

By 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; 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

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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; amending s. 120.595,
37 F.S.; conforming a cross-reference; providing an
38 effective date.

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

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

45 120.54 Rulemaking.—

46 (7) PETITION TO INITIATE RULEMAKING.—

47 (c) If the agency does not initiate rulemaking or otherwise
48 comply with the requested action within 30 days after following
49 the public hearing provided for in by paragraph (b), ~~if the~~
50 ~~agency does not initiate rulemaking or otherwise comply with the~~
51 ~~requested action,~~ the agency shall publish in the Florida
52 Administrative Register a statement of its reasons for not
53 initiating rulemaking or otherwise complying with the requested
54 action, and of any changes it will make in the scope or
55 application of the unadopted rule. The agency shall file the
56 statement with the committee. The committee shall forward a copy
57 of the statement to the substantive committee with primary
58 oversight jurisdiction of the agency in each house of the

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59 Legislature. The committee or the committee with primary
60 oversight jurisdiction may hold a hearing directed to the
61 statement of the agency. The committee holding the hearing may
62 recommend to the Legislature the introduction of legislation
63 making the rule a statutory standard or limiting or otherwise
64 modifying the authority of the agency.

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

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

79 120.55 Publication.—

80 (1) The Department of State shall:

81 (a)1. Through a continuous revision and publication system,
82 compile and publish electronically, on a ~~an Internet~~ website
83 managed by the department, the "Florida Administrative Code."
84 The Florida Administrative Code shall contain all rules adopted
85 by each agency, citing the grant of rulemaking authority and the
86 specific law implemented pursuant to which each rule was
87 adopted, all history notes as authorized in s. 120.545(7),

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88 complete indexes to all rules contained in the code, and any
89 other material required or authorized by law or deemed useful by
90 the department. The electronic code shall display each rule
91 chapter currently in effect in browse mode and allow full text
92 search of the code and each rule chapter. The department may
93 contract with a publishing firm for a printed publication;
94 however, the department shall retain responsibility for the code
95 as provided in this section. The electronic publication shall be
96 the official compilation of the administrative rules of this
97 state. The Department of State shall retain the copyright over
98 the Florida Administrative Code.

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

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

113 4. Forms shall not be published in the Florida
114 Administrative Code; but any form which an agency uses in its
115 dealings with the public, along with any accompanying
116 instructions, shall be filed with the committee before it is

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117 used. Any form or instruction which meets the definition of
118 "rule" provided in s. 120.52 shall be incorporated by reference
119 into the appropriate rule. The reference shall specifically
120 state that the form is being incorporated by reference and shall
121 include the number, title, and effective date of the form and an
122 explanation of how the form may be obtained. Each form created
123 by an agency which is incorporated by reference in a rule notice
124 of which is given under s. 120.54(3)(a) after December 31, 2007,
125 must clearly display the number, title, and effective date of
126 the form and the number of the rule in which the form is
127 incorporated.

128 5. The department shall allow adopted rules and material
129 incorporated by reference to be filed in electronic form as
130 prescribed by department rule. When a rule is filed for adoption
131 with incorporated material in electronic form, the department's
132 publication of the Florida Administrative Code on its ~~Internet~~
133 website must contain a hyperlink from the incorporating
134 reference in the rule directly to that material. The department
135 may not allow hyperlinks from rules in the Florida
136 Administrative Code to any material other than that filed with
137 and maintained by the department, but may allow hyperlinks to
138 incorporated material maintained by the department from the
139 adopting agency's website or other sites.

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

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

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146 consideration.

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

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

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

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

157 6. A list of rules filed for adoption in the previous 7
158 days.

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

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

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

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

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

174 (e) Maintain a permanent record of all notices published in

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175 the Florida Administrative Register.

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

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

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

182 (c) Subscribe to an automated e-mail notification of
183 selected notices to be sent out before or concurrently with
184 publication of the electronic Florida Administrative Register.
185 Such notification must include in the text of the e-mail a
186 summary of the content of each notice.

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

190 (e) Comment on proposed rules.

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

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

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

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204 proposed rule or final rule.

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

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

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

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

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

225 Section 3. Subsection (1), paragraph (a) of subsection (2),
226 paragraph (a) of subsection (3), and subsection (4) of section
227 120.56, Florida Statutes, are amended to read:

228 120.56 Challenges to rules.—

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

231 (a) Any person substantially affected by a rule or a
232 proposed rule may seek an administrative determination of the

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233 invalidity of the rule on the ground that the rule is an invalid
234 exercise of delegated legislative authority.

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

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

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

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

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

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

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

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

282 (a) A ~~substantially affected person may seek an~~
283 ~~administrative determination of the invalidity of a proposed~~
284 ~~rule by filing a petition~~ alleging the invalidity of a proposed
285 rule shall be filed seeking such a determination with the
286 ~~division~~ within 21 days after the date of publication of the
287 notice required by s. 120.54(3)(a); within 10 days after the
288 final public hearing is held on the proposed rule as provided by
289 s. 120.54(3)(e)2.; within 20 days after the statement of
290 estimated regulatory costs or revised statement of estimated

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

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

311 (a) A petition alleging ~~substantially affected person may~~
312 ~~seek an administrative determination of the invalidity of an~~
313 ~~existing rule~~ may be filed at any time during which the
314 ~~existence of the rule~~ is in effect. The petitioner has the a
315 burden of proving by a preponderance of the evidence that the
316 existing rule is an invalid exercise of delegated legislative
317 authority as to the objections raised.

