

By the Committee on Governmental Oversight and Accountability;
and Senator Brandes

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1 A bill to be entitled
2 An act relating to governmental procedures and legal
3 proceedings; amending s. 57.111, F.S.; revising the
4 definition of the term "small business party";
5 providing conditions under which a proceeding is not
6 substantially justified for purposes of an award under
7 the Florida Equal Access to Justice Act; amending s.
8 119.12, F.S.; specifying what constitutes reasonable
9 costs of enforcement in a civil action against an
10 agency to enforce ch. 119, F.S.; amending s. 120.52,
11 F.S.; defining the term "small business" as used in
12 the Administrative Procedure Act; amending s. 120.55,
13 F.S.; providing for publication of notices of rule
14 development and of rules filed for adoption; providing
15 additional notice of rule development, proposals, and
16 adoptions; amending s. 120.56, F.S.; providing that
17 the petitioner challenging a proposed rule or
18 unadopted agency statement has the burden of
19 establishing a prima facie case; amending s. 120.569,
20 F.S.; providing for extension of time to render final
21 agency action in certain circumstances; amending s.
22 120.57, F.S.; conforming proceedings opposing agency
23 action based on an invalid rule or unadopted rule to
24 proceedings for challenging rules; requiring notice of
25 whether the agency will rely on the challenged rule or
26 unadopted rule; providing for the administrative law
27 judge to make certain findings and enter a final order
28 on the validity of the rule or the use of an unadopted
29 rule; providing for stay of proceedings not involving

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30 disputed issues of fact upon timely filing of rule
31 challenge; amending s. 120.573, F.S.; authorizing any
32 party to request mediation of rule challenge and
33 declaratory statement proceedings; amending s.
34 120.595, F.S.; providing for an award of attorney fees
35 and costs in specified challenges to agency action;
36 removing certain exceptions from requirements that
37 attorney fees and costs be rendered against the agency
38 in proceedings in which the petitioner prevails in a
39 rule challenge; requiring service of notice of
40 invalidity to an agency before bringing a rule
41 challenge as a condition precedent to award of
42 attorney fees and costs; providing for award of
43 additional attorney fees and costs for litigating
44 entitlement to and amount of attorney fees and costs
45 in administrative actions; providing that such awards
46 of additional attorney fees and costs are not subject
47 to certain statutory limits; amending s. 120.68, F.S.;
48 providing for appellate review of orders rendered in
49 challenges to specified rules or unadopted rules;
50 amending s. 120.695, F.S.; providing for the
51 designation of minor violations; requiring agency
52 review and certification rules, a violation of which
53 would be considered a minor violation, by a certain
54 date; providing sanctions for failure to provide
55 certification; requiring certification of minor
56 violation status for rules adopted after a certain
57 date; requiring public notice; providing certain
58 exclusions; amending ss. 420.9072, 420.9075, and

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59 443.091, F.S.; conforming cross-references; providing
60 an effective date.

61

62 Be It Enacted by the Legislature of the State of Florida:

63

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

66 57.111 Civil actions and administrative proceedings
67 initiated by state agencies; attorney ~~attorneys'~~ fees and
68 costs.—

69 (3) As used in this section:

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

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

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

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

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88 2. Any small business party as defined in subparagraph 1.,
89 without regard to the number of its employees or its net worth,
90 in any action under s. 72.011 or in any administrative
91 proceeding under that section to contest the legality of any
92 assessment of tax imposed for the sale or use of services as
93 provided in chapter 212, or interest thereon, or penalty
94 therefor; or

95 3. Any small business as defined in s. 288.703 in any
96 administrative proceeding pursuant to chapter 120 and any appeal
97 thereof.

98 (e) A proceeding is "substantially justified" if it had a
99 reasonable basis in law and fact at the time it was initiated by
100 a state agency. A proceeding is not substantially justified if
101 the agency action involves identical or substantially similar
102 facts and circumstances and the specified law, rule, or order on
103 which the party substantially affected by the agency action
104 petitioned for a declaratory statement under s. 120.565, and:

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

107 2. The agency denied the petition under s. 120.565 before
108 initiating the agency action against the substantially affected
109 party.

110 Section 2. Section 119.12, Florida Statutes, is amended to
111 read:

112 119.12 Attorney ~~Attorney's~~ fees.—If a civil action is filed
113 against an agency to enforce the provisions of this chapter and
114 if the court determines that such agency unlawfully refused to
115 permit a public record to be inspected or copied, the court
116 shall assess and award, against the agency responsible, the

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117 reasonable costs of enforcement. The reasonable costs of
118 enforcement include, but are not limited to, including
119 reasonable attorney ~~attorneys'~~ fees, including those reasonable
120 attorney fees incurred in litigating entitlement to, and the
121 determination or quantification of, attorney fees for the
122 underlying matter.

123 Section 3. Present subsections (18) through (22) of section
124 120.52, Florida Statutes, are renumbered as subsections (19)
125 through (23), respectively, and a new subsection (18) is added
126 to that section, to read:

127 120.52 Definitions.—As used in this act:

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

130 Section 4. Section 120.55, Florida Statutes, is amended to
131 read:

132 120.55 Publication.—

133 (1) The Department of State shall:

134 (a)1. Through a continuous revision and publication system,
135 compile and publish electronically, on an Internet website
136 managed by the department, the "Florida Administrative Code."
137 The Florida Administrative Code shall contain all rules adopted
138 by each agency, citing the grant of rulemaking authority and the
139 specific law implemented pursuant to which each rule was
140 adopted, all history notes as authorized in s. 120.545(7),
141 complete indexes to all rules contained in the code, and any
142 other material required or authorized by law or deemed useful by
143 the department. The electronic code shall display each rule
144 chapter currently in effect in browse mode and allow full text
145 search of the code and each rule chapter. The department may

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146 contract with a publishing firm for a printed publication;
147 however, the department shall retain responsibility for the code
148 as provided in this section. The electronic publication shall be
149 the official compilation of the administrative rules of this
150 state. The Department of State shall retain the copyright over
151 the Florida Administrative Code.

