

By the Committees on Appropriations; and Judiciary; and Senator Lee

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1                   A bill to be entitled  
2           An act relating to administrative procedures; amending  
3           s. 120.54, F.S.; providing procedures for agencies to  
4           follow when initiating rulemaking after certain public  
5           hearings; limiting reliance upon an unadopted rule in  
6           certain circumstances; amending s. 120.55, F.S.;  
7           providing for publication of notices of rule  
8           development and of rules filed for adoption; providing  
9           for additional notice of rule development, proposals,  
10          and adoptions in the Florida Administrative Register;  
11          requiring certain agencies to provide additional e-  
12          mail notifications concerning specified rulemaking and  
13          rule development activities; 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  
30          petition challenging an agency rule as an invalid  
31          exercise of delegated legislative authority; amending

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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. 403.8141,  
39 F.S.; providing that administrative challenges to  
40 proposed regulatory permits related to special events  
41 are subject to certain summary hearing provisions;  
42 amending s. 120.595, F.S.; conforming a cross-  
43 reference; providing an effective date.  
44

45 Be It Enacted by the Legislature of the State of Florida:  
46

47 Section 1. Paragraph (c) of subsection (7) of section  
48 120.54, Florida Statutes, is amended, and paragraph (d) is added  
49 to that subsection, to read:

50 120.54 Rulemaking.—

51 (7) PETITION TO INITIATE RULEMAKING.—

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

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

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

83 Section 2. Section 120.55, Florida Statutes, is amended to  
84 read:

85 120.55 Publication.—

86 (1) The Department of State shall:

87 (a)1. Through a continuous revision and publication system,  
88 compile and publish electronically, on a ~~an Internet~~ website  
89 managed by the department, the "Florida Administrative Code."

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

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

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

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

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

146           (b) Electronically publish on a ~~an Internet~~ website managed  
147 by the department a continuous revision and publication entitled

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148 the "Florida Administrative Register," which shall serve as the  
149 official publication and must contain:

150 1. All notices required by s. 120.54(2) and (3)(a)  
151 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
152 consideration.

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

156 3. A notice of each request for authorization to amend or  
157 repeal an existing uniform rule or for the adoption of new  
158 uniform rules.

159 4. Notice of petitions for declaratory statements or  
160 administrative determinations.

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

163 6. A list of rules filed for adoption in the previous 7  
164 days.

165 7. A list of all rules filed for adoption pending  
166 legislative ratification under s. 120.541(3). A rule shall be  
167 removed from the list once notice of ratification or withdrawal  
168 of the rule is received.

169 ~~8.6.~~ Any other material required or authorized by law or  
170 deemed useful by the department.

171  
172 The department may contract with a publishing firm for a printed  
173 publication of the Florida Administrative Register and make  
174 copies available on an annual subscription basis.

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

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177 (d) Charge each agency using the Florida Administrative  
178 Register a space rate to cover the costs related to the Florida  
179 Administrative Register and the Florida Administrative Code.

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

182 (2) The Florida Administrative Register ~~Internet~~ website  
183 must allow users to:

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

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

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

193 (d) View agency forms and other materials submitted to the  
194 department in electronic form and incorporated by reference in  
195 proposed rules.

196 (e) Comment on proposed rules.

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

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

204 (5) Each agency that provides an e-mail notification  
205 service to inform licensees or other registered recipients of

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206 notices shall use that service to notify recipients of each  
207 notice required under s. 120.54(2) and (3) and provide Internet  
208 links to the appropriate rule page on the Secretary of State's  
209 website or Internet links to an agency website that contains the  
210 proposed rule or final rule.

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

217 (7)~~(6)~~ Access to the Florida Administrative Register  
218 ~~Internet~~ website and its contents, including the e-mail  
219 notification service, shall be free for the public.

220 (8)~~(7)~~(a) All fees and moneys collected by the Department  
221 of State under this chapter shall be deposited in the Records  
222 Management Trust Fund for the purpose of paying for costs  
223 incurred by the department in carrying out this chapter.

