

1 A bill to be entitled

2 An act relating to administrative procedures; amending  
3 s. 120.54, F.S.; providing procedures for agencies to  
4 follow when initiating rulemaking after certain public  
5 hearings; limiting reliance upon an unadopted rule in  
6 certain circumstances; amending s. 120.55, F.S.;  
7 providing for publication of notices of rule  
8 development and of rules filed for adoption; providing  
9 for additional notice of rule development, proposals,  
10 and adoptions in the Florida Administrative Register;  
11 requiring certain agencies to provide additional e-  
12 mail notifications concerning specified rulemaking and  
13 rule development activities; amending s. 120.56, F.S.;  
14 specifying the burden of proof necessary for a  
15 petitioner to challenge a proposed rule or unadopted  
16 agency statement; amending s. 120.569, F.S.; granting  
17 agencies additional time to render final orders in  
18 certain circumstances; amending s. 120.57, F.S.;  
19 conforming proceedings that oppose agency action based  
20 on an invalid or unadopted rule to proceedings used  
21 for challenging rules; requiring the agency to issue a  
22 notice stating whether the agency will rely on the  
23 challenged rule or alleged unadopted rule; authorizing  
24 the administrative law judge to make certain findings  
25 on the validity of certain alleged unadopted rules;  
26 authorizing the administrative law judge to issue a

27 separate final order on certain rules and alleged  
28 unadopted rules; prohibiting agencies from rejecting  
29 specific conclusions of law in certain final orders  
30 rendered by an administrative law judge; providing for  
31 the stay of proceedings not involving disputed issues  
32 of fact upon timely filing of a rule challenge;  
33 providing that the final order terminates the stay;  
34 amending s. 120.68, F.S.; providing for judicial  
35 review of orders rendered in challenges to specified  
36 rules or unadopted rules; authorizing extensions for  
37 filing certain appeals or petitions for review under  
38 certain circumstances; amending s. 120.695, F.S.;  
39 removing obsolete provisions with respect to required  
40 agency review and designation of minor violations;  
41 requiring agency review and certification of minor  
42 violation rules by a specified date; requiring the  
43 reporting of agency failure to complete the review and  
44 file certification of such rules; requiring minor  
45 violation certification for all rules adopted after a  
46 specified date; requiring public notice; providing  
47 applicability; conforming provisions to changes made  
48 by the act; providing an effective date.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Paragraph (c) of subsection (7) of section

53 120.54, Florida Statutes, is amended, and paragraph (d) is added  
54 to that subsection, to read:

55 120.54 Rulemaking.—

56 (7) PETITION TO INITIATE RULEMAKING.—

57 (c) If the agency does not initiate rulemaking or  
58 otherwise comply with the requested action within 30 days after  
59 ~~following~~ the public hearing provided for in ~~by~~ paragraph (b),  
60 ~~if the agency does not initiate rulemaking or otherwise comply~~  
61 ~~with the requested action,~~ the agency shall publish in the  
62 Florida Administrative Register a statement of its reasons for  
63 not initiating rulemaking or otherwise complying with the  
64 requested action, and of any changes it will make in the scope  
65 or application of the unadopted rule. The agency shall file the  
66 statement with the committee. The committee shall forward a copy  
67 of the statement to the substantive committee with primary  
68 oversight jurisdiction of the agency in each house of the  
69 Legislature. The committee or the committee with primary  
70 oversight jurisdiction may hold a hearing directed to the  
71 statement of the agency. The committee holding the hearing may  
72 recommend to the Legislature the introduction of legislation  
73 making the rule a statutory standard or limiting or otherwise  
74 modifying the authority of the agency.

75 (d) If the agency initiates rulemaking after a public  
76 hearing provided for in paragraph (b), the agency shall publish  
77 a notice of rule development within 30 days after the hearing  
78 and file a notice of proposed rule within 180 days after the

79 notice of rule development unless, before the 180th day, the  
80 agency publishes in the Florida Administrative Register a  
81 statement explaining its reasons for not having filed the  
82 notice. If rulemaking is initiated under this paragraph, the  
83 agency may not rely on the unadopted rule unless the agency  
84 publishes in the Florida Administrative Register a statement  
85 explaining why rulemaking under paragraph (1) (a) is not feasible  
86 or practicable until conclusion of the rulemaking proceeding.

