

By the Committee on Judiciary; and Senators Bennett and Gaetz

590-05785-08

2008704c1

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. 120.53, F.S.; authorizing agencies to
9 transmit agency orders electronically to the Division of
10 Administrative Hearings; amending s. 120.536, F.S.;
11 revising guidelines for the construction of statutory
12 language granting rulemaking authority; amending s.
13 120.54, F.S.; prescribing limits and guidelines with
14 respect to the incorporation of material by reference;
15 prescribing requirements for material being incorporated
16 by reference; prohibiting an agency head from delegating
17 or transferring certain specified rulemaking
18 responsibilities; revising the information required in
19 notices of proposed actions; providing additional
20 procedures for rule-adoption hearings; revising
21 requirements for filing rules; requiring that material
22 incorporated by reference be published by the agency when
23 adopting emergency rules; revising provisions with respect
24 to petitions to initiate rulemaking; amending s. 120.545,
25 F.S.; revising duties and procedures of the Administrative
26 Procedures Committee and agencies with respect to review
27 of agency rules; deleting procedures for agency election
28 to modify, withdraw, amend, or repeal a proposed rule;
29 providing for the effect of the failure of an agency to

590-05785-08

2008704c1

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

590-05785-08

2008704c1

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

72
73 Be It Enacted by the Legislature of the State of Florida:

74
75 Section 1. This act may be cited as the "Open Government
76 Act."

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

84 120.52 Definitions.--As used in this act:

85 (8) "Invalid exercise of delegated legislative authority"
86 means action that ~~which~~ goes beyond the powers, functions, and
87 duties delegated by the Legislature. A proposed or existing rule

590-05785-08

2008704c1

88 is an invalid exercise of delegated legislative authority if any
89 one of the following applies:

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

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

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

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

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

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

109
110 A grant of rulemaking authority is necessary but not sufficient
111 to allow an agency to adopt a rule; a specific law to be
112 implemented is also required. An agency may adopt only rules that
113 implement or interpret the specific powers and duties granted by
114 the enabling statute. No agency shall have authority to adopt a
115 rule only because it is reasonably related to the purpose of the
116 enabling legislation and is not arbitrary and capricious or is

590-05785-08

2008704c1

117 within the agency's class of powers and duties, nor shall an
118 agency have the authority to implement statutory provisions
119 setting forth general legislative intent or policy. Statutory
120 language granting rulemaking authority or generally describing
121 the powers and functions of an agency shall be construed to
122 extend no further than implementing or interpreting the specific
123 powers and duties conferred by the enabling statute ~~by the same~~
124 ~~statute~~.

125 (9) "Law implemented" means the language of the enabling
126 statute being carried out or interpreted by an agency through
127 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. Paragraph (a) of subsection (2) of section
136 120.53, Florida Statutes, is amended to read:

137 120.53 Maintenance of orders; indexing; listing;
138 organizational information.--

139 (2) (a) An agency may comply with subparagraphs (1) (a) 1. and
140 2. by designating an official reporter to publish and index by
141 subject matter each agency order that must be indexed and made
142 available to the public, or by electronically transmitting to the
143 division a copy of such orders for posting on the division's
144 website. An agency is in compliance with subparagraph (1) (a) 3. if
145 it publishes in its designated reporter a list of each agency

590-05785-08

2008704c1

146 final order that must be listed and preserves each listed order
147 and makes it available for public inspection and copying.

148 Section 4. Subsection (1) of section 120.536, Florida
149 Statutes, is amended to read:

150 120.536 Rulemaking authority; repeal; challenge.--

151 (1) A grant of rulemaking authority is necessary but not
152 sufficient to allow an agency to adopt a rule; a specific law to
153 be implemented is also required. An agency may adopt only rules
154 that implement or interpret the specific powers and duties
155 granted by the enabling statute. No agency shall have authority
156 to adopt a rule only because it is reasonably related to the
157 purpose of the enabling legislation and is not arbitrary and
158 capricious or is within the agency's class of powers and duties,
159 nor shall an agency have the authority to implement statutory
160 provisions setting forth general legislative intent or policy.
161 Statutory language granting rulemaking authority or generally
162 describing the powers and functions of an agency shall be
163 construed to extend no further than implementing or interpreting
164 the specific powers and duties conferred by the enabling statute
165 ~~by the same statute~~.

166 Section 5. Paragraph (i) of subsection (1), paragraphs (a),
167 (c), and (e) of subsection (3), paragraph (a) of subsection (4),
168 and subsection (7) of section 120.54, Florida Statutes, are
169 amended, and paragraph (k) is added to subsection (1) of that
170 section, to read:

171 120.54 Rulemaking.--

172 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
173 EMERGENCY RULES.--

174 (i)1. A rule may incorporate material by reference but only

590-05785-08

2008704c1

175 as the material exists on the date the rule is adopted. For
176 purposes of the rule, changes in the material are not effective
177 unless the rule is amended to incorporate the changes.

178 2. An agency rule that incorporates by specific reference
179 another rule of that agency automatically incorporates subsequent
180 amendments to the referenced rule unless a contrary intent is
181 clearly indicated in the referencing rule. A notice of amendments
182 to a rule that has been incorporated by specific reference in
183 other rules of that agency must explain the effect of those
184 amendments on the referencing rules.

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

187 a. The material has been submitted in the prescribed
188 electronic format to the Department of State and the full text of
189 the material can be made available for free public access through
190 an electronic hyperlink from the rule making the reference in the
191 Florida Administrative Code; or

192 b. The agency has determined that posting the material on
193 the Internet for purposes of public examination and inspection
194 would constitute a violation of federal copyright law, in which
195 case a statement to that effect, along with the address of
196 locations at the Department of State and the agency at which the
197 material is available for public inspection and examination, must
198 be included in the notice required by subparagraph (3)(a)1.

199 4. A rule may not be amended by reference only. Amendments
200 must set out the amended rule in full in the same manner as
201 required by the State Constitution for laws. ~~The Department of~~
202 State may prescribe by rule requirements for incorporating
203 materials by reference pursuant to this paragraph.

590-05785-08

2008704c1

204 ~~5.2.~~ Notwithstanding any contrary provision in this
205 section, when an adopted rule of the Department of Environmental
206 Protection or a water management district is incorporated by
207 reference in the other agency's rule to implement a provision of
208 part IV of chapter 373, subsequent amendments to the rule are not
209 effective as to the incorporating rule unless the agency
210 incorporating by reference notifies the committee and the
211 Department of State of its intent to adopt the subsequent
212 amendment, publishes notice of such intent in the Florida
213 Administrative Weekly, and files with the Department of State a
214 copy of the amended rule incorporated by reference. Changes in
215 the rule incorporated by reference are effective as to the other
216 agency 20 days after the date of the published notice and filing
217 with the Department of State. The Department of State shall amend
218 the history note of the incorporating rule to show the effective
219 date of such change. Any substantially affected person may,
220 within 14 days after the date of publication of the notice of
221 intent in the Florida Administrative Weekly, file an objection to
222 rulemaking with the agency. The objection shall specify the
223 portions of the rule incorporated by reference to which the
224 person objects and the reasons for the objection. The agency
225 shall not have the authority under this subparagraph to adopt
226 those portions of the rule specified in such objection. The
227 agency shall publish notice of the objection and of its action in
228 response in the next available issue of the Florida
229 Administrative Weekly.

