of such rule or statement thereof, continues to be
645 subject to administrative determination and judicial review as
646 provided by law.

647 4. Failure of an agency to respond to committee
648 certification within the time prescribed by subparagraph 2.
649 constitutes a refusal to suspend the rule, ~~or to~~ suspend the
650 adoption of the proposed rule, or suspend all reliance upon the
651 statement or any substantially similar statement as a basis for
652 agency action.

653 (c) The committee shall prepare proposed legislation bills
654 to address the committee's objection ~~modify or suspend the~~
655 ~~adoption of the proposed rule or amend or repeal the rule, or~~
656 ~~portion thereof,~~ in accordance with the rules of the Senate and
657 the House of Representatives for prefiling and introduction in
658 the next regular session of the Legislature. The proposed
659 legislation bill ~~bill~~ shall be presented to the President of the
660 Senate and the Speaker of the House of Representatives with the
661 committee recommendation.

662 (d) If proposed legislation addressing the committee's
663 objection ~~a bill to suspend the adoption of a proposed rule is~~

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664 ~~enacted into law, the proposed rule is suspended until specific~~
665 ~~delegated legislative authority for the proposed rule has been~~
666 ~~enacted. If a bill to suspend the adoption of a proposed rule~~
667 ~~fails to become law, any temporary agency suspension of the rule~~
668 ~~shall expire. If a bill to modify a proposed rule or amend a rule~~
669 ~~is enacted into law, the suspension shall expire upon publication~~
670 ~~of notice of modification or amendment in the Florida~~
671 ~~Administrative Weekly. If a bill to repeal a rule is enacted into~~
672 ~~law, the suspension shall remain in effect until notification of~~
673 ~~repeal of the rule is published in the Florida Administrative~~
674 ~~Weekly.~~

675 ~~(c) The Department of State shall publish in the next~~
676 ~~available issue of the Florida Administrative Weekly the final~~
677 ~~legislative action taken. If a bill to modify or suspend the~~
678 ~~adoption of the proposed rule or amend or repeal the rule, or~~
679 ~~portion thereof, is enacted into law, the Department of State~~
680 ~~shall conform the rule or portion of the rule to the provisions~~
681 ~~of the law in the Florida Administrative Code and publish a~~
682 ~~reference to the law as a history note to the rule.~~

683 Section 6. Paragraphs (a) and (d) of subsection (1) and
684 subsection (5) of section 120.55, Florida Statutes, are amended
685 to read:

686 120.55 Publication.--

687 (1) The Department of State shall:

688 (a)1. Through a continuous revision system, compile and
689 publish the "Florida Administrative Code." The Florida
690 Administrative Code shall contain all rules adopted by each
691 agency, citing the grant of specific rulemaking authority and the
692 specific law implemented pursuant to which each rule was adopted,

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693 all history notes as authorized in s. 120.545(8) ~~s. 120.545(9)~~,
694 and complete indexes to all rules contained in the code.
695 Supplementation shall be made as often as practicable, but at
696 least monthly. The department may contract with a publishing firm
697 for the publication, in a timely and useful form, of the Florida
698 Administrative Code; however, the department shall retain
699 responsibility for the code as provided in this section. This
700 publication shall be the official compilation of the
701 administrative rules of this state. The Department of State shall
702 retain the copyright over the Florida Administrative Code.

703 2. Rules general in form but applicable to only one school
704 district, community college district, or county, or a part
705 thereof, or state university rules relating to internal personnel
706 or business and finance shall not be published in the Florida
707 Administrative Code. Exclusion from publication in the Florida
708 Administrative Code shall not affect the validity or
709 effectiveness of such rules.

710 3. At the beginning of the section of the code dealing with
711 an agency that files copies of its rules with the department, the
712 department shall publish the address and telephone number of the
713 executive offices of each agency, the manner by which the agency
714 indexes its rules, a listing of all rules of that agency excluded
715 from publication in the code, and a statement as to where those
716 rules may be inspected.

