

1 A bill to be entitled
2 An act relating to administrative procedures; amending
3 s. 57.111, F.S.; revising the definition of the term
4 "small business party"; providing conditions under
5 which a proceeding is not substantially justified for
6 purposes of an award under the Florida Equal Access to
7 Justice Act; amending s. 120.52, F.S.; defining the
8 term "small business" as used in the Administrative
9 Procedure Act; amending s. 120.55, F.S.; providing for
10 publication of notices of rule development and of
11 rules filed for adoption; providing additional notice
12 of rule development, proposals, and adoptions;
13 amending s. 120.56, F.S.; providing that the
14 petitioner challenging a proposed rule or unadopted
15 agency statement has the burden of establishing a
16 prima facie case; amending s. 120.569, F.S.; providing
17 for extension of time to render final agency action in
18 certain circumstances; amending s. 120.57, F.S.;
19 conforming proceedings opposing agency action based on
20 an invalid rule or unadopted rule to proceedings for
21 challenging rules; requiring notice of whether the
22 agency will rely on the challenged rule or unadopted
23 rule; providing for the administrative law judge to
24 make certain findings and enter a final order on the
25 validity of the rule or the use of an unadopted rule;
26 providing for stay of proceedings not involving
27 disputed issues of fact upon timely filing of rule
28 challenge; amending s. 120.573, F.S.; authorizing any

29 party to request mediation of rule challenge and
30 declaratory statement proceedings; amending s.
31 120.595, F.S.; providing for an award of attorney fees
32 and costs in specified challenges to agency action;
33 removing certain exceptions from requirements that
34 attorney fees and costs be rendered against the agency
35 in proceedings in which the petitioner prevails in a
36 rule challenge; requiring service of notice of
37 invalidity to an agency before bringing a rule
38 challenge as a condition precedent to award of
39 attorney fees and costs; providing for award of
40 additional attorney fees and costs for litigating
41 entitlement to and amount of attorney fees and costs
42 in administrative actions; providing that such awards
43 of additional attorney fees and costs are not subject
44 to certain statutory limits; amending s. 120.68, F.S.;
45 providing for appellate review of orders rendered in
46 challenges to specified rules or unadopted rules;
47 amending s. 120.695, F.S.; removing obsolete
48 provisions with respect to required agency review and
49 designation of minor violations; amending ss.
50 420.9072, 420.9075, and 443.091, F.S.; conforming
51 cross-references; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Paragraphs (d) and (e) of subsection (3) of
56 section 57.111, Florida Statutes, are amended to read:

57 57.111 Civil actions and administrative proceedings
 58 initiated by state agencies; attorney ~~attorneys'~~ fees and
 59 costs.—

60 (3) As used in this section:

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

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

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

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

79 2. Any small business party as defined in subparagraph 1.,
 80 without regard to the number of its employees or its net worth,
 81 in any action under s. 72.011 or in any administrative
 82 proceeding under that section to contest the legality of any
 83 assessment of tax imposed for the sale or use of services as

84 provided in chapter 212, or interest thereon, or penalty
 85 therefor; or

86 3. Any small business as defined in s. 288.703 in any
 87 administrative proceeding pursuant to chapter 120 and any appeal
 88 thereof.

89 (e) A proceeding is "substantially justified" if it had a
 90 reasonable basis in law and fact at the time it was initiated by
 91 a state agency. A proceeding is not substantially justified when
 92 the agency action involves identical or substantially similar
 93 facts and circumstances and the specified law, rule, or order on
 94 which the party substantially affected by the agency action
 95 petitioned for a declaratory statement under s. 120.565, and:

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

98 2. The agency denied the petition under s. 120.565 before
 99 initiating the agency action against the substantially affected
 100 party.

101 Section 2. Subsections (18) through (22) of section
 102 120.52, Florida Statutes, are renumbered as subsections (19)
 103 through (23), respectively, and a new subsection (18) is added
 104 to that section to read:

105 120.52 Definitions.—As used in this act:

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

108 Section 3. Section 120.55, Florida Statutes, is amended to
 109 read:

110 120.55 Publication.—

111 (1) The Department of State shall:

112 (a)1. Through a continuous revision and publication
113 system, compile and publish electronically, on an Internet
114 website managed by the department, the "Florida Administrative
115 Code." The Florida Administrative Code shall contain all rules
116 adopted by each agency, citing the grant of rulemaking authority
117 and the specific law implemented pursuant to which each rule was
118 adopted, all history notes as authorized in s. 120.545(7),
119 complete indexes to all rules contained in the code, and any
120 other material required or authorized by law or deemed useful by
121 the department. The electronic code shall display each rule
122 chapter currently in effect in browse mode and allow full text
123 search of the code and each rule chapter. The department may
124 contract with a publishing firm for a printed publication;
125 however, the department shall retain responsibility for the code
126 as provided in this section. The electronic publication shall be
127 the official compilation of the administrative rules of this
128 state. The Department of State shall retain the copyright over
129 the Florida Administrative Code.

130 2. Rules general in form but applicable to only one school
131 district, community college district, or county, or a part
132 thereof, or state university rules relating to internal
133 personnel or business and finance shall not be published in the
134 Florida Administrative Code. Exclusion from publication in the
135 Florida Administrative Code shall not affect the validity or
136 effectiveness of such rules.

137 3. At the beginning of the section of the code dealing
138 with an agency that files copies of its rules with the
139 department, the department shall publish the address and

140 telephone number of the executive offices of each agency, the
141 manner by which the agency indexes its rules, a listing of all
142 rules of that agency excluded from publication in the code, and
143 a statement as to where those rules may be inspected.