87 Section 2. Section 120.55, Florida Statutes, is amended to  
88 read:

89 120.55 Publication.—

90 (1) The Department of State shall:

91 (a)1. Through a continuous revision and publication  
92 system, compile and publish electronically, on an Internet  
93 website managed by the department, the "Florida Administrative  
94 Code." The Florida Administrative Code shall contain all rules  
95 adopted by each agency, citing the grant of rulemaking authority  
96 and the specific law implemented pursuant to which each rule was  
97 adopted, all history notes as authorized in s. 120.545(7),  
98 complete indexes to all rules contained in the code, and any  
99 other material required or authorized by law or deemed useful by  
100 the department. The electronic code shall display each rule  
101 chapter currently in effect in browse mode and allow full text  
102 search of the code and each rule chapter. The department may  
103 contract with a publishing firm for a printed publication;  
104 however, the department shall retain responsibility for the code

105 as provided in this section. The electronic publication shall be  
106 the official compilation of the administrative rules of this  
107 state. The Department of State shall retain the copyright over  
108 the Florida Administrative Code.

109 2. Rules general in form but applicable to only one school  
110 district, community college district, or county, or a part  
111 thereof, or state university rules relating to internal  
112 personnel or business and finance shall not be published in the  
113 Florida Administrative Code. Exclusion from publication in the  
114 Florida Administrative Code shall not affect the validity or  
115 effectiveness of such rules.

116 3. At the beginning of the section of the code dealing  
117 with an agency that files copies of its rules with the  
118 department, the department shall publish the address and  
119 telephone number of the executive offices of each agency, the  
120 manner by which the agency indexes its rules, a listing of all  
121 rules of that agency excluded from publication in the code, and  
122 a statement as to where those rules may be inspected.

123 4. Forms shall not be published in the Florida  
124 Administrative Code; but any form which an agency uses in its  
125 dealings with the public, along with any accompanying  
126 instructions, shall be filed with the committee before it is  
127 used. Any form or instruction which meets the definition of  
128 "rule" provided in s. 120.52 shall be incorporated by reference  
129 into the appropriate rule. The reference shall specifically  
130 state that the form is being incorporated by reference and shall

131 include the number, title, and effective date of the form and an  
132 explanation of how the form may be obtained. Each form created  
133 by an agency which is incorporated by reference in a rule notice  
134 of which is given under s. 120.54(3)(a) after December 31, 2007,  
135 must clearly display the number, title, and effective date of  
136 the form and the number of the rule in which the form is  
137 incorporated.

138         5. The department shall allow adopted rules and material  
139 incorporated by reference to be filed in electronic form as  
140 prescribed by department rule. When a rule is filed for adoption  
141 with incorporated material in electronic form, the department's  
142 publication of the Florida Administrative Code on its Internet  
143 website must contain a hyperlink from the incorporating  
144 reference in the rule directly to that material. The department  
145 may not allow hyperlinks from rules in the Florida  
146 Administrative Code to any material other than that filed with  
147 and maintained by the department, but may allow hyperlinks to  
148 incorporated material maintained by the department from the  
149 adopting agency's website or other sites.

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

154             1. All notices required by s. 120.54(2) and (3)(a)  
155 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
156 consideration.

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

160           3. A notice of each request for authorization to amend or  
 161 repeal an existing uniform rule or for the adoption of new  
 162 uniform rules.

163           4. Notice of petitions for declaratory statements or  
 164 administrative determinations.

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

167           6. A list of rules filed for adoption in the previous 7  
 168 days.

169           7. A list of all rules filed for adoption pending  
 170 legislative ratification under s. 120.541(3). A rule shall be  
 171 taken off the list once notice of ratification or withdrawal of  
 172 such rule is received.

173           ~~8.6.~~ Any other material required or authorized by law or  
 174 deemed useful by the department.

175  
 176 The department may contract with a publishing firm for a printed  
 177 publication of the Florida Administrative Register and make  
 178 copies available on an annual subscription basis.

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

181           (d) Charge each agency using the Florida Administrative  
 182 Register a space rate to cover the costs related to the Florida

183 Administrative Register and the Florida Administrative Code.

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

186 (2) The Florida Administrative Register Internet website  
187 must allow users to:

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

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

192 (c) Subscribe to an automated e-mail notification of  
193 selected notices to be sent out before or concurrently with  
194 publication of the electronic Florida Administrative Register.  
195 Such notification must include in the text of the e-mail a  
196 summary of the content of each notice.

