

By Senator Brandes

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1 A bill to be entitled

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

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

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

27 120.52 Definitions.—As used in this act:

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

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

33 120.56 Challenges to rules.—

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

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

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

44 (b) The administrative law judge may extend the hearing  
45 date beyond 30 days after assignment of the case for good cause.  
46 Upon notification to the administrative law judge provided  
47 before the final hearing that the agency has published a notice  
48 of rulemaking under s. 120.54(3), such notice shall  
49 automatically operate as a stay of proceedings pending adoption  
50 of the statement as a rule. The administrative law judge may  
51 vacate the stay for good cause shown. A stay of proceedings  
52 pending rulemaking shall remain in effect so long as the agency  
53 is proceeding expeditiously and in good faith to adopt the  
54 statement as a rule. The petitioner has the burden of going  
55 forward. ~~If a hearing is held and the petitioner proves the~~  
56 ~~allegations of the petition,~~ The agency then has ~~shall have~~ the  
57 burden to prove by a preponderance of the evidence that the  
58 statement does not constitute a rule under s. 120.52, that the

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59 agency adopted the statement by the rulemaking procedure  
60 provided by s. 120.54, or ~~of proving~~ that rulemaking is not  
61 feasible or not practicable under s. 120.54(1)(a).

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

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

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

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

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

76 (c) In proceedings pursuant to s. 120.57(1), and upon  
77 motion, the administrative law judge shall determine whether any  
78 party participated in the proceeding for an improper purpose as  
79 defined by this subsection. In making such determination, the  
80 administrative law judge shall consider whether the  
81 nonprevailing adverse party has participated in two or more  
82 other such proceedings involving the same prevailing party and  
83 the same project as an adverse party and in which such two or  
84 more proceedings the nonprevailing adverse party did not  
85 establish either the factual or legal merits of its position,  
86 and shall consider whether the factual or legal position  
87 asserted in the instant proceeding would have been cognizable in

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88 the previous proceedings. In such event, it shall be rebuttably  
89 presumed that the nonprevailing adverse party participated in  
90 the pending proceeding for an improper purpose.

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

95 (e) For the purpose of this subsection:

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

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

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

115 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION  
116 120.56(2).—If the appellate court or administrative law judge

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

133 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION  
134 120.56(3) AND (5).—If the appellate court or administrative law  
135 judge declares a rule or portion of a rule invalid pursuant to  
136 s. 120.56(3) or (5), a judgment or order shall be rendered  
137 against the agency for reasonable costs and reasonable attorney  
138 ~~attorney's~~ fees, unless the agency demonstrates that its actions  
139 were substantially justified or special circumstances exist  
140 which would make the award unjust. An agency's actions are  
141 "substantially justified" if there was a reasonable basis in law  
142 and fact at the time the actions were taken by the agency. If  
143 the agency prevails in the proceedings, the appellate court or  
144 administrative law judge shall award reasonable costs and  
145 reasonable attorney ~~attorney's~~ fees against a party if the

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146 appellate court or administrative law judge determines that a  
147 party participated in the proceedings for an improper purpose as  
148 defined by paragraph (1) (e). An ~~No~~ award of attorney ~~attorney's~~  
149 fees as provided by this subsection may not ~~shall~~ exceed  
150 \$50,000.

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

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

163 (b) Upon notification to the administrative law judge  
164 provided before the final hearing that the agency has published  
165 a notice of rulemaking under s. 120.54(3) (a), such notice shall  
166 automatically operate as a stay of proceedings pending  
167 rulemaking. The administrative law judge may vacate the stay for  
168 good cause shown. A stay of proceedings under this paragraph  
169 remains in effect so long as the agency is proceeding  
170 expeditiously and in good faith to adopt the statement as a  
171 rule. The administrative law judge shall award reasonable costs  
172 and reasonable attorney ~~attorney's~~ fees accrued by the  
173 petitioner before ~~prior to~~ the date the notice was published,  
174 ~~unless the agency proves to the administrative law judge that it~~

