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LEGISLATIVE ACTION

Senate

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House

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Floor: NC/2R

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Senator Lee moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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



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12 the public hearing provided for in ~~by~~ paragraph (b), ~~if the~~  
13 ~~agency does not initiate rulemaking or otherwise comply with the~~  
14 ~~requested action,~~ the agency shall publish in the Florida  
15 Administrative Register a statement of its reasons for not  
16 initiating rulemaking or otherwise complying with the requested  
17 action, and of any changes it will make in the scope or  
18 application of the unadopted rule. The agency shall file the  
19 statement with the committee. The committee shall forward a copy  
20 of the statement to the substantive committee with primary  
21 oversight jurisdiction of the agency in each house of the  
22 Legislature. The committee or the committee with primary  
23 oversight jurisdiction may hold a hearing directed to the  
24 statement of the agency. The committee holding the hearing may  
25 recommend to the Legislature the introduction of legislation  
26 making the rule a statutory standard or limiting or otherwise  
27 modifying the authority of the agency.

28 (d) If the agency initiates rulemaking after a public  
29 hearing provided for in paragraph (b), the agency shall publish  
30 a notice of rule development within 30 days after the hearing  
31 and file a notice of proposed rule within 180 days after the  
32 notice of rule development unless, before the 180th day, the  
33 agency publishes in the Florida Administrative Register a  
34 statement explaining its reasons for not having filed the  
35 notice. If rulemaking is initiated under this paragraph, the  
36 agency may not rely on the unadopted rule unless the agency  
37 publishes in the Florida Administrative Register a statement  
38 explaining why rulemaking under paragraph (1)(a) is not feasible  
39 or practicable until conclusion of the rulemaking proceeding.

40 Section 2. Section 120.55, Florida Statutes, is amended to



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41 read:

42 120.55 Publication.—

43 (1) The Department of State shall:

44 (a)1. Through a continuous revision and publication system,  
45 compile and publish electronically, on an Internet website  
46 managed by the department, the "Florida Administrative Code."  
47 The Florida Administrative Code shall contain all rules adopted  
48 by each agency, citing the grant of rulemaking authority and the  
49 specific law implemented pursuant to which each rule was  
50 adopted, all history notes as authorized in s. 120.545(7),  
51 complete indexes to all rules contained in the code, and any  
52 other material required or authorized by law or deemed useful by  
53 the department. The electronic code shall display each rule  
54 chapter currently in effect in browse mode and allow full text  
55 search of the code and each rule chapter. The department may  
56 contract with a publishing firm for a printed publication;  
57 however, the department shall retain responsibility for the code  
58 as provided in this section. The electronic publication shall be  
59 the official compilation of the administrative rules of this  
60 state. The Department of State shall retain the copyright over  
61 the Florida Administrative Code.

62 2. Rules general in form but applicable to only one school  
63 district, community college district, or county, or a part  
64 thereof, or state university rules relating to internal  
65 personnel or business and finance shall not be published in the  
66 Florida Administrative Code. Exclusion from publication in the  
67 Florida Administrative Code shall not affect the validity or  
68 effectiveness of such rules.

69 3. At the beginning of the section of the code dealing with



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70 an agency that files copies of its rules with the department,  
71 the department shall publish the address and telephone number of  
72 the executive offices of each agency, the manner by which the  
73 agency indexes its rules, a listing of all rules of that agency  
74 excluded from publication in the code, and a statement as to  
75 where those rules may be inspected.

76 4. Forms shall not be published in the Florida  
77 Administrative Code; but any form which an agency uses in its  
78 dealings with the public, along with any accompanying  
79 instructions, shall be filed with the committee before it is  
80 used. Any form or instruction which meets the definition of  
81 "rule" provided in s. 120.52 shall be incorporated by reference  
82 into the appropriate rule. The reference shall specifically  
83 state that the form is being incorporated by reference and shall  
84 include the number, title, and effective date of the form and an  
85 explanation of how the form may be obtained. Each form created  
86 by an agency which is incorporated by reference in a rule notice  
87 of which is given under s. 120.54(3)(a) after December 31, 2007,  
88 must clearly display the number, title, and effective date of  
89 the form and the number of the rule in which the form is  
90 incorporated.

