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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(3) As used in this section:

(e) A proceeding is "substantially justified" if it had a



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12 reasonable basis in law and fact at the time it was initiated by
13 a state agency. A proceeding is not substantially justified if
14 the specified law, rule, or order at issue in the current agency
15 action is the subject upon which the substantially affected
16 party previously petitioned the agency for a declaratory
17 statement under s. 120.565; the current agency action involves
18 identical or substantially similar facts and circumstances as
19 those raised in the previous petition; and:

20 1. The agency action contradicts the declaratory statement
21 issued by the agency upon the previous petition; or

22 2. The agency denied the previous petition under s. 120.565
23 before initiating the current agency action against the
24 substantially affected party.

25 Section 2. Paragraph (c) of subsection (7) of section
26 120.54, Florida Statutes, is amended, and a new paragraph (d) is
27 added, to read:

28 120.54 Rulemaking.—

29 (7) PETITION TO INITIATE RULEMAKING.—

30 (c) Within 30 days after ~~following~~ the public hearing
31 provided for in ~~by~~ paragraph (b), if the agency does not
32 initiate rulemaking or otherwise comply with the requested
33 action, the agency shall publish in the Florida Administrative
34 Register a statement of its reasons for not initiating
35 rulemaking or otherwise complying with the requested action, and
36 of any changes it will make in the scope or application of the
37 unadopted rule. The agency shall file the statement with the
38 committee. The committee shall forward a copy of the statement
39 to the substantive committee with primary oversight jurisdiction
40 of the agency in each house of the Legislature. The committee or



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41 the committee with primary oversight jurisdiction may hold a
42 hearing directed to the statement of the agency. The committee
43 holding the hearing may recommend to the Legislature the
44 introduction of legislation making the rule a statutory standard
45 or limiting or otherwise modifying the authority of the agency.

46 (d) If the agency initiates rulemaking following a public
47 hearing under paragraph (b), the agency shall publish its notice
48 of rule development within 30 days after the hearing and file
49 its notice of proposed rule within 180 days after the notice of
50 rule development unless by such deadline the agency publishes in
51 the Florida Administrative Register a statement explaining its
52 reasons why a proposed rule has not been filed. If rulemaking is
53 initiated under this paragraph, the agency may not rely on the
54 unadopted rule unless the agency publishes in the Florida
55 Administrative Register a statement explaining why rulemaking
56 has not been feasible or practicable under s. 120.54(1)(a).

57 Section 3. Section 120.55, Florida Statutes, is amended to
58 read:

59 120.55 Publication.—

60 (1) The Department of State shall:

61 (a)1. Through a continuous revision and publication system,
62 compile and publish electronically, on an Internet website
63 managed by the department, the "Florida Administrative Code."
64 The Florida Administrative Code shall contain all rules adopted
65 by each agency, citing the grant of rulemaking authority and the
66 specific law implemented pursuant to which each rule was
67 adopted, all history notes as authorized in s. 120.545(7),
68 complete indexes to all rules contained in the code, and any
69 other material required or authorized by law or deemed useful by



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70 the department. The electronic code shall display each rule
71 chapter currently in effect in browse mode and allow full text
72 search of the code and each rule chapter. The department may
73 contract with a publishing firm for a printed publication;
74 however, the department shall retain responsibility for the code
75 as provided in this section. The electronic publication shall be
76 the official compilation of the administrative rules of this
77 state. The Department of State shall retain the copyright over
78 the Florida Administrative Code.

79 2. Rules general in form but applicable to only one school
80 district, community college district, or county, or a part
81 thereof, or state university rules relating to internal
82 personnel or business and finance shall not be published in the
83 Florida Administrative Code. Exclusion from publication in the
84 Florida Administrative Code shall not affect the validity or
85 effectiveness of such rules.

86 3. At the beginning of the section of the code dealing with
87 an agency that files copies of its rules with the department,
88 the department shall publish the address and telephone number of
89 the executive offices of each agency, the manner by which the
90 agency indexes its rules, a listing of all rules of that agency
91 excluded from publication in the code, and a statement as to
92 where those rules may be inspected.

93 4. Forms shall not be published in the Florida
94 Administrative Code; but any form which an agency uses in its
95 dealings with the public, along with any accompanying
96 instructions, shall be filed with the committee before it is
97 used. Any form or instruction which meets the definition of
98 "rule" provided in s. 120.52 shall be incorporated by reference



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99 into the appropriate rule. The reference shall specifically
100 state that the form is being incorporated by reference and shall
101 include the number, title, and effective date of the form and an
102 explanation of how the form may be obtained. Each form created
103 by an agency which is incorporated by reference in a rule notice
104 of which is given under s. 120.54(3)(a) after December 31, 2007,
105 must clearly display the number, title, and effective date of
106 the form and the number of the rule in which the form is
107 incorporated.

108 5. The department shall allow adopted rules and material
109 incorporated by reference to be filed in electronic form as
110 prescribed by department rule. When a rule is filed for adoption
111 with incorporated material in electronic form, the department's
112 publication of the Florida Administrative Code on its Internet
113 website must contain a hyperlink from the incorporating
114 reference in the rule directly to that material. The department
115 may not allow hyperlinks from rules in the Florida
116 Administrative Code to any material other than that filed with
117 and maintained by the department, but may allow hyperlinks to
118 incorporated material maintained by the department from the
119 adopting agency's website or other sites.

