

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
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; conforming a cross-reference; requiring
37 electronic publication of the Florida Administrative Code;
38 prescribing requirements with respect to the content of
39 such electronic publication; providing for filing
40 information incorporated by reference in electronic form;
41 providing requirements for the Florida Administrative
42 Weekly Internet website; amending s. 120.56, F.S.,
43 relating to challenges to rules; conforming a cross-
44 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
 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 a 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; providing for a
 68 temporary increase in the space rate charge for
 69 publication in the Florida Administrative Weekly;
 70 providing for a temporary revision of provisions imposing
 71 a cap on the unencumbered balance in the Records
 72 Management Trust Fund; providing effective dates.

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

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

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

85 120.52 Definitions.--As used in this act:

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

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

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

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

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

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

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

110
 111 A grant of rulemaking authority is necessary but not sufficient
 112 to allow an agency to adopt a rule; a specific law to be

HB 7127

2008

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

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

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

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

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

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

140 (2) (a) An agency may comply with subparagraphs (1) (a)1.
 141 and 2. by designating an official reporter to publish and index
 142 by subject matter each agency order that must be indexed and
 143 made available to the public or by electronically transmitting
 144 to the division a copy of such orders for posting on the
 145 division's website. An agency is in compliance with subparagraph
 146 (1) (a)3. if it publishes in its designated reporter a list of
 147 each agency final order that must be listed and preserves each
 148 listed order and makes it available for public inspection and
 149 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.~~

HB 7127

2008

168 Section 5. Paragraph (i) of subsection (1), paragraphs
169 (a), (c), and (e) of subsection (3), paragraph (a) of subsection
170 (4), 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
175 EMERGENCY RULES.--

176 (i)1. A rule may incorporate material by reference but
177 only 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
182 subsequent amendments to the referenced rule unless a contrary
183 intent is clearly indicated in the referencing rule. A notice of
184 amendments to a rule that has been incorporated by specific
185 reference in other rules of that agency must explain the effect
186 of those 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
191 of the material can be made available for free public access
192 through an electronic hyperlink from the rule making the
193 reference in the 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

HB 7127

2008

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,
200 must 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~~
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
211 not 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
220 amend the history note of the incorporating rule to show the
221 effective date of such change. Any substantially affected person
222 may, within 14 days after the date of publication of the notice
223 of intent in the Florida Administrative Weekly, file an

224 objection to rulemaking with the agency. The objection shall
 225 specify the portions of the rule incorporated by reference to
 226 which the person objects and the reasons for the objection. The
 227 agency shall not have the authority under this subparagraph to
 228 adopt those portions of the rule specified in such objection.
 229 The agency shall publish notice of the objection and of its
 230 action in response in the next available issue of the Florida
 231 Administrative Weekly.

232 6. The Department of State may adopt by rule requirements
 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
 245 the proposed action; the full text of the proposed rule or
 246 amendment and a summary thereof; a reference to the grant of
 247 ~~specific~~ rulemaking authority pursuant to which the rule is
 248 adopted; and a reference to the section or subsection of the
 249 Florida Statutes or the Laws of Florida being implemented or
 250 ~~interpreted, or made specific~~. The notice must ~~shall~~ include a
 251 summary of the agency's statement of the estimated regulatory

HB 7127

2008

252 costs, if one has been prepared, based on the factors set forth
253 in s. 120.541(2), and a statement that any person who wishes to
254 provide the agency with information regarding the statement of
255 estimated regulatory costs, or to provide a proposal for a lower
256 cost regulatory alternative as provided by s. 120.541(1), must
257 do so in writing within 21 days after publication of the notice.
258 The notice must state the procedure for requesting a public
259 hearing on the proposed rule. Except when the intended action is
260 the repeal of a rule, the notice must ~~shall~~ include a reference
261 both to the date on which and to the place where the notice of
262 rule development 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
265 intended action. The proposed rule shall be available for
266 inspection and copying by the public at the time of the
267 publication of notice.

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

274 4. The adopting agency shall file with the committee, at
275 least 21 days prior to the proposed adoption date, a copy of
276 each rule it proposes to adopt; a copy of any material
277 incorporated by reference in the rule; a detailed written
278 statement of the facts and circumstances justifying the proposed
279 rule; a copy of any statement of estimated regulatory costs that

HB 7127

2008

280 has been prepared pursuant to s. 120.541; a statement of the
281 extent to which the proposed rule relates to federal standards
282 or rules on the same subject; and the notice required by
283 subparagraph 1.

284 (c) Hearings.--

285 1. If the intended action concerns any rule other than one
286 relating exclusively to procedure or practice, the agency shall,
287 on the request of any affected person received within 21 days
288 after the date of publication of the notice of intended agency
289 action, give affected persons an opportunity to present evidence
290 and argument on all issues under consideration. The agency may
291 schedule a public hearing on the rule and, if requested by any
292 affected person, shall schedule a public hearing on the rule. If
293 the agency head is a board or other collegial body created under
294 s. 20.165(4) or s. 20.43(3)(g), and one or more requested public
295 hearings are scheduled, the board or other collegial body shall
296 conduct at least one of the public hearings itself and may not
297 delegate this responsibility without the consent of those
298 persons requesting the public hearing. Any material pertinent to
299 the issues under consideration submitted to the agency within 21
300 days after the date of publication of the notice or submitted at
301 a public hearing shall be considered by the agency and made a
302 part of the record of the rulemaking proceeding.

303 2. Rulemaking proceedings shall be governed solely by the
304 provisions of this section unless a person timely asserts that
305 the person's substantial interests will be affected in the
306 proceeding and affirmatively demonstrates to the agency that the
307 proceeding does not provide adequate opportunity to protect

HB 7127

2008

308 those interests. If the agency determines that the rulemaking
309 proceeding is not adequate to protect the person's interests, it
310 shall suspend the rulemaking proceeding and convene a separate
311 proceeding under the provisions of ss. 120.569 and 120.57.
312 Similarly situated persons may be requested to join and
313 participate in the separate proceeding. Upon conclusion of the
314 separate proceeding, the rulemaking proceeding shall be resumed.

