

1 A bill to be entitled
 2 An act relating to administrative procedures; amending
 3 s. 120.52, F.S.; defining the term "small business" as
 4 used in the Administrative Procedure Act; amending s.
 5 120.56, F.S.; providing that the agency has the burden
 6 of proof in proceedings challenging the validity of
 7 existing rules and unadopted agency statements;
 8 amending s. 120.595, F.S.; removing certain exceptions
 9 from requirements that attorney fees and costs be
 10 rendered against the agency in proceedings in which
 11 the petitioner prevails in a challenge to an unadopted
 12 agency statement; amending s. 120.573, F.S.;
 13 authorizing any party to request mediation of rule
 14 challenge and declaratory statement proceedings;
 15 amending s. 120.695, F.S.; removing obsolete
 16 provisions with respect to required agency review and
 17 designation of minor violations; amending ss.
 18 420.9072, 420.9075, and 443.091, F.S.; conforming
 19 cross-references; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsections (18) through (22) of section
 24 120.52, Florida Statutes, are renumbered as subsections (19)
 25 through (23), respectively, and a new subsection (18) is added
 26 to that section, to read:

27 120.52 Definitions.—As used in this act:
 28 (18) "Small business" has the same meaning as provided in

29 | s. 288.703.

30 | Section 2. Paragraph (a) of subsection (3) and paragraph
 31 | (b) of subsection (4) of section 120.56, Florida Statutes, are
 32 | amended to read:

33 | 120.56 Challenges to rules.—

34 | (3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

35 | (a) A substantially affected person may seek an
 36 | administrative determination of the invalidity of an existing
 37 | rule at any time during the existence of the rule. The
 38 | petitioner has the ~~a~~ burden of going forward. The agency then
 39 | has the burden to prove ~~proving~~ by a preponderance of the
 40 | evidence that the existing rule is not an invalid exercise of
 41 | delegated legislative authority as to the objections raised.

42 | (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
 43 | SPECIAL PROVISIONS.—

44 | (b) The administrative law judge may extend the hearing
 45 | date beyond 30 days after assignment of the case for good cause.
 46 | Upon notification to the administrative law judge provided
 47 | before the final hearing that the agency has published a notice
 48 | of rulemaking under s. 120.54(3), such notice shall
 49 | automatically operate as a stay of proceedings pending adoption
 50 | of the statement as a rule. The administrative law judge may
 51 | vacate the stay for good cause shown. A stay of proceedings
 52 | pending rulemaking shall remain in effect so long as the agency
 53 | is proceeding expeditiously and in good faith to adopt the
 54 | statement as a rule. The petitioner has the burden of going
 55 | forward. ~~If a hearing is held and the petitioner proves the~~
 56 | ~~allegations of the petition,~~ The agency then has ~~shall have~~ the

57 | burden to prove by a preponderance of the evidence that the
 58 | statement does not constitute a rule under s. 120.52, that the
 59 | agency adopted the statement by the rulemaking procedure
 60 | provided by s. 120.54, or ~~of proving~~ that rulemaking is not
 61 | feasible or not practicable under s. 120.54(1) (a).

62 | Section 3. Section 120.595, Florida Statutes, is amended
 63 | to read:

64 | 120.595 Attorney ~~Attorney's~~ fees.—

65 | (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 66 | 120.57(1).—

67 | (a) The provisions of this subsection are supplemental to,
 68 | and do not abrogate, other provisions allowing the award of fees
 69 | or costs in administrative proceedings.

70 | (b) The final order in a proceeding pursuant to s.
 71 | 120.57(1) shall award reasonable costs and a reasonable attorney
 72 | fees ~~attorney's fee~~ to the prevailing party only where the
 73 | nonprevailing adverse party has been determined by the
 74 | administrative law judge to have participated in the proceeding
 75 | for an improper purpose.

76 | (c) In proceedings pursuant to s. 120.57(1), and upon
 77 | motion, the administrative law judge shall determine whether any
 78 | party participated in the proceeding for an improper purpose as
 79 | defined by this subsection. In making such determination, the
 80 | administrative law judge shall consider whether the
 81 | nonprevailing adverse party has participated in two or more
 82 | other such proceedings involving the same prevailing party and
 83 | the same project as an adverse party and in which such two or
 84 | more proceedings the nonprevailing adverse party did not

HB 1225

2013

85 | establish either the factual or legal merits of its position,
86 | and shall consider whether the factual or legal position
87 | asserted in the instant proceeding would have been cognizable in
88 | the previous proceedings. In such event, it shall be rebuttably
89 | presumed that the nonprevailing adverse party participated in
90 | the pending proceeding for an improper purpose.

