

1                   A bill to be entitled  
2           An act relating to administrative procedures; amending  
3           s. 57.111, F.S.; providing conditions under which a  
4           proceeding is not substantially justified for purposes  
5           of an award under the Florida Equal Access to Justice  
6           Act; amending s. 120.55, F.S.; providing for  
7           publication of notices of rule development and of  
8           rules filed for adoption; providing additional notice  
9           of rule development, proposals, and adoptions;  
10          amending s. 120.56, F.S.; providing that the  
11          petitioner challenging a proposed rule or unadopted  
12          agency statement has the burden of establishing a  
13          prima facie case; amending s. 120.569, F.S.; providing  
14          for extension of time to render final agency action in  
15          certain circumstances; amending s. 120.57, F.S.;  
16          conforming proceedings opposing agency action based on  
17          an invalid rule or unadopted rule to proceedings for  
18          challenging rules; requiring notice of whether the  
19          agency will rely on the challenged rule or unadopted  
20          rule; providing for the administrative law judge to  
21          make certain findings and enter a final order on the  
22          validity of the rule or the use of an unadopted rule;  
23          providing for stay of proceedings not involving  
24          disputed issues of fact upon timely filing of rule  
25          challenge; amending s. 120.573, F.S.; authorizing any  
26          party to request mediation of rule challenge and  
27          declaratory statement proceedings; amending s.  
28          120.595, F.S.; providing for an award of attorney fees

29 and costs in specified challenges to agency action;  
30 removing certain exceptions from requirements that  
31 attorney fees and costs be rendered against the agency  
32 in proceedings in which the petitioner prevails in a  
33 rule challenge; requiring service of notice of  
34 invalidity to an agency before bringing a rule  
35 challenge as a condition precedent to award of  
36 attorney fees and costs; providing for award of  
37 additional attorney fees and costs for litigating  
38 entitlement to and amount of attorney fees and costs  
39 in administrative actions; providing that such awards  
40 of additional attorney fees and costs are not subject  
41 to certain statutory limits; amending s. 120.68, F.S.;  
42 providing for appellate review of orders rendered in  
43 challenges to specified rules or unadopted rules;  
44 amending s. 120.695, F.S.; removing obsolete  
45 provisions with respect to required agency review and  
46 designation of minor violations; requiring agency  
47 review and certification of minor violation rules by a  
48 specified date; requiring reporting of agency failure  
49 to complete review and file certification of such  
50 rules; requiring minor violation certification for all  
51 rules adopted after a specified date; requiring public  
52 notice; providing for nonapplicability; providing an  
53 effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:  
56

57 Section 1. Paragraph (e) of subsection (3) of section  
 58 57.111, Florida Statutes, is amended to read:

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

62 (3) As used in this section:

63 (e) A proceeding is "substantially justified" if it had a  
 64 reasonable basis in law and fact at the time it was initiated by  
 65 a state agency. A proceeding is not substantially justified when  
 66 the agency action involves identical or substantially similar  
 67 facts and circumstances and the specified law, rule, or order on  
 68 which the party substantially affected by the agency action  
 69 petitioned for a declaratory statement under s. 120.565, and:

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

72 2. The agency denied the petition under s. 120.565 before  
 73 initiating the agency action against the substantially affected  
 74 party.

75 Section 2. Section 120.55, Florida Statutes, is amended to  
 76 read:

77 120.55 Publication.—

78 (1) The Department of State shall:

79 (a)1. Through a continuous revision and publication  
 80 system, compile and publish electronically, on an Internet  
 81 website managed by the department, the "Florida Administrative  
 82 Code." The Florida Administrative Code shall contain all rules  
 83 adopted by each agency, citing the grant of rulemaking authority  
 84 and the specific law implemented pursuant to which each rule was

85 | adopted, all history notes as authorized in s. 120.545(7),  
86 | complete indexes to all rules contained in the code, and any  
87 | other material required or authorized by law or deemed useful by  
88 | the department. The electronic code shall display each rule  
89 | chapter currently in effect in browse mode and allow full text  
90 | search of the code and each rule chapter. The department may  
91 | contract with a publishing firm for a printed publication;  
92 | however, the department shall retain responsibility for the code  
93 | as provided in this section. The electronic publication shall be  
94 | the official compilation of the administrative rules of this  
95 | state. The Department of State shall retain the copyright over  
96 | the Florida Administrative Code.

97 |         2. Rules general in form but applicable to only one school  
98 | district, community college district, or county, or a part  
99 | thereof, or state university rules relating to internal  
100 | personnel or business and finance shall not be published in the  
101 | Florida Administrative Code. Exclusion from publication in the  
102 | Florida Administrative Code shall not affect the validity or  
103 | effectiveness of such rules.

104 |         3. At the beginning of the section of the code dealing  
105 | with an agency that files copies of its rules with the  
106 | department, the department shall publish the address and  
107 | telephone number of the executive offices of each agency, the  
108 | manner by which the agency indexes its rules, a listing of all  
109 | rules of that agency excluded from publication in the code, and  
110 | a statement as to where those rules may be inspected.