144 4. Forms shall not be published in the Florida
145 Administrative Code; but any form which an agency uses in its
146 dealings with the public, along with any accompanying
147 instructions, shall be filed with the committee before it is
148 used. Any form or instruction which meets the definition of
149 "rule" provided in s. 120.52 shall be incorporated by reference
150 into the appropriate rule. The reference shall specifically
151 state that the form is being incorporated by reference and shall
152 include the number, title, and effective date of the form and an
153 explanation of how the form may be obtained. Each form created
154 by an agency which is incorporated by reference in a rule notice
155 of which is given under s. 120.54(3)(a) after December 31, 2007,
156 must clearly display the number, title, and effective date of
157 the form and the number of the rule in which the form is
158 incorporated.

159 5. The department shall allow adopted rules and material
160 incorporated by reference to be filed in electronic form as
161 prescribed by department rule. When a rule is filed for adoption
162 with incorporated material in electronic form, the department's
163 publication of the Florida Administrative Code on its Internet
164 website must contain a hyperlink from the incorporating
165 reference in the rule directly to that material. The department
166 may not allow hyperlinks from rules in the Florida
167 Administrative Code to any material other than that filed with

168 and maintained by the department, but may allow hyperlinks to
169 incorporated material maintained by the department from the
170 adopting agency's website or other sites.

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

175 1. All notices required by s. 120.54(2) and (3)(a) ~~s.~~
176 ~~120.54(3)(a)~~, showing the text of all rules proposed for
177 consideration.

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

181 3. A notice of each request for authorization to amend or
182 repeal an existing uniform rule or for the adoption of new
183 uniform rules.

184 4. Notice of petitions for declaratory statements or
185 administrative determinations.

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

188 6. A listing of rules filed for adoption in the previous 7
189 calendar days.

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

193 ~~8.6.~~ Any other material required or authorized by law or
194 deemed useful by the department.

195

196 The department may contract with a publishing firm for a printed
197 publication of the Florida Administrative Register and make
198 copies available on an annual subscription basis.

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

201 (d) Charge each agency using the Florida Administrative
202 Register a space rate to cover the costs related to the Florida
203 Administrative Register and the Florida Administrative Code.

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

206 (2) The Florida Administrative Register Internet website
207 must allow users to:

208 (a) Search for notices by type, publication date, rule
209 number, word, subject, and agency.

210 (b) Search a database that makes available all notices
211 published on the website for a period of at least 5 years.

212 (c) Subscribe to an automated e-mail notification of
213 selected notices to be sent out before or concurrently with
214 publication of the electronic Florida Administrative Register.
215 Such notification must include in the text of the e-mail a
216 summary of the content of each notice.

217 (d) View agency forms and other materials submitted to the
218 department in electronic form and incorporated by reference in
219 proposed rules.

220 (e) Comment on proposed rules.

221 (3) Publication of material required by paragraph (1) (b)
222 on the Florida Administrative Register Internet website does not

223 preclude publication of such material on an agency's website or
224 by other means.

225 (4) Each agency shall provide copies of its rules upon
226 request, with citations to the grant of rulemaking authority and
227 the specific law implemented for each rule.

228 (5) Each agency that provides an e-mail alert service to
229 inform licensees or other registered recipients of important
230 notices shall use such service to notify recipients of each
231 notice required under s. 120.54(2) and (3)(a), including, but
232 not limited to, notice of rule development, notice of proposed
233 rules, and notice of filing rules for adoption, and provide
234 internet links to the appropriate rule page on the Secretary of
235 State's website, or Internet links to an agency website that
236 contains the proposed rule or final rule.

237 (6)~~(5)~~ Any publication of a proposed rule promulgated by
238 an agency, whether published in the Florida Administrative
239 Register or elsewhere, shall include, along with the rule, the
240 name of the person or persons originating such rule, the name of
241 the agency head who approved the rule, and the date upon which
242 the rule was approved.

243 (7)~~(6)~~ Access to the Florida Administrative Register
244 Internet website and its contents, including the e-mail
245 notification service, shall be free for the public.

246 (8)~~(7)~~(a) All fees and moneys collected by the Department
247 of State under this chapter shall be deposited in the Records
248 Management Trust Fund for the purpose of paying for costs
249 incurred by the department in carrying out this chapter.

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

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

257 120.56 Challenges to rules.—

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

260 (b) The petition challenging the validity of a proposed or
 261 adopted rule or an agency statement defined as a rule under this
 262 section seeking an administrative determination must state with
 263 particularity:

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

267 2. Facts sufficient to show that the petitioner ~~person~~
 268 ~~challenging a rule~~ is substantially affected by the challenged
 269 adopted rule or agency statement defined as a rule ~~it,~~ or ~~that~~
 270 ~~the person challenging a proposed rule~~ would be substantially
 271 affected by the proposed rule ~~it.~~

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

273 (a) A substantially affected person may seek an
 274 administrative determination of the invalidity of a proposed
 275 rule by filing a petition seeking such a determination with the
 276 division within 21 days after the date of publication of the
 277 notice required by s. 120.54(3)(a); within 10 days after the