717 4. Forms shall not be published in the Florida
718 Administrative Code; but any form which an agency uses in its
719 dealings with the public, along with any accompanying
720 instructions, shall be filed with the committee before it is
721 used. Any form or instruction which meets the definition of

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722 "rule" provided in s. 120.52 shall be incorporated by reference
723 into the appropriate rule. The reference shall specifically state
724 that the form is being incorporated by reference and shall
725 include the number, title, and effective date of the form and an
726 explanation of how the form may be obtained. Each form created by
727 an agency which is incorporated by reference in a rule notice of
728 which is given under s. 120.54(3)(a) after December 31, 2007,
729 must clearly display the number, title, and effective date of the
730 form and the number of the rule in which the form is
731 incorporated.

732 (d) Prescribe by rule the style, ~~and form,~~ and content
733 requirements required for rules, notices, and other materials
734 submitted for filing ~~and establish the form for their~~
735 ~~certification.~~

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

742 Section 7. For the 2008-2009 fiscal year only and
743 notwithstanding s. 120.55(8)(b), Florida Statutes, the
744 unencumbered balance in the Records Management Trust Fund for
745 fees collected pursuant to chapter 120, Florida Statutes, may not
746 exceed \$400,000 at the beginning of the fiscal year, and any
747 excess shall be transferred to the General Revenue Fund.

748 Section 8. Effective December 31, 2008, subsection (2) of
749 section 120.55, Florida Statutes, is amended to read:

750 120.55 Publication.--

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751 (2) The Florida Administrative Weekly Internet website must
752 allow users to:

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

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

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

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

765 (e) Comment on proposed rules.

766 Section 9. Effective December 31, 2009, paragraph (a) of
767 subsection (1) of section 120.55, Florida Statutes, as amended by
768 this act, is amended to read:

769 120.55 Publication.--

770 (1) The Department of State shall:

771 (a)1. Through a continuous revision system, compile and
772 publish electronically the "Florida Administrative Code-" on an
773 Internet website managed by the department. The Florida
774 Administrative Code shall contain all rules adopted by each
775 agency, citing the grant of rulemaking authority and the specific
776 law implemented pursuant to which each rule was adopted, all
777 history notes as authorized in s. 120.545(8) ~~s. 120.545(9)~~, and
778 complete indexes to all rules contained in the code, and any
779 other material required or authorized by law or deemed useful by

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780 the department. The electronic code shall display each rule
781 chapter currently in effect in browse mode and allow full text
782 search of the code and each rule chapter. ~~Supplementation shall~~
783 ~~be made as often as practicable, but at least monthly.~~ The
784 department shall publish a printed version of the Florida
785 Administrative Code and may contract with a publishing firm for
786 such printed the publication, in a timely and useful form, of the
787 ~~Florida Administrative Code~~; however, the department shall retain
788 responsibility for the code as provided in this section.
789 Supplementation of the printed code shall be made as often as
790 practicable, but at least monthly. The printed ~~This~~ publication
791 shall be the official compilation of the administrative rules of
792 this state. The Department of State shall retain the copyright
793 over the Florida Administrative Code.

794 2. Rules general in form but applicable to only one school
795 district, community college district, or county, or a part
796 thereof, or state university rules relating to internal personnel
797 or business and finance shall not be published in the Florida
798 Administrative Code. Exclusion from publication in the Florida
799 Administrative Code shall not affect the validity or
800 effectiveness of such rules.

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

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808 4. Forms shall not be published in the Florida
809 Administrative Code; but any form which an agency uses in its
810 dealings with the public, along with any accompanying
811 instructions, shall be filed with the committee before it is
812 used. Any form or instruction which meets the definition of
813 "rule" provided in s. 120.52 shall be incorporated by reference
814 into the appropriate rule. The reference shall specifically state
815 that the form is being incorporated by reference and shall
816 include the number, title, and effective date of the form and an
817 explanation of how the form may be obtained. Each form created by
818 an agency which is incorporated by reference in a rule notice of
819 which is given under s. 120.54(3)(a) after December 31, 2007,
820 must clearly display the number, title, and effective date of the
821 form and the number of the rule in which the form is
822 incorporated.