152 2. Rules general in form but applicable to only one school
153 district, community college district, or county, or a part
154 thereof, or state university rules relating to internal
155 personnel or business and finance shall not be published in the
156 Florida Administrative Code. Exclusion from publication in the
157 Florida Administrative Code shall not affect the validity or
158 effectiveness of such rules.

159 3. At the beginning of the section of the code dealing with
160 an agency that files copies of its rules with the department,
161 the department shall publish the address and telephone number of
162 the executive offices of each agency, the manner by which the
163 agency indexes its rules, a listing of all rules of that agency
164 excluded from publication in the code, and a statement as to
165 where those rules may be inspected.

166 4. Forms shall not be published in the Florida
167 Administrative Code; but any form which an agency uses in its
168 dealings with the public, along with any accompanying
169 instructions, shall be filed with the committee before it is
170 used. Any form or instruction which meets the definition of
171 "rule" provided in s. 120.52 shall be incorporated by reference
172 into the appropriate rule. The reference shall specifically
173 state that the form is being incorporated by reference and shall
174 include the number, title, and effective date of the form and an

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175 explanation of how the form may be obtained. Each form created
176 by an agency which is incorporated by reference in a rule notice
177 of which is given under s. 120.54(3)(a) after December 31, 2007,
178 must clearly display the number, title, and effective date of
179 the form and the number of the rule in which the form is
180 incorporated.

181 5. The department shall allow adopted rules and material
182 incorporated by reference to be filed in electronic form as
183 prescribed by department rule. When a rule is filed for adoption
184 with incorporated material in electronic form, the department's
185 publication of the Florida Administrative Code on its Internet
186 website must contain a hyperlink from the incorporating
187 reference in the rule directly to that material. The department
188 may not allow hyperlinks from rules in the Florida
189 Administrative Code to any material other than that filed with
190 and maintained by the department, but may allow hyperlinks to
191 incorporated material maintained by the department from the
192 adopting agency's website or other sites.

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

197 1. All notices required under s. 120.54(2) and (3)(a) ~~by s.~~
198 ~~120.54(3)(a)~~, showing the text of all rules proposed for
199 consideration.

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

203 3. A notice of each request for authorization to amend or

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204 repeal an existing uniform rule or for the adoption of new
205 uniform rules.

206 4. Notice of petitions for declaratory statements or
207 administrative determinations.

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

210 6. A listing of rules filed for adoption in the previous 7
211 calendar days.

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

215 ~~8.6.~~ Any other material required or authorized by law or
216 deemed useful by the department.

217
218 The department may contract with a publishing firm for a printed
219 publication of the Florida Administrative Register and make
220 copies available on an annual subscription basis.

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

223 (d) Charge each agency using the Florida Administrative
224 Register a space rate to cover the costs related to the Florida
225 Administrative Register and the Florida Administrative Code.

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

228 (2) The Florida Administrative Register Internet website
229 must allow users to:

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

232 (b) Search a database that makes available all notices

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233 published on the website for a period of at least 5 years.

234 (c) Subscribe to an automated e-mail notification of
235 selected notices to be sent out before or concurrently with
236 publication of the electronic Florida Administrative Register.
237 Such notification must include in the text of the e-mail a
238 summary of the content of each notice.

239 (d) View agency forms and other materials submitted to the
240 department in electronic form and incorporated by reference in
241 proposed rules.

242 (e) Comment on proposed rules.

243 (3) Publication of material required by paragraph (1)(b) on
244 the Florida Administrative Register Internet website does not
245 preclude publication of such material on an agency's website or
246 by other means.

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

250 (5) Each agency that provides an e-mail alert service to
251 inform licensees or other registered recipients of important
252 notices shall use such service to notify recipients of each
253 notice required under s. 120.54(2) and (3)(a), including, but
254 not limited to, notice of rule development, notice of proposed
255 rules, and notice of filing rules for adoption, and provide
256 Internet links to the appropriate rule page on the Secretary of
257 State's website, or Internet links to an agency website that
258 contains the proposed rule or final rule.

259 (6) ~~(5)~~ Any publication of a proposed rule promulgated by an
260 agency, whether published in the Florida Administrative Register
261 or elsewhere, shall include, along with the rule, the name of

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262 the person or persons originating such rule, the name of the
 263 agency head who approved the rule, and the date upon which the
 264 rule was approved.

265 (7)~~(6)~~ Access to the Florida Administrative Register
 266 Internet website and its contents, including the e-mail
 267 notification service, shall be free for the public.

268 (8)~~(7)~~(a) All fees and moneys collected by the Department
 269 of State under this chapter shall be deposited in the Records
 270 Management Trust Fund for the purpose of paying for costs
 271 incurred by the department in carrying out this chapter.

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

276 Section 5. Paragraph (b) of subsection (1), paragraph (a)
 277 of subsection (2), and subsection (4) of section 120.56, Florida
 278 Statutes, are amended to read:

279 120.56 Challenges to rules.—

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

282 (b) The petition challenging the validity of a proposed or
 283 adopted rule or an agency statement defined as a rule under this
 284 section ~~seeking an administrative determination~~ must state with
 285 particularity:

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

289 2. Facts sufficient to show that the petitioner ~~person~~
 290 ~~challenging a rule~~ is substantially affected by the challenged

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291 adopted rule or agency statement defined as a rule ~~it, or that~~
292 ~~the person challenging a proposed rule~~ would be substantially
293 affected by the proposed rule ~~it~~.