278 final public hearing is held on the proposed rule as provided by
279 s. 120.54(3)(e)2.; within 20 days after the statement of
280 estimated regulatory costs or revised statement of estimated
281 regulatory costs, if applicable, has been prepared and made
282 available as provided in s. 120.541(1)(d); or within 20 days
283 after the date of publication of the notice required by s.
284 120.54(3)(d). The petition must state with particularity the
285 objections to the proposed rule and the reasons that the
286 proposed rule is an invalid exercise of delegated legislative
287 authority. The petitioner has the burden of presenting a prima
288 facie case demonstrating the invalidity of the proposed rule
289 ~~going forward~~. The agency then has the burden to prove by a
290 preponderance of the evidence that the proposed rule is not an
291 invalid exercise of delegated legislative authority as to the
292 objections raised. ~~A person who is substantially affected by a~~
293 ~~change in the proposed rule may seek a determination of the~~
294 ~~validity of such change~~. A person who is not substantially
295 affected by the proposed rule as initially noticed, but who is
296 substantially affected by the rule as a result of a change, may
297 challenge any provision of the resulting rule ~~and is not limited~~
298 ~~to challenging the change to the proposed rule~~.

299 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
300 RULES; SPECIAL PROVISIONS.—

301 (a) Any person substantially affected by an agency
302 statement that is an unadopted rule may seek an administrative
303 determination that the statement violates s. 120.54(1)(a). The
304 petition shall include the text of the statement or a
305 description of the statement and shall state with particularity

306 facts sufficient to show that the statement constitutes an a
307 unadopted rule under ~~s. 120.52~~ and that the agency has not
308 ~~adopted the statement by the rulemaking procedure provided by s.~~
309 ~~120.54.~~

310 (b) The administrative law judge may extend the hearing
311 date beyond 30 days after assignment of the case for good cause.
312 Upon notification to the administrative law judge provided
313 before the final hearing that the agency has published a notice
314 of rulemaking under s. 120.54(3), such notice shall
315 automatically operate as a stay of proceedings pending adoption
316 of the statement as a rule. The administrative law judge may
317 vacate the stay for good cause shown. A stay of proceedings
318 pending rulemaking shall remain in effect so long as the agency
319 is proceeding expeditiously and in good faith to adopt the
320 statement as a rule. ~~If a hearing is held and the petitioner~~
321 ~~proves the allegations of the petition, the agency shall have~~
322 ~~the burden of proving~~

323 (c) The petitioner has the burden of presenting a prima
324 facie case demonstrating that the agency statement constitutes
325 an unadopted rule. The agency then has the burden to prove by a
326 preponderance of the evidence that the statement does not meet
327 the definition of an unadopted rule, the statement was adopted
328 as a rule in compliance with s. 120.54, or that rulemaking is
329 not feasible or not practicable under s. 120.54(1)(a).

330 ~~(d)(e)~~ The administrative law judge may determine whether
331 all or part of a statement violates s. 120.54(1)(a). The
332 decision of the administrative law judge shall constitute a
333 final order. The division shall transmit a copy of the final

334 order to the Department of State and the committee. The
 335 Department of State shall publish notice of the final order in
 336 the first available issue of the Florida Administrative Weekly.

337 (e)~~(d)~~ If an administrative law judge enters a final order
 338 that all or part of an unadopted rule ~~agency statement~~ violates
 339 s. 120.54(1)(a), the agency must immediately discontinue all
 340 reliance upon the unadopted rule ~~statement~~ or any substantially
 341 similar statement as a basis for agency action.

342 (f)~~(e)~~ If proposed rules addressing the challenged
 343 unadopted rule ~~statement~~ are determined to be an invalid
 344 exercise of delegated legislative authority as defined in s.
 345 120.52(8)(b)-(f), the agency must immediately discontinue
 346 reliance on the unadopted rule ~~statement~~ and any substantially
 347 similar statement until rules addressing the subject are
 348 properly adopted, and the administrative law judge shall enter a
 349 final order to that effect.

350 (g)~~(f)~~ All proceedings to determine a violation of s.
 351 120.54(1)(a) shall be brought pursuant to this subsection. A
 352 proceeding pursuant to this subsection may be consolidated with
 353 a proceeding under subsection (3) or under any other section of
 354 this chapter. This paragraph does not prevent a party whose
 355 substantial interests have been determined by an agency action
 356 from bringing a proceeding pursuant to s. 120.57(1)(e).

357 Section 5. Paragraph (1) of subsection (2) of section
 358 120.569, Florida Statutes, is amended to read:

359 120.569 Decisions which affect substantial interests.—

360 (2)

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

366 1. After the hearing is concluded, if conducted by the
 367 agency;

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

374 3. After the agency has received the written and oral
 375 material it has authorized to be submitted, if there has been no
 376 hearing.

377 Section 6. Paragraphs (e) and (h) of subsection (1) and
 378 subsection (2) of section 120.57, Florida Statutes, are amended
 379 to read:

380 120.57 Additional procedures for particular cases.—

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

383 (e)1. An agency or an administrative law judge may not
 384 base agency action that determines the substantial interests of
 385 a party on an unadopted rule or a rule that is an invalid
 386 exercise of delegated legislative authority. ~~The administrative~~
 387 ~~law judge shall determine whether an agency statement~~
 388 ~~constitutes an unadopted rule.~~ This subparagraph does not

389 preclude application of valid ~~adopted~~ rules and applicable
390 provisions of law to the facts.

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

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

399 b. Section 120.56(3)(a) applies to a challenge alleging a
400 rule is an invalid exercise of delegated legislative authority;

401 c. Section 120.56(4)(c) applies to a challenge alleging an
402 unadopted rule.