91 5. The department shall allow adopted rules and material  
92 incorporated by reference to be filed in electronic form as  
93 prescribed by department rule. When a rule is filed for adoption  
94 with incorporated material in electronic form, the department's  
95 publication of the Florida Administrative Code on its Internet  
96 website must contain a hyperlink from the incorporating  
97 reference in the rule directly to that material. The department  
98 may not allow hyperlinks from rules in the Florida



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99 Administrative Code to any material other than that filed with  
100 and maintained by the department, but may allow hyperlinks to  
101 incorporated material maintained by the department from the  
102 adopting agency's website or other sites.

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

107 1. All notices required by s. 120.54(2) and (3)(a)  
108 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
109 consideration.

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

113 3. A notice of each request for authorization to amend or  
114 repeal an existing uniform rule or for the adoption of new  
115 uniform rules.

116 4. Notice of petitions for declaratory statements or  
117 administrative determinations.

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

120 6. A list of rules filed for adoption in the previous 7  
121 days.

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

126 ~~8.6.~~ Any other material required or authorized by law or  
127 deemed useful by the department.



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128  
129 The department may contract with a publishing firm for a printed  
130 publication of the Florida Administrative Register and make  
131 copies available on an annual subscription basis.

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

134 (d) Charge each agency using the Florida Administrative  
135 Register a space rate to cover the costs related to the Florida  
136 Administrative Register and the Florida Administrative Code.

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

139 (2) The Florida Administrative Register Internet website  
140 must allow users to:

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

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

145 (c) Subscribe to an automated e-mail notification of  
146 selected notices to be sent out before or concurrently with  
147 publication of the electronic Florida Administrative Register.  
148 Such notification must include in the text of the e-mail a  
149 summary of the content of each notice.

150 (d) View agency forms and other materials submitted to the  
151 department in electronic form and incorporated by reference in  
152 proposed rules.

153 (e) Comment on proposed rules.

154 (3) Publication of material required by paragraph (1)(b) on  
155 the Florida Administrative Register Internet website does not  
156 preclude publication of such material on an agency's website or



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157 by other means.

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

161 (5) Each agency that provides an e-mail notification  
162 service to inform licensees or other registered recipients of  
163 notices shall use that service to notify recipients of each  
164 notice required under s. 120.54(2) and (3) and provide Internet  
165 links to the appropriate rule page on the Secretary of State's  
166 website or Internet links to an agency website that contains the  
167 proposed rule or final rule.

168 (6)~~(5)~~ Any publication of a proposed rule promulgated by an  
169 agency, whether published in the Florida Administrative Register  
170 or elsewhere, shall include, along with the rule, the name of  
171 the person or persons originating such rule, the name of the  
172 agency head who approved the rule, and the date upon which the  
173 rule was approved.

174 (7)~~(6)~~ Access to the Florida Administrative Register  
175 Internet website and its contents, including the e-mail  
176 notification service, shall be free for the public.

177 (8)~~(7)~~(a) All fees and moneys collected by the Department  
178 of State under this chapter shall be deposited in the Records  
179 Management Trust Fund for the purpose of paying for costs  
180 incurred by the department in carrying out this chapter.

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

185 (9) The failure to follow the provisions of this section



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186 may not be raised in a proceeding challenging the validity of a  
187 rule pursuant to s. 120.52(8) (a).

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

191 120.56 Challenges to rules.—

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

194 (a) Any person substantially affected by a rule or a  
195 proposed rule may seek an administrative determination of the  
196 invalidity of the rule on the ground that the rule is an invalid  
197 exercise of delegated legislative authority.

