



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; providing that failure to  
14          follow certain provisions does not constitute grounds  
15          to challenge validity of a rule; amending s. 120.56,  
16          F.S.; clarifying language; amending s. 120.57, F.S.;  
17          conforming proceedings that oppose agency action based  
18          on an invalid or unadopted rule to proceedings used  
19          for challenging rules; authorizing the administrative  
20          law judge to make certain findings on the validity of  
21          certain alleged unadopted rules; prohibiting agencies  
22          from rejecting specific conclusions of law in certain  
23          recommended orders rendered by an administrative law  
24          judge; authorizing a petitioner to file certain  
25          collateral challenges regarding the validity of a  
26          rule; authorizing the administrative law judge to



27 | consolidate proceedings in such rule challenges;  
28 | providing that agency action may not be based on an  
29 | invalid or unadopted rule; amending s. 120.68, F.S.;  
30 | revising mechanism for determining when appeals or  
31 | petitions for review must be instituted; authorizing  
32 | extensions for filing certain appeals or petitions for  
33 | review under certain circumstances; amending s.  
34 | 120.695, F.S.; removing obsolete provisions with  
35 | respect to required agency review and designation of  
36 | minor violations; requiring agency review and  
37 | certification of minor violation rules by a specified  
38 | date; requiring minor violation certification for all  
39 | rules adopted after a specified date; requiring public  
40 | notice; providing applicability; conforming provisions  
41 | to changes made by the act; providing an effective  
42 | date.

43

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

45

46 | Section 1. Paragraph (c) of subsection (7) of section  
47 | 120.54, Florida Statutes, is amended, and paragraph (d) is added  
48 | to that subsection, to read:

49 | 120.54 Rulemaking.—

50 | (7) PETITION TO INITIATE RULEMAKING.—

51 | (c) If the agency does not initiate rulemaking or  
52 | otherwise comply with the requested action within 30 days after



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

69 (d) If the agency initiates rulemaking after a public  
70 hearing provided for in paragraph (b), the agency shall publish  
71 a notice of rule development within 30 days after the hearing  
72 and file a notice of proposed rule within 180 days after the  
73 notice of rule development unless, before the 180th day, the  
74 agency publishes in the Florida Administrative Register a  
75 statement explaining its reasons for not having filed the  
76 notice. If rulemaking is initiated under this paragraph, the  
77 agency may not rely on the unadopted rule unless the agency  
78 publishes in the Florida Administrative Register a statement



79 explaining why rulemaking under paragraph (1)(a) is not feasible  
80 or practicable until conclusion of the rulemaking proceeding.

81 Section 2. Section 120.55, Florida Statutes, is amended to  
82 read:

83 120.55 Publication.—

84 (1) The Department of State shall:

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

103 2. Rules general in form but applicable to only one school  
104 district, community college district, or county, or a part



105 | thereof, or state university rules relating to internal  
106 | personnel or business and finance shall not be published in the  
107 | Florida Administrative Code. Exclusion from publication in the  
108 | Florida Administrative Code shall not affect the validity or  
109 | effectiveness of such rules.

110 |         3. At the beginning of the section of the code dealing  
111 | with an agency that files copies of its rules with the  
112 | department, the department shall publish the address and  
113 | telephone number of the executive offices of each agency, the  
114 | manner by which the agency indexes its rules, a listing of all  
115 | rules of that agency excluded from publication in the code, and  
116 | a statement as to where those rules may be inspected.

117 |         4. Forms shall not be published in the Florida  
118 | Administrative Code; but any form which an agency uses in its  
119 | dealings with the public, along with any accompanying  
120 | instructions, shall be filed with the committee before it is  
121 | used. Any form or instruction which meets the definition of  
122 | "rule" provided in s. 120.52 shall be incorporated by reference  
123 | into the appropriate rule. The reference shall specifically  
124 | state that the form is being incorporated by reference and shall  
125 | include the number, title, and effective date of the form and an  
126 | explanation of how the form may be obtained. Each form created  
127 | by an agency which is incorporated by reference in a rule notice  
128 | of which is given under s. 120.54(3)(a) after December 31, 2007,  
129 | must clearly display the number, title, and effective date of  
130 | the form and the number of the rule in which the form is



131 incorporated.

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

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

148             1. All notices required by s. 120.54(2) and (3)(a)  
149 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
150 consideration.

