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**RULEMAKING OVERSIGHT  
&  
REPEAL  
SUBCOMMITTEE  
MEETING**

**Wednesday, March 27, 2013  
10:30 a.m. – 12:30 p.m.**

**306 House Office Building**

**ACTION PACKET**

Will Weatherford  
Speaker

John Tobia  
Chair

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**Summary:**

**Rulemaking Oversight & Repeal Subcommittee**

*Wednesday March 27, 2013 10:30 am*

HB 7	Favorable	Yeas: 11	Nays: 0
CS/HB 23	Favorable	Yeas: 9	Nays: 2
CS/HB 127	Favorable	Yeas: 10	Nays: 1
CS/HB 667	Favorable With Committee Substitute	Yeas: 11	Nays: 0
	Amendment 171619	Adopted Without Objection	
	Amendment 509173	Withdrawn	
HB 1165	Temporarily Deferred		
HB 1225	Favorable With Committee Substitute	Yeas: 12	Nays: 0
	Amendment 630645	Adopted Without Objection	
	Amendment 742551	Adopted Without Objection	
PCB RORS 13-01	Favorable	Yeas: 10	Nays: 0

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**Attendance:**

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
John Tobia (Chair)	X		
Bruce Antone	X		
Matt Gaetz	X		
Travis Hutson	X		
Dave Kerner	X		
MaryLynn Magar	X		
Jeanette Nuñez	X		
Lake Ray	X		
David Richardson	X		
David Santiago	X		
W. Gregory Steube	X		
Victor Torres, Jr.	X		
Barbara Watson	X		
<b>Totals:</b>	<b>13</b>	<b>0</b>	<b>0</b>

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**HB 7 : Water Management Districts**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Bruce Antone	X				
Matt Gaetz	X				
Travis Hutson	X				
Dave Kerner			X		
MaryLynn Magar	X				
Jeanette Nufiez	X				
Lake Ray	X				
David Richardson	X				
David Santiago	X				
W. Gregory Steube			X		
Victor Torres, Jr.	X				
Barbara Watson	X				
John Tobia (Chair)	X				
<b>Total Yeas: 11</b>		<b>Total Nays: 0</b>			

**Appearances:**

Pitts, Brian - Waive In Support  
 Trustee-Justice-2-Jesus  
 1119 Newton Avenue South  
 S. Petersburg Florida 33705  
 Phone: 727-897-9291

Minnis, Steven (Lobbyist) - Waive In Support  
 Suwannee River Water Management District  
 9225 CR 49  
 Live Oak FL 32060  
 Phone: (386)362-1001

Perdue, Tammy (Lobbyist) - Waive In Support  
 Associated Industries of Florida  
 516 N. Adams St.  
 Tallahassee Florida 32301  
 Phone: 224-7173

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**CS/HB 23 : Public Meetings**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Bruce Antone	X				
Matt Gaetz	X				
Travis Hutson	X				
Dave Kerner			X		
MaryLynn Magar	X				
Jeanette Nufiez	X				
Lake Ray	X				
David Richardson	X				
David Santiago	X				
W. Gregory Steube			X		
Victor Torres, Jr.	X				
Barbara Watson		X			
John Tobia (Chair)		X			
<b>Total Yeas: 9</b>		<b>Total Nays: 2</b>			

**Appearances:**

Milsted, Charles (Lobbyist) - Waive In Support  
 AARP  
 200 West College Avenue  
 Tallahassee FL 32301  
 Phone: (850)577-5190

Pitts, Brian - Information Only  
 Trustee-Justice-2-Jesus  
 1119 Newton Avenue South  
 S. Petersburg Florida 33705  
 Phone: 727-897-9291

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**CS/HB 127 : Meetings of District School Boards**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Bruce Antone	X				
Matt Gaetz	X				
Travis Hutson	X				
Dave Kerner			X		
MaryLynn Magar	X				
Jeanette Nufiez	X				
Lake Ray	X				
David Richardson	X				
David Santiago	X				
W. Gregory Steube			X		
Victor Torres, Jr.	X				
Barbara Watson	X				
John Tobia (Chair)		X			
<b>Total Yeas: 10</b>		<b>Total Nays: 1</b>			

**Appearances:**

Pitts, Brian - Information Only  
 Trustee-Justice-2-Jesus  
 1119 Newton Avenue South  
 S. Petersburg Florida 33705  
 Phone: 727-897-9291

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**CS/HB 667 : Real Estate Brokers and Appraisers**

*Favorable With Committee Substitute*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Bruce Antone	X				
Matt Gaetz	X				
Travis Hutson	X				
Dave Kerner			X		
MaryLynn Magar	X				
Jeanette Nuñez	X				
Lake Ray	X				
David Richