

By the Committee on Judiciary; and Senator Lee

590-01328-16

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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 regarding challenges to  
17          rules; specifying the petitioner's burden of proof in  
18          proposed rule challenges; 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; authorizing the administrative  
22          law judge to make certain findings on the validity of  
23          certain alleged unadopted rules; authorizing a  
24          petitioner to file certain collateral challenges  
25          regarding the validity of a rule; authorizing the  
26          administrative law judge to consolidate proceedings in  
27          such rule challenges; providing that agency action may  
28          not be based on an invalid or unadopted rule; amending  
29          s. 120.68, F.S.; specifying legal authority to file a

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30 petition challenging an agency rule as an invalid  
31 exercise of delegated legislative authority; amending  
32 s. 120.695, F.S.; removing obsolete provisions with  
33 respect to required agency review and designation of  
34 minor violations; requiring agency review and  
35 certification of minor violation rules by a specified  
36 date; requiring minor violation certification for all  
37 rules adopted after a specified date; requiring public  
38 notice; providing applicability; amending s. 120.595,  
39 F.S.; conforming a cross-reference; providing an  
40 effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Paragraph (c) of subsection (7) of section  
45 120.54, Florida Statutes, is amended, and paragraph (d) is added  
46 to that subsection, to read:

47 120.54 Rulemaking.—

48 (7) PETITION TO INITIATE RULEMAKING.—

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

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

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

79 Section 2. Section 120.55, Florida Statutes, is amended to  
80 read:

81 120.55 Publication.—

82 (1) The Department of State shall:

83 (a)1. Through a continuous revision and publication system,  
84 compile and publish electronically, on a ~~an Internet~~ website  
85 managed by the department, the "Florida Administrative Code."  
86 The Florida Administrative Code shall contain all rules adopted  
87 by each agency, citing the grant of rulemaking authority and the

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88 specific law implemented pursuant to which each rule was  
89 adopted, all history notes as authorized in s. 120.545(7),  
90 complete indexes to all rules contained in the code, and any  
91 other material required or authorized by law or deemed useful by  
92 the department. The electronic code shall display each rule  
93 chapter currently in effect in browse mode and allow full text  
94 search of the code and each rule chapter. The department may  
95 contract with a publishing firm for a printed publication;  
96 however, the department shall retain responsibility for the code  
97 as provided in this section. The electronic publication shall be  
98 the official compilation of the administrative rules of this  
99 state. The Department of State shall retain the copyright over  
100 the Florida Administrative Code.

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

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

115 4. Forms shall not be published in the Florida  
116 Administrative Code; but any form which an agency uses in its

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

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

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

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- 146 1. All notices required by s. 120.54(2) and (3)(a)  
147 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
148 consideration.
- 149 2. All notices of public meetings, hearings, and workshops  
150 conducted in accordance with s. 120.525, including a statement  
151 of the manner in which a copy of the agenda may be obtained.
- 152 3. A notice of each request for authorization to amend or  
153 repeal an existing uniform rule or for the adoption of new  
154 uniform rules.
- 155 4. Notice of petitions for declaratory statements or  
156 administrative determinations.
- 157 5. A summary of each objection to any rule filed by the  
158 Administrative Procedures Committee.
- 159 6. A list of rules filed for adoption in the previous 7  
160 days.
- 161 7. A list of all rules filed for adoption pending  
162 legislative ratification under s. 120.541(3). A rule shall be  
163 removed from the list once notice of ratification or withdrawal  
164 of the rule is received.
- 165 ~~8.6.~~ Any other material required or authorized by law or  
166 deemed useful by the department.
- 167
- 168 The department may contract with a publishing firm for a printed  
169 publication of the Florida Administrative Register and make  
170 copies available on an annual subscription basis.
- 171 (c) Prescribe by rule the style and form required for  
172 rules, notices, and other materials submitted for filing.
- 173 (d) Charge each agency using the Florida Administrative  
174 Register a space rate to cover the costs related to the Florida

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175 Administrative Register and the Florida Administrative Code.

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

178 (2) The Florida Administrative Register ~~Internet~~ website  
179 must allow users to:

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

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

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

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

192 (e) Comment on proposed rules.