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

154             3. A notice of each request for authorization to amend or  
155 repeal an existing uniform rule or for the adoption of new  
156 uniform rules.



157 4. Notice of petitions for declaratory statements or  
158 administrative determinations.

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

161 6. A list of rules filed for adoption in the previous 7  
162 days.

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

167 ~~8.6.~~ Any other material required or authorized by law or  
168 deemed useful by the department.

169  
170 The department may contract with a publishing firm for a printed  
171 publication of the Florida Administrative Register and make  
172 copies available on an annual subscription basis.

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

175 (d) Charge each agency using the Florida Administrative  
176 Register a space rate to cover the costs related to the Florida  
177 Administrative Register and the Florida Administrative Code.

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

180 (2) The Florida Administrative Register Internet website  
181 must allow users to:

182 (a) Search for notices by type, publication date, rule



183 number, word, subject, and agency.

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

186 (c) Subscribe to an automated e-mail notification of  
187 selected notices to be sent out before or concurrently with  
188 publication of the electronic Florida Administrative Register.  
189 Such notification must include in the text of the e-mail a  
190 summary of the content of each notice.

191 (d) View agency forms and other materials submitted to the  
192 department in electronic form and incorporated by reference in  
193 proposed rules.

194 (e) Comment on proposed rules.

195 (3) Publication of material required by paragraph (1) (b)  
196 on the Florida Administrative Register Internet website does not  
197 preclude publication of such material on an agency's website or  
198 by other means.

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

202 (5) Each agency that provides an e-mail notification  
203 service to inform licensees or other registered recipients of  
204 notices shall use that service to notify recipients of each  
205 notice required under s. 120.54(2) and (3) and provide Internet  
206 links to the appropriate rule page on the Secretary of State's  
207 website or Internet links to an agency website that contains the  
208 proposed rule or final rule.





209        (6)~~(5)~~ Any publication of a proposed rule promulgated by  
210 an agency, whether published in the Florida Administrative  
211 Register or elsewhere, shall include, along with the rule, the  
212 name of the person or persons originating such rule, the name of  
213 the agency head who approved the rule, and the date upon which  
214 the rule was approved.

215        (7)~~(6)~~ Access to the Florida Administrative Register  
216 Internet website and its contents, including the e-mail  
217 notification service, shall be free for the public.

218        (8)~~(7)~~(a) All fees and moneys collected by the Department  
219 of State under this chapter shall be deposited in the Records  
220 Management Trust Fund for the purpose of paying for costs  
221 incurred by the department in carrying out this chapter.

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

226        (9) The failure to follow the provisions of this section  
227 may not be raised in a proceeding challenging the validity of a  
228 rule pursuant to s. 120.52(8)(a).

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

232        120.56 Challenges to rules.—

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



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

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

242 1. The particular provisions alleged to be invalid and a  
243 statement ~~with sufficient explanation~~ of the facts or grounds  
244 for the alleged invalidity. ~~and~~

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

249 (c) The petition shall be filed by electronic means with  
250 the division which shall, immediately upon filing, forward by  
251 electronic means copies to the agency whose rule is challenged,  
252 the Department of State, and the committee. Within 10 days after  
253 receiving the petition, the division director shall, if the  
254 petition complies with ~~the requirements of~~ paragraph (b), assign  
255 an administrative law judge who shall conduct a hearing within  
256 30 days thereafter, unless the petition is withdrawn or a  
257 continuance is granted by agreement of the parties or for good  
258 cause shown. Evidence of good cause includes, but is not limited  
259 to, written notice of an agency's decision to modify or withdraw  
260 the proposed rule or a written notice from the chair of the



261 committee stating that the committee will consider an objection  
262 to the rule at its next scheduled meeting. The failure of an  
263 agency to follow the applicable rulemaking procedures or  
264 requirements set forth in this chapter shall be presumed to be  
265 material; however, the agency may rebut this presumption by  
266 showing that the substantial interests of the petitioner and the  
267 fairness of the proceedings have not been impaired.

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

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

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

285 (a) A substantially affected person may seek an  
286 administrative determination of the invalidity of a proposed



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

311 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
312 RULES; SPECIAL PROVISIONS.—



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

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

333 (c) If a hearing is held and the petitioner proves the  
334 allegations of the petition, the agency shall have the burden of  
335 proving that rulemaking is not feasible or not practicable under  
336 s. 120.54(1)(a).