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

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

231 Section 3. Subsection (1), paragraph (a) of subsection (2),  
232 paragraph (a) of subsection (3), and subsection (4) of section  
233 120.56, Florida Statutes, are amended to read:

234 120.56 Challenges to rules.-



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

237 (a) Any person substantially affected by a rule or a  
238 proposed rule may seek an administrative determination of the  
239 invalidity of the rule on the ground that the rule is an invalid  
240 exercise of delegated legislative authority.

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

244 1. The particular provisions alleged to be invalid and a  
245 statement with sufficient explanation of the facts or grounds  
246 for the alleged invalidity. and

247 2. Facts sufficient to show that the petitioner ~~person~~  
248 ~~challenging a rule~~ is substantially affected by the challenged  
249 adopted rule ~~it~~, or that ~~the person challenging a proposed rule~~  
250 would be substantially affected by the proposed rule ~~it~~.

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

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264 to the rule at its next scheduled meeting. The failure of an  
265 agency to follow the applicable rulemaking procedures or  
266 requirements set forth in this chapter shall be presumed to be  
267 material; however, the agency may rebut this presumption by  
268 showing that the substantial interests of the petitioner and the  
269 fairness of the proceedings have not been impaired.

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

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

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

288 (a) A ~~substantially affected person may seek an~~  
289 ~~administrative determination of the invalidity of a proposed~~  
290 ~~rule by filing a petition alleging the invalidity of a proposed~~  
291 rule shall be filed seeking such a determination with the  
292 ~~division~~ within 21 days after the date of publication of the

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293 notice required by s. 120.54(3)(a); within 10 days after the  
294 final public hearing is held on the proposed rule as provided by  
295 s. 120.54(3)(e)2.; within 20 days after the statement of  
296 estimated regulatory costs or revised statement of estimated  
297 regulatory costs, if applicable, has been prepared and made  
298 available as provided in s. 120.541(1)(d); or within 20 days  
299 after the date of publication of the notice required by s.  
300 120.54(3)(d). ~~The petition must state with particularity the~~  
301 ~~objections to the proposed rule and the reasons that the~~  
302 ~~proposed rule is an invalid exercise of delegated legislative~~  
303 ~~authority.~~ The petitioner has the burden to prove by a  
304 preponderance of the evidence that it would be substantially  
305 affected by the proposed rule of going forward. The agency then  
306 has the burden to prove by a preponderance of the evidence that  
307 the proposed rule is not an invalid exercise of delegated  
308 legislative authority as to the objections raised. ~~A person who~~  
309 ~~is substantially affected by a change in the proposed rule may~~  
310 ~~seek a determination of the validity of such change.~~ A person  
311 who is not substantially affected by the proposed rule as  
312 initially noticed, but who is substantially affected by the rule  
313 as a result of a change, may challenge any provision of the  
314 resulting proposed rule and is not limited to challenging the  
315 change to the proposed rule.

316 (3) CHALLENGING ~~EXISTING~~ RULES IN EFFECT; SPECIAL  
317 PROVISIONS.—

318 (a) A petition alleging substantially affected person may  
319 ~~seek an administrative determination of the invalidity of an~~  
320 ~~existing rule~~ may be filed at any time during which the  
321 ~~existence of the rule~~ is in effect. The petitioner has the a

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322 burden of proving by a preponderance of the evidence that the  
323 existing rule is an invalid exercise of delegated legislative  
324 authority as to the objections raised.