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175 ~~did not know and should not have known that the statement was an~~  
176 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~  
177 ~~and paragraph (a) shall be awarded only upon a finding that the~~  
178 ~~agency received notice that the statement may constitute an~~  
179 ~~unadopted rule at least 30 days before a petition under s.~~  
180 ~~120.56(4) was filed and that the agency failed to publish the~~  
181 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~  
182 ~~addresses the statement within that 30-day period. Notice to the~~  
183 ~~agency may be satisfied by its receipt of a copy of the s.~~  
184 ~~120.56(4) petition, a notice or other paper containing~~  
185 ~~substantially the same information, or a petition filed pursuant~~  
186 ~~to s. 120.54(7). An award of attorney ~~attorney's~~ fees as~~  
187 ~~provided by this paragraph may not exceed \$50,000.~~

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

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

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

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

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

224 120.573 Mediation of disputes.—

225 (1) Each announcement of an agency action that affects  
226 substantial interests shall advise whether mediation of the  
227 administrative dispute for the type of agency action announced  
228 is available and that choosing mediation does not affect the  
229 right to an administrative hearing. If the agency and all  
230 parties to the administrative action agree to mediation, in  
231 writing, within 10 days after the time period stated in the  
232 announcement for election of an administrative remedy under ss.



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233 120.569 and 120.57, the time limitations imposed by ss. 120.569  
234 and 120.57 shall be tolled to allow the agency and parties to  
235 mediate the administrative dispute. The mediation shall be  
236 concluded within 60 days of such agreement unless otherwise  
237 agreed by the parties. The mediation agreement shall include  
238 provisions for mediator selection, the allocation of costs and  
239 fees associated with mediation, and the mediating parties'  
240 understanding regarding the confidentiality of discussions and  
241 documents introduced during mediation. If mediation results in  
242 settlement of the administrative dispute, the agency shall enter  
243 a final order incorporating the agreement of the parties. If  
244 mediation terminates without settlement of the dispute, the  
245 agency shall notify the parties in writing that the  
246 administrative hearing processes under ss. 120.569 and 120.57  
247 are resumed.

248 (2) Any party to a proceeding conducted pursuant to a  
249 petition seeking an administration determination of the  
250 invalidity of an existing rule, proposed rule, or unadopted  
251 agency statement under s. 120.56 or a proceeding conducted  
252 pursuant to a petition seeking a declaratory statement under s.  
253 120.565 may request mediation of the dispute under this section.

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

256 120.695 Notice of noncompliance.—

257 (2) (a) Each agency shall issue a notice of noncompliance as  
258 a first response to a minor violation of a rule. A "notice of  
259 noncompliance" is a notification by the agency charged with  
260 enforcing the rule issued to the person or business subject to  
261 the rule. A notice of noncompliance may not be accompanied with

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262 a fine or other disciplinary penalty. It must identify the  
263 specific rule that is being violated, provide information on how  
264 to comply with the rule, and specify a reasonable time for the  
265 violator to comply with the rule. A rule is agency action that  
266 regulates a business, occupation, or profession, or regulates a  
267 person operating a business, occupation, or profession, and  
268 that, if not complied with, may result in a disciplinary  
269 penalty.

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

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

290 ~~(d) The Governor or the Governor and Cabinet, as~~

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291 ~~appropriate pursuant to paragraph (c), may evaluate the review~~  
292 ~~and designation effects of each agency and may apply a different~~  
293 ~~designation than that applied by the agency.~~

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

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

298 Section 6. Paragraph (a) of subsection (1) of section  
299 420.9072, Florida Statutes, is amended to read:

300 420.9072 State Housing Initiatives Partnership Program.—The  
301 State Housing Initiatives Partnership Program is created for the  
302 purpose of providing funds to counties and eligible  
303 municipalities as an incentive for the creation of local housing  
304 partnerships, to expand production of and preserve affordable  
305 housing, to further the housing element of the local government  
306 comprehensive plan specific to affordable housing, and to  
307 increase housing-related employment.