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

316 1. If the adopting agency is required to publish its rules
317 in the Florida Administrative Code, the agency, upon approval of
318 the agency head, ~~it~~ shall file with the Department of State
319 three certified copies of the rule it proposes to adopt; one
320 copy of any material incorporated by reference in the rule,
321 certified by the agency; ~~;~~ a summary of the rule; ~~;~~ a summary of
322 any hearings held on the rule; ~~;~~ and a detailed written statement
323 of the facts and circumstances justifying the rule. Agencies not
324 required to publish their rules in the Florida Administrative
325 Code shall file one certified copy of the proposed rule, and the
326 other material required by this subparagraph, in the office of
327 the agency head, and such rules shall be open to the public.

328 2. A rule may not be filed for adoption less than 28 days
329 or more than 90 days after the notice required by paragraph (a),
330 until 21 days after the notice of change required by paragraph
331 (d), until 14 days after the final public hearing, until 21 days
332 after ~~preparation of~~ a statement of estimated regulatory costs
333 required under s. 120.541 has been provided to all persons who
334 submitted a lower cost regulatory alternative and made available
335 to the public, or until the administrative law judge has

HB 7127

2008

336 rendered a decision under s. 120.56(2), whichever applies. When
337 a required notice of change is published prior to the expiration
338 of the time to file the rule for adoption, the period during
339 which a rule must be filed for adoption is extended to 45 days
340 after the date of publication. If notice of a public hearing is
341 published prior to the expiration of the time to file the rule
342 for adoption, the period during which a rule must be filed for
343 adoption is extended to 45 days after adjournment of the final
344 hearing on the rule, 21 days after receipt of all material
345 authorized to be submitted at the hearing, or 21 days after
346 receipt of the transcript, if one is made, whichever is latest.
347 The term "public hearing" includes any public meeting held by
348 any agency at which the rule is considered. If a petition for an
349 administrative determination under s. 120.56(2) is filed, the
350 period during which a rule must be filed for adoption is
351 extended to 60 days after the administrative law judge files the
352 final order with the clerk or until 60 days after subsequent
353 judicial review is complete.

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

359 4. At the time a rule is filed, the committee shall
360 certify whether the agency has responded in writing to all
361 material and timely written comments or written inquiries made
362 on behalf of the committee. The department shall reject any rule
363 that is not filed within the prescribed time limits; that does

HB 7127

2008

364 not comply with ~~satisfy~~ all statutory rulemaking requirements
365 and rules of the department; upon which an agency has not
366 responded in writing to all material and timely written
367 inquiries or written comments; upon which an administrative
368 determination is pending; or which does not include a statement
369 of estimated regulatory costs, if required.

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

376 6. The proposed rule shall be adopted on being filed with
377 the Department of State and become effective 20 days after being
378 filed, on a later date specified in the rule, or on a date
379 required by statute. Rules not required to be filed with the
380 Department of State shall become effective when adopted by the
381 agency head or on a later date specified by rule or statute. If
382 the committee notifies an agency that an objection to a rule is
383 being considered, the agency may postpone the adoption of the
384 rule to accommodate review of the rule by the committee. When an
385 agency postpones adoption of a rule to accommodate review by the
386 committee, the 90-day period for filing the rule is tolled until
387 the committee notifies the agency that it has completed its
388 review of the rule.

389
390 For the purposes of this paragraph, the term "administrative
391 determination" does not include subsequent judicial review.

392 (4) EMERGENCY RULES.--

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

398 1. The procedure provides at least the procedural
 399 protection given by other statutes, the State Constitution, or
 400 the United States Constitution.

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

403 3. The agency publishes in writing at the time of, or
 404 prior to, its action the specific facts and reasons for finding
 405 an immediate danger to the public health, safety, or welfare and
 406 its reasons for concluding that the procedure used is fair under
 407 the circumstances. In any event, notice of emergency rules,
 408 other than those of educational units or units of government
 409 with jurisdiction in only one or a part of one county, including
 410 the full text of the rules, shall be published in the first
 411 available issue of the Florida Administrative Weekly and
 412 provided to the committee along with any material incorporated
 413 by reference in the rules. The agency's findings of immediate
 414 danger, necessity, and procedural fairness shall be judicially
 415 reviewable.

416 (7) PETITION TO INITIATE RULEMAKING.--

417 (a) Any person regulated by an agency or having
 418 substantial interest in an agency rule may petition an agency to
 419 adopt, amend, or repeal a rule or to provide the minimum public

HB 7127

2008

420 information required by this chapter. The petition shall specify
421 the proposed rule and action requested. Not later than 30
422 calendar days following the date of filing a petition, the
423 agency shall initiate rulemaking proceedings under this chapter,
424 otherwise comply with the requested action, or deny the petition
425 with a written statement of its reasons for the denial.

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

441 (c) Within 30 days following the public hearing provided
442 for by paragraph (b), if the agency does not initiate rulemaking
443 or otherwise comply with the requested action, the agency shall
444 publish in the Florida Administrative Weekly a statement of its
445 reasons for not initiating rulemaking or otherwise complying
446 with the requested action, and of any changes it will make in
447 the scope or application of the unadopted rule. The agency shall

HB 7127

2008

448 file the statement with the committee. The committee shall
 449 forward a copy of the statement to the substantive committee
 450 with primary oversight jurisdiction of the agency in each house
 451 of the Legislature. The committee or the committee with primary
 452 oversight jurisdiction may hold a hearing directed to the
 453 statement of the agency. The committee holding the hearing may
 454 recommend to the Legislature the introduction of legislation
 455 making the rule a statutory standard or limiting or otherwise
 456 modifying the authority of the agency.

