

1                   A bill to be entitled  
2           An act relating to administrative procedures; amending  
3           s. 110.205, F.S.; revising positions at the Division  
4           of Administrative Hearings that are exempt from the  
5           Career Service System; amending s. 120.52, F.S.;  
6           revising and providing definitions; amending s.  
7           120.54, F.S.; applying certain provisions applicable  
8           to all rules other than emergency rules to  
9           repromulgated rules; requiring that a proposed rule  
10          and material proposed to be incorporated by reference  
11          be available to the public; requiring that material  
12          proposed to be incorporated by reference be made  
13          available in a specified manner; requiring an agency  
14          to provide notice of a regulatory alternative to the  
15          Administrative Procedures Committee by a certain date;  
16          requiring an agency to file copies of certain  
17          petitions with the committee; amending s. 120.541,  
18          F.S.; requiring an agency to provide a copy of any  
19          proposal for a lower cost regulatory alternative to  
20          the Administrative Procedures Committee by a certain  
21          date; creating s. 120.5435, F.S.; providing  
22          legislative intent; requiring agency review of rules  
23          and repromulgation of rules that do not require  
24          substantive changes; requiring an agency to publish a  
25          notice of repromulgation in the Florida Administrative

26 Register and file a rule for promulgation with the  
27 Department of State within a specified time period;  
28 requiring an agency to file a notice of repromulgation  
29 with the committee within a specified time period;  
30 requiring withdrawal of a rule proposed for  
31 repromulgation if the rule is not filed within a  
32 specified time period; providing that a repromulgated  
33 rule is not subject to challenge as a proposed rule  
34 and that certain hearing requirements do not apply;  
35 requiring an agency to file a specified number of  
36 certified copies of a proposed repromulgated rule and  
37 any material incorporated by reference; providing that  
38 a repromulgated rule is adopted upon filing with the  
39 department and becomes effective after a specified  
40 time period; requiring the department to update  
41 certain information in the Florida Administrative  
42 Code; requiring the department to adopt rules by a  
43 certain date; amending s. 120.55, F.S.; providing that  
44 the department shall require material incorporated by  
45 reference to be filed in a specified manner; requiring  
46 the department to include the date of a technical rule  
47 change in the Florida Administrative Code; providing  
48 that a technical change does not affect the effective  
49 date of a rule; requiring specified rules; amending s.  
50 120.569, F.S.; requiring that certain documents filed

51 with the Division of Administrative Hearings be filed  
52 electronically; relieving certain parties from a  
53 requirement to serve other certain parties; amending  
54 s. 120.65, F.S.; requiring the Administration  
55 Commission to select from full-time administrative law  
56 judges employed with the division in appointing a  
57 division director; removing the requirement that the  
58 division director is subject to Senate confirmation;  
59 deleting provisions regarding minimum qualifications  
60 of the division director and deputy chief  
61 administrative law judges; prohibiting an  
62 administrative law judge from engaging in the private  
63 practice of law during his or her term of office;  
64 requiring the Governor and Cabinet to appoint  
65 administrative law judges from nominees recommended by  
66 a statewide nominating commission unless otherwise  
67 provided; specifying the composition and term lengths  
68 of members of the commission; providing that meetings  
69 and determinations of the commission are open to the  
70 public; specifying term lengths of administrative law  
71 judges; prescribing procedures for the commission to  
72 review a judge's performance before the expiration of  
73 a term; requiring the Governor and Cabinet to take  
74 certain action regarding a judge after the  
75 commission's review; providing for initial

76 | appointments of administrative law judges and  
 77 | staggered terms; providing transitional provisions;  
 78 | amending ss. 120.80, 120.81, 420.9072, 420.9075, and  
 79 | 443.091, F.S.; conforming cross-references; providing  
 80 | an effective date.

81 |

82 | Be It Enacted by the Legislature of the State of Florida:

83 |

84 | Section 1. Paragraphs (r) and (w) of subsection (2) of  
 85 | section 110.205, Florida Statutes, are amended to read:

86 | 110.205 Career service; exemptions.—

87 | (2) EXEMPT POSITIONS.—The exempt positions that are not  
 88 | covered by this part include the following:

89 | (r) All positions not otherwise exempt under this  
 90 | subsection which require as a prerequisite to employment:  
 91 | licensure as a physician pursuant to chapter 458, licensure as  
 92 | an osteopathic physician pursuant to chapter 459, licensure as a  
 93 | chiropractic physician pursuant to chapter 460, including those  
 94 | positions which are occupied by employees who are exempted from  
 95 | licensure pursuant to s. 409.352; licensure as an engineer  
 96 | pursuant to chapter 471, which are supervisory positions; or for  
 97 | 12 calendar months, which require as a prerequisite to  
 98 | employment that the employee have received the degree of  
 99 | Bachelor of Laws or Juris Doctor from a law school accredited by  
 100 | the American Bar Association and thereafter membership in The

101 Florida Bar, including ~~except for~~ any attorney who serves as an  
102 administrative law judge pursuant to s. 120.65 or for hearings  
103 conducted pursuant to s. 120.57(1)(a). Unless otherwise fixed by  
104 law, the department shall set the salary and benefits for these  
105 positions in accordance with the rules established for the  
106 Selected Exempt Service.

107 (w) Managerial employees, as defined in s. 447.203(4),  
108 confidential employees, as defined in s. 447.203(5), and  
109 supervisory employees who spend the majority of their time  
110 communicating with, motivating, training, and evaluating  
111 employees, and planning and directing employees' work, and who  
112 have the authority to hire, transfer, suspend, lay off, recall,  
113 promote, discharge, assign, reward, or discipline subordinate  
114 employees or effectively recommend such action, including all  
115 employees serving as supervisors, administrators, and directors.  
116 Excluded are employees also designated as special risk or  
117 special risk administrative support ~~and attorneys who serve as~~  
118 ~~administrative law judges pursuant to s. 120.65 or for hearings~~  
119 ~~conducted pursuant to s. 120.57(1)(a)~~. Additionally, registered  
120 nurses licensed under chapter 464, dentists licensed under  
121 chapter 466, psychologists licensed under chapter 490 or chapter  
122 491, nutritionists or dietitians licensed under part X of  
123 chapter 468, pharmacists licensed under chapter 465,  
124 psychological specialists licensed under chapter 491, physical  
125 therapists licensed under chapter 486, and speech therapists

126 licensed under part I of chapter 468 are excluded, unless  
 127 otherwise collectively bargained.

