

1                                   A bill to be entitled  
2           An act relating to administrative procedures; amending  
3           s. 120.54, F.S.; providing procedures for agencies to  
4           follow when initiating rulemaking after certain public  
5           hearings; limiting reliance upon an unadopted rule in  
6           certain circumstances; amending s. 120.55, F.S.;  
7           providing for publication of notices of rule  
8           development and of rules filed for adoption; providing  
9           for additional notice of rule development, proposals,  
10          and adoptions in the Florida Administrative Register;  
11          requiring certain agencies to provide additional e-  
12          mail notifications concerning specified rulemaking and  
13          rule development activities; providing that failure to  
14          follow certain provisions does not constitute grounds  
15          to challenge validity of a rule; amending s. 120.56,  
16          F.S.; clarifying language; amending s. 120.57, F.S.;  
17          conforming proceedings that oppose agency action based  
18          on an invalid or unadopted rule to proceedings used  
19          for challenging rules; authorizing the administrative  
20          law judge to make certain findings on the validity of  
21          certain alleged unadopted rules; authorizing a  
22          petitioner to file certain collateral challenges  
23          regarding the validity of a rule; authorizing the  
24          administrative law judge to consolidate proceedings in  
25          such rule challenges; providing that agency action may  
26          not be based on an invalid or unadopted rule; amending

27 s. 120.68, F.S.; specifying legal authority to file a  
 28 petition challenging an agency rule as an invalid  
 29 exercise of delegated legislative authority; amending  
 30 s. 120.695, F.S.; removing obsolete provisions with  
 31 respect to required agency review and designation of  
 32 minor violations; requiring agency review and  
 33 certification of minor violation rules by a specified  
 34 date; requiring minor violation certification for all  
 35 rules adopted after a specified date; requiring public  
 36 notice; providing applicability; providing an  
 37 effective date.

38  
 39 Be It Enacted by the Legislature of the State of Florida:

40  
 41 Section 1. Paragraph (c) of subsection (7) of section  
 42 120.54, Florida Statutes, is amended, and paragraph (d) is added  
 43 to that subsection, to read:

44 120.54 Rulemaking.—

45 (7) PETITION TO INITIATE RULEMAKING.—

46 (c) If the agency does not initiate rulemaking or  
 47 otherwise comply with the requested action within 30 days after  
 48 ~~following~~ the public hearing provided for in ~~by~~ paragraph (b),  
 49 ~~if the agency does not initiate rulemaking or otherwise comply~~  
 50 ~~with the requested action,~~ the agency shall publish in the  
 51 Florida Administrative Register a statement of its reasons for  
 52 not initiating rulemaking or otherwise complying with the

53 requested action~~7~~ and of any changes it will make in the scope  
54 or application of the unadopted rule. The agency shall file the  
55 statement with the committee. The committee shall forward a copy  
56 of the statement to the substantive committee with primary  
57 oversight jurisdiction of the agency in each house of the  
58 Legislature. The committee or the committee with primary  
59 oversight jurisdiction may hold a hearing directed to the  
60 statement of the agency. The committee holding the hearing may  
61 recommend to the Legislature the introduction of legislation  
62 making the rule a statutory standard or limiting or otherwise  
63 modifying the authority of the agency.

64 (d) If the agency initiates rulemaking after the public  
65 hearing provided for in paragraph (b), the agency shall publish  
66 a notice of rule development within 30 days after the hearing  
67 and file a notice of proposed rule within 180 days after the  
68 notice of rule development unless, before the 180th day, the  
69 agency publishes in the Florida Administrative Register a  
70 statement explaining its reasons for not having filed the  
71 notice. If rulemaking is initiated under this paragraph, the  
72 agency may not rely on the unadopted rule unless the agency  
73 publishes in the Florida Administrative Register a statement  
74 explaining why rulemaking under paragraph (1) (a) was not  
75 previously feasible or practicable before the public hearing.

76 Section 2. Section 120.55, Florida Statutes, is amended to  
77 read:

78 120.55 Publication.—

79 (1) The Department of State shall:

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

98 2. Rules general in form but applicable to only one school  
99 district, community college district, or county, or a part  
100 thereof, or state university rules relating to internal  
101 personnel or business and finance shall not be published in the  
102 Florida Administrative Code. Exclusion from publication in the  
103 Florida Administrative Code shall not affect the validity or  
104 effectiveness of such rules.

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

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

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

131 publication of the Florida Administrative Code on its ~~Internet~~  
132 website must contain a hyperlink from the incorporating  
133 reference in the rule directly to that material. The department  
134 may not allow hyperlinks from rules in the Florida  
135 Administrative Code to any material other than that filed with  
136 and maintained by the department, but may allow hyperlinks to  
137 incorporated material maintained by the department from the  
138 adopting agency's website or other sites.