197 (d) View agency forms and other materials submitted to the  
198 department in electronic form and incorporated by reference in  
199 proposed rules.

200 (e) Comment on proposed rules.

201 (3) Publication of material required by paragraph (1)(b)  
202 on the Florida Administrative Register Internet website does not  
203 preclude publication of such material on an agency's website or  
204 by other means.

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

208 (5) Each agency that provides an e-mail notification

209 service to inform licensees or other registered recipients of  
210 notices shall use that service to notify recipients of each  
211 notice required under s. 120.54(2) and (3) and provide Internet  
212 links to the appropriate rule page on the Secretary of State's  
213 website or Internet links to an agency website that contains the  
214 proposed rule or final rule.

215 (6)-(5) Any publication of a proposed rule promulgated by  
216 an agency, whether published in the Florida Administrative  
217 Register or elsewhere, shall include, along with the rule, the  
218 name of the person or persons originating such rule, the name of  
219 the agency head who approved the rule, and the date upon which  
220 the rule was approved.

221 (7)-(6) Access to the Florida Administrative Register  
222 Internet website and its contents, including the e-mail  
223 notification service, shall be free for the public.

224 (8)-(7)(a) All fees and moneys collected by the Department  
225 of State under this chapter shall be deposited in the Records  
226 Management Trust Fund for the purpose of paying for costs  
227 incurred by the department in carrying out this chapter.

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

232 Section 3. Subsection (1), paragraph (a) of subsection  
233 (2), and subsection (4) of section 120.56, Florida Statutes, are  
234 amended to read:

235 120.56 Challenges to rules.—

236 (1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A~~  
 237 ~~RULE OR A PROPOSED RULE.~~—

238 (a) Any person substantially affected by a rule or a  
 239 proposed rule may seek an administrative determination of the  
 240 invalidity of the rule on the ground that the rule is an invalid  
 241 exercise of delegated legislative authority.

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

245 1. The particular provisions alleged to be invalid and a  
 246 statement ~~with sufficient explanation~~ of the facts or grounds  
 247 for the alleged invalidity. and

248 2. Facts sufficient to show that the petitioner ~~person~~  
 249 ~~challenging a rule~~ is substantially affected by the challenged  
 250 adopted rule ~~it,~~ or that the person ~~challenging a proposed rule~~  
 251 would be substantially affected by the proposed rule ~~it.~~

252 (c) The petition shall be filed by electronic means with  
 253 the division which shall, immediately upon filing, forward by  
 254 electronic means copies to the agency whose rule is challenged,  
 255 the Department of State, and the committee. Within 10 days after  
 256 receiving the petition, the division director shall, if the  
 257 petition complies with ~~the requirements of~~ paragraph (b), assign  
 258 an administrative law judge who shall conduct a hearing within  
 259 30 days thereafter, unless the petition is withdrawn or a  
 260 continuance is granted by agreement of the parties or for good

261 cause shown. Evidence of good cause includes, but is not limited  
262 to, written notice of an agency's decision to modify or withdraw  
263 the proposed rule or a written notice from the chair of the  
264 committee stating that the committee will consider an objection  
265 to the rule at its next scheduled meeting. The failure of an  
266 agency to follow the applicable rulemaking procedures or  
267 requirements set forth in this chapter shall be presumed to be  
268 material; however, the agency may rebut this presumption by  
269 showing that the substantial interests of the petitioner and the  
270 fairness of the proceedings have not been impaired.

271 (d) Within 30 days after the hearing, the administrative  
272 law judge shall render a decision and state the reasons therefor  
273 in writing. The division shall forthwith transmit by electronic  
274 means copies of the administrative law judge's decision to the  
275 agency, the Department of State, and the committee.

276 (e) Hearings held under this section shall be de novo in  
277 nature. The standard of proof shall be the preponderance of the  
278 evidence. Hearings shall be conducted in the same manner as  
279 provided by ss. 120.569 and 120.57, except that the  
280 administrative law judge's order shall be final agency action.  
281 The petitioner and the agency whose rule is challenged shall be  
282 adverse parties. Other substantially affected persons may join  
283 the proceedings as intervenors on appropriate terms which shall  
284 not unduly delay the proceedings. Failure to proceed under this  
285 section does ~~shall~~ not constitute failure to exhaust  
286 administrative remedies.