128 Section 2. Subsections (16) through (22) of section  
 129 120.52, Florida Statutes, are renumbered as subsections (17)  
 130 through (23), respectively, subsection (5) is amended, and a new  
 131 subsection (16) is added to that section, to read:

132 120.52 Definitions.—As used in this act:

133 (5) "Division" means the Division of Administrative  
 134 Hearings. ~~Any document filed with the division by a party~~  
 135 ~~represented by an attorney shall be filed by electronic means~~  
 136 ~~through the division's website. Any document filed with the~~  
 137 ~~division by a party not represented by an attorney shall,~~  
 138 ~~whenever possible, be filed by electronic means through the~~  
 139 ~~division's website.~~

140 (16) "Repromulgate" or "repromulgation" means the  
 141 publication and adoption of an existing rule following an  
 142 agency's review of the rule for consistency with the powers and  
 143 duties granted by its enabling statute.

144 Section 3. Paragraph (i) of subsection (1), subsection  
 145 (3), and paragraph (a) of subsection (7) of section 120.54,  
 146 Florida Statutes, are amended to read:

147 120.54 Rulemaking.—

148 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
 149 EMERGENCY RULES.—

150 (i)1. A rule may incorporate material by reference but

151 only as the material exists on the date the rule is adopted. For  
152 purposes of the rule, changes in the material are not effective  
153 unless the rule is amended to incorporate the changes.

154 2. An agency rule that incorporates by specific reference  
155 another rule of that agency automatically incorporates  
156 subsequent amendments to the referenced rule unless a contrary  
157 intent is clearly indicated in the referencing rule. A notice of  
158 amendments to a rule that has been incorporated by specific  
159 reference in other rules of that agency must explain the effect  
160 of those amendments on the referencing rules.

161 3. In rules adopted after December 31, 2010, and rules  
162 repromulgated after December 31, 2018, material may not be  
163 incorporated by reference unless:

164 a. The material has been submitted in the prescribed  
165 electronic format to the Department of State and the full text  
166 of the material can be made available for free public access  
167 through an electronic hyperlink from the rule making the  
168 reference in the Florida Administrative Code; or

169 b. The agency has determined that posting the material on  
170 the Internet for purposes of public examination and inspection  
171 would constitute a violation of federal copyright law, in which  
172 case a statement to that effect, along with the address of  
173 locations at the Department of State and the agency at which the  
174 material is available for public inspection and examination,  
175 must be included in the notice required by subparagraph (3) (a)1.

176 4. A rule may not be amended by reference only. Amendments  
177 must set out the amended rule in full in the same manner as  
178 required by the State Constitution for laws.

179 5. Notwithstanding any contrary provision in this section,  
180 when an adopted rule of the Department of Environmental  
181 Protection or a water management district is incorporated by  
182 reference in the other agency's rule to implement a provision of  
183 part IV of chapter 373, subsequent amendments to the rule are  
184 not effective as to the incorporating rule unless the agency  
185 incorporating by reference notifies the committee and the  
186 Department of State of its intent to adopt the subsequent  
187 amendment, publishes notice of such intent in the Florida  
188 Administrative Register, and files with the Department of State  
189 a copy of the amended rule incorporated by reference. Changes in  
190 the rule incorporated by reference are effective as to the other  
191 agency 20 days after the date of the published notice and filing  
192 with the Department of State. The Department of State shall  
193 amend the history note of the incorporating rule to show the  
194 effective date of such change. Any substantially affected person  
195 may, within 14 days after the date of publication of the notice  
196 of intent in the Florida Administrative Register, file an  
197 objection to rulemaking with the agency. The objection shall  
198 specify the portions of the rule incorporated by reference to  
199 which the person objects and the reasons for the objection. The  
200 agency shall not have the authority under this subparagraph to



201 adopt those portions of the rule specified in such objection.  
202 The agency shall publish notice of the objection and of its  
203 action in response in the next available issue of the Florida  
204 Administrative Register.

205 6. The Department of State may adopt by rule requirements  
206 for incorporating materials pursuant to this paragraph.

207 (3) ADOPTION PROCEDURES.—

208 (a) Notices.—

209 1. Prior to the adoption, amendment, or repeal of any rule  
210 other than an emergency rule, an agency, upon approval of the  
211 agency head, shall give notice of its intended action, setting  
212 forth a short, plain explanation of the purpose and effect of  
213 the proposed action; the full text of the proposed rule or  
214 amendment and a summary thereof; a reference to the grant of  
215 rulemaking authority pursuant to which the rule is adopted; and  
216 a reference to the section or subsection of the Florida Statutes  
217 or the Laws of Florida being implemented or interpreted. The  
218 notice must include a summary of the agency's statement of the  
219 estimated regulatory costs, if one has been prepared, based on  
220 the factors set forth in s. 120.541(2); a statement that any  
221 person who wishes to provide the agency with information  
222 regarding the statement of estimated regulatory costs, or to  
223 provide a proposal for a lower cost regulatory alternative as  
224 provided by s. 120.541(1), must do so in writing within 21 days  
225 after publication of the notice; and a statement as to whether,

226 based on the statement of the estimated regulatory costs or  
227 other information expressly relied upon and described by the  
228 agency if no statement of regulatory costs is required, the  
229 proposed rule is expected to require legislative ratification  
230 pursuant to s. 120.541(3). The notice must state the procedure  
231 for requesting a public hearing on the proposed rule. Except  
232 when the intended action is the repeal of a rule, the notice  
233 must include a reference both to the date on which and to the  
234 place where the notice of rule development that is required by  
235 subsection (2) appeared.

