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1  
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

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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; providing for the transfer of excess funds;  
37 requiring electronic publication of the Florida  
38 Administrative Code; prescribing requirements with respect  
39 to the content of such electronic publication; providing  
40 for filing information incorporated by reference in  
41 electronic form; providing requirements for the Florida  
42 Administrative Weekly Internet website; amending s.  
43 120.56, F.S., relating to challenges to rules; conforming  
44 a cross-reference; revising procedures for administrative  
45 determinations of the invalidity of rules; requiring an  
46 agency to discontinue reliance on a statement under  
47 certain circumstances; providing an exception; deleting  
48 certain provisions relating to actions before a final  
49 hearing is held; amending s. 120.57, F.S.; revising  
50 procedures applicable to hearings involving disputed  
51 issues of material fact; prohibiting enforcement of  
52 unadopted agency rules under certain circumstances;  
53 amending s. 120.595, F.S.; increasing the limitation on  
54 attorney's fees in challenges to proposed agency rules or  
55 existing agency rules; providing for an award of  
56 reasonable costs and attorney's fees accrued by a  
57 petitioner under certain circumstances; providing for an  
58 award of fees and costs if the agency prevails and a party

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59 participated for an improper purpose; amending s. 120.569,  
60 F.S.; requiring that certain administrative proceedings be  
61 terminated and subsequently reinstated under different  
62 provisions of law if a disputed issue of material fact  
63 arises during the proceeding; conforming a cross-  
64 reference; amending s. 120.74, F.S.; revising reporting  
65 requirement for agency heads; amending ss. 120.80, 120.81,  
66 409.175, 420.9072, and 420.9075, F.S.; conforming cross-  
67 references; providing appropriations; requiring a  
68 temporary increase in the space rate charge for  
69 publication in the Florida Administrative Weekly;  
70 revising, for a specified period, the limit for the  
71 unencumbered balance in the Records Management Trust Fund  
72 at the beginning of the fiscal year for fees collected  
73 under ch. 120, F.S.; providing 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:

87 (8) "Invalid exercise of delegated legislative authority"

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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  
116 | the enabling statute. No agency shall have authority to adopt a

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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 enabling statute ~~by the same~~  
126 | ~~statute~~.

127 |       (9) "Law implemented" means the language of the enabling  
128 | statute being carried out or interpreted by an agency through  
129 | rulemaking.

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

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

137 |       Section 3. Paragraph (a) of subsection (2) of section  
138 | 120.53, Florida Statutes, is amended to read:

139 |       120.53 Maintenance of orders; indexing; listing;  
140 | organizational information.--

141 |       (2) (a) An agency may comply with subparagraphs (1) (a) 1. and  
142 | 2. by designating an official reporter to publish and index by  
143 | subject matter each agency order that must be indexed and made  
144 | available to the public, or by electronically transmitting to the  
145 | division a copy of such orders for posting on the division's

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146 website. An agency is in compliance with subparagraph (1)(a)3. if  
147 it publishes in its designated reporter a list of each agency  
148 final order that must be listed and preserves each listed order  
149 and makes it available for public inspection and copying.

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

152 120.536 Rulemaking authority; repeal; challenge.--

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

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

173 120.54 Rulemaking.--

174 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN

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175 EMERGENCY RULES.--

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

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

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

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

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

201 4. A rule may not be amended by reference only. Amendments  
202 must set out the amended rule in full in the same manner as  
203 required by the State Constitution for laws. ~~The Department of~~

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204 ~~State may prescribe by rule requirements for incorporating~~  
205 ~~materials by reference pursuant to this paragraph.~~

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

232 6. The Department of State may adopt by rule requirements

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233 for incorporating materials pursuant to this paragraph.

234 (k) An agency head may delegate the authority to initiate  
235 rule development under subsection (2); however, rulemaking  
236 responsibilities of an agency head under subparagraph (3)(a)1.,  
237 subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be  
238 delegated or transferred.