823 5. The department shall allow material incorporated by
824 reference to be filed in electronic form as prescribed by
825 department rule. When a rule is filed for adoption with
826 incorporated material in electronic form, the department's
827 publication of the Florida Administrative Code on its Internet
828 website must contain a hyperlink from the incorporating reference
829 in the rule directly to that material. The department may not
830 allow hyperlinks from rules in the Florida Administrative Code to
831 any material other than that filed with and maintained by the
832 department, but it may allow additional hyperlinks to
833 incorporated material maintained by the department from the
834 adopting agency's website or other sites.

835 Section 10. Paragraphs (a) and (b) of subsection (2) of
836 section 120.56, Florida Statutes, are amended to read:

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837 120.56 Challenges to rules.--

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

839 (a) Any substantially affected person may seek an

840 administrative determination of the invalidity of any proposed

841 rule by filing a petition seeking such a determination with the

842 division within 21 days after the date of publication of the

843 notice required by s. 120.54(3)(a), within 10 days after the

844 final public hearing is held on the proposed rule as provided by

845 s. 120.54(3)(e)2. ~~s. 120.54(3)(e)~~, within 20 days after the

846 ~~preparation of a~~ statement of estimated regulatory costs required

847 pursuant to s. 120.541, if applicable, has been provided to all

848 persons who submitted a lower cost regulatory alternative and

849 made available to the public, or within 20 days after the date of

850 publication of the notice required by s. 120.54(3)(d). The

851 petition shall state with particularity the objections to the

852 proposed rule and the reasons that the proposed rule is an

853 invalid exercise of delegated legislative authority. The

854 petitioner has the burden of going forward. The agency then has

855 the burden to prove by a preponderance of the evidence that the

856 proposed rule is not an invalid exercise of delegated legislative

857 authority as to the objections raised. Any person who is

858 substantially affected by a change in the proposed rule may seek

859 a determination of the validity of such change. Any person not

860 substantially affected by the proposed rule as initially noticed,

861 but who is substantially affected by the rule as a result of a

862 change, may challenge any provision of the rule and is not

863 limited to challenging the change to the proposed rule.

864 (b) The administrative law judge may declare the proposed

865 rule wholly or partly invalid. Unless the decision of the

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866 administrative law judge is reversed on appeal, the proposed rule
867 or provision of a proposed rule declared invalid shall not be
868 adopted. After a petition for administrative determination has
869 been filed ~~However~~, the agency may proceed with all other steps
870 in the rulemaking process, including the holding of a factfinding
871 hearing. In the event part of a proposed rule is declared
872 invalid, the adopting agency may, in its sole discretion,
873 withdraw the proposed rule in its entirety. The agency whose
874 proposed rule has been declared invalid in whole or part shall
875 give notice of the decision in the first available issue of the
876 Florida Administrative Weekly.

877 Section 11. Effective January 1, 2009, subsection (4) of
878 section 120.56, Florida Statutes, is amended to read:

879 120.56 Challenges to rules.--

880 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL
881 PROVISIONS.--

882 (a) Any person substantially affected by an agency
883 statement may seek an administrative determination that the
884 statement violates s. 120.54(1)(a). The petition shall include
885 the text of the statement or a description of the statement and
886 shall state with particularity facts sufficient to show that the
887 statement constitutes a rule under s. 120.52 and that the agency
888 has not adopted the statement by the rulemaking procedure
889 provided by s. 120.54. Upon the filing of a petition for an
890 administrative determination under this paragraph, the agency
891 shall immediately discontinue all reliance upon the statement or
892 any substantially similar statement as a basis for agency action
893 until:

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

896 2. The statement is adopted and becomes effective as a
897 rule;

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

901 4. A final order is issued which contains a determination
902 that rulemaking is not feasible under s. 120.54(1)(a)1.a. or s.
903 120.54(1)(a)1.b. or not practicable under s. 120.54(1)(a)2.

904 (b) If the administrative law judge determines that the
905 agency's inability to rely upon the statement during the
906 proceeding under paragraph (a) would constitute an immediate
907 danger to the public health, safety, or welfare, the
908 administrative law judge shall grant an agency petition to allow
909 application of the statement until the proceeding is concluded.

910 (c)~~(b)~~ The administrative law judge may extend the hearing
911 date beyond 30 days after assignment of the case for good cause.
912 If a hearing is held and the petitioner proves the allegations of
913 the petition, the agency shall have the burden of proving that
914 rulemaking is not feasible or not ~~and~~ practicable under s.
915 120.54(1)(a).

916 (d)~~(e)~~ The administrative law judge may determine whether
917 all or part of a statement violates s. 120.54(1)(a). The decision
918 of the administrative law judge shall constitute a final order.
919 The division shall transmit a copy of the final order to the
920 Department of State and the committee. The Department of State
921 shall publish notice of the final order in the first available
922 issue of the Florida Administrative Weekly.

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923 ~~(d) When an administrative law judge enters a final order~~
924 ~~that all or part of an agency statement violates s. 120.54(1)(a),~~
925 ~~the agency shall immediately discontinue all reliance upon the~~
926 ~~statement or any substantially similar statement as a basis for~~
927 ~~agency action.~~

928 ~~(e)1. If, prior to a final hearing to determine whether all~~
929 ~~or part of any agency statement violates s. 120.54(1)(a), an~~
930 ~~agency publishes, pursuant to s. 120.54(3)(a), proposed rules~~
931 ~~that address the statement, then for purposes of this section, a~~
932 ~~presumption is created that the agency is acting expeditiously~~
933 ~~and in good faith to adopt rules that address the statement, and~~
934 ~~the agency shall be permitted to rely upon the statement or a~~
935 ~~substantially similar statement as a basis for agency action if~~
936 ~~the statement meets the requirements of s. 120.57(1)(e).~~

937 ~~2. If, prior to the final hearing to determine whether all~~
938 ~~or part of an agency statement violates s. 120.54(1)(a), an~~
939 ~~agency publishes a notice of rule development which addresses the~~
940 ~~statement pursuant to s. 120.54(2), or certifies that such a~~
941 ~~notice has been transmitted to the Florida Administrative Weekly~~
942 ~~for publication, then such publication shall constitute good~~
943 ~~cause for the granting of a stay of the proceedings and a~~
944 ~~continuance of the final hearing for 30 days. If the agency~~
945 ~~publishes proposed rules within this 30-day period or any~~
946 ~~extension of that period granted by an administrative law judge~~
947 ~~upon showing of good cause, then the administrative law judge~~
948 ~~shall place the case in abeyance pending the outcome of~~
949 ~~rulemaking and any proceedings involving challenges to proposed~~
950 ~~rules pursuant to subsection (2).~~

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951 3. ~~If, following the commencement of the final hearing and~~
952 ~~prior to entry of a final order that all or part of an agency~~
953 ~~statement violates s. 120.54(1) (a), an agency publishes, pursuant~~
954 ~~to s. 120.54(3) (a), proposed rules that address the statement and~~
955 ~~proceeds expeditiously and in good faith to adopt rules that~~
956 ~~address the statement, the agency shall be permitted to rely upon~~
957 ~~the statement or a substantially similar statement as a basis for~~
958 ~~agency action if the statement meets the requirements of s.~~
959 ~~120.57(1) (e).~~

960 4. ~~If an agency fails to adopt rules that address the~~
961 ~~statement within 180 days after publishing proposed rules, for~~
962 ~~purposes of this subsection, a presumption is created that the~~
963 ~~agency is not acting expeditiously and in good faith to adopt~~
964 ~~rules. If the agency's proposed rules are challenged pursuant to~~
965 ~~subsection (2), the 180-day period for adoption of rules is~~
966 ~~tolled until a final order is entered in that proceeding.~~