403 d. The agency shall have 15 days from the date of
404 receiving a challenge under this paragraph to serve the
405 challenging party with a notice that the agency will continue to
406 rely upon the rule or the alleged unadopted rule as a basis for
407 the action determining the party's substantive interests.
408 Failure to timely serve the notice shall constitute a binding
409 stipulation that the agency shall not rely upon the rule or
410 unadopted rule further in the proceeding. The agency shall
411 include a copy of this notice with the referral of the matter to
412 the division under s. 120.569(2)(a).

413 e. This subparagraph does not preclude the consolidation
414 of any proceeding under s. 120.56 with any proceeding under this
415 paragraph.

416 3.2. Notwithstanding subparagraph 1., if an agency
417 demonstrates that the statute being implemented directs it to
418 adopt rules, that the agency has not had time to adopt those
419 rules because the requirement was so recently enacted, and that
420 the agency has initiated rulemaking and is proceeding
421 expeditiously and in good faith to adopt the required rules,
422 then the agency's action may be based upon those unadopted rules
423 if, subject to de novo review by the administrative law judge
424 determines rulemaking is neither feasible nor practicable and
425 the unadopted rules would not constitute an invalid exercise of
426 delegated legislative authority if adopted as rules. An
427 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
428 ~~invalid~~. The agency must demonstrate that the unadopted rule:
429 a. Is within the powers, functions, and duties delegated
430 by the Legislature or, if the agency is operating pursuant to
431 authority vested in the agency by ~~derived from~~ the State
432 Constitution, is within that authority;
433 b. Does not enlarge, modify, or contravene the specific
434 provisions of law implemented;
435 c. Is not vague, establishes adequate standards for agency
436 decisions, or does not vest unbridled discretion in the agency;
437 d. Is not arbitrary or capricious. A rule is arbitrary if
438 it is not supported by logic or the necessary facts; a rule is
439 capricious if it is adopted without thought or reason or is
440 irrational;
441 e. Is not being applied to the substantially affected
442 party without due notice; and

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

445 4. The administrative law judge shall determine under
446 subparagraph 2. whether a rule is an invalid exercise of
447 delegated legislative authority or an agency statement
448 constitutes an unadopted rule and shall determine whether an
449 unadopted rule meets the requirements of subparagraph 3. The
450 determination shall be rendered as a separate final order no
451 earlier than the date on which the administrative law judge
452 serves the recommended order.

453 ~~5.3.~~ The recommended and final orders in any proceeding
454 shall be governed by the provisions of paragraphs (k) and (l),
455 except that the administrative law judge's determination
456 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
457 ~~subparagraph 2. shall be included as a conclusion of law that~~
458 ~~the agency may not reject not be rejected by the agency unless~~
459 ~~the agency first determines from a review of the complete~~
460 ~~record, and states with particularity in the order, that such~~
461 ~~determination is clearly erroneous or does not comply with~~
462 ~~essential requirements of law. In any proceeding for review~~
463 ~~under s. 120.68, if the court finds that the agency's rejection~~
464 ~~of the determination regarding the unadopted rule does not~~
465 ~~comport with the provisions of this subparagraph, the agency~~
466 ~~action shall be set aside and the court shall award to the~~
467 ~~prevailing party the reasonable costs and a reasonable~~
468 ~~attorney's fee for the initial proceeding and the proceeding for~~
469 ~~review.~~

470 (h) Any party to a proceeding in which an administrative
471 law judge of the Division of Administrative Hearings has final
472 order authority may move for a summary final order when there is
473 no genuine issue as to any material fact. A summary final order
474 shall be rendered if the administrative law judge determines
475 from the pleadings, depositions, answers to interrogatories, and
476 admissions on file, together with affidavits, if any, that no
477 genuine issue as to any material fact exists and that the moving
478 party is entitled as a matter of law to the entry of a final
479 order. A summary final order shall consist of findings of fact,
480 if any, conclusions of law, a disposition or penalty, if
481 applicable, and any other information required by law to be
482 contained in the final order. This paragraph does not apply to
483 proceedings authorized by paragraph (e).

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

487 (a) The agency shall:

488 1. Give reasonable notice to affected persons of the
489 action of the agency, whether proposed or already taken, or of
490 its decision to refuse action, together with a summary of the
491 factual, legal, and policy grounds therefor.

492 2. Give parties or their counsel the option, at a
493 convenient time and place, to present to the agency or hearing
494 officer written or oral evidence in opposition to the action of
495 the agency or to its refusal to act, or a written statement
496 challenging the grounds upon which the agency has chosen to
497 justify its action or inaction.

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

500 (b) An agency may not base agency action that determines
 501 the substantial interests of a party on an unadopted rule or a
 502 rule that is an invalid exercise of delegated legislative
 503 authority. No later than the date provided by the agency under
 504 subparagraph (a)2. for presenting material in opposition to the
 505 agency's proposed action or refusal to act, the party may file a
 506 petition under s. 120.56 challenging the rule, portion of rule,
 507 or unadopted rule on which the agency bases its proposed action
 508 or refusal to act. The filing of a challenge under s. 120.56
 509 pursuant to this paragraph shall stay all proceedings on the
 510 agency's proposed action or refusal to act until entry of the
 511 final order by the administrative law judge, which shall provide
 512 additional notice that the stay of the pending agency action is
 513 terminated and any further stay pending appeal of the final
 514 order must be sought from the appellate court.

515 (c) ~~(b)~~ The record shall only consist of:

- 516 1. The notice and summary of grounds.
- 517 2. Evidence received.
- 518 3. All written statements submitted.
- 519 4. Any decision overruling objections.
- 520 5. All matters placed on the record after an ex parte
 521 communication.
- 522 6. The official transcript.
- 523 7. Any decision, opinion, order, or report by the
 524 presiding officer.

525 Section 7. Section 120.573, Florida Statutes, is amended
 526 to read:

527 120.573 Mediation of disputes.—

528 (1) Each announcement of an agency action that affects
 529 substantial interests shall advise whether mediation of the
 530 administrative dispute for the type of agency action announced
 531 is available and that choosing mediation does not affect the
 532 right to an administrative hearing. If the agency and all
 533 parties to the administrative action agree to mediation, in
 534 writing, within 10 days after the time period stated in the
 535 announcement for election of an administrative remedy under ss.
 536 120.569 and 120.57, the time limitations imposed by ss. 120.569
 537 and 120.57 shall be tolled to allow the agency and parties to
 538 mediate the administrative dispute. The mediation shall be
 539 concluded within 60 days of such agreement unless otherwise
 540 agreed by the parties. The mediation agreement shall include
 541 provisions for mediator selection, the allocation of costs and
 542 fees associated with mediation, and the mediating parties'
 543 understanding regarding the confidentiality of discussions and
 544 documents introduced during mediation. If mediation results in
 545 settlement of the administrative dispute, the agency shall enter
 546 a final order incorporating the agreement of the parties. If
 547 mediation terminates without settlement of the dispute, the
 548 agency shall notify the parties in writing that the
 549 administrative hearing processes under ss. 120.569 and 120.57
 550 are resumed.

551 (2) Any party to a proceeding conducted pursuant to a
 552 petition seeking an administrative determination of the

553 invalidity of an existing rule, proposed rule, or unadopted
 554 agency statement under s. 120.56 or a proceeding conducted
 555 pursuant to a petition seeking a declaratory statement under s.
 556 120.565 may request mediation of the dispute under this section.

557 Section 8. Section 120.595, Florida Statutes, is amended
 558 to read:

559 120.595 Attorney ~~Attorney's~~ fees.—

560 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 561 120.57(1).—

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

565 (b) The final order in a proceeding pursuant to s.
 566 120.57(1) shall award reasonable costs and a reasonable attorney
 567 fees ~~attorney's fee~~ to the prevailing party if the
 568 administrative law judge determines only where the nonprevailing
 569 adverse party ~~has been determined by the administrative law~~
 570 ~~judge to have~~ participated in the proceeding for an improper
 571 purpose.

572 1.(e) Other than as provided in paragraph (d), in
 573 proceedings pursuant to s. 120.57(1), and upon motion, the
 574 administrative law judge shall determine whether any party
 575 participated in the proceeding for an improper purpose as
 576 defined by this subsection. ~~In making such determination, the~~
 577 ~~administrative law judge shall consider whether~~ The
 578 nonprevailing adverse party shall be presumed to have
 579 participated in the pending proceeding for an improper purpose
 580 if:

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

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

587 c. Whether The factual or legal position asserted in the
588 pending instant proceeding would have been cognizable in the
589 previous proceedings; and. ~~In such event, it shall be rebuttably~~
590 ~~presumed that the nonprevailing adverse party participated in~~
591 ~~the pending proceeding for an improper purpose~~

592 d. The nonprevailing adverse party has not rebutted the
593 presumption of participating in the pending proceeding for an
594 improper purpose.

595 2.(d) If ~~In any proceeding in which the administrative law~~
596 ~~judge determines that a party is determined to have~~ participated
597 in the proceeding for an improper purpose, the recommended order
598 shall include such findings of fact and conclusions of law to
599 establish the conclusion ~~so designate~~ and shall determine the
600 award of costs and attorney ~~attorney's~~ fees.

601 (c)(e) For the purpose of this subsection:

602 1. "Improper purpose" means participation in a proceeding
603 pursuant to s. 120.57(1) primarily to harass or to cause
604 unnecessary delay or for frivolous purpose or to needlessly
605 increase the cost of litigation, licensing, or securing the
606 approval of an activity.

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

609 3. "Nonprevailing adverse party" means a party that has
610 failed to have substantially changed the outcome of the proposed
611 or final agency action which is the subject of a proceeding. In
612 the event that a proceeding results in any substantial
613 modification or condition intended to resolve the matters raised
614 in a party's petition, it shall be determined that the party
615 having raised the issue addressed is not a nonprevailing adverse
616 party. The recommended order shall state whether the change is
617 substantial for purposes of this subsection. In no event shall
618 the term "nonprevailing party" or "prevailing party" be deemed
619 to include any party that has intervened in a previously
620 existing proceeding to support the position of an agency.

621 (d) For challenges brought under s. 120.57(1)(e), if the
622 appellate court or the administrative law judge declares a rule
623 or portion of a rule to be invalid or that the agency statement
624 is an unadopted rule which does not meet the requirements of s.
625 120.57(1)(e)4., a judgment or order shall be rendered against
626 the agency for reasonable costs and reasonable attorney fees,
627 unless the agency demonstrates that special circumstances exist
628 which would make the award unjust. Reasonable costs and
629 reasonable attorney fees shall be awarded only for the period
630 beginning 15 days after the receipt of the petition for hearing
631 challenging the rule or unadopted rule. If the agency prevails
632 in the proceedings, the appellate court or administrative law
633 judge shall award reasonable costs and reasonable attorney fees
634 against a party if the appellate court or administrative law
635 judge determines that a party participated in the proceedings
636 for an improper purpose as defined by paragraph (c). An award of

637 attorney fees as provided by this subsection may not exceed
638 \$50,000.