239 (3) ADOPTION PROCEDURES.--

240 (a) Notices.--

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

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262 that is required by subsection (2) appeared.

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

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

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

282 (c) Hearings.--

283 1. If the intended action concerns any rule other than one  
284 relating exclusively to procedure or practice, the agency shall,  
285 on the request of any affected person received within 21 days  
286 after the date of publication of the notice of intended agency  
287 action, give affected persons an opportunity to present evidence  
288 and argument on all issues under consideration. The agency may  
289 schedule a public hearing on the rule and, if requested by any  
290 affected person, shall schedule a public hearing on the rule. If

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291 | the agency head is a board or other collegial body created under  
292 | s. 20.165(4) or s. 20.43(3)(g), and one or more requested public  
293 | hearings is scheduled, the board or other collegial body shall  
294 | conduct at least one of the public hearings itself and may not  
295 | delegate this responsibility without the consent of those persons  
296 | requesting the public hearing. Any material pertinent to the  
297 | issues under consideration submitted to the agency within 21 days  
298 | after the date of publication of the notice or submitted at a  
299 | public hearing shall be considered by the agency and made a part  
300 | of the record of the rulemaking proceeding.

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

310 | Similarly situated persons may be requested to join and  
311 | participate in the separate proceeding. Upon conclusion of the  
312 | separate proceeding, the rulemaking proceeding shall be resumed.

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

314 |         1. If the adopting agency is required to publish its rules  
315 | in the Florida Administrative Code, the agency, upon approval of  
316 | the agency head, ~~it~~ shall file with the Department of State three  
317 | certified copies of the rule it proposes to adopt; one copy of  
318 | any material incorporated by reference in the rule, certified by  
319 | the agency; ~~a summary of the rule;~~ a summary of any hearings

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320 held on the rule;<sup>7</sup> and a detailed written statement of the facts  
321 and circumstances justifying the rule. Agencies not required to  
322 publish their rules in the Florida Administrative Code shall file  
323 one certified copy of the proposed rule, and the other material  
324 required by this subparagraph, in the office of the agency head,  
325 and such rules shall be open to the public.

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

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349 administrative law judge files the final order with the clerk or  
350 until 60 days after subsequent judicial review is complete.

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

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

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

372 6. The proposed rule shall be adopted on being filed with  
373 the Department of State and become effective 20 days after being  
374 filed, on a later date specified in the rule, or on a date  
375 required by statute. Rules not required to be filed with the  
376 Department of State shall become effective when adopted by the  
377 agency head or on a later date specified by rule or statute. If

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

385

386 | For the purposes of this paragraph, the term "administrative  
387 | determination" does not include subsequent judicial review.

388 |       (4) EMERGENCY RULES.--

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

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

397 |           2. The agency takes only that action necessary to protect  
398 | the public interest under the emergency procedure.

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

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407 | issue of the Florida Administrative Weekly and provided to the  
408 | committee along with any material incorporated by reference in  
409 | the rules. The agency's findings of immediate danger, necessity,  
410 | and procedural fairness shall be judicially reviewable.

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

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

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

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

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

455 120.54 Rulemaking.--

456 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
457 EMERGENCY RULES.--

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

462 1. Rulemaking shall be presumed feasible unless the agency  
463 proves that:

464 a. The agency has not had sufficient time to acquire the

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465 knowledge and experience reasonably necessary to address a  
466 statement by rulemaking;

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

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

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

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

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

483 Section 7. Section 120.545, Florida Statutes, is amended to  
484 read:

485 120.545 Committee review of agency rules.--

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

492 (a) The rule is an invalid exercise of delegated  
493 legislative authority.

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

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

496 (d) The rule is in proper form.

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

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

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

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

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

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

516 (k) The rule will require additional appropriations.