111 |         4. Forms shall not be published in the Florida  
112 | Administrative Code; but any form which an agency uses in its

113 | dealings with the public, along with any accompanying  
114 | instructions, shall be filed with the committee before it is  
115 | used. Any form or instruction which meets the definition of  
116 | "rule" provided in s. 120.52 shall be incorporated by reference  
117 | into the appropriate rule. The reference shall specifically  
118 | state that the form is being incorporated by reference and shall  
119 | include the number, title, and effective date of the form and an  
120 | explanation of how the form may be obtained. Each form created  
121 | by an agency which is incorporated by reference in a rule notice  
122 | of which is given under s. 120.54(3)(a) after December 31, 2007,  
123 | must clearly display the number, title, and effective date of  
124 | the form and the number of the rule in which the form is  
125 | incorporated.

126 |         5. The department shall allow adopted rules and material  
127 | incorporated by reference to be filed in electronic form as  
128 | prescribed by department rule. When a rule is filed for adoption  
129 | with incorporated material in electronic form, the department's  
130 | publication of the Florida Administrative Code on its Internet  
131 | website must contain a hyperlink from the incorporating  
132 | reference in the rule directly to that material. The department  
133 | may not allow hyperlinks from rules in the Florida  
134 | Administrative Code to any material other than that filed with  
135 | and maintained by the department, but may allow hyperlinks to  
136 | incorporated material maintained by the department from the  
137 | adopting agency's website or other sites.

138 |         (b) Electronically publish on an Internet website managed  
139 | by the department a continuous revision and publication entitled

140 the "Florida Administrative Register," which shall serve as the  
141 official publication and must contain:

142 1. All notices required by s. 120.54(2) and (3)(a) ~~s.~~  
143 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
144 consideration.

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

148 3. A notice of each request for authorization to amend or  
149 repeal an existing uniform rule or for the adoption of new  
150 uniform rules.

151 4. Notice of petitions for declaratory statements or  
152 administrative determinations.

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

155 6. A listing of rules filed for adoption in the previous 7  
156 calendar days.

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

160 ~~8.6.~~ Any other material required or authorized by law or  
161 deemed useful by the department.

162  
163 The department may contract with a publishing firm for a printed  
164 publication of the Florida Administrative Register and make  
165 copies available on an annual subscription basis.

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

168 (d) Charge each agency using the Florida Administrative  
169 Register a space rate to cover the costs related to the Florida  
170 Administrative Register and the Florida Administrative Code.

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

173 (2) The Florida Administrative Register Internet website  
174 must allow users to:

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

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

179 (c) Subscribe to an automated e-mail notification of  
180 selected notices to be sent out before or concurrently with  
181 publication of the electronic Florida Administrative Register.  
182 Such notification must include in the text of the e-mail a  
183 summary of the content of each notice.

184 (d) View agency forms and other materials submitted to the  
185 department in electronic form and incorporated by reference in  
186 proposed rules.

187 (e) Comment on proposed rules.

188 (3) Publication of material required by paragraph (1) (b)  
189 on the Florida Administrative Register Internet website does not  
190 preclude publication of such material on an agency's website or  
191 by other means.

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

195        (5) Each agency that provides an e-mail alert service to  
 196 inform licensees or other registered recipients of important  
 197 notices shall use such service to notify recipients of each  
 198 notice required under s. 120.54(2) and (3)(a), including, but  
 199 not limited to, notice of rule development, notice of proposed  
 200 rules, and notice of filing rules for adoption, and provide  
 201 internet links to the appropriate rule page on the Secretary of  
 202 State's website, or Internet links to an agency website that  
 203 contains the proposed rule or final rule.

204        (6)~~(5)~~ Any publication of a proposed rule promulgated by  
 205 an agency, whether published in the Florida Administrative  
 206 Register or elsewhere, shall include, along with the rule, the  
 207 name of the person or persons originating such rule, the name of  
 208 the agency head who approved the rule, and the date upon which  
 209 the rule was approved.

210        (7)~~(6)~~ Access to the Florida Administrative Register  
 211 Internet website and its contents, including the e-mail  
 212 notification service, shall be free for the public.

213        (8)~~(7)~~(a) All fees and moneys collected by the Department  
 214 of State under this chapter shall be deposited in the Records  
 215 Management Trust Fund for the purpose of paying for costs  
 216 incurred by the department in carrying out this chapter.

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



221 Section 3. Paragraph (b) of subsection (1), paragraph (a)  
 222 of subsection (2), and subsection (4) of section 120.56, Florida  
 223 Statutes, are amended to read:

224 120.56 Challenges to rules.—

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

227 (b) The petition challenging the validity of a proposed or  
 228 adopted rule or an agency statement defined as a rule under this  
 229 section seeking an administrative determination must state with  
 230 particularity:

231 1. The provisions alleged to be invalid and a statement  
 232 with sufficient explanation of the facts establishing a prima  
 233 facie case of or grounds for the alleged invalidity; and

234 2. Facts sufficient to show that the petitioner person  
 235 challenging a rule is substantially affected by the challenged  
 236 adopted rule or agency statement defined as a rule it, or ~~that~~  
 237 ~~the person challenging a proposed rule~~ would be substantially  
 238 affected by the proposed rule it.