457 Section 6. Effective January 1, 2009, paragraph (a) of
 458 subsection (1) of section 120.54, Florida Statutes, is amended
 459 to read:

460 120.54 Rulemaking.--

461 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
 462 EMERGENCY RULES.--

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

467 1. Rulemaking shall be presumed feasible unless the agency
 468 proves that:

469 a. The agency has not had sufficient time to acquire the
 470 knowledge and experience reasonably necessary to address a
 471 statement by rulemaking; or

472 b. Related matters are not sufficiently resolved to enable
 473 the agency to address a statement by rulemaking, ~~or~~

HB 7127

2008

474 ~~e. The agency is currently using the rulemaking procedure~~
475 ~~expeditiously and in good faith to adopt rules which address the~~
476 ~~statement.~~

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

481 a. Detail or precision in the establishment of principles,
482 criteria, or standards for agency decisions is not reasonable
483 under the circumstances; or

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

488 Section 7. Section 120.545, Florida Statutes, is amended
489 to read:

490 120.545 Committee review of agency rules.--

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

497 (a) The rule is an invalid exercise of delegated
498 legislative authority.

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

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

HB 7127

2008

502 (d) The rule is in proper form.

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

505 (f) The rule is consistent with expressed legislative
506 intent pertaining to the specific provisions of law which the
507 rule implements.

508 (g) The rule is necessary to accomplish the apparent or
509 expressed objectives of the specific provision of law which the
510 rule implements.

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

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

516 (j) The rule's statement of estimated regulatory costs
517 complies with the requirements of s. 120.541 and whether the
518 rule does not impose regulatory costs on the regulated person,
519 county, or city which could be reduced by the adoption of less
520 costly alternatives that substantially accomplish the statutory
521 objectives.

522 (k) The rule will require additional appropriations.

523 (l) If the rule is an emergency rule, there exists an
524 emergency justifying the adoption ~~promulgation~~ of such rule, the
525 agency is within ~~has exceeded the scope of~~ its statutory
526 authority, and the rule was adopted ~~promulgated~~ in compliance
527 with the requirements and limitations of s. 120.54(4).

528 (2) The committee may request from an agency such
529 information as is reasonably necessary for examination of a rule

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

542 (3) Within 30 days after ~~of~~ receipt of the objection, if
 543 the agency is headed by an individual, or within 45 days after
 544 ~~of~~ receipt of the objection, if the agency is headed by a
 545 collegial body, the agency shall:

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

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

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

552 3. Notify the committee in writing that the agency refuses
 553 ~~Refuse~~ to modify or withdraw the rule.

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

555 1. File notice pursuant to s. 120.54(3)(a), without prior
 556 notice of rule development, ~~Notify the committee that it has~~

HB 7127

2008

557 ~~elect~~ to amend the rule to address ~~meet~~ the committee's
558 objection and ~~initiate the amendment procedure;~~

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

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

564 (c) If ~~the rule is either an existing or a proposed rule~~
565 and the objection is to the statement of estimated regulatory
566 costs:

567 1. Prepare a corrected statement of estimated regulatory
568 costs, give notice of the availability of the corrected
569 statement in the first available issue of the Florida
570 Administrative Weekly, and file a copy of the corrected
571 statement with the committee; or

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

574 ~~(4) If the agency elects to modify a proposed rule to meet~~
575 ~~the committee's objection, it shall make only such modifications~~
576 ~~as are necessary to meet the objection and shall resubmit the~~
577 ~~rule to the committee. The agency shall give notice of its~~
578 ~~election to modify a proposed rule to meet the committee's~~
579 ~~objection by publishing a notice of change in the first~~
580 ~~available issue of the Florida Administrative Weekly, but shall~~
581 ~~not be required to conduct a public hearing. If the agency~~
582 ~~elects to amend an existing rule to meet the committee's~~
583 ~~objection, it shall notify the committee in writing and shall~~
584 ~~initiate the amendment procedure by giving notice in the next~~

HB 7127

2008

585 ~~available issue of the Florida Administrative Weekly. The~~
586 ~~committee shall give priority to rules so modified or amended~~
587 ~~when setting its agenda.~~

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

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

604 (4)(7) Failure of the agency to respond to a committee
605 objection to a ~~proposed~~ rule that is not yet in effect within
606 the time prescribed in subsection (3) constitutes ~~shall~~
607 ~~constitute~~ withdrawal of the rule in its entirety. In this
608 event, the committee shall notify the Department of State that
609 the agency, by its failure to respond to a committee objection,
610 has elected to withdraw the ~~proposed~~ rule. Upon receipt of the
611 committee's notice, the Department of State shall publish a
612 notice to that effect in the next available issue of the Florida

HB 7127

2008

613 Administrative Weekly. Upon publication of the notice, the
614 ~~proposed~~ rule shall be stricken from the files of the Department
615 of State and the files of the agency.

616 (5)~~(8)~~ Failure of the agency to respond to a committee
617 objection to a an-existing rule that is in effect within the
618 time prescribed in subsection (3) constitutes ~~shall constitute~~ a
619 refusal to amend or repeal the rule.

620 (6) Failure of the agency to respond to a committee
621 objection to a statement of estimated regulatory costs within
622 the time prescribed in subsection (3) constitutes a refusal to
623 prepare a corrected statement of estimated regulatory costs.

624 (7)~~(9)~~ If the committee objects to a ~~proposed or existing~~
625 rule and the agency refuses to modify, amend, withdraw, or
626 repeal the rule, the committee shall file with the Department of
627 State a notice of the objection, detailing with particularity
628 the committee's its objection to the rule. The Department of
629 State shall publish this notice in the Florida Administrative
630 Weekly. If the rule is published and shall publish, as a history
631 note to the rule in the Florida Administrative Code, a reference
632 to the committee's objection and to the issue of the Florida
633 Administrative Weekly in which the full text thereof appears
634 shall be recorded in a history note.