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

522 (2) The committee may request from an agency such

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523 information as is reasonably necessary for examination of a rule  
524 as required by subsection (1). The committee shall consult with  
525 legislative standing committees having ~~with~~ jurisdiction over the  
526 subject areas. If the committee objects to ~~an emergency rule or a~~  
527 ~~proposed or existing~~ rule, the committee ~~it~~ shall, within 5 days  
528 after ~~of~~ the objection, certify that fact to the agency whose  
529 rule has been examined and include with the certification a  
530 statement detailing its objections with particularity. The  
531 committee shall notify the Speaker of the House of  
532 Representatives and the President of the Senate of any objection  
533 to an agency rule concurrent with certification of that fact to  
534 the agency. Such notice shall include a copy of the rule and the  
535 statement detailing the committee's objections to the rule.

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

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

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

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

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

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

549 1. File notice pursuant to s. 120.54(3) (a), without prior  
550 notice of rule development, ~~Notify the committee that it has~~  
551 ~~elected~~ to amend the rule to address ~~meet~~ the committee's

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552 objection and ~~initiate the amendment procedure;~~

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

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

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

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

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

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

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

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

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

608           (5)~~(8)~~ Failure of the agency to respond to a committee  
609 objection to a ~~an existing~~ rule that is in effect within the time

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610 prescribed in subsection (3) constitutes ~~shall constitute~~ a  
611 refusal to amend or repeal the rule.

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

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

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

638 (b)1. If the committee votes to recommend the introduction

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

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

651 a. Temporarily suspend the rule or suspend the adoption of  
652 the proposed rule; or

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

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

667 4. Failure of an agency to respond to committee

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668 certification within the time prescribed by subparagraph 2.  
669 constitutes a refusal to suspend the rule or to suspend the  
670 adoption of the proposed rule.

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

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

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

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697 ~~portion thereof, is enacted into law, the Department of State~~  
698 ~~shall conform the rule or portion of the rule to the provisions~~  
699 ~~of the law in the Florida Administrative Code and publish a~~  
700 ~~reference to the law as a history note to the rule.~~

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

704 120.55 Publication.--

705 (1) The Department of State shall:

706 (a)1. Through a continuous revision system, compile and  
707 publish the "Florida Administrative Code." The Florida  
708 Administrative Code shall contain all rules adopted by each  
709 agency, citing the grant of specific rulemaking authority and the  
710 specific law implemented pursuant to which each rule was adopted,  
711 all history notes as authorized in s. 120.545(8) ~~s. 120.545(9)~~,  
712 and complete indexes to all rules contained in the code.

713 Supplementation shall be made as often as practicable, but at  
714 least monthly. The department may contract with a publishing firm  
715 for the publication, in a timely and useful form, of the Florida  
716 Administrative Code; however, the department shall retain  
717 responsibility for the code as provided in this section. This  
718 publication shall be the official compilation of the  
719 administrative rules of this state. The Department of State shall  
720 retain the copyright over the Florida Administrative Code.

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

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726 Administrative Code shall not affect the validity or  
727 effectiveness of such rules.

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

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

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

753 (5) Any publication of a proposed rule promulgated by an  
754 agency, whether published in the Florida Administrative Code or

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755 elsewhere, shall include, along with the rule, the name of the  
756 person or persons originating such rule, the name of the agency  
757 head supervisor or person who approved the rule, and the date  
758 upon which the rule was approved.

759 Section 9. Effective July 1, 2010, paragraph (a) of  
760 subsection (1) and subsection (2) of section 120.55, Florida  
761 Statutes, as amended by this act, are amended to read:

762 120.55 Publication.--

763 (1) The Department of State shall:

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

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

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

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

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

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813 must clearly display the number, title, and effective date of the  
814 form and the number of the rule in which the form is  
815 incorporated.