236 2. The notice shall be published in the Florida  
237 Administrative Register not less than 28 days prior to the  
238 intended action. The proposed rule, including all material  
239 proposed to be incorporated by reference, shall be available for  
240 inspection and copying by the public at the time of the  
241 publication of notice. After December 31, 2018, material  
242 proposed to be incorporated by reference in the notice required  
243 by this paragraph shall be made available in the manner  
244 prescribed by sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

245 3. The notice shall be mailed to all persons named in the  
246 proposed rule and to all persons who, at least 14 days prior to  
247 such mailing, have made requests of the agency for advance  
248 notice of its proceedings. The agency shall also give such  
249 notice as is prescribed by rule to those particular classes of  
250 persons to whom the intended action is directed.

251 4. The adopting agency shall file with the committee, at  
252 least 21 days prior to the proposed adoption date, a copy of  
253 each rule it proposes to adopt; a copy of any material  
254 incorporated by reference in the rule; a detailed written  
255 statement of the facts and circumstances justifying the proposed  
256 rule; a copy of any statement of estimated regulatory costs that  
257 has been prepared pursuant to s. 120.541; a statement of the  
258 extent to which the proposed rule relates to federal standards  
259 or rules on the same subject; and the notice required by  
260 subparagraph 1.

261 (b) Special matters to be considered in rule adoption.—

262 1. Statement of estimated regulatory costs.—Before the  
263 adoption, amendment, or repeal of any rule other than an  
264 emergency rule, an agency is encouraged to prepare a statement  
265 of estimated regulatory costs of the proposed rule, as provided  
266 by s. 120.541. However, an agency must prepare a statement of  
267 estimated regulatory costs of the proposed rule, as provided by  
268 s. 120.541, if:

269 a. The proposed rule will have an adverse impact on small  
270 business; or

271 b. The proposed rule is likely to directly or indirectly  
272 increase regulatory costs in excess of \$200,000 in the aggregate  
273 in this state within 1 year after the implementation of the  
274 rule.

275 2. Small businesses, small counties, and small cities.—

276 a. Each agency, before the adoption, amendment, or repeal  
277 of a rule, shall consider the impact of the rule on small  
278 businesses as defined by s. 288.703 and the impact of the rule  
279 on small counties or small cities as defined by s. 120.52.  
280 Whenever practicable, an agency shall tier its rules to reduce  
281 disproportionate impacts on small businesses, small counties, or  
282 small cities to avoid regulating small businesses, small  
283 counties, or small cities that do not contribute significantly  
284 to the problem the rule is designed to address. An agency may  
285 define "small business" to include businesses employing more  
286 than 200 persons, may define "small county" to include those  
287 with populations of more than 75,000, and may define "small  
288 city" to include those with populations of more than 10,000, if  
289 it finds that such a definition is necessary to adapt a rule to  
290 the needs and problems of small businesses, small counties, or  
291 small cities. The agency shall consider each of the following  
292 methods for reducing the impact of the proposed rule on small  
293 businesses, small counties, and small cities, or any combination  
294 of these entities:

295 (I) Establishing less stringent compliance or reporting  
296 requirements in the rule.

297 (II) Establishing less stringent schedules or deadlines in  
298 the rule for compliance or reporting requirements.

299 (III) Consolidating or simplifying the rule's compliance  
300 or reporting requirements.

301 (IV) Establishing performance standards or best management  
302 practices to replace design or operational standards in the  
303 rule.

304 (V) Exempting small businesses, small counties, or small  
305 cities from any or all requirements of the rule.

306 b.(I) If the agency determines that the proposed action  
307 will affect small businesses as defined by the agency as  
308 provided in sub-subparagraph a., the agency shall send written  
309 notice of the rule to the rules ombudsman in the Executive  
310 Office of the Governor at least 28 days before the intended  
311 action.

312 (II) Each agency shall adopt those regulatory alternatives  
313 offered by the rules ombudsman in the Executive Office of the  
314 Governor and provided to the agency no later than 21 days after  
315 the rules ombudsman's receipt of the written notice of the rule  
316 which it finds are feasible and consistent with the stated  
317 objectives of the proposed rule and which would reduce the  
318 impact on small businesses. When regulatory alternatives are  
319 offered by the rules ombudsman in the Executive Office of the  
320 Governor, the 90-day period for filing the rule in subparagraph  
321 (e)2. is extended for a period of 21 days. The agency shall  
322 provide notice to the committee of any regulatory alternative  
323 offered to the agency pursuant to this sub-subparagraph at least  
324 21 days before filing the rule for adoption.

325 (III) If an agency does not adopt all alternatives offered

326 | pursuant to this sub-subparagraph, it shall, before rule  
327 | adoption or amendment and pursuant to subparagraph (d)1., file a  
328 | detailed written statement with the committee explaining the  
329 | reasons for failure to adopt such alternatives. Within 3 working  
330 | days after the filing of such notice, the agency shall send a  
331 | copy of such notice to the rules ombudsman in the Executive  
332 | Office of the Governor.

333 | (c) Hearings.—

334 | 1. If the intended action concerns any rule other than one  
335 | relating exclusively to procedure or practice, the agency shall,  
336 | on the request of any affected person received within 21 days  
337 | after the date of publication of the notice of intended agency  
338 | action, give affected persons an opportunity to present evidence  
339 | and argument on all issues under consideration. The agency may  
340 | schedule a public hearing on the rule and, if requested by any  
341 | affected person, shall schedule a public hearing on the rule.  
342 | When a public hearing is held, the agency must ensure that staff  
343 | are available to explain the agency's proposal and to respond to  
344 | questions or comments regarding the rule. If the agency head is  
345 | a board or other collegial body created under s. 20.165(4) or s.  
346 | 20.43(3)(g), and one or more requested public hearings is  
347 | scheduled, the board or other collegial body shall conduct at  
348 | least one of the public hearings itself and may not delegate  
349 | this responsibility without the consent of those persons  
350 | requesting the public hearing. Any material pertinent to the

351 issues under consideration submitted to the agency within 21  
352 days after the date of publication of the notice or submitted to  
353 the agency between the date of publication of the notice and the  
354 end of the final public hearing shall be considered by the  
355 agency and made a part of the record of the rulemaking  
356 proceeding.