967 5. ~~If the proposed rules addressing the challenged~~
968 ~~statement are determined to be an invalid exercise of delegated~~
969 ~~legislative authority as defined in s. 120.52(8) (b)-(f), the~~
970 ~~agency must immediately discontinue reliance on the statement and~~
971 ~~any substantially similar statement until the rules addressing~~
972 ~~the subject are properly adopted.~~

973 (e) ~~(f)~~ All proceedings to determine a violation of s.
974 120.54(1) (a) shall be brought pursuant to this subsection. A
975 proceeding pursuant to this subsection may be consolidated with a
976 proceeding under subsection (3) or under any other section of
977 this chapter. ~~Nothing in This paragraph does not shall be~~
978 ~~construed to prevent a party whose substantial interests have~~

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979 | been determined by an agency action from bringing a proceeding
980 | pursuant to s. 120.57(1) (e).

981 | Section 12. Effective January 1, 2009, paragraph (e) of
982 | subsection (1) of section 120.57, Florida Statutes, is amended to
983 | read:

984 | 120.57 Additional procedures for particular cases.--

985 | (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
986 | DISPUTED ISSUES OF MATERIAL FACT.--

987 | (e)1. ~~Any~~ Agency action that determines the substantial
988 | interests of a party may not be ~~and that is~~ based on an agency
989 | statement that violates s. 120.54(1) (a). An agency or an
990 | administrative law judge may not enforce any agency policy that
991 | constitutes an unadopted rule if the agency fails to prove that
992 | rulemaking is not feasible or practicable. This subparagraph does
993 | not preclude application of adopted rules and applicable
994 | provisions of law to the facts ~~unadopted rule is subject to de~~
995 | ~~no~~ ~~re~~ ~~view~~ ~~by~~ ~~an~~ ~~administrative~~ ~~law~~ ~~judge.~~

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

998 | ~~a. Is within the powers, functions, and duties delegated by~~
999 | ~~the Legislature or, if the agency is operating pursuant to~~
1000 | ~~authority derived from the State Constitution, is within that~~
1001 | ~~authority;~~

1002 | ~~b. Does not enlarge, modify, or contravene the specific~~
1003 | ~~provisions of law implemented;~~

1004 | ~~e. Is not vague, establishes adequate standards for agency~~
1005 | ~~decisions, or does not vest unbridled discretion in the agency;~~

1006 | ~~d. Is not arbitrary or capricious. A rule is arbitrary if~~
1007 | ~~it is not supported by logic or the necessary facts; a rule is~~

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1008 ~~capricious if it is adopted without thought or reason or is~~
1009 ~~irrational;~~

1010 ~~e. Is not being applied to the substantially affected party~~
1011 ~~without due notice; and~~

1012 ~~f. Does not impose excessive regulatory costs on the~~
1013 ~~regulated person, county, or city.~~

1014 2.3. The recommended and final orders in any proceeding
1015 shall be governed by the provisions of paragraphs (k) and (l),
1016 except that the administrative law judge's determination
1017 regarding the unadopted rule shall not be rejected by the agency
1018 unless the agency first determines from a review of the complete
1019 record, and states with particularity in the order, that such
1020 determination is clearly erroneous or does not comply with
1021 essential requirements of law. In any proceeding for review under
1022 s. 120.68, if the court finds that the agency's rejection of the
1023 determination regarding the unadopted rule does not comport with
1024 the provisions of this subparagraph, the agency action shall be
1025 set aside and the court shall award to the prevailing party the
1026 reasonable costs and a reasonable attorney's fee for the initial
1027 proceeding and the proceeding for review.

1028 Section 13. Effective January 1, 2009, subsections (2),
1029 (3), and (4) of section 120.595, Florida Statutes, are amended to
1030 read:

1031 120.595 Attorney's fees.--

1032 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
1033 120.56(2).--If the court or administrative law judge declares a
1034 proposed rule or portion of a proposed rule invalid pursuant to
1035 s. 120.56(2), a judgment or order shall be rendered against the
1036 agency for reasonable costs and reasonable attorney's fees,

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1037 unless the agency demonstrates that its actions were
1038 substantially justified or special circumstances exist which
1039 would make the award unjust. An agency's actions are
1040 "substantially justified" if there was a reasonable basis in law
1041 and fact at the time the actions were taken by the agency. If the
1042 agency prevails in the proceedings, the court or administrative
1043 law judge shall award reasonable costs and reasonable attorney's
1044 fees against a party if the court or administrative law judge
1045 determines that a party participated in the proceedings for an
1046 improper purpose as defined by paragraph (1)(e). No award of
1047 attorney's fees as provided by this subsection shall exceed
1048 \$50,000 ~~\$15,000~~.