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

201 1. The particular provisions alleged to be invalid and a  
202 statement with sufficient explanation of the facts or grounds  
203 for the alleged invalidity. ~~and~~

204 2. Facts sufficient to show that the petitioner person  
205 ~~challenging a rule~~ is substantially affected by the challenged  
206 adopted rule it, or ~~that the person challenging a proposed rule~~  
207 would be substantially affected by the proposed rule it.

208 (c) The petition shall be filed by electronic means with  
209 the division which shall, immediately upon filing, forward by  
210 electronic means copies to the agency whose rule is challenged,  
211 the Department of State, and the committee. Within 10 days after  
212 receiving the petition, the division director shall, if the  
213 petition complies with ~~the requirements of~~ paragraph (b), assign  
214 an administrative law judge who shall conduct a hearing within





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215 30 days thereafter, unless the petition is withdrawn or a  
216 continuance is granted by agreement of the parties or for good  
217 cause shown. Evidence of good cause includes, but is not limited  
218 to, written notice of an agency's decision to modify or withdraw  
219 the proposed rule or a written notice from the chair of the  
220 committee stating that the committee will consider an objection  
221 to the rule at its next scheduled meeting. The failure of an  
222 agency to follow the applicable rulemaking procedures or  
223 requirements set forth in this chapter shall be presumed to be  
224 material; however, the agency may rebut this presumption by  
225 showing that the substantial interests of the petitioner and the  
226 fairness of the proceedings have not been impaired.

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

232 (e) Hearings held under this section shall be de novo in  
233 nature. The standard of proof shall be the preponderance of the  
234 evidence. Hearings shall be conducted in the same manner as  
235 provided by ss. 120.569 and 120.57, except that the  
236 administrative law judge's order shall be final agency action.  
237 The petitioner and the agency whose rule is challenged shall be  
238 adverse parties. Other substantially affected persons may join  
239 the proceedings as intervenors on appropriate terms which shall  
240 not unduly delay the proceedings. Failure to proceed under this  
241 section does ~~shall~~ not constitute failure to exhaust  
242 administrative remedies.

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



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244 (a) A substantially affected person may seek an  
245 administrative determination of the invalidity of a proposed  
246 rule by filing a petition seeking such a determination with the  
247 division within 21 days after the date of publication of the  
248 notice required by s. 120.54(3) (a); within 10 days after the  
249 final public hearing is held on the proposed rule as provided by  
250 s. 120.54(3) (e)2.; within 20 days after the statement of  
251 estimated regulatory costs or revised statement of estimated  
252 regulatory costs, if applicable, has been prepared and made  
253 available as provided in s. 120.541(1) (d); or within 20 days  
254 after the date of publication of the notice required by s.  
255 120.54(3) (d). The petition must state with particularity the  
256 objections to the proposed rule and the reasons that the  
257 proposed rule is an invalid exercise of delegated legislative  
258 authority. The petitioner has the burden of going forward with  
259 evidence sufficient to support the petition. The agency then has  
260 the burden to prove by a preponderance of the evidence that the  
261 proposed rule is not an invalid exercise of delegated  
262 legislative authority as to the objections raised. ~~A person who~~  
263 ~~is substantially affected by a change in the proposed rule may~~  
264 ~~seek a determination of the validity of such change.~~ A person  
265 who is not substantially affected by the proposed rule as  
266 initially noticed, but who is substantially affected by the rule  
267 as a result of a change, may challenge any provision of the  
268 resulting proposed rule and ~~is not limited to challenging the~~  
269 ~~change to the proposed rule.~~

270 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
271 RULES; SPECIAL PROVISIONS.—