357         2. Rulemaking proceedings shall be governed solely by the  
358 provisions of this section unless a person timely asserts that  
359 the person's substantial interests will be affected in the  
360 proceeding and affirmatively demonstrates to the agency that the  
361 proceeding does not provide adequate opportunity to protect  
362 those interests. If the agency determines that the rulemaking  
363 proceeding is not adequate to protect the person's interests, it  
364 shall suspend the rulemaking proceeding and convene a separate  
365 proceeding under the provisions of ss. 120.569 and 120.57.  
366 Similarly situated persons may be requested to join and  
367 participate in the separate proceeding. Upon conclusion of the  
368 separate proceeding, the rulemaking proceeding shall be resumed.

369         (d) Modification or withdrawal of proposed rules.—

370         1. After the final public hearing on the proposed rule, or  
371 after the time for requesting a hearing has expired, if the rule  
372 has not been changed from the rule as previously filed with the  
373 committee, or contains only technical changes, the adopting  
374 agency shall file a notice to that effect with the committee at  
375 least 7 days prior to filing the rule for adoption. Any change,

376 other than a technical change that does not affect the substance  
377 of the rule, must be supported by the record of public hearings  
378 held on the rule, must be in response to written material  
379 submitted to the agency within 21 days after the date of  
380 publication of the notice of intended agency action or submitted  
381 to the agency between the date of publication of the notice and  
382 the end of the final public hearing, or must be in response to a  
383 proposed objection by the committee. In addition, when any  
384 change is made in the a proposed rule text or any material  
385 incorporated by reference, other than a technical change, the  
386 adopting agency shall provide a copy of a notice of change by  
387 certified mail or actual delivery to any person who requests it  
388 in writing no later than 21 days after the notice required in  
389 paragraph (a). The agency shall file the notice of change with  
390 the committee, along with the reasons for the change, and  
391 provide the notice of change to persons requesting it, at least  
392 21 days prior to filing the rule for adoption. The notice of  
393 change shall be published in the Florida Administrative Register  
394 at least 21 days prior to filing the rule for adoption. This  
395 subparagraph does not apply to emergency rules adopted pursuant  
396 to subsection (4). After December 31, 2018, material proposed to  
397 be incorporated by reference in the notice required by this  
398 subparagraph shall be made available in the manner prescribed by  
399 sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

400 2. After the notice required by paragraph (a) and prior to



401 adoption, the agency may withdraw the rule in whole or in part.

402 3. After adoption and before the rule becomes effective, a  
403 rule may be modified or withdrawn only in the following  
404 circumstances:

405 a. When the committee objects to the rule;

406 b. When a final order, which is not subject to further  
407 appeal, is entered in a rule challenge brought pursuant to s.  
408 120.56 after the date of adoption but before the rule becomes  
409 effective pursuant to subparagraph (e)6.;

410 c. If the rule requires ratification, when more than 90  
411 days have passed since the rule was filed for adoption without  
412 the Legislature ratifying the rule, in which case the rule may  
413 be withdrawn but may not be modified; or

414 d. When the committee notifies the agency that an  
415 objection to the rule is being considered, in which case the  
416 rule may be modified to extend the effective date by not more  
417 than 60 days.

418 4. The agency shall give notice of its decision to  
419 withdraw or modify a rule in the first available issue of the  
420 publication in which the original notice of rulemaking was  
421 published, shall notify those persons described in subparagraph  
422 (a)3. in accordance with the requirements of that subparagraph,  
423 and shall notify the Department of State if the rule is required  
424 to be filed with the Department of State.

425 5. After a rule has become effective, it may be repealed

426 or amended only through the rulemaking procedures specified in  
427 this chapter.

428 (e) Filing for final adoption; effective date.—

429 1. If the adopting agency is required to publish its rules  
430 in the Florida Administrative Code, the agency, upon approval of  
431 the agency head, shall file with the Department of State three  
432 certified copies of the rule it proposes to adopt; one copy of  
433 any material incorporated by reference in the rule, certified by  
434 the agency; a summary of the rule; a summary of any hearings  
435 held on the rule; and a detailed written statement of the facts  
436 and circumstances justifying the rule. Agencies not required to  
437 publish their rules in the Florida Administrative Code shall  
438 file one certified copy of the proposed rule, and the other  
439 material required by this subparagraph, in the office of the  
440 agency head, and such rules shall be open to the public.

441 2. A rule may not be filed for adoption less than 28 days  
442 or more than 90 days after the notice required by paragraph (a),  
443 until 21 days after the notice of change required by paragraph  
444 (d), until 14 days after the final public hearing, until 21 days  
445 after a statement of estimated regulatory costs required under  
446 s. 120.541 has been provided to all persons who submitted a  
447 lower cost regulatory alternative and made available to the  
448 public, or until the administrative law judge has rendered a  
449 decision under s. 120.56(2), whichever applies. When a required  
450 notice of change is published prior to the expiration of the

451 time to file the rule for adoption, the period during which a  
452 rule must be filed for adoption is extended to 45 days after the  
453 date of publication. If notice of a public hearing is published  
454 prior to the expiration of the time to file the rule for  
455 adoption, the period during which a rule must be filed for  
456 adoption is extended to 45 days after adjournment of the final  
457 hearing on the rule, 21 days after receipt of all material  
458 authorized to be submitted at the hearing, or 21 days after  
459 receipt of the transcript, if one is made, whichever is latest.  
460 The term "public hearing" includes any public meeting held by  
461 any agency at which the rule is considered. If a petition for an  
462 administrative determination under s. 120.56(2) is filed, the  
463 period during which a rule must be filed for adoption is  
464 extended to 60 days after the administrative law judge files the  
465 final order with the clerk or until 60 days after subsequent  
466 judicial review is complete.

