

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

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

Section 1. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

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

79        (d) If the agency initiates rulemaking after a public  
80 hearing provided for in paragraph (b), the agency shall publish  
81 a notice of rule development within 30 days after the hearing  
82 and file a notice of proposed rule within 180 days after the  
83 notice of rule development unless, before the 180th day, the  
84 agency publishes in the Florida Administrative Register a  
85 statement explaining its reasons for not having filed the  
86 notice. If rulemaking is initiated under this paragraph, the  
87 agency may not rely on the unadopted rule unless the agency  
88 publishes in the Florida Administrative Register a statement  
89 explaining why rulemaking under paragraph (1)(a) is not feasible  
90 or practicable until conclusion of the rulemaking proceeding.

91        Section 2. Section 120.55, Florida Statutes, is amended to  
92 read:

93        120.55 Publication.—

94        (1) The Department of State shall:

95        (a)1. Through a continuous revision and publication  
96 system, compile and publish electronically, on an Internet  
97 website managed by the department, the "Florida Administrative  
98 Code." The Florida Administrative Code shall contain all rules  
99 adopted by each agency, citing the grant of rulemaking authority  
100 and the specific law implemented pursuant to which each rule was  
101 adopted, all history notes as authorized in s. 120.545(7),  
102 complete indexes to all rules contained in the code, and any  
103 other material required or authorized by law or deemed useful by  
104 the department. The electronic code shall display each rule

105 chapter currently in effect in browse mode and allow full text  
106 search of the code and each rule chapter. The department may  
107 contract with a publishing firm for a printed publication;  
108 however, the department shall retain responsibility for the code  
109 as provided in this section. The electronic publication shall be  
110 the official compilation of the administrative rules of this  
111 state. The Department of State shall retain the copyright over  
112 the Florida Administrative Code.

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

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

127 4. Forms shall not be published in the Florida  
128 Administrative Code; but any form which an agency uses in its  
129 dealings with the public, along with any accompanying  
130 instructions, shall be filed with the committee before it is

131 used. Any form or instruction which meets the definition of  
132 "rule" provided in s. 120.52 shall be incorporated by reference  
133 into the appropriate rule. The reference shall specifically  
134 state that the form is being incorporated by reference and shall  
135 include the number, title, and effective date of the form and an  
136 explanation of how the form may be obtained. Each form created  
137 by an agency which is incorporated by reference in a rule notice  
138 of which is given under s. 120.54(3)(a) after December 31, 2007,  
139 must clearly display the number, title, and effective date of  
140 the form and the number of the rule in which the form is  
141 incorporated.

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

154 (b) Electronically publish on an Internet website managed  
155 by the department a continuous revision and publication entitled  
156 the "Florida Administrative Register," which shall serve as the

157 official publication and must contain:

158 1. All notices required by s. 120.54(2) and (3)(a)  
 159 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
 160 consideration.

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

164 3. A notice of each request for authorization to amend or  
 165 repeal an existing uniform rule or for the adoption of new  
 166 uniform rules.

167 4. Notice of petitions for declaratory statements or  
 168 administrative determinations.

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

171 6. A list of rules filed for adoption in the previous 7  
 172 days.

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

177 ~~8.6.~~ Any other material required or authorized by law or  
 178 deemed useful by the department.

179  
 180 The department may contract with a publishing firm for a printed  
 181 publication of the Florida Administrative Register and make  
 182 copies available on an annual subscription basis.

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

185 (d) Charge each agency using the Florida Administrative  
186 Register a space rate to cover the costs related to the Florida  
187 Administrative Register and the Florida Administrative Code.

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

190 (2) The Florida Administrative Register Internet website  
191 must allow users to:

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

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

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

201 (d) View agency forms and other materials submitted to the  
202 department in electronic form and incorporated by reference in  
203 proposed rules.

204 (e) Comment on proposed rules.

205 (3) Publication of material required by paragraph (1) (b)  
206 on the Florida Administrative Register Internet website does not  
207 preclude publication of such material on an agency's website or  
208 by other means.



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

212 (5) Each agency that provides an e-mail notification  
213 service to inform licensees or other registered recipients of  
214 notices shall use that service to notify recipients of each  
215 notice required under s. 120.54(2) and (3) and provide Internet  
216 links to the appropriate rule page on the Secretary of State's  
217 website or Internet links to an agency website that contains the  
218 proposed rule or final rule.

