

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Rulemaking Oversight &
 2 Repeal Subcommittee
 3 Representative Adkins offered the following:

Amendment (with title amendment)

Remove lines 23-299 and insert:

Section 1. Paragraphs (d) and (e) of subsection (3) of section 57.111, Florida Statutes, are amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.—

(3) As used in this section:

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than \$2 million, including both personal and business investments;

Amendment No. 1

20 b. A partnership or corporation, including a professional
21 practice, which has its principal office in this state and has
22 at the time the action is initiated by a state agency not more
23 than 25 full-time employees or a net worth of not more than \$2
24 million; or

25 c. An individual whose net worth did not exceed \$2 million
26 at the time the action is initiated by a state agency when the
27 action is brought against that individual's license to engage in
28 the practice or operation of a business, profession, or trade;
29 or

30 2. Any small business party as defined in subparagraph 1.,
31 without regard to the number of its employees or its net worth,
32 in any action under s. 72.011 or in any administrative
33 proceeding under that section to contest the legality of any
34 assessment of tax imposed for the sale or use of services as
35 provided in chapter 212, or interest thereon, or penalty
36 therefor; or

37 3. Any small business as defined in s. 288.703(6) in any
38 administrative proceeding pursuant to chapter 120 and any appeal
39 thereof.

40 (e) A proceeding is "substantially justified" if it had a
41 reasonable basis in law and fact at the time it was initiated by
42 a state agency. A proceeding is not substantially justified when
43 the agency action involves identical or substantially similar
44 facts and circumstances and the specified law, rule or order on
45 which the party substantially affected by the agency action
46 petitioned for a declaratory statement under s. 120.565 and:

Amendment No. 1

47 1. The agency action contradicts a declaratory statement
48 issued under s. 120.565 to the substantially affected party; or

49 2. The agency denied the petition under s. 120.565 prior to
50 initiating the agency action against the substantially affected
51 party.

52 Section 2. Subsections (18) through (22) of section
53 120.52, Florida Statutes, are renumbered as subsections (19)
54 through (23), respectively, and a new subsection (18) is added
55 to that section, to read:

56 120.52 Definitions.—As used in this act:

57 (18) "Small business" has the same meaning as provided in
58 s. 288.703.

59 Section 3. Section 120.55, Florida Statutes, is amended to
60 read:

61 120.55 Publication.—

62 (1) The Department of State shall:

63 (a)1. Through a continuous revision and publication
64 system, compile and publish electronically, on an Internet
65 website managed by the department, the "Florida Administrative
66 Code." The Florida Administrative Code shall contain all rules
67 adopted by each agency, citing the grant of rulemaking authority
68 and the specific law implemented pursuant to which each rule was
69 adopted, all history notes as authorized in s. 120.545(7),
70 complete indexes to all rules contained in the code, and any
71 other material required or authorized by law or deemed useful by
72 the department. The electronic code shall display each rule
73 chapter currently in effect in browse mode and allow full text
74 search of the code and each rule chapter. The department may

Amendment No. 1

75 contract with a publishing firm for a printed publication;
76 however, the department shall retain responsibility for the code
77 as provided in this section. The electronic publication shall be
78 the official compilation of the administrative rules of this
79 state. The Department of State shall retain the copyright over
80 the Florida Administrative Code.

81 2. Rules general in form but applicable to only one school
82 district, community college district, or county, or a part
83 thereof, or state university rules relating to internal
84 personnel or business and finance shall not be published in the
85 Florida Administrative Code. Exclusion from publication in the
86 Florida Administrative Code shall not affect the validity or
87 effectiveness of such rules.

88 3. At the beginning of the section of the code dealing
89 with an agency that files copies of its rules with the
90 department, the department shall publish the address and
91 telephone number of the executive offices of each agency, the
92 manner by which the agency indexes its rules, a listing of all
93 rules of that agency excluded from publication in the code, and
94 a statement as to where those rules may be inspected.

95 4. Forms shall not be published in the Florida
96 Administrative Code; but any form which an agency uses in its
97 dealings with the public, along with any accompanying
98 instructions, shall be filed with the committee before it is
99 used. Any form or instruction which meets the definition of
100 "rule" provided in s. 120.52 shall be incorporated by reference
101 into the appropriate rule. The reference shall specifically
102 state that the form is being incorporated by reference and shall

Amendment No. 1

103 include the number, title, and effective date of the form and an
104 explanation of how the form may be obtained. Each form created
105 by an agency which is incorporated by reference in a rule notice
106 of which is given under s. 120.54(3)(a) after December 31, 2007,
107 must clearly display the number, title, and effective date of
108 the form and the number of the rule in which the form is
109 incorporated.

110 5. The department shall allow adopted rules and material
111 incorporated by reference to be filed in electronic form as
112 prescribed by department rule. When a rule is filed for adoption
113 with incorporated material in electronic form, the department's
114 publication of the Florida Administrative Code on its Internet
115 website must contain a hyperlink from the incorporating
116 reference in the rule directly to that material. The department
117 may not allow hyperlinks from rules in the Florida
118 Administrative Code to any material other than that filed with
119 and maintained by the department, but may allow hyperlinks to
120 incorporated material maintained by the department from the
121 adopting agency's website or other sites.