1049 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
1050 120.56(3) AND (5).--If the court or administrative law judge
1051 declares a rule or portion of a rule invalid pursuant to s.
1052 120.56(3) or s. 120.56(5), a judgment or order shall be rendered
1053 against the agency for reasonable costs and reasonable attorney's
1054 fees, unless the agency demonstrates that its actions were
1055 substantially justified or special circumstances exist which
1056 would make the award unjust. An agency's actions are
1057 "substantially justified" if there was a reasonable basis in law
1058 and fact at the time the actions were taken by the agency. If the
1059 agency prevails in the proceedings, the court or administrative
1060 law judge shall award reasonable costs and reasonable attorney's
1061 fees against a party if the court or administrative law judge
1062 determines that a party participated in the proceedings for an
1063 improper purpose as defined by paragraph (1)(e). No award of
1064 attorney's fees as provided by this subsection shall exceed
1065 \$50,000 ~~\$15,000~~.

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1066 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
1067 120.56(4).--

1068 (a) Upon entry of a final order that all or part of an
1069 agency statement violates s. 120.54(1)(a), the administrative law
1070 judge shall award reasonable costs and reasonable attorney's fees
1071 to the petitioner, unless the agency demonstrates that the
1072 statement is required by the Federal Government to implement or
1073 retain a delegated or approved program or to meet a condition to
1074 receipt of federal funds.

1075 (b) If, prior to the final hearing, the agency initiates
1076 rulemaking under s. 120.54 and requests a stay of the proceedings
1077 pending rulemaking, the administrative law judge shall award
1078 reasonable costs and reasonable attorney's fees accrued by the
1079 petitioner prior to the date the agency filed its request for a
1080 stay pending rulemaking, provided the agency adopts the statement
1081 as a rule. A request for a stay shall be granted when the
1082 petitioner and the agency agree to the stay. If the petitioner
1083 objects to the stay, the stay may be denied if the petitioner
1084 establishes that good cause exists to deny the stay. A stay
1085 granted under this paragraph remains in effect until either the
1086 statement has been adopted as a rule and has become effective or
1087 the proposed rule has been withdrawn. A request for attorney's
1088 fees and costs under this paragraph shall be granted only upon a
1089 finding that the agency knew or should have known at the time the
1090 petition was filed that the agency statement was an unadopted
1091 rule. An award of attorney's fees as provided by this paragraph
1092 may not exceed \$50,000.

1093 (c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an
1094 award shall be paid from the budget entity of the secretary,

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1095 executive director, or equivalent administrative officer of the
1096 agency, and the agency shall not be entitled to payment of an
1097 award or reimbursement for payment of an award under any
1098 provision of law.

1099 (d) If the agency prevails in the proceedings, the court or
1100 administrative law judge shall award reasonable costs and
1101 attorney's fees against a party if the court or administrative
1102 law judge determines that the party participated in the
1103 proceedings for an improper purpose as defined in paragraph
1104 (1) (e).