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

225 ~~(7)-(6)~~ Access to the Florida Administrative Register  
226 Internet website and its contents, including the e-mail  
227 notification service, shall be free for the public.

228 ~~(8)-(7)~~ (a) All fees and moneys collected by the Department  
229 of State under this chapter shall be deposited in the Records  
230 Management Trust Fund for the purpose of paying for costs  
231 incurred by the department in carrying out this chapter.

232 (b) The unencumbered balance in the Records Management  
233 Trust Fund for fees collected pursuant to this chapter may not  
234 exceed \$300,000 at the beginning of each fiscal year, and any

235 excess shall be transferred to the General Revenue Fund.

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

239 120.56 Challenges to rules.—

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

242 (a) Any person substantially affected by a rule or a  
 243 proposed rule may seek an administrative determination of the  
 244 invalidity of the rule on the ground that the rule is an invalid  
 245 exercise of delegated legislative authority.

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

249 1. The particular provisions alleged to be invalid and a  
 250 statement ~~with sufficient explanation~~ of the facts or grounds  
 251 for the alleged invalidity. ~~and~~

252 2. Facts sufficient to show that the petitioner ~~person~~  
 253 ~~challenging a rule~~ is substantially affected by the challenged  
 254 adopted rule ~~it,~~ or ~~that the person challenging a proposed rule~~  
 255 would be substantially affected by the proposed rule ~~it.~~

256 (c) The petition shall be filed by electronic means with  
 257 the division which shall, immediately upon filing, forward by  
 258 electronic means copies to the agency whose rule is challenged,  
 259 the Department of State, and the committee. Within 10 days after  
 260 receiving the petition, the division director shall, if the

261 petition complies with ~~the requirements of~~ paragraph (b), assign  
262 an administrative law judge who shall conduct a hearing within  
263 30 days thereafter, unless the petition is withdrawn or a  
264 continuance is granted by agreement of the parties or for good  
265 cause shown. Evidence of good cause includes, but is not limited  
266 to, written notice of an agency's decision to modify or withdraw  
267 the proposed rule or a written notice from the chair of the  
268 committee stating that the committee will consider an objection  
269 to the rule at its next scheduled meeting. The failure of an  
270 agency to follow the applicable rulemaking procedures or  
271 requirements set forth in this chapter shall be presumed to be  
272 material; however, the agency may rebut this presumption by  
273 showing that the substantial interests of the petitioner and the  
274 fairness of the proceedings have not been impaired.

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

280 (e) Hearings held under this section shall be de novo in  
281 nature. The standard of proof shall be the preponderance of the  
282 evidence. Hearings shall be conducted in the same manner as  
283 provided by ss. 120.569 and 120.57, except that the  
284 administrative law judge's order shall be final agency action.  
285 The petitioner and the agency whose rule is challenged shall be  
286 adverse parties. Other substantially affected persons may join

287 the proceedings as intervenors on appropriate terms which shall  
288 not unduly delay the proceedings. Failure to proceed under this  
289 section does ~~shall~~ not constitute failure to exhaust  
290 administrative remedies.

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

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

313 who is not substantially affected by the proposed rule as  
314 initially noticed, but who is substantially affected by the rule  
315 as a result of a change, may challenge any provision of the  
316 resulting proposed rule ~~and is not limited to challenging the~~  
317 ~~change to the proposed rule.~~

318 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
319 RULES; SPECIAL PROVISIONS.—

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

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

339 statement as a rule.

340 (c) The petitioner has the burden of going forward with  
341 evidence sufficient to support the petition. The agency then has  
342 the burden to prove by a preponderance of the evidence that the  
343 statement does not meet the definition of an unadopted rule, the  
344 statement was adopted as a rule in compliance with s. 120.54, or  
345 ~~If a hearing is held and the petitioner proves the allegations~~  
346 ~~of the petition, the agency shall have the burden of proving~~  
347 that rulemaking is not feasible or not practicable under s.  
348 120.54(1) (a).

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

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

362 (f)~~(e)~~ If proposed rules addressing the challenged  
363 unadopted rule ~~statement~~ are determined to be an invalid  
364 exercise of delegated legislative authority as defined in s.

365 120.52(8)(b)-(f), the agency must immediately discontinue  
366 reliance upon ~~on~~ the unadopted rule statement and any  
367 substantially similar statement until rules addressing the  
368 subject are properly adopted, and the administrative law judge  
369 shall enter a final order to that effect.

