

By the Committee on Appropriations; and Senator Lee

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1 A bill to be entitled
2 An act relating to administrative procedures; amending
3 s. 120.54, F.S.; providing procedures for agencies to
4 follow when initiating rulemaking after certain public
5 hearings; limiting reliance upon an unadopted rule in
6 certain circumstances; amending s. 120.55, F.S.;
7 providing for publication of notices of rule
8 development and of rules filed for adoption; providing
9 for additional notice of rule development, proposals,
10 and adoptions in the Florida Administrative Register;
11 requiring certain agencies to provide additional e-
12 mail notifications concerning specified rulemaking and
13 rule development activities; amending s. 120.56, F.S.;
14 specifying the burden of proof necessary for a
15 petitioner to challenge a proposed rule or unadopted
16 agency statement; amending s. 120.569, F.S.; granting
17 agencies additional time to render final orders in
18 certain circumstances; amending s. 120.57, F.S.;
19 conforming proceedings that oppose agency action based
20 on an invalid or unadopted rule to proceedings used
21 for challenging rules; requiring the agency to issue a
22 notice stating whether the agency will rely on the
23 challenged rule or alleged unadopted rule; authorizing
24 the administrative law judge to make certain findings
25 on the validity of certain alleged unadopted rules;
26 authorizing the administrative law judge to issue a
27 separate final order on certain rules and alleged
28 unadopted rules; prohibiting agencies from rejecting
29 specific conclusions of law in certain final orders

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

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Paragraph (c) of subsection (7) of section
57 120.54, Florida Statutes, is amended, and paragraph (d) is added
58 to that subsection, to read:

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59 120.54 Rulemaking.—

60 (7) PETITION TO INITIATE RULEMAKING.—

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

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

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88 publishes in the Florida Administrative Register a statement
89 explaining why rulemaking under paragraph (1) (a) is not feasible
90 or practicable until conclusion of the rulemaking proceeding.

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

93 120.55 Publication.—

94 (1) The Department of State shall:

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

113 2. Rules general in form but applicable to only one school
114 district, community college district, or county, or a part
115 thereof, or state university rules relating to internal
116 personnel or business and finance shall not be published in the

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117 Florida Administrative Code. Exclusion from publication in the
118 Florida Administrative Code shall not affect the validity or
119 effectiveness of such rules.

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

127 4. Forms shall not be published in the Florida
128 Administrative Code; but any form which an agency uses in its
129 dealings with the public, along with any accompanying
130 instructions, shall be filed with the committee before it is
131 used. Any form or instruction which meets the definition of
132 "rule" provided in s. 120.52 shall be incorporated by reference
133 into the appropriate rule. The reference shall specifically
134 state that the form is being incorporated by reference and shall
135 include the number, title, and effective date of the form and an
136 explanation of how the form may be obtained. Each form created
137 by an agency which is incorporated by reference in a rule notice
138 of which is given under s. 120.54(3)(a) after December 31, 2007,
139 must clearly display the number, title, and effective date of
140 the form and the number of the rule in which the form is
141 incorporated.

142 5. The department shall allow adopted rules and material
143 incorporated by reference to be filed in electronic form as
144 prescribed by department rule. When a rule is filed for adoption
145 with incorporated material in electronic form, the department's

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146 publication of the Florida Administrative Code on its Internet
147 website must contain a hyperlink from the incorporating
148 reference in the rule directly to that material. The department
149 may not allow hyperlinks from rules in the Florida
150 Administrative Code to any material other than that filed with
151 and maintained by the department, but may allow hyperlinks to
152 incorporated material maintained by the department from the
153 adopting agency's website or other sites.

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

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

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

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

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

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

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

173 7. A list of all rules filed for adoption pending
174 legislative ratification under s. 120.541(3). A rule shall be

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175 taken off the list once notice of ratification or withdrawal of
176 such rule is received.

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

179

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

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

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

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

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

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

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

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

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

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204 (e) Comment on proposed rules.

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

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

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

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

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

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

232 (b) The unencumbered balance in the Records Management

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233 Trust Fund for fees collected pursuant to this chapter may not
234 exceed \$300,000 at the beginning of each fiscal year, and any
235 excess shall be transferred to the General Revenue Fund.

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

239 120.56 Challenges to rules.—

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

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

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

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

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

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

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

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

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

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

292 (a) A substantially affected person may seek an

293 administrative determination of the invalidity of a proposed

294 rule by filing a petition seeking such a determination with the

295 division within 21 days after the date of publication of the

296 notice required by s. 120.54(3)(a); within 10 days after the

297 final public hearing is held on the proposed rule as provided by

298 s. 120.54(3)(e)2.; within 20 days after the statement of

299 estimated regulatory costs or revised statement of estimated

300 regulatory costs, if applicable, has been prepared and made

301 available as provided in s. 120.54(1)(d); or within 20 days

302 after the date of publication of the notice required by s.

