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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2015	.	
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	.	
	.	

The Committee on Appropriations (Lee) recommended 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 Section 3. Subsection (1), paragraph (a) of subsection (2),



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186 and subsection (4) of section 120.56, Florida Statutes, are
187 amended to read:

188 120.56 Challenges to rules.—

189 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A
190 RULE OR A PROPOSED RULE.—

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

195 (b) The petition challenging the validity of a proposed or
196 adopted rule under this section seeking an administrative
197 determination must state: with particularity

198 1. The particular provisions alleged to be invalid and a
199 statement with sufficient explanation of the facts or grounds
200 for the alleged invalidity. and

201 2. Facts sufficient to show that the petitioner person
202 challenging a rule is substantially affected by the challenged
203 adopted rule it, or that the person challenging a proposed rule
204 would be substantially affected by the proposed rule it.

205 (c) The petition shall be filed by electronic means with
206 the division which shall, immediately upon filing, forward by
207 electronic means copies to the agency whose rule is challenged,
208 the Department of State, and the committee. Within 10 days after
209 receiving the petition, the division director shall, if the
210 petition complies with the requirements of paragraph (b), assign
211 an administrative law judge who shall conduct a hearing within
212 30 days thereafter, unless the petition is withdrawn or a
213 continuance is granted by agreement of the parties or for good
214 cause shown. Evidence of good cause includes, but is not limited



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215 to, written notice of an agency's decision to modify or withdraw
216 the proposed rule or a written notice from the chair of the
217 committee stating that the committee will consider an objection
218 to the rule at its next scheduled meeting. The failure of an
219 agency to follow the applicable rulemaking procedures or
220 requirements set forth in this chapter shall be presumed to be
221 material; however, the agency may rebut this presumption by
222 showing that the substantial interests of the petitioner and the
223 fairness of the proceedings have not been impaired.

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

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

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

241 (a) A substantially affected person may seek an
242 administrative determination of the invalidity of a proposed
243 rule by filing a petition seeking such a determination with the



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

267 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
268 RULES; SPECIAL PROVISIONS.—

269 (a) Any person substantially affected by an agency
270 statement that is an unadopted rule may seek an administrative
271 determination that the statement violates s. 120.54(1)(a). The
272 petition shall include the text of the statement or a



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273 description of the statement and shall state ~~with particularity~~
274 facts sufficient to show that the statement constitutes an
275 unadopted a rule under ~~s. 120.52~~ and that the agency has not
276 ~~adopted the statement by the rulemaking procedure provided by s.~~
277 ~~120.54.~~

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

289 (c) The petitioner has the burden of going forward with
290 evidence sufficient to support the petition. The agency then has
291 the burden to prove by a preponderance of the evidence that the
292 statement does not meet the definition of an unadopted rule, the
293 statement was adopted as a rule in compliance with s. 120.54, or
294 ~~If a hearing is held and the petitioner proves the allegations~~
295 ~~of the petition, the agency shall have the burden of proving~~
296 that rulemaking is not feasible or not practicable under s.
297 120.54(1) (a).

298 (d) ~~(e)~~ The administrative law judge may determine whether
299 all or part of a statement violates s. 120.54(1) (a). The
300 decision of the administrative law judge shall constitute a
301 final order. The division shall transmit a copy of the final



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302 order to the Department of State and the committee. The
303 Department of State shall publish notice of the final order in
304 the first available issue of the Florida Administrative
305 Register.

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

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

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

326 Section 4. Paragraph (1) of subsection (2) of section
327 120.569, Florida Statutes, is amended to read:

328 120.569 Decisions which affect substantial interests.—

329 (2)

330 (1) Unless the time period is waived or extended with the



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331 consent of all parties, the final order in a proceeding which
332 affects substantial interests must be in writing and include
333 findings of fact, if any, and conclusions of law separately
334 stated, and it must be rendered within 90 days:

335 1. After the hearing is concluded, if conducted by the
336 agency;

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

343 3. After the agency has received the written and oral
344 material it has authorized to be submitted, if there has been no
345 hearing.

346 Section 5. Paragraphs (e) and (h) of subsection (1) and
347 subsection (2) of section 120.57, Florida Statutes, are amended
348 to read:

349 120.57 Additional procedures for particular cases.—

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

352 (e)1. An agency or an administrative law judge may not base
353 agency action that determines the substantial interests of a
354 party on an unadopted rule or a rule that is an invalid exercise
355 of delegated legislative authority. ~~The administrative law judge~~
356 ~~shall determine whether an agency statement constitutes an~~
357 ~~unadopted rule.~~ This subparagraph does not preclude application
358 of valid adopted rules and applicable provisions of law to the
359 facts.



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

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

368 b. Section 120.56(3)(a) applies to a challenge alleging
369 that a rule is an invalid exercise of delegated legislative
370 authority.