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

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.54(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward with evidence sufficient to support the petition. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.~~ A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule and ~~is not limited to challenging the~~

313 ~~change to the proposed rule.~~

314 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
 315 RULES; SPECIAL PROVISIONS.—

316 (a) Any person substantially affected by an agency  
 317 statement that is an unadopted rule may seek an administrative  
 318 determination that the statement violates s. 120.54(1)(a). The  
 319 petition shall include the text of the statement or a  
 320 description of the statement and shall state ~~with particularity~~  
 321 facts sufficient to show that the statement constitutes an  
 322 unadopted a rule ~~under s. 120.52 and that the agency has not~~  
 323 ~~adopted the statement by the rulemaking procedure provided by s.~~  
 324 ~~120.54.~~

325 (b) The administrative law judge may extend the hearing  
 326 date beyond 30 days after assignment of the case for good cause.  
 327 Upon notification to the administrative law judge provided  
 328 before the final hearing that the agency has published a notice  
 329 of rulemaking under s. 120.54(3), such notice shall  
 330 automatically operate as a stay of proceedings pending adoption  
 331 of the statement as a rule. The administrative law judge may  
 332 vacate the stay for good cause shown. A stay of proceedings  
 333 pending rulemaking shall remain in effect so long as the agency  
 334 is proceeding expeditiously and in good faith to adopt the  
 335 statement as a rule.

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

339 statement does not meet the definition of an unadopted rule, the  
340 statement was adopted as a rule in compliance with s. 120.54, or  
341 ~~If a hearing is held and the petitioner proves the allegations~~  
342 ~~of the petition, the agency shall have the burden of proving~~  
343 that rulemaking is not feasible or not practicable under s.  
344 120.54(1)(a).

345 (d)-(e) The administrative law judge may determine whether  
346 all or part of a statement violates s. 120.54(1)(a). The  
347 decision of the administrative law judge shall constitute a  
348 final order. The division shall transmit a copy of the final  
349 order to the Department of State and the committee. The  
350 Department of State shall publish notice of the final order in  
351 the first available issue of the Florida Administrative  
352 Register.

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

358 (f)-(e) If proposed rules addressing the challenged  
359 unadopted rule ~~statement~~ are determined to be an invalid  
360 exercise of delegated legislative authority as defined in s.  
361 120.52(8)(b)-(f), the agency must immediately discontinue  
362 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any  
363 substantially similar statement until rules addressing the  
364 subject are properly adopted, and the administrative law judge

365 shall enter a final order to that effect.

366 (g)~~(f)~~ All proceedings to determine a violation of s.  
 367 120.54(1) (a) shall be brought pursuant to this subsection. A  
 368 proceeding pursuant to this subsection may be consolidated with  
 369 a proceeding under subsection (3) or under any other section of  
 370 this chapter. This paragraph does not prevent a party whose  
 371 substantial interests have been determined by an agency action  
 372 from bringing a proceeding pursuant to s. 120.57(1) (e).

373 Section 4. Paragraph (1) of subsection (2) of section  
 374 120.569, Florida Statutes, is amended to read:

375 120.569 Decisions which affect substantial interests.—

376 (2)

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

382 1. After the hearing is concluded, if conducted by the  
 383 agency;

384 2. After a recommended order is submitted to the agency  
 385 and mailed to all parties, if the hearing is conducted by an  
 386 administrative law judge, except that, at the election of the  
 387 agency, the time for rendering the final order may be extended  
 388 up to 10 days after entry of a mandate from any appeal following  
 389 entry of a final order under s. 120.57(1) (e) 4.; or

390 3. After the agency has received the written and oral

391 material it has authorized to be submitted, if there has been no  
392 hearing.

393 Section 5. Paragraphs (e) and (h) of subsection (1) and  
394 subsection (2) of section 120.57, Florida Statutes, are amended  
395 to read:

396 120.57 Additional procedures for particular cases.—

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

399 (e)1. An agency or an administrative law judge may not  
400 base agency action that determines the substantial interests of  
401 a party on an unadopted rule or a rule that is an invalid  
402 exercise of delegated legislative authority. ~~The administrative~~  
403 ~~law judge shall determine whether an agency statement~~  
404 ~~constitutes an unadopted rule.~~ This subparagraph does not  
405 preclude application of valid adopted rules and applicable  
406 provisions of law to the facts.