139 (b) Electronically publish on a ~~an Internet~~ website  
140 managed by the department a continuous revision and publication  
141 entitled the "Florida Administrative Register," which shall  
142 serve as the official publication and must contain:

143 1. All notices required by s. 120.54(2) and (3)(a)  
144 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
145 consideration.

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

149 3. A notice of each request for authorization to amend or  
150 repeal an existing uniform rule or for the adoption of new  
151 uniform rules.

152 4. Notice of petitions for declaratory statements or  
153 administrative determinations.

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

156 6. A list of rules filed for adoption in the previous 7

157 days.

158 7. A list of all rules filed for adoption pending  
159 legislative ratification under s. 120.541(3). A rule shall be  
160 removed from the list once notice of ratification or withdrawal  
161 of the rule is received.

162 ~~8.6.~~ Any other material required or authorized by law or  
163 deemed useful by the department.

164

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

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

170 (d) Charge each agency using the Florida Administrative  
171 Register a space rate to cover the costs related to the Florida  
172 Administrative Register and the Florida Administrative Code.

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

175 (2) The Florida Administrative Register ~~Internet~~ website  
176 must allow users to:

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

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

181 (c) Subscribe to an automated e-mail notification of  
182 selected notices to be sent out before or concurrently with

183 publication of the electronic Florida Administrative Register.  
184 Such notification must include in the text of the e-mail a  
185 summary of the content of each notice.

186 (d) View agency forms and other materials submitted to the  
187 department in electronic form and incorporated by reference in  
188 proposed rules.

189 (e) Comment on proposed rules.

190 (3) Publication of material required by paragraph (1) (b)  
191 on the Florida Administrative Register ~~Internet~~ website does not  
192 preclude publication of such material on an agency's website or  
193 by other means.

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

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

204 (6)~~(5)~~ Any publication of a proposed rule promulgated by  
205 an agency, whether published in the Florida Administrative  
206 Register or elsewhere, shall include, along with the rule, the  
207 name of the person or persons originating such rule, the name of  
208 the agency head who approved the rule, and the date upon which



209 the rule was approved.

210 (7)~~(6)~~ Access to the Florida Administrative Register  
 211 ~~Internet~~ website and its contents, including the e-mail  
 212 notification service, shall be free for the public.

213 (8)~~(7)~~(a) All fees and moneys collected by the Department  
 214 of State under this chapter shall be deposited in the Records  
 215 Management Trust Fund for the purpose of paying for costs  
 216 incurred by the department in carrying out this chapter.

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

221 (9) The failure to comply with this section may not be  
 222 raised in a proceeding challenging the validity of a rule  
 223 pursuant to s. 120.52(8)(a).

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

227 120.56 Challenges to rules.—

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

230 (a) Any person substantially affected by a rule or a  
 231 proposed rule may seek an administrative determination of the  
 232 invalidity of the rule on the ground that the rule is an invalid  
 233 exercise of delegated legislative authority.

234 (b) The petition challenging the validity of a proposed or

235 adopted rule under this section ~~seeking an administrative~~  
236 ~~determination~~ must state: with particularity

237 1. The particular provisions alleged to be invalid and a  
238 statement ~~with sufficient explanation~~ of the facts or grounds  
239 for the alleged invalidity. ~~and~~

240 2. Facts sufficient to show that the petitioner ~~person~~  
241 ~~challenging a rule~~ is substantially affected by the challenged  
242 adopted rule ~~it~~, or ~~that the person challenging a proposed rule~~  
243 would be substantially affected by the proposed rule ~~it~~.

244 (c) The petition shall be filed by electronic means with  
245 the division which shall, immediately upon filing, forward by  
246 electronic means copies to the agency whose rule is challenged,  
247 the Department of State, and the committee. Within 10 days after  
248 receiving the petition, the division director shall, if the  
249 petition complies with ~~the requirements of~~ paragraph (b), assign  
250 an administrative law judge who shall conduct a hearing within  
251 30 days thereafter, unless the petition is withdrawn or a  
252 continuance is granted by agreement of the parties or for good  
253 cause shown. Evidence of good cause includes, but is not limited  
254 to, written notice of an agency's decision to modify or withdraw  
255 the proposed rule or a written notice from the chair of the  
256 committee stating that the committee will consider an objection  
257 to the rule at its next scheduled meeting. The failure of an  
258 agency to follow the applicable rulemaking procedures or  
259 requirements set forth in this chapter shall be presumed to be  
260 material; however, the agency may rebut this presumption by

261 showing that the substantial interests of the petitioner and the  
 262 fairness of the proceedings have not been impaired.