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

124 1. All notices required by s. 120.54(2) and (3)(a) ~~s.~~
125 ~~120.54(3)(a)~~, showing the text of all rules proposed for
126 consideration.

127 2. All notices of public meetings, hearings, and workshops



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128 conducted in accordance with s. 120.525, including a statement
129 of the manner in which a copy of the agenda may be obtained.

130 3. A notice of each request for authorization to amend or
131 repeal an existing uniform rule or for the adoption of new
132 uniform rules.

133 4. Notice of petitions for declaratory statements or
134 administrative determinations.

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

137 6. A listing of rules filed for adoption in the previous 7
138 days.

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

142 8.6- Any other material required or authorized by law or
143 deemed useful by the department.

144

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

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

150 (d) Charge each agency using the Florida Administrative
151 Register a space rate to cover the costs related to the Florida
152 Administrative Register and the Florida Administrative Code.

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

155 (2) The Florida Administrative Register Internet website
156 must allow users to:



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

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

161 (c) Subscribe to an automated e-mail notification of
162 selected notices to be sent out before or concurrently with
163 publication of the electronic Florida Administrative Register.
164 Such notification must include in the text of the e-mail a
165 summary of the content of each notice.

166 (d) View agency forms and other materials submitted to the
167 department in electronic form and incorporated by reference in
168 proposed rules.

169 (e) Comment on proposed rules.

170 (3) Publication of material required by paragraph (1)(b) on
171 the Florida Administrative Register Internet website does not
172 preclude publication of such material on an agency's website or
173 by other means.

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

177 (5) Each agency that provides an e-mail alert service to
178 inform licensees or other registered recipients of important
179 notices shall use such service to notify recipients of each
180 notice required under s. 120.54(2) and (3)(a), including a
181 notice of rule development, notice of proposed rules, and notice
182 of filing rules for adoption, and provide Internet links to the
183 appropriate rule page on the Secretary of State's website or
184 Internet links to an agency website that contains the proposed
185 rule or final rule.



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186 (6)~~(5)~~ Any publication of a proposed rule promulgated by an
187 agency, whether published in the Florida Administrative Register
188 or elsewhere, shall include, along with the rule, the name of
189 the person or persons originating such rule, the name of the
190 agency head who approved the rule, and the date upon which the
191 rule was approved.

192 (7)~~(6)~~ Access to the Florida Administrative Register
193 Internet website and its contents, including the e-mail
194 notification service, shall be free for the public.

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

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

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

206 120.56 Challenges to rules.—

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

209 (b) The petition challenging the validity of a proposed or
210 adopted rule under this section ~~seeking an administrative~~
211 ~~determination~~ must state ~~with particularity~~:

212 1. The particular provisions alleged to be invalid and
213 include a statement ~~with sufficient explanation~~ of the facts or
214 grounds for the alleged invalidity; and



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215 2. Facts sufficient to show that the petitioner person
216 ~~challenging a rule~~ is substantially affected by the challenged
217 adopted rule it, or ~~that the person challenging a proposed rule~~
218 would be substantially affected by the proposed rule it.

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

220 (a) A substantially affected person may seek an
221 administrative determination of the invalidity of a proposed
222 rule by filing a petition seeking such a determination with the
223 division within 21 days after the date of publication of the
224 notice required by s. 120.54(3) (a); within 10 days after the
225 final public hearing is held on the proposed rule as provided by
226 s. 120.54(3) (e)2.; within 20 days after the statement of
227 estimated regulatory costs or revised statement of estimated
228 regulatory costs, if applicable, has been prepared and made
229 available as provided in s. 120.541(1) (d); or within 20 days
230 after the date of publication of the notice required by s.
231 120.54(3) (d). The petition must state with particularity the
232 objections to the proposed rule and the reasons that the
233 proposed rule is an invalid exercise of delegated legislative
234 authority. The petitioner has the burden of going forward with
235 evidence sufficient to support the petition. The agency then has
236 the burden to prove by a preponderance of the evidence that the
237 proposed rule is not an invalid exercise of delegated
238 legislative authority as to the objections raised. ~~A person who~~
239 ~~is substantially affected by a change in the proposed rule may~~
240 ~~seek a determination of the validity of such change~~. A person
241 who is not substantially affected by the proposed rule as
242 initially noticed, but who is substantially affected by the rule
243 as a result of a change, may challenge any provision of the



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244 ~~resulting rule and is not limited to challenging the change to~~
245 ~~the proposed rule.~~

246 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
247 RULES; SPECIAL PROVISIONS.—

248 (a) A ~~Any~~ person substantially affected by an agency
249 statement that is an unadopted rule may seek an administrative
250 determination that the statement violates s. 120.54(1)(a). The
251 petition shall include the text of the statement or a
252 description of the statement and shall state ~~with particularity~~
253 facts sufficient to show that the statement constitutes an a
254 unadopted rule under s. 120.52 and that the agency has not
255 ~~adopted the statement by the rulemaking procedure provided by s.~~
256 ~~120.54.~~