371 c. Section 120.56(4)(c) applies to a challenge alleging an
372 unadopted rule.

373 d. The agency has 15 days after the date of receipt of a
374 challenge under this subparagraph to serve the challenging party
375 with a notice stating whether the agency will continue to rely
376 upon the rule or the alleged unadopted rule as a basis for the
377 action determining the party's substantive interests. Failure to
378 timely serve the notice constitutes a binding stipulation that
379 the agency shall not rely upon the rule or unadopted rule
380 further in the proceeding. The agency shall include a copy of
381 this notice upon referral of the matter to the division under s.
382 120.569(2)(a).

383 e. This subparagraph does not preclude the consolidation of
384 any proceeding under s. 120.56 with any proceeding under this
385 paragraph.

386 3.2- Notwithstanding subparagraph 1., if an agency
387 demonstrates that the statute being implemented directs it to
388 adopt rules, that the agency has not had time to adopt those



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389 rules because the requirement was so recently enacted, and that
390 the agency has initiated rulemaking and is proceeding
391 expeditiously and in good faith to adopt the required rules,
392 then the agency's action may be based upon those unadopted rules
393 ~~if, subject to de novo review by~~ the administrative law judge
394 determines that rulemaking is neither feasible nor practicable
395 and the unadopted rules would not constitute an invalid exercise
396 of delegated legislative authority if adopted as rules. An
397 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
398 ~~invalid~~. The agency must demonstrate that the unadopted rule:
399 a. Is within the powers, functions, and duties delegated by
400 the Legislature or, if the agency is operating pursuant to
401 authority vested in the agency by ~~derived from~~ the State
402 Constitution, is within that authority;
403 b. Does not enlarge, modify, or contravene the specific
404 provisions of law implemented;
405 c. Is not vague, establishes adequate standards for agency
406 decisions, or does not vest unbridled discretion in the agency;
407 d. Is not arbitrary or capricious. A rule is arbitrary if
408 it is not supported by logic or the necessary facts; a rule is
409 capricious if it is adopted without thought or reason or is
410 irrational;
411 e. Is not being applied to the substantially affected party
412 without due notice; and
413 f. Does not impose excessive regulatory costs on the
414 regulated person, county, or city.
415 4. If the agency timely serves notice of continued reliance
416 upon a challenged rule or an alleged unadopted rule under sub-
417 subparagraph 2.d., the administrative law judge shall determine



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418 whether the challenged rule is an invalid exercise of delegated
419 legislative authority or whether the challenged agency statement
420 constitutes an unadopted rule and if that unadopted rule meets
421 the requirements of subparagraph 3. The determination shall be
422 rendered as a separate final order no earlier than the date on
423 which the administrative law judge serves the recommended order.

424 ~~5.3.~~ 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 under subparagraph 4. 1. or~~
428 ~~subparagraph 2.~~ shall be included as a conclusion of law that
429 the agency may not reject ~~not be rejected by the agency unless~~
430 ~~the agency first determines from a review of the complete~~
431 ~~record, and states with particularity in the order, that such~~
432 ~~determination is clearly erroneous or does not comply with~~
433 ~~essential requirements of law. In any proceeding for review~~
434 ~~under s. 120.68, if the court finds that the agency's rejection~~
435 ~~of the determination regarding the unadopted rule does not~~
436 ~~comport with the provisions of this subparagraph, the agency~~
437 ~~action shall be set aside and the court shall award to the~~
438 ~~prevailing party the reasonable costs and a reasonable~~
439 ~~attorney's fee for the initial proceeding and the proceeding for~~
440 ~~review.~~

441 6. A petitioner may pursue a separate, collateral challenge
442 under s. 120.56 even if an adequate remedy exists through a
443 proceeding under this section. The administrative law judge may
444 consolidate the proceedings.

445 (h) Any party to a proceeding in which an administrative
446 law judge ~~of the Division of Administrative Hearings~~ has final



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447 order authority may move for a summary final order when there is
448 no genuine issue as to any material fact. A summary final order
449 shall be rendered if the administrative law judge determines
450 from the pleadings, depositions, answers to interrogatories, and
451 admissions on file, together with affidavits, if any, that no
452 genuine issue as to any material fact exists and that the moving
453 party is entitled as a matter of law to the entry of a final
454 order. A summary final order shall consist of findings of fact,
455 if any, conclusions of law, a disposition or penalty, if
456 applicable, and any other information required by law to be
457 contained in the final order. This paragraph does not apply to
458 proceedings authorized in paragraph (e).