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

828 (2) The Florida Administrative Weekly Internet website must  
829 allow users to:

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

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

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

839 (d) View agency forms and other materials submitted to the  
840 department in electronic form and incorporated by reference in  
841 proposed rules; and

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842 (e) Comment on proposed rules.

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

845 120.56 Challenges to rules.--

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

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

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871 | limited to challenging the change to the proposed rule.

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

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

887 |       120.56 Challenges to rules.--

888 |       (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL  
889 | PROVISIONS.--

890 |       (a) Any person substantially affected by an agency  
891 | statement may seek an administrative determination that the  
892 | statement violates s. 120.54(1)(a). The petition shall include  
893 | the text of the statement or a description of the statement and  
894 | shall state with particularity facts sufficient to show that the  
895 | statement constitutes a rule under s. 120.52 and that the agency  
896 | has not adopted the statement by the rulemaking procedure  
897 | provided by s. 120.54.

898 |       (b) The administrative law judge may extend the hearing  
899 | date beyond 30 days after assignment of the case for good cause.

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

912 (c) The administrative law judge may determine whether all  
913 or part of a statement violates s. 120.54(1) (a). The decision of  
914 the administrative law judge shall constitute a final order. The  
915 division shall transmit a copy of the final order to the  
916 Department of State and the committee. The Department of State  
917 shall publish notice of the final order in the first available  
918 issue of the Florida Administrative Weekly.

919 (d) If ~~When~~ an administrative law judge enters a final  
920 order that all or part of an agency statement violates s.  
921 120.54(1) (a), the agency shall immediately discontinue all  
922 reliance upon the statement or any substantially similar  
923 statement as a basis for agency action. This paragraph shall not  
924 be construed to impair the obligation of contracts existing at  
925 the time the final order is entered.

926 ~~(c)1. If, prior to a final hearing to determine whether all~~  
927 ~~or part of any agency statement violates s. 120.54(1) (a), an~~  
928 ~~agency publishes, pursuant to s. 120.54(3) (a), proposed rules~~

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929 ~~that address the statement, then for purposes of this section, a~~  
930 ~~presumption is created that the agency is acting expeditiously~~  
931 ~~and in good faith to adopt rules that address the statement, and~~  
932 ~~the agency shall be permitted to rely upon the statement or a~~  
933 ~~substantially similar statement as a basis for agency action if~~  
934 ~~the statement meets the requirements of s. 120.57(1)(e).~~

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

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

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

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

972           (f) All proceedings to determine a violation of s.  
973 120.54(1)(a) shall be brought pursuant to this subsection. A  
974 proceeding pursuant to this subsection may be consolidated with a  
975 proceeding under subsection (3) or under any other section of  
976 this chapter. ~~Nothing in~~ This paragraph does not shall be  
977 ~~construed to~~ prevent a party whose substantial interests have  
978 been determined by an agency action from bringing a proceeding  
979 pursuant to s. 120.57(1)(e).

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

983           120.57 Additional procedures for particular cases.--

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

986           (e)1. An agency or an administrative law judge may not base

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987 ~~Any~~ agency action that determines the substantial interests of a  
988 party ~~and that is based~~ on an unadopted rule. The administrative  
989 law judge shall determine whether an agency statement constitutes  
990 an unadopted rule. This subparagraph does not preclude  
991 application of adopted rules and applicable provisions of law to  
992 the facts ~~unadopted rule is subject to de novo review by an~~  
993 ~~administrative law judge~~.

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

1004       a. Is within the powers, functions, and duties delegated by  
1005 the Legislature or, if the agency is operating pursuant to  
1006 authority derived from the State Constitution, is within that  
1007 authority;

1008       b. Does not enlarge, modify, or contravene the specific  
1009 provisions of law implemented;

1010       c. Is not vague, establishes adequate standards for agency  
1011 decisions, or does not vest unbridled discretion in the agency;

1012       d. Is not arbitrary or capricious. A rule is arbitrary if  
1013 it is not supported by logic or the necessary facts; a rule is  
1014 capricious if it is adopted without thought or reason or is  
1015 irrational;

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1016 e. Is not being applied to the substantially affected party  
1017 without due notice; and

1018 f. Does not impose excessive regulatory costs on the  
1019 regulated person, county, or city.