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

232 (k) An agency head may delegate the authority to initiate

590-05785-08

2008704c1

233 rule development under subsection (2); however, rulemaking
234 responsibilities of an agency head under subparagraph (3)(a)1.,
235 subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be
236 delegated or transferred.

237 (3) ADOPTION PROCEDURES.--

238 (a) Notices.--

239 1. Prior to the adoption, amendment, or repeal of any rule
240 other than an emergency rule, an agency, upon approval of the
241 agency head, shall give notice of its intended action, setting
242 forth a short, plain explanation of the purpose and effect of the
243 proposed action; the full text of the proposed rule or amendment
244 and a summary thereof; a reference to the grant of specific
245 rulemaking authority pursuant to which the rule is adopted; and a
246 reference to the section or subsection of the Florida Statutes or
247 the Laws of Florida being implemented or, ~~interpreted, or made~~
248 ~~specific~~. The notice must ~~shall~~ include a summary of the agency's
249 statement of the estimated regulatory costs, if one has been
250 prepared, based on the factors set forth in s. 120.541(2), and a
251 statement that any person who wishes to provide the agency with
252 information regarding the statement of estimated regulatory
253 costs, or to provide a proposal for a lower cost regulatory
254 alternative as provided by s. 120.541(1), must do so in writing
255 within 21 days after publication of the notice. The notice must
256 state the procedure for requesting a public hearing on the
257 proposed rule. Except when the intended action is the repeal of a
258 rule, the notice must ~~shall~~ include a reference both to the date
259 on which and to the place where the notice of rule development
260 that is required by subsection (2) appeared.

261 2. The notice shall be published in the Florida

590-05785-08

2008704c1

262 | Administrative Weekly not less than 28 days prior to the intended
263 | action. The proposed rule shall be available for inspection and
264 | copying by the public at the time of the publication of notice.

265 | 3. The notice shall be mailed to all persons named in the
266 | proposed rule and to all persons who, at least 14 days prior to
267 | such mailing, have made requests of the agency for advance notice
268 | of its proceedings. The agency shall also give such notice as is
269 | prescribed by rule to those particular classes of persons to whom
270 | the intended action is directed.

271 | 4. The adopting agency shall file with the committee, at
272 | least 21 days prior to the proposed adoption date, a copy of each
273 | rule it proposes to adopt; a copy of any material incorporated by
274 | reference in the rule; a detailed written statement of the facts
275 | and circumstances justifying the proposed rule; a copy of any
276 | statement of estimated regulatory costs that has been prepared
277 | pursuant to s. 120.541; a statement of the extent to which the
278 | proposed rule relates to federal standards or rules on the same
279 | subject; and the notice required by subparagraph 1.

280 | (c) Hearings.--

281 | 1. If the intended action concerns any rule other than one
282 | relating exclusively to procedure or practice, the agency shall,
283 | on the request of any affected person received within 21 days
284 | after the date of publication of the notice of intended agency
285 | action, give affected persons an opportunity to present evidence
286 | and argument on all issues under consideration. The agency may
287 | schedule a public hearing on the rule and, if requested by any
288 | affected person, shall schedule a public hearing on the rule. If
289 | the agency head is a board or other collegial body created under
290 | s. 20.165(4) or s. 20.43(3) (g), and one or more requested public

590-05785-08

2008704c1

291 hearings is scheduled, the board or other collegial body shall
292 conduct at least one of the public hearings itself and may not
293 delegate this responsibility without the consent of those persons
294 requesting the public hearing. Any material pertinent to the
295 issues under consideration submitted to the agency within 21 days
296 after the date of publication of the notice or submitted at a
297 public hearing shall be considered by the agency and made a part
298 of the record of the rulemaking proceeding.

299 2. Rulemaking proceedings shall be governed solely by the
300 provisions of this section unless a person timely asserts that
301 the person's substantial interests will be affected in the
302 proceeding and affirmatively demonstrates to the agency that the
303 proceeding does not provide adequate opportunity to protect those
304 interests. If the agency determines that the rulemaking
305 proceeding is not adequate to protect the person's interests, it
306 shall suspend the rulemaking proceeding and convene a separate
307 proceeding under the provisions of ss. 120.569 and 120.57.
308 Similarly situated persons may be requested to join and
309 participate in the separate proceeding. Upon conclusion of the
310 separate proceeding, the rulemaking proceeding shall be resumed.

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

312 1. If the adopting agency is required to publish its rules
313 in the Florida Administrative Code, the agency, upon approval of
314 the agency head, ~~it~~ shall file with the Department of State three
315 certified copies of the rule it proposes to adopt; one copy of
316 any material incorporated by reference in the rule, certified by
317 the agency; ~~;~~ a summary of the rule; ~~;~~ a summary of any hearings
318 held on the rule; ~~;~~ and a detailed written statement of the facts
319 and circumstances justifying the rule. Agencies not required to

590-05785-08

2008704c1

320 | publish their rules in the Florida Administrative Code shall file
321 | one certified copy of the proposed rule, and the other material
322 | required by this subparagraph, in the office of the agency head,
323 | and such rules shall be open to the public.

324 | 2. A rule may not be filed for adoption less than 28 days
325 | or more than 90 days after the notice required by paragraph (a),
326 | until 21 days after the notice of change required by paragraph
327 | (d), until 14 days after the final public hearing, until 21 days
328 | after ~~preparation of~~ a statement of estimated regulatory costs
329 | required under s. 120.541 has been provided to all persons who
330 | submitted a lower cost regulatory alternative and made available
331 | to the public, or until the administrative law judge has rendered
332 | a decision under s. 120.56(2), whichever applies. When a required
333 | notice of change is published prior to the expiration of the time
334 | to file the rule for adoption, the period during which a rule
335 | must be filed for adoption is extended to 45 days after the date
336 | of publication. If notice of a public hearing is published prior
337 | to the expiration of the time to file the rule for adoption, the
338 | period during which a rule must be filed for adoption is extended
339 | to 45 days after adjournment of the final hearing on the rule, 21
340 | days after receipt of all material authorized to be submitted at
341 | the hearing, or 21 days after receipt of the transcript, if one
342 | is made, whichever is latest. The term "public hearing" includes
343 | any public meeting held by any agency at which the rule is
344 | considered. If a petition for an administrative determination
345 | under s. 120.56(2) is filed, the period during which a rule must
346 | be filed for adoption is extended to 60 days after the
347 | administrative law judge files the final order with the clerk or
348 | until 60 days after subsequent judicial review is complete.

590-05785-08

2008704c1

349 3. At the time a rule is filed, the agency shall certify
350 that the time limitations prescribed by this paragraph have been
351 complied with, that all statutory rulemaking requirements have
352 been met, and that there is no administrative determination
353 pending on the rule.