635 (8)~~(10)~~(a) If the committee objects to a ~~proposed or~~
636 ~~existing~~ rule, or portion of a rule thereof, and the agency
637 fails to initiate administrative action to modify, amend,
638 withdraw, or repeal the rule consistent with the objection
639 within 60 days after the objection, or thereafter fails to
640 proceed in good faith to complete such action, the committee may

HB 7127

2008

641 submit to the President of the Senate and the Speaker of the
642 House of Representatives a recommendation that legislation be
643 introduced to address the committee's objection ~~modify or~~
644 ~~suspend the adoption of the proposed rule, or amend or repeal~~
645 ~~the rule, or portion thereof.~~

646 (b)1. If the committee votes to recommend the introduction
647 of legislation to address the committee's objection ~~modify or~~
648 ~~suspend the adoption of a proposed rule, or amend or repeal a~~
649 ~~rule,~~ the committee shall, within 5 days after this
650 determination, certify that fact to the agency whose rule or
651 proposed rule has been examined. The committee may request that
652 the agency temporarily suspend the rule or suspend the adoption
653 of the proposed rule, pending consideration of proposed
654 legislation during the next regular session of the Legislature.

655 2. Within 30 days after receipt of the certification, if
656 the agency is headed by an individual, or within 45 days after
657 receipt of the certification, if the agency is headed by a
658 collegial body, the agency shall ~~either:~~

659 a. Temporarily suspend the rule or suspend the adoption of
660 the proposed rule; or

661 b. Notify the committee in writing that the agency ~~it~~
662 refuses to temporarily suspend the rule or suspend the adoption
663 of the proposed rule.

664 3. If the agency elects to temporarily suspend the rule or
665 suspend the adoption of the proposed rule, the agency ~~it~~ shall
666 give notice of the suspension in the Florida Administrative
667 Weekly. The rule or the rule adoption process shall be suspended
668 upon publication of the notice. An agency may ~~shall~~ not base any

HB 7127

2008

669 agency action on a suspended rule or suspended proposed rule, or
 670 portion of such rule ~~thereof~~, prior to expiration of the
 671 suspension. A suspended rule or suspended proposed rule, or
 672 portion of such rule ~~thereof~~, continues to be subject to
 673 administrative determination and judicial review as provided by
 674 law.

675 4. Failure of an agency to respond to committee
 676 certification within the time prescribed by subparagraph 2.
 677 constitutes a refusal to suspend the rule or to suspend the
 678 adoption of the proposed rule.

679 (c) The committee shall prepare proposed legislation bills
 680 to address the committee's objection ~~modify or suspend the~~
 681 ~~adoption of the proposed rule or amend or repeal the rule, or~~
 682 ~~portion thereof~~, in accordance with the rules of the Senate and
 683 the House of Representatives for prefiling and introduction in
 684 the next regular session of the Legislature. The proposed
 685 legislation bill shall be presented to the President of the
 686 Senate and the Speaker of the House of Representatives with the
 687 committee recommendation.

688 (d) If proposed legislation addressing the committee's
 689 objection ~~a bill to suspend the adoption of a proposed rule is~~
 690 ~~enacted into law, the proposed rule is suspended until specific~~
 691 ~~delegated legislative authority for the proposed rule has been~~
 692 ~~enacted. If a bill to suspend the adoption of a proposed rule~~
 693 ~~fails to become law, any temporary agency suspension of the rule~~
 694 ~~shall expire. If a bill to modify a proposed rule or amend a~~
 695 ~~rule is enacted into law, the suspension shall expire upon~~
 696 ~~publication of notice of modification or amendment in the~~

697 ~~Florida Administrative Weekly. If a bill to repeal a rule is~~
 698 ~~enacted into law, the suspension shall remain in effect until~~
 699 ~~notification of repeal of the rule is published in the Florida~~
 700 ~~Administrative Weekly.~~

701 ~~(e) The Department of State shall publish in the next~~
 702 ~~available issue of the Florida Administrative Weekly the final~~
 703 ~~legislative action taken. If a bill to modify or suspend the~~
 704 ~~adoption of the proposed rule or amend or repeal the rule, or~~
 705 ~~portion thereof, is enacted into law, the Department of State~~
 706 ~~shall conform the rule or portion of the rule to the provisions~~
 707 ~~of the law in the Florida Administrative Code and publish a~~
 708 ~~reference to the law as a history note to the rule.~~

709 Section 8. Paragraphs (a) and (d) of subsection (1) and
 710 subsection (5) of section 120.55, Florida Statutes, are amended
 711 to read:

712 120.55 Publication.--

713 (1) The Department of State shall:

714 (a)1. Through a continuous revision system, compile and
 715 publish the "Florida Administrative Code." The Florida
 716 Administrative Code shall contain all rules adopted by each
 717 agency, citing the grant of specific rulemaking authority and
 718 the specific law implemented pursuant to which each rule was
 719 adopted, all history notes as authorized in s. 120.545(7) ~~s.~~
 720 ~~120.545(9)~~, and complete indexes to all rules contained in the
 721 code. Supplementation shall be made as often as practicable, but
 722 at least monthly. The department may contract with a publishing
 723 firm for the publication, in a timely and useful form, of the
 724 Florida Administrative Code; however, the department shall

725 retain responsibility for the code as provided in this section.
726 This publication shall be the official compilation of the
727 administrative rules of this state. The Department of State
728 shall retain the copyright over the Florida Administrative Code.

729 2. Rules general in form but applicable to only one school
730 district, community college district, or county, or a part
731 thereof, or state university rules relating to internal
732 personnel or business and finance shall not be published in the
733 Florida Administrative Code. Exclusion from publication in the
734 Florida Administrative Code shall not affect the validity or
735 effectiveness of such rules.

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

743 4. Forms shall not be published in the Florida
744 Administrative Code; but any form which an agency uses in its
745 dealings with the public, along with any accompanying
746 instructions, shall be filed with the committee before it is
747 used. Any form or instruction which meets the definition of
748 "rule" provided in s. 120.52 shall be incorporated by reference
749 into the appropriate rule. The reference shall specifically
750 state that the form is being incorporated by reference and shall
751 include the number, title, and effective date of the form and an
752 explanation of how the form may be obtained. Each form created

HB 7127

2008

753 by an agency which is incorporated by reference in a rule notice
754 of which is given under s. 120.54(3)(a) after December 31, 2007,
755 must clearly display the number, title, and effective date of
756 the form and the number of the rule in which the form is
757 incorporated.