467 3. At the time a rule is filed, the agency shall certify  
468 that the time limitations prescribed by this paragraph have been  
469 complied with, that all statutory rulemaking requirements have  
470 been met, and that there is no administrative determination  
471 pending on the rule.

472 4. At the time a rule is filed, the committee shall  
473 certify whether the agency has responded in writing to all  
474 material and timely written comments or written inquiries made  
475 on behalf of the committee. The department shall reject any rule

476 that is not filed within the prescribed time limits; that does  
477 not comply with all statutory rulemaking requirements and rules  
478 of the department; upon which an agency has not responded in  
479 writing to all material and timely written inquiries or written  
480 comments; upon which an administrative determination is pending;  
481 or which does not include a statement of estimated regulatory  
482 costs, if required.

483 5. If a rule has not been adopted within the time limits  
484 imposed by this paragraph or has not been adopted in compliance  
485 with all statutory rulemaking requirements, the agency proposing  
486 the rule shall withdraw the rule and give notice of its action  
487 in the next available issue of the Florida Administrative  
488 Register.

489 6. The proposed rule shall be adopted on being filed with  
490 the Department of State and become effective 20 days after being  
491 filed, on a later date specified in the notice required by  
492 subparagraph (a)1., on a date required by statute, or upon  
493 ratification by the Legislature pursuant to s. 120.541(3). Rules  
494 not required to be filed with the Department of State shall  
495 become effective when adopted by the agency head, on a later  
496 date specified by rule or statute, or upon ratification by the  
497 Legislature pursuant to s. 120.541(3). If the committee notifies  
498 an agency that an objection to a rule is being considered, the  
499 agency may postpone the adoption of the rule to accommodate  
500 review of the rule by the committee. When an agency postpones

501 adoption of a rule to accommodate review by the committee, the  
 502 90-day period for filing the rule is tolled until the committee  
 503 notifies the agency that it has completed its review of the  
 504 rule.

505  
 506 For the purposes of this paragraph, the term "administrative  
 507 determination" does not include subsequent judicial review.

508 (7) PETITION TO INITIATE RULEMAKING.—

509 (a) Any person regulated by an agency or having  
 510 substantial interest in an agency rule may petition an agency to  
 511 adopt, amend, or repeal a rule or to provide the minimum public  
 512 information required by this chapter. The petition shall specify  
 513 the proposed rule and action requested. The agency shall file a  
 514 copy of the petition with the committee. Not later than 30  
 515 calendar days following the date of filing a petition, the  
 516 agency shall initiate rulemaking proceedings under this chapter,  
 517 otherwise comply with the requested action, or deny the petition  
 518 with a written statement of its reasons for the denial.

519 Section 4. Paragraph (a) of subsection (1) of section  
 520 120.541, Florida Statutes, is amended to read:

521 120.541 Statement of estimated regulatory costs.—

522 (1)(a) Within 21 days after publication of the notice  
 523 required under s. 120.54(3)(a), a substantially affected person  
 524 may submit to an agency a good faith written proposal for a  
 525 lower cost regulatory alternative to a proposed rule which

526 substantially accomplishes the objectives of the law being  
527 implemented. The agency shall provide a copy of any proposal for  
528 a lower cost regulatory alternative to the committee at least 21  
529 days before filing the rule for adoption. The proposal may  
530 include the alternative of not adopting any rule if the proposal  
531 explains how the lower costs and objectives of the law will be  
532 achieved by not adopting any rule. If such a proposal is  
533 submitted, the 90-day period for filing the rule is extended 21  
534 days. Upon the submission of the lower cost regulatory  
535 alternative, the agency shall prepare a statement of estimated  
536 regulatory costs as provided in subsection (2), or shall revise  
537 its prior statement of estimated regulatory costs, and either  
538 adopt the alternative or provide a statement of the reasons for  
539 rejecting the alternative in favor of the proposed rule.

540 Section 5. Section 120.5435, Florida Statutes, is created  
541 to read:

542 120.5435 Repromulgation of rules.—

543 (1) It is the intent of the Legislature that each agency  
544 shall periodically review its rules for consistency with the  
545 powers and duties granted by its enabling statutes. If an agency  
546 determines after review that substantive changes to update a  
547 rule are not required, such agency shall repromulgate the rule  
548 to reflect the date of the review.

549 (2) Before repromulgation of the rule, an agency shall,  
550 upon approval by the agency head:

551 (a) Publish a notice of repromulgation in the Florida  
552 Administrative Register. A notice of repromulgation is not  
553 required to include the text of the rule being promulgated.

554 (b) File the rule for repromulgation with the Department  
555 of State. A rule may not be filed for repromulgation less than  
556 28 days or more than 90 days after the publication of the notice  
557 required by paragraph (a).

558 (3) The agency shall file a notice of repromulgation with  
559 the committee at least 14 days before filing the rule for  
560 repromulgation. At the time the rule is filed for  
561 repromulgation, the committee shall certify whether the agency  
562 has responded in writing to all material and timely written  
563 comments or written inquiries made on behalf of the committee.

564 (4) If the rule is not filed for repromulgation within the  
565 time limit imposed by paragraph (2) (b), the agency shall  
566 withdraw the rule for repromulgation and give notice of the  
567 withdrawal in the next available issue of the Florida  
568 Administrative Register.

569 (5) A repromulgated rule is not subject to challenge as a  
570 proposed rule pursuant to s. 120.56(2).

571 (6) The hearing requirements of s. 120.54 do not apply to  
572 repromulgation of a rule.

573 (7) (a) The agency, upon approval of the agency head or his  
574 or her designee, shall file with the Department of State three  
575 certified copies of the repromulgated rule it proposes to adopt

576 and one certified copy of any material incorporated by reference  
577 in the rule.

578 (b) The repromulgated rule shall be adopted upon filing  
579 with the Department of State and becomes effective 20 days after  
580 being filed.