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

295 (a) A substantially affected person may seek an
296 administrative determination of the invalidity of a proposed
297 rule by filing a petition seeking such a determination with the
298 division within 21 days after the date of publication of the
299 notice required by s. 120.54(3)(a); within 10 days after the
300 final public hearing is held on the proposed rule as provided by
301 s. 120.54(3)(e)2.; within 20 days after the statement of
302 estimated regulatory costs or revised statement of estimated
303 regulatory costs, if applicable, has been prepared and made
304 available as provided in s. 120.541(1)(d); or within 20 days
305 after the date of publication of the notice required by s.
306 120.54(3)(d). The petition must state with particularity the
307 objections to the proposed rule and the reasons that the
308 proposed rule is an invalid exercise of delegated legislative
309 authority. The petitioner has the burden of presenting a prima
310 facie case demonstrating the invalidity of the proposed rule
311 ~~going forward~~. The agency then has the burden to prove by a
312 preponderance of the evidence that the proposed rule is not an
313 invalid exercise of delegated legislative authority as to the
314 objections raised. ~~A person who is substantially affected by a~~
315 ~~change in the proposed rule may seek a determination of the~~
316 ~~validity of such change~~. A person who is not substantially
317 affected by the proposed rule as initially noticed, but who is
318 substantially affected by the rule as a result of a change, may
319 challenge any provision of the resulting rule ~~and is not limited~~

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320 ~~to challenging the change to the proposed rule.~~

321 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
322 RULES; SPECIAL PROVISIONS.—

323 (a) Any person substantially affected by an agency
324 statement that is an unadopted rule may seek an administrative
325 determination that the statement violates s. 120.54(1)(a). The
326 petition shall include the text of the statement or a
327 description of the statement and shall state with particularity
328 facts sufficient to show that the statement constitutes an a
329 unadopted rule under s. 120.52 and that the agency has not
330 adopted the statement by the rulemaking procedure provided by s.
331 120.54.

332 (b) The administrative law judge may extend the hearing
333 date beyond 30 days after assignment of the case for good cause.
334 Upon notification to the administrative law judge provided
335 before the final hearing that the agency has published a notice
336 of rulemaking under s. 120.54(3), such notice shall
337 automatically operate as a stay of proceedings pending adoption
338 of the statement as a rule. The administrative law judge may
339 vacate the stay for good cause shown. A stay of proceedings
340 pending rulemaking shall remain in effect so long as the agency
341 is proceeding expeditiously and in good faith to adopt the
342 statement as a rule. ~~If a hearing is held and the petitioner~~
343 ~~proves the allegations of the petition, the agency shall have~~
344 ~~the burden of proving~~

345 (c) The petitioner has the burden of presenting a prima
346 facie case demonstrating that the agency statement constitutes
347 an unadopted rule. The agency then has the burden to prove by a
348 preponderance of the evidence that the statement does not meet

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349 the definition of an unadopted rule, that the statement was
350 adopted as a rule in compliance with s. 120.54, or that
351 rulemaking is not feasible or not practicable under s.
352 120.54(1)(a).

353 (d)~~(e)~~ The administrative law judge may determine whether
354 all or part of a statement violates s. 120.54(1)(a). The
355 decision of the administrative law judge shall constitute a
356 final order. The division shall transmit a copy of the final
357 order to the Department of State and the committee. The
358 Department of State shall publish notice of the final order in
359 the first available issue of the Florida Administrative Weekly.

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

365 (f)~~(e)~~ If proposed rules addressing the challenged
366 unadopted rule ~~statement~~ are determined to be an invalid
367 exercise of delegated legislative authority as defined in s.
368 120.52(8)(b)-(f), the agency must immediately discontinue
369 reliance on the unadopted rule ~~statement~~ and any substantially
370 similar statement until rules addressing the subject are
371 properly adopted, and the administrative law judge shall enter a
372 final order to that effect.

373 (g)~~(f)~~ All proceedings to determine a violation of s.
374 120.54(1)(a) shall be brought pursuant to this subsection. A
375 proceeding pursuant to this subsection may be consolidated with
376 a proceeding under subsection (3) or under any other section of
377 this chapter. This paragraph does not prevent a party whose

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378 substantial interests have been determined by an agency action
379 from bringing a proceeding pursuant to s. 120.57(1)(e).

380 Section 6. Paragraph (1) of subsection (2) of section
381 120.569, Florida Statutes, is amended to read:

382 120.569 Decisions which affect substantial interests.—

383 (2)

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

389 1. After the hearing is concluded, if conducted by the
390 agency;

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

397 3. After the agency has received the written and oral
398 material it has authorized to be submitted, if there has been no
399 hearing.

400 Section 7. Paragraphs (e) and (h) of subsection (1) and
401 subsection (2) of section 120.57, Florida Statutes, are amended
402 to read:

403 120.57 Additional procedures for particular cases.—

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

406 (e)1. An agency or an administrative law judge may not base

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407 agency action that determines the substantial interests of a
408 party on an unadopted rule or a rule that is an invalid exercise
409 of delegated legislative authority. ~~The administrative law judge~~
410 ~~shall determine whether an agency statement constitutes an~~
411 ~~unadopted rule.~~ This subparagraph does not preclude application
412 of valid adopted rules and applicable provisions of law to the
413 facts.

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

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

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

424 c. Section 120.56(4)(c) applies to a challenge alleging an
425 unadopted rule.

426 d. The agency shall have 15 days from the date of receiving
427 a challenge under this paragraph to serve the challenging party
428 with a notice that the agency will continue to rely upon the
429 rule or the alleged unadopted rule as a basis for the action
430 determining the party's substantive interests. Failure to timely
431 serve the notice shall constitute a binding stipulation that the
432 agency shall not rely upon the rule or unadopted rule further in
433 the proceeding. The agency shall include a copy of this notice
434 with the referral of the matter to the division under s.
435 120.569(2)(a).

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436 e. This subparagraph does not preclude the consolidation of
437 any proceeding under s. 120.56 with any proceeding under this
438 paragraph.