639 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
640 SECTION 120.56(2).—If the appellate court or administrative law
641 judge declares a proposed rule or portion of a proposed rule
642 invalid pursuant to s. 120.56(2), a judgment or order shall be
643 rendered against the agency for reasonable costs and reasonable
644 attorney ~~attorney's~~ fees, unless the agency demonstrates ~~that~~
645 ~~its actions were substantially justified or~~ special
646 circumstances exist which would make the award unjust. ~~An~~
647 ~~agency's actions are "substantially justified" if there was a~~
648 ~~reasonable basis in law and fact at the time the actions were~~
649 ~~taken by the agency.~~ If the agency prevails in the proceedings,
650 the appellate court or administrative law judge shall award
651 reasonable costs and reasonable attorney ~~attorney's~~ fees against
652 a party if the appellate court or administrative law judge
653 determines that a party participated in the proceedings for an
654 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. ~~An~~ ~~No~~
655 award of attorney ~~attorney's~~ fees as provided by this subsection
656 may not ~~shall~~ exceed \$50,000.

657 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
658 SECTION 120.56(3) AND (5).—If the appellate court or
659 administrative law judge declares a rule or portion of a rule
660 invalid pursuant to s. 120.56(3) or (5), a judgment or order
661 shall be rendered against the agency for reasonable costs and
662 reasonable attorney ~~attorney's~~ fees, unless the agency
663 demonstrates that ~~its actions were substantially justified or~~
664 special circumstances exist which would make the award unjust.

665 ~~An agency's actions are "substantially justified" if there was a~~
666 ~~reasonable basis in law and fact at the time the actions were~~
667 ~~taken by the agency.~~ If the agency prevails in the proceedings,
668 the appellate court or administrative law judge shall award
669 reasonable costs and reasonable attorney ~~attorney's~~ fees against
670 a party if the appellate court or administrative law judge
671 determines that a party participated in the proceedings for an
672 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. ~~An~~ ~~No~~
673 award of attorney ~~attorney's~~ fees as provided by this subsection
674 may not ~~shall~~ exceed \$50,000.

675 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT
676 TO SECTION 120.56(4).—

677 (a) If the appellate court or administrative law judge
678 determines that all or part of an unadopted rule ~~agency~~
679 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
680 immediately discontinue reliance on the unadopted rule ~~statement~~
681 and any substantially similar statement pursuant to s.
682 120.56(4)(e), a judgment or order shall be entered against the
683 agency for reasonable costs and reasonable attorney ~~attorney's~~
684 fees, unless the agency demonstrates that the statement is
685 required by the Federal Government to implement or retain a
686 delegated or approved program or to meet a condition to receipt
687 of federal funds.

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

693 good cause shown. A stay of proceedings under this paragraph
694 remains in effect so long as the agency is proceeding
695 expeditiously and in good faith to adopt the statement as a
696 rule. The administrative law judge shall award reasonable costs
697 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
698 petitioner before ~~prior to~~ the date the notice was published,
699 ~~unless the agency proves to the administrative law judge that it~~
700 ~~did not know and should not have known that the statement was an~~
701 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
702 ~~and paragraph (a) shall be awarded only upon a finding that the~~
703 ~~agency received notice that the statement may constitute an~~
704 ~~unadopted rule at least 30 days before a petition under s.~~
705 ~~120.56(4) was filed and that the agency failed to publish the~~
706 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
707 ~~addresses the statement within that 30-day period. Notice to the~~
708 ~~agency may be satisfied by its receipt of a copy of the s.~~
709 ~~120.56(4) petition, a notice or other paper containing~~
710 ~~substantially the same information, or a petition filed pursuant~~
711 ~~to s. 120.54(7).~~ An award of attorney ~~attorney's~~ fees as
712 provided by this paragraph may not exceed \$50,000.

713 (c) Notwithstanding the provisions of chapter 284, an
714 award shall be paid from the budget entity of the secretary,
715 executive director, or equivalent administrative officer of the
716 agency, and the agency is ~~shall~~ not be entitled to payment of an
717 award or reimbursement for payment of an award under any
718 provision of law.

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

721 reasonable costs and attorney ~~attorney's~~ fees against a party if
 722 the appellate court or administrative law judge determines that
 723 the party participated in the proceedings for an improper
 724 purpose as defined in paragraph (1) (c) ~~(e)~~ or that the party or
 725 the party's attorney knew or should have known that a claim was
 726 not supported by the material facts necessary to establish the
 727 claim or would not be supported by the application of then-
 728 existing law to those material facts.

729 (5) APPEALS.—When there is an appeal, the court in its
 730 discretion may award reasonable attorney ~~attorney's~~ fees and
 731 reasonable costs to the prevailing party if the court finds that
 732 the appeal was frivolous, meritless, or an abuse of the
 733 appellate process, or that the agency action which precipitated
 734 the appeal was a gross abuse of the agency's discretion. Upon
 735 review of agency action that precipitates an appeal, if the
 736 court finds that the agency improperly rejected or modified
 737 findings of fact in a recommended order, the court shall award
 738 reasonable attorney ~~attorney's~~ fees and reasonable costs to a
 739 prevailing appellant for the administrative proceeding and the
 740 appellate proceeding.

741 (6) NOTICE OF INVALIDITY.—A party failing to serve a
 742 notice of invalidity under this subsection is not entitled to an
 743 award of reasonable costs and reasonable attorney fees under
 744 this section except as provided in paragraph (d).