354 4. At the time a rule is filed, the committee shall certify
355 whether the agency has responded in writing to all material and
356 timely written comments or written inquiries made on behalf of
357 the committee. The department shall reject any rule that is not
358 filed within the prescribed time limits; that does not comply
359 with ~~satisfy~~ all statutory rulemaking requirements and rules of
360 the department; upon which an agency has not responded in writing
361 to all material and timely written inquiries or written comments;
362 upon which an administrative determination is pending; or which
363 does not include a statement of estimated regulatory costs, if
364 required.

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

370 6. The proposed rule shall be adopted on being filed with
371 the Department of State and become effective 20 days after being
372 filed, on a later date specified in the rule, or on a date
373 required by statute. Rules not required to be filed with the
374 Department of State shall become effective when adopted by the
375 agency head or on a later date specified by rule or statute. If
376 the committee notifies an agency that an objection to a rule is
377 being considered, the agency may postpone the adoption of the

590-05785-08

2008704c1

378 rule to accommodate review of the rule by the committee. When an
379 agency postpones adoption of a rule to accommodate review by the
380 committee, the 90-day period for filing the rule is tolled until
381 the committee notifies the agency that it has completed its
382 review of the rule.

383

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

386 (4) EMERGENCY RULES.--

387 (a) If an agency finds that an immediate danger to the
388 public health, safety, or welfare requires emergency action, the
389 agency may adopt any rule necessitated by the immediate danger.
390 The agency may adopt a rule by any procedure which is fair under
391 the circumstances if:

392 1. The procedure provides at least the procedural
393 protection given by other statutes, the State Constitution, or
394 the United States Constitution.

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

397 3. The agency publishes in writing at the time of, or prior
398 to, its action the specific facts and reasons for finding an
399 immediate danger to the public health, safety, or welfare and its
400 reasons for concluding that the procedure used is fair under the
401 circumstances. In any event, notice of emergency rules, other
402 than those of educational units or units of government with
403 jurisdiction in only one or a part of one county, including the
404 full text of the rules, shall be published in the first available
405 issue of the Florida Administrative Weekly and provided to the
406 committee along with any material incorporated by reference in

590-05785-08

2008704c1

407 | the rules. The agency's findings of immediate danger, necessity,
408 | and procedural fairness shall be judicially reviewable.

409 | (7) PETITION TO INITIATE RULEMAKING.--

410 | (a) Any person regulated by an agency or having substantial
411 | interest in an agency rule may petition an agency to adopt,
412 | amend, or repeal a rule or to provide the minimum public
413 | information required by this chapter. The petition shall specify
414 | the proposed rule and action requested. Not later than 30
415 | calendar days following the date of filing a petition, the agency
416 | shall initiate rulemaking proceedings under this chapter,
417 | otherwise comply with the requested action, or deny the petition
418 | with a written statement of its reasons for the denial.

419 | (b) If the petition filed under this subsection is directed
420 | to an unadopted ~~existing rule which the agency has not adopted by~~
421 | ~~the rulemaking procedures or requirements set forth in this~~
422 | ~~chapter~~, the agency shall, not later than 30 days following the
423 | date of filing a petition, initiate rulemaking, or provide notice
424 | in the Florida Administrative Weekly that the agency will hold a
425 | public hearing on the petition within 30 days after publication
426 | of the notice. The purpose of the public hearing is to consider
427 | the comments of the public directed to the agency rule which has
428 | not been adopted by the rulemaking procedures or requirements of
429 | this chapter, its scope and application, and to consider whether
430 | the public interest is served adequately by the application of
431 | the rule on a case-by-case basis, as contrasted with its adoption
432 | by the rulemaking procedures or requirements set forth in this
433 | chapter.

434 | (c) Within 30 days following the public hearing provided
435 | for by paragraph (b), if the agency does not initiate rulemaking

590-05785-08

2008704c1

436 or otherwise comply with the requested action, the agency shall
437 publish in the Florida Administrative Weekly a statement of its
438 reasons for not initiating rulemaking or otherwise complying with
439 the requested action, and of any changes it will make in the
440 scope or application of the unadopted rule. The agency shall file
441 the statement with the committee. The committee shall forward a
442 copy of the statement to the substantive committee with primary
443 oversight jurisdiction of the agency in each house of the
444 Legislature. The committee or the committee with primary
445 oversight jurisdiction may hold a hearing directed to the
446 statement of the agency. The committee holding the hearing may
447 recommend to the Legislature the introduction of legislation
448 making the rule a statutory standard or limiting or otherwise
449 modifying the authority of the agency.

450 Section 6. Effective January 1, 2009, paragraph (a) of
451 subsection (1) of section 120.54, Florida Statutes, is amended to
452 read:

453 120.54 Rulemaking.--

454 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
455 EMERGENCY RULES.--

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

460 1. Rulemaking shall be presumed feasible unless the agency
461 proves that:

462 a. The agency has not had sufficient time to acquire the
463 knowledge and experience reasonably necessary to address a
464 statement by rulemaking;

590-05785-08

2008704c1

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

467 ~~e. The agency is currently using the rulemaking procedure~~
468 ~~expeditiously and in good faith to adopt rules which address the~~
469 ~~statement.~~

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

474 a. Detail or precision in the establishment of principles,
475 criteria, or standards for agency decisions is not reasonable
476 under the circumstances; or

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

481 Section 7. Section 120.545, Florida Statutes, is amended to
482 read:

483 120.545 Committee review of agency rules.--

484 (1) As a legislative check on legislatively created
485 authority, the committee shall examine each proposed rule, except
486 for those proposed rules exempted by s. 120.81(1)(e) and (2), and
487 its accompanying material, and each emergency rule, and may
488 examine any existing rule, for the purpose of determining
489 whether:

490 (a) The rule is an invalid exercise of delegated
491 legislative authority.

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

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

590-05785-08

2008704c1

494 (d) The rule is in proper form.

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

497 (f) The rule is consistent with expressed legislative
498 intent pertaining to the specific provisions of law which the
499 rule implements.

500 (g) The rule is necessary to accomplish the apparent or
501 expressed objectives of the specific provision of law which the
502 rule implements.

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

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

508 (j) The rule's statement of estimated regulatory costs
509 complies with the requirements of s. 120.541 and whether the rule
510 does not impose regulatory costs on the regulated person, county,
511 or city which could be reduced by the adoption of less costly
512 alternatives that substantially accomplish the statutory
513 objectives.

514 (k) The rule will require additional appropriations.

515 (l) If the rule is an emergency rule, there exists an
516 emergency justifying the adoption ~~promulgation~~ of such rule, the
517 agency is within ~~has exceeded the scope of~~ its statutory
518 authority, and the rule was adopted ~~promulgated~~ in compliance
519 with the requirements and limitations of s. 120.54(4).