581 (c) The Department of State shall update the history note  
582 of the rule in the Florida Administrative Code to reflect the  
583 effective date of the repromulgated rule.

584 (8) The Department of State shall adopt rules to implement  
585 this section by December 31, 2018.

586 Section 6. Paragraphs (a) and (c) of subsection (1) of  
587 section 120.55, Florida Statutes, are amended to read:

588 120.55 Publication.—

589 (1) The Department of State shall:

590 (a)1. Through a continuous revision and publication  
591 system, compile and publish electronically, on a website managed  
592 by the department, the "Florida Administrative Code." The  
593 Florida Administrative Code shall contain all rules adopted by  
594 each agency, citing the grant of rulemaking authority and the  
595 specific law implemented pursuant to which each rule was  
596 adopted, all history notes as authorized in s. 120.545(7),  
597 complete indexes to all rules contained in the code, and any  
598 other material required or authorized by law or deemed useful by  
599 the department. The electronic code shall display each rule  
600 chapter currently in effect in browse mode and allow full text



601 search of the code and each rule chapter. The department may  
602 contract with a publishing firm for a printed publication;  
603 however, the department shall retain responsibility for the code  
604 as provided in this section. The electronic publication shall be  
605 the official compilation of the administrative rules of this  
606 state. The Department of State shall retain the copyright over  
607 the Florida Administrative Code.

608 2. Rules general in form but applicable to only one school  
609 district, community college district, or county, or a part  
610 thereof, or state university rules relating to internal  
611 personnel or business and finance shall not be published in the  
612 Florida Administrative Code. Exclusion from publication in the  
613 Florida Administrative Code shall not affect the validity or  
614 effectiveness of such rules.

615 3. At the beginning of the section of the code dealing  
616 with an agency that files copies of its rules with the  
617 department, the department shall publish the address and  
618 telephone number of the executive offices of each agency, the  
619 manner by which the agency indexes its rules, a listing of all  
620 rules of that agency excluded from publication in the code, and  
621 a statement as to where those rules may be inspected.

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

626 used. Any form or instruction which meets the definition of  
627 "rule" provided in s. 120.52 shall be incorporated by reference  
628 into the appropriate rule. The reference shall specifically  
629 state that the form is being incorporated by reference and shall  
630 include the number, title, and effective date of the form and an  
631 explanation of how the form may be obtained. Each form created  
632 by an agency which is incorporated by reference in a rule notice  
633 of which is given under s. 120.54(3)(a) after December 31, 2007,  
634 must clearly display the number, title, and effective date of  
635 the form and the number of the rule in which the form is  
636 incorporated.

637 5. After December 31, 2018, the department shall require  
638 all material incorporated by reference in any part of an adopted  
639 rule and in any part of a repromulgated rule ~~allow adopted rules~~  
640 ~~and material incorporated by reference~~ to be filed in the manner  
641 prescribed by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b.  
642 ~~electronic form as prescribed by department rule.~~ When a rule is  
643 filed for adoption or repromulgation with incorporated material  
644 in electronic form, the department's publication of the Florida  
645 Administrative Code on its website must contain a hyperlink from  
646 the incorporating reference in the rule directly to that  
647 material. The department may not allow hyperlinks from rules in  
648 the Florida Administrative Code to any material other than that  
649 filed with and maintained by the department, but may allow  
650 hyperlinks to incorporated material maintained by the department

651 from the adopting agency's website or other sites.

652 6. The Department of State shall include the date of any  
653 technical changes to a rule in the history note of the rule in  
654 the Florida Administrative Code. A technical change does not  
655 affect the effective date of the rule.

656 (c) Prescribe by rule the style and form required for  
657 rules, notices, and other materials submitted for filing,  
658 including a rule requiring documents created by an agency that  
659 are proposed to be incorporated by reference in notices  
660 published pursuant to s. 120.54(3)(a) and (d) to be coded in the  
661 same manner as notices published pursuant to s. 120.54(3)(a)1.

662 Section 7. Subsection (1) of section 120.569, Florida  
663 Statutes, is amended to read:

664 120.569 Decisions which affect substantial interests.—

665 (1) (a) The provisions of this section apply in all  
666 proceedings in which the substantial interests of a party are  
667 determined by an agency, unless the parties are proceeding under  
668 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
669 120.57(1) applies whenever the proceeding involves a disputed  
670 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
671 applies in all other cases. If a disputed issue of material fact  
672 arises during a proceeding under s. 120.57(2), then, unless  
673 waived by all parties, the proceeding under s. 120.57(2) shall  
674 be terminated and a proceeding under s. 120.57(1) shall be  
675 conducted. Parties shall be notified of any order, including a

676 final order. Unless waived, a copy of the order shall be  
677 delivered or mailed to each party or the party's attorney of  
678 record at the address of record. Each notice shall inform the  
679 recipient of any administrative hearing or judicial review that  
680 is available under this section, s. 120.57, or s. 120.68; shall  
681 indicate the procedure which must be followed to obtain the  
682 hearing or judicial review; and shall state the time limits  
683 which apply.

684 (b) In all proceedings pursuant to this chapter conducted  
685 before the division, any document filed with the division by a  
686 party represented by an attorney shall be filed electronically  
687 through the division's website. Any document filed with the  
688 division by a party not represented by an attorney shall,  
689 whenever possible, be filed electronically through the  
690 division's website. The division shall serve all such documents  
691 on all parties of record electronically through the division's  
692 website. The parties are relieved of any requirement to serve  
693 other parties who are registered for electronic filing when they  
694 file documents electronically with the division.