337 ~~(d)-(e)~~ The administrative law judge may determine whether  
338 all or part of a statement violates s. 120.54(1)(a). The



339 decision of the administrative law judge shall constitute a  
340 final order. The division shall transmit a copy of the final  
341 order to the Department of State and the committee. The  
342 Department of State shall publish notice of the final order in  
343 the first available issue of the Florida Administrative  
344 Register.

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

350 (f)~~(e)~~ If proposed rules addressing the challenged  
351 unadopted rule ~~statement~~ are determined to be an invalid  
352 exercise of delegated legislative authority as defined in s.  
353 120.52(8)(b)-(f), the agency must immediately discontinue  
354 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any  
355 substantially similar statement until rules addressing the  
356 subject are properly adopted, and the administrative law judge  
357 shall enter a final order to that effect.

358 (g)~~(f)~~ All proceedings to determine a violation of s.  
359 120.54(1)(a) shall be brought pursuant to this subsection. A  
360 proceeding pursuant to this subsection may be consolidated with  
361 a proceeding under subsection (3) or under any other section of  
362 this chapter. This paragraph does not prevent a party whose  
363 substantial interests have been determined by an agency action  
364 from bringing a proceeding pursuant to s. 120.57(1)(e).



365 Section 4. Paragraphs (e) and (h) of subsection (1) and  
366 subsection (2) of section 120.57, Florida Statutes, are amended  
367 to read:

368 120.57 Additional procedures for particular cases.—

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

371 (e)1. An agency or an administrative law judge may not  
372 base agency action that determines the substantial interests of  
373 a party on an unadopted rule or a rule that is an invalid  
374 exercise of delegated legislative authority. ~~The administrative~~  
375 ~~law judge shall determine whether an agency statement~~  
376 ~~constitutes an unadopted rule.~~ This subparagraph does not  
377 preclude application of valid adopted rules and applicable  
378 provisions of law to the facts.

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

385 a. The challenge may be pled as a defense using the  
386 procedures set forth in s. 120.56(1)(b).

387 b. Section 120.56(3)(a) applies to a challenge alleging  
388 that a rule is an invalid exercise of delegated legislative  
389 authority.

390 c. Section 120.56(4)(c) applies to a challenge alleging an



391 unadopted rule.

392 d. This subparagraph does not preclude the consolidation  
393 of any proceeding under s. 120.56 with any proceeding under this  
394 paragraph.

395 3.2. Notwithstanding subparagraph 1., if an agency  
396 demonstrates that the statute being implemented directs it to  
397 adopt rules, that the agency has not had time to adopt those  
398 rules because the requirement was so recently enacted, and that  
399 the agency has initiated rulemaking and is proceeding  
400 expeditiously and in good faith to adopt the required rules,  
401 then the agency's action may be based upon those unadopted rules  
402 if, subject to de novo review by the administrative law judge  
403 determines that rulemaking is neither feasible nor practicable  
404 and the unadopted rules would not constitute an invalid exercise  
405 of delegated legislative authority if adopted as rules. An  
406 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
407 ~~invalid~~. The agency must demonstrate that the unadopted rule:

408 a. Is within the powers, functions, and duties delegated  
409 by the Legislature or, if the agency is operating pursuant to  
410 authority vested in the agency by ~~derived from~~ the State  
411 Constitution, is within that authority;

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

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

416 d. Is not arbitrary or capricious. A rule is arbitrary if





417 it is not supported by logic or the necessary facts; a rule is  
418 capricious if it is adopted without thought or reason or is  
419 irrational;

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

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

424 ~~4.3.~~ The recommended and final orders in any proceeding  
425 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
426 except that the administrative law judge's determination  
427 regarding an unadopted rule or a rule challenged as an invalid  
428 exercise of delegated legislative authority under subparagraph  
429 1. or subparagraph 2. shall be included as a conclusion of law  
430 that the agency may not reject ~~not be rejected by the agency~~  
431 ~~unless the agency first determines from a review of the complete~~  
432 ~~record, and states with particularity in the order, that such~~  
433 ~~determination is clearly erroneous or does not comply with~~  
434 ~~essential requirements of law. In any proceeding for review~~  
435 ~~under s. 120.68, if the court finds that the agency's rejection~~  
436 ~~of the determination regarding the unadopted rule does not~~  
437 ~~comport with the provisions of this subparagraph, the agency~~  
438 ~~action shall be set aside and the court shall award to the~~  
439 ~~prevailing party the reasonable costs and a reasonable~~  
440 ~~attorney's fee for the initial proceeding and the proceeding for~~  
441 ~~review.~~

442 5. A petitioner may pursue a separate, collateral



443 challenge under s. 120.56 even if an adequate remedy exists  
444 through a proceeding under this section. The administrative law  
445 judge may consolidate the proceedings.