520 (2) The committee may request from an agency such
521 information as is reasonably necessary for examination of a rule
522 as required by subsection (1). The committee shall consult with

590-05785-08

2008704c1

523 legislative standing committees having ~~with~~ jurisdiction over the
524 subject areas. If the committee objects to ~~an emergency rule or a~~
525 ~~proposed or existing~~ rule, the committee ~~it~~ shall, within 5 days
526 after ~~of~~ the objection, certify that fact to the agency whose
527 rule has been examined and include with the certification a
528 statement detailing its objections with particularity. The
529 committee shall notify the Speaker of the House of
530 Representatives and the President of the Senate of any objection
531 to an agency rule concurrent with certification of that fact to
532 the agency. Such notice shall include a copy of the rule and the
533 statement detailing the committee's objections to the rule.

534 (3) Within 30 days after ~~of~~ receipt of the objection, if
535 the agency is headed by an individual, or within 45 days after ~~of~~
536 receipt of the objection, if the agency is headed by a collegial
537 body, the agency shall:

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

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

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

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

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

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

551 2. File notice pursuant to s. 120.54(3)(a) ~~Notify the~~

590-05785-08

2008704c1

552 ~~committee that it has elected to repeal the rule and initiate the~~
553 ~~repeal procedure; or~~

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

556 (c) ~~If the rule is either an existing or a proposed rule~~
557 ~~and~~ the objection is to the statement of estimated regulatory
558 costs:

559 1. Prepare a corrected statement of estimated regulatory
560 costs, give notice of the availability of the corrected statement
561 in the first available issue of the Florida Administrative
562 Weekly, and file a copy of the corrected statement with the
563 committee; or

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

566 ~~(4) If the agency elects to modify a proposed rule to meet~~
567 ~~the committee's objection, it shall make only such modifications~~
568 ~~as are necessary to meet the objection and shall resubmit the~~
569 ~~rule to the committee. The agency shall give notice of its~~
570 ~~election to modify a proposed rule to meet the committee's~~
571 ~~objection by publishing a notice of change in the first available~~
572 ~~issue of the Florida Administrative Weekly, but shall not be~~
573 ~~required to conduct a public hearing. If the agency elects to~~
574 ~~amend an existing rule to meet the committee's objection, it~~
575 ~~shall notify the committee in writing and shall initiate the~~
576 ~~amendment procedure by giving notice in the next available issue~~
577 ~~of the Florida Administrative Weekly. The committee shall give~~
578 ~~priority to rules so modified or amended when setting its agenda.~~

579 ~~(5) If the agency elects to withdraw a proposed rule as a~~
580 ~~result of a committee objection, it shall notify the committee,~~

590-05785-08

2008704c1

581 | ~~in writing, of its election and shall give notice of the~~
582 | ~~withdrawal in the next available issue of the Florida~~
583 | ~~Administrative Weekly. The rule shall be withdrawn without a~~
584 | ~~public hearing, effective upon publication of the notice in the~~
585 | ~~Florida Administrative Weekly. If the agency elects to repeal an~~
586 | ~~existing rule as a result of a committee objection, it shall~~
587 | ~~notify the committee, in writing, of its election and shall~~
588 | ~~initiate rulemaking procedures for that purpose by giving notice~~
589 | ~~in the next available issue of the Florida Administrative Weekly.~~

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

594 | (4)~~(7)~~ Failure of the agency to respond to a committee
595 | objection to a ~~proposed~~ rule that is not yet in effect within the
596 | time prescribed in subsection (3) constitutes ~~shall constitute~~
597 | withdrawal of the rule in its entirety. In this event, the
598 | committee shall notify the Department of State that the agency,
599 | by its failure to respond to a committee objection, has elected
600 | to withdraw the ~~proposed~~ rule. Upon receipt of the committee's
601 | notice, the Department of State shall publish a notice to that
602 | effect in the next available issue of the Florida Administrative
603 | Weekly. Upon publication of the notice, the ~~proposed~~ rule shall
604 | be stricken from the files of the Department of State and the
605 | files of the agency.

606 | (5)~~(8)~~ Failure of the agency to respond to a committee
607 | objection to a ~~an existing~~ rule that is in effect within the time
608 | prescribed in subsection (3) constitutes ~~shall constitute~~ a
609 | refusal to amend or repeal the rule.

590-05785-08

2008704c1

610 (6) Failure of the agency to respond to a committee
611 objection to a statement of estimated regulatory costs within the
612 time prescribed in subsection (3) constitutes a refusal to
613 prepare a corrected statement of estimated regulatory costs.

614 ~~(7)(9)~~ If the committee objects to a ~~proposed or existing~~
615 rule and the agency refuses to modify, amend, withdraw, or repeal
616 the rule, the committee shall file with the Department of State a
617 notice of the objection, detailing with particularity the
618 committee's ~~its~~ objection to the rule. The Department of State
619 shall publish this notice in the Florida Administrative Weekly.
620 If the rule is published and shall publish, as a history note to
621 ~~the rule~~ in the Florida Administrative Code, a reference to the
622 committee's objection and to the issue of the Florida
623 Administrative Weekly in which the full text thereof appears
624 shall be recorded in a history note.

625 ~~(8)(10)~~(a) If the committee objects to a ~~proposed or~~
626 ~~existing~~ rule, or portion of a rule ~~thereof~~, and the agency fails
627 to initiate administrative action to modify, amend, withdraw, or
628 repeal the rule consistent with the objection within 60 days
629 after the objection, or thereafter fails to proceed in good faith
630 to complete such action, the committee may submit to the
631 President of the Senate and the Speaker of the House of
632 Representatives a recommendation that legislation be introduced
633 to address the committee's objection ~~modify or suspend the~~
634 ~~adoption of the proposed rule, or amend or repeal the rule, or~~
635 ~~portion thereof.~~

636 (b)1. If the committee votes to recommend the introduction
637 of legislation to address the committee's objection ~~modify or~~
638 ~~suspend the adoption of a proposed rule, or amend or repeal a~~

590-05785-08

2008704c1

639 ~~rule~~, the committee shall, within 5 days after this
640 determination, certify that fact to the agency whose rule or
641 proposed rule has been examined. The committee may request that
642 the agency temporarily suspend the rule or suspend the adoption
643 of the proposed rule, pending consideration of proposed
644 legislation during the next regular session of the Legislature.

645 2. Within 30 days after receipt of the certification, if
646 the agency is headed by an individual, or within 45 days after
647 receipt of the certification, if the agency is headed by a
648 collegial body, the agency shall ~~either~~:

649 a. Temporarily suspend the rule or suspend the adoption of
650 the proposed rule; or

651 b. Notify the committee in writing that the agency ~~it~~
652 refuses to temporarily suspend the rule or suspend the adoption
653 of the proposed rule.

654 3. If the agency elects to temporarily suspend the rule or
655 suspend the adoption of the proposed rule, the agency ~~it~~ shall
656 give notice of the suspension in the Florida Administrative
657 Weekly. The rule or the rule adoption process shall be suspended
658 upon publication of the notice. An agency may ~~shall~~ not base any
659 agency action on a suspended rule or suspended proposed rule, or
660 portion of such rule ~~thereof~~, prior to expiration of the
661 suspension. A suspended rule or suspended proposed rule, or
662 portion of such rule ~~thereof~~, continues to be subject to
663 administrative determination and judicial review as provided by
664 law.