257 (b) The administrative law judge may extend the hearing
258 date beyond 30 days after assignment of the case for good cause.
259 Upon notification to the administrative law judge provided
260 before the final hearing that the agency has published a notice
261 of rulemaking under s. 120.54(3), such notice shall
262 automatically operate as a stay of proceedings pending adoption
263 of the statement as a rule. The administrative law judge may
264 vacate the stay for good cause shown. A stay of proceedings
265 pending rulemaking shall remain in effect so long as the agency
266 is proceeding expeditiously and in good faith to adopt the
267 statement as a rule. ~~If a hearing is held and the petitioner~~
268 ~~proves the allegations of the petition, the agency shall have~~
269 ~~the burden of proving~~

270 (c) The petitioner has the burden of going forward with
271 evidence sufficient to support the petition. The agency then has
272 the burden to prove by a preponderance of the evidence that the



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273 statement does not meet the definition of an unadopted rule, the
274 statement was adopted as a rule in compliance with s. 120.54, or
275 that rulemaking is not feasible or not practicable under s.
276 120.54(1) (a) .

277 (d)~~(e)~~ The administrative law judge may determine whether
278 all or part of a statement violates s. 120.54(1) (a). The
279 decision of the administrative law judge shall constitute a
280 final order. The division shall transmit a copy of the final
281 order to the Department of State and the committee. The
282 Department of State shall publish notice of the final order in
283 the first available issue of the Florida Administrative
284 Register.

285 (e)~~(d)~~ If an administrative law judge enters a final order
286 that all or part of an unadopted rule ~~agency statement~~ violates
287 s. 120.54(1) (a), the agency must immediately discontinue all
288 reliance on ~~upon~~ the unadopted rule ~~statement~~ or any
289 substantially similar statement as a basis for agency action.

290 (f)~~(e)~~ If proposed rules addressing the challenged
291 unadopted rule ~~statement~~ are determined to be an invalid
292 exercise of delegated legislative authority as defined in s.
293 120.52(8) (b)-(f), the agency must immediately discontinue
294 reliance on the unadopted rule ~~statement~~ and any substantially
295 similar statement until rules addressing the subject are
296 properly adopted, and the administrative law judge shall enter a
297 final order to that effect.

298 (g)~~(f)~~ All proceedings to determine a violation of s.
299 120.54(1) (a) shall be brought pursuant to this subsection. A
300 proceeding pursuant to this subsection may be consolidated with
301 a proceeding under subsection (3) or under any other section of



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302 this chapter. This paragraph does not prevent a party whose
303 substantial interests have been determined by an agency action
304 from bringing a proceeding pursuant to s. 120.57(1)(e).

305 Section 5. Paragraph (1) of subsection (2) of section
306 120.569, Florida Statutes, is amended to read:

307 120.569 Decisions which affect substantial interests.—

308 (2)

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

314 1. After the hearing is concluded, if conducted by the
315 agency;

316 2. After a recommended order is submitted to the agency and
317 mailed to all parties, if the hearing is conducted by an
318 administrative law judge, except that, at the election of the
319 agency, the time for rendering the final order may be extended
320 up to 10 days after entry of a mandate on any appeal from a
321 final order under s. 120.57(1)(e)4.; or

322 3. After the agency has received the written and oral
323 material it has authorized to be submitted, if there has been no
324 hearing.

325 Section 6. Paragraphs (e) and (h) of subsection (1) and
326 subsection (2) of section 120.57, Florida Statutes, are amended
327 to read:

328 120.57 Additional procedures for particular cases.—

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



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331 (e)1. An agency or an administrative law judge may not base
332 agency action that determines the substantial interests of a
333 party on an unadopted rule or a rule that is an invalid exercise
334 of delegated legislative authority. ~~The administrative law judge~~
335 ~~shall determine whether an agency statement constitutes an~~
336 ~~unadopted rule.~~ This subparagraph does not preclude application
337 of valid adopted rules and applicable provisions of law to the
338 facts.

339 2. In a matter initiated as a result of agency action
340 proposing to determine the substantial interests of a party, the
341 party's timely petition for hearing may challenge the proposed
342 agency action based on a rule that is an invalid exercise of
343 delegated legislative authority or based on an alleged unadopted
344 rule. For challenges brought under this subparagraph:

345 a. The challenge shall be pled as a defense using the
346 procedures set forth in s. 120.56(1)(b).

347 b. Section 120.56(3)(a) applies to a challenge alleging
348 that a rule is an invalid exercise of delegated legislative
349 authority.

350 c. Section 120.56(4)(c) applies to a challenge alleging an
351 unadopted rule.

352 d. The agency has 15 days from the date of receipt of a
353 challenge under this subparagraph to serve the challenging party
354 with a notice as to whether the agency will continue to rely
355 upon the rule or the alleged unadopted rule as a basis for the
356 action determining the party's substantive interests. Failure to
357 timely serve the notice constitutes a binding stipulation that
358 the agency may not rely upon the rule or unadopted rule further
359 in the proceeding. The agency shall include a copy of this



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360 notice with the referral of the matter to the division under s.
361 120.569(2) (a).