272 (a) Any person substantially affected by an agency



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273 statement that is an unadopted rule may seek an administrative  
274 determination that the statement violates s. 120.54(1)(a). The  
275 petition shall include the text of the statement or a  
276 description of the statement and shall state ~~with particularity~~  
277 facts sufficient to show that the statement constitutes an  
278 unadopted a rule ~~under s. 120.52 and that the agency has not~~  
279 ~~adopted the statement by the rulemaking procedure provided by s.~~  
280 ~~120.54.~~

281 (b) The administrative law judge may extend the hearing  
282 date beyond 30 days after assignment of the case for good cause.  
283 Upon notification to the administrative law judge provided  
284 before the final hearing that the agency has published a notice  
285 of rulemaking under s. 120.54(3), such notice shall  
286 automatically operate as a stay of proceedings pending adoption  
287 of the statement as a rule. The administrative law judge may  
288 vacate the stay for good cause shown. A stay of proceedings  
289 pending rulemaking shall remain in effect so long as the agency  
290 is proceeding expeditiously and in good faith to adopt the  
291 statement as a rule.

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

296 (d)~~(e)~~ The administrative law judge may determine whether  
297 all or part of a statement violates s. 120.54(1)(a). The  
298 decision of the administrative law judge shall constitute a  
299 final order. The division shall transmit a copy of the final  
300 order to the Department of State and the committee. The  
301 Department of State shall publish notice of the final order in



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302 the first available issue of the Florida Administrative  
303 Register.

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

309 (f)~~(e)~~ If proposed rules addressing the challenged  
310 unadopted rule ~~statement~~ are determined to be an invalid  
311 exercise of delegated legislative authority as defined in s.  
312 120.52(8)(b)-(f), the agency must immediately discontinue  
313 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any  
314 substantially similar statement until rules addressing the  
315 subject are properly adopted, and the administrative law judge  
316 shall enter a final order to that effect.

317 (g)~~(f)~~ All proceedings to determine a violation of s.  
318 120.54(1)(a) shall be brought pursuant to this subsection. A  
319 proceeding pursuant to this subsection may be consolidated with  
320 a proceeding under subsection (3) or under any other section of  
321 this chapter. This paragraph does not prevent a party whose  
322 substantial interests have been determined by an agency action  
323 from bringing a proceeding pursuant to s. 120.57(1)(e).

324 Section 4. Paragraphs (e) and (h) of subsection (1) and  
325 subsection (2) of section 120.57, Florida Statutes, are amended  
326 to read:

327 120.57 Additional procedures for particular cases.—

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

330 (e)1. An agency or an administrative law judge may not base



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

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

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

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

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

351 d. This subparagraph does not preclude the consolidation of  
352 any proceeding under s. 120.56 with any proceeding under this  
353 paragraph.

354 3.2. Notwithstanding subparagraph 1., if an agency  
355 demonstrates that the statute being implemented directs it to  
356 adopt rules, that the agency has not had time to adopt those  
357 rules because the requirement was so recently enacted, and that  
358 the agency has initiated rulemaking and is proceeding  
359 expeditiously and in good faith to adopt the required rules,



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360 then the agency's action may be based upon those unadopted rules  
361 ~~if, subject to de novo review by~~ the administrative law judge  
362 determines that rulemaking is neither feasible nor practicable  
363 and the unadopted rules would not constitute an invalid exercise  
364 of delegated legislative authority if adopted as rules. An  
365 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
366 ~~invalid~~. The agency must demonstrate that the unadopted rule:  
367       a. Is within the powers, functions, and duties delegated by  
368 the Legislature or, if the agency is operating pursuant to  
369 authority vested in the agency by ~~derived from~~ the State  
370 Constitution, is within that authority;  
371       b. Does not enlarge, modify, or contravene the specific  
372 provisions of law implemented;  
373       c. Is not vague, establishes adequate standards for agency  
374 decisions, or does not vest unbridled discretion in the agency;  
375       d. Is not arbitrary or capricious. A rule is arbitrary if  
376 it is not supported by logic or the necessary facts; a rule is  
377 capricious if it is adopted without thought or reason or is  
378 irrational;  
379       e. Is not being applied to the substantially affected party  
380 without due notice; and  
381       f. Does not impose excessive regulatory costs on the  
382 regulated person, county, or city.  
383       ~~4.3.~~ The recommended and final orders in any proceeding  
384 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
385 except that the administrative law judge's determination  
386 regarding an unadopted rule or a rule challenged as an invalid  
387 exercise of delegated legislative authority under subparagraph  
388 ~~1. or subparagraph 2.~~ shall be included as a conclusion of law