439 3.2- Notwithstanding subparagraph 1., if an agency
440 demonstrates that the statute being implemented directs it to
441 adopt rules, that the agency has not had time to adopt those
442 rules because the requirement was so recently enacted, and that
443 the agency has initiated rulemaking and is proceeding
444 expeditiously and in good faith to adopt the required rules,
445 then the agency's action may be based upon those unadopted rules
446 if, subject to de novo review by the administrative law judge
447 determines rulemaking is neither feasible nor practicable and
448 the unadopted rules would not constitute an invalid exercise of
449 delegated legislative authority if adopted as rules. An
450 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
451 ~~invalid~~. The agency must demonstrate that the unadopted rule:

452 a. Is within the powers, functions, and duties delegated by
453 the Legislature or, if the agency is operating pursuant to
454 authority vested in the agency by ~~derived from~~ the State
455 Constitution, is within that authority;

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

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

460 d. Is not arbitrary or capricious. A rule is arbitrary if
461 it is not supported by logic or the necessary facts; a rule is
462 capricious if it is adopted without thought or reason or is
463 irrational;

464 e. Is not being applied to the substantially affected party

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465 without due notice; and

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

468 4. The administrative law judge shall determine under
469 subparagraph 2. whether a rule is an invalid exercise of
470 delegated legislative authority or an agency statement
471 constitutes an unadopted rule and shall determine whether an
472 unadopted rule meets the requirements of subparagraph 3. The
473 determination shall be rendered as a separate final order no
474 earlier than the date on which the administrative law judge
475 serves the recommended order.

476 ~~5.3.~~ The recommended and final orders in any proceeding
477 shall be governed by the provisions of paragraphs (k) and (l),
478 except that the administrative law judge's determination
479 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
480 ~~subparagraph 2. shall be included as a conclusion of law that~~
481 ~~the agency may not reject not be rejected by the agency unless~~
482 ~~the agency first determines from a review of the complete~~
483 ~~record, and states with particularity in the order, that such~~
484 ~~determination is clearly erroneous or does not comply with~~
485 ~~essential requirements of law. In any proceeding for review~~
486 ~~under s. 120.68, if the court finds that the agency's rejection~~
487 ~~of the determination regarding the unadopted rule does not~~
488 ~~comport with the provisions of this subparagraph, the agency~~
489 ~~action shall be set aside and the court shall award to the~~
490 ~~prevailing party the reasonable costs and a reasonable~~
491 ~~attorney's fee for the initial proceeding and the proceeding for~~
492 ~~review.~~

493 (h) Any party to a proceeding in which an administrative

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494 law judge of the Division of Administrative Hearings has final
495 order authority may move for a summary final order when there is
496 no genuine issue as to any material fact. A summary final order
497 shall be rendered if the administrative law judge determines
498 from the pleadings, depositions, answers to interrogatories, and
499 admissions on file, together with affidavits, if any, that no
500 genuine issue as to any material fact exists and that the moving
501 party is entitled as a matter of law to the entry of a final
502 order. A summary final order shall consist of findings of fact,
503 if any, conclusions of law, a disposition or penalty, if
504 applicable, and any other information required by law to be
505 contained in the final order. This paragraph does not apply to
506 proceedings authorized under paragraph (e).

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

510 (a) The agency shall:

511 1. Give reasonable notice to affected persons of the action
512 of the agency, whether proposed or already taken, or of its
513 decision to refuse action, together with a summary of the
514 factual, legal, and policy grounds therefor.

515 2. Give parties or their counsel the option, at a
516 convenient time and place, to present to the agency or hearing
517 officer written or oral evidence in opposition to the action of
518 the agency or to its refusal to act, or a written statement
519 challenging the grounds upon which the agency has chosen to
520 justify its action or inaction.

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

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523 (b) An agency may not base agency action that determines
524 the substantial interests of a party on an unadopted rule or a
525 rule that is an invalid exercise of delegated legislative
526 authority. No later than the date provided by the agency under
527 subparagraph (a)2. for presenting material in opposition to the
528 agency's proposed action or refusal to act, the party may file a
529 petition under s. 120.56 challenging the rule, portion of rule,
530 or unadopted rule on which the agency bases its proposed action
531 or refusal to act. The filing of a challenge under s. 120.56
532 pursuant to this paragraph shall stay all proceedings on the
533 agency's proposed action or refusal to act until entry of the
534 final order by the administrative law judge, which shall provide
535 additional notice that the stay of the pending agency action is
536 terminated and any further stay pending appeal of the final
537 order must be sought from the appellate court.

538 (c) ~~(b)~~ The record shall only consist of:
539 1. The notice and summary of grounds.
540 2. Evidence received.
541 3. All written statements submitted.
542 4. Any decision overruling objections.
543 5. All matters placed on the record after an ex parte
544 communication.
545 6. The official transcript.
546 7. Any decision, opinion, order, or report by the presiding
547 officer.

548 Section 8. Section 120.573, Florida Statutes, is amended to
549 read:

550 120.573 Mediation of disputes.—

551 (1) Each announcement of an agency action that affects

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552 substantial interests shall advise whether mediation of the
553 administrative dispute for the type of agency action announced
554 is available and that choosing mediation does not affect the
555 right to an administrative hearing. If the agency and all
556 parties to the administrative action agree to mediation, in
557 writing, within 10 days after the time period stated in the
558 announcement for election of an administrative remedy under ss.
559 120.569 and 120.57, the time limitations imposed by ss. 120.569
560 and 120.57 shall be tolled to allow the agency and parties to
561 mediate the administrative dispute. The mediation shall be
562 concluded within 60 days of such agreement unless otherwise
563 agreed by the parties. The mediation agreement shall include
564 provisions for mediator selection, the allocation of costs and
565 fees associated with mediation, and the mediating parties'
566 understanding regarding the confidentiality of discussions and
567 documents introduced during mediation. If mediation results in
568 settlement of the administrative dispute, the agency shall enter
569 a final order incorporating the agreement of the parties. If
570 mediation terminates without settlement of the dispute, the
571 agency shall notify the parties in writing that the
572 administrative hearing processes under ss. 120.569 and 120.57
573 are resumed.