91 | (d) In any proceeding in which the administrative law
92 | judge determines that a party participated in the proceeding for
93 | an improper purpose, the recommended order shall so designate
94 | and shall determine the award of costs and attorney ~~attorney's~~
95 | fees.

96 | (e) For the purpose of this subsection:

97 | 1. "Improper purpose" means participation in a proceeding
98 | pursuant to s. 120.57(1) primarily to harass or to cause
99 | unnecessary delay or for frivolous purpose or to needlessly
100 | increase the cost of litigation, licensing, or securing the
101 | approval of an activity.

102 | 2. "Costs" has the same meaning as the costs allowed in
103 | civil actions in this state as provided in chapter 57.

104 | 3. "Nonprevailing adverse party" means a party that has
105 | failed to have substantially changed the outcome of the proposed
106 | or final agency action which is the subject of a proceeding. In
107 | the event that a proceeding results in any substantial
108 | modification or condition intended to resolve the matters raised
109 | in a party's petition, it shall be determined that the party
110 | having raised the issue addressed is not a nonprevailing adverse
111 | party. The recommended order shall state whether the change is
112 | substantial for purposes of this subsection. In no event shall

113 the term "nonprevailing party" or "prevailing party" be deemed
 114 to include any party that has intervened in a previously
 115 existing proceeding to support the position of an agency.

116 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
 117 SECTION 120.56(2).—If the appellate court or administrative law
 118 judge declares a proposed rule or portion of a proposed rule
 119 invalid pursuant to s. 120.56(2), a judgment or order shall be
 120 rendered against the agency for reasonable costs and reasonable
 121 attorney ~~attorney's~~ fees, unless the agency demonstrates that
 122 its actions were substantially justified or special
 123 circumstances exist which would make the award unjust. An
 124 agency's actions are "substantially justified" if there was a
 125 reasonable basis in law and fact at the time the actions were
 126 taken by the agency. If the agency prevails in the proceedings,
 127 the appellate court or administrative law judge shall award
 128 reasonable costs and reasonable attorney ~~attorney's~~ fees against
 129 a party if the appellate court or administrative law judge
 130 determines that a party participated in the proceedings for an
 131 improper purpose as defined by paragraph (1)(e). An ~~No~~ award of
 132 attorney ~~attorney's~~ fees as provided by this subsection may not
 133 ~~shall~~ exceed \$50,000.

134 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
 135 SECTION 120.56(3) AND (5).—If the appellate court or
 136 administrative law judge declares a rule or portion of a rule
 137 invalid pursuant to s. 120.56(3) or (5), a judgment or order
 138 shall be rendered against the agency for reasonable costs and
 139 reasonable attorney ~~attorney's~~ fees, unless the agency
 140 demonstrates that its actions were substantially justified or

HB 1225

2013

141 special circumstances exist which would make the award unjust.
142 An agency's actions are "substantially justified" if there was a
143 reasonable basis in law and fact at the time the actions were
144 taken by the agency. If the agency prevails in the proceedings,
145 the appellate court or administrative law judge shall award
146 reasonable costs and reasonable attorney ~~attorney's~~ fees against
147 a party if the appellate court or administrative law judge
148 determines that a party participated in the proceedings for an
149 improper purpose as defined by paragraph (1) (e). An ~~No~~ award of
150 attorney ~~attorney's~~ fees as provided by this subsection may not
151 ~~shall~~ exceed \$50,000.

152 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
153 120.56(4).—

154 (a) If the appellate court or administrative law judge
155 determines that all or part of an agency statement violates s.
156 120.54(1) (a), or that the agency must immediately discontinue
157 reliance on the statement and any substantially similar
158 statement pursuant to s. 120.56(4) (e), a judgment or order shall
159 be entered against the agency for reasonable costs and
160 reasonable attorney ~~attorney's~~ fees, unless the agency
161 demonstrates that the statement is required by the Federal
162 Government to implement or retain a delegated or approved
163 program or to meet a condition to receipt of federal funds.