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389 ~~that the agency may not reject not be rejected by the agency~~  
390 ~~unless the agency first determines from a review of the complete~~  
391 ~~record, and states with particularity in the order, that such~~  
392 ~~determination is clearly erroneous or does not comply with~~  
393 ~~essential requirements of law. In any proceeding for review~~  
394 ~~under s. 120.68, if the court finds that the agency's rejection~~  
395 ~~of the determination regarding the unadopted rule does not~~  
396 ~~comport with the provisions of this subparagraph, the agency~~  
397 ~~action shall be set aside and the court shall award to the~~  
398 ~~prevailing party the reasonable costs and a reasonable~~  
399 ~~attorney's fee for the initial proceeding and the proceeding for~~  
400 ~~review.~~

401 5. A petitioner may pursue a separate, collateral challenge  
402 under s. 120.56 even if an adequate remedy exists through a  
403 proceeding under this section. The administrative law judge may  
404 consolidate the proceedings.

405 (h) Any party to a proceeding in which an administrative  
406 law judge ~~of the Division of Administrative Hearings~~ has final  
407 order authority may move for a summary final order when there is  
408 no genuine issue as to any material fact. A summary final order  
409 shall be rendered if the administrative law judge determines  
410 from the pleadings, depositions, answers to interrogatories, and  
411 admissions on file, together with affidavits, if any, that no  
412 genuine issue as to any material fact exists and that the moving  
413 party is entitled as a matter of law to the entry of a final  
414 order. A summary final order shall consist of findings of fact,  
415 if any, conclusions of law, a disposition or penalty, if  
416 applicable, and any other information required by law to be  
417 contained in the final order.



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

421 (a) The agency shall:

422 1. Give reasonable notice to affected persons of the action  
423 of the agency, whether proposed or already taken, or of its  
424 decision to refuse action, together with a summary of the  
425 factual, legal, and policy grounds therefor.

426 2. Give parties or their counsel the option, at a  
427 convenient time and place, to present to the agency or hearing  
428 officer written or oral evidence in opposition to the action of  
429 the agency or to its refusal to act, or a written statement  
430 challenging the grounds upon which the agency has chosen to  
431 justify its action or inaction.

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

434 (b) An agency may not base agency action that determines  
435 the substantial interests of a party on an unadopted rule or a  
436 rule that is an invalid exercise of delegated legislative  
437 authority.

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

439 1. The notice and summary of grounds.

440 2. Evidence received.

441 3. All written statements submitted.

442 4. Any decision overruling objections.

443 5. All matters placed on the record after an ex parte  
444 communication.

445 6. The official transcript.

446 7. Any decision, opinion, order, or report by the presiding





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447 officer.

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

450 120.68 Judicial review.—

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

453 (b) A preliminary, procedural, or intermediate order of the  
454 agency or of an administrative law judge of the Division of  
455 Administrative Hearings is immediately reviewable if review of  
456 the final agency decision would not provide an adequate remedy.

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

460 (b) All proceedings shall be instituted by filing a notice  
461 of appeal or petition for review in accordance with the Florida  
462 Rules of Appellate Procedure within 30 days after the date that  
463 rendition of the order being appealed is filed with the agency  
464 clerk. If a party receives notice of the filing of the order  
465 later than the 25th day after the filing of the order with the  
466 agency clerk, the time by which the party must file a notice of  
467 appeal or petition for review is extended for 10 days after the  
468 date that the party received the notice of the filing of the  
469 order. If the appeal is of an order rendered in a proceeding  
470 initiated under s. 120.56, the agency whose rule is being  
471 challenged shall transmit a copy of the notice of appeal to the  
472 committee.