303 120.54(3)(d). The petition must state with particularity the

304 objections to the proposed rule and the reasons that the

305 proposed rule is an invalid exercise of delegated legislative

306 authority. The petitioner has the burden of going forward with

307 evidence sufficient to support the petition. The agency then has

308 the burden to prove by a preponderance of the evidence that the

309 proposed rule is not an invalid exercise of delegated

310 legislative authority as to the objections raised. ~~A person who~~

311 ~~is substantially affected by a change in the proposed rule may~~

312 ~~seek a determination of the validity of such change.~~ A person

313 who is not substantially affected by the proposed rule as

314 initially noticed, but who is substantially affected by the rule

315 as a result of a change, may challenge any provision of the

316 resulting proposed rule and ~~is not limited to challenging the~~

317 ~~change to the proposed rule.~~

318 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED

319 RULES; SPECIAL PROVISIONS.—

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

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

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

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

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

362 (f)~~(e)~~ If proposed rules addressing the challenged
363 unadopted rule ~~statement~~ are determined to be an invalid
364 exercise of delegated legislative authority as defined in s.
365 120.52(8)(b)-(f), the agency must immediately discontinue
366 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any
367 substantially similar statement until rules addressing the
368 subject are properly adopted, and the administrative law judge
369 shall enter a final order to that effect.

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

377 Section 4. Paragraph (1) of subsection (2) of section

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378 120.569, Florida Statutes, is amended to read:

379 120.569 Decisions which affect substantial interests.—

380 (2)

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

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

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

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

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

400 120.57 Additional procedures for particular cases.—

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

403 (e)1. An agency or an administrative law judge may not base
404 agency action that determines the substantial interests of a
405 party on an unadopted rule or a rule that is an invalid exercise
406 of delegated legislative authority. ~~The administrative law judge~~

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407 ~~shall determine whether an agency statement constitutes an~~
408 ~~unadopted rule.~~ This subparagraph does not preclude application
409 of valid adopted rules and applicable provisions of law to the
410 facts.

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

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

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

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

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

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

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436 paragraph.

437 3.2. Notwithstanding subparagraph 1., if an agency
438 demonstrates that the statute being implemented directs it to
439 adopt rules, that the agency has not had time to adopt those
440 rules because the requirement was so recently enacted, and that
441 the agency has initiated rulemaking and is proceeding
442 expeditiously and in good faith to adopt the required rules,
443 then the agency's action may be based upon those unadopted rules
444 if, subject to de novo review by the administrative law judge
445 determines that rulemaking is neither feasible nor practicable
446 and the unadopted rules would not constitute an invalid exercise
447 of delegated legislative authority if adopted as rules. An
448 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
449 ~~invalid~~. The agency must demonstrate that the unadopted rule:

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

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

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

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

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

464 f. Does not impose excessive regulatory costs on the

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465 regulated person, county, or city.

466 4. If the agency timely serves notice of continued reliance
467 upon a challenged rule or an alleged unadopted rule under sub-
468 subparagraph 2.d., the administrative law judge shall determine
469 whether the challenged rule is an invalid exercise of delegated
470 legislative authority or whether the challenged agency statement
471 constitutes an unadopted rule and if that unadopted rule meets
472 the requirements of subparagraph 3. The determination shall be
473 rendered as a separate final order no earlier than the date on
474 which the administrative law judge serves the recommended order.

475 ~~5.3.~~ The recommended and final orders in any proceeding
476 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
477 except that the administrative law judge's determination
478 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
479 ~~subparagraph 2. shall be included as a conclusion of law that~~
480 ~~the agency may not reject not be rejected by the agency unless~~
481 ~~the agency first determines from a review of the complete~~
482 ~~record, and states with particularity in the order, that such~~
483 ~~determination is clearly erroneous or does not comply with~~
484 ~~essential requirements of law. In any proceeding for review~~
485 ~~under s. 120.68, if the court finds that the agency's rejection~~
486 ~~of the determination regarding the unadopted rule does not~~
487 ~~comport with the provisions of this subparagraph, the agency~~
488 ~~action shall be set aside and the court shall award to the~~
489 ~~prevailing party the reasonable costs and a reasonable~~
490 ~~attorney's fee for the initial proceeding and the proceeding for~~
491 ~~review.~~

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

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494 proceeding under this section. The administrative law judge may
495 consolidate the proceedings.

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

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

513 (a) The agency shall:

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

518 2. Give parties or their counsel the option, at a
519 convenient time and place, to present to the agency or hearing
520 officer written or oral evidence in opposition to the action of
521 the agency or to its refusal to act, or a written statement
522 challenging the grounds upon which the agency has chosen to

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523 justify its action or inaction.