362 e. This subparagraph does not preclude the consolidation of
363 any proceeding under s. 120.56 with any proceeding under this
364 paragraph.

365 3.2. Notwithstanding subparagraph 1., if an agency
366 demonstrates that the statute being implemented directs it to
367 adopt rules, that the agency has not had time to adopt those
368 rules because the requirement was so recently enacted, and that
369 the agency has initiated rulemaking and is proceeding
370 expeditiously and in good faith to adopt the required rules,
371 ~~then~~ the agency's action may be based upon those unadopted rules
372 ~~if, subject to de novo review by~~ the administrative law judge
373 determines that rulemaking is neither feasible nor practicable
374 and the unadopted rules would not constitute an invalid exercise
375 of delegated legislative authority if adopted as rules. An
376 unadopted rule ~~The agency action~~ shall not be presumed valid or
377 invalid. The agency must demonstrate that the unadopted rule:

378 a. Is within the powers, functions, and duties delegated by
379 the Legislature or, if the agency is operating pursuant to
380 authority vested in the agency by ~~derived from~~ the State
381 Constitution, is within that authority;

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

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

386 d. Is not arbitrary or capricious. A rule is arbitrary if
387 it is not supported by logic or the necessary facts; a rule is
388 capricious if it is adopted without thought or reason or is



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389 irrational;

390 e. Is not being applied to the substantially affected party
391 without due notice; and

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

394 4. If the agency timely serves notice of continued reliance
395 upon a challenged rule or an alleged unadopted rule under sub-
396 subparagraph 2.d., the administrative law judge shall determine
397 whether the challenged rule is an invalid exercise of delegated
398 legislative authority or whether the challenged agency statement
399 constitutes an unadopted rule and if that unadopted rule meets
400 the requirements of subparagraph 3. The determination shall be
401 rendered as a separate final order no earlier than the date on
402 which the administrative law judge serves the recommended order.

403 ~~5.3-~~ The recommended and final orders in any proceeding
404 shall be governed by the provisions of paragraphs (k) and (l),
405 except that the administrative law judge's determination
406 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
407 ~~subparagraph 2. shall be included as a conclusion of law that~~
408 ~~the agency may not reject not be rejected by the agency unless~~
409 ~~the agency first determines from a review of the complete~~
410 ~~record, and states with particularity in the order, that such~~
411 ~~determination is clearly erroneous or does not comply with~~
412 ~~essential requirements of law. In any proceeding for review~~
413 ~~under s. 120.68, if the court finds that the agency's rejection~~
414 ~~of the determination regarding the unadopted rule does not~~
415 ~~comport with the provisions of this subparagraph, the agency~~
416 ~~action shall be set aside and the court shall award to the~~
417 ~~prevailing party the reasonable costs and a reasonable~~



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418 ~~attorney's fee for the initial proceeding and the proceeding for~~
419 ~~review.~~

420 (h) Any party to a proceeding in which an administrative
421 law judge of the Division of Administrative Hearings has final
422 order authority may move for a summary final order when there is
423 no genuine issue as to any material fact. A summary final order
424 shall be rendered if the administrative law judge determines
425 from the pleadings, depositions, answers to interrogatories, and
426 admissions on file, together with affidavits, if any, that no
427 genuine issue as to any material fact exists and that the moving
428 party is entitled as a matter of law to the entry of a final
429 order. A summary final order shall consist of findings of fact,
430 if any, conclusions of law, a disposition or penalty, if
431 applicable, and any other information required by law to be
432 contained in the final order. This paragraph does not apply to
433 proceedings authorized by paragraph (e).

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

437 (a) The agency shall:

438 1. Give reasonable notice to affected persons of the action
439 of the agency, whether proposed or already taken, or of its
440 decision to refuse action, together with a summary of the
441 factual, legal, and policy grounds therefor.

442 2. Give parties or their counsel the option, at a
443 convenient time and place, to present to the agency or hearing
444 officer written or oral evidence in opposition to the action of
445 the agency or to its refusal to act, or a written statement
446 challenging the grounds upon which the agency has chosen to



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447 justify its action or inaction.

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

450 (b) An agency may not base agency action that determines
451 the substantial interests of a party on an unadopted rule or a
452 rule that is an invalid exercise of delegated legislative
453 authority. No later than the date provided by the agency under
454 subparagraph (a)2. for presenting material in opposition to the
455 agency's proposed action or refusal to act, the party may file a
456 petition under s. 120.56 challenging the rule, portion of rule,
457 or unadopted rule upon which the agency bases its proposed
458 action or refusal to act. The filing of a challenge under s.
459 120.56 pursuant to this paragraph shall stay all proceedings on
460 the agency's proposed action or refusal to act until entry of
461 the final order by the administrative law judge, which shall
462 provide additional notice that the stay of the pending agency
463 action is terminated and any further stay pending appeal of the
464 final order must be sought from the appellate court.

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

466 1. The notice and summary of grounds.

467 2. Evidence received.

468 3. All written statements submitted.