122 (b) Electronically publish on an Internet website managed
123 by the department a continuous revision and publication entitled
124 the "Florida Administrative Register," which shall serve as the
125 official publication and must contain:

126 1. All notices required by ss. 120.54(2) and 120.54(3)(a),
127 showing the text of all rules proposed for consideration.

128 2. All notices of public meetings, hearings, and workshops
129 conducted in accordance with s. 120.525, including a statement
130 of the manner in which a copy of the agenda may be obtained.

Amendment No. 1

131 3. A notice of each request for authorization to amend or
132 repeal an existing uniform rule or for the adoption of new
133 uniform rules.

134 4. Notice of petitions for declaratory statements or
135 administrative determinations.

136 5. A summary of each objection to any rule filed by the
137 Administrative Procedures Committee.

138 6. A listing of rules filed for adoption in the previous 7
139 calendar days.

140 7. A listing of all rules filed for adoption pending
141 legislative ratification under s. 120.541(3) until notice is
142 received of ratification or withdrawal of such rule.

143 8. Any other material required or authorized by law or
144 deemed useful by the department.

145
146 The department may contract with a publishing firm for a printed
147 publication of the Florida Administrative Register and make
148 copies available on an annual subscription basis.

149 (c) Prescribe by rule the style and form required for
150 rules, notices, and other materials submitted for filing.

151 (d) Charge each agency using the Florida Administrative
152 Register a space rate to cover the costs related to the Florida
153 Administrative Register and the Florida Administrative Code.

154 (e) Maintain a permanent record of all notices published
155 in the Florida Administrative Register.

156 (2) The Florida Administrative Register Internet website
157 must allow users to:

Amendment No. 1

- 158 (a) Search for notices by type, publication date, rule
159 number, word, subject, and agency.
- 160 (b) Search a database that makes available all notices
161 published on the website for a period of at least 5 years.
- 162 (c) Subscribe to an automated e-mail notification of
163 selected notices to be sent out before or concurrently with
164 publication of the electronic Florida Administrative Register.
165 Such notification must include in the text of the e-mail a
166 summary of the content of each notice.
- 167 (d) View agency forms and other materials submitted to the
168 department in electronic form and incorporated by reference in
169 proposed rules.
- 170 (e) Comment on proposed rules.
- 171 (3) Publication of material required by paragraph (1) (b)
172 on the Florida Administrative Register Internet website does not
173 preclude publication of such material on an agency's website or
174 by other means.
- 175 (4) Each agency shall provide copies of its rules upon
176 request, with citations to the grant of rulemaking authority and
177 the specific law implemented for each rule.
- 178 (5) Each agency that provides an e-mail alert service to
179 inform licensees or other registered recipients of important
180 notices, shall use such service to notify recipients of each
181 notice required under ss. 120.54(2) and 120.54(3) (a), including
182 but not limited to notice of rule development, notice of
183 proposed rules, and notice of filing rules for adoption, and
184 provide internet links to the appropriate rule page on the

Amendment No. 1

185 Secretary of State website, or internet links to an agency
186 website that contains the proposed rule or final rule.

187 (6) Any publication of a proposed rule promulgated by an
188 agency, whether published in the Florida Administrative Register
189 or elsewhere, shall include, along with the rule, the name of
190 the person or persons originating such rule, the name of the
191 agency head who approved the rule, and the date upon which the
192 rule was approved.

193 (~~6~~7) Access to the Florida Administrative Register
194 Internet website and its contents, including the e-mail
195 notification service, shall be free for the public.

196 (~~7~~8) (a) All fees and moneys collected by the Department of
197 State under this chapter shall be deposited in the Records
198 Management Trust Fund for the purpose of paying for costs
199 incurred by the department in carrying out this chapter.

200 (b) The unencumbered balance in the Records Management
201 Trust Fund for fees collected pursuant to this chapter may not
202 exceed \$300,000 at the beginning of each fiscal year, and any
203 excess shall be transferred to the General Revenue Fund.

204 Section 4. Paragraph (b) of subsection (1), paragraph (a)
205 of subsection (2), and subsection (4) of section 120.56, Florida
206 Statutes, are amended to read:

207 120.56 Challenges to rules.—

208 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A
209 RULE OR A PROPOSED RULE.—

210 (b) The petition challenging the validity of a proposed or
211 adopted rule or an agency statement defined as a rule under this

Amendment No. 1

212 ~~section seeking an administrative determination~~ must state with
213 particularity:

214 1. ~~The provisions alleged to be invalid and a statement~~
215 ~~with sufficient explanation of the facts~~ establishing a prima
216 facie case of or grounds for the alleged invalidity; and

217 2. ~~Facts sufficient to show that the petitioner person~~
218 ~~challenging a rule is substantially affected by the challenged~~
219 adopted rule or agency statement defined as a rule it, or that
220 ~~the person challenging a proposed rule would be substantially~~
221 ~~affected by the proposed rule~~ it.