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

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

200 (5) Each agency that provides an e-mail notification  
201 service to inform licensees or other registered recipients of  
202 notices shall use that service to notify recipients of each  
203 notice required under s. 120.54(2) and (3) and provide Internet

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204 links to the appropriate rule page on the Secretary of State's  
205 website or Internet links to an agency website that contains the  
206 proposed rule or final rule.

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

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

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

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

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

227 Section 3. Subsection (1), paragraph (a) of subsection (2),  
228 paragraph (a) of subsection (3), and subsection (4) of section  
229 120.56, Florida Statutes, are amended to read:

230 120.56 Challenges to rules.—

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



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

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

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

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

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

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262 requirements set forth in this chapter shall be presumed to be  
263 material; however, the agency may rebut this presumption by  
264 showing that the substantial interests of the petitioner and the  
265 fairness of the proceedings have not been impaired.

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

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

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

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

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

312 (3) CHALLENGING ~~EXISTING~~ RULES IN EFFECT; SPECIAL  
313 PROVISIONS.—

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

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320 authority as to the objections raised.

321 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
322 RULES; SPECIAL PROVISIONS.—

323 (a) Any person substantially affected by an agency  
324 statement that is an unadopted rule may seek an administrative  
325 determination that the statement violates s. 120.54(1)(a). The  
326 petition shall include the text of the statement or a  
327 description of the statement and shall state ~~with particularity~~  
328 facts sufficient to show that the statement constitutes an  
329 unadopted a rule ~~under s. 120.52 and that the agency has not~~  
330 ~~adopted the statement by the rulemaking procedure provided by s.~~  
331 ~~120.54.~~

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

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

347 (d)~~(e)~~ The administrative law judge may determine whether  
348 all or part of a statement violates s. 120.54(1)(a). The

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349 decision of the administrative law judge shall constitute a  
350 final order. The division shall transmit a copy of the final  
351 order to the Department of State and the committee. The  
352 Department of State shall publish notice of the final order in  
353 the first available issue of the Florida Administrative  
354 Register.

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

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

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

375 Section 4. Paragraphs (e) and (h) of subsection (1) and  
376 subsection (2) of section 120.57, Florida Statutes, are amended  
377 to read:

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378 120.57 Additional procedures for particular cases.—

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

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

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

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

397 b. Section 120.56(3)(a) applies to a challenge alleging  
398 that a rule is an invalid exercise of delegated legislative  
399 authority.

400 c. Section 120.56(4)(c) applies to a challenge alleging an  
401 unadopted rule.

402 d. This subparagraph does not preclude the consolidation of  
403 any proceeding under s. 120.56 with any proceeding under this  
404 paragraph.

405 3.2. Notwithstanding subparagraph 1., if an agency  
406 demonstrates that the statute being implemented directs it to

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407 adopt rules, that the agency has not had time to adopt those  
408 rules because the requirement was so recently enacted, and that  
409 the agency has initiated rulemaking and is proceeding  
410 expeditiously and in good faith to adopt the required rules,  
411 then the agency's action may be based upon those unadopted rules  
412 if, subject to de novo review by the administrative law judge  
413 determines that rulemaking is neither feasible nor practicable  
414 and the unadopted rules would not constitute an invalid exercise  
415 of delegated legislative authority if adopted as rules. An  
416 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
417 ~~invalid~~. The agency must demonstrate that the unadopted rule:

418 a. Is within the powers, functions, and duties delegated by  
419 the Legislature or, if the agency is operating pursuant to  
420 authority vested in the agency by ~~derived from~~ the State  
421 Constitution, is within that authority;

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

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

426 d. Is not arbitrary or capricious. A rule is arbitrary if  
427 it is not supported by logic or the necessary facts; a rule is  
428 capricious if it is adopted without thought or reason or is  
429 irrational;

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

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

434 ~~4.3.~~ The recommended and final orders in any proceeding  
435 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),

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436 except that the administrative law judge's determination  
437 regarding an unadopted rule under subparagraph 1. or  
438 subparagraph 2. shall not be rejected by the agency unless the  
439 agency first determines from a review of the complete record,  
440 and states with particularity in the order, that such  
441 determination is clearly erroneous or does not comply with  
442 essential requirements of law. In any proceeding for review  
443 under s. 120.68, if the court finds that the agency's rejection  
444 of the determination regarding the unadopted rule does not  
445 comport with ~~the provisions of~~ this subparagraph, the agency  
446 action shall be set aside and the court shall award to the  
447 prevailing party the reasonable costs and a reasonable attorney  
448 ~~attorney's~~ fee for the initial proceeding and the proceeding for  
449 review.