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

240 (a) A substantially affected person may seek an  
 241 administrative determination of the invalidity of a proposed  
 242 rule by filing a petition seeking such a determination with the  
 243 division within 21 days after the date of publication of the  
 244 notice required by s. 120.54(3)(a); within 10 days after the  
 245 final public hearing is held on the proposed rule as provided by  
 246 s. 120.54(3)(e)2.; within 20 days after the statement of  
 247 estimated regulatory costs or revised statement of estimated  
 248 regulatory costs, if applicable, has been prepared and made

249 available as provided in s. 120.541(1)(d); or within 20 days  
250 after the date of publication of the notice required by s.  
251 120.54(3)(d). The petition must state with particularity the  
252 objections to the proposed rule and the reasons that the  
253 proposed rule is an invalid exercise of delegated legislative  
254 authority. The petitioner has the burden of presenting a prima  
255 facie case demonstrating the invalidity of the proposed rule  
256 ~~going forward~~. The agency then has the burden to prove by a  
257 preponderance of the evidence that the proposed rule is not an  
258 invalid exercise of delegated legislative authority as to the  
259 objections raised. ~~A person who is substantially affected by a~~  
260 ~~change in the proposed rule may seek a determination of the~~  
261 ~~validity of such change~~. A person who is not substantially  
262 affected by the proposed rule as initially noticed, but who is  
263 substantially affected by the rule as a result of a change, may  
264 challenge any provision of the resulting rule ~~and is not limited~~  
265 ~~to challenging the change to the proposed rule~~.

266 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
267 RULES; SPECIAL PROVISIONS.—

268 (a) Any person substantially affected by an agency  
269 statement that is an unadopted rule may seek an administrative  
270 determination that the statement violates s. 120.54(1)(a). The  
271 petition shall include the text of the statement or a  
272 description of the statement and shall state with particularity  
273 facts sufficient to show that the statement constitutes an a  
274 unadopted rule ~~under s. 120.52 and that the agency has not~~  
275 ~~adopted the statement by the rulemaking procedure provided by s.~~  
276 ~~120.54~~.

277 (b) The administrative law judge may extend the hearing  
278 date beyond 30 days after assignment of the case for good cause.  
279 Upon notification to the administrative law judge provided  
280 before the final hearing that the agency has published a notice  
281 of rulemaking under s. 120.54(3), such notice shall  
282 automatically operate as a stay of proceedings pending adoption  
283 of the statement as a rule. The administrative law judge may  
284 vacate the stay for good cause shown. A stay of proceedings  
285 pending rulemaking shall remain in effect so long as the agency  
286 is proceeding expeditiously and in good faith to adopt the  
287 statement as a rule. ~~If a hearing is held and the petitioner~~  
288 ~~proves the allegations of the petition, the agency shall have~~  
289 ~~the burden of proving~~

290 (c) The petitioner has the burden of presenting a prima  
291 facie case demonstrating that the agency statement constitutes  
292 an unadopted rule. The agency then has the burden to prove by a  
293 preponderance of the evidence that the statement does not meet  
294 the definition of an unadopted rule, the statement was adopted  
295 as a rule in compliance with s. 120.54, or that rulemaking is  
296 not feasible or not practicable under s. 120.54(1)(a).

297 ~~(d)-(e)~~ The administrative law judge may determine whether  
298 all or part of a statement violates s. 120.54(1)(a). The  
299 decision of the administrative law judge shall constitute a  
300 final order. The division shall transmit a copy of the final  
301 order to the Department of State and the committee. The  
302 Department of State shall publish notice of the final order in  
303 the first available issue of the Florida Administrative Weekly.

304        ~~(e)-(d)~~ If an administrative law judge enters a final order  
305 that all or part of an unadopted rule ~~agency statement~~ violates  
306 s. 120.54(1)(a), the agency must immediately discontinue all  
307 reliance upon the unadopted rule ~~statement~~ or any substantially  
308 similar statement as a basis for agency action.

309        ~~(f)-(e)~~ If proposed rules addressing the challenged  
310 unadopted rule ~~statement~~ are determined to be an invalid  
311 exercise of delegated legislative authority as defined in s.  
312 120.52(8)(b)-(f), the agency must immediately discontinue  
313 reliance on the unadopted rule ~~statement~~ and any substantially  
314 similar statement until rules addressing the subject are  
315 properly adopted, and the administrative law judge shall enter a  
316 final order to that effect.

317        ~~(g)-(f)~~ All proceedings to determine a violation of s.  
318 120.54(1)(a) shall be brought pursuant to this subsection. A  
319 proceeding pursuant to this subsection may be consolidated with  
320 a proceeding under subsection (3) or under any other section of  
321 this chapter. This paragraph does not prevent a party whose  
322 substantial interests have been determined by an agency action  
323 from bringing a proceeding pursuant to s. 120.57(1)(e).

324        Section 4. Paragraph (1) of subsection (2) of section  
325 120.569, Florida Statutes, is amended to read:

326        120.569 Decisions which affect substantial interests.—

327        (2)

328        (1) Unless the time period is waived or extended with the  
329 consent of all parties, the final order in a proceeding which  
330 affects substantial interests must be in writing and include

331 findings of fact, if any, and conclusions of law separately  
 332 stated, and it must be rendered within 90 days:

333 1. After the hearing is concluded, if conducted by the  
 334 agency;

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

341 3. After the agency has received the written and oral  
 342 material it has authorized to be submitted, if there has been no  
 343 hearing.