1020 3. The recommended and final orders in any proceeding shall  
1021 be governed by the provisions of paragraphs (k) and (l), except  
1022 that the administrative law judge's determination regarding an  
1023 ~~the~~ unadopted rule under subparagraph 1. or 2. shall not be  
1024 rejected by the agency unless the agency first determines from a  
1025 review of the complete record, and states with particularity in  
1026 the order, that such determination is clearly erroneous or does  
1027 not comply with essential requirements of law. In any proceeding  
1028 for review under s. 120.68, if the court finds that the agency's  
1029 rejection of the determination regarding the unadopted rule does  
1030 not comport with the provisions of this subparagraph, the agency  
1031 action shall be set aside and the court shall award to the  
1032 prevailing party the reasonable costs and a reasonable attorney's  
1033 fee for the initial proceeding and the proceeding for review.

1034 Section 13. Effective January 1, 2009, subsections (2),  
1035 (3), and (4) of section 120.595, Florida Statutes, are amended to  
1036 read:

1037 120.595 Attorney's fees.--

1038 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION  
1039 120.56(2).--If the appellate court or administrative law judge  
1040 declares a proposed rule or portion of a proposed rule invalid  
1041 pursuant to s. 120.56(2), a judgment or order shall be rendered  
1042 against the agency for reasonable costs and reasonable attorney's  
1043 fees, unless the agency demonstrates that its actions were  
1044 substantially justified or special circumstances exist which

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

1055 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION  
1056 120.56(3) AND (5).--If the appellate court or administrative law  
1057 judge declares a rule or portion of a rule invalid pursuant to s.  
1058 120.56(3) or s. 120.56(5), a judgment or order shall be rendered  
1059 against the agency for reasonable costs and reasonable attorney's  
1060 fees, unless the agency demonstrates that its actions were  
1061 substantially justified or special circumstances exist which  
1062 would make the award unjust. An agency's actions are  
1063 "substantially justified" if there was a reasonable basis in law  
1064 and fact at the time the actions were taken by the agency. If the  
1065 agency prevails in the proceedings, the appellate court or  
1066 administrative law judge shall award reasonable costs and  
1067 reasonable attorney's fees against a party if the appellate court  
1068 or administrative law judge determines that a party participated  
1069 in the proceedings for an improper purpose as defined by  
1070 paragraph (1)(e). No award of attorney's fees as provided by this  
1071 subsection shall exceed \$50,000 ~~\$15,000~~.

1072 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
1073 120.56(4).--

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1074           (a) If the appellate court or administrative law judge  
1075 determines ~~Upon entry of a final order~~ that all or part of an  
1076 agency statement violates s. 120.54(1) (a), or that the agency  
1077 must immediately discontinue reliance on the statement and any  
1078 substantially similar statement pursuant to s. 120.56(4) (e), a  
1079 judgment or order shall be entered against the agency for the  
1080 ~~administrative law judge shall award~~ reasonable costs and  
1081 reasonable attorney's fees ~~to the petitioner~~, unless the agency  
1082 demonstrates that the statement is required by the Federal  
1083 Government to implement or retain a delegated or approved program  
1084 or to meet a condition to receipt of federal funds.