745 (a) Before filing a petition challenging the validity of a
 746 proposed rule under s. 120.56(2), an adopted rule under s.
 747 120.56(3), or an agency statement defined as an unadopted rule
 748 under s. 120.56(4), the substantially affected person shall

749 serve the agency head with notice of the proposed challenge. The
750 notice shall identify the proposed or adopted rule or the
751 unadopted rule the person proposes to challenge and a brief
752 explanation of the basis for that challenge. The notice must be
753 received by the agency head at least 5 days before the filing of
754 a petition under s. 120.56(2), and at least 30 days before the
755 filing of a petition under s. 120.56(3) or s. 120.56(4).

756 (b) Reasonable costs and reasonable attorney fees shall be
757 awarded only for the period beginning after the date on which
758 the agency head receives the notice of invalidity under
759 paragraph (a).

760 (c) Within the time limits specified in paragraph (a), if
761 the agency provides the substantially affected person with
762 written notice that the agency will not adopt the proposed rule
763 or will not rely upon the adopted rule or the agency statement
764 defined as an unadopted rule until after the agency has complied
765 with the requirements of s. 120.54 to amend the proposed rule or
766 the adopted rule or adopt the unadopted rule, such written
767 notice shall constitute a special circumstance under this
768 section.

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

771 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
772 purposes of this chapter, s. 57.105(5), and s. 57.111, in
773 addition to an award of attorney fees and costs, the prevailing
774 party shall also recover attorney fees and costs incurred in
775 litigating entitlement to, and the determination or
776 quantification of, attorney fees and costs for the underlying

777 matter. Attorney fees and costs awarded for litigating
 778 entitlement to, and the determination or quantification of,
 779 attorney fees and costs for the underlying matter are not
 780 subject to the limitations on amounts provided in this chapter
 781 or s. 57.111.

782 (8)~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
 783 including ss. 57.105 and 57.111, authorize the award of attorney
 784 ~~attorney's~~ fees and costs in administrative proceedings. Nothing
 785 in this section shall affect the availability of attorney
 786 ~~attorney's~~ fees and costs as provided in those sections.

787 Section 9. Subsections (1), (2), and (9) of section
 788 120.68, Florida Statutes, are amended to read:

789 120.68 Judicial review.—

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

792 (b) A preliminary, procedural, or intermediate order of
 793 the agency or of an administrative law judge of the Division of
 794 Administrative Hearings, or a final order under s.
 795 120.57(1)(e)4., is immediately reviewable if review of the final
 796 agency decision would not provide an adequate remedy.

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

800 (b) All proceedings shall be instituted by filing a notice
 801 of appeal or petition for review in accordance with the Florida
 802 Rules of Appellate Procedure within 30 days after the date that
 803 ~~rendition of~~ the order being appealed was filed with the agency
 804 clerk. Such time is hereby extended for any party 10 days from

805 receipt by such party of the notice of the order, if such notice
806 is received after the 25th day from the filing of the order. If
807 the appeal is of an order rendered in a proceeding initiated
808 under s. 120.56, or a final order under s. 120.57(1)(e)4., the
809 agency whose rule is being challenged shall transmit a copy of
810 the notice of appeal to the committee.

811 (c) ~~(b)~~ When proceedings under this chapter are
812 consolidated for final hearing and the parties to the
813 consolidated proceeding seek review of final or interlocutory
814 orders in more than one district court of appeal, the courts of
815 appeal are authorized to transfer and consolidate the review
816 proceedings. The court may transfer such appellate proceedings
817 on its own motion, upon motion of a party to one of the
818 appellate proceedings, or by stipulation of the parties to the
819 appellate proceedings. In determining whether to transfer a
820 proceeding, the court may consider such factors as the
821 interrelationship of the parties and the proceedings, the
822 desirability of avoiding inconsistent results in related
823 matters, judicial economy, and the burden on the parties of
824 reproducing the record for use in multiple appellate courts.

825 (9) No petition challenging an agency rule as an invalid
826 exercise of delegated legislative authority shall be instituted
827 pursuant to this section, except to review an order entered
828 pursuant to a proceeding under s. 120.56, under s.
829 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
830 findings of immediate danger, necessity, and procedural fairness
831 prerequisite to the adoption of an emergency rule pursuant to s.
832 120.54(4), unless the sole issue presented by the petition is

833 the constitutionality of a rule and there are no disputed issues
834 of fact.

835 Section 10. Subsection (2) of section 120.695, Florida
836 Statutes, is amended to read:

837 120.695 Notice of noncompliance.—

838 (2) (a) Each agency shall issue a notice of noncompliance
839 as a first response to a minor violation of a rule. A "notice of
840 noncompliance" is a notification by the agency charged with
841 enforcing the rule issued to the person or business subject to
842 the rule. A notice of noncompliance may not be accompanied with
843 a fine or other disciplinary penalty. It must identify the
844 specific rule that is being violated, provide information on how
845 to comply with the rule, and specify a reasonable time for the
846 violator to comply with the rule. A rule is agency action that
847 regulates a business, occupation, or profession, or regulates a
848 person operating a business, occupation, or profession, and
849 that, if not complied with, may result in a disciplinary
850 penalty.