325 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
326 RULES; SPECIAL PROVISIONS.—

327 (a) Any person substantially affected by an agency  
328 statement that is an unadopted rule may seek an administrative  
329 determination that the statement violates s. 120.54(1)(a). The  
330 petition shall include the text of the statement or a  
331 description of the statement and shall state ~~with particularity~~  
332 facts sufficient to show that the statement constitutes an  
333 unadopted a rule ~~under s. 120.52 and that the agency has not~~  
334 ~~adopted the statement by the rulemaking procedure provided by s.~~  
335 ~~120.54.~~

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

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

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

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

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

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

379        Section 4. Paragraphs (e) and (h) of subsection (1) and

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380 subsection (2) of section 120.57, Florida Statutes, are amended  
381 to read:

382 120.57 Additional procedures for particular cases.—

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

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

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

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

401 b. Section 120.56(3)(a) applies to a challenge alleging  
402 that a rule is an invalid exercise of delegated legislative  
403 authority.

404 c. Section 120.56(4)(c) applies to a challenge alleging an  
405 unadopted rule.

406 d. This subparagraph does not preclude the consolidation of  
407 any proceeding under s. 120.56 with any proceeding under this  
408 paragraph.

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409       ~~3.2.~~ Notwithstanding subparagraph 1., if an agency  
410 demonstrates that the statute being implemented directs it to  
411 adopt rules, that the agency has not had time to adopt those  
412 rules because the requirement was so recently enacted, and that  
413 the agency has initiated rulemaking and is proceeding  
414 expeditiously and in good faith to adopt the required rules,  
415 then the agency's action may be based upon those unadopted rules  
416 if, subject to de novo review by the administrative law judge  
417 determines that rulemaking is neither feasible nor practicable  
418 and the unadopted rules would not constitute an invalid exercise  
419 of delegated legislative authority if adopted as rules. An  
420 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
421 ~~invalid~~. The agency must demonstrate that the unadopted rule:  
422       a. Is within the powers, functions, and duties delegated by  
423 the Legislature or, if the agency is operating pursuant to  
424 authority vested in the agency by ~~derived from~~ the State  
425 Constitution, is within that authority;  
426       b. Does not enlarge, modify, or contravene the specific  
427 provisions of law implemented;  
428       c. Is not vague, establishes adequate standards for agency  
429 decisions, or does not vest unbridled discretion in the agency;  
430       d. Is not arbitrary or capricious. A rule is arbitrary if  
431 it is not supported by logic or the necessary facts; a rule is  
432 capricious if it is adopted without thought or reason or is  
433 irrational;  
434       e. Is not being applied to the substantially affected party  
435 without due notice; and  
436       f. Does not impose excessive regulatory costs on the  
437 regulated person, county, or city.

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438       ~~4.3.~~ The recommended and final orders in any proceeding  
439 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
440 except that the administrative law judge's determination  
441 regarding an unadopted rule under subparagraph 1. or  
442 subparagraph 2. shall not be rejected by the agency unless the  
443 agency first determines from a review of the complete record,  
444 and states with particularity in the order, that such  
445 determination is clearly erroneous or does not comply with  
446 essential requirements of law. In any proceeding for review  
447 under s. 120.68, if the court finds that the agency's rejection  
448 of the determination regarding the unadopted rule does not  
449 comport with ~~the provisions of~~ this subparagraph, the agency  
450 action shall be set aside and the court shall award to the  
451 prevailing party the reasonable costs and a reasonable attorney  
452 ~~attorney's~~ fee for the initial proceeding and the proceeding for  
453 review.

454       5. A petitioner may pursue a separate, collateral challenge  
455 under s. 120.56 even if an adequate remedy exists through a  
456 proceeding under this section. The administrative law judge may  
457 consolidate the proceedings.

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



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467 order. A summary final order shall consist of findings of fact,  
468 if any, conclusions of law, a disposition or penalty, if  
469 applicable, and any other information required by law to be  
470 contained in the final order.

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

474 (a) The agency shall:

475 1. Give reasonable notice to affected persons of the action  
476 of the agency, whether proposed or already taken, or of its  
477 decision to refuse action, together with a summary of the  
478 factual, legal, and policy grounds therefor.

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

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

487 (b) An agency may not base agency action that determines  
488 the substantial interests of a party on an unadopted rule or a  
489 rule that is an invalid exercise of delegated legislative  
490 authority.