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

344 (d) ~~(e)~~ The administrative law judge may determine whether
345 all or part of a statement violates s. 120.54(1)(a). The
346 decision of the administrative law judge shall constitute a
347 final order. The division shall transmit a copy of the final
348 order to the Department of State and the committee. The

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349 Department of State shall publish notice of the final order in
350 the first available issue of the Florida Administrative
351 Register.

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

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

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

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

375 120.57 Additional procedures for particular cases.—

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

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

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

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

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

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

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

402 3.2. Notwithstanding subparagraph 1., if an agency
403 demonstrates that the statute being implemented directs it to
404 adopt rules, that the agency has not had time to adopt those
405 rules because the requirement was so recently enacted, and that
406 the agency has initiated rulemaking and is proceeding

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407 expeditiously and in good faith to adopt the required rules,
408 then the agency's action may be based upon those unadopted rules
409 ~~if, subject to de novo review by~~ the administrative law judge
410 determines that rulemaking is neither feasible nor practicable
411 and the unadopted rules would not constitute an invalid exercise
412 of delegated legislative authority if adopted as rules. An
413 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
414 ~~invalid~~. The agency must demonstrate that the unadopted rule:
415 a. Is within the powers, functions, and duties delegated by
416 the Legislature or, if the agency is operating pursuant to
417 authority vested in the agency by ~~derived from~~ the State
418 Constitution, is within that authority;
419 b. Does not enlarge, modify, or contravene the specific
420 provisions of law implemented;
421 c. Is not vague, establishes adequate standards for agency
422 decisions, or does not vest unbridled discretion in the agency;
423 d. Is not arbitrary or capricious. A rule is arbitrary if
424 it is not supported by logic or the necessary facts; a rule is
425 capricious if it is adopted without thought or reason or is
426 irrational;
427 e. Is not being applied to the substantially affected party
428 without due notice; and
429 f. Does not impose excessive regulatory costs on the
430 regulated person, county, or city.
431 ~~4.3.~~ The recommended and final orders in any proceeding
432 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
433 except that the administrative law judge's determination
434 regarding an unadopted rule under subparagraph 1. or
435 subparagraph 2. shall not be rejected by the agency unless the

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436 agency first determines from a review of the complete record,
437 and states with particularity in the order, that such
438 determination is clearly erroneous or does not comply with
439 essential requirements of law. In any proceeding for review
440 under s. 120.68, if the court finds that the agency's rejection
441 of the determination regarding the unadopted rule does not
442 comport with ~~the provisions of~~ this subparagraph, the agency
443 action shall be set aside and the court shall award to the
444 prevailing party the reasonable costs and a reasonable attorney
445 ~~attorney's~~ fee for the initial proceeding and the proceeding for
446 review.

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

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

464 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT

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465 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which
466 subsection (1) does not apply:

467 (a) The agency shall:

468 1. Give reasonable notice to affected persons of the action
469 of the agency, whether proposed or already taken, or of its
470 decision to refuse action, together with a summary of the
471 factual, legal, and policy grounds therefor.

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

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

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

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

485 1. The notice and summary of grounds.

486 2. Evidence received.

487 3. All written statements submitted.

488 4. Any decision overruling objections.

489 5. All matters placed on the record after an ex parte
490 communication.

491 6. The official transcript.

492 7. Any decision, opinion, order, or report by the presiding
493 officer.

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

496 120.68 Judicial review.—

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

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

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

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

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

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

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

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

542 (b) Each agency shall review all of its rules and designate
543 those for which a violation would be a minor violation and for
544 which a notice of noncompliance must be the first enforcement
545 action taken against a person or business subject to regulation.
546 A violation of a rule is a minor violation if it does not result
547 in economic or physical harm to a person or adversely affect the
548 public health, safety, or welfare or create a significant threat
549 of such harm. ~~If an agency under the direction of a cabinet~~
550 ~~officer mails to each licensee a notice of the designated rules~~
551 ~~at the time of licensure and at least annually thereafter, the~~

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552 ~~provisions of paragraph (a) may be exercised at the discretion~~
553 ~~of the agency. Such notice shall include a subject matter index~~
554 ~~of the rules and information on 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.

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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. Paragraph (a) of subsection (4) of section
 595 120.595, Florida Statutes, is amended to read:

596 120.595 Attorney's fees.—

597 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 598 120.56(4).—

599 (a) If the appellate court or administrative law judge
 600 determines that all or part of an agency statement violates s.
 601 120.54(1)(a), or that the agency must immediately discontinue
 602 reliance on the statement and any substantially similar
 603 statement pursuant to s. 120.56(4)(f) ~~s. 120.56(4)(e)~~, a
 604 judgment or order shall be entered against the agency for
 605 reasonable costs and reasonable attorney's fees, unless the
 606 agency demonstrates that the statement is required by the
 607 Federal Government to implement or retain a delegated or
 608 approved program or to meet a condition to receipt of federal
 609 funds.

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Section 8. This act shall take effect July 1, 2016.