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

377 Section 4. Paragraph (1) of subsection (2) of section  
378 120.569, Florida Statutes, is amended to read:

379 120.569 Decisions which affect substantial interests.—

380 (2)

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

386 1. After the hearing is concluded, if conducted by the  
387 agency;

388 2. After a recommended order is submitted to the agency  
389 and mailed to all parties, if the hearing is conducted by an  
390 administrative law judge, except that, at the election of the

391 agency, the time for rendering the final order may be extended  
392 up to 10 days after entry of a mandate from any appeal following  
393 entry of a final order under s. 120.57(1)(e)4.; or

394 3. After the agency has received the written and oral  
395 material it has authorized to be submitted, if there has been no  
396 hearing.

397 Section 5. Paragraphs (e) and (h) of subsection (1) and  
398 subsection (2) of section 120.57, Florida Statutes, are amended  
399 to read:

400 120.57 Additional procedures for particular cases.—

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

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

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



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

419 b. Section 120.56(3)(a) applies to a challenge alleging  
420 that a rule is an invalid exercise of delegated legislative  
421 authority.

422 c. Section 120.56(4)(c) applies to a challenge alleging an  
423 unadopted rule.

424 d. The agency has 15 days after the date of receipt of a  
425 challenge under this subparagraph to serve the challenging party  
426 with a notice stating whether the agency will continue to rely  
427 upon the rule or the alleged unadopted rule as a basis for the  
428 action determining the party's substantive interests. Failure to  
429 timely serve the notice constitutes a binding stipulation that  
430 the agency shall not rely upon the rule or unadopted rule  
431 further in the proceeding. The agency shall include a copy of  
432 this notice upon referral of the matter to the division under s.  
433 120.569(2)(a).

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

437 3.2- Notwithstanding subparagraph 1., if an agency  
438 demonstrates that the statute being implemented directs it to  
439 adopt rules, that the agency has not had time to adopt those  
440 rules because the requirement was so recently enacted, and that  
441 the agency has initiated rulemaking and is proceeding  
442 expeditiously and in good faith to adopt the required rules,

443 then the agency's action may be based upon those unadopted rules  
444 if, subject to de novo review by the administrative law judge  
445 determines that rulemaking is neither feasible nor practicable  
446 and the unadopted rules would not constitute an invalid exercise  
447 of delegated legislative authority if adopted as rules. An  
448 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
449 ~~invalid~~. The agency must demonstrate that the unadopted rule:

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

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

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

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

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

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

466 4. If the agency timely serves notice of continued  
467 reliance upon a challenged rule or an alleged unadopted rule  
468 under sub-subparagraph 2.d., the administrative law judge shall

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

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

493 6. A petitioner may pursue a separate, collateral  
494 challenge under s. 120.56 even if an adequate remedy exists

495 through a proceeding under this section. The administrative law  
 496 judge may consolidate the proceedings.

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

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

514 (a) The agency shall:

515 1. Give reasonable notice to affected persons of the  
 516 action of the agency, whether proposed or already taken, or of  
 517 its decision to refuse action, together with a summary of the  
 518 factual, legal, and policy grounds therefor.

519 2. Give parties or their counsel the option, at a  
 520 convenient time and place, to present to the agency or hearing

521 officer written or oral evidence in opposition to the action of  
522 the agency or to its refusal to act, or a written statement  
523 challenging the grounds upon which the agency has chosen to  
524 justify its action or inaction.

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

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

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

- 544 1. The notice and summary of grounds.  
545 2. Evidence received.  
546 3. All written statements submitted.

- 547 4. Any decision overruling objections.  
 548 5. All matters placed on the record after an ex parte  
 549 communication.  
 550 6. The official transcript.  
 551 7. Any decision, opinion, order, or report by the  
 552 presiding officer.

553 Section 6. Subsections (1), (2), and (9) of section  
 554 120.68, Florida Statutes, are amended to read:

555 120.68 Judicial review.—

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

558 (b) A preliminary, procedural, or intermediate order of  
 559 the agency or of an administrative law judge of the Division of  
 560 Administrative Hearings, or a final order under s.  
 561 120.57(1)(e)4., is immediately reviewable if review of the final  
 562 agency decision would not provide an adequate remedy.

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

566 (b) All proceedings shall be instituted by filing a notice  
 567 of appeal or petition for review in accordance with the Florida  
 568 Rules of Appellate Procedure within 30 days after the date that  
 569 ~~rendition of~~ the order being appealed is filed with the agency  
 570 clerk. If a party receives notice of the filing of the order  
 571 later than the 25th day after the filing of the order with the  
 572 agency clerk, the time by which the party must file a notice of

573 appeal or petition for review is extended for 10 days after the  
574 date that the party received the notice of the filing of the  
575 order. If the appeal is of an order rendered in a proceeding  
576 initiated under s. 120.56 or a final order under s.