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 action
464 of the agency, whether proposed or already taken, or of its
465 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



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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. No later than the date provided by the agency under
479 subparagraph (a)2. for presenting material in opposition to the
480 agency's proposed action or refusal to act, the party may file a
481 petition under s. 120.56 challenging the rule, portion of rule,
482 or unadopted rule upon which the agency bases its proposed
483 action or refusal to act. The filing of a challenge under s.
484 120.56 pursuant to this paragraph shall stay all proceedings on
485 the agency's proposed action or refusal to act until entry of
486 the final order by the administrative law judge. The final order
487 shall provide additional notice that the stay of the pending
488 agency action is terminated and that any further stay pending
489 appeal of the final order must be sought from the appellate
490 court.

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

- 492 1. The notice and summary of grounds.
- 493 2. Evidence received.
- 494 3. All written statements submitted.
- 495 4. Any decision overruling objections.
- 496 5. All matters placed on the record after an ex parte
497 communication.
- 498 6. The official transcript.
- 499 7. Any decision, opinion, order, or report by the presiding
500 officer.

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

503 120.68 Judicial review.—

504 (1) (a) A party who is adversely affected by final agency



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505 action is entitled to judicial review.

506 (b) A preliminary, procedural, or intermediate order of the
507 agency or of an administrative law judge of the Division of
508 Administrative Hearings, or a final order under s.
509 120.57(1)(e)4., is immediately reviewable if review of the final
510 agency decision would not provide an adequate remedy.

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

514 (b) All proceedings shall be instituted by filing a notice
515 of appeal or petition for review in accordance with the Florida
516 Rules of Appellate Procedure within 30 days after the date that
517 rendition of the order being appealed is filed with the agency
518 clerk. If a party receives notice of the filing of the order
519 later than the 25th day after the filing of the order with the
520 agency clerk, the time by which the party must file a notice of
521 appeal or petition for review is extended for 10 days after the
522 date that the party received the notice of the filing of the
523 order. If the appeal is of an order rendered in a proceeding
524 initiated under s. 120.56 or a final order under s.
525 120.57(1)(e)4., the agency whose rule is being challenged shall
526 transmit a copy of the notice of appeal to the committee.

527 (c) ~~(b)~~ When proceedings under this chapter are consolidated
528 for final hearing and the parties to the consolidated proceeding
529 seek review of final or interlocutory orders in more than one
530 district court of appeal, the courts of appeal are authorized to
531 transfer and consolidate the review proceedings. The court may
532 transfer such appellate proceedings on its own motion, upon
533 motion of a party to one of the appellate proceedings, or by



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534 stipulation of the parties to the appellate proceedings. In
535 determining whether to transfer a proceeding, the court may
536 consider such factors as the interrelationship of the parties
537 and the proceedings, the desirability of avoiding inconsistent
538 results in related matters, judicial economy, and the burden on
539 the parties of reproducing the record for use in multiple
540 appellate courts.

541 (9) A ~~Ne~~ petition challenging an agency rule as an invalid
542 exercise of delegated legislative authority shall not be
543 instituted pursuant to this section, except to review an order
544 entered pursuant to a proceeding under s. 120.56, s.
545 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of
546 immediate danger, necessity, and procedural fairness
547 prerequisite to the adoption of an emergency rule pursuant to s.
548 120.54(4), unless the sole issue presented by the petition is
549 the constitutionality of a rule and there are no disputed issues
550 of fact.

551 Section 7. Section 120.695, Florida Statutes, is amended to
552 read:

553 120.695 Notice of noncompliance; designation of minor
554 violation of rules.—

555 (1) It is the policy of the state that the purpose of
556 regulation is to protect the public by attaining compliance with
557 the policies established by the Legislature. Fines and other
558 penalties may be provided in order to assure compliance;
559 however, the collection of fines and the imposition of penalties
560 are intended to be secondary to the primary goal of attaining
561 compliance with an agency's rules. It is the intent of the
562 Legislature that an agency charged with enforcing rules shall



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563 issue a notice of noncompliance as its first response to a minor
564 violation of a rule in any instance in which it is reasonable to
565 assume that the violator was unaware of the rule or unclear as
566 to how to comply with it.

567 (2) (a) Each agency shall issue a notice of noncompliance as
568 a first response to a minor violation of a rule. A "notice of
569 noncompliance" is a notification by the agency charged with
570 enforcing the rule issued to the person or business subject to
571 the rule. A notice of noncompliance may not be accompanied with
572 a fine or other disciplinary penalty. It must identify the
573 specific rule that is being violated, provide information on how
574 to comply with the rule, and specify a reasonable time for the
575 violator to comply with the rule. A rule is agency action that
576 regulates a business, occupation, or profession, or regulates a
577 person operating a business, occupation, or profession, and
578 that, if not complied with, may result in a disciplinary
579 penalty.