574 (2) Any party to a proceeding conducted pursuant to a
575 petition seeking an administrative determination of the
576 invalidity of an existing rule, proposed rule, or unadopted
577 agency statement under s. 120.56 or a proceeding conducted
578 pursuant to a petition seeking a declaratory statement under s.
579 120.565 may request mediation of the dispute under this section.

580 Section 9. Section 120.595, Florida Statutes, is amended to

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581 read:

582 120.595 Attorney ~~Attorney's~~ fees.-583 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
584 120.57(1).-585 (a) The provisions of this subsection are supplemental to,
586 and do not abrogate, other provisions allowing the award of fees
587 or costs in administrative proceedings.588 (b) The final order in a proceeding pursuant to s.
589 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney
590 fees ~~attorney's fee~~ to the prevailing party if the
591 administrative law judge determines ~~only where~~ the nonprevailing
592 adverse party ~~has been determined by the administrative law~~
593 ~~judge to have~~ participated in the proceeding for an improper
594 purpose.595 1.(c) Other than as provided in paragraph (d), in
596 proceedings pursuant to s. 120.57(1), and upon motion, the
597 administrative law judge shall determine whether any party
598 participated in the proceeding for an improper purpose as
599 defined by this subsection. In making such determination, the
600 administrative law judge shall consider whether The
601 nonprevailing adverse party shall be presumed to have
602 participated in the pending proceeding for an improper purpose
603 if:604 a. Such party was an adverse party ~~has participated~~ in two
605 or more other such proceedings involving the same prevailing
606 party and the same subject; project ~~as an adverse party and in~~607 b. In those ~~which such two or more~~ proceedings the
608 nonprevailing adverse party did not establish either the factual
609 or legal merits of its position; ~~and shall consider~~

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

615 d. The nonprevailing adverse party has not rebutted the
616 presumption of participating in the pending proceeding for an
617 improper purpose.

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

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

625 1. "Improper purpose" means participation in a proceeding
626 pursuant to s. 120.57(1) primarily to harass or to cause
627 unnecessary delay or for frivolous purpose or to needlessly
628 increase the cost of litigation, licensing, or securing the
629 approval of an activity.

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

632 3. "Nonprevailing adverse party" means a party that has
633 failed to have substantially changed the outcome of the proposed
634 or final agency action which is the subject of a proceeding. In
635 the event that a proceeding results in any substantial
636 modification or condition intended to resolve the matters raised
637 in a party's petition, it shall be determined that the party
638 having raised the issue addressed is not a nonprevailing adverse

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639 party. The recommended order shall state whether the change is
640 substantial for purposes of this subsection. In no event shall
641 the term "nonprevailing party" or "prevailing party" be deemed
642 to include any party that has intervened in a previously
643 existing proceeding to support the position of an agency.

644 (d) For challenges brought under s. 120.57(1)(e), if the
645 appellate court or the administrative law judge declares a rule
646 or portion of a rule to be invalid or that the agency statement
647 is an unadopted rule which does not meet the requirements of s.
648 120.57(1)(e)4., a judgment or order shall be rendered against
649 the agency for reasonable costs and reasonable attorney fees,
650 unless the agency demonstrates that special circumstances exist
651 which would make the award unjust. Reasonable costs and
652 reasonable attorney fees shall be awarded only for the period
653 beginning 15 days after the receipt of the petition for hearing
654 challenging the rule or unadopted rule. If the agency prevails
655 in the proceedings, the appellate court or administrative law
656 judge shall award reasonable costs and reasonable attorney fees
657 against a party if the appellate court or administrative law
658 judge determines that a party participated in the proceedings
659 for an improper purpose as defined by paragraph (c). An award of
660 attorney fees as provided by this subsection may not exceed
661 \$50,000.

662 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
663 120.56(2).—If the appellate court or administrative law judge
664 declares a proposed rule or portion of a proposed rule invalid
665 pursuant to s. 120.56(2), a judgment or order shall be rendered
666 against the agency for reasonable costs and reasonable attorney
667 attorney's fees, unless the agency demonstrates ~~that its actions~~

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

680 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
681 120.56(3) AND (5).—If the appellate court or administrative law
682 judge declares a rule or portion of a rule invalid pursuant to
683 s. 120.56(3) or (5), a judgment or order shall be rendered
684 against the agency for reasonable costs and reasonable attorney
685 ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions~~
686 ~~were substantially justified or~~ special circumstances exist
687 which would make the award unjust. ~~An agency's actions are~~
688 ~~"substantially justified" if there was a reasonable basis in law~~
689 ~~and fact at the time the actions were taken by the agency.~~ If
690 the agency prevails in the proceedings, the appellate court or
691 administrative law judge shall award reasonable costs and
692 reasonable attorney ~~attorney's~~ fees against a party if the
693 appellate court or administrative law judge determines that a
694 party participated in the proceedings for an improper purpose as
695 defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~ award of attorney
696 ~~attorney's~~ fees as provided by this subsection may not ~~shall~~

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697 exceed \$50,000.

698 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO
699 SECTION 120.56(4).—

700 (a) If the appellate court or administrative law judge
701 determines that all or part of an unadopted rule ~~agency~~
702 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
703 immediately discontinue reliance on the unadopted rule ~~statement~~
704 and any substantially similar statement pursuant to s.
705 120.56(4)(e), a judgment or order shall be entered against the
706 agency for reasonable costs and reasonable attorney ~~attorney's~~
707 fees, unless the agency demonstrates that the statement is
708 required by the Federal Government to implement or retain a
709 delegated or approved program or to meet a condition to receipt
710 of federal funds.