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

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



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465 applicable, and any other information required by law to be  
466 contained in the final order.

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

470 (a) The agency shall:

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

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

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

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

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

488 1. The notice and summary of grounds.

489 2. Evidence received.

490 3. All written statements submitted.

491 4. Any decision overruling objections.

492 5. All matters placed on the record after an ex parte  
493 communication.

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494 6. The official transcript.

495 7. Any decision, opinion, order, or report by the presiding  
496 officer.

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

499 120.68 Judicial review.—

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

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

506 (9) A ~~No~~ petition challenging an agency rule as an invalid  
507 exercise of delegated legislative authority shall not be  
508 instituted pursuant to this section, except to review an order  
509 entered pursuant to a proceeding under s. 120.56, s.  
510 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of  
511 immediate danger, necessity, and procedural fairness  
512 prerequisite to the adoption of an emergency rule pursuant to s.  
513 120.54(4), unless the sole issue presented by the petition is  
514 the constitutionality of a rule and there are no disputed issues  
515 of fact.

516 Section 6. Section 120.695, Florida Statutes, is amended to  
517 read:

518 120.695 Notice of noncompliance; designation of minor  
519 violation of rules.—

520 (1) It is the policy of the state that the purpose of  
521 regulation is to protect the public by attaining compliance with  
522 the policies established by the Legislature. Fines and other

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523 penalties may be provided in order to assure compliance;  
524 however, the collection of fines and the imposition of penalties  
525 are intended to be secondary to the primary goal of attaining  
526 compliance with an agency's rules. It is the intent of the  
527 Legislature that an agency charged with enforcing rules shall  
528 issue a notice of noncompliance as its first response to a minor  
529 violation of a rule in any instance in which it is reasonable to  
530 assume that the violator was unaware of the rule or unclear as  
531 to how to comply with it.

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

545 (b) Each agency shall review all of its rules and designate  
546 those for which a violation would be a minor violation and for  
547 which a notice of noncompliance must be the first enforcement  
548 action taken against a person or business subject to regulation.  
549 A violation of a rule is a minor violation if it does not result  
550 in economic or physical harm to a person or adversely affect the  
551 public health, safety, or welfare or create a significant threat

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552 of such harm. ~~If an agency under the direction of a cabinet~~  
553 ~~officer mails to each licensee a notice of the designated rules~~  
554 ~~at the time of licensure and at least annually thereafter, the~~  
555 ~~provisions of paragraph (a) may be exercised at the discretion~~  
556 ~~of the agency. Such notice shall include a subject matter index~~  
557 ~~of the rules and information on how the rules may be obtained.~~

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

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

572 a. Publish all rules that the agency has designated as  
573 rules the violation of which would be a minor violation, either  
574 as a complete list on the agency's website or by incorporation  
575 of the designations in the agency's disciplinary guidelines  
576 adopted as a rule.

577 b. Ensure that all investigative and enforcement personnel  
578 are knowledgeable about the agency's designations under this  
579 section.

580 3. For each rule filed for adoption, the agency head shall

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581 certify whether any part of the rule is designated as a rule the  
582 violation of which would be a minor violation and shall update  
583 the listing required by sub-subparagraph 2.a.

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

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

- 591 1. The Department of Corrections;  
592 2. Educational units;  
593 3. The regulation of law enforcement personnel; or  
594 4. The regulation of teachers.

595 (f) Designation pursuant to this section is not subject to  
596 challenge under this chapter.

597 Section 7. Paragraph (a) of subsection (4) of section  
598 120.595, Florida Statutes, is amended to read:

599 120.595 Attorney's fees.—

600 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
601 120.56(4).—

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

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610 Federal Government to implement or retain a delegated or  
611 approved program or to meet a condition to receipt of federal  
612 funds.

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