222 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

223 (a) A substantially affected person may seek an
224 administrative determination of the invalidity of a proposed
225 rule by filing a petition seeking such a determination with the
226 division within 21 days after the date of publication of the
227 notice required by s. 120.54(3) (a); within 10 days after the
228 final public hearing is held on the proposed rule as provided by
229 s. 120.54(3) (e)2.; within 20 days after the statement of
230 estimated regulatory costs or revised statement of estimated
231 regulatory costs, if applicable, has been prepared and made
232 available as provided in s. 120.541(1) (d); or within 20 days
233 after the date of publication of the notice required by s.
234 120.54(3) (d). The petition must state with particularity the
235 objections to the proposed rule and the reasons that the
236 proposed rule is an invalid exercise of delegated legislative
237 authority. The petitioner has the burden of presenting a prima
238 facie case demonstrating the invalidity of the proposed
239 rule ~~going forward~~. The agency then has the burden to prove by a

Amendment No. 1

240 preponderance of the evidence that the proposed rule is not an
241 invalid exercise of delegated legislative authority as to the
242 objections raised. ~~A person who is substantially affected by a~~
243 ~~change in the proposed rule may seek a determination of the~~
244 ~~validity of such change.~~ A person who is not substantially
245 affected by the proposed rule as initially noticed, but who is
246 substantially affected by the rule as a result of a change, may
247 challenge any provision of the resulting rule ~~and is not limited~~
248 ~~to challenging the change to the proposed rule.~~

249 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
250 RULES; SPECIAL PROVISIONS.—

251 (a) Any person substantially affected by an agency
252 statement that is an unadopted rule may seek an administrative
253 determination that the statement violates s. 120.54(1)(a). The
254 petition shall include the text of the statement or a
255 description of the statement and shall state with particularity
256 facts sufficient to show that the statement constitutes an
257 unadopted rule ~~under s. 120.52 and that the agency has not~~
258 ~~adopted the statement by the rulemaking procedure provided by s.~~
259 ~~120.54.~~

260 (b) The administrative law judge may extend the hearing
261 date beyond 30 days after assignment of the case for good cause.
262 Upon notification to the administrative law judge provided
263 before the final hearing that the agency has published a notice
264 of rulemaking under s. 120.54(3), such notice shall
265 automatically operate as a stay of proceedings pending adoption
266 of the statement as a rule. The administrative law judge may
267 vacate the stay for good cause shown. A stay of proceedings

Amendment No. 1

268 pending rulemaking shall remain in effect so long as the agency
269 is proceeding expeditiously and in good faith to adopt the
270 statement as a rule. ~~If a hearing is held and the petitioner~~
271 ~~proves the allegations of the petition, the agency shall have~~
272 ~~the burden of proving~~

273 (c) The petitioner has the burden of presenting a prima
274 facie case demonstrating the agency statement constitutes an
275 unadopted rule. The agency then has the burden to prove by a
276 preponderance of the evidence that the statement does not meet
277 the definition of an unadopted rule, the statement was adopted
278 as a rule in compliance with s. 120.54, or that rulemaking is
279 not feasible or not practicable under s. 120.54(1) (a).

280 (ed) The administrative law judge may determine whether
281 all or part of a statement violates s. 120.54(1) (a). The
282 decision of the administrative law judge shall constitute a
283 final order. The division shall transmit a copy of the final
284 order to the Department of State and the committee. The
285 Department of State shall publish notice of the final order in
286 the first available issue of the Florida Administrative Weekly.

287 (de) If an administrative law judge enters a final order
288 that all or part of an unadopted rule ~~agency statement~~ violates
289 s. 120.54(1) (a), the agency must immediately discontinue all
290 reliance upon the unadopted rule ~~statement~~ or any substantially
291 similar statement as a basis for agency action.

292 (ef) If proposed rules addressing the challenged unadopted
293 rule ~~statement~~ are determined to be an invalid exercise of
294 delegated legislative authority as defined in s. 120.52(8) (b)-
295 (f), the agency must immediately discontinue reliance on the

Amendment No. 1

296 unadopted rule statement and any substantially similar statement
297 until rules addressing the subject are properly adopted, and the
298 administrative law judge shall enter a final order to that
299 effect.

300 (fg) All proceedings to determine a violation of s.
301 120.54(1)(a) shall be brought pursuant to this subsection. A
302 proceeding pursuant to this subsection may be consolidated with
303 a proceeding under subsection (3) or under any other section of
304 this chapter. This paragraph does not prevent a party whose
305 substantial interests have been determined by an agency action
306 from bringing a proceeding pursuant to s. 120.57(1)(e).

307 Section 5. Paragraph (1) of subsection (2) of section
308 120.569, Florida Statutes, is amended to read:

309 120.569 Decisions which affect substantial interests.—

310 (2)

311 (1) Unless the time period is waived or extended with the
312 consent of all parties, the final order in a proceeding which
313 affects substantial interests must be in writing and include
314 findings of fact, if any, and conclusions of law separately
315 stated, and it must be rendered within 90 days:

316 1. After the hearing is concluded, if conducted by the
317 agency;

318 2. After a recommended order is submitted to the agency
319 and mailed to all parties, if the hearing is conducted by an
320 administrative law judge, provided that, at the election of the
321 agency, the time for rendering the final order may be extended
322 until 10 days after entry of final judgment on any appeal from a
323 final order under s. 120.57(1)(e)5.; or

Amendment No. 1

324 3. After the agency has received the written and oral
325 material it has authorized to be submitted, if there has been no
326 hearing.