711 (b) Upon notification to the administrative law judge
712 provided before the final hearing that the agency has published
713 a notice of rulemaking under s. 120.54(3)(a), such notice shall
714 automatically operate as a stay of proceedings pending
715 rulemaking. The administrative law judge may vacate the stay for
716 good cause shown. A stay of proceedings under this paragraph
717 remains in effect so long as the agency is proceeding
718 expeditiously and in good faith to adopt the statement as a
719 rule. The administrative law judge shall award reasonable costs
720 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
721 petitioner before ~~prior to~~ the date the notice was published,
722 ~~unless the agency proves to the administrative law judge that it~~
723 ~~did not know and should not have known that the statement was an~~
724 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
725 ~~and paragraph (a) shall be awarded only upon a finding that the~~

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726 agency received notice that the statement may constitute an
727 unadopted rule at least 30 days before a petition under s.
728 120.56(4) was filed and that the agency failed to publish the
729 required notice of rulemaking pursuant to s. 120.54(3) that
730 addresses the statement within that 30-day period. Notice to the
731 agency may be satisfied by its receipt of a copy of the s.
732 120.56(4) petition, a notice or other paper containing
733 substantially the same information, or a petition filed pursuant
734 to s. 120.54(7). An award of attorney ~~attorney's~~ fees as
735 provided by this paragraph may not exceed \$50,000.

736 (c) Notwithstanding the provisions of chapter 284, an award
737 shall be paid from the budget entity of the secretary, executive
738 director, or equivalent administrative officer of the agency,
739 and the agency is ~~shall~~ not be entitled to payment of an award
740 or reimbursement for payment of an award under any provision of
741 law.

742 (d) If the agency prevails in the proceedings, the
743 appellate court or administrative law judge shall award
744 reasonable costs and attorney ~~attorney's~~ fees against a party if
745 the appellate court or administrative law judge determines that
746 the party participated in the proceedings for an improper
747 purpose as defined in paragraph (1) (c) ~~(e)~~ or that the party or
748 the party's attorney knew or should have known that a claim was
749 not supported by the material facts necessary to establish the
750 claim or would not be supported by the application of then-
751 existing law to those material facts.

752 (5) APPEALS.—When there is an appeal, the court in its
753 discretion may award reasonable attorney ~~attorney's~~ fees and
754 reasonable costs to the prevailing party if the court finds that

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755 the appeal was frivolous, meritless, or an abuse of the
756 appellate process, or that the agency action which precipitated
757 the appeal was a gross abuse of the agency's discretion. Upon
758 review of agency action that precipitates an appeal, if the
759 court finds that the agency improperly rejected or modified
760 findings of fact in a recommended order, the court shall award
761 reasonable attorney ~~attorney's~~ fees and reasonable costs to a
762 prevailing appellant for the administrative proceeding and the
763 appellate proceeding.

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

768 (a) Before filing a petition challenging the validity of a
769 proposed rule under s. 120.56(2), an adopted rule under s.
770 120.56(3), or an agency statement defined as an unadopted rule
771 under s. 120.56(4), the substantially affected person shall
772 serve the agency head with notice of the proposed challenge. The
773 notice shall identify the proposed or adopted rule or the
774 unadopted rule the person proposes to challenge and a brief
775 explanation of the basis for that challenge. The notice must be
776 received by the agency head at least 5 days before the filing of
777 a petition under s. 120.56(2), and at least 30 days before the
778 filing of a petition under s. 120.56(3) or s. 120.56(4).

779 (b) Reasonable costs and reasonable attorney fees shall be
780 awarded only for the period beginning after the date on which
781 the agency head receives the notice of invalidity under
782 paragraph (a).

783 (c) Within the time limits specified in paragraph (a), if

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784 the agency provides the substantially affected person with
785 written notice that the agency will not adopt the proposed rule
786 or will not rely upon the adopted rule or the agency statement
787 defined as an unadopted rule until after the agency has complied
788 with the requirements of s. 120.54 to amend the proposed rule or
789 the adopted rule or adopt the unadopted rule, such written
790 notice shall constitute a special circumstance under this
791 section.

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

794 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
795 purposes of this chapter, s. 57.105(5), and s. 57.111, in
796 addition to an award of attorney fees and costs, the prevailing
797 party shall also recover attorney fees and costs incurred in
798 litigating entitlement to, and the determination or
799 quantification of, attorney fees and costs for the underlying
800 matter. Attorney fees and costs awarded for litigating
801 entitlement to, and the determination or quantification of,
802 attorney fees and costs for the underlying matter are not
803 subject to the limitations on amounts provided in this chapter
804 or s. 57.111.

805 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
806 including ss. 57.105 and 57.111, authorize the award of attorney
807 ~~attorney's~~ fees and costs in administrative proceedings. Nothing
808 in this section shall affect the availability of attorney
809 ~~attorney's~~ fees and costs as provided in those sections.

810 Section 10. Subsections (1), (2), and (9) of section
811 120.68, Florida Statutes, are amended to read:

812 120.68 Judicial review.—

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

815 (b) A preliminary, procedural, or intermediate order of the
816 agency or of an administrative law judge of the Division of
817 Administrative Hearings, or a final order under s.
818 120.57(1)(e)4., is immediately reviewable if review of the final
819 agency decision would not provide an adequate remedy.

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

823 (b) All proceedings shall be instituted by filing a notice
824 of appeal or petition for review in accordance with the Florida
825 Rules of Appellate Procedure within 30 days after the date that
826 ~~rendition of~~ the order being appealed was filed with the agency
827 clerk. Such time is hereby extended for any party 10 days from
828 receipt by such party of the notice of the order, if such notice
829 is received after the 25th day from the filing of the order. If
830 the appeal is of an order rendered in a proceeding initiated
831 under s. 120.56, or a final order under s. 120.57(1)(e)4., the
832 agency whose rule is being challenged shall transmit a copy of
833 the notice of appeal to the committee.