665 4. Failure of an agency to respond to committee
666 certification within the time prescribed by subparagraph 2.
667 constitutes a refusal to suspend the rule or to suspend the

590-05785-08

2008704c1

668 adoption of the proposed rule.

669 (c) The committee shall prepare proposed legislation bills
670 to address the committee's objection ~~modify or suspend the~~
671 ~~adoption of the proposed rule or amend or repeal the rule, or~~
672 ~~portion thereof,~~ in accordance with the rules of the Senate and
673 the House of Representatives for prefiling and introduction in
674 the next regular session of the Legislature. The proposed
675 legislation bill shall be presented to the President of the
676 Senate and the Speaker of the House of Representatives with the
677 committee recommendation.

678 (d) If proposed legislation addressing the committee's
679 objection ~~a bill to suspend the adoption of a proposed rule is~~
680 ~~enacted into law, the proposed rule is suspended until specific~~
681 ~~delegated legislative authority for the proposed rule has been~~
682 ~~enacted. If a bill to suspend the adoption of a proposed rule~~
683 ~~fails to become law, any temporary agency suspension of the rule~~
684 ~~shall expire. If a bill to modify a proposed rule or amend a rule~~
685 ~~is enacted into law, the suspension shall expire upon publication~~
686 ~~of notice of modification or amendment in the Florida~~
687 ~~Administrative Weekly. If a bill to repeal a rule is enacted into~~
688 ~~law, the suspension shall remain in effect until notification of~~
689 ~~repeal of the rule is published in the Florida Administrative~~
690 ~~Weekly.~~

691 (e) ~~The Department of State shall publish in the next~~
692 ~~available issue of the Florida Administrative Weekly the final~~
693 ~~legislative action taken. If a bill to modify or suspend the~~
694 ~~adoption of the proposed rule or amend or repeal the rule, or~~
695 ~~portion thereof, is enacted into law, the Department of State~~
696 ~~shall conform the rule or portion of the rule to the provisions~~

590-05785-08

2008704c1

697 ~~of the law in the Florida Administrative Code and publish a~~
698 ~~reference to the law as a history note to the rule.~~

699 Section 8. Paragraphs (a) and (d) of subsection (1) and
700 subsection (5) of section 120.55, Florida Statutes, are amended
701 to read:

702 120.55 Publication.--

703 (1) The Department of State shall:

704 (a)1. Through a continuous revision system, compile and
705 publish the "Florida Administrative Code." The Florida
706 Administrative Code shall contain all rules adopted by each
707 agency, citing the grant of specific rulemaking authority and the
708 specific law implemented pursuant to which each rule was adopted,
709 all history notes as authorized in s. 120.545(8) ~~s. 120.545(9)~~,
710 and complete indexes to all rules contained in the code.
711 Supplementation shall be made as often as practicable, but at
712 least monthly. The department may contract with a publishing firm
713 for the publication, in a timely and useful form, of the Florida
714 Administrative Code; however, the department shall retain
715 responsibility for the code as provided in this section. This
716 publication shall be the official compilation of the
717 administrative rules of this state. The Department of State shall
718 retain the copyright over the Florida Administrative Code.

719 2. Rules general in form but applicable to only one school
720 district, community college district, or county, or a part
721 thereof, or state university rules relating to internal personnel
722 or business and finance shall not be published in the Florida
723 Administrative Code. Exclusion from publication in the Florida
724 Administrative Code shall not affect the validity or
725 effectiveness of such rules.

590-05785-08

2008704c1

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

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

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

751 (5) Any publication of a proposed rule promulgated by an
752 agency, whether published in the Florida Administrative Code or
753 elsewhere, shall include, along with the rule, the name of the
754 person or persons originating such rule, the name of the agency

590-05785-08

2008704c1

755 ~~head supervisor or person~~ who approved the rule, and the date
756 upon which the rule was approved.

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

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

766 120.55 Publication.--

767 (1) The Department of State shall:

768 (a)1. Through a continuous revision system, compile and
769 publish electronically, on an Internet website managed by the
770 department, the "Florida Administrative Code." The Florida
771 Administrative Code shall contain all rules adopted by each
772 agency, citing the grant of rulemaking authority and the specific
773 law implemented pursuant to which each rule was adopted, all
774 history notes as authorized in s. 120.545(8), ~~and~~ complete
775 indexes to all rules contained in the code, and any other
776 material required or authorized by law or deemed useful by the
777 department. The electronic code shall display each rule chapter
778 currently in effect in browse mode and allow full text search of
779 the code and each rule chapter. ~~Supplementation shall be made as~~
780 ~~often as practicable, but at least monthly.~~ The department shall
781 publish a printed version of the Florida Administrative Code and
782 may contract with a publishing firm for such printed the
783 publication, ~~in a timely and useful form, of the Florida~~

590-05785-08

2008704c1

784 ~~Administrative Code~~; however, the department shall retain
785 responsibility for the code as provided in this section.
786 Supplementation of the printed code shall be made as often as
787 practicable, but at least monthly. The printed ~~This~~ publication
788 shall be the official compilation of the administrative rules of
789 this state. The Department of State shall retain the copyright
790 over the Florida Administrative Code.

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

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

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

590-05785-08

2008704c1

813 include the number, title, and effective date of the form and an
814 explanation of how the form may be obtained. Each form created by
815 an agency which is incorporated by reference in a rule notice of
816 which is given under s. 120.54(3)(a) after December 31, 2007,
817 must clearly display the number, title, and effective date of the
818 form and the number of the rule in which the form is
819 incorporated.

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

832 (2) The Florida Administrative Weekly Internet website must
833 allow users to:

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

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

838 (c) Subscribe to an automated e-mail notification of
839 selected notices to be sent out before or concurrently with
840 weekly publication of the printed and electronic Florida
841 Administrative Weekly. Such notification must include in the text

590-05785-08

2008704c1

842 of the e-mail a summary of the content of each notice;

843 (d) View agency forms and other materials submitted to the
844 department in electronic form and incorporated by reference in
845 proposed rules; and

846 (e) Comment on proposed rules.

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

849 120.56 Challenges to rules.--

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

851 (a) Any substantially affected person may seek an
852 administrative determination of the invalidity of any proposed
853 rule by filing a petition seeking such a determination with the
854 division within 21 days after the date of publication of the
855 notice required by s. 120.54(3) (a), within 10 days after the
856 final public hearing is held on the proposed rule as provided by
857 s. 120.54(3) (e) 2. ~~s. 120.54(3) (e)~~, within 20 days after the
858 ~~preparation of a~~ statement of estimated regulatory costs required
859 pursuant to s. 120.541, if applicable, has been provided to all
860 persons who submitted a lower cost regulatory alternative and
861 made available to the public, or within 20 days after the date of
862 publication of the notice required by s. 120.54(3) (d). The
863 petition shall state with particularity the objections to the
864 proposed rule and the reasons that the proposed rule is an
865 invalid exercise of delegated legislative authority. The
866 petitioner has the burden of going forward. The agency then has
867 the burden to prove by a preponderance of the evidence that the
868 proposed rule is not an invalid exercise of delegated legislative
869 authority as to the objections raised. Any person who is
870 substantially affected by a change in the proposed rule may seek

590-05785-08

2008704c1

871 a determination of the validity of such change. Any person not
872 substantially affected by the proposed rule as initially noticed,
873 but who is substantially affected by the rule as a result of a
874 change, may challenge any provision of the rule and is not
875 limited to challenging the change to the proposed rule.