327 Section 6. Paragraphs (e) and (h) of subsection (1) and
328 subsection (2) of section 120.57, Florida Statutes, are amended
329 to read:

330 120.57 Additional procedures for particular cases.—

331 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
332 DISPUTED ISSUES OF MATERIAL FACT.—

333 (e)1. An agency or an administrative law judge may not
334 base agency action that determines the substantial interests of
335 a party on an unadopted rule or a rule that is an invalid
336 exercise of delegated legislative authority. ~~The administrative~~
337 ~~law judge shall determine whether an agency statement~~
338 ~~constitutes an unadopted rule.~~ This subparagraph does not
339 preclude application of valid adopted rules and applicable
340 provisions of law to the facts.

341 2. In a matter initiated by agency action proposing to
342 determine the substantive interests of a party, the party's
343 timely petition for hearing may challenge the proposed agency
344 action as based on a rule that is an invalid exercise of
345 delegated legislative authority or based on an unadopted rule.
346 For challenges brought under this subsection:

347 a. The challenge shall be pled as a defense with the
348 particularity required in s. 120.56(1)(b);

349 b. Paragraph 120.56(3)(a) applies to a challenge alleging a
350 rule is an invalid exercise of delegated legislative authority;

Amendment No. 1

351 c. Paragraph 120.56(4) (c) applies to a challenge alleging
352 an unadopted rule.

353 d. The agency shall have 15 days from the date of receiving
354 a challenge under this paragraph to serve the challenging party
355 a notice that the agency will continue to rely upon the rule or
356 the alleged unadopted rule as a basis for the action determining
357 the party's substantive interests. Failure to timely serve the
358 notice shall constitute a binding stipulation that the agency
359 shall not rely upon the rule or unadopted rule further in the
360 proceeding. The agency shall include a copy of this notice with
361 the referral of the matter to the division under s.
362 120.569(2) (a).

363 e. Nothing in this subparagraph precludes the consolidation
364 of any proceeding under s. 120.56 with any proceeding under this
365 paragraph.

366 3. Notwithstanding subparagraph 1., if an agency
367 demonstrates that the statute being implemented directs it to
368 adopt rules, that the agency has not had time to adopt those
369 rules because the requirement was so recently enacted, and that
370 the agency has initiated rulemaking and is proceeding
371 expeditiously and in good faith to adopt the required rules,
372 then the agency's action may be based upon those unadopted rules
373 if, subject to de novo review by the administrative law judge
374 determines rulemaking is neither feasible nor practicable and
375 the unadopted rules would not constitute an invalid exercise of
376 delegated legislative authority if adopted as rules. The agency
377 action An unadopted rule shall not be presumed valid or invalid.
378 The agency must demonstrate that the unadopted rule:

Amendment No. 1

379 a. Is within the powers, functions, and duties delegated
380 by the Legislature or, if the agency is operating pursuant to
381 authority vested in the agency by ~~derived from~~ the State
382 Constitution, is within that authority;

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

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

387 d. Is not arbitrary or capricious. A rule is arbitrary if
388 it is not supported by logic or the necessary facts; a rule is
389 capricious if it is adopted without thought or reason or is
390 irrational;

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

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

395 4. The administrative law judge shall determine under
396 subparagraph 2. whether a rule is an invalid exercise of
397 delegated legislative authority or an agency statement
398 constitutes an unadopted rule and shall determine whether an
399 unadopted rule meets the requirements of subparagraph 3. The
400 determination shall be rendered as a separate final order no
401 earlier than the date the administrative law judge serves the
402 recommended order.

403 ~~35.~~ The recommended and final orders in any proceeding
404 shall be governed by the provisions of paragraphs (k) and (l),
405 except that the administrative law judge's determination
406 ~~regarding an unadopted rule~~ under subparagraph 4 1. ~~or~~

Amendment No. 1

407 ~~subparagraph 2. shall be included as a conclusion of law that~~
408 ~~the agency shall not reject not be rejected by the agency unless~~
409 ~~the agency first determines from a review of the complete~~
410 ~~record, and states with particularity in the order, that such~~
411 ~~determination is clearly erroneous or does not comply with~~
412 ~~essential requirements of law. In any proceeding for review~~
413 ~~under s. 120.68, if the court finds that the agency's rejection~~
414 ~~of the determination regarding the unadopted rule does not~~
415 ~~comport with the provisions of this subparagraph, the agency~~
416 ~~action shall be set aside and the court shall award to the~~
417 ~~prevailing party the reasonable costs and a reasonable~~
418 ~~attorney's fee for the initial proceeding and the proceeding for~~
419 ~~review.~~

420 (h) Any party to a proceeding in which an administrative
421 law judge of the Division of Administrative Hearings has final
422 order authority may move for a summary final order when there is
423 no genuine issue as to any material fact. A summary final order
424 shall be rendered if the administrative law judge determines
425 from the pleadings, depositions, answers to interrogatories, and
426 admissions on file, together with affidavits, if any, that no
427 genuine issue as to any material fact exists and that the moving
428 party is entitled as a matter of law to the entry of a final
429 order. A summary final order shall consist of findings of fact,
430 if any, conclusions of law, a disposition or penalty, if
431 applicable, and any other information required by law to be
432 contained in the final order. This paragraph shall not apply to
433 proceedings authorized by paragraph (e).