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

761 (5) Any publication of a proposed rule promulgated by an
762 agency, whether published in the Florida Administrative Code or
763 elsewhere, shall include, along with the rule, the name of the
764 person or persons originating such rule, the name of the agency
765 head ~~supervisor or person~~ who approved the rule, and the date
766 upon which the rule was approved.

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

770 120.55 Publication.--

771 (1) The Department of State shall:

772 (a)1. Through a continuous revision system, compile and
773 publish electronically the "Florida Administrative Code,~~-~~" on an
774 Internet website managed by the department. The Florida
775 Administrative Code shall contain all rules adopted by each
776 agency, citing the grant of rulemaking authority and the
777 specific law implemented pursuant to which each rule was
778 adopted, all history notes as authorized in s. 120.545(7), ~~and~~
779 complete indexes to all rules contained in the code, and any
780 other material required or authorized by law or deemed useful by

HB 7127

2008

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

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

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

HB 7127

2008

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

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

HB 7127

2008

836 (2) The Florida Administrative Weekly Internet website
837 must allow users to:

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

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

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

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

850 (e) Comment on proposed rules.

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

853 120.56 Challenges to rules.--

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

855 (a) Any substantially affected person may seek an
856 administrative determination of the invalidity of any proposed
857 rule by filing a petition seeking such a determination with the
858 division within 21 days after the date of publication of the
859 notice required by s. 120.54(3)(a), within 10 days after the
860 final public hearing is held on the proposed rule as provided by
861 s. 120.54(3)(e)2. ~~s. 120.54(3)(e)~~, within 20 days after the
862 ~~preparation of a~~ statement of estimated regulatory costs
863 required pursuant to s. 120.541, if applicable, has been

HB 7127

2008

864 provided to all persons who submitted a lower cost regulatory
865 alternative and made available to the public, or within 20 days
866 after the date of publication of the notice required by s.
867 120.54(3)(d). The petition shall state with particularity the
868 objections to the proposed rule and the reasons that the
869 proposed rule is an invalid exercise of delegated legislative
870 authority. The petitioner has the burden of going forward. The
871 agency then has the burden to prove by a preponderance of the
872 evidence that the proposed rule is not an invalid exercise of
873 delegated legislative authority as to the objections raised. Any
874 person who is substantially affected by a change in the proposed
875 rule may seek a determination of the validity of such change.
876 Any person not substantially affected by the proposed rule as
877 initially noticed, but who is substantially affected by the rule
878 as a result of a change, may challenge any provision of the rule
879 and is not limited to challenging the change to the proposed
880 rule.

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

892 part shall give notice of the decision in the first available
 893 issue of the Florida Administrative Weekly.

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

896 120.56 Challenges to rules.--

897 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
 898 SPECIAL PROVISIONS.--

899 (a) Any person substantially affected by an agency
 900 statement may seek an administrative determination that the
 901 statement violates s. 120.54(1)(a). The petition shall include
 902 the text of the statement or a description of the statement and
 903 shall state with particularity facts sufficient to show that the
 904 statement constitutes a rule under s. 120.52 and that the agency
 905 has not adopted the statement by the rulemaking procedure
 906 provided by s. 120.54.

907 (b) The administrative law judge may extend the hearing
 908 date beyond 30 days after assignment of the case for good cause.
 909 Upon notification to the administrative law judge provided prior
 910 to the final hearing that the agency has published a notice of
 911 rulemaking under s. 120.54(3), such notice shall automatically
 912 operate as a stay of proceedings pending adoption of the
 913 statement as a rule. The administrative law judge may vacate the
 914 stay for good cause shown. A stay of proceedings pending
 915 rulemaking shall remain in effect so long as the agency is
 916 proceeding expeditiously and in good faith to adopt the
 917 statement as a rule. If a hearing is held and the petitioner
 918 proves the allegations of the petition, the agency shall have

919 the burden of proving that rulemaking is not feasible or not ~~and~~
 920 practicable under s. 120.54(1)(a).

921 (c) The administrative law judge may determine whether all
 922 or part of a statement violates s. 120.54(1)(a). The decision of
 923 the administrative law judge shall constitute a final order. The
 924 division shall transmit a copy of the final order to the
 925 Department of State and the committee. The Department of State
 926 shall publish notice of the final order in the first available
 927 issue of the Florida Administrative Weekly.

928 (d) If ~~When~~ an administrative law judge enters a final
 929 order that all or part of an agency statement violates s.
 930 120.54(1)(a), the agency shall immediately discontinue all
 931 reliance upon the statement or any substantially similar
 932 statement as a basis for agency action. This paragraph shall not
 933 be construed to impair the obligation of contracts existing at
 934 the time the final order is entered.

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

944 ~~2. If, prior to the final hearing to determine whether all~~
 945 ~~or part of an agency statement violates s. 120.54(1)(a), an~~
 946 ~~agency publishes a notice of rule development which addresses~~

HB 7127

2008

947 ~~the statement pursuant to s. 120.54(2), or certifies that such a~~
948 ~~notice has been transmitted to the Florida Administrative Weekly~~
949 ~~for publication, then such publication shall constitute good~~
950 ~~cause for the granting of a stay of the proceedings and a~~
951 ~~continuance of the final hearing for 30 days. If the agency~~
952 ~~publishes proposed rules within this 30-day period or any~~
953 ~~extension of that period granted by an administrative law judge~~
954 ~~upon showing of good cause, then the administrative law judge~~
955 ~~shall place the case in abeyance pending the outcome of~~
956 ~~rulemaking and any proceedings involving challenges to proposed~~
957 ~~rules pursuant to subsection (2).~~

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

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

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

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

990 Section 12. Effective January 1, 2009, paragraph (e) of
 991 subsection (1) of section 120.57, Florida Statutes, is amended
 992 to read:

993 120.57 Additional procedures for particular cases.--

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

996 (e)1. An agency or an administrative law judge may not
 997 base ~~Any~~ agency action that determines the substantial interests
 998 of a party ~~and that is based~~ on an unadopted rule. The
 999 administrative law judge shall determine whether an agency
 1000 statement constitutes an unadopted rule. This subparagraph does
 1001 not preclude application of adopted rules and applicable

1002 provisions of law to the facts ~~unadopted rule is subject to de~~
 1003 ~~novo review by an administrative law judge.~~

1004 2. Notwithstanding subparagraph 1., if an agency
 1005 demonstrates that the statute being implemented directs it to
 1006 adopt rules, that the agency has not had time to adopt those
 1007 rules because the requirement was so recently enacted, and that
 1008 the agency has initiated rulemaking and is proceeding
 1009 expeditiously and in good faith to adopt the required rules,
 1010 then the agency's action may be based upon those unadopted
 1011 rules, subject to de novo review by the administrative law
 1012 judge. The agency action shall not be presumed valid or invalid.