1085           (b) Upon notification to the administrative law judge  
1086 provided before the final hearing that the agency has published a  
1087 notice of rulemaking under s. 120.54(3) (a), such notice shall  
1088 automatically operate as a stay of proceedings pending  
1089 rulemaking. The administrative law judge may vacate the stay for  
1090 good cause shown. A stay of proceedings under this paragraph  
1091 remains in effect so long as the agency is proceeding  
1092 expeditiously and in good faith to adopt the statement as a rule.  
1093 The administrative law judge shall award reasonable costs and  
1094 reasonable attorney's fees accrued by the petitioner prior to the  
1095 date the notice was published, unless the agency proves to the  
1096 administrative law judge that it did not know and should not have  
1097 known that the statement was an unadopted rule. Attorneys' fees  
1098 and costs under paragraphs (a) and (b) shall be awarded only upon  
1099 a finding that the agency received notice that the statement may  
1100 constitute an unadopted rule at least 30 days before a petition  
1101 under s. 120.56(4) was filed and that the agency failed to  
1102 publish the required notice of rulemaking pursuant to s.

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1103 120.54(3) that addresses the statement within that 30-day period.  
1104 Notice to the agency may be satisfied by its receipt of a copy of  
1105 the s. 120.56(4) petition, a notice or other paper containing  
1106 substantially the same information, or a petition filed pursuant  
1107 to s. 120.54(7). An award of attorney's fees as provided by this  
1108 paragraph may not exceed \$50,000.

1109 (c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an  
1110 award shall be paid from the budget entity of the secretary,  
1111 executive director, or equivalent administrative officer of the  
1112 agency, and the agency shall not be entitled to payment of an  
1113 award or reimbursement for payment of an award under any  
1114 provision of law.

1115 (d) If the agency prevails in the proceedings, the  
1116 appellate court or administrative law judge shall award  
1117 reasonable costs and attorney's fees against a party if the  
1118 appellate court or administrative law judge determines that the  
1119 party participated in the proceedings for an improper purpose as  
1120 defined in paragraph (1)(e) or that the party or the party's  
1121 attorney knew or should have known that a claim was not supported  
1122 by the material facts necessary to establish the claim or would  
1123 not be supported by the application of then-existing law to those  
1124 material facts.

1125 Section 14. Subsection (1) and paragraph (c) of subsection  
1126 (2) of section 120.569, Florida Statutes, are amended to read:

1127 120.569 Decisions which affect substantial interests.--

1128 (1) The provisions of this section apply in all proceedings  
1129 in which the substantial interests of a party are determined by  
1130 an agency, unless the parties are proceeding under s. 120.573 or  
1131 s. 120.574. Unless waived by all parties, s. 120.57(1) applies

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

1146 (2)

1147 (c) Unless otherwise provided by law, a petition or request  
1148 for hearing shall include those items required by the uniform  
1149 rules adopted pursuant to s. 120.54(5)(b) ~~s. 120.54(5)(b)4~~. Upon  
1150 the receipt of a petition or request for hearing, the agency  
1151 shall carefully review the petition to determine if it contains  
1152 all of the required information. A petition shall be dismissed if  
1153 it is not in substantial compliance with these requirements or it  
1154 has been untimely filed. Dismissal of a petition shall, at least  
1155 once, be without prejudice to petitioner's filing a timely  
1156 amended petition curing the defect, unless it conclusively  
1157 appears from the face of the petition that the defect cannot be  
1158 cured. The agency shall promptly give written notice to all  
1159 parties of the action taken on the petition, shall state with  
1160 particularity its reasons if the petition is not granted, and

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1161 shall state the deadline for filing an amended petition if  
1162 applicable. This paragraph does not eliminate the availability of  
1163 equitable tolling as a defense to the untimely filing of a  
1164 petition.

1165 Section 15. Subsection (2) of section 120.74, Florida  
1166 Statutes, is amended to read:

1167 120.74 Agency review, revision, and report.--

1168 (2) Beginning October 1, 1997, and by October 1 of every  
1169 other year thereafter, the head of each agency shall file a  
1170 report with the President of the Senate, the Speaker of the House  
1171 of Representatives, and the committee, with a copy to each  
1172 appropriate standing committee of the Legislature, which  
1173 certifies that the agency has complied with the requirements of  
1174 this section ~~subsection~~. The report must specify any changes made  
1175 to its rules as a result of the review and, when appropriate,  
1176 recommend statutory changes that will promote efficiency, reduce  
1177 paperwork, or decrease costs to government and the private  
1178 sector. The report must identify the types of cases or disputes  
1179 in which the agency is involved which should be conducted under  
1180 the summary hearing process described in s. 120.574.