1105 Section 14. Subsection (1) and paragraph (c) of subsection
1106 (2) of section 120.569, Florida Statutes, are amended to read:

1107 120.569 Decisions which affect substantial interests.--

1108 (1) The provisions of this section apply in all proceedings
1109 in which the substantial interests of a party are determined by
1110 an agency, unless the parties are proceeding under s. 120.573 or
1111 s. 120.574. Unless waived by all parties, s. 120.57(1) applies
1112 whenever the proceeding involves a disputed issue of material
1113 fact. Unless otherwise agreed, s. 120.57(2) applies in all other
1114 cases. If a disputed issue of material fact arises during a
1115 proceeding under s. 120.57(2), then, unless waived by all
1116 parties, the proceeding under s. 120.57(2) shall be terminated
1117 and a proceeding under s. 120.57(1) shall be conducted. Parties
1118 shall be notified of any order, including a final order. Unless
1119 waived, a copy of the order shall be delivered or mailed to each
1120 party or the party's attorney of record at the address of record.
1121 Each notice shall inform the recipient of any administrative
1122 hearing or judicial review that is available under this section,
1123 s. 120.57, or s. 120.68; shall indicate the procedure which must

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1124 | be followed to obtain the hearing or judicial review; and shall
1125 | state the time limits which apply.

1126 | (2)

1127 | (c) Unless otherwise provided by law, a petition or request
1128 | for hearing shall include those items required by the uniform
1129 | rules adopted pursuant to s. 120.54(5)(b) ~~s. 120.54(5)(b)~~4. Upon
1130 | the receipt of a petition or request for hearing, the agency
1131 | shall carefully review the petition to determine if it contains
1132 | all of the required information. A petition shall be dismissed if
1133 | it is not in substantial compliance with these requirements or it
1134 | has been untimely filed. Dismissal of a petition shall, at least
1135 | once, be without prejudice to petitioner's filing a timely
1136 | amended petition curing the defect, unless it conclusively
1137 | appears from the face of the petition that the defect cannot be
1138 | cured. The agency shall promptly give written notice to all
1139 | parties of the action taken on the petition, shall state with
1140 | particularity its reasons if the petition is not granted, and
1141 | shall state the deadline for filing an amended petition if
1142 | applicable. This paragraph does not eliminate the availability of
1143 | equitable tolling as a defense to the untimely filing of a
1144 | petition.

1145 | Section 15. Subsection (2) of section 120.74, Florida
1146 | Statutes, is amended to read:

1147 | 120.74 Agency review, revision, and report.--

1148 | (2) Beginning October 1, 1997, and by October 1 of every
1149 | other year thereafter, the head of each agency shall file a
1150 | report with the President of the Senate, the Speaker of the House
1151 | of Representatives, and the committee, with a copy to each
1152 | appropriate standing committee of the Legislature, which

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1153 certifies that the agency has complied with the requirements of
1154 this section ~~subsection~~. The report must specify any changes made
1155 to its rules as a result of the review and, when appropriate,
1156 recommend statutory changes that will promote efficiency, reduce
1157 paperwork, or decrease costs to government and the private
1158 sector. The report must identify the types of cases or disputes
1159 in which the agency is involved which should be conducted under
1160 the summary hearing process described in s. 120.574.

1161 Section 16. Subsection (11) of section 120.80, Florida
1162 Statutes, is amended to read:

1163 120.80 Exceptions and special requirements; agencies.--

1164 (11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s.~~
1165 ~~120.52(15)~~, the enlistment, organization, administration,
1166 equipment, maintenance, training, and discipline of the militia,
1167 National Guard, organized militia, and unorganized militia, as
1168 provided by s. 2, Art. X of the State Constitution, are not rules
1169 as defined by this chapter.

1170 Section 17. Paragraph (c) of subsection (1) and paragraph
1171 (a) of subsection (3) of section 120.81, Florida Statutes, are
1172 amended to read:

1173 120.81 Exceptions and special requirements; general
1174 areas.--

1175 (1) EDUCATIONAL UNITS.--

1176 (c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any tests,
1177 test scoring criteria, or testing procedures relating to student
1178 assessment which are developed or administered by the Department
1179 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or
1180 s. 1008.25, or any other statewide educational tests required by
1181 law, are not rules.

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1182 (3) PRISONERS AND PAROLEES.--

1183 (a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~, prisoners,
1184 as defined by s. 944.02, shall not be considered parties in any
1185 proceedings other than those under s. 120.54(3)(c) or (7), and
1186 may not seek judicial review under s. 120.68 of any other agency
1187 action. Prisoners are not eligible to seek an administrative
1188 determination of an agency statement under s. 120.56(4). Parolees
1189 shall not be considered parties for purposes of agency action or
1190 judicial review when the proceedings relate to the rescission or
1191 revocation of parole.