1013 The agency must demonstrate that the unadopted rule:

1014 a. Is within the powers, functions, and duties delegated
 1015 by the Legislature or, if the agency is operating pursuant to
 1016 authority derived from the State Constitution, is within that
 1017 authority;

1018 b. Does not enlarge, modify, or contravene the specific
 1019 provisions of law implemented;

1020 c. Is not vague, establishes adequate standards for agency
 1021 decisions, or does not vest unbridled discretion in the agency;

1022 d. Is not arbitrary or capricious. A rule is arbitrary if
 1023 it is not supported by logic or the necessary facts; a rule is
 1024 capricious if it is adopted without thought or reason or is
 1025 irrational;

1026 e. Is not being applied to the substantially affected
 1027 party without due notice; and

1028 f. Does not impose excessive regulatory costs on the
 1029 regulated person, county, or city.

HB 7127

2008

1030 3. The recommended and final orders in any proceeding
 1031 shall be governed by the provisions of paragraphs (k) and (l),
 1032 except that the administrative law judge's determination
 1033 regarding an ~~the~~ unadopted rule under subparagraph 1. or
 1034 subparagraph 2. shall not be rejected by the agency unless the
 1035 agency first determines from a review of the complete record,
 1036 and states with particularity in the order, that such
 1037 determination is clearly erroneous or does not comply with
 1038 essential requirements of law. In any proceeding for review
 1039 under s. 120.68, if the court finds that the agency's rejection
 1040 of the determination regarding the unadopted rule does not
 1041 comport with the provisions of this subparagraph, the agency
 1042 action shall be set aside and the court shall award to the
 1043 prevailing party the reasonable costs and a reasonable
 1044 attorney's fee for the initial proceeding and the proceeding for
 1045 review.

1046 Section 13. Effective January 1, 2009, subsections (2),
 1047 (3), and (4) of section 120.595, Florida Statutes, are amended
 1048 to read:

1049 120.595 Attorney's fees.--

1050 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
 1051 SECTION 120.56(2).--If the appellate court or administrative law
 1052 judge declares a proposed rule or portion of a proposed rule
 1053 invalid pursuant to s. 120.56(2), a judgment or order shall be
 1054 rendered against the agency for reasonable costs and reasonable
 1055 attorney's fees, unless the agency demonstrates that its actions
 1056 were substantially justified or special circumstances exist
 1057 which would make the award unjust. An agency's actions are

HB 7127

2008

1058 "substantially justified" if there was a reasonable basis in law
 1059 and fact at the time the actions were taken by the agency. If
 1060 the agency prevails in the proceedings, the appellate court or
 1061 administrative law judge shall award reasonable costs and
 1062 reasonable attorney's fees against a party if the appellate
 1063 court or administrative law judge determines that a party
 1064 participated in the proceedings for an improper purpose as
 1065 defined by paragraph (1)(e). No award of attorney's fees as
 1066 provided by this subsection shall exceed \$50,000 ~~\$15,000~~.

1067 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
 1068 SECTION 120.56(3) AND (5).--If the appellate court or
 1069 administrative law judge declares a rule or portion of a rule
 1070 invalid pursuant to s. 120.56(3) or (5), a judgment or order
 1071 shall be rendered against the agency for reasonable costs and
 1072 reasonable attorney's fees, unless the agency demonstrates that
 1073 its actions were substantially justified or special
 1074 circumstances exist which would make the award unjust. An
 1075 agency's actions are "substantially justified" if there was a
 1076 reasonable basis in law and fact at the time the actions were
 1077 taken by the agency. If the agency prevails in the proceedings,
 1078 the appellate court or administrative law judge shall award
 1079 reasonable costs and reasonable attorney's fees against a party
 1080 if the appellate court or administrative law judge determines
 1081 that a party participated in the proceedings for an improper
 1082 purpose as defined by paragraph (1)(e). No award of attorney's
 1083 fees as provided by this subsection shall exceed \$50,000
 1084 ~~\$15,000~~.

HB 7127

2008

1085 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 1086 120.56(4).--
 1087 (a) If the appellate court or administrative law judge
 1088 determines ~~Upon entry of a final order~~ that all or part of an
 1089 agency statement violates s. 120.54(1)(a), or that the agency
 1090 must immediately discontinue reliance on the statement and any
 1091 substantially similar statement pursuant to s. 120.56(4)(e), a
 1092 judgment or order shall be entered against the agency for the
 1093 ~~administrative law judge shall award~~ reasonable costs and
 1094 reasonable attorney's fees ~~to the petitioner~~, unless the agency
 1095 demonstrates that the statement is required by the Federal
 1096 Government to implement or retain a delegated or approved
 1097 program or to meet a condition to receipt of federal funds.
 1098 (b) Upon notification to the administrative law judge
 1099 provided before the final hearing that the agency has published
 1100 a notice of rulemaking under s. 120.54(3)(a), such notice shall
 1101 automatically operate as a stay of proceedings pending
 1102 rulemaking. The administrative law judge may vacate the stay for
 1103 good cause shown. A stay of proceedings under this paragraph
 1104 remains in effect so long as the agency is proceeding
 1105 expeditiously and in good faith to adopt the statement as a
 1106 rule. The administrative law judge shall award reasonable costs
 1107 and reasonable attorney's fees accrued by the petitioner prior
 1108 to the date the notice was published, unless the agency proves
 1109 to the administrative law judge that it did not know and should
 1110 not have known that the statement was an unadopted rule.
 1111 Attorney's fees and costs under this paragraph and paragraph (a)
 1112 shall be awarded only upon a finding that the agency received

HB 7127

2008

1113 notice that the statement may constitute an unadopted rule at
1114 least 30 days before a petition under s. 120.56(4) was filed and
1115 that the agency failed to publish the required notice of
1116 rulemaking pursuant to s. 120.54(3) that addresses the statement
1117 within that 30-day period. Notice to the agency may be satisfied
1118 by its receipt of a copy of the s. 120.56(4) petition, a notice
1119 or other paper containing substantially the same information, or
1120 a petition filed pursuant to s. 120.54(7). An award of
1121 attorney's fees as provided by this paragraph may not exceed
1122 \$50,000.