469 4. Any decision overruling objections.

470 5. All matters placed on the record after an ex parte
471 communication.

472 6. The official transcript.

473 7. Any decision, opinion, order, or report by the presiding
474 officer.

475 Section 7. Section 120.595, Florida Statutes, is amended to



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476 read:

477 120.595 Attorney ~~Attorney's~~ fees and costs.—

478 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
479 120.57(1).—

480 (a) ~~The provisions of~~ This subsection is ~~are~~ supplemental
481 to, and does ~~do~~ not abrogate, other provisions allowing the
482 award of fees or costs in administrative proceedings.

483 (b) The final order in a proceeding conducted pursuant to
484 s. 120.57(1) must ~~shall~~ award all reasonable costs and all a
485 reasonable attorney fees ~~attorney's fee~~ to the prevailing party
486 only if ~~where~~ the administrative law judge determines that the
487 nonprevailing adverse party has been determined by the
488 administrative law judge to have participated in the proceeding
489 for an improper purpose.

490 (c) In proceedings conducted pursuant to s. 120.57(1), it
491 shall be rebuttably presumed that a nonprevailing adverse party
492 participated in the current proceeding for an improper purpose
493 if the administrative law judge determines that:

494 1. The nonprevailing adverse party participated in another
495 such proceeding involving the same prevailing party and project
496 as an adverse party in which the nonprevailing adverse party did
497 not establish either the factual or legal merits of its
498 position.

499 2. The factual or legal position asserted in the current
500 proceeding would have been cognizable in the previous proceeding
501 and upon motion, the administrative law judge shall determine
502 whether any party participated in the proceeding for an improper
503 purpose as defined by this subsection. In making such
504 determination, the administrative law judge shall consider



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505 ~~whether the nonprevailing adverse party has participated in two~~
506 ~~or more other such proceedings involving the same prevailing~~
507 ~~party and the same project as an adverse party and in which such~~
508 ~~two or more proceedings the nonprevailing adverse party did not~~
509 ~~establish either the factual or legal merits of its position,~~
510 ~~and shall consider whether the factual or legal position~~
511 ~~asserted in the instant proceeding would have been cognizable in~~
512 ~~the previous proceedings. In such event, it shall be rebuttably~~
513 ~~presumed that the nonprevailing adverse party participated in~~
514 ~~the pending proceeding for an improper purpose.~~

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

520 (e) For purposes ~~the purpose~~ of this subsection, the term:

521 1. "Improper purpose" means participation in a proceeding
522 pursuant to s. 120.57(1) primarily to harass or to cause
523 unnecessary delay or for frivolous purpose or to needlessly
524 increase the cost of litigation, licensing, or securing the
525 approval of an activity.

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

528 3. "Nonprevailing adverse party" means a party that has
529 failed to have substantially changed the outcome of the proposed
530 or final agency action which is the subject of a proceeding. If
531 ~~In the event that~~ a proceeding results in any substantial
532 modification or condition intended to resolve the matters raised
533 in a party's petition, it shall be determined that the party



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534 having raised the issue addressed is not a nonprevailing adverse
535 party. The recommended order shall state whether the change is
536 substantial for purposes of this subsection. ~~In no event shall~~
537 The term "nonprevailing party" or "prevailing party" may not be
538 deemed to include a any party that has intervened in a
539 previously existing proceeding to support the position of an
540 agency.

541 (f) For challenges brought under s. 120.57(1)(e), when the
542 agency relies on a challenged rule or an alleged unadopted rule
543 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the
544 administrative law judge declares the rule or portion of the
545 rule to be invalid or that the agency statement is an unadopted
546 rule that does not meet the requirements of s. 120.57(1)(e)4., a
547 judgment or order shall be rendered against the agency for
548 reasonable costs and reasonable attorney fees, unless the agency
549 demonstrates that special circumstances exist which would make
550 the award unjust. An award of attorney fees as provided by this
551 paragraph may not exceed \$50,000.

552 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
553 120.56(2).—If the appellate court or administrative law judge
554 declares a proposed rule or portion of a proposed rule invalid
555 pursuant to s. 120.56(2), a judgment or order shall be rendered
556 against the agency for reasonable costs and reasonable attorney
557 attorney's fees, unless the agency demonstrates that ~~its actions~~
558 ~~were substantially justified or~~ special circumstances exist
559 which would make the award unjust. ~~An agency's actions are~~
560 ~~"substantially justified" if there was a reasonable basis in law~~
561 ~~and fact at the time the actions were taken by the agency. If~~
562 ~~the agency prevails in the proceedings, the appellate court or~~



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563 ~~administrative law judge shall award reasonable costs and~~
564 ~~reasonable attorney's fees against a party if the appellate~~
565 ~~court or administrative law judge determines that a party~~
566 ~~participated in the proceedings for an improper purpose as~~
567 ~~defined by paragraph (1)(e). An~~ award of attorney ~~attorney's~~
568 ~~fees as provided by this subsection~~ may not ~~shall~~ exceed
569 \$50,000.