577 120.57(1)(e)4., the agency whose rule is being challenged shall  
578 transmit a copy of the notice of appeal to the committee.

579 (c)-(b) When proceedings under this chapter are  
580 consolidated for final hearing and the parties to the  
581 consolidated proceeding seek review of final or interlocutory  
582 orders in more than one district court of appeal, the courts of  
583 appeal are authorized to transfer and consolidate the review  
584 proceedings. The court may transfer such appellate proceedings  
585 on its own motion, upon motion of a party to one of the  
586 appellate proceedings, or by stipulation of the parties to the  
587 appellate proceedings. In determining whether to transfer a  
588 proceeding, the court may consider such factors as the  
589 interrelationship of the parties and the proceedings, the  
590 desirability of avoiding inconsistent results in related  
591 matters, judicial economy, and the burden on the parties of  
592 reproducing the record for use in multiple appellate courts.

593 (9) A ~~No~~ petition challenging an agency rule as an invalid  
594 exercise of delegated legislative authority shall not be  
595 instituted pursuant to this section, except to review an order  
596 entered pursuant to a proceeding under s. 120.56, s.  
597 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of  
598 immediate danger, necessity, and procedural fairness

599 prerequisite to the adoption of an emergency rule pursuant to s.  
 600 120.54(4), unless the sole issue presented by the petition is  
 601 the constitutionality of a rule and there are no disputed issues  
 602 of fact.

603 Section 7. Section 120.695, Florida Statutes, is amended  
 604 to read:

605 120.695 Notice of noncompliance; designation of minor  
 606 violation of rules.—

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

619 (2) (a) Each agency shall issue a notice of noncompliance  
 620 as a first response to a minor violation of a rule. A "notice of  
 621 noncompliance" is a notification by the agency charged with  
 622 enforcing the rule issued to the person or business subject to  
 623 the rule. A notice of noncompliance may not be accompanied with  
 624 a fine or other disciplinary penalty. It must identify the



625 specific rule that is being violated, provide information on how  
626 to comply with the rule, and specify a reasonable time for the  
627 violator to comply with the rule. A rule is agency action that  
628 regulates a business, occupation, or profession, or regulates a  
629 person operating a business, occupation, or profession, and  
630 that, if not complied with, may result in a disciplinary  
631 penalty.

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

646 (c) 1. No later than June 30, 2016, and after such date  
647 within 3 months after any request of the rules ombudsman in the  
648 Executive Office of the Governor, ~~The agency's review and~~  
649 ~~designation must be completed by December 1, 1995;~~ each agency  
650 shall review ~~under the direction of the Governor shall make a~~

651 ~~report to the Governor, and each agency under the joint~~  
652 ~~direction of the Governor and Cabinet shall report to the~~  
653 ~~Governor and Cabinet by January 1, 1996, on which of its rules~~  
654 and certify to the President of the Senate, the Speaker of the  
655 House of Representatives, the committee, and the rules ombudsman  
656 those rules that have been designated as rules the violation of  
657 which would be a minor violation under paragraph (b), consistent  
658 with the legislative intent stated in subsection (1). The rules  
659 ombudsman shall promptly report to the Governor, the President  
660 of the Senate, the Speaker of the House of Representatives, and  
661 the committee the failure of any agency to timely complete the  
662 review and file the certification as required by this section.

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

664 a. Publish all rules that the agency has designated as  
665 rules the violation of which would be a minor violation, either  
666 as a complete list on the agency's website or by incorporation  
667 of the designations in the agency's disciplinary guidelines  
668 adopted as a rule.

669 b. Ensure that all investigative and enforcement personnel  
670 are knowledgeable about the agency's designations under this  
671 section.

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

676 (d) The Governor or the Governor and Cabinet, as  
 677 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
 678 and designation effects of each agency subject to the direction  
 679 and supervision of such authority and may direct ~~apply~~ a  
 680 different designation than that applied by such ~~the~~ agency.

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

- 683 1. The Department of Corrections;
- 684 2. Educational units;
- 685 3. The regulation of law enforcement personnel; or
- 686 4. The regulation of teachers.

687 (f) Designation pursuant to this section is not subject to  
 688 challenge under this chapter.

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