344 Section 5. Paragraphs (e) and (h) of subsection (1) and  
 345 subsection (2) of section 120.57, Florida Statutes, are amended  
 346 to read:

347 120.57 Additional procedures for particular cases.—

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

350 (e)1. An agency or an administrative law judge may not  
 351 base agency action that determines the substantial interests of  
 352 a party on an unadopted rule or a rule that is an invalid  
 353 exercise of delegated legislative authority. ~~The administrative~~  
 354 ~~law judge shall determine whether an agency statement~~  
 355 ~~constitutes an unadopted rule.~~ This subparagraph does not  
 356 preclude application of valid ~~adopted~~ rules and applicable  
 357 provisions of law to the facts.

358        2. In a matter initiated by agency action proposing to  
359 determine the substantive interests of a party, the party's  
360 timely petition for hearing may challenge the proposed agency  
361 action as based on a rule that is an invalid exercise of  
362 delegated legislative authority or based on an unadopted rule.

363 For challenges brought under this subsection:

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

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

368        c. Section 120.56(4)(c) applies to a challenge alleging an  
369 unadopted rule.

370        d. The agency shall have 15 days from the date of  
371 receiving a challenge under this paragraph to serve the  
372 challenging party with a notice that the agency will continue to  
373 rely upon the rule or the alleged unadopted rule as a basis for  
374 the action determining the party's substantive interests.

375 Failure to timely serve the notice shall constitute a binding  
376 stipulation that the agency shall not rely upon the rule or  
377 unadopted rule further in the proceeding. The agency shall  
378 include a copy of this notice with the referral of the matter to  
379 the division under s. 120.569(2)(a).

380        e. This subparagraph does not preclude the consolidation  
381 of any proceeding under s. 120.56 with any proceeding under this  
382 paragraph.

383        3.2. Notwithstanding subparagraph 1., if an agency  
384 demonstrates that the statute being implemented directs it to  
385 adopt rules, that the agency has not had time to adopt those

386 | rules because the requirement was so recently enacted, and that  
387 | the agency has initiated rulemaking and is proceeding  
388 | expeditiously and in good faith to adopt the required rules,  
389 | then the agency's action may be based upon those unadopted rules  
390 | if, subject to de novo review by the administrative law judge  
391 | determines rulemaking is neither feasible nor practicable and  
392 | the unadopted rules would not constitute an invalid exercise of  
393 | delegated legislative authority if adopted as rules. An  
394 | unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
395 | ~~invalid~~. The agency must demonstrate that the unadopted rule:  
396 |       a. Is within the powers, functions, and duties delegated  
397 | by the Legislature or, if the agency is operating pursuant to  
398 | authority vested in the agency by ~~derived from~~ the State  
399 | Constitution, is within that authority;  
400 |       b. Does not enlarge, modify, or contravene the specific  
401 | provisions of law implemented;  
402 |       c. Is not vague, establishes adequate standards for agency  
403 | decisions, or does not vest unbridled discretion in the agency;  
404 |       d. Is not arbitrary or capricious. A rule is arbitrary if  
405 | it is not supported by logic or the necessary facts; a rule is  
406 | capricious if it is adopted without thought or reason or is  
407 | irrational;  
408 |       e. Is not being applied to the substantially affected  
409 | party without due notice; and  
410 |       f. Does not impose excessive regulatory costs on the  
411 | regulated person, county, or city.  
412 |       4. The administrative law judge shall determine under  
413 | subparagraph 2. whether a rule is an invalid exercise of

414 delegated legislative authority or an agency statement  
415 constitutes an unadopted rule and shall determine whether an  
416 unadopted rule meets the requirements of subparagraph 3. The  
417 determination shall be rendered as a separate final order no  
418 earlier than the date on which the administrative law judge  
419 serves the recommended order.

420 ~~5.3.~~ The recommended and final orders in any proceeding  
421 shall be governed by the provisions of paragraphs (k) and (l),  
422 except that the administrative law judge's determination  
423 ~~regarding an unadopted rule under subparagraph 4. 1. or~~  
424 ~~subparagraph 2. shall be included as a conclusion of law that~~  
425 ~~the agency may not reject not be rejected by the agency unless~~  
426 ~~the agency first determines from a review of the complete~~  
427 ~~record, and states with particularity in the order, that such~~  
428 ~~determination is clearly erroneous or does not comply with~~  
429 ~~essential requirements of law. In any proceeding for review~~  
430 ~~under s. 120.68, if the court finds that the agency's rejection~~  
431 ~~of the determination regarding the unadopted rule does not~~  
432 ~~comport with the provisions of this subparagraph, the agency~~  
433 ~~action shall be set aside and the court shall award to the~~  
434 ~~prevailing party the reasonable costs and a reasonable~~  
435 ~~attorney's fee for the initial proceeding and the proceeding for~~  
436 ~~review.~~

437 (h) Any party to a proceeding in which an administrative  
438 law judge of the Division of Administrative Hearings has final  
439 order authority may move for a summary final order when there is  
440 no genuine issue as to any material fact. A summary final order  
441 shall be rendered if the administrative law judge determines



442 from the pleadings, depositions, answers to interrogatories, and  
443 admissions on file, together with affidavits, if any, that no  
444 genuine issue as to any material fact exists and that the moving  
445 party is entitled as a matter of law to the entry of a final  
446 order. A summary final order shall consist of findings of fact,  
447 if any, conclusions of law, a disposition or penalty, if  
448 applicable, and any other information required by law to be  
449 contained in the final order. This paragraph does not apply to  
450 proceedings authorized by paragraph (e).