1123 (c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an
1124 award shall be paid from the budget entity of the secretary,
1125 executive director, or equivalent administrative officer of the
1126 agency, and the agency shall not be entitled to payment of an
1127 award or reimbursement for payment of an award under any
1128 provision of law.

1129 (d) If the agency prevails in the proceedings, the
1130 appellate court or administrative law judge shall award
1131 reasonable costs and attorney's fees against a party if the
1132 appellate court or administrative law judge determines that the
1133 party participated in the proceedings for an improper purpose as
1134 defined in paragraph (1)(e) or that the party or the party's
1135 attorney knew or should have known that a claim was not
1136 supported by the material facts necessary to establish the claim
1137 or would not be supported by the application of then-existing
1138 law to those material facts.

1139 Section 14. Subsection (1) and paragraph (c) of subsection
1140 (2) of section 120.569, Florida Statutes, are amended to read:

1141 120.569 Decisions which affect substantial interests.--
 1142 (1) The provisions of this section apply in all
 1143 proceedings in which the substantial interests of a party are
 1144 determined by an agency, unless the parties are proceeding under
 1145 s. 120.573 or s. 120.574. Unless waived by all parties, s.
 1146 120.57(1) applies whenever the proceeding involves a disputed
 1147 issue of material fact. Unless otherwise agreed, s. 120.57(2)
 1148 applies in all other cases. If a disputed issue of material fact
 1149 arises during a proceeding under s. 120.57(2), then, unless
 1150 waived by all parties, the proceeding under s. 120.57(2) shall
 1151 be terminated and a proceeding under s. 120.57(1) shall be
 1152 conducted. Parties shall be notified of any order, including a
 1153 final order. Unless waived, a copy of the order shall be
 1154 delivered or mailed to each party or the party's attorney of
 1155 record at the address of record. Each notice shall inform the
 1156 recipient of any administrative hearing or judicial review that
 1157 is available under this section, s. 120.57, or s. 120.68; shall
 1158 indicate the procedure which must be followed to obtain the
 1159 hearing or judicial review; and shall state the time limits
 1160 which apply.

1161 (2)

1162 (c) Unless otherwise provided by law, a petition or
 1163 request for hearing shall include those items required by the
 1164 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~
 1165 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for
 1166 hearing, the agency shall carefully review the petition to
 1167 determine if it contains all of the required information. A
 1168 petition shall be dismissed if it is not in substantial

HB 7127

2008

1169 compliance with these requirements or it has been untimely
 1170 filed. Dismissal of a petition shall, at least once, be without
 1171 prejudice to petitioner's filing a timely amended petition
 1172 curing the defect, unless it conclusively appears from the face
 1173 of the petition that the defect cannot be cured. The agency
 1174 shall promptly give written notice to all parties of the action
 1175 taken on the petition, shall state with particularity its
 1176 reasons if the petition is not granted, and shall state the
 1177 deadline for filing an amended petition if applicable. This
 1178 paragraph does not eliminate the availability of equitable
 1179 tolling as a defense to the untimely filing of a petition.

1180 Section 15. Subsection (2) of section 120.74, Florida
 1181 Statutes, is amended to read:

1182 120.74 Agency review, revision, and report.--

1183 (2) Beginning October 1, 1997, and by October 1 of every
 1184 other year thereafter, the head of each agency shall file a
 1185 report with the President of the Senate, the Speaker of the
 1186 House of Representatives, and the committee, with a copy to each
 1187 appropriate standing committee of the Legislature, which
 1188 certifies that the agency has complied with the requirements of
 1189 this section ~~subsection~~. The report must specify any changes
 1190 made to its rules as a result of the review and, when
 1191 appropriate, recommend statutory changes that will promote
 1192 efficiency, reduce paperwork, or decrease costs to government
 1193 and the private sector. The report must identify the types of
 1194 cases or disputes in which the agency is involved which should
 1195 be conducted under the summary hearing process described in s.
 1196 120.574.

HB 7127

2008

1197 Section 16. Subsection (11) of section 120.80, Florida
 1198 Statutes, is amended to read:

1199 120.80 Exceptions and special requirements; agencies.--

1200 (11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s.~~
 1201 ~~120.52(15)~~, the enlistment, organization, administration,
 1202 equipment, maintenance, training, and discipline of the militia,
 1203 National Guard, organized militia, and unorganized militia, as
 1204 provided by s. 2, Art. X of the State Constitution, are not
 1205 rules as defined by this chapter.

1206 Section 17. Paragraph (c) of subsection (1) and paragraph
 1207 (a) of subsection (3) of section 120.81, Florida Statutes, are
 1208 amended to read:

1209 120.81 Exceptions and special requirements; general
 1210 areas.--

1211 (1) EDUCATIONAL UNITS.--

1212 (c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any
 1213 tests, test scoring criteria, or testing procedures relating to
 1214 student assessment which are developed or administered by the
 1215 Department of Education pursuant to s. 1003.43, s. 1003.438, s.
 1216 1008.22, or s. 1008.25, or any other statewide educational tests
 1217 required by law, are not rules.