164 (b) Upon notification to the administrative law judge
165 provided before the final hearing that the agency has published
166 a notice of rulemaking under s. 120.54(3) (a), such notice shall
167 automatically operate as a stay of proceedings pending
168 rulemaking. The administrative law judge may vacate the stay for

169 good cause shown. A stay of proceedings under this paragraph
170 remains in effect so long as the agency is proceeding
171 expeditiously and in good faith to adopt the statement as a
172 rule. The administrative law judge shall award reasonable costs
173 and reasonable attorney ~~attorney's~~ fees accrued by the
174 petitioner before ~~prior to~~ the date the notice was published,
175 ~~unless the agency proves to the administrative law judge that it~~
176 ~~did not know and should not have known that the statement was an~~
177 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
178 ~~and paragraph (a) shall be awarded only upon a finding that the~~
179 ~~agency received notice that the statement may constitute an~~
180 ~~unadopted rule at least 30 days before a petition under s.~~
181 ~~120.56(4) was filed and that the agency failed to publish the~~
182 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
183 ~~addresses the statement within that 30-day period. Notice to the~~
184 ~~agency may be satisfied by its receipt of a copy of the s.~~
185 ~~120.56(4) petition, a notice or other paper containing~~
186 ~~substantially the same information, or a petition filed pursuant~~
187 ~~to s. 120.54(7).~~ An award of attorney ~~attorney's~~ fees as
188 provided by this paragraph may not exceed \$50,000.

189 (c) Notwithstanding the provisions of chapter 284, an
190 award shall be paid from the budget entity of the secretary,
191 executive director, or equivalent administrative officer of the
192 agency, and the agency is ~~shall~~ not be entitled to payment of an
193 award or reimbursement for payment of an award under any
194 provision of law.

195 (d) If the agency prevails in the proceedings, the
196 appellate court or administrative law judge shall award

197 reasonable costs and attorney ~~attorney's~~ fees against a party if
 198 the appellate court or administrative law judge determines that
 199 the party participated in the proceedings for an improper
 200 purpose as defined in paragraph (1) (e) or that the party or the
 201 party's attorney knew or should have known that a claim was not
 202 supported by the material facts necessary to establish the claim
 203 or would not be supported by the application of then-existing
 204 law to those material facts.

205 (5) APPEALS.—When there is an appeal, the court in its
 206 discretion may award reasonable attorney ~~attorney's~~ fees and
 207 reasonable costs to the prevailing party if the court finds that
 208 the appeal was frivolous, meritless, or an abuse of the
 209 appellate process, or that the agency action which precipitated
 210 the appeal was a gross abuse of the agency's discretion. Upon
 211 review of agency action that precipitates an appeal, if the
 212 court finds that the agency improperly rejected or modified
 213 findings of fact in a recommended order, the court shall award
 214 reasonable attorney ~~attorney's~~ fees and reasonable costs to a
 215 prevailing appellant for the administrative proceeding and the
 216 appellate proceeding.

217 (6) OTHER SECTIONS NOT AFFECTED.—Other provisions,
 218 including ss. 57.105 and 57.111, authorize the award of attorney
 219 ~~attorney's~~ fees and costs in administrative proceedings. ~~Nothing~~
 220 ~~in~~ This section does not ~~shall~~ affect the availability of
 221 attorney ~~attorney's~~ fees and costs as provided in those
 222 sections.

223 Section 4. Section 120.573, Florida Statutes, is amended
 224 to read:

HB 1225

2013

225 | 120.573 Mediation of disputes.—

226 | (1) Each announcement of an agency action that affects
227 | substantial interests shall advise whether mediation of the
228 | administrative dispute for the type of agency action announced
229 | is available and that choosing mediation does not affect the
230 | right to an administrative hearing. If the agency and all
231 | parties to the administrative action agree to mediation, in
232 | writing, within 10 days after the time period stated in the
233 | announcement for election of an administrative remedy under ss.
234 | 120.569 and 120.57, the time limitations imposed by ss. 120.569
235 | and 120.57 shall be tolled to allow the agency and parties to
236 | mediate the administrative dispute. The mediation shall be
237 | concluded within 60 days of such agreement unless otherwise
238 | agreed by the parties. The mediation agreement shall include
239 | provisions for mediator selection, the allocation of costs and
240 | fees associated with mediation, and the mediating parties'
241 | understanding regarding the confidentiality of discussions and
242 | documents introduced during mediation. If mediation results in
243 | settlement of the administrative dispute, the agency shall enter
244 | a final order incorporating the agreement of the parties. If
245 | mediation terminates without settlement of the dispute, the
246 | agency shall notify the parties in writing that the
247 | administrative hearing processes under ss. 120.569 and 120.57
248 | are resumed.