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

492 1. The notice and summary of grounds.  
493 2. Evidence received.  
494 3. All written statements submitted.  
495 4. Any decision overruling objections.

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496 5. All matters placed on the record after an ex parte  
497 communication.

498 6. The official transcript.

499 7. Any decision, opinion, order, or report by the presiding  
500 officer.

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

503 120.68 Judicial review.—

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

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

510 (9) A ~~No~~ petition challenging an agency rule as an invalid  
511 exercise of delegated legislative authority shall not be  
512 instituted pursuant to this section, except to review an order  
513 entered pursuant to a proceeding under s. 120.56, s.  
514 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of  
515 immediate danger, necessity, and procedural fairness  
516 prerequisite to the adoption of an emergency rule pursuant to s.  
517 120.54(4), unless the sole issue presented by the petition is  
518 the constitutionality of a rule and there are no disputed issues  
519 of fact.

520 Section 6. Section 120.695, Florida Statutes, is amended to  
521 read:

522 120.695 Notice of noncompliance; designation of minor  
523 violation of rules.—

524 (1) It is the policy of the state that the purpose of

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

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

549 (b) Each agency shall review all of its rules and designate  
550 those for which a violation would be a minor violation and for  
551 which a notice of noncompliance must be the first enforcement  
552 action taken against a person or business subject to regulation.  
553 A violation of a rule is a minor violation if it does not result

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554 in economic or physical harm to a person or adversely affect the  
555 public health, safety, or welfare or create a significant threat  
556 of such harm. ~~If an agency under the direction of a cabinet~~  
557 ~~officer mails to each licensee a notice of the designated rules~~  
558 ~~at the time of licensure and at least annually thereafter, the~~  
559 ~~provisions of paragraph (a) may be exercised at the discretion~~  
560 ~~of the agency. Such notice shall include a subject-matter index~~  
561 ~~of the rules and information on how the rules may be obtained.~~

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

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

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

581 b. Ensure that all investigative and enforcement personnel  
582 are knowledgeable about the agency's designations under this

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583 section.

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

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

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

595 1. The Department of Corrections;

596 2. Educational units;

597 3. The regulation of law enforcement personnel; or

598 4. The regulation of teachers.

599 (f) Designation pursuant to this section is not subject to  
600 challenge under this chapter.

601 Section 7. Section 403.8141, Florida Statutes, is amended  
602 to read:

603 403.8141 Special event permits.—

604 (1) The department shall issue permits for special events  
605 under s. 253.0345. The permits must be for a period that runs  
606 concurrently with the lease or letter of consent issued pursuant  
607 to s. 253.0345 and must allow for the movement of temporary  
608 structures within the footprint of the lease area.

609 (2) Administrative challenges to any proposed regulatory  
610 permits related to special events are subject to the summary  
611 hearing provisions of s. 120.574, except that the summary

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612 proceeding must be conducted within 30 days after a party files  
613 a motion for a summary hearing, regardless of whether the  
614 parties agree to the summary proceeding.

615 Section 8. Paragraph (a) of subsection (4) of section  
616 120.595, Florida Statutes, is amended to read:

617 120.595 Attorney's fees.—

618 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
619 120.56(4).—

620 (a) If the appellate court or administrative law judge  
621 determines that all or part of an agency statement violates s.  
622 120.54(1)(a), or that the agency must immediately discontinue  
623 reliance on the statement and any substantially similar  
624 statement pursuant to s. 120.56(4)(f) ~~s. 120.56(4)(e)~~, a  
625 judgment or order shall be entered against the agency for  
626 reasonable costs and reasonable attorney's fees, unless the  
627 agency demonstrates that the statement is required by the  
628 Federal Government to implement or retain a delegated or  
629 approved program or to meet a condition to receipt of federal  
630 funds.

631 Section 9. This act shall take effect July 1, 2016.