851 ~~(b) Each agency shall review all of its rules and~~
852 ~~designate those for which~~ A violation would be a minor violation
853 ~~and~~ for which a notice of noncompliance must be the first
854 enforcement action taken against a person or business subject to
855 regulation. ~~A violation of a rule is a minor violation if it~~
856 does not result in economic or physical harm to a person or
857 adversely affect the public health, safety, or welfare or create
858 a significant threat of such harm. ~~If an agency under the~~
859 ~~direction of a cabinet officer mails to each licensee a notice~~
860 ~~of the designated rules at the time of licensure and at least~~

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

865 ~~(c) The agency's review and designation must be completed~~
866 ~~by December 1, 1995; each agency under the direction of the~~
867 ~~Governor shall make a report to the Governor, and each agency~~
868 ~~under the joint direction of the Governor and Cabinet shall~~
869 ~~report to the Governor and Cabinet by January 1, 1996, on which~~
870 ~~of its rules have been designated as rules the violation of~~
871 ~~which would be a minor violation.~~

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

876 ~~(c)(e)~~ This section does not apply to the regulation of
877 law enforcement personnel or teachers.

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

880 Section 11. Paragraph (a) of subsection (1) of section
881 420.9072, Florida Statutes, is amended to read:

882 420.9072 State Housing Initiatives Partnership Program.—
883 The State Housing Initiatives Partnership Program is created for
884 the purpose of providing funds to counties and eligible
885 municipalities as an incentive for the creation of local housing
886 partnerships, to expand production of and preserve affordable
887 housing, to further the housing element of the local government
888 comprehensive plan specific to affordable housing, and to

889 | increase housing-related employment.

890 | (1) (a) In addition to the legislative findings set forth
891 | in s. 420.6015, the Legislature finds that affordable housing is
892 | most effectively provided by combining available public and
893 | private resources to conserve and improve existing housing and
894 | provide new housing for very-low-income households, low-income
895 | households, and moderate-income households. The Legislature
896 | intends to encourage partnerships in order to secure the
897 | benefits of cooperation by the public and private sectors and to
898 | reduce the cost of housing for the target group by effectively
899 | combining all available resources and cost-saving measures. The
900 | Legislature further intends that local governments achieve this
901 | combination of resources by encouraging active partnerships
902 | between government, lenders, builders and developers, real
903 | estate professionals, advocates for low-income persons, and
904 | community groups to produce affordable housing and provide
905 | related services. Extending the partnership concept to encompass
906 | cooperative efforts among small counties as defined in s. 120.52
907 | ~~120.52(19)~~, and among counties and municipalities is
908 | specifically encouraged. Local governments are also intended to
909 | establish an affordable housing advisory committee to recommend
910 | monetary and nonmonetary incentives for affordable housing as
911 | provided in s. 420.9076.

912 | Section 12. Subsection (7) of section 420.9075, Florida
913 | Statutes, is amended to read:

914 | 420.9075 Local housing assistance plans; partnerships.—

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

917 housing assistance plan. The cost of administering the plan may
 918 not exceed 5 percent of the local housing distribution moneys
 919 and program income deposited into the trust fund. A county or an
 920 eligible municipality may not exceed the 5-percent limitation on
 921 administrative costs, unless its governing body finds, by
 922 resolution, that 5 percent of the local housing distribution
 923 plus 5 percent of program income is insufficient to adequately
 924 pay the necessary costs of administering the local housing
 925 assistance plan. The cost of administering the program may not
 926 exceed 10 percent of the local housing distribution plus 5
 927 percent of program income deposited into the trust fund, except
 928 that small counties, as defined in s. 120.52 ~~120.52(19)~~, and
 929 eligible municipalities receiving a local housing distribution
 930 of up to \$350,000 may use up to 10 percent of program income for
 931 administrative costs.

932 Section 13. Paragraph (d) of subsection (1) of section
 933 443.091, Florida Statutes, is amended to read:

934 443.091 Benefit eligibility conditions.—

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

938 (d) She or he is able to work and is available for work.
 939 In order to assess eligibility for a claimed week of
 940 unemployment, the department shall develop criteria to determine
 941 a claimant's ability to work and availability for work. A
 942 claimant must be actively seeking work in order to be considered
 943 available for work. This means engaging in systematic and
 944 sustained efforts to find work, including contacting at least

945 five prospective employers for each week of unemployment
946 claimed. The department may require the claimant to provide
947 proof of such efforts to the one-stop career center as part of
948 reemployment services. The department shall conduct random
949 reviews of work search information provided by claimants. As an
950 alternative to contacting at least five prospective employers
951 for any week of unemployment claimed, a claimant may, for that
952 same week, report in person to a one-stop career center to meet
953 with a representative of the center and access reemployment
954 services of the center. The center shall keep a record of the
955 services or information provided to the claimant and shall
956 provide the records to the department upon request by the
957 department. However:

958 1. Notwithstanding any other provision of this paragraph
959 or paragraphs (b) and (e), an otherwise eligible individual may
960 not be denied benefits for any week because she or he is in
961 training with the approval of the department, or by reason of s.
962 443.101(2) relating to failure to apply for, or refusal to
963 accept, suitable work. Training may be approved by the
964 department in accordance with criteria prescribed by rule. A
965 claimant's eligibility during approved training is contingent
966 upon satisfying eligibility conditions prescribed by rule.

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

973 subparagraph, the term "suitable employment" means work of a
974 substantially equal or higher skill level than the worker's past
975 adversely affected employment, as defined for purposes of the
976 Trade Act of 1974, as amended, the wages for which are at least
977 80 percent of the worker's average weekly wage as determined for
978 purposes of the Trade Act of 1974, as amended.

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

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

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

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

994 Section 14. This act shall take effect July 1, 2013.