249 | (2) Any party to a proceeding conducted pursuant to a
250 | petition seeking an administration determination of the
251 | invalidity of an existing rule, proposed rule, or unadopted
252 | agency statement under s. 120.56 or a proceeding conducted

253 pursuant to a petition seeking a declaratory statement under s.
254 120.565 may request mediation of the dispute under this section.

255 Section 5. Subsection (2) of section 120.695, Florida
256 Statutes, is amended to read:

257 120.695 Notice of noncompliance.—

258 (2) (a) Each agency shall issue a notice of noncompliance
259 as a first response to a minor violation of a rule. A "notice of
260 noncompliance" is a notification by the agency charged with
261 enforcing the rule issued to the person or business subject to
262 the rule. A notice of noncompliance may not be accompanied with
263 a fine or other disciplinary penalty. It must identify the
264 specific rule that is being violated, provide information on how
265 to comply with the rule, and specify a reasonable time for the
266 violator to comply with the rule. A rule is agency action that
267 regulates a business, occupation, or profession, or regulates a
268 person operating a business, occupation, or profession, and
269 that, if not complied with, may result in a disciplinary
270 penalty.

271 ~~(b) Each agency shall review all of its rules and~~
272 ~~designate those for which~~ A violation would be a minor violation
273 ~~and~~ for which a notice of noncompliance must be the first
274 enforcement action taken against a person or business subject to
275 regulation. ~~A violation of a rule is a minor violation if it~~
276 does not result in economic or physical harm to a person or
277 adversely affect the public health, safety, or welfare or create
278 a significant threat of such harm. ~~If an agency under the~~
279 ~~direction of a cabinet officer mails to each licensee a notice~~
280 ~~of the designated rules at the time of licensure and at least~~

281 ~~annually thereafter, the provisions of paragraph (a) may be~~
282 ~~exercised at the discretion of the agency. Such notice shall~~
283 ~~include a subject-matter index of the rules and information on~~
284 ~~how the rules may be obtained.~~

285 ~~(c) The agency's review and designation must be completed~~
286 ~~by December 1, 1995; each agency under the direction of the~~
287 ~~Governor shall make a report to the Governor, and each agency~~
288 ~~under the joint direction of the Governor and Cabinet shall~~
289 ~~report to the Governor and Cabinet by January 1, 1996, on which~~
290 ~~of its rules have been designated as rules the violation of~~
291 ~~which would be a minor violation.~~

292 ~~(d) The Governor or the Governor and Cabinet, as~~
293 ~~appropriate pursuant to paragraph (c), may evaluate the review~~
294 ~~and designation effects of each agency and may apply a different~~
295 ~~designation than that applied by the agency.~~

296 (c)(e) This section does not apply to the regulation of
297 law enforcement personnel or teachers.

298 ~~(f) Designation pursuant to this section is not subject to~~
299 ~~challenge under this chapter.~~

300 Section 6. Paragraph (a) of subsection (1) of section
301 420.9072, Florida Statutes, is amended to read:

302 420.9072 State Housing Initiatives Partnership Program.—
303 The State Housing Initiatives Partnership Program is created for
304 the purpose of providing funds to counties and eligible
305 municipalities as an incentive for the creation of local housing
306 partnerships, to expand production of and preserve affordable
307 housing, to further the housing element of the local government
308 comprehensive plan specific to affordable housing, and to

HB 1225

2013

309 increase housing-related employment.

310 (1) (a) In addition to the legislative findings set forth
311 in s. 420.6015, the Legislature finds that affordable housing is
312 most effectively provided by combining available public and
313 private resources to conserve and improve existing housing and
314 provide new housing for very-low-income households, low-income
315 households, and moderate-income households. The Legislature
316 intends to encourage partnerships in order to secure the
317 benefits of cooperation by the public and private sectors and to
318 reduce the cost of housing for the target group by effectively
319 combining all available resources and cost-saving measures. The
320 Legislature further intends that local governments achieve this
321 combination of resources by encouraging active partnerships
322 between government, lenders, builders and developers, real
323 estate professionals, advocates for low-income persons, and
324 community groups to produce affordable housing and provide
325 related services. Extending the partnership concept to encompass
326 cooperative efforts among small counties as defined in s. 120.52
327 ~~120.52(19)~~, and among counties and municipalities is
328 specifically encouraged. Local governments are also intended to
329 establish an affordable housing advisory committee to recommend
330 monetary and nonmonetary incentives for affordable housing as
331 provided in s. 420.9076.