263 (d) Within 30 days after the hearing, the administrative  
 264 law judge shall render a decision and state the reasons for his  
 265 or her decision ~~therefor~~ in writing. The division shall  
 266 forthwith transmit by electronic means copies of the  
 267 administrative law judge's decision to the agency, the  
 268 Department of State, and the committee.

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

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

281 (a) A ~~substantially affected person may seek an~~  
 282 ~~administrative determination of the invalidity of a proposed~~  
 283 ~~rule by filing a~~ petition alleging the invalidity of a proposed  
 284 rule shall be filed ~~seeking such a determination with the~~  
 285 ~~division~~ within 21 days after the date of publication of the  
 286 notice required by s. 120.54(3) (a); within 10 days after the

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

308 (3) CHALLENGING ~~EXISTING~~ RULES IN EFFECT; SPECIAL  
 309 PROVISIONS.—

310 (a) A petition alleging ~~substantially affected person may~~  
 311 ~~seek an administrative determination of the invalidity of an~~  
 312 existing rule may be filed at any time during which the

313 ~~existence of the~~ rule is in effect. The petitioner has the a  
314 burden of proving by a preponderance of the evidence that the  
315 existing rule is an invalid exercise of delegated legislative  
316 authority as to the objections raised.

317 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
318 RULES; SPECIAL PROVISIONS.—

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

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

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

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

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

356        (f)~~(e)~~ If proposed rules addressing the challenged  
357 unadopted rule ~~statement~~ are determined to be an invalid  
358 exercise of delegated legislative authority as defined in s.  
359 120.52(8)(b)-(f), the agency must immediately discontinue  
360 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any  
361 substantially similar statement until rules addressing the  
362 subject are properly adopted, and the administrative law judge  
363 shall enter a final order to that effect.

364        (g)~~(f)~~ All proceedings to determine a violation of s.

365 120.54(1) (a) shall be brought pursuant to this subsection. A  
 366 proceeding pursuant to this subsection may be consolidated with  
 367 a proceeding under subsection (3) or under any other section of  
 368 this chapter. This paragraph does not prevent a party whose  
 369 substantial interests have been determined by an agency action  
 370 from bringing a proceeding pursuant to s. 120.57(1) (e).

371 Section 4. Paragraphs (e) and (h) of subsection (1) and  
 372 subsection (2) of section 120.57, Florida Statutes, are amended  
 373 to read:

374 120.57 Additional procedures for particular cases.—

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

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

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

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

393 b. Section 120.56(3)(a) applies to a challenge alleging  
394 that a rule is an invalid exercise of delegated legislative  
395 authority.

396 c. Section 120.56(4)(c) applies to a challenge alleging an  
397 unadopted rule.

398 d. This subparagraph does not preclude the consolidation  
399 of any proceeding under s. 120.56 with any proceeding under this  
400 paragraph.

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

414 a. Is within the powers, functions, and duties delegated  
415 by the Legislature or, if the agency is operating pursuant to  
416 authority vested in the agency by ~~derived from~~ the State



417 Constitution, is within that authority;

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

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

422 d. Is not arbitrary or capricious. A rule is arbitrary if  
423 it is not supported by logic or the necessary facts; a rule is  
424 capricious if it is adopted without thought or reason or is  
425 irrational;

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

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

430 4.3- The recommended and final orders in any proceeding  
431 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
432 except that the administrative law judge's determination  
433 regarding an unadopted rule under subparagraph 1. or  
434 subparagraph 2. shall not be rejected by the agency unless the  
435 agency first determines from a review of the complete record,  
436 and states with particularity in the order, that such  
437 determination is clearly erroneous or does not comply with  
438 essential requirements of law. In any proceeding for review  
439 under s. 120.68, if the court finds that the agency's rejection  
440 of the determination regarding the unadopted rule does not  
441 comport with ~~the provisions of~~ this subparagraph, the agency  
442 action shall be set aside and the court shall award to the

443 prevailing party the reasonable costs and a reasonable attorney  
444 ~~attorney's~~ fee for the initial proceeding and the proceeding for  
445 review.

446 5. A petitioner may pursue a separate, collateral  
447 challenge under s. 120.56 even if an adequate remedy exists  
448 through a proceeding under this section. The administrative law  
449 judge may consolidate the proceedings.

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

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

466 (a) The agency shall:

467 1. Give reasonable notice to affected persons of the  
468 action of the agency, whether proposed or already taken, or of

469 its decision to refuse action, together with a summary of the  
 470 factual, legal, and policy grounds therefor.