876 (b) The administrative law judge may declare the proposed
877 rule wholly or partly invalid. Unless the decision of the
878 administrative law judge is reversed on appeal, the proposed rule
879 or provision of a proposed rule declared invalid shall not be
880 adopted. After a petition for administrative determination has
881 been filed ~~However~~, the agency may proceed with all other steps
882 in the rulemaking process, including the holding of a factfinding
883 hearing. In the event part of a proposed rule is declared
884 invalid, the adopting agency may, in its sole discretion,
885 withdraw the proposed rule in its entirety. The agency whose
886 proposed rule has been declared invalid in whole or part shall
887 give notice of the decision in the first available issue of the
888 Florida Administrative Weekly.

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

891 120.56 Challenges to rules.--

892 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL
893 PROVISIONS.--

894 (a) Any person substantially affected by an agency
895 statement may seek an administrative determination that the
896 statement violates s. 120.54(1)(a). The petition shall include
897 the text of the statement or a description of the statement and
898 shall state with particularity facts sufficient to show that the
899 statement constitutes a rule under s. 120.52 and that the agency

590-05785-08

2008704c1

900 has not adopted the statement by the rulemaking procedure
901 provided by s. 120.54.

902 (b) The administrative law judge may extend the hearing
903 date beyond 30 days after assignment of the case for good cause.
904 Upon notification to the administrative law judge provided before
905 the final hearing that the agency has published a notice of
906 rulemaking under s. 120.54(3), such notice shall automatically
907 operate as a stay of proceedings pending adoption of the
908 statement as a rule. The administrative law judge may vacate the
909 stay for good cause shown. A stay of proceedings pending
910 rulemaking shall remain in effect so long as the agency is
911 proceeding expeditiously and in good faith to adopt the statement
912 as a rule. If a hearing is held and the petitioner proves the
913 allegations of the petition, the agency shall have the burden of
914 proving that rulemaking is not feasible or not ~~and~~ practicable
915 under s. 120.54(1) (a).

916 (c) The administrative law judge may determine whether all
917 or part of a statement violates s. 120.54(1) (a). The decision of
918 the administrative law judge shall constitute a final order. The
919 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.

923 (d) If ~~When~~ an administrative law judge enters a final
924 order that all or part of an agency statement violates s.
925 120.54(1) (a), the agency shall immediately discontinue all
926 reliance upon the statement or any substantially similar
927 statement as a basis for agency action. This paragraph shall not
928 be construed to impair the obligation of contracts existing at

590-05785-08

2008704c1

929 the time the final order is entered.

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

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

953 ~~3. If, following the commencement of the final hearing and~~
954 ~~prior to entry of a final order that all or part of an agency~~
955 ~~statement violates s. 120.54(1)(a), an agency publishes, pursuant~~
956 ~~to s. 120.54(3)(a), proposed rules that address the statement and~~
957 ~~proceeds expeditiously and in good faith to adopt rules that~~

590-05785-08

2008704c1

958 ~~address the statement, the agency shall be permitted to rely upon~~
959 ~~the statement or a substantially similar statement as a basis for~~
960 ~~agency action if the statement meets the requirements of s.~~
961 ~~120.57(1)(e).~~

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

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

976 (f) All proceedings to determine a violation of s.
977 120.54(1)(a) shall be brought pursuant to this subsection. A
978 proceeding pursuant to this subsection may be consolidated with a
979 proceeding under subsection (3) or under any other section of
980 this chapter. ~~Nothing in This paragraph does not shall be~~
981 ~~construed to prevent a party whose substantial interests have~~
982 ~~been determined by an agency action from bringing a proceeding~~
983 ~~pursuant to s. 120.57(1)(e).~~

984 Section 13. Effective January 1, 2009, paragraph (e) of
985 subsection (1) of section 120.57, Florida Statutes, is amended to
986 read:

590-05785-08

2008704c1

987 120.57 Additional procedures for particular cases.--

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

990 (e)1. An agency or an administrative law judge may not base
991 ~~Any~~ agency action that determines the substantial interests of a
992 party ~~and that is based~~ on an unadopted rule. The administrative
993 law judge shall determine whether an agency statement constitutes
994 an unadopted rule. This subparagraph does not preclude
995 application of adopted rules and applicable provisions of law to
996 the facts ~~unadopted rule is subject to de novo review by an~~
997 ~~administrative law judge~~.

998 2. Notwithstanding subparagraph 1., if an agency
999 demonstrates that the statute being implemented directs it to
1000 adopt rules, that the agency has not had time to adopt those
1001 rules because the requirement was so recently enacted, and that
1002 the agency has initiated rulemaking and is proceeding
1003 expeditiously and in good faith to adopt the required rules, then
1004 the agency's action may be based upon those unadopted rules,
1005 subject to de novo review by the administrative law judge. The
1006 agency action shall not be presumed valid or invalid. The agency
1007 must demonstrate that the unadopted rule:

1008 a. Is within the powers, functions, and duties delegated by
1009 the Legislature or, if the agency is operating pursuant to
1010 authority derived from the State Constitution, is within that
1011 authority;

1012 b. Does not enlarge, modify, or contravene the specific
1013 provisions of law implemented;

1014 c. Is not vague, establishes adequate standards for agency
1015 decisions, or does not vest unbridled discretion in the agency;

590-05785-08

2008704c1

1016 d. Is not arbitrary or capricious. A rule is arbitrary if
1017 it is not supported by logic or the necessary facts; a rule is
1018 capricious if it is adopted without thought or reason or is
1019 irrational;

1020 e. Is not being applied to the substantially affected party
1021 without due notice; and

1022 f. Does not impose excessive regulatory costs on the
1023 regulated person, county, or city.

1024 3. The recommended and final orders in any proceeding shall
1025 be governed by the provisions of paragraphs (k) and (l), except
1026 that the administrative law judge's determination regarding an
1027 ~~the~~ unadopted rule under subparagraph 1. or 2. shall not be
1028 rejected by the agency unless the agency first determines from a
1029 review of the complete record, and states with particularity in
1030 the order, that such determination is clearly erroneous or does
1031 not comply with essential requirements of law. In any proceeding
1032 for review under s. 120.68, if the court finds that the agency's
1033 rejection of the determination regarding the unadopted rule does
1034 not comport with the provisions of this subparagraph, the agency
1035 action shall be set aside and the court shall award to the
1036 prevailing party the reasonable costs and a reasonable attorney's
1037 fee for the initial proceeding and the proceeding for review.