308 (1) (a) In addition to the legislative findings set forth in  
309 s. 420.6015, the Legislature finds that affordable housing is  
310 most effectively provided by combining available public and  
311 private resources to conserve and improve existing housing and  
312 provide new housing for very-low-income households, low-income  
313 households, and moderate-income households. The Legislature  
314 intends to encourage partnerships in order to secure the  
315 benefits of cooperation by the public and private sectors and to  
316 reduce the cost of housing for the target group by effectively  
317 combining all available resources and cost-saving measures. The  
318 Legislature further intends that local governments achieve this  
319 combination of resources by encouraging active partnerships

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320 between government, lenders, builders and developers, real  
321 estate professionals, advocates for low-income persons, and  
322 community groups to produce affordable housing and provide  
323 related services. Extending the partnership concept to encompass  
324 cooperative efforts among small counties as defined in s. 120.52  
325 ~~120.52(19)~~, and among counties and municipalities is  
326 specifically encouraged. Local governments are also intended to  
327 establish an affordable housing advisory committee to recommend  
328 monetary and nonmonetary incentives for affordable housing as  
329 provided in s. 420.9076.

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

332 420.9075 Local housing assistance plans; partnerships.—

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

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349 administrative costs.

350 Section 8. Paragraph (d) of subsection (1) of section  
351 443.091, Florida Statutes, is amended to read:

352 443.091 Benefit eligibility conditions.—

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

356 (d) She or he is able to work and is available for work. In  
357 order to assess eligibility for a claimed week of unemployment,  
358 the department shall develop criteria to determine a claimant's  
359 ability to work and availability for work. A claimant must be  
360 actively seeking work in order to be considered available for  
361 work. This means engaging in systematic and sustained efforts to  
362 find work, including contacting at least five prospective  
363 employers for each week of unemployment claimed. The department  
364 may require the claimant to provide proof of such efforts to the  
365 one-stop career center as part of reemployment services. The  
366 department shall conduct random reviews of work search  
367 information provided by claimants. As an alternative to  
368 contacting at least five prospective employers for any week of  
369 unemployment claimed, a claimant may, for that same week, report  
370 in person to a one-stop career center to meet with a  
371 representative of the center and access reemployment services of  
372 the center. The center shall keep a record of the services or  
373 information provided to the claimant and shall provide the  
374 records to the department upon request by the department.

375 However:

376 1. Notwithstanding any other provision of this paragraph or  
377 paragraphs (b) and (e), an otherwise eligible individual may not

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378 be denied benefits for any week because she or he is in training  
379 with the approval of the department, or by reason of s.  
380 443.101(2) relating to failure to apply for, or refusal to  
381 accept, suitable work. Training may be approved by the  
382 department in accordance with criteria prescribed by rule. A  
383 claimant's eligibility during approved training is contingent  
384 upon satisfying eligibility conditions prescribed by rule.

385       2. Notwithstanding any other provision of this chapter, an  
386 otherwise eligible individual who is in training approved under  
387 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be  
388 determined ineligible or disqualified for benefits due to  
389 enrollment in such training or because of leaving work that is  
390 not suitable employment to enter such training. As used in this  
391 subparagraph, the term "suitable employment" means work of a  
392 substantially equal or higher skill level than the worker's past  
393 adversely affected employment, as defined for purposes of the  
394 Trade Act of 1974, as amended, the wages for which are at least  
395 80 percent of the worker's average weekly wage as determined for  
396 purposes of the Trade Act of 1974, as amended.

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

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

404       5. The work search requirements of this paragraph do not  
405 apply to persons who are unemployed as a result of a temporary  
406 layoff or who are claiming benefits under an approved short-time

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407 compensation plan as provided in s. 443.1116.

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

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