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

454 (a) The agency shall:

455 1. Give reasonable notice to affected persons of the  
456 action of the agency, whether proposed or already taken, or of  
457 its decision to refuse action, together with a summary of the  
458 factual, legal, and policy grounds therefor.

459 2. Give parties or their counsel the option, at a  
460 convenient time and place, to present to the agency or hearing  
461 officer written or oral evidence in opposition to the action of  
462 the agency or to its refusal to act, or a written statement  
463 challenging the grounds upon which the agency has chosen to  
464 justify its action or inaction.

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

467 (b) An agency may not base agency action that determines  
468 the substantial interests of a party on an unadopted rule or a  
469 rule that is an invalid exercise of delegated legislative

470 authority. No later than the date provided by the agency under  
471 subparagraph (a)2. for presenting material in opposition to the  
472 agency's proposed action or refusal to act, the party may file a  
473 petition under s. 120.56 challenging the rule, portion of rule,  
474 or unadopted rule on which the agency bases its proposed action  
475 or refusal to act. The filing of a challenge under s. 120.56  
476 pursuant to this paragraph shall stay all proceedings on the  
477 agency's proposed action or refusal to act until entry of the  
478 final order by the administrative law judge, which shall provide  
479 additional notice that the stay of the pending agency action is  
480 terminated and any further stay pending appeal of the final  
481 order must be sought from the appellate court.

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

- 483 1. The notice and summary of grounds.
- 484 2. Evidence received.
- 485 3. All written statements submitted.
- 486 4. Any decision overruling objections.
- 487 5. All matters placed on the record after an ex parte  
488 communication.
- 489 6. The official transcript.
- 490 7. Any decision, opinion, order, or report by the  
491 presiding officer.

492 Section 6. Section 120.573, Florida Statutes, is amended  
493 to read:

494 120.573 Mediation of disputes.—

495 (1) Each announcement of an agency action that affects  
496 substantial interests shall advise whether mediation of the  
497 administrative dispute for the type of agency action announced

498 is available and that choosing mediation does not affect the  
499 right to an administrative hearing. If the agency and all  
500 parties to the administrative action agree to mediation, in  
501 writing, within 10 days after the time period stated in the  
502 announcement for election of an administrative remedy under ss.  
503 120.569 and 120.57, the time limitations imposed by ss. 120.569  
504 and 120.57 shall be tolled to allow the agency and parties to  
505 mediate the administrative dispute. The mediation shall be  
506 concluded within 60 days of such agreement unless otherwise  
507 agreed by the parties. The mediation agreement shall include  
508 provisions for mediator selection, the allocation of costs and  
509 fees associated with mediation, and the mediating parties'  
510 understanding regarding the confidentiality of discussions and  
511 documents introduced during mediation. If mediation results in  
512 settlement of the administrative dispute, the agency shall enter  
513 a final order incorporating the agreement of the parties. If  
514 mediation terminates without settlement of the dispute, the  
515 agency shall notify the parties in writing that the  
516 administrative hearing processes under ss. 120.569 and 120.57  
517 are resumed.

518 (2) Any party to a proceeding conducted pursuant to a  
519 petition seeking an administrative determination of the  
520 invalidity of an existing rule, proposed rule, or unadopted  
521 agency statement under s. 120.56 or a proceeding conducted  
522 pursuant to a petition seeking a declaratory statement under s.  
523 120.565 may request mediation of the dispute under this section.

524 Section 7. Section 120.595, Florida Statutes, is amended  
525 to read:

526 120.595 Attorney ~~Attorney's~~ fees.—

527 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
528 120.57(1).—

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

532 (b) The final order in a proceeding pursuant to s.  
533 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney  
534 fees ~~attorney's fee~~ to the prevailing party if the  
535 administrative law judge determines ~~only where~~ the nonprevailing  
536 adverse party ~~has been determined by the administrative law~~  
537 ~~judge to have~~ participated in the proceeding for an improper  
538 purpose.

539 1.(e) Other than as provided in paragraph (d), in  
540 proceedings pursuant to s. 120.57(1), and upon motion, the  
541 administrative law judge shall determine whether any party  
542 participated in the proceeding for an improper purpose as  
543 defined by this subsection. ~~In making such determination, the~~  
544 ~~administrative law judge shall consider whether~~ The  
545 nonprevailing adverse party shall be presumed to have  
546 participated in the pending proceeding for an improper purpose  
547 if:

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

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

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

559 d. The nonprevailing adverse party has not rebutted the  
560 presumption of participating in the pending proceeding for an  
561 improper purpose.

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

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

569 1. "Improper purpose" means participation in a proceeding  
570 pursuant to s. 120.57(1) primarily to harass or to cause  
571 unnecessary delay or for frivolous purpose or to needlessly  
572 increase the cost of litigation, licensing, or securing the  
573 approval of an activity.

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

576 3. "Nonprevailing adverse party" means a party that has  
577 failed to have substantially changed the outcome of the proposed  
578 or final agency action which is the subject of a proceeding. In  
579 the event that a proceeding results in any substantial  
580 modification or condition intended to resolve the matters raised  
581 in a party's petition, it shall be determined that the party

582 having raised the issue addressed is not a nonprevailing adverse  
583 party. The recommended order shall state whether the change is  
584 substantial for purposes of this subsection. In no event shall  
585 the term "nonprevailing party" or "prevailing party" be deemed  
586 to include any party that has intervened in a previously  
587 existing proceeding to support the position of an agency.