473 (c) ~~(b)~~ When proceedings under this chapter are consolidated  
474 for final hearing and the parties to the consolidated proceeding  
475 seek review of final or interlocutory orders in more than one



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476 district court of appeal, the courts of appeal are authorized to  
477 transfer and consolidate the review proceedings. The court may  
478 transfer such appellate proceedings on its own motion, upon  
479 motion of a party to one of the appellate proceedings, or by  
480 stipulation of the parties to the appellate proceedings. In  
481 determining whether to transfer a proceeding, the court may  
482 consider such factors as the interrelationship of the parties  
483 and the proceedings, the desirability of avoiding inconsistent  
484 results in related matters, judicial economy, and the burden on  
485 the parties of reproducing the record for use in multiple  
486 appellate courts.

487 (9) A ~~No~~ petition challenging an agency rule as an invalid  
488 exercise of delegated legislative authority shall not be  
489 instituted pursuant to this section, except to review an order  
490 entered pursuant to a proceeding under s. 120.56, s.  
491 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of  
492 immediate danger, necessity, and procedural fairness  
493 prerequisite to the adoption of an emergency rule pursuant to s.  
494 120.54(4), unless the sole issue presented by the petition is  
495 the constitutionality of a rule and there are no disputed issues  
496 of fact.

497 Section 6. Section 120.695, Florida Statutes, is amended to  
498 read:

499 120.695 Notice of noncompliance; designation of minor  
500 violation of rules.—

501 (1) It is the policy of the state that the purpose of  
502 regulation is to protect the public by attaining compliance with  
503 the policies established by the Legislature. Fines and other  
504 penalties may be provided in order to assure compliance;



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505 however, the collection of fines and the imposition of penalties  
506 are intended to be secondary to the primary goal of attaining  
507 compliance with an agency's rules. It is the intent of the  
508 Legislature that an agency charged with enforcing rules shall  
509 issue a notice of noncompliance as its first response to a minor  
510 violation of a rule in any instance in which it is reasonable to  
511 assume that the violator was unaware of the rule or unclear as  
512 to how to comply with it.

513 (2)(a) Each agency shall issue a notice of noncompliance as  
514 a first response to a minor violation of a rule. A "notice of  
515 noncompliance" is a notification by the agency charged with  
516 enforcing the rule issued to the person or business subject to  
517 the rule. A notice of noncompliance may not be accompanied with  
518 a fine or other disciplinary penalty. It must identify the  
519 specific rule that is being violated, provide information on how  
520 to comply with the rule, and specify a reasonable time for the  
521 violator to comply with the rule. A rule is agency action that  
522 regulates a business, occupation, or profession, or regulates a  
523 person operating a business, occupation, or profession, and  
524 that, if not complied with, may result in a disciplinary  
525 penalty.

526 (b) Each agency shall review all of its rules and designate  
527 those for which a violation would be a minor violation and for  
528 which a notice of noncompliance must be the first enforcement  
529 action taken against a person or business subject to regulation.  
530 A violation of a rule is a minor violation if it does not result  
531 in economic or physical harm to a person or adversely affect the  
532 public health, safety, or welfare or create a significant threat  
533 of such harm. ~~If an agency under the direction of a cabinet~~



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534 ~~officer mails to each licensee a notice of the designated rules~~  
535 ~~at the time of licensure and at least annually thereafter, the~~  
536 ~~provisions of paragraph (a) may be exercised at the discretion~~  
537 ~~of the agency. Such notice shall include a subject matter index~~  
538 ~~of the rules and information on how the rules may be obtained.~~