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

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

415 b. Section 120.56(3)(a) applies to a challenge alleging  
416 that a rule is an invalid exercise of delegated legislative

417 authority.

418 c. Section 120.56(4)(c) applies to a challenge alleging an  
419 unadopted rule.

420 d. The agency has 15 days after the date of receipt of a  
421 challenge under this subparagraph to serve the challenging party  
422 with a notice stating whether the agency will continue to rely  
423 upon the rule or the alleged unadopted rule as a basis for the  
424 action determining the party's substantive interests. Failure to  
425 timely serve the notice constitutes a binding stipulation that  
426 the agency shall not rely upon the rule or unadopted rule  
427 further in the proceeding. The agency shall include a copy of  
428 this notice upon referral of the matter to the division under s.  
429 120.569(2)(a).

430 e. This subparagraph does not preclude the consolidation  
431 of any proceeding under s. 120.56 with any proceeding under this  
432 paragraph.

433 3.2. Notwithstanding subparagraph 1., if an agency  
434 demonstrates that the statute being implemented directs it to  
435 adopt rules, that the agency has not had time to adopt those  
436 rules because the requirement was so recently enacted, and that  
437 the agency has initiated rulemaking and is proceeding  
438 expeditiously and in good faith to adopt the required rules,  
439 then the agency's action may be based upon those unadopted rules  
440 if, subject to de novo review by the administrative law judge  
441 determines that rulemaking is neither feasible nor practicable  
442 and the unadopted rules would not constitute an invalid exercise

443 of delegated legislative authority if adopted as rules. An  
 444 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
 445 ~~invalid~~. The agency must demonstrate that the unadopted rule:  
 446       a. Is within the powers, functions, and duties delegated  
 447 by the Legislature or, if the agency is operating pursuant to  
 448 authority vested in the agency by ~~derived from~~ the State  
 449 Constitution, is within that authority;  
 450       b. Does not enlarge, modify, or contravene the specific  
 451 provisions of law implemented;  
 452       c. Is not vague, establishes adequate standards for agency  
 453 decisions, or does not vest unbridled discretion in the agency;  
 454       d. Is not arbitrary or capricious. A rule is arbitrary if  
 455 it is not supported by logic or the necessary facts; a rule is  
 456 capricious if it is adopted without thought or reason or is  
 457 irrational;  
 458       e. Is not being applied to the substantially affected  
 459 party without due notice; and  
 460       f. Does not impose excessive regulatory costs on the  
 461 regulated person, county, or city.  
 462       4. If the agency timely serves notice of continued  
 463 reliance upon a challenged rule or an alleged unadopted rule  
 464 under sub-subparagraph 2.d., the administrative law judge shall  
 465 determine whether the challenged rule is an invalid exercise of  
 466 delegated legislative authority or whether the challenged agency  
 467 statement constitutes an unadopted rule and if that unadopted  
 468 rule meets the requirements of subparagraph 3. The determination

469 shall be rendered as a separate final order no earlier than the  
470 date on which the administrative law judge serves the  
471 recommended order.

472 ~~5.3.~~ The recommended and final orders in any proceeding  
473 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
474 except that the administrative law judge's determination  
475 ~~regarding an unadopted rule under subparagraph 4. 1. or~~  
476 ~~subparagraph 2.~~ shall be included as a conclusion of law that  
477 the agency may not reject ~~not be rejected by the agency unless~~  
478 ~~the agency first determines from a review of the complete~~  
479 ~~record, and states with particularity in the order, that such~~  
480 ~~determination is clearly erroneous or does not comply with~~  
481 ~~essential requirements of law. In any proceeding for review~~  
482 ~~under s. 120.68, if the court finds that the agency's rejection~~  
483 ~~of the determination regarding the unadopted rule does not~~  
484 ~~comport with the provisions of this subparagraph, the agency~~  
485 ~~action shall be set aside and the court shall award to the~~  
486 ~~prevailing party the reasonable costs and a reasonable~~  
487 ~~attorney's fee for the initial proceeding and the proceeding for~~  
488 ~~review.~~

489 (h) Any party to a proceeding in which an administrative  
490 law judge ~~of the Division of Administrative Hearings~~ has final  
491 order authority may move for a summary final order when there is  
492 no genuine issue as to any material fact. A summary final order  
493 shall be rendered if the administrative law judge determines  
494 from the pleadings, depositions, answers to interrogatories, and

495 admissions on file, together with affidavits, if any, that no  
496 genuine issue as to any material fact exists and that the moving  
497 party is entitled as a matter of law to the entry of a final  
498 order. A summary final order shall consist of findings of fact,  
499 if any, conclusions of law, a disposition or penalty, if  
500 applicable, and any other information required by law to be  
501 contained in the final order. This paragraph does not apply to  
502 proceedings authorized in paragraph (e).