588 (d) For challenges brought under s. 120.57(1)(e), if the  
589 appellate court or the administrative law judge declares a rule  
590 or portion of a rule to be invalid or that the agency statement  
591 is an unadopted rule which does not meet the requirements of s.  
592 120.57(1)(e)4., a judgment or order shall be rendered against  
593 the agency for reasonable costs and reasonable attorney fees,  
594 unless the agency demonstrates that special circumstances exist  
595 which would make the award unjust. Reasonable costs and  
596 reasonable attorney fees shall be awarded only for the period  
597 beginning 15 days after the receipt of the petition for hearing  
598 challenging the rule or unadopted rule. If the agency prevails  
599 in the proceedings, the appellate court or administrative law  
600 judge shall award reasonable costs and reasonable attorney fees  
601 against a party if the appellate court or administrative law  
602 judge determines that a party participated in the proceedings  
603 for an improper purpose as defined by paragraph (c). An award of  
604 attorney fees as provided by this subsection may not exceed  
605 \$50,000.

606 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO  
607 SECTION 120.56(2).—If the appellate court or administrative law  
608 judge declares a proposed rule or portion of a proposed rule  
609 invalid pursuant to s. 120.56(2), a judgment or order shall be

610 rendered against the agency for reasonable costs and reasonable  
 611 attorney ~~attorney's~~ fees, unless the agency demonstrates ~~that~~  
 612 ~~its actions were substantially justified or~~ special  
 613 circumstances exist which would make the award unjust. ~~An~~  
 614 ~~agency's actions are "substantially justified" if there was a~~  
 615 ~~reasonable basis in law and fact at the time the actions were~~  
 616 ~~taken by the agency.~~ If the agency prevails in the proceedings,  
 617 the appellate court or administrative law judge shall award  
 618 reasonable costs and reasonable attorney ~~attorney's~~ fees against  
 619 a party if the appellate court or administrative law judge  
 620 determines that a party participated in the proceedings for an  
 621 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. ~~An~~ ~~No~~  
 622 award of attorney ~~attorney's~~ fees as provided by this subsection  
 623 may not ~~shall~~ exceed \$50,000.

624 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO  
 625 SECTION 120.56(3) AND (5).-If the appellate court or  
 626 administrative law judge declares a rule or portion of a rule  
 627 invalid pursuant to s. 120.56(3) or (5), a judgment or order  
 628 shall be rendered against the agency for reasonable costs and  
 629 reasonable attorney ~~attorney's~~ fees, unless the agency  
 630 demonstrates that ~~its actions were substantially justified or~~  
 631 ~~special circumstances exist which would make the award unjust.~~  
 632 ~~An agency's actions are "substantially justified" if there was a~~  
 633 ~~reasonable basis in law and fact at the time the actions were~~  
 634 ~~taken by the agency.~~ If the agency prevails in the proceedings,  
 635 the appellate court or administrative law judge shall award  
 636 reasonable costs and reasonable attorney ~~attorney's~~ fees against  
 637 a party if the appellate court or administrative law judge

638 determines that a party participated in the proceedings for an  
 639 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~  
 640 award of attorney ~~attorney's~~ fees as provided by this subsection  
 641 may not ~~shall~~ exceed \$50,000.

642 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT  
 643 TO SECTION 120.56(4).—

644 (a) If the appellate court or administrative law judge  
 645 determines that all or part of an unadopted rule ~~agency~~  
 646 ~~statement~~ violates s. 120.54(1)(a), or that the agency must  
 647 immediately discontinue reliance on the unadopted rule ~~statement~~  
 648 and any substantially similar statement pursuant to s.  
 649 120.56(4)(e), a judgment or order shall be entered against the  
 650 agency for reasonable costs and reasonable attorney ~~attorney's~~  
 651 fees, unless the agency demonstrates that the statement is  
 652 required by the Federal Government to implement or retain a  
 653 delegated or approved program or to meet a condition to receipt  
 654 of federal funds.

655 (b) Upon notification to the administrative law judge  
 656 provided before the final hearing that the agency has published  
 657 a notice of rulemaking under s. 120.54(3)(a), such notice shall  
 658 automatically operate as a stay of proceedings pending  
 659 rulemaking. The administrative law judge may vacate the stay for  
 660 good cause shown. A stay of proceedings under this paragraph  
 661 remains in effect so long as the agency is proceeding  
 662 expeditiously and in good faith to adopt the statement as a  
 663 rule. The administrative law judge shall award reasonable costs  
 664 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the  
 665 petitioner before ~~prior to~~ the date the notice was published.



666 ~~unless the agency proves to the administrative law judge that it~~  
667 ~~did not know and should not have known that the statement was an~~  
668 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~  
669 ~~and paragraph (a) shall be awarded only upon a finding that the~~  
670 ~~agency received notice that the statement may constitute an~~  
671 ~~unadopted rule at least 30 days before a petition under s.~~  
672 ~~120.56(4) was filed and that the agency failed to publish the~~  
673 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~  
674 ~~addresses the statement within that 30-day period. Notice to the~~  
675 ~~agency may be satisfied by its receipt of a copy of the s.~~  
676 ~~120.56(4) petition, a notice or other paper containing~~  
677 ~~substantially the same information, or a petition filed pursuant~~  
678 ~~to s. 120.54(7)). An award of attorney ~~attorney's~~ fees as~~  
679 provided by this paragraph may not exceed \$50,000.