834 (c) ~~(b)~~ When proceedings under this chapter are consolidated
835 for final hearing and the parties to the consolidated proceeding
836 seek review of final or interlocutory orders in more than one
837 district court of appeal, the courts of appeal are authorized to
838 transfer and consolidate the review proceedings. The court may
839 transfer such appellate proceedings on its own motion, upon
840 motion of a party to one of the appellate proceedings, or by
841 stipulation of the parties to the appellate proceedings. In

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842 determining whether to transfer a proceeding, the court may
843 consider such factors as the interrelationship of the parties
844 and the proceedings, the desirability of avoiding inconsistent
845 results in related matters, judicial economy, and the burden on
846 the parties of reproducing the record for use in multiple
847 appellate courts.

848 (9) No petition challenging an agency rule as an invalid
849 exercise of delegated legislative authority shall be instituted
850 pursuant to this section, except to review an order entered
851 pursuant to a proceeding under s. 120.56, under s.
852 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
853 findings of immediate danger, necessity, and procedural fairness
854 prerequisite to the adoption of an emergency rule pursuant to s.
855 120.54(4), unless the sole issue presented by the petition is
856 the constitutionality of a rule and there are no disputed issues
857 of fact.

858 Section 11. Section 120.695, Florida Statutes, is amended
859 to read:

860 120.695 Notice of noncompliance.—

861 (1) It is the policy of the state that the purpose of
862 regulation is to protect the public by attaining compliance with
863 the policies established by the Legislature. Fines and other
864 penalties may be provided in order to assure compliance;
865 however, the collection of fines and the imposition of penalties
866 are intended to be secondary to the primary goal of attaining
867 compliance with an agency's rules. It is the intent of the
868 Legislature that an agency charged with enforcing rules shall
869 issue a notice of noncompliance as its first response to a minor
870 violation of a rule in any instance in which it is reasonable to

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871 assume that the violator was unaware of the rule or unclear as
872 to how to comply with it.

873 (2) (a) Each agency shall issue a notice of noncompliance as
874 a first response to a minor violation of a rule. A "notice of
875 noncompliance" is a notification by the agency charged with
876 enforcing the rule issued to the person or business subject to
877 the rule. A notice of noncompliance may not be accompanied with
878 a fine or other disciplinary penalty. It must identify the
879 specific rule that is being violated, provide information on how
880 to comply with the rule, and specify a reasonable time for the
881 violator to comply with the rule. A rule is agency action that
882 regulates a business, occupation, or profession, or regulates a
883 person operating a business, occupation, or profession, and
884 that, if not complied with, may result in a disciplinary
885 penalty.

886 (b) Each agency shall review all of its rules and designate
887 those for which a violation would be a minor violation and for
888 which a notice of noncompliance must be the first enforcement
889 action taken against a person or business subject to regulation.
890 A violation of a rule is a minor violation if it does not result
891 in economic or physical harm to a person or adversely affect the
892 public health, safety, or welfare or create a significant threat
893 of such harm. ~~If an agency under the direction of a cabinet~~
894 ~~officer mails to each licensee a notice of the designated rules~~
895 ~~at the time of licensure and at least annually thereafter, the~~
896 ~~provisions of paragraph (a) may be exercised at the discretion~~
897 ~~of the agency. Such notice shall include a subject-matter index~~
898 ~~of the rules and information on how the rules may be obtained.~~

899 ~~(c) The agency's review and designation must be completed~~

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900 ~~by December 1, 1995;~~

901 1. No later than June 30, 2014, and, thereafter, within 3
902 months of any request of the rules ombudsman, each agency shall
903 review under the direction of the Governor shall make a report
904 to the Governor, and each agency under the joint direction of
905 the Governor and Cabinet shall report to the Governor and
906 Cabinet by January 1, 1996, on which of its rules have been
907 designated as rules the violation of which would be a minor
908 violation and certify to the President of the Senate, the
909 Speaker of the House of Representatives, the committee, and the
910 rules ombudsman those rules for which a violation would be
911 considered a minor violation under this paragraph, consistent
912 with the legislative intent stated in subsection (1). Each
913 agency that fails to timely complete the review and file the
914 certification as required by this section is prohibited from
915 imposing any sanction greater than the minimum authorized by law
916 for an initial minor violation until the agency completes and
917 files the required certification.

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

919 a. Publish all rules of that agency designated as rules the
920 violation of which would be a minor violation, either as a
921 complete list on the agency's Internet webpage or by
922 incorporation of the designations in the agency's disciplinary
923 guidelines adopted as a rule.

924 b. Ensure that all investigative and enforcement personnel
925 are knowledgeable of the agency's designations under this
926 section.

927 c. For each rule filed for adoption, certify whether any
928 part of the rule is designated as one the violation of which

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929 would be a minor violation and shall update the listing required
 930 by sub-subparagraph a.

931 (c)~~(d)~~ The Governor or the Governor and Cabinet, as
 932 appropriate ~~pursuant to paragraph (e)~~, may evaluate the review
 933 and designation effects of each agency subject to the direction
 934 and supervision of such authority and may direct ~~apply~~ a
 935 different designation than that applied by such ~~the~~ agency.

936 (d)~~(e)~~ Notwithstanding s. 120.52(1)(a), this section does
 937 not apply to:

- 938 1. The Department of Corrections;
- 939 2. Educational units;
- 940 3. The regulation of law enforcement personnel; or
- 941 4. The regulation of teachers.

942 (e)~~(f)~~ Designation pursuant to this section is not subject
 943 to challenge under this chapter.