580 (b) Each agency shall review all of its rules and designate
581 those for which a violation would be a minor violation and for
582 which a notice of noncompliance must be the first enforcement
583 action taken against a person or business subject to regulation.
584 A violation of a rule is a minor violation if it does not result
585 in economic or physical harm to a person or adversely affect the
586 public health, safety, or welfare or create a significant threat
587 of such harm. ~~If an agency under the direction of a cabinet~~
588 ~~officer mails to each licensee a notice of the designated rules~~
589 ~~at the time of licensure and at least annually thereafter, the~~
590 ~~provisions of paragraph (a) may be exercised at the discretion~~
591 ~~of the agency. Such notice shall include a subject-matter index~~



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592 ~~of the rules and information on how the rules may be obtained.~~

593 (c)1. No later than June 30, 2016, and after such date
594 within 3 months after any request of the rules ombudsman in the
595 Executive Office of the Governor, ~~The agency's review and~~
596 designation must be completed by December 1, 1995; each agency
597 shall review under the direction of the Governor shall make a
598 report to the Governor, and each agency under the joint
599 direction of the Governor and Cabinet shall report to the
600 Governor and Cabinet by January 1, 1996, on which of its rules
601 and certify to the President of the Senate, the Speaker of the
602 House of Representatives, the committee, and the rules ombudsman
603 those rules that have been designated as rules the violation of
604 which would be a minor violation under paragraph (b), consistent
605 with the legislative intent stated in subsection (1). The rules
606 ombudsman shall promptly report to the Governor, the President
607 of the Senate, the Speaker of the House of Representatives, and
608 the committee the failure of any agency to timely complete the
609 review and file the certification as required by this section.

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

611 a. Publish all rules that the agency has designated as
612 rules the violation of which would be a minor violation, either
613 as a complete list on the agency's website or by incorporation
614 of the designations in the agency's disciplinary guidelines
615 adopted as a rule.

616 b. Ensure that all investigative and enforcement personnel
617 are knowledgeable about the agency's designations under this
618 section.

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



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

623 (d) The Governor or the Governor and Cabinet, as
624 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
625 and designation effects of each agency subject to the direction
626 and supervision of such authority and may direct ~~apply~~ a
627 different designation than that applied by such ~~the~~ agency.

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

- 630 1. The Department of Corrections;
631 2. Educational units;
632 3. The regulation of law enforcement personnel; or
633 4. The regulation of teachers.

634 (f) Designation pursuant to this section is not subject to
635 challenge under this chapter.

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

637
638 ===== T I T L E A M E N D M E N T =====

639 And the title is amended as follows:

640 Delete everything before the enacting clause
641 and insert:

642 A bill to be entitled
643 An act relating to administrative procedures; amending
644 s. 120.54, F.S.; providing procedures for agencies to
645 follow when initiating rulemaking after certain public
646 hearings; limiting reliance upon an unadopted rule in
647 certain circumstances; amending s. 120.55, F.S.;
648 providing for publication of notices of rule
649 development and of rules filed for adoption; providing



650 for additional notice of rule development, proposals,
651 and adoptions in the Florida Administrative Register;
652 requiring certain agencies to provide additional e-
653 mail notifications concerning specified rulemaking and
654 rule development activities; amending s. 120.56, F.S.;
655 specifying the burden of proof necessary for a
656 petitioner to challenge a proposed rule or unadopted
657 agency statement; amending s. 120.569, F.S.; granting
658 agencies additional time to render final orders in
659 certain circumstances; amending s. 120.57, F.S.;
660 conforming proceedings that oppose agency action based
661 on an invalid or unadopted rule to proceedings used
662 for challenging rules; requiring the agency to issue a
663 notice stating whether the agency will rely on the
664 challenged rule or alleged unadopted rule; authorizing
665 the administrative law judge to make certain findings
666 on the validity of certain alleged unadopted rules;
667 authorizing the administrative law judge to issue a
668 separate final order on certain rules and alleged
669 unadopted rules; prohibiting agencies from rejecting
670 specific conclusions of law in certain final orders
671 rendered by an administrative law judge; authorizing a
672 petitioner to file certain collateral challenges
673 regarding the validity of a rule; authorizing the
674 administrative law judge to consolidate proceedings in
675 such rule challenges; providing for the stay of
676 proceedings not involving disputed issues of fact upon
677 timely filing of a rule challenge; providing that the
678 final order terminates the stay; amending s. 120.68,



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679 F.S.; providing for judicial review of orders rendered
680 in challenges to specified rules or unadopted rules;
681 authorizing extensions for filing certain appeals or
682 petitions for review under certain circumstances;
683 amending s. 120.695, F.S.; removing obsolete
684 provisions with respect to required agency review and
685 designation of minor violations; requiring agency
686 review and certification of minor violation rules by a
687 specified date; requiring the reporting of an agency's
688 failure to complete the review and file certification
689 of such rules; requiring minor violation certification
690 for all rules adopted after a specified date;
691 requiring public notice; providing applicability;
692 conforming provisions to changes made by the act;
693 providing an effective date.