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

506 (a) The agency shall:

507 1. Give reasonable notice to affected persons of the  
508 action of the agency, whether proposed or already taken, or of  
509 its decision to refuse action, together with a summary of the  
510 factual, legal, and policy grounds therefor.

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

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

519 (b) An agency may not base agency action that determines  
520 the substantial interests of a party on an unadopted rule or a

521 rule that is an invalid exercise of delegated legislative  
522 authority. No later than the date provided by the agency under  
523 subparagraph (a)2. for presenting material in opposition to the  
524 agency's proposed action or refusal to act, the party may file a  
525 petition under s. 120.56 challenging the rule, portion of rule,  
526 or unadopted rule upon which the agency bases its proposed  
527 action or refusal to act. The filing of a challenge under s.  
528 120.56 pursuant to this paragraph shall stay all proceedings on  
529 the agency's proposed action or refusal to act until entry of  
530 the final order by the administrative law judge. The final order  
531 shall provide additional notice that the stay of the pending  
532 agency action is terminated and that any further stay pending  
533 appeal of the final order must be sought from the appellate  
534 court.

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

- 536 1. The notice and summary of grounds.
- 537 2. Evidence received.
- 538 3. All written statements submitted.
- 539 4. Any decision overruling objections.
- 540 5. All matters placed on the record after an ex parte  
541 communication.
- 542 6. The official transcript.
- 543 7. Any decision, opinion, order, or report by the  
544 presiding officer.

545 Section 6. Subsections (1), (2), and (9) of section  
546 120.68, Florida Statutes, are amended to read:

547 120.68 Judicial review.—

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

550 (b) A preliminary, procedural, or intermediate order of  
551 the agency or of an administrative law judge of the Division of  
552 Administrative Hearings, or a final order under s.  
553 120.57(1)(e)4., is immediately reviewable if review of the final  
554 agency decision would not provide an adequate remedy.

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

558 (b) All proceedings shall be instituted by filing a notice  
559 of appeal or petition for review in accordance with the Florida  
560 Rules of Appellate Procedure within 30 days after the date that  
561 ~~rendition of~~ the order being appealed is filed with the agency  
562 clerk. If a party receives notice of the filing of the order  
563 later than the 25th day after the filing of the order with the  
564 agency clerk, the time by which the party must file a notice of  
565 appeal or petition for review is extended for 10 days after the  
566 date that the party received the notice of the filing of the  
567 order. If the appeal is of an order rendered in a proceeding  
568 initiated under s. 120.56 or a final order under s.  
569 120.57(1)(e)4., the agency whose rule is being challenged shall  
570 transmit a copy of the notice of appeal to the committee.

571 (c) ~~(b)~~ When proceedings under this chapter are  
572 consolidated for final hearing and the parties to the

573 consolidated proceeding seek review of final or interlocutory  
574 orders in more than one district court of appeal, the courts of  
575 appeal are authorized to transfer and consolidate the review  
576 proceedings. The court may transfer such appellate proceedings  
577 on its own motion, upon motion of a party to one of the  
578 appellate proceedings, or by stipulation of the parties to the  
579 appellate proceedings. In determining whether to transfer a  
580 proceeding, the court may consider such factors as the  
581 interrelationship of the parties and the proceedings, the  
582 desirability of avoiding inconsistent results in related  
583 matters, judicial economy, and the burden on the parties of  
584 reproducing the record for use in multiple appellate courts.

585 (9) A ~~No~~ petition challenging an agency rule as an invalid  
586 exercise of delegated legislative authority shall not be  
587 instituted pursuant to this section, except to review an order  
588 entered pursuant to a proceeding under s. 120.56, s.  
589 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of  
590 immediate danger, necessity, and procedural fairness  
591 prerequisite to the adoption of an emergency rule pursuant to s.  
592 120.54(4), unless the sole issue presented by the petition is  
593 the constitutionality of a rule and there are no disputed issues  
594 of fact.