1038 Section 14. Effective January 1, 2009, subsections (2),
1039 (3), and (4) of section 120.595, Florida Statutes, are amended to
1040 read:

1041 120.595 Attorney's fees.--

1042 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
1043 120.56(2).--If the appellate court or administrative law judge
1044 declares a proposed rule or portion of a proposed rule invalid

590-05785-08

2008704c1

1045 pursuant to s. 120.56(2), a judgment or order shall be rendered
1046 against the agency for reasonable costs and reasonable attorney's
1047 fees, unless the agency demonstrates that its actions were
1048 substantially justified or special circumstances exist which
1049 would make the award unjust. An agency's actions are
1050 "substantially justified" if there was a reasonable basis in law
1051 and fact at the time the actions were taken by the agency. If the
1052 agency prevails in the proceedings, the appellate court or
1053 administrative law judge shall award reasonable costs and
1054 reasonable attorney's fees against a party if the appellate court
1055 or administrative law judge determines that a party participated
1056 in the proceedings for an improper purpose as defined by
1057 paragraph (1)(e). No award of attorney's fees as provided by this
1058 subsection shall exceed \$50,000 ~~\$15,000~~.

1059 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
1060 120.56(3) AND (5).--If the appellate court or administrative law
1061 judge declares a rule or portion of a rule invalid pursuant to s.
1062 120.56(3) or s. 120.56(5), a judgment or order shall be rendered
1063 against the agency for reasonable costs and reasonable attorney's
1064 fees, unless the agency demonstrates that its actions were
1065 substantially justified or special circumstances exist which
1066 would make the award unjust. An agency's actions are
1067 "substantially justified" if there was a reasonable basis in law
1068 and fact at the time the actions were taken by the agency. If the
1069 agency prevails in the proceedings, the appellate court or
1070 administrative law judge shall award reasonable costs and
1071 reasonable attorney's fees against a party if the appellate court
1072 or administrative law judge determines that a party participated
1073 in the proceedings for an improper purpose as defined by

590-05785-08

2008704c1

1074 paragraph (1) (e). No award of attorney's fees as provided by this
1075 subsection shall exceed \$50,000 ~~\$15,000~~.

1076 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
1077 120.56(4).--

1078 (a) If the appellate court or administrative law judge
1079 determines ~~Upon entry of a final order~~ that all or part of an
1080 agency statement violates s. 120.54(1) (a), or that the agency
1081 must immediately discontinue reliance on the statement and any
1082 substantially similar statement pursuant to s. 120.56(4) (e), a
1083 judgment or order shall be entered against the agency for the
1084 ~~administrative law judge shall award~~ reasonable costs and
1085 reasonable attorney's fees ~~to the petitioner~~, unless the agency
1086 demonstrates that the statement is required by the Federal
1087 Government to implement or retain a delegated or approved program
1088 or to meet a condition to receipt of federal funds.

1089 (b) Upon notification to the administrative law judge
1090 provided before the final hearing that the agency has published a
1091 notice of rulemaking under s. 120.54(3) (a), such notice shall
1092 automatically operate as a stay of proceedings pending
1093 rulemaking. The administrative law judge may vacate the stay for
1094 good cause shown. A stay of proceedings under this paragraph
1095 remains in effect so long as the agency is proceeding
1096 expeditiously and in good faith to adopt the statement as a rule.
1097 The administrative law judge shall award reasonable costs and
1098 reasonable attorney's fees accrued by the petitioner prior to the
1099 date the notice was published, unless the agency proves to the
1100 administrative law judge that it did not know and should not have
1101 known that the statement was an unadopted rule. Attorneys' fees
1102 and costs under paragraphs (a) and (b) shall be awarded only upon

590-05785-08

2008704c1

1103 a finding that the agency received notice that the statement may
1104 constitute an unadopted rule at least 30 days before a petition
1105 under s. 120.56(4) was filed and that the agency failed to
1106 publish the required notice of rulemaking pursuant to s.
1107 120.54(3) that addresses the statement within that 30-day period.
1108 Notice to the agency may be satisfied by its receipt of a copy of
1109 the s. 120.56(4) petition, a notice or other paper containing
1110 substantially the same information, or a petition filed pursuant
1111 to s. 120.54(7). An award of attorney's fees as provided by this
1112 paragraph may not exceed \$50,000.

1113 (c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an
1114 award shall be paid from the budget entity of the secretary,
1115 executive director, or equivalent administrative officer of the
1116 agency, and the agency shall not be entitled to payment of an
1117 award or reimbursement for payment of an award under any
1118 provision of law.

1119 (d) If the agency prevails in the proceedings, the
1120 appellate court or administrative law judge shall award
1121 reasonable costs and attorney's fees against a party if the
1122 appellate court or administrative law judge determines that the
1123 party participated in the proceedings for an improper purpose as
1124 defined in paragraph (1)(e) or that the party or the party's
1125 attorney knew or should have known that a claim was not supported
1126 by the material facts necessary to establish the claim or would
1127 not be supported by the application of then-existing law to those
1128 material facts.

1129 Section 15. Subsection (1) and paragraph (c) of subsection
1130 (2) of section 120.569, Florida Statutes, are amended to read:

1131 120.569 Decisions which affect substantial interests.--

590-05785-08

2008704c1

1132 (1) The provisions of this section apply in all proceedings
1133 in which the substantial interests of a party are determined by
1134 an agency, unless the parties are proceeding under s. 120.573 or
1135 s. 120.574. Unless waived by all parties, s. 120.57(1) applies
1136 whenever the proceeding involves a disputed issue of material
1137 fact. Unless otherwise agreed, s. 120.57(2) applies in all other
1138 cases. If a disputed issue of material fact arises during a
1139 proceeding under s. 120.57(2), then, unless waived by all
1140 parties, the proceeding under s. 120.57(2) shall be terminated
1141 and a proceeding under s. 120.57(1) shall be conducted. Parties
1142 shall be notified of any order, including a final order. Unless
1143 waived, a copy of the order shall be delivered or mailed to each
1144 party or the party's attorney of record at the address of record.
1145 Each notice shall inform the recipient of any administrative
1146 hearing or judicial review that is available under this section,
1147 s. 120.57, or s. 120.68; shall indicate the procedure which must
1148 be followed to obtain the hearing or judicial review; and shall
1149 state the time limits which apply.

1150 (2)

1151 (c) Unless otherwise provided by law, a petition or request
1152 for hearing shall include those items required by the uniform
1153 rules adopted pursuant to s. 120.54(5)(b) ~~s. 120.54(5)(b)~~⁴. Upon
1154 the receipt of a petition or request for hearing, the agency
1155 shall carefully review the petition to determine if it contains
1156 all of the required information. A petition shall be dismissed if
1157 it is not in substantial compliance with these requirements or it
1158 has been untimely filed. Dismissal of a petition shall, at least
1159 once, be without prejudice to petitioner's filing a timely
1160 amended petition curing the defect, unless it conclusively

590-05785-08

2008704c1

1161 | appears from the face of the petition that the defect cannot be
1162 | cured. The agency shall promptly give written notice to all
1163 | parties of the action taken on the petition, shall state with
1164 | particularity its reasons if the petition is not granted, and
1165 | shall state the deadline for filing an amended petition if
1166 | applicable. This paragraph does not eliminate the availability of
1167 | equitable tolling as a defense to the untimely filing of a
1168 | petition.