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

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

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

543 1. The notice and summary of grounds.

544 2. Evidence received.

545 3. All written statements submitted.

546 4. Any decision overruling objections.

547 5. All matters placed on the record after an ex parte
548 communication.

549 6. The official transcript.

550 7. Any decision, opinion, order, or report by the presiding
551 officer.

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

554 120.68 Judicial review.—

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

557 (b) A preliminary, procedural, or intermediate order of the
558 agency or of an administrative law judge of the Division of
559 Administrative Hearings, or a final order under s.

560 120.57(1)(e)4., is immediately reviewable if review of the final
561 agency decision would not provide an adequate remedy.

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

565 (b) All proceedings shall be instituted by filing a notice
566 of appeal or petition for review in accordance with the Florida
567 Rules of Appellate Procedure within 30 days after the date that
568 rendition of the order being appealed is filed with the agency
569 clerk. If a party receives notice of the filing of the order
570 later than the 25th day after the filing of the order with the
571 agency clerk, the time by which the party must file a notice of
572 appeal or petition for review is extended for 10 days after the
573 date that the party received the notice of the filing of the
574 order. If the appeal is of an order rendered in a proceeding
575 initiated under s. 120.56 or a final order under s.

576 120.57(1)(e)4., the agency whose rule is being challenged shall
577 transmit a copy of the notice of appeal to the committee.

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

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581 district court of appeal, the courts of appeal are authorized to
582 transfer and consolidate the review proceedings. The court may
583 transfer such appellate proceedings on its own motion, upon
584 motion of a party to one of the appellate proceedings, or by
585 stipulation of the parties to the appellate proceedings. In
586 determining whether to transfer a proceeding, the court may
587 consider such factors as the interrelationship of the parties
588 and the proceedings, the desirability of avoiding inconsistent
589 results in related matters, judicial economy, and the burden on
590 the parties of reproducing the record for use in multiple
591 appellate courts.

592 (9) A ~~No~~ petition challenging an agency rule as an invalid
593 exercise of delegated legislative authority shall not be
594 instituted pursuant to this section, except to review an order
595 entered pursuant to a proceeding under s. 120.56, s.
596 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of
597 immediate danger, necessity, and procedural fairness
598 prerequisite to the adoption of an emergency rule pursuant to s.
599 120.54(4), unless the sole issue presented by the petition is
600 the constitutionality of a rule and there are no disputed issues
601 of fact.

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

604 120.695 Notice of noncompliance; designation of minor
605 violation of rules.—

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

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610 however, the collection of fines and the imposition of penalties
611 are intended to be secondary to the primary goal of attaining
612 compliance with an agency's rules. It is the intent of the
613 Legislature that an agency charged with enforcing rules shall
614 issue a notice of noncompliance as its first response to a minor
615 violation of a rule in any instance in which it is reasonable to
616 assume that the violator was unaware of the rule or unclear as
617 to how to comply with it.

618 (2) (a) Each agency shall issue a notice of noncompliance as
619 a first response to a minor violation of a rule. A "notice of
620 noncompliance" is a notification by the agency charged with
621 enforcing the rule issued to the person or business subject to
622 the rule. A notice of noncompliance may not be accompanied with
623 a fine or other disciplinary penalty. It must identify the
624 specific rule that is being violated, provide information on how
625 to comply with the rule, and specify a reasonable time for the
626 violator to comply with the rule. A rule is agency action that
627 regulates a business, occupation, or profession, or regulates a
628 person operating a business, occupation, or profession, and
629 that, if not complied with, may result in a disciplinary
630 penalty.

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

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

644 (c)1. No later than June 30, 2016, and after such date
645 within 3 months after any request of the rules ombudsman in the
646 Executive Office of the Governor, The agency's review and
647 designation must be completed by December 1, 1995; each agency
648 shall review under the direction of the Governor shall make a
649 report to the Governor, and each agency under the joint
650 direction of the Governor and Cabinet shall report to the
651 Governor and Cabinet by January 1, 1996, on which of its rules
652 and certify to the President of the Senate, the Speaker of the
653 House of Representatives, the committee, and the rules ombudsman
654 those rules that have been designated as rules the violation of
655 which would be a minor violation under paragraph (b), consistent
656 with the legislative intent stated in subsection (1). The rules
657 ombudsman shall promptly report to the Governor, the President
658 of the Senate, the Speaker of the House of Representatives, and
659 the committee the failure of any agency to timely complete the
660 review and file the certification as required by this section.

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

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

667 b. Ensure that all investigative and enforcement personnel

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668 are knowledgeable about the agency's designations under this
669 section.

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

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

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

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

685 (f) Designation pursuant to this section is not subject to
686 challenge under this chapter.

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