1218 (3) PRISONERS AND PAROLEES.--

1219 (a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~,
 1220 prisoners, as defined by s. 944.02, shall not be considered
 1221 parties in any proceedings other than those under s.
 1222 120.54(3)(c) or (7), and may not seek judicial review under s.
 1223 120.68 of any other agency action. Prisoners are not eligible to
 1224 seek an administrative determination of an agency statement

HB 7127

2008

1225 under s. 120.56(4). Parolees shall not be considered parties for
 1226 purposes of agency action or judicial review when the
 1227 proceedings relate to the rescission or revocation of parole.

1228 Section 18. Paragraph (f) of subsection (2) of section
 1229 409.175, Florida Statutes, is amended to read:

1230 409.175 Licensure of family foster homes, residential
 1231 child-caring agencies, and child-placing agencies; public
 1232 records exemption.--

1233 (2) As used in this section, the term:

1234 (f) "License" means "license" as defined in s. 120.52(10)
 1235 ~~s. 120.52(9)~~. A license under this section is issued to a family
 1236 foster home or other facility and is not a professional license
 1237 of any individual. Receipt of a license under this section shall
 1238 not create a property right in the recipient. A license under
 1239 this act is a public trust and a privilege, and is not an
 1240 entitlement. This privilege must guide the finder of fact or
 1241 trier of law at any administrative proceeding or court action
 1242 initiated by the department.

1243 Section 19. Paragraph (a) of subsection (1) of section
 1244 420.9072, Florida Statutes, is amended to read:

1245 420.9072 State Housing Initiatives Partnership
 1246 Program.--The State Housing Initiatives Partnership Program is
 1247 created for the purpose of providing funds to counties and
 1248 eligible municipalities as an incentive for the creation of
 1249 local housing partnerships, to expand production of and preserve
 1250 affordable housing, to further the housing element of the local
 1251 government comprehensive plan specific to affordable housing,
 1252 and to increase housing-related employment.

1253 (1) (a) In addition to the legislative findings set forth
 1254 in s. 420.6015, the Legislature finds that affordable housing is
 1255 most effectively provided by combining available public and
 1256 private resources to conserve and improve existing housing and
 1257 provide new housing for very-low-income households, low-income
 1258 households, and moderate-income households. The Legislature
 1259 intends to encourage partnerships in order to secure the
 1260 benefits of cooperation by the public and private sectors and to
 1261 reduce the cost of housing for the target group by effectively
 1262 combining all available resources and cost-saving measures. The
 1263 Legislature further intends that local governments achieve this
 1264 combination of resources by encouraging active partnerships
 1265 between government, lenders, builders and developers, real
 1266 estate professionals, advocates for low-income persons, and
 1267 community groups to produce affordable housing and provide
 1268 related services. Extending the partnership concept to encompass
 1269 cooperative efforts among small counties as defined in s.
 1270 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities
 1271 is specifically encouraged. Local governments are also intended
 1272 to establish an affordable housing advisory committee to
 1273 recommend monetary and nonmonetary incentives for affordable
 1274 housing as provided in s. 420.9076.

1275 Section 20. Subsection (7) of section 420.9075, Florida
 1276 Statutes, is amended to read:

1277 420.9075 Local housing assistance plans; partnerships.--

1278 (7) The moneys deposited in the local housing assistance
 1279 trust fund shall be used to administer and implement the local
 1280 housing assistance plan. The cost of administering the plan may

HB 7127

2008

1281 not exceed 5 percent of the local housing distribution moneys
 1282 and program income deposited into the trust fund. A county or an
 1283 eligible municipality may not exceed the 5-percent limitation on
 1284 administrative costs, unless its governing body finds, by
 1285 resolution, that 5 percent of the local housing distribution
 1286 plus 5 percent of program income is insufficient to adequately
 1287 pay the necessary costs of administering the local housing
 1288 assistance plan. The cost of administering the program may not
 1289 exceed 10 percent of the local housing distribution plus 5
 1290 percent of program income deposited into the trust fund, except
 1291 that small counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~,
 1292 and eligible municipalities receiving a local housing
 1293 distribution of up to \$350,000 may use up to 10 percent of
 1294 program income for administrative costs.

1295 Section 21. For the 2008-2009 fiscal year, the
 1296 nonrecurring sum of \$50,000 is appropriated in lump sum from the
 1297 Records Management Trust Fund to the Department of State, and
 1298 for the 2009-2010 fiscal year, the nonrecurring sum of \$401,000
 1299 is appropriated in lump sum from the Records Management Trust
 1300 Fund to the Department of State for the purposes of carrying out
 1301 the provisions of this act requiring the implementation of
 1302 electronic publications. To cover this nonrecurring cost to
 1303 implement system modifications, the Department of State shall
 1304 temporarily increase the space rate charge for publication in
 1305 the Florida Administrative Weekly. After implementation of the
 1306 required system changes, the department shall decrease the fee
 1307 to the 2007-2008 fiscal-year level. Funds appropriated are held
 1308 in a lump sum category contingent on available cash deposited

1309 into the trust fund and derived from the fee increase. Funds
 1310 collected from the fee increase and not expended by June 30,
 1311 2009, may be retained in the trust fund to complete the system
 1312 implementation as appropriated in the 2009-10 fiscal year.

1313 Section 22. For the 2008-2009 fiscal year, the Department
 1314 of State is authorized one full-time-equivalent position, salary
 1315 rate of 16,969, and a recurring sum of \$22,399 in salaries and
 1316 benefits from the Records Management Trust Fund for the purpose
 1317 of handling administrative and system requirements in carrying
 1318 out the provisions of this act related to electronic
 1319 publications.

1320 Section 23. Notwithstanding s. 120.55(8)(b), Florida
 1321 Statutes, on July 1, 2009, the unencumbered balance in the
 1322 Records Management Trust Fund for fees collected pursuant to
 1323 chapter 120, Florida Statutes, may not exceed \$300,000 plus any
 1324 funds collected, but not yet expended, from the fee increase
 1325 implemented to fund the provisions of this act. By June 30,
 1326 2009, any funds in excess of this amount shall be transferred to
 1327 the General Revenue Fund. This section expires August 1, 2009.

1328 Section 24. Except as otherwise expressly provided in this
 1329 act, this act shall take effect July 1, 2008.