446 (h) Any party to a proceeding in which an administrative  
447 law judge ~~of the Division of Administrative Hearings~~ has final  
448 order authority may move for a summary final order when there is  
449 no genuine issue as to any material fact. A summary final order  
450 shall be rendered if the administrative law judge determines  
451 from the pleadings, depositions, answers to interrogatories, and  
452 admissions on file, together with affidavits, if any, that no  
453 genuine issue as to any material fact exists and that the moving  
454 party is entitled as a matter of law to the entry of a final  
455 order. A summary final order shall consist of findings of fact,  
456 if any, conclusions of law, a disposition or penalty, if  
457 applicable, and any other information required by law to be  
458 contained in the final order.

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

462 (a) The agency shall:

463 1. Give reasonable notice to affected persons of the  
464 action of the agency, whether proposed or already taken, or of  
465 its decision to refuse action, together with a summary of the  
466 factual, legal, and policy grounds therefor.

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



469 officer written or oral evidence in opposition to the action of  
470 the agency or to its refusal to act, or a written statement  
471 challenging the grounds upon which the agency has chosen to  
472 justify its action or inaction.

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

475 (b) An agency may not base agency action that determines  
476 the substantial interests of a party on an unadopted rule or a  
477 rule that is an invalid exercise of delegated legislative  
478 authority.

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

- 480 1. The notice and summary of grounds.
- 481 2. Evidence received.
- 482 3. All written statements submitted.
- 483 4. Any decision overruling objections.
- 484 5. All matters placed on the record after an ex parte  
485 communication.
- 486 6. The official transcript.
- 487 7. Any decision, opinion, order, or report by the  
488 presiding officer.

489 Section 5. Subsections (1), (2), and (9) of section  
490 120.68, Florida Statutes, are amended to read:

491 120.68 Judicial review.—

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

494 (b) A preliminary, procedural, or intermediate order of



495 the agency or of an administrative law judge of the Division of  
496 Administrative Hearings is immediately reviewable if review of  
497 the final agency decision would not provide an adequate remedy.

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

501 (b) All proceedings shall be instituted by filing a notice  
502 of appeal or petition for review in accordance with the Florida  
503 Rules of Appellate Procedure within 30 days after the date that  
504 ~~rendition of~~ the order being appealed is filed with the agency  
505 clerk. If a party receives notice of the filing of the order  
506 later than the 25th day after the filing of the order with the  
507 agency clerk, the time by which the party must file a notice of  
508 appeal or petition for review is extended for 10 days after the  
509 date that the party received the notice of the filing of the  
510 order. If the appeal is of an order rendered in a proceeding  
511 initiated under s. 120.56, the agency whose rule is being  
512 challenged shall transmit a copy of the notice of appeal to the  
513 committee.

514 (c) ~~(b)~~ When proceedings under this chapter are  
515 consolidated for final hearing and the parties to the  
516 consolidated proceeding seek review of final or interlocutory  
517 orders in more than one district court of appeal, the courts of  
518 appeal are authorized to transfer and consolidate the review  
519 proceedings. The court may transfer such appellate proceedings  
520 on its own motion, upon motion of a party to one of the



521 appellate proceedings, or by stipulation of the parties to the  
522 appellate proceedings. In determining whether to transfer a  
523 proceeding, the court may consider such factors as the  
524 interrelationship of the parties and the proceedings, the  
525 desirability of avoiding inconsistent results in related  
526 matters, judicial economy, and the burden on the parties of  
527 reproducing the record for use in multiple appellate courts.