570 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
571 120.56(3) AND (5).—If the appellate court or administrative law
572 judge declares a rule or portion of a rule invalid pursuant to
573 s. 120.56(3) or (5), a judgment or order shall be rendered
574 against the agency for reasonable costs and reasonable attorney
575 ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions~~
576 ~~were substantially justified or~~ special circumstances exist
577 which would make the award unjust. ~~An agency's actions are~~
578 ~~"substantially justified" if there was a reasonable basis in law~~
579 ~~and fact at the time the actions were taken by the agency. If~~
580 ~~the agency prevails in the proceedings, the appellate court or~~
581 ~~administrative law judge shall award reasonable costs and~~
582 ~~reasonable attorney's fees against a party if the appellate~~
583 ~~court or administrative law judge determines that a party~~
584 ~~participated in the proceedings for an improper purpose as~~
585 ~~defined by paragraph (1)(e). An~~ award of attorney ~~attorney's~~
586 ~~fees as provided by this subsection~~ may not ~~shall~~ exceed
587 \$50,000.

588 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO
589 SECTION 120.56(4).—

590 (a) If the appellate court or administrative law judge
591 determines that all or part of an unadopted rule ~~agency~~



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592 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
593 immediately discontinue reliance upon ~~on~~ the unadopted rule
594 ~~statement~~ and any substantially similar statement pursuant to s.
595 120.56(4)(f) ~~s. 120.56(4)(e)~~, a judgment or order shall be
596 entered against the agency for reasonable costs and reasonable
597 attorney ~~attorney's~~ fees, unless the agency demonstrates that
598 the statement is required by the Federal Government to implement
599 or retain a delegated or approved program or to meet a condition
600 to receipt of federal funds.

601 (b) Upon notification to the administrative law judge
602 provided before the final hearing that the agency has published
603 a notice of rulemaking under s. 120.54(3)(a), such notice shall
604 automatically operate as a stay of proceedings pending
605 rulemaking. The administrative law judge may vacate the stay for
606 good cause shown. A stay of proceedings under this paragraph
607 remains in effect so long as the agency is proceeding
608 expeditiously and in good faith to adopt the statement as a
609 rule. The administrative law judge shall award reasonable costs
610 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
611 petitioner before ~~prior to~~ the date the notice was published,
612 ~~unless the agency proves to the administrative law judge that it~~
613 ~~did not know and should not have known that the statement was an~~
614 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
615 ~~and paragraph (a) shall be awarded only upon a finding that the~~
616 ~~agency received notice that the statement may constitute an~~
617 ~~unadopted rule at least 30 days before a petition under s.~~
618 ~~120.56(4) was filed and that the agency failed to publish the~~
619 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
620 ~~addresses the statement within that 30-day period. Notice to the~~



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621 ~~agency may be satisfied by its receipt of a copy of the s.~~
622 ~~120.56(4) petition, a notice or other paper containing~~
623 ~~substantially the same information, or a petition filed pursuant~~
624 ~~to s. 120.54(7). An award of attorney attorney's fees as~~
625 ~~provided by this paragraph may not exceed \$50,000.~~

626 (c) Notwithstanding the provisions of chapter 284, an award
627 shall be paid from the budget entity of the secretary, executive
628 director, or equivalent administrative officer of the agency,
629 and the agency is ~~shall~~ not be entitled to payment of an award
630 or reimbursement for payment of an award under any provision of
631 law.

632 ~~(d) If the agency prevails in the proceedings, the~~
633 ~~appellate court or administrative law judge shall award~~
634 ~~reasonable costs and attorney's fees against a party if the~~
635 ~~appellate court or administrative law judge determines that the~~
636 ~~party participated in the proceedings for an improper purpose as~~
637 ~~defined in paragraph (1)(e) or that the party or the party's~~
638 ~~attorney knew or should have known that a claim was not~~
639 ~~supported by the material facts necessary to establish the claim~~
640 ~~or would not be supported by the application of then-existing~~
641 ~~law to those material facts.~~

642 (5) APPEALS.—When there is an appeal, the court in its
643 discretion may award reasonable attorney attorney's fees and
644 reasonable costs to the prevailing party if the court finds that
645 the appeal was frivolous, meritless, or an abuse of the
646 appellate process, or that the agency action which precipitated
647 the appeal was a gross abuse of the agency's discretion. Upon
648 review of agency action that precipitates an appeal, if the
649 court finds that the agency improperly rejected or modified



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650 findings of fact in a recommended order, the court shall award
651 reasonable attorney ~~attorney's~~ fees and reasonable costs to a
652 prevailing appellant for the administrative proceeding and the
653 appellate proceeding.

654 (6) NOTICE OF INVALIDITY.—A party failing to serve a notice
655 of proposed challenge under this subsection is not entitled to
656 an award of reasonable costs and reasonable attorney fees under
657 this section.