1181 Section 16. Subsection (11) of section 120.80, Florida  
1182 Statutes, is amended to read:

1183 120.80 Exceptions and special requirements; agencies.--

1184 (11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s.~~  
1185 ~~120.52(15)~~, the enlistment, organization, administration,  
1186 equipment, maintenance, training, and discipline of the militia,  
1187 National Guard, organized militia, and unorganized militia, as  
1188 provided by s. 2, Art. X of the State Constitution, are not rules  
1189 as defined by this chapter.

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1190 Section 17. Paragraph (c) of subsection (1) and paragraph  
1191 (a) of subsection (3) of section 120.81, Florida Statutes, are  
1192 amended to read:

1193 120.81 Exceptions and special requirements; general  
1194 areas.--

1195 (1) EDUCATIONAL UNITS.--

1196 (c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any tests,  
1197 test scoring criteria, or testing procedures relating to student  
1198 assessment which are developed or administered by the Department  
1199 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or  
1200 s. 1008.25, or any other statewide educational tests required by  
1201 law, are not rules.

1202 (3) PRISONERS AND PAROLEES.--

1203 (a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~, prisoners,  
1204 as defined by s. 944.02, shall not be considered parties in any  
1205 proceedings other than those under s. 120.54(3)(c) or (7), and  
1206 may not seek judicial review under s. 120.68 of any other agency  
1207 action. Prisoners are not eligible to seek an administrative  
1208 determination of an agency statement under s. 120.56(4). Parolees  
1209 shall not be considered parties for purposes of agency action or  
1210 judicial review when the proceedings relate to the rescission or  
1211 revocation of parole.

1212 Section 18. Paragraph (f) of subsection (2) of section  
1213 409.175, Florida Statutes, is amended to read:

1214 409.175 Licensure of family foster homes, residential  
1215 child-caring agencies, and child-placing agencies; public records  
1216 exemption.--

1217 (2) As used in this section, the term:

1218 (f) "License" means "license" as defined in s. 120.52(10)

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1219 ~~s. 120.52(9)~~. A license under this section is issued to a family  
1220 foster home or other facility and is not a professional license  
1221 of any individual. Receipt of a license under this section shall  
1222 not create a property right in the recipient. A license under  
1223 this act is a public trust and a privilege, and is not an  
1224 entitlement. This privilege must guide the finder of fact or  
1225 trier of law at any administrative proceeding or court action  
1226 initiated by the department.

1227 Section 19. Paragraph (a) of subsection (1) of section  
1228 420.9072, Florida Statutes, is amended to read:

1229 420.9072 State Housing Initiatives Partnership  
1230 Program.--The State Housing Initiatives Partnership Program is  
1231 created for the purpose of providing funds to counties and  
1232 eligible municipalities as an incentive for the creation of local  
1233 housing partnerships, to expand production of and preserve  
1234 affordable housing, to further the housing element of the local  
1235 government comprehensive plan specific to affordable housing, and  
1236 to increase housing-related employment.