1169 | Section 16. Subsection (2) of section 120.74, Florida
1170 | Statutes, is amended to read:

1171 | 120.74 Agency review, revision, and report.--

1172 | (2) Beginning October 1, 1997, and by October 1 of every
1173 | other year thereafter, the head of each agency shall file a
1174 | report with the President of the Senate, the Speaker of the House
1175 | of Representatives, and the committee, with a copy to each
1176 | appropriate standing committee of the Legislature, which
1177 | certifies that the agency has complied with the requirements of
1178 | this section ~~subsection~~. The report must specify any changes made
1179 | to its rules as a result of the review and, when appropriate,
1180 | recommend statutory changes that will promote efficiency, reduce
1181 | paperwork, or decrease costs to government and the private
1182 | sector. The report must identify the types of cases or disputes
1183 | in which the agency is involved which should be conducted under
1184 | the summary hearing process described in s. 120.574.

1185 | Section 17. Subsection (11) of section 120.80, Florida
1186 | Statutes, is amended to read:

1187 | 120.80 Exceptions and special requirements; agencies.--

1188 | (11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s.~~
1189 | ~~120.52(15)~~, the enlistment, organization, administration,

590-05785-08

2008704c1

1190 equipment, maintenance, training, and discipline of the militia,
1191 National Guard, organized militia, and unorganized militia, as
1192 provided by s. 2, Art. X of the State Constitution, are not rules
1193 as defined by this chapter.

1194 Section 18. Paragraph (c) of subsection (1) and paragraph
1195 (a) of subsection (3) of section 120.81, Florida Statutes, are
1196 amended to read:

1197 120.81 Exceptions and special requirements; general
1198 areas.--

1199 (1) EDUCATIONAL UNITS.--

1200 (c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any tests,
1201 test scoring criteria, or testing procedures relating to student
1202 assessment which are developed or administered by the Department
1203 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or
1204 s. 1008.25, or any other statewide educational tests required by
1205 law, are not rules.

1206 (3) PRISONERS AND PAROLEES.--

1207 (a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~, prisoners,
1208 as defined by s. 944.02, shall not be considered parties in any
1209 proceedings other than those under s. 120.54(3)(c) or (7), and
1210 may not seek judicial review under s. 120.68 of any other agency
1211 action. Prisoners are not eligible to seek an administrative
1212 determination of an agency statement under s. 120.56(4). Parolees
1213 shall not be considered parties for purposes of agency action or
1214 judicial review when the proceedings relate to the rescission or
1215 revocation of parole.

1216 Section 19. Paragraph (f) of subsection (2) of section
1217 409.175, Florida Statutes, is amended to read:

1218 409.175 Licensure of family foster homes, residential

590-05785-08

2008704c1

1219 child-caring agencies, and child-placing agencies; public records
1220 exemption.--

1221 (2) As used in this section, the term:

1222 (f) "License" means "license" as defined in s. 120.52(10)
1223 ~~s. 120.52(9)~~. A license under this section is issued to a family
1224 foster home or other facility and is not a professional license
1225 of any individual. Receipt of a license under this section shall
1226 not create a property right in the recipient. A license under
1227 this act is a public trust and a privilege, and is not an
1228 entitlement. This privilege must guide the finder of fact or
1229 trier of law at any administrative proceeding or court action
1230 initiated by the department.

1231 Section 20. Paragraph (a) of subsection (1) of section
1232 420.9072, Florida Statutes, is amended to read:

1233 420.9072 State Housing Initiatives Partnership
1234 Program.--The State Housing Initiatives Partnership Program is
1235 created for the purpose of providing funds to counties and
1236 eligible municipalities as an incentive for the creation of local
1237 housing partnerships, to expand production of and preserve
1238 affordable housing, to further the housing element of the local
1239 government comprehensive plan specific to affordable housing, and
1240 to increase housing-related employment.

1241 (1)(a) In addition to the legislative findings set forth in
1242 s. 420.6015, the Legislature finds that affordable housing is
1243 most effectively provided by combining available public and
1244 private resources to conserve and improve existing housing and
1245 provide new housing for very-low-income households, low-income
1246 households, and moderate-income households. The Legislature
1247 intends to encourage partnerships in order to secure the benefits

590-05785-08

2008704c1

1248 of cooperation by the public and private sectors and to reduce
1249 the cost of housing for the target group by effectively combining
1250 all available resources and cost-saving measures. The Legislature
1251 further intends that local governments achieve this combination
1252 of resources by encouraging active partnerships between
1253 government, lenders, builders and developers, real estate
1254 professionals, advocates for low-income persons, and community
1255 groups to produce affordable housing and provide related
1256 services. Extending the partnership concept to encompass
1257 cooperative efforts among small counties as defined in s.
1258 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities
1259 is specifically encouraged. Local governments are also intended
1260 to establish an affordable housing advisory committee to
1261 recommend monetary and nonmonetary incentives for affordable
1262 housing as provided in s. 420.9076.

1263 Section 21. Subsection (7) of section 420.9075, Florida
1264 Statutes, is amended to read:

1265 420.9075 Local housing assistance plans; partnerships.--

1266 (7) The moneys deposited in the local housing assistance
1267 trust fund shall be used to administer and implement the local
1268 housing assistance plan. The cost of administering the plan may
1269 not exceed 5 percent of the local housing distribution moneys and
1270 program income deposited into the trust fund. A county or an
1271 eligible municipality may not exceed the 5-percent limitation on
1272 administrative costs, unless its governing body finds, by
1273 resolution, that 5 percent of the local housing distribution plus
1274 5 percent of program income is insufficient to adequately pay the
1275 necessary costs of administering the local housing assistance
1276 plan. The cost of administering the program may not exceed 10

590-05785-08

2008704c1

1277 | percent of the local housing distribution plus 5 percent of
1278 | program income deposited into the trust fund, except that small
1279 | counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~, and eligible
1280 | municipalities receiving a local housing distribution of up to
1281 | \$350,000 may use up to 10 percent of program income for
1282 | administrative costs.

1283 | Section 22. For the 2008-2009 fiscal year, the nonrecurring
1284 | sum of \$50,000 is appropriated from the Records Management Trust
1285 | Fund to the Department of State, and for the 2009-2010 fiscal
1286 | year, the nonrecurring sum of \$401,000 is appropriated from the
1287 | Records Management Trust Fund to the Department of State for the
1288 | purposes of carrying out the provisions of this act.

1289 | Section 23. Except as otherwise expressly provided in this
1290 | act, this act shall take effect July 1, 2008.