680 (c) Notwithstanding the provisions of chapter 284, an  
681 award shall be paid from the budget entity of the secretary,  
682 executive director, or equivalent administrative officer of the  
683 agency, and the agency is ~~shall~~ not be entitled to payment of an  
684 award or reimbursement for payment of an award under any  
685 provision of law.

686 (d) If the agency prevails in the proceedings, the  
687 appellate court or administrative law judge shall award  
688 reasonable costs and attorney ~~attorney's~~ fees against a party if  
689 the appellate court or administrative law judge determines that  
690 the party participated in the proceedings for an improper  
691 purpose as defined in paragraph (1) (c) ~~(e)~~ or that the party or  
692 the party's attorney knew or should have known that a claim was  
693 not supported by the material facts necessary to establish the

694 claim or would not be supported by the application of then-  
695 existing law to those material facts.

696 (5) APPEALS.—When there is an appeal, the court in its  
697 discretion may award reasonable attorney ~~attorney's~~ fees and  
698 reasonable costs to the prevailing party if the court finds that  
699 the appeal was frivolous, meritless, or an abuse of the  
700 appellate process, or that the agency action which precipitated  
701 the appeal was a gross abuse of the agency's discretion. Upon  
702 review of agency action that precipitates an appeal, if the  
703 court finds that the agency improperly rejected or modified  
704 findings of fact in a recommended order, the court shall award  
705 reasonable attorney ~~attorney's~~ fees and reasonable costs to a  
706 prevailing appellant for the administrative proceeding and the  
707 appellate proceeding.

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

712 (a) Before filing a petition challenging the validity of a  
713 proposed rule under s. 120.56(2), an adopted rule under s.  
714 120.56(3), or an agency statement defined as an unadopted rule  
715 under s. 120.56(4), the substantially affected person shall  
716 serve the agency head with notice of the proposed challenge. The  
717 notice shall identify the proposed or adopted rule or the  
718 unadopted rule the person proposes to challenge and a brief  
719 explanation of the basis for that challenge. The notice must be  
720 received by the agency head at least 5 days before the filing of

721 a petition under s. 120.56(2), and at least 30 days before the  
722 filing of a petition under s. 120.56(3) or s. 120.56(4).

723 (b) Reasonable costs and reasonable attorney fees shall be  
724 awarded only for the period beginning after the date on which  
725 the agency head receives the notice of invalidity under  
726 paragraph (a).

727 (c) Within the time limits specified in paragraph (a), if  
728 the agency provides the substantially affected person with  
729 written notice that the agency will not adopt the proposed rule  
730 or will not rely upon the adopted rule or the agency statement  
731 defined as an unadopted rule until after the agency has complied  
732 with the requirements of s. 120.54 to amend the proposed rule or  
733 the adopted rule or adopt the unadopted rule, such written  
734 notice shall constitute a special circumstance under this  
735 section.

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

738 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For  
739 purposes of this chapter, s. 57.105(5), and s. 57.111, in  
740 addition to an award of reasonable attorney fees and reasonable  
741 costs, the prevailing party shall also recover reasonable  
742 attorney fees and reasonable costs incurred in litigating  
743 entitlement to, and the determination or quantification of,  
744 reasonable attorney fees and reasonable costs for the underlying  
745 matter. Reasonable attorney fees and reasonable costs awarded  
746 for litigating entitlement to, and the determination or  
747 quantification of, reasonable attorney fees and reasonable costs

748 for the underlying matter are not subject to the limitations on  
749 amounts provided in this chapter or s. 57.111.

750 (8)~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,  
751 including ss. 57.105 and 57.111, authorize the award of attorney  
752 attorney's fees and costs in administrative proceedings. Nothing  
753 in this section shall affect the availability of attorney  
754 attorney's fees and costs as provided in those sections.

755 Section 8. Subsections (1), (2), and (9) of section  
756 120.68, Florida Statutes, are amended to read:

757 120.68 Judicial review.—

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

760 (b) A preliminary, procedural, or intermediate order of  
761 the agency or of an administrative law judge of the Division of  
762 Administrative Hearings, or a final order under s.  
763 120.57(1)(e)4., is immediately reviewable if review of the final  
764 agency decision would not provide an adequate remedy.

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

768 (b) All proceedings shall be instituted by filing a notice  
769 of appeal or petition for review in accordance with the Florida  
770 Rules of Appellate Procedure within 30 days after the date that  
771 rendition of the order being appealed was filed with the agency  
772 clerk. Such time is hereby extended for any party 10 days from  
773 receipt by such party of the notice of the order, if such notice  
774 is received after the 25th day from the filing of the order. If  
775 the appeal is of an order rendered in a proceeding initiated

776 | under s. 120.56, or a final order under s. 120.57(1)(e)4., the  
777 | agency whose rule is being challenged shall transmit a copy of  
778 | the notice of appeal to the committee.

779 |       ~~(c)(b)~~ When proceedings under this chapter are  
780 | consolidated for final hearing and the parties to the  
781 | consolidated proceeding seek review of final or interlocutory  
782 | orders in more than one district court of appeal, the courts of  
783 | appeal are authorized to transfer and consolidate the review  
784 | proceedings. The court may transfer such appellate proceedings  
785 | on its own motion, upon motion of a party to one of the  
786 | appellate proceedings, or by stipulation of the parties to the  
787 | appellate proceedings. In determining whether to transfer a  
788 | proceeding, the court may consider such factors as the  
789 | interrelationship of the parties and the proceedings, the  
790 | desirability of avoiding inconsistent results in related  
791 | matters, judicial economy, and the burden on the parties of  
792 | reproducing the record for use in multiple appellate courts.