658 (a) Before filing a petition challenging the validity of a
659 proposed rule under s. 120.56(2), an adopted rule under s.
660 120.56(3), or an agency statement defined as an unadopted rule
661 under s. 120.56(4), a substantially affected person shall serve
662 the agency head with notice of the proposed challenge. The
663 notice shall identify the proposed or adopted rule or the
664 unadopted rule that the person proposes to challenge and a brief
665 explanation of the basis for that challenge. The notice must be
666 received by the agency head at least 5 days before the filing of
667 a petition under s. 120.56(2), and at least 30 days before the
668 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

671 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
672 purposes of this chapter, s. 57.105(5), and s. 57.111, in
673 addition to an award of reasonable attorney fees and costs, the
674 prevailing party, if the prevailing party is not a state agency,
675 shall also recover reasonable attorney fees and costs incurred
676 in litigating entitlement to, and the determination or
677 quantification of, reasonable attorney fees and costs for the
678 underlying matter. Reasonable attorney fees and costs awarded



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679 for litigating entitlement to, and the determination or
680 quantification of, reasonable attorney fees and costs for the
681 underlying matter are not subject to the limitations on amounts
682 provided in this chapter or s. 57.111.

683 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
684 including ss. 57.105 and 57.111, authorize the award of attorney
685 attorney's fees and costs in administrative proceedings. Nothing
686 in this section shall affect the availability of attorney
687 attorney's fees and costs as provided in those sections.

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

690 120.68 Judicial review.—

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

693 (b) A preliminary, procedural, or intermediate order of the
694 agency or of an administrative law judge of the Division of
695 Administrative Hearings, or a final order under s.
696 120.57(1)(e)4., is immediately reviewable if review of the final
697 agency decision would not provide an adequate remedy.

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

701 (b) All proceedings shall be instituted by filing a notice
702 of appeal or petition for review in accordance with the Florida
703 Rules of Appellate Procedure within 30 days after the date that
704 rendition of the order being appealed was filed with the agency
705 clerk. Such time is hereby extended for any party 10 days from
706 receipt by such party of the notice of the order, if such notice
707 is received after the 25th day from the filing of the order. If



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708 the appeal is of an order rendered in a proceeding initiated
709 under s. 120.56, or a final order under s. 120.57(1)(e)4., the
710 agency whose rule is being challenged shall transmit a copy of
711 the notice of appeal to the committee.

712 ~~(c)(b)~~ When proceedings under this chapter are consolidated
713 for final hearing and the parties to the consolidated proceeding
714 seek review of final or interlocutory orders in more than one
715 district court of appeal, the courts of appeal are authorized to
716 transfer and consolidate the review proceedings. The court may
717 transfer such appellate proceedings on its own motion, upon
718 motion of a party to one of the appellate proceedings, or by
719 stipulation of the parties to the appellate proceedings. In
720 determining whether to transfer a proceeding, the court may
721 consider such factors as the interrelationship of the parties
722 and the proceedings, the desirability of avoiding inconsistent
723 results in related matters, judicial economy, and the burden on
724 the parties of reproducing the record for use in multiple
725 appellate courts.

726 (9) No petition challenging an agency rule as an invalid
727 exercise of delegated legislative authority shall be instituted
728 pursuant to this section, except to review an order entered
729 pursuant to a proceeding under s. 120.56, under s.
730 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
731 findings of immediate danger, necessity, and procedural fairness
732 prerequisite to the adoption of an emergency rule pursuant to s.
733 120.54(4), unless the sole issue presented by the petition is
734 the constitutionality of a rule and there are no disputed issues
735 of fact.

736 Section 9. Section 120.695, Florida Statutes, is amended to



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737 read:

738 120.695 Notice of noncompliance; designation of minor
739 violation rules.—

740 (1) It is the policy of the state that the purpose of
741 regulation is to protect the public by attaining compliance with
742 the policies established by the Legislature. Fines and other
743 penalties may be provided in order to assure compliance;
744 however, the collection of fines and the imposition of penalties
745 are intended to be secondary to the primary goal of attaining
746 compliance with an agency's rules. It is the intent of the
747 Legislature that an agency charged with enforcing rules shall
748 issue a notice of noncompliance as its first response to a minor
749 violation of a rule in any instance in which it is reasonable to
750 assume that the violator was unaware of the rule or unclear as
751 to how to comply with it.

752 (2) (a) Each agency shall issue a notice of noncompliance as
753 a first response to a minor violation of a rule. A "notice of
754 noncompliance" is a notification by the agency charged with
755 enforcing the rule issued to the person or business subject to
756 the rule. A notice of noncompliance may not be accompanied with
757 a fine or other disciplinary penalty. It must identify the
758 specific rule that is being violated, provide information on how
759 to comply with the rule, and specify a reasonable time for the
760 violator to comply with the rule. A rule is agency action that
761 regulates a business, occupation, or profession, or regulates a
762 person operating a business, occupation, or profession, and
763 that, if not complied with, may result in a disciplinary
764 penalty.

