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1
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



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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.

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

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



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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



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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



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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



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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.



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- 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



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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.



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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.—~~



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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



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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



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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.—



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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



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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).



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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



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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



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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



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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



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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



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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



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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



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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



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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



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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.