695 Section 8. Subsections (2) and (3) of section 120.65,  
696 Florida Statutes, are renumbered as subsections (3) and (4),  
697 respectively, subsection (1) and present subsection (4) of that  
698 section are amended, and a new subsection (2) is added to that  
699 section, to read:

700 120.65 Administrative law judges.—

701 (1) The Division of Administrative Hearings within the  
702 Department of Management Services shall be headed by the a  
703 director of the Division of Administrative Hearings. The  
704 director ~~who~~ shall be appointed by the Administration Commission  
705 and must be a full-time administrative law judge employed by the  
706 division ~~and confirmed by the Senate. The director, who shall~~  
707 ~~also serve as the chief administrative law judge, and any deputy~~  
708 ~~chief administrative law judge must possess the same minimum~~  
709 ~~qualifications as the administrative law judges employed by the~~  
710 ~~division.~~ The Deputy Chief Judge of Compensation Claims must  
711 possess the minimum qualifications established in s. 440.45(2)  
712 and shall report to the director. The division is ~~shall be~~ a  
713 separate budget entity, and the director shall be its agency  
714 head for all purposes. The Department of Management Services  
715 shall provide administrative support and service to the division  
716 to the extent requested by the director. The division shall not  
717 be subject to control, supervision, or direction by the  
718 Department of Management Services in any manner, including, but  
719 not limited to, personnel, purchasing, transactions involving  
720 real or personal property, and budgetary matters.

721 (2) The Governor and Cabinet shall appoint full-time  
722 administrative law judges to conduct hearings in accordance with  
723 this chapter. A person may not serve as an administrative law  
724 judge unless he or she has been a member of The Florida Bar in  
725 good standing for the previous 5 years. An administrative law

726 judge may not engage in the private practice of law during his  
727 or her term of office.

728 (a)1. Except as provided in paragraph (b), the Governor  
729 and Cabinet shall appoint an administrative law judge from a  
730 list of three persons nominated by a statewide nominating  
731 commission. The statewide nominating commission shall be  
732 composed of three members, at least one of whom must be a  
733 minority person as defined in s. 288.703, appointed by the  
734 Governor; two members appointed by the Attorney General; two  
735 members appointed by the Chief Financial Officer; and two  
736 members appointed by the Commissioner of Agriculture.

737 2. Beginning July 1, 2018, the Governor and each member of  
738 the Cabinet shall appoint one member to serve a 2-year term and  
739 appoint the remaining members to serve 4-year terms. Thereafter,  
740 each member shall be appointed for a 4-year term. A vacancy  
741 occurring on the commission shall be filled by the original  
742 appointing authority for the unexpired balance of the term.

743 3. The meetings and determinations of the nominating  
744 commission as to the administrative law judges shall be open to  
745 the public.

746 (b) Each administrative law judge shall be appointed for a  
747 4-year term, but during his or her term of office may be removed  
748 by the Governor and Cabinet for cause. Before the expiration of  
749 a judge's term of office, the statewide nominating commission  
750 shall review the judge's conduct and determine whether the

751 judge's performance is satisfactory. In determining whether a  
752 judge's performance is satisfactory, the commission shall  
753 consider the extent to which the judge has met the requirements  
754 of this chapter. The commission shall report its finding to the  
755 Governor and Cabinet no later than 6 months before the  
756 expiration of the judge's term of office. The Governor and  
757 Cabinet shall review the commission's report and may reappoint  
758 the administrative law judge for an additional 4-year term. If  
759 the Governor and Cabinet do not reappoint the judge, the  
760 Governor and Cabinet shall inform the commission. The judge  
761 shall remain in office until the Governor and Cabinet have  
762 appointed a successor judge in accordance with this subsection.  
763 If a vacancy occurs during a judge's unexpired term, the  
764 commission does not find the judge's performance satisfactory,  
765 or the Governor and Cabinet do not reappoint the judge, the  
766 Governor and Cabinet shall appoint a successor judge for a 4-  
767 year term in accordance with paragraph (a).

768 (c) The Governor and Cabinet shall appoint each  
769 administrative law judge by June 30, 2019, for a term beginning  
770 on July 1, 2019. For the term beginning on July 1, 2019,  
771 administrative law judges shall be appointed in the following  
772 manner: 8 judges appointed to a 1-year term; 8 judges appointed  
773 to a 2-year term; 8 judges appointed to a 3-year term; and 8  
774 judges appointed to a 4-year term. Thereafter, each term of  
775 office shall be 4 years.

776           (d) The Division of Administrative Hearings shall maintain  
 777           32 administrative law judges as they existed on June 30, 2018.  
 778           Each administrative law judge may continue to serve until June  
 779           30, 2019, and may be appointed for an additional term under the  
 780           process for reappointments in paragraph (b).

781           ~~(4) The division shall employ administrative law judges to~~  
 782           ~~conduct hearings required by this chapter or other law. Any~~  
 783           ~~person employed by the division as an administrative law judge~~  
 784           ~~must have been a member of The Florida Bar in good standing for~~  
 785           ~~the preceding 5 years.~~

786           Section 9. Subsection (11) of section 120.80, Florida  
 787           Statutes, is amended to read:

788           120.80 Exceptions and special requirements; agencies.—

789           (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s.~~  
 790           ~~120.52(16)~~, the enlistment, organization, administration,  
 791           equipment, maintenance, training, and discipline of the militia,  
 792           National Guard, organized militia, and unorganized militia, as  
 793           provided by s. 2, Art. X of the State Constitution, are not  
 794           rules as defined by this chapter.

795           Section 10. Paragraph (c) of subsection (1) of section  
 796           120.81, Florida Statutes, is amended to read:

797           120.81 Exceptions and special requirements; general  
 798           areas.—

799           (1) EDUCATIONAL UNITS.—

800           (c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any



801 tests, test scoring criteria, or testing procedures relating to  
802 student assessment which are developed or administered by the  
803 Department of Education pursuant to s. 1003.4282, s. 1008.22, or  
804 s. 1008.25, or any other statewide educational tests required by  
805 law, are not rules.

806 Section 11. Paragraph (a) of subsection (1) of section  
807 420.9072, Florida Statutes, is amended to read:

808 420.9072 State Housing Initiatives Partnership Program.—  
809 The State Housing Initiatives Partnership Program is created for  
810 the purpose of providing funds to counties and eligible  
811 municipalities as an incentive for the creation of local housing  
812 partnerships, to expand production of and preserve affordable  
813 housing, to further the housing element of the local government  
814 comprehensive plan specific to affordable housing, and to  
815 increase housing-related employment.