595 Section 7. Section 120.695, Florida Statutes, is amended  
596 to read:

597 120.695 Notice of noncompliance; designation of minor  
598 violation of rules.—

599 (1) It is the policy of the state that the purpose of  
600 regulation is to protect the public by attaining compliance with  
601 the policies established by the Legislature. Fines and other  
602 penalties may be provided in order to assure compliance;  
603 however, the collection of fines and the imposition of penalties  
604 are intended to be secondary to the primary goal of attaining  
605 compliance with an agency's rules. It is the intent of the  
606 Legislature that an agency charged with enforcing rules shall  
607 issue a notice of noncompliance as its first response to a minor  
608 violation of a rule in any instance in which it is reasonable to  
609 assume that the violator was unaware of the rule or unclear as  
610 to how to comply with it.

611 (2) (a) Each agency shall issue a notice of noncompliance  
612 as a first response to a minor violation of a rule. A "notice of  
613 noncompliance" is a notification by the agency charged with  
614 enforcing the rule issued to the person or business subject to  
615 the rule. A notice of noncompliance may not be accompanied with  
616 a fine or other disciplinary penalty. It must identify the  
617 specific rule that is being violated, provide information on how  
618 to comply with the rule, and specify a reasonable time for the  
619 violator to comply with the rule. A rule is agency action that  
620 regulates a business, occupation, or profession, or regulates a  
621 person operating a business, occupation, or profession, and  
622 that, if not complied with, may result in a disciplinary  
623 penalty.

624 (b) Each agency shall review all of its rules and  
625 designate those for which a violation would be a minor violation  
626 and for which a notice of noncompliance must be the first  
627 enforcement action taken against a person or business subject to  
628 regulation. A violation of a rule is a minor violation if it  
629 does not result in economic or physical harm to a person or  
630 adversely affect the public health, safety, or welfare or create  
631 a significant threat of such harm. ~~If an agency under the~~  
632 ~~direction of a cabinet officer mails to each licensee a notice~~  
633 ~~of the designated rules at the time of licensure and at least~~  
634 ~~annually thereafter, the provisions of paragraph (a) may be~~  
635 ~~exercised at the discretion of the agency. Such notice shall~~  
636 ~~include a subject matter index of the rules and information on~~  
637 ~~how the rules may be obtained.~~

638 (c) 1. No later than June 30, 2016, and after such date  
639 within 3 months after any request of the rules ombudsman in the  
640 Executive Office of the Governor, The agency's review and  
641 designation must be completed by December 1, 1995; each agency  
642 shall review ~~under the direction of the Governor shall make a~~  
643 ~~report to the Governor, and each agency under the joint~~  
644 ~~direction of the Governor and Cabinet shall report to the~~  
645 ~~Governor and Cabinet by January 1, 1996, on which of its rules~~  
646 and certify to the President of the Senate, the Speaker of the  
647 House of Representatives, the committee, and the rules ombudsman  
648 those rules that have been designated as rules the violation of  
649 which would be a minor violation under paragraph (b), consistent

650 with the legislative intent stated in subsection (1). The rules  
651 ombudsman shall promptly report to the Governor, the President  
652 of the Senate, the Speaker of the House of Representatives, and  
653 the committee the failure of any agency to timely complete the  
654 review and file the certification as required by this section.

655 2. Beginning July 1, 2016, each agency shall:

656 a. Publish all rules that the agency has designated as  
657 rules the violation of which would be a minor violation, either  
658 as a complete list on the agency's website or by incorporation  
659 of the designations in the agency's disciplinary guidelines  
660 adopted as a rule.

661 b. Ensure that all investigative and enforcement personnel  
662 are knowledgeable about the agency's designations under this  
663 section.

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

668 (d) The Governor or the Governor and Cabinet, as  
669 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
670 and designation effects of each agency subject to the direction  
671 and supervision of such authority and may direct ~~apply~~ a  
672 different designation than that applied by such ~~the~~ agency.

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

675 1. The Department of Corrections;

676 |       2. Educational units;

677 |       3. The regulation of law enforcement personnel; or

678 |       4. The regulation of teachers.

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

681 |       Section 8. This act shall take effect July 1, 2015.