Amendment No. 1

434 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT
435 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which
436 subsection (1) does not apply:

437 (a) The agency shall:

438 1. Give reasonable notice to affected persons of the
439 action of the agency, whether proposed or already taken, or of
440 its decision to refuse action, together with a summary of the
441 factual, legal, and policy grounds therefor.

442 2. Give parties or their counsel the option, at a
443 convenient time and place, to present to the agency or hearing
444 officer written or oral evidence in opposition to the action of
445 the agency or to its refusal to act, or a written statement
446 challenging the grounds upon which the agency has chosen to
447 justify its action or inaction.

448 3. If the objections of the parties are overruled, provide
449 a written explanation within 7 days.

450 (b) An agency may not base agency action that determines
451 the substantial interests of a party on an unadopted rule or a
452 rule that is an invalid exercise of delegated legislative
453 authority. No later than the date provided by the agency under
454 subparagraph (a)2. for presenting material in opposition to the
455 agency's proposed action or refusal to act, the party may file a
456 petition under s. 120.56 challenging the rule, portion of rule,
457 or the unadopted rule on which the agency bases its proposed
458 action or refusal to act. The filing of a challenge under s.
459 120.56 pursuant to this paragraph shall stay all proceedings on
460 the agency's proposed action or refusal to act until entry of
461 the final order by the administrative law judge, which shall

Amendment No. 1

462 provide additional notice that the stay of the pending agency
463 action is terminated and any further stay pending appeal of the
464 final order must be sought from the appellate court.

465 (c) The record shall only consist of:

- 466 1. The notice and summary of grounds.
- 467 2. Evidence received.
- 468 3. All written statements submitted.
- 469 4. Any decision overruling objections.
- 470 5. All matters placed on the record after an ex parte
471 communication.
- 472 6. The official transcript.
- 473 7. Any decision, opinion, order, or report by the
474 presiding officer.

475 Section 7. Section 120.573, Florida Statutes, is amended
476 to read:

477 120.573 Mediation of disputes.—

478 (1) Each announcement of an agency action that affects
479 substantial interests shall advise whether mediation of the
480 administrative dispute for the type of agency action announced
481 is available and that choosing mediation does not affect the
482 right to an administrative hearing. If the agency and all
483 parties to the administrative action agree to mediation, in
484 writing, within 10 days after the time period stated in the
485 announcement for election of an administrative remedy under ss.
486 120.569 and 120.57, the time limitations imposed by ss. 120.569
487 and 120.57 shall be tolled to allow the agency and parties to
488 mediate the administrative dispute. The mediation shall be
489 concluded within 60 days of such agreement unless otherwise

Amendment No. 1

490 agreed by the parties. The mediation agreement shall include
491 provisions for mediator selection, the allocation of costs and
492 fees associated with mediation, and the mediating parties'
493 understanding regarding the confidentiality of discussions and
494 documents introduced during mediation. If mediation results in
495 settlement of the administrative dispute, the agency shall enter
496 a final order incorporating the agreement of the parties. If
497 mediation terminates without settlement of the dispute, the
498 agency shall notify the parties in writing that the
499 administrative hearing processes under ss. 120.569 and 120.57
500 are resumed.

501 (2) Any party to a proceeding conducted pursuant to a
502 petition seeking an administrative determination of the
503 invalidity of an existing rule, proposed rule, or unadopted
504 agency statement under s. 120.56 or a proceeding conducted
505 pursuant to a petition seeking a declaratory statement under s.
506 120.565 may request mediation of the dispute under this section.

507 Section 8. Section 120.595, Florida Statutes, is amended
508 to read:

509 120.595 Attorney's fees.—

510 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
511 120.57(1).—

512 (a) The provisions of this subsection are supplemental to,
513 and do not abrogate, other provisions allowing the award of fees
514 or costs in administrative proceedings.

515 (b) The final order in a proceeding pursuant to s.
516 120.57(1) shall award reasonable costs and ~~a~~ reasonable
517 attorney's fees to the prevailing party if the administrative

Amendment No. 1

518 law judge determines ~~only where~~ the nonprevailing adverse party
519 ~~has been determined by the administrative law judge to have~~
520 participated in the proceeding for an improper purpose.