816 (1) (a) In addition to the legislative findings set forth  
817 in s. 420.6015, the Legislature finds that affordable housing is  
818 most effectively provided by combining available public and  
819 private resources to conserve and improve existing housing and  
820 provide new housing for very-low-income households, low-income  
821 households, and moderate-income households. The Legislature  
822 intends to encourage partnerships in order to secure the  
823 benefits of cooperation by the public and private sectors and to  
824 reduce the cost of housing for the target group by effectively  
825 combining all available resources and cost-saving measures. The

826 Legislature further intends that local governments achieve this  
827 combination of resources by encouraging active partnerships  
828 between government, lenders, builders and developers, real  
829 estate professionals, advocates for low-income persons, and  
830 community groups to produce affordable housing and provide  
831 related services. Extending the partnership concept to encompass  
832 cooperative efforts among small counties as defined in s.  
833 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities  
834 is specifically encouraged. Local governments are also intended  
835 to establish an affordable housing advisory committee to  
836 recommend monetary and nonmonetary incentives for affordable  
837 housing as provided in s. 420.9076.

838 Section 12. Subsection (7) of section 420.9075, Florida  
839 Statutes, is amended to read:

840 420.9075 Local housing assistance plans; partnerships.—

841 (7) The moneys deposited in the local housing assistance  
842 trust fund shall be used to administer and implement the local  
843 housing assistance plan. The cost of administering the plan may  
844 not exceed 5 percent of the local housing distribution moneys  
845 and program income deposited into the trust fund. A county or an  
846 eligible municipality may not exceed the 5-percent limitation on  
847 administrative costs, unless its governing body finds, by  
848 resolution, that 5 percent of the local housing distribution  
849 plus 5 percent of program income is insufficient to adequately  
850 pay the necessary costs of administering the local housing

851 assistance plan. The cost of administering the program may not  
852 exceed 10 percent of the local housing distribution plus 5  
853 percent of program income deposited into the trust fund, except  
854 that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~,  
855 and eligible municipalities receiving a local housing  
856 distribution of up to \$350,000 may use up to 10 percent of  
857 program income for administrative costs.

858 Section 13. Paragraph (d) of subsection (1) of section  
859 443.091, Florida Statutes, is amended to read:

860 443.091 Benefit eligibility conditions.—

861 (1) An unemployed individual is eligible to receive  
862 benefits for any week only if the Department of Economic  
863 Opportunity finds that:

864 (d) She or he is able to work and is available for work.  
865 In order to assess eligibility for a claimed week of  
866 unemployment, the department shall develop criteria to determine  
867 a claimant's ability to work and availability for work. A  
868 claimant must be actively seeking work in order to be considered  
869 available for work. This means engaging in systematic and  
870 sustained efforts to find work, including contacting at least  
871 five prospective employers for each week of unemployment  
872 claimed. The department may require the claimant to provide  
873 proof of such efforts to the one-stop career center as part of  
874 reemployment services. A claimant's proof of work search efforts  
875 may not include the same prospective employer at the same

876 location in 3 consecutive weeks, unless the employer has  
877 indicated since the time of the initial contact that the  
878 employer is hiring. The department shall conduct random reviews  
879 of work search information provided by claimants. As an  
880 alternative to contacting at least five prospective employers  
881 for any week of unemployment claimed, a claimant may, for that  
882 same week, report in person to a one-stop career center to meet  
883 with a representative of the center and access reemployment  
884 services of the center. The center shall keep a record of the  
885 services or information provided to the claimant and shall  
886 provide the records to the department upon request by the  
887 department. However:

888 1. Notwithstanding any other provision of this paragraph  
889 or paragraphs (b) and (e), an otherwise eligible individual may  
890 not be denied benefits for any week because she or he is in  
891 training with the approval of the department, or by reason of s.  
892 443.101(2) relating to failure to apply for, or refusal to  
893 accept, suitable work. Training may be approved by the  
894 department in accordance with criteria prescribed by rule. A  
895 claimant's eligibility during approved training is contingent  
896 upon satisfying eligibility conditions prescribed by rule.

897 2. Notwithstanding any other provision of this chapter, an  
898 otherwise eligible individual who is in training approved under  
899 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be  
900 determined ineligible or disqualified for benefits due to

901 enrollment in such training or because of leaving work that is  
 902 not suitable employment to enter such training. As used in this  
 903 subparagraph, the term "suitable employment" means work of a  
 904 substantially equal or higher skill level than the worker's past  
 905 adversely affected employment, as defined for purposes of the  
 906 Trade Act of 1974, as amended, the wages for which are at least  
 907 80 percent of the worker's average weekly wage as determined for  
 908 purposes of the Trade Act of 1974, as amended.

909 3. Notwithstanding any other provision of this section, an  
 910 otherwise eligible individual may not be denied benefits for any  
 911 week because she or he is before any state or federal court  
 912 pursuant to a lawfully issued summons to appear for jury duty.

913 4. Union members who customarily obtain employment through  
 914 a union hiring hall may satisfy the work search requirements of  
 915 this paragraph by reporting daily to their union hall.

916 5. The work search requirements of this paragraph do not  
 917 apply to persons who are unemployed as a result of a temporary  
 918 layoff or who are claiming benefits under an approved short-time  
 919 compensation plan as provided in s. 443.1116.

920 6. In small counties as defined in s. 120.52(20) ~~s.~~  
 921 ~~120.52(19)~~, a claimant engaging in systematic and sustained  
 922 efforts to find work must contact at least three prospective  
 923 employers for each week of unemployment claimed.

924 7. The work search requirements of this paragraph do not  
 925 apply to persons required to participate in reemployment

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926 | services under paragraph (e).

927 |       Section 14. This act shall take effect July 1, 2018.