1237 (1) (a) In addition to the legislative findings set forth in  
1238 s. 420.6015, the Legislature finds that affordable housing is  
1239 most effectively provided by combining available public and  
1240 private resources to conserve and improve existing housing and  
1241 provide new housing for very-low-income households, low-income  
1242 households, and moderate-income households. The Legislature  
1243 intends to encourage partnerships in order to secure the benefits  
1244 of cooperation by the public and private sectors and to reduce  
1245 the cost of housing for the target group by effectively combining  
1246 all available resources and cost-saving measures. The Legislature  
1247 further intends that local governments achieve this combination

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1248 of resources by encouraging active partnerships between  
1249 government, lenders, builders and developers, real estate  
1250 professionals, advocates for low-income persons, and community  
1251 groups to produce affordable housing and provide related  
1252 services. Extending the partnership concept to encompass  
1253 cooperative efforts among small counties as defined in s.  
1254 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities  
1255 is specifically encouraged. Local governments are also intended  
1256 to establish an affordable housing advisory committee to  
1257 recommend monetary and nonmonetary incentives for affordable  
1258 housing as provided in s. 420.9076.

1259 Section 20. Subsection (7) of section 420.9075, Florida  
1260 Statutes, is amended to read:

1261 420.9075 Local housing assistance plans; partnerships.--

1262 (7) The moneys deposited in the local housing assistance  
1263 trust fund shall be used to administer and implement the local  
1264 housing assistance plan. The cost of administering the plan may  
1265 not exceed 5 percent of the local housing distribution moneys and  
1266 program income deposited into the trust fund. A county or an  
1267 eligible municipality may not exceed the 5-percent limitation on  
1268 administrative costs, unless its governing body finds, by  
1269 resolution, that 5 percent of the local housing distribution plus  
1270 5 percent of program income is insufficient to adequately pay the  
1271 necessary costs of administering the local housing assistance  
1272 plan. The cost of administering the program may not exceed 10  
1273 percent of the local housing distribution plus 5 percent of  
1274 program income deposited into the trust fund, except that small  
1275 counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~, and eligible  
1276 municipalities receiving a local housing distribution of up to

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1277 \$350,000 may use up to 10 percent of program income for  
1278 administrative costs.

1279 Section 21. For the 2008-2009 fiscal year, the nonrecurring  
1280 sum of \$50,000 is appropriated in lump sum from the Records  
1281 Management Trust Fund to the Department of State, and for the  
1282 2009-2010 fiscal year, the nonrecurring sum of \$401,000 is  
1283 appropriated in lump sum from the Records Management Trust Fund  
1284 to the Department of State for the purposes of carrying out the  
1285 provisions of this act requiring the implementation of electronic  
1286 publications. To cover this nonrecurring cost to implement system  
1287 modifications, the Department of State shall temporarily increase  
1288 the space rate charge for publication in the Florida  
1289 Administrative Weekly. After implementation of the required  
1290 system changes, the department shall decrease the fee to the  
1291 2007-2008 fiscal year level. Funds appropriated shall be held in  
1292 a lump-sum category, contingent on available cash deposited into  
1293 the trust fund and derived from the fee increase. Funds collected  
1294 from the fee increase and not expended by June 30, 2009, may be  
1295 retained in the trust fund to complete the system implementation  
1296 as appropriated in the 2009-2010 fiscal year.

1297 Section 22. For the 2008-2009 fiscal year, the Department  
1298 of State is authorized one additional full-time equivalent  
1299 position, salary rate of 16,969, and the recurring sum of \$22,399  
1300 in salaries and benefits from the Records Management Trust Fund  
1301 for the purpose of handling administrative and system  
1302 requirements in carrying out the provisions of this act related  
1303 to electronic publications.

1304 Section 23. Notwithstanding s. 120.55(8)(b), Florida  
1305 Statutes, on July 1, 2009, the unencumbered balance in the

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1306 Records Management Trust Fund for fees collected pursuant to  
1307 chapter 120, Florida Statutes, may not exceed \$300,000 plus any  
1308 funds collected, but not expended, from the fee increase  
1309 implemented to fund the provisions of this act. By June 30, 2009,  
1310 any funds in excess of this amount shall be transferred to the  
1311 General Revenue Fund. This section expires August 1, 2009.

1312       Section 24. Except as otherwise expressly provided in this  
1313 act, this act shall take effect July 1, 2008.