521 1. (e) Other than as provided below in paragraph (1) (d),
522 ~~in~~ proceedings pursuant to s. 120.57(1), and upon motion, the
523 administrative law judge shall determine whether any party
524 participated in the proceeding for an improper purpose as
525 defined by this subsection. ~~In making such determination, the~~
526 ~~administrative law judge shall consider whether t~~The
527 nonprevailing adverse party shall be presumed to have
528 participated in the pending proceeding for an improper purpose
529 if:

530 a. Such party was an adverse party ~~has participated in two~~
531 or more other such proceedings involving the same prevailing
532 party and the same subject; project as an adverse party and

533 b. In those ~~which such two or more~~ proceedings the
534 nonprevailing adverse party did not establish either the factual
535 or legal merits of its position; ~~and shall consider~~

536 c. Whether the factual or legal position asserted in the
537 pending instant proceeding would have been cognizable in the
538 previous proceedings; ~~and. In such event, it shall be rebuttably~~
539 ~~presumed that the nonprevailing adverse party participated in~~
540 ~~the pending proceeding for an improper purpose~~

541 d. The nonprevailing adverse party has not rebutted the
542 presumption of participating in the pending proceeding for an
543 improper purpose.

544 2. (d) In any proceeding in which the administrative law
545 judge determines that If a party is determined to have

Amendment No. 1

546 participated in the proceeding for an improper purpose, the
547 recommended order shall include such findings of fact and
548 conclusions of law to establish the conclusion ~~so designate~~ and
549 shall determine the award of costs and attorney's fees.

550 (e) For the purpose of this subsection:

551 1. "Improper purpose" means participation in a proceeding
552 pursuant to s. 120.57(1) primarily to harass or to cause
553 unnecessary delay or for frivolous purpose or to needlessly
554 increase the cost of litigation, licensing, or securing the
555 approval of an activity.

556 2. "Costs" has the same meaning as the costs allowed in
557 civil actions in this state as provided in chapter 57.

558 3. "Nonprevailing adverse party" means a party that has
559 failed to have substantially changed the outcome of the proposed
560 or final agency action which is the subject of a proceeding. In
561 the event that a proceeding results in any substantial
562 modification or condition intended to resolve the matters raised
563 in a party's petition, it shall be determined that the party
564 having raised the issue addressed is not a nonprevailing adverse
565 party. The recommended order shall state whether the change is
566 substantial for purposes of this subsection. In no event shall
567 the term "nonprevailing party" or "prevailing party" be deemed
568 to include any party that has intervened in a previously
569 existing proceeding to support the position of an agency.

570 (d) For challenges brought under s. 120.57(1)(e), if the
571 appellate court or the administrative law judge declares a rule
572 or portion of a rule to be invalid or that the agency statement
573 is an unadopted rule which does not meet the requirements of s.

Amendment No. 1

574 120.57(1)(e)4., a judgment or order shall be rendered against
575 the agency for reasonable costs and reasonable attorney's fees,
576 unless the agency demonstrates that special circumstances exist
577 which would make the award unjust. Reasonable costs and
578 reasonable attorney fees shall be awarded only for the period
579 beginning 15 days following the receipt of the petition for
580 hearing challenging the rule or unadopted rule. If the agency
581 prevails in the proceedings, the appellate court or
582 administrative law judge shall award reasonable costs and
583 reasonable attorney fees against a party if the appellate court
584 or administrative law judge determines that a party participated
585 in the proceedings for an improper purpose as defined by
586 paragraph (1)(c). An award of attorney fees as provided by this
587 subsection shall not exceed \$50,000.

588 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
589 SECTION 120.56(2).-If the appellate court or administrative law
590 judge declares a proposed rule or portion of a proposed rule
591 invalid pursuant to s. 120.56(2), a judgment or order shall be
592 rendered against the agency for reasonable costs and reasonable
593 attorney's fees, unless the agency demonstrates ~~that its actions~~
594 ~~were substantially justified or~~ special circumstances exist
595 which would make the award unjust. ~~An agency's actions are~~
596 ~~"substantially justified" if there was a reasonable basis in law~~
597 ~~and fact at the time the actions were taken by the agency.~~ If
598 the agency prevails in the proceedings, the appellate court or
599 administrative law judge shall award reasonable costs and
600 reasonable attorney's fees against a party if the appellate
601 court or administrative law judge determines that a party

Amendment No. 1

602 participated in the proceedings for an improper purpose as
603 defined by paragraph (1) (~~ec~~). ~~No~~An award of attorney's fees as
604 provided by this subsection shall not exceed \$50,000.

605 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
606 SECTION 120.56(3) AND (5).—If the appellate court or
607 administrative law judge declares a rule or portion of a rule
608 invalid pursuant to s. 120.56(3) or (5), a judgment or order
609 shall be rendered against the agency for reasonable costs and
610 reasonable attorney's fees, unless the agency demonstrates that
611 ~~its actions were substantially justified or special~~
612 circumstances exist which would make the award unjust. ~~An~~
613 ~~agency's actions are "substantially justified" if there was a~~
614 ~~reasonable basis in law and fact at the time the actions were~~
615 ~~taken by the agency.~~ If the agency prevails in the proceedings,
616 the appellate court or administrative law judge shall award
617 reasonable costs and reasonable attorney's fees against a party
618 if the appellate court or administrative law judge determines
619 that a party participated in the proceedings for an improper
620 purpose as defined by paragraph (1) (~~ec~~). ~~No~~An award of
621 attorney's fees as provided by this subsection shall exceed
622 \$50,000.