793 |       (9) No petition challenging an agency rule as an invalid  
794 | exercise of delegated legislative authority shall be instituted  
795 | pursuant to this section, except to review an order entered  
796 | pursuant to a proceeding under s. 120.56, under s.  
797 | 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's  
798 | findings of immediate danger, necessity, and procedural fairness  
799 | prerequisite to the adoption of an emergency rule pursuant to s.  
800 | 120.54(4), unless the sole issue presented by the petition is  
801 | the constitutionality of a rule and there are no disputed issues  
802 | of fact.

803 |       Section 9. Section 120.695, Florida Statutes, is amended

804 to read:

805       120.695 Notice of noncompliance; designation of minor  
806 violation rules.—

807       (1) It is the policy of the state that the purpose of  
808 regulation is to protect the public by attaining compliance with  
809 the policies established by the Legislature. Fines and other  
810 penalties may be provided in order to assure compliance;  
811 however, the collection of fines and the imposition of penalties  
812 are intended to be secondary to the primary goal of attaining  
813 compliance with an agency's rules. It is the intent of the  
814 Legislature that an agency charged with enforcing rules shall  
815 issue a notice of noncompliance as its first response to a minor  
816 violation of a rule in any instance in which it is reasonable to  
817 assume that the violator was unaware of the rule or unclear as  
818 to how to comply with it.

819       (2) (a) Each agency shall issue a notice of noncompliance  
820 as a first response to a minor violation of a rule. A "notice of  
821 noncompliance" is a notification by the agency charged with  
822 enforcing the rule issued to the person or business subject to  
823 the rule. A notice of noncompliance may not be accompanied with  
824 a fine or other disciplinary penalty. It must identify the  
825 specific rule that is being violated, provide information on how  
826 to comply with the rule, and specify a reasonable time for the  
827 violator to comply with the rule. A rule is agency action that  
828 regulates a business, occupation, or profession, or regulates a  
829 person operating a business, occupation, or profession, and  
830 that, if not complied with, may result in a disciplinary  
831 penalty.

832 (b) Each agency shall review all of its rules and  
833 designate those for which a violation would be a minor violation  
834 and for which a notice of noncompliance must be the first  
835 enforcement action taken against a person or business subject to  
836 regulation. A violation of a rule is a minor violation if it  
837 does not result in economic or physical harm to a person or  
838 adversely affect the public health, safety, or welfare or create  
839 a significant threat of such harm. ~~If an agency under the~~  
840 ~~direction of a cabinet officer mails to each licensee a notice~~  
841 ~~of the designated rules at the time of licensure and at least~~  
842 ~~annually thereafter, the provisions of paragraph (a) may be~~  
843 ~~exercised at the discretion of the agency. Such notice shall~~  
844 ~~include a subject-matter index of the rules and information on~~  
845 ~~how the rules may be obtained.~~

846 (c) ~~The agency's review and designation must be completed~~  
847 ~~by December 1, 1995;~~

848 1. No later than June 30, 2014, and after such date within  
849 3 months after any request of the rules ombudsman, each agency  
850 shall review under the direction of the Governor shall make a  
851 report to the Governor, and each agency under the joint  
852 direction of the Governor and Cabinet shall report to the  
853 Governor and Cabinet by January 1, 1996, on which of its rules  
854 and certify to the President of the Senate, the Speaker of the  
855 House of Representatives, the Administrative Procedures  
856 Committee, and the rules ombudsman those rules that have been  
857 designated as rules the violation of which would be a minor  
858 violation under paragraph (b), consistent with the legislative  
859 intent stated in subsection (1). For each agency failing to

860 timely complete the review and file the certification as  
861 required by this section, the rules ombudsman shall promptly  
862 report such failure to the Governor, the President of the  
863 Senate, the Speaker of the House of Representatives, and the  
864 Administrative Procedures Committee.

865 2. Beginning on July 1, 2014, each agency shall:

866 a. Publish all rules of that agency designated as rules  
867 the violation of which would be a minor violation, either as a  
868 complete list on the agency's Internet web page or by  
869 incorporation of the designations in the agency's disciplinary  
870 guidelines adopted as a rule.

871 b. Ensure that all investigative and enforcement personnel  
872 are knowledgeable of the agency's designations under this  
873 section.

874 c. For each rule filed for adoption the agency head shall  
875 certify whether any part of the rule is designated as one the  
876 violation of which would be a minor violation and shall update  
877 the listing required by sub-subparagraph a.

878 (d) The Governor or the Governor and Cabinet, as  
879 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
880 and designation effects of each agency subject to the direction  
881 and supervision of such authority and may direct ~~apply~~ a  
882 different designation than that applied by such ~~the~~ agency.

883 (e) Notwithstanding s. 120.52(1)(a), this section does not  
884 apply to:

885 1. The Department of Corrections;

886 2. Educational units;

887 3. The regulation of law enforcement personnel; or



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888 |       4. The regulation of teachers.

889 |       (f) Designation pursuant to this section is not subject to  
890 | challenge under this chapter.

891 |       Section 10. This act shall take effect July 1, 2013.