332 Section 7. Subsection (7) of section 420.9075, Florida
333 Statutes, is amended to read:

334 420.9075 Local housing assistance plans; partnerships.—

335 (7) The moneys deposited in the local housing assistance
336 trust fund shall be used to administer and implement the local

337 housing assistance plan. The cost of administering the plan may
338 not exceed 5 percent of the local housing distribution moneys
339 and program income deposited into the trust fund. A county or an
340 eligible municipality may not exceed the 5-percent limitation on
341 administrative costs, unless its governing body finds, by
342 resolution, that 5 percent of the local housing distribution
343 plus 5 percent of program income is insufficient to adequately
344 pay the necessary costs of administering the local housing
345 assistance plan. The cost of administering the program may not
346 exceed 10 percent of the local housing distribution plus 5
347 percent of program income deposited into the trust fund, except
348 that small counties, as defined in s. 120.52 ~~120.52(19)~~, and
349 eligible municipalities receiving a local housing distribution
350 of up to \$350,000 may use up to 10 percent of program income for
351 administrative costs.

352 Section 8. Paragraph (d) of subsection (1) of section
353 443.091, Florida Statutes, is amended to read:

354 443.091 Benefit eligibility conditions.—

355 (1) An unemployed individual is eligible to receive
356 benefits for any week only if the Department of Economic
357 Opportunity finds that:

358 (d) She or he is able to work and is available for work.
359 In order to assess eligibility for a claimed week of
360 unemployment, the department shall develop criteria to determine
361 a claimant's ability to work and availability for work. A
362 claimant must be actively seeking work in order to be considered
363 available for work. This means engaging in systematic and
364 sustained efforts to find work, including contacting at least

365 five prospective employers for each week of unemployment
366 claimed. The department may require the claimant to provide
367 proof of such efforts to the one-stop career center as part of
368 reemployment services. The department shall conduct random
369 reviews of work search information provided by claimants. As an
370 alternative to contacting at least five prospective employers
371 for any week of unemployment claimed, a claimant may, for that
372 same week, report in person to a one-stop career center to meet
373 with a representative of the center and access reemployment
374 services of the center. The center shall keep a record of the
375 services or information provided to the claimant and shall
376 provide the records to the department upon request by the
377 department. However:

378 1. Notwithstanding any other provision of this paragraph
379 or paragraphs (b) and (e), an otherwise eligible individual may
380 not be denied benefits for any week because she or he is in
381 training with the approval of the department, or by reason of s.
382 443.101(2) relating to failure to apply for, or refusal to
383 accept, suitable work. Training may be approved by the
384 department in accordance with criteria prescribed by rule. A
385 claimant's eligibility during approved training is contingent
386 upon satisfying eligibility conditions prescribed by rule.

387 2. Notwithstanding any other provision of this chapter, an
388 otherwise eligible individual who is in training approved under
389 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
390 determined ineligible or disqualified for benefits due to
391 enrollment in such training or because of leaving work that is
392 not suitable employment to enter such training. As used in this

HB 1225

2013

393 subparagraph, the term "suitable employment" means work of a
394 substantially equal or higher skill level than the worker's past
395 adversely affected employment, as defined for purposes of the
396 Trade Act of 1974, as amended, the wages for which are at least
397 80 percent of the worker's average weekly wage as determined for
398 purposes of the Trade Act of 1974, as amended.

399 3. Notwithstanding any other provision of this section, an
400 otherwise eligible individual may not be denied benefits for any
401 week because she or he is before any state or federal court
402 pursuant to a lawfully issued summons to appear for jury duty.

403 4. Union members who customarily obtain employment through
404 a union hiring hall may satisfy the work search requirements of
405 this paragraph by reporting daily to their union hall.

406 5. The work search requirements of this paragraph do not
407 apply to persons who are unemployed as a result of a temporary
408 layoff or who are claiming benefits under an approved short-time
409 compensation plan as provided in s. 443.1116.

410 6. In small counties as defined in s. 120.52 ~~120.52(19)~~, a
411 claimant engaging in systematic and sustained efforts to find
412 work must contact at least three prospective employers for each
413 week of unemployment claimed.

414 Section 9. This act shall take effect July 1, 2013.