623 (4) CHALLENGES TO ~~AGENCY ACTION~~ UNADOPTED RULES PURSUANT
624 TO SECTION 120.56(4).—

625 (a) If the appellate court or administrative law judge
626 determines that all or part of ~~an agency statement~~ unadopted
627 rule violates s. 120.54(1)(a), or that the agency must
628 immediately discontinue reliance on the ~~statement~~ unadopted rule
629 and any substantially similar statement pursuant to s.

Amendment No. 1

630 120.56(4) (e), a judgment or order shall be entered against the
631 agency for reasonable costs and reasonable attorney's fees,
632 unless the agency demonstrates that the statement is required by
633 the Federal Government to implement or retain a delegated or
634 approved program or to meet a condition to receipt of federal
635 funds.

636 (b) Upon notification to the administrative law judge
637 provided before the final hearing that the agency has published
638 a notice of rulemaking under s. 120.54(3) (a), such notice shall
639 automatically operate as a stay of proceedings pending
640 rulemaking. The administrative law judge may vacate the stay for
641 good cause shown. A stay of proceedings under this paragraph
642 remains in effect so long as the agency is proceeding
643 expeditiously and in good faith to adopt the statement as a
644 rule. The administrative law judge shall award reasonable costs
645 and reasonable attorney's fees incurred ~~accrued~~ by the
646 petitioner before ~~prior to~~ the date the notice was published,
647 ~~unless the agency proves to the administrative law judge that it~~
648 ~~did not know and should not have known that the statement was an~~
649 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
650 ~~and paragraph (a) shall be awarded only upon a finding that the~~
651 ~~agency received notice that the statement may constitute an~~
652 ~~unadopted rule at least 30 days before a petition under s.~~
653 ~~120.56(4) was filed and that the agency failed to publish the~~
654 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
655 ~~addresses the statement within that 30-day period. Notice to the~~
656 ~~agency may be satisfied by its receipt of a copy of the s.~~
657 ~~120.56(4) petition, a notice or other paper containing~~

Amendment No. 1

658 ~~substantially the same information, or a petition filed pursuant~~
659 ~~to s. 120.54(7).~~ An award of attorney's fees as provided by this
660 paragraph may not exceed \$50,000.

661 (c) Notwithstanding the provisions of chapter 284, an
662 award shall be paid from the budget entity of the secretary,
663 executive director, or equivalent administrative officer of the
664 agency, and the agency is ~~shall not be~~ entitled to payment of an
665 award or reimbursement for payment of an award under any
666 provision of law.

667 (d) If the agency prevails in the proceedings, the
668 appellate court or administrative law judge shall award
669 reasonable costs and attorney's fees against a party if the
670 appellate court or administrative law judge determines that the
671 party participated in the proceedings for an improper purpose as
672 defined in paragraph (1) (ec) or that the party or the party's
673 attorney knew or should have known that a claim was not
674 supported by the material facts necessary to establish the claim
675 or would not be supported by the application of then-existing
676 law to those material facts.

677 (5) APPEALS.—When there is an appeal, the court in its
678 discretion may award reasonable attorney's fees and reasonable
679 costs to the prevailing party if the court finds that the appeal
680 was frivolous, meritless, or an abuse of the appellate process,
681 or that the agency action which precipitated the appeal was a
682 gross abuse of the agency's discretion. Upon review of agency
683 action that precipitates an appeal, if the court finds that the
684 agency improperly rejected or modified findings of fact in a
685 recommended order, the court shall award reasonable attorney's

Amendment No. 1

686 fees and reasonable costs to a prevailing appellant for the
687 administrative proceeding and the appellate proceeding.

688 (6) NOTICE OF INVALIDITY. A party failing to serve a
689 Notice of Invalidity under this subsection shall not be entitled
690 to an award of reasonable costs and attorney fees under this
691 section except as provided in paragraph (d).

692 (a) Prior to filing a petition challenging the validity of
693 a proposed rule under s. 120.56(2), an adopted rule under s.
694 120.56(3), or an agency statement defined as an unadopted rule
695 under s. 120.56(4), the substantially affected person shall
696 serve the agency head with notice of the proposed challenge. The
697 notice shall identify the proposed or adopted rule or the
698 unadopted rule the person proposes to challenge and a brief
699 explanation of the basis for that challenge. The notice shall be
700 received by the agency head no later than 5 days prior to the
701 filing of a petition under s. 120.56(2), and no later than 30
702 days prior to the filing of a petition under s. 120.56(3) or s.
703 120.56(4).

704 (b) Reasonable costs and reasonable attorney fees shall be
705 awarded only for the period beginning after the date the agency
706 head receives the Notice of Invalidity under paragraph (a).