471 2. Give parties or their counsel the option, at a  
 472 convenient time and place, to present to the agency or hearing  
 473 officer written or oral evidence in opposition to the action of  
 474 the agency or to its refusal to act, or a written statement  
 475 challenging the grounds upon which the agency has chosen to  
 476 justify its action or inaction.

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

479 (b) An agency may not base agency action that determines  
 480 the substantial interests of a party on an unadopted rule or a  
 481 rule that is an invalid exercise of delegated legislative  
 482 authority.

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

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

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

495 120.68 Judicial review.—

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

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

502 (9) A ~~No~~ petition challenging an agency rule as an invalid  
503 exercise of delegated legislative authority shall not be  
504 instituted pursuant to this section, except to review an order  
505 entered pursuant to a proceeding under s. 120.56, s.  
506 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of  
507 immediate danger, necessity, and procedural fairness  
508 prerequisite to the adoption of an emergency rule pursuant to s.  
509 120.54(4), unless the sole issue presented by the petition is  
510 the constitutionality of a rule and there are no disputed issues  
511 of fact.

512 Section 6. Section 120.695, Florida Statutes, is amended  
513 to read:

514 120.695 Notice of noncompliance; designation of minor  
515 violation of rules.—

516 (1) It is the policy of the state that the purpose of  
517 regulation is to protect the public by attaining compliance with  
518 the policies established by the Legislature. Fines and other  
519 penalties may be provided in order to assure compliance;  
520 however, the collection of fines and the imposition of penalties

521 are intended to be secondary to the primary goal of attaining  
522 compliance with an agency's rules. It is the intent of the  
523 Legislature that an agency charged with enforcing rules shall  
524 issue a notice of noncompliance as its first response to a minor  
525 violation of a rule in any instance in which it is reasonable to  
526 assume that the violator was unaware of the rule or unclear as  
527 to how to comply with it.

528 (2) (a) Each agency shall issue a notice of noncompliance  
529 as a first response to a minor violation of a rule. A "notice of  
530 noncompliance" is a notification by the agency charged with  
531 enforcing the rule issued to the person or business subject to  
532 the rule. A notice of noncompliance may not be accompanied with  
533 a fine or other disciplinary penalty. It must identify the  
534 specific rule that is being violated, provide information on how  
535 to comply with the rule, and specify a reasonable time for the  
536 violator to comply with the rule. A rule is agency action that  
537 regulates a business, occupation, or profession, or regulates a  
538 person operating a business, occupation, or profession, and  
539 that, if not complied with, may result in a disciplinary  
540 penalty.

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

547 adversely affect the public health, safety, or welfare or create  
548 a significant threat of such harm. ~~If an agency under the~~  
549 ~~direction of a cabinet officer mails to each licensee a notice~~  
550 ~~of the designated rules at the time of licensure and at least~~  
551 ~~annually thereafter, the provisions of paragraph (a) may be~~  
552 ~~exercised at the discretion of the agency. Such notice shall~~  
553 ~~include a subject-matter index of the rules and information on~~  
554 ~~how the rules may be obtained.~~

555 (c)1. No later than June 30, 2017, and after such date  
556 within 3 months after any request of the rules ombudsman in the  
557 Executive Office of the Governor, ~~The agency's review and~~  
558 ~~designation must be completed by December 1, 1995;~~ each agency  
559 ~~shall review under the direction of the Governor shall make a~~  
560 ~~report to the Governor, and each agency under the joint~~  
561 ~~direction of the Governor and Cabinet shall report to the~~  
562 ~~Governor and Cabinet by January 1, 1996, on which of its rules~~  
563 ~~and certify to the President of the Senate, the Speaker of the~~  
564 ~~House of Representatives, the committee, and the rules ombudsman~~  
565 ~~those rules that~~ have been designated as rules the violation of  
566 which would be a minor violation ~~under paragraph (b), consistent~~  
567 with the legislative intent stated in subsection (1).

568 2. Beginning July 1, 2017, each agency shall:

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

573 adopted as a rule.

574 b. Ensure that all investigative and enforcement personnel  
 575 are knowledgeable about the agency's designations under this  
 576 section.

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

581 (d) The Governor or the Governor and Cabinet, as  
 582 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
 583 and designation effects of each agency subject to the direction  
 584 and supervision of such authority and may direct ~~apply~~ a  
 585 different designation than that applied by such ~~the~~ agency.

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

- 588 1. The Department of Corrections;
- 589 2. Educational units;
- 590 3. The regulation of law enforcement personnel; or
- 591 4. The regulation of teachers.

592 (f) Designation pursuant to this section is not subject to  
 593 challenge under this chapter.

594 Section 7. This act shall take effect July 1, 2016.