765 (b) Each agency shall review all of its rules and designate



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766 those for which a violation would be a minor violation and for
767 which a notice of noncompliance must be the first enforcement
768 action taken against a person or business subject to regulation.
769 A violation of a rule is a minor violation if it does not result
770 in economic or physical harm to a person or adversely affect the
771 public health, safety, or welfare or create a significant threat
772 of such harm. ~~If an agency under the direction of a cabinet
773 officer mails to each licensee a notice of the designated rules
774 at the time of licensure and at least annually thereafter, the
775 provisions of paragraph (a) may be exercised at the discretion
776 of the agency. Such notice shall include a subject-matter index
777 of the rules and information on how the rules may be obtained.~~

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

780 1. No later than June 30, 2015, and thereafter within 3
781 months after any request of the rules ombudsman in the Executive
782 Office of the Governor, each agency shall review under the
783 direction of the Governor shall make a report to the Governor,
784 and each agency under the joint direction of the Governor and
785 Cabinet shall report to the Governor and Cabinet by January 1,
786 1996, on which of its rules and certify to the President of the
787 Senate, the Speaker of the House of Representatives, the
788 Administrative Procedures Committee, and the rules ombudsman
789 those rules that have been designated as rules the violation of
790 which would be a minor violation under paragraph (b), consistent
791 with the legislative intent stated in subsection (1). The rules
792 ombudsman shall promptly report the failure of an agency to
793 timely complete the required review and file the required
794 certification to the Governor, the President of the Senate, the



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795 Speaker of the House of Representatives, and the Administrative
796 Procedures Committee.

797 2. Beginning on July 1, 2015, each agency shall:

798 a. Publish all rules that it has designated as rules the
799 violation of which would be a minor violation, either as a
800 complete list on the agency's Internet website or by
801 incorporation of the designations in the agency's disciplinary
802 guidelines, which shall be adopted as a rule.

803 b. Ensure that all investigative and enforcement personnel
804 are knowledgeable of the agency's designations under this
805 section.

806 3. For each rule filed for adoption, the agency head shall
807 certify whether any part of the rule is designated as a rule the
808 violation of which would be a minor violation and shall update
809 the listing required by sub-subparagraph 2.a.

810 (d) The Governor or the Governor and Cabinet, as
811 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
812 and designation effects of each agency subject to the direction
813 and supervision of such authority and may direct ~~apply~~ a
814 different designation than that applied by such ~~the~~ agency.

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

817 1. The Department of Corrections;

818 2. Educational units;

819 3. The regulation of law enforcement personnel; or

820 4. The regulation of teachers.

821 (f) Designation pursuant to this section is not subject to
822 challenge under this chapter.

823 Section 10. This act shall take effect July 1, 2014.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to administrative procedures; amending
s. 57.111, F.S.; providing conditions under which a
proceeding is not substantially justified for purposes
of an award under the Florida Equal Access to Justice
Act; amending s. 120.54, F.S.; requiring agencies to
publish its notice of rule development within 30 days
if initiating rulemaking at the request of the
petitioner; requiring an agency to publish its notice
of proposed rule within 180 days of the notice of rule
development; providing an exception; limiting reliance
upon an unadopted rule in certain circumstances;
amending s. 120.55, F.S.; providing for publication of
notices of rule development and of rules filed for
adoption; providing additional notice of rule
development, proposals, and adoptions; amending s.
120.56, F.S.; providing that the petitioner
challenging a proposed rule or unadopted agency
statement has the burden of going forward with
evidence sufficient to support the petition; amending
s. 120.569, F.S.; granting agencies additional time to
render final orders in certain circumstances; amending
s. 120.57, F.S.; conforming proceedings that oppose
agency action based on an invalid or unadopted rule to



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853 proceedings used for challenging rules; requiring the
854 agency to issue a notice stating whether the agency
855 will rely on the challenged rule or alleged unadopted
856 rule; authorizing the administrative law judge to make
857 certain findings on the validity of certain alleged
858 unadopted rules; authorizing the administrative law
859 judge to issue a separate final order on certain rules
860 and alleged unadopted rules; prohibiting agencies from
861 rejecting specific conclusions of law; providing for
862 stay of proceedings not involving disputed issues of
863 fact upon timely filing of a rule challenge; providing
864 that the final order terminates the stay; amending s.
865 120.595, F.S.; requiring that a final order in
866 specified administrative proceedings award all
867 reasonable costs and attorney fees to a prevailing
868 party under certain circumstances; revising the
869 criteria used by an administrative law judge to
870 determine whether a party participated in a proceeding
871 for an improper purpose; removing certain exceptions
872 from requirements that attorney fees and costs be
873 rendered against the agency in proceedings in which
874 the petitioner prevails in a rule challenge; requiring
875 service of notice of invalidity to an agency before
876 bringing a rule challenge as a condition precedent to
877 award of attorney fees and costs; authorizing the
878 recovery of reasonable attorney fees and costs
879 incurred by a prevailing party in litigating
880 entitlement to or quantification of underlying
881 attorney fees and costs; removing certain limitations



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882 on such attorney fees and costs; removing
883 redundancies; amending s. 120.68, F.S.; providing for
884 appellate review of orders rendered in challenges to
885 specified rules or unadopted rules; amending s.
886 120.695, F.S.; removing obsolete provisions with
887 respect to required agency review and designation of
888 minor violations; requiring agency review and
889 certification of minor violation rules by a specified
890 date; requiring the reporting of agency failure to
891 complete the review and file certification of such
892 rules; requiring minor violation certification for all
893 rules adopted after a specified date; requiring public
894 notice; providing for applicability; providing an
895 effective date.