707 (c) Within the time limits specified in paragraph (a), if
708 the agency provides the substantially affected person with
709 written notice that the agency will not adopt the proposed rule
710 or will not rely upon the adopted rule or the agency statement
711 defined as an unadopted rule until after the agency has complied
712 with the requirements of s. 120.54 to amend the proposed rule or
713 the adopted rule or adopt the unadopted rule, such written

Amendment No. 1

714 notice shall constitute a special circumstance under this
715 section.

716 (d) This subsection does not apply to defenses raised and
717 challenges authorized by s. 120.57(1)(e) or s. 120.57(2)(b).

718 (7) OTHER SECTIONS NOT AFFECTED.—Other provisions,
719 including ss. 57.105 and 57.111, authorize the award of
720 attorney's fees and costs in administrative proceedings. Nothing
721 in this section shall affect the availability of attorney's fees
722 and costs as provided in those sections.

723 Section 9. Subsections (1), (2), and (9) of section
724 120.68, Florida Statutes, are amended to read:

725 120.68 Judicial review.—

726 (1) (a) A party who is adversely affected by final agency
727 action is entitled to judicial review.

728 (b) A preliminary, procedural, or intermediate order of the
729 agency or of an administrative law judge of the Division of
730 Administrative Hearings, or a final order under s.

731 120.57(1)(e)4., is immediately reviewable if review of the final
732 agency decision would not provide an adequate remedy.

733 (2) (a) Judicial review shall be sought in the appellate
734 district where the agency maintains its headquarters or where a
735 party resides or as otherwise provided by law.

736 (b) All proceedings shall be instituted by filing a notice
737 of appeal or petition for review in accordance with the Florida
738 Rules of Appellate Procedure within 30 days after the date that
739 rendition of the order being appealed was filed with the agency
740 clerk. Such time is hereby extended for any party ten days from
741 receipt by such party of the notice of the order if such notice

Amendment No. 1

742 is received after the 25th day from the filing of the order. If
743 the appeal is of an order rendered in a proceeding initiated
744 under s. 120.56, or a final order under s. 120.57(1)(e)4., the
745 agency whose rule is being challenged shall transmit a copy of
746 the notice of appeal to the committee.

747 (b~~c~~) When proceedings under this chapter are consolidated
748 for final hearing and the parties to the consolidated proceeding
749 seek review of final or interlocutory orders in more than one
750 district court of appeal, the courts of appeal are authorized to
751 transfer and consolidate the review proceedings. The court may
752 transfer such appellate proceedings on its own motion, upon
753 motion of a party to one of the appellate proceedings, or by
754 stipulation of the parties to the appellate proceedings. In
755 determining whether to transfer a proceeding, the court may
756 consider such factors as the interrelationship of the parties
757 and the proceedings, the desirability of avoiding inconsistent
758 results in related matters, judicial economy, and the burden on
759 the parties of reproducing the record for use in multiple
760 appellate courts.

761 (9) No petition challenging an agency rule as an invalid
762 exercise of delegated legislative authority shall be instituted
763 pursuant to this section, except to review an order entered
764 pursuant to a proceeding under s. 120.56, under s.
765 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
766 findings of immediate danger, necessity, and procedural fairness
767 prerequisite to the adoption of an emergency rule pursuant to s.
768 120.54(4), unless the sole issue presented by the petition is

Amendment No. 1

769 the constitutionality of a rule and there are no disputed issues
770 of fact.

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T I T L E A M E N D M E N T

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Between lines 2 and 3, insert:

777

s. 57.111, F.S.; providing an additional definition of small
778 business; describing when a proceeding is not substantially
779 justified for purposes of an award under the Florida Equal
780 Access to Justice Act; amending

781

782

Remove lines 5-14 and insert:

783

120.55, F.S.; providing for publication of notices of rule
784 development and of rules filed for adoption; providing
785 additional notice of rule development, proposals and adoptions;
786 amending s. 120.56, F.S.; providing that the petitioner
787 challenging a proposed rule or unadopted has the burden of
788 establishing a prima facie case; amending s. 120.569, F.S.;
789 providing for extension of time to render final agency action in
790 certain circumstances; amending s. 120.57, F.S.; conforming
791 proceedings opposing agency action based on an invalid rule or
792 unadopted rule to proceedings for challenging rules; requiring
793 notice whether the agency will rely on the challenged rule or
794 unadopted rule; providing for the administrative law judge to
795 make certain findings and enter final order on the validity of
796 the rule or the use of unadopted rule; providing for stay of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1225 (2013)

Amendment No. 1

797 proceedings not involving disputed issues of fact on timely
798 filing of rule challenge; amending s. 120.573, F.S.; authorizing
799 any party to request mediation of rule challenge and declaratory
800 statement proceedings; amending s. 120.595, F.S.; providing for
801 an award of attorney fees and costs in challenges brought under
802 s. 120.57(1)(e), F.S.; removing certain exceptions from
803 requirements that attorney fees and costs be rendered against
804 the agency in proceedings in which the petitioner prevails in a
805 rule challenge; requiring service of notice of invalidity to
806 agency prior to bringing rule challenge as condition precedent
807 for award of attorney fees and costs; amending s. 120.68, F.S.;
808 providing for appellate review of orders rendered in challenges
809 to rules or unadopted rules under s. 120.57, F.S.;

810