539 (c)1. No later than June 30, 2016, and after such date  
540 within 3 months after any request of the rules ombudsman in the  
541 Executive Office of the Governor, The agency's review and  
542 designation must be completed by December 1, 1995; each agency  
543 shall review under the direction of the Governor shall make a  
544 report to the Governor, and each agency under the joint  
545 direction of the Governor and Cabinet shall report to the  
546 Governor and Cabinet by January 1, 1996, on which of its rules  
547 and certify to the President of the Senate, the Speaker of the  
548 House of Representatives, the committee, and the rules ombudsman  
549 those rules that have been designated as rules the violation of  
550 which would be a minor violation under paragraph (b), consistent  
551 with the legislative intent stated in subsection (1).

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

553 a. Publish all rules that the agency has designated as  
554 rules the violation of which would be a minor violation, either  
555 as a complete list on the agency's website or by incorporation  
556 of the designations in the agency's disciplinary guidelines  
557 adopted as a rule.

558 b. Ensure that all investigative and enforcement personnel  
559 are knowledgeable about the agency's designations under this  
560 section.

561 3. For each rule filed for adoption, the agency head shall  
562 certify whether any part of the rule is designated as a rule the



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563 violation of which would be a minor violation and shall update  
564 the listing required by sub-subparagraph 2.a.

565 (d) The Governor or the Governor and Cabinet, as  
566 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
567 and designation effects of each agency subject to the direction  
568 and supervision of such authority and may direct ~~apply~~ a  
569 different designation than that applied by such ~~the~~ agency.

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

- 572 1. The Department of Corrections;  
573 2. Educational units;  
574 3. The regulation of law enforcement personnel; or  
575 4. The regulation of teachers.

576 (f) Designation pursuant to this section is not subject to  
577 challenge under this chapter.

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

579

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

581 And the title is amended as follows:

582 Delete everything before the enacting clause  
583 and insert:

584 A bill to be entitled  
585 An act relating to administrative procedures; amending  
586 s. 120.54, F.S.; providing procedures for agencies to  
587 follow when initiating rulemaking after certain public  
588 hearings; limiting reliance upon an unadopted rule in  
589 certain circumstances; amending s. 120.55, F.S.;  
590 providing for publication of notices of rule  
591 development and of rules filed for adoption; providing



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592 for additional notice of rule development, proposals,  
593 and adoptions in the Florida Administrative Register;  
594 requiring certain agencies to provide additional e-  
595 mail notifications concerning specified rulemaking and  
596 rule development activities; providing that failure to  
597 follow certain provisions does not constitute grounds  
598 to challenge validity of a rule; amending s. 120.56,  
599 F.S.; clarifying language; amending s. 120.57, F.S.;  
600 conforming proceedings that oppose agency action based  
601 on an invalid or unadopted rule to proceedings used  
602 for challenging rules; authorizing the administrative  
603 law judge to make certain findings on the validity of  
604 certain alleged unadopted rules; prohibiting agencies  
605 from rejecting specific conclusions of law in certain  
606 recommended orders rendered by an administrative law  
607 judge; authorizing a petitioner to file certain  
608 collateral challenges regarding the validity of a  
609 rule; authorizing the administrative law judge to  
610 consolidate proceedings in such rule challenges;  
611 providing that agency action may not be based on an  
612 invalid or unadopted rule; amending s. 120.68, F.S.;  
613 revising mechanism for determining when appeals or  
614 petitions for review must be instituted; authorizing  
615 extensions for filing certain appeals or petitions for  
616 review under certain circumstances; amending s.  
617 120.695, F.S.; removing obsolete provisions with  
618 respect to required agency review and designation of  
619 minor violations; requiring agency review and  
620 certification of minor violation rules by a specified



621 date; requiring minor violation certification for all  
622 rules adopted after a specified date; requiring public  
623 notice; providing applicability; conforming provisions  
624 to changes made by the act; providing an effective  
625 date.