1192 Section 18. Paragraph (f) of subsection (2) of section
1193 409.175, Florida Statutes, is amended to read:

1194 409.175 Licensure of family foster homes, residential
1195 child-caring agencies, and child-placing agencies; public records
1196 exemption.--

1197 (2) As used in this section, the term:

1198 (f) "License" means "license" as defined in s. 120.52(10)
1199 ~~s. 120.52(9)~~. A license under this section is issued to a family
1200 foster home or other facility and is not a professional license
1201 of any individual. Receipt of a license under this section shall
1202 not create a property right in the recipient. A license under
1203 this act is a public trust and a privilege, and is not an
1204 entitlement. This privilege must guide the finder of fact or
1205 trier of law at any administrative proceeding or court action
1206 initiated by the department.

1207 Section 19. Paragraph (a) of subsection (1) of section
1208 420.9072, Florida Statutes, is amended to read:

1209 420.9072 State Housing Initiatives Partnership
1210 Program.--The State Housing Initiatives Partnership Program is

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1211 created for the purpose of providing funds to counties and
1212 eligible municipalities as an incentive for the creation of local
1213 housing partnerships, to expand production of and preserve
1214 affordable housing, to further the housing element of the local
1215 government comprehensive plan specific to affordable housing, and
1216 to increase housing-related employment.

1217 (1) (a) In addition to the legislative findings set forth in
1218 s. 420.6015, the Legislature finds that affordable housing is
1219 most effectively provided by combining available public and
1220 private resources to conserve and improve existing housing and
1221 provide new housing for very-low-income households, low-income
1222 households, and moderate-income households. The Legislature
1223 intends to encourage partnerships in order to secure the benefits
1224 of cooperation by the public and private sectors and to reduce
1225 the cost of housing for the target group by effectively combining
1226 all available resources and cost-saving measures. The Legislature
1227 further intends that local governments achieve this combination
1228 of resources by encouraging active partnerships between
1229 government, lenders, builders and developers, real estate
1230 professionals, advocates for low-income persons, and community
1231 groups to produce affordable housing and provide related
1232 services. Extending the partnership concept to encompass
1233 cooperative efforts among small counties as defined in s.
1234 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities
1235 is specifically encouraged. Local governments are also intended
1236 to establish an affordable housing advisory committee to
1237 recommend monetary and nonmonetary incentives for affordable
1238 housing as provided in s. 420.9076.

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1239 Section 20. Subsection (7) of section 420.9075, Florida
1240 Statutes, is amended to read:

1241 420.9075 Local housing assistance plans; partnerships.--

1242 (7) The moneys deposited in the local housing assistance
1243 trust fund shall be used to administer and implement the local
1244 housing assistance plan. The cost of administering the plan may
1245 not exceed 5 percent of the local housing distribution moneys and
1246 program income deposited into the trust fund. A county or an
1247 eligible municipality may not exceed the 5-percent limitation on
1248 administrative costs, unless its governing body finds, by
1249 resolution, that 5 percent of the local housing distribution plus
1250 5 percent of program income is insufficient to adequately pay the
1251 necessary costs of administering the local housing assistance
1252 plan. The cost of administering the program may not exceed 10
1253 percent of the local housing distribution plus 5 percent of
1254 program income deposited into the trust fund, except that small
1255 counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~, and eligible
1256 municipalities receiving a local housing distribution of up to
1257 \$350,000 may use up to 10 percent of program income for
1258 administrative costs.

1259 Section 21. For the 2008-2009 fiscal year, the nonrecurring
1260 sum of \$345,000 is appropriated from the Records Management Trust
1261 Fund to the Department of State for the purposes of carrying out
1262 the provisions of this act.

1263 Section 22. Except as otherwise expressly provided in this
1264 act, this act shall take effect July 1, 2008.