528 (9) A ~~No~~ petition challenging an agency rule as an invalid  
529 exercise of delegated legislative authority shall not be  
530 instituted pursuant to this section, except to review an order  
531 entered pursuant to a proceeding under s. 120.56, s.  
532 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of  
533 immediate danger, necessity, and procedural fairness  
534 prerequisite to the adoption of an emergency rule pursuant to s.  
535 120.54(4), unless the sole issue presented by the petition is  
536 the constitutionality of a rule and there are no disputed issues  
537 of fact.

538 Section 6. Section 120.695, Florida Statutes, is amended  
539 to read:

540 120.695 Notice of noncompliance; designation of minor  
541 violation of rules.—

542 (1) It is the policy of the state that the purpose of  
543 regulation is to protect the public by attaining compliance with  
544 the policies established by the Legislature. Fines and other  
545 penalties may be provided in order to assure compliance;  
546 however, the collection of fines and the imposition of penalties



547 are intended to be secondary to the primary goal of attaining  
548 compliance with an agency's rules. It is the intent of the  
549 Legislature that an agency charged with enforcing rules shall  
550 issue a notice of noncompliance as its first response to a minor  
551 violation of a rule in any instance in which it is reasonable to  
552 assume that the violator was unaware of the rule or unclear as  
553 to how to comply with it.

554 (2) (a) Each agency shall issue a notice of noncompliance  
555 as a first response to a minor violation of a rule. A "notice of  
556 noncompliance" is a notification by the agency charged with  
557 enforcing the rule issued to the person or business subject to  
558 the rule. A notice of noncompliance may not be accompanied with  
559 a fine or other disciplinary penalty. It must identify the  
560 specific rule that is being violated, provide information on how  
561 to comply with the rule, and specify a reasonable time for the  
562 violator to comply with the rule. A rule is agency action that  
563 regulates a business, occupation, or profession, or regulates a  
564 person operating a business, occupation, or profession, and  
565 that, if not complied with, may result in a disciplinary  
566 penalty.

567 (b) Each agency shall review all of its rules and  
568 designate those for which a violation would be a minor violation  
569 and for which a notice of noncompliance must be the first  
570 enforcement action taken against a person or business subject to  
571 regulation. A violation of a rule is a minor violation if it  
572 does not result in economic or physical harm to a person or



573 adversely affect the public health, safety, or welfare or create  
574 a significant threat of such harm. ~~If an agency under the~~  
575 ~~direction of a cabinet officer mails to each licensee a notice~~  
576 ~~of the designated rules at the time of licensure and at least~~  
577 ~~annually thereafter, the provisions of paragraph (a) may be~~  
578 ~~exercised at the discretion of the agency. Such notice shall~~  
579 ~~include a subject-matter index of the rules and information on~~  
580 ~~how the rules may be obtained.~~

581 (c)1. No later than June 30, 2016, and after such date  
582 within 3 months after any request of the rules ombudsman in the  
583 Executive Office of the Governor, ~~The agency's review and~~  
584 designation must be completed by December 1, 1995; each agency  
585 shall review under the direction of the Governor shall make a  
586 report to the Governor, and each agency under the joint  
587 direction of the Governor and Cabinet shall report to the  
588 Governor and Cabinet by January 1, 1996, on which of its rules  
589 and certify to the President of the Senate, the Speaker of the  
590 House of Representatives, the committee, and the rules ombudsman  
591 those rules that have been designated as rules the violation of  
592 which would be a minor violation under paragraph (b), consistent  
593 with the legislative intent stated in subsection (1).

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

595 a. Publish all rules that the agency has designated as  
596 rules the violation of which would be a minor violation, either  
597 as a complete list on the agency's website or by incorporation  
598 of the designations in the agency's disciplinary guidelines



599 adopted as a rule.

600 b. Ensure that all investigative and enforcement personnel  
601 are knowledgeable about the agency's designations under this  
602 section.

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

607 (d) The Governor or the Governor and Cabinet, as  
608 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
609 and designation effects of each agency subject to the direction  
610 and supervision of such authority and may direct ~~apply~~ a  
611 different designation than that applied by such ~~the~~ agency.

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

- 614 1. The Department of Corrections;  
615 2. Educational units;  
616 3. The regulation of law enforcement personnel; or  
617 4. The regulation of teachers.

618 (f) Designation pursuant to this section is not subject to  
619 challenge under this chapter.

620 Section 7. This act shall take effect July 1, 2015.