944 Section 12. Paragraph (a) of subsection (1) of section
 945 420.9072, Florida Statutes, is amended to read:

946 420.9072 State Housing Initiatives Partnership Program.—The
 947 State Housing Initiatives Partnership Program is created for the
 948 purpose of providing funds to counties and eligible
 949 municipalities as an incentive for the creation of local housing
 950 partnerships, to expand production of and preserve affordable
 951 housing, to further the housing element of the local government
 952 comprehensive plan specific to affordable housing, and to
 953 increase housing-related employment.

954 (1) (a) In addition to the legislative findings set forth in
 955 s. 420.6015, the Legislature finds that affordable housing is
 956 most effectively provided by combining available public and
 957 private resources to conserve and improve existing housing and

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958 provide new housing for very-low-income households, low-income
959 households, and moderate-income households. The Legislature
960 intends to encourage partnerships in order to secure the
961 benefits of cooperation by the public and private sectors and to
962 reduce the cost of housing for the target group by effectively
963 combining all available resources and cost-saving measures. The
964 Legislature further intends that local governments achieve this
965 combination of resources by encouraging active partnerships
966 between government, lenders, builders and developers, real
967 estate professionals, advocates for low-income persons, and
968 community groups to produce affordable housing and provide
969 related services. Extending the partnership concept to encompass
970 cooperative efforts among small counties as defined in s. 120.52
971 ~~120.52(19)~~, and among counties and municipalities is
972 specifically encouraged. Local governments are also intended to
973 establish an affordable housing advisory committee to recommend
974 monetary and nonmonetary incentives for affordable housing as
975 provided in s. 420.9076.

976 Section 13. Subsection (7) of section 420.9075, Florida
977 Statutes, is amended to read:

978 420.9075 Local housing assistance plans; partnerships.—

979 (7) The moneys deposited in the local housing assistance
980 trust fund shall be used to administer and implement the local
981 housing assistance plan. The cost of administering the plan may
982 not exceed 5 percent of the local housing distribution moneys
983 and program income deposited into the trust fund. A county or an
984 eligible municipality may not exceed the 5-percent limitation on
985 administrative costs, unless its governing body finds, by
986 resolution, that 5 percent of the local housing distribution

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987 plus 5 percent of program income is insufficient to adequately
988 pay the necessary costs of administering the local housing
989 assistance plan. The cost of administering the program may not
990 exceed 10 percent of the local housing distribution plus 5
991 percent of program income deposited into the trust fund, except
992 that small counties, as defined in s. 120.52 ~~120.52(19)~~, and
993 eligible municipalities receiving a local housing distribution
994 of up to \$350,000 may use up to 10 percent of program income for
995 administrative costs.

996 Section 14. Paragraph (d) of subsection (1) of section
997 443.091, Florida Statutes, is amended to read:

998 443.091 Benefit eligibility conditions.—

999 (1) An unemployed individual is eligible to receive
1000 benefits for any week only if the Department of Economic
1001 Opportunity finds that:

1002 (d) She or he is able to work and is available for work. In
1003 order to assess eligibility for a claimed week of unemployment,
1004 the department shall develop criteria to determine a claimant's
1005 ability to work and availability for work. A claimant must be
1006 actively seeking work in order to be considered available for
1007 work. This means engaging in systematic and sustained efforts to
1008 find work, including contacting at least five prospective
1009 employers for each week of unemployment claimed. The department
1010 may require the claimant to provide proof of such efforts to the
1011 one-stop career center as part of reemployment services. The
1012 department shall conduct random reviews of work search
1013 information provided by claimants. As an alternative to
1014 contacting at least five prospective employers for any week of
1015 unemployment claimed, a claimant may, for that same week, report

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1016 in person to a one-stop career center to meet with a
1017 representative of the center and access reemployment services of
1018 the center. The center shall keep a record of the services or
1019 information provided to the claimant and shall provide the
1020 records to the department upon request by the department.

1021 However:

1022 1. Notwithstanding any other provision of this paragraph or
1023 paragraphs (b) and (e), an otherwise eligible individual may not
1024 be denied benefits for any week because she or he is in training
1025 with the approval of the department, or by reason of s.
1026 443.101(2) relating to failure to apply for, or refusal to
1027 accept, suitable work. Training may be approved by the
1028 department in accordance with criteria prescribed by rule. A
1029 claimant's eligibility during approved training is contingent
1030 upon satisfying eligibility conditions prescribed by rule.

1031 2. Notwithstanding any other provision of this chapter, an
1032 otherwise eligible individual who is in training approved under
1033 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
1034 determined ineligible or disqualified for benefits due to
1035 enrollment in such training or because of leaving work that is
1036 not suitable employment to enter such training. As used in this
1037 subparagraph, the term "suitable employment" means work of a
1038 substantially equal or higher skill level than the worker's past
1039 adversely affected employment, as defined for purposes of the
1040 Trade Act of 1974, as amended, the wages for which are at least
1041 80 percent of the worker's average weekly wage as determined for
1042 purposes of the Trade Act of 1974, as amended.

1043 3. Notwithstanding any other provision of this section, an
1044 otherwise eligible individual may not be denied benefits for any

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1045 week because she or he is before any state or federal court
1046 pursuant to a lawfully issued summons to appear for jury duty.

1047 4. Union members who customarily obtain employment through
1048 a union hiring hall may satisfy the work search requirements of
1049 this paragraph by reporting daily to their union hall.

1050 5. The work search requirements of this paragraph do not
1051 apply to persons who are unemployed as a result of a temporary
1052 layoff or who are claiming benefits under an approved short-time
1053 compensation plan as provided in s. 443.1116.

1054 6. In small counties as defined in s. 120.52 ~~120.52(19)~~, a
1055 claimant engaging in systematic and sustained efforts to find
1056 work must contact at least three prospective employers for each
1057 week of unemployment claimed.

1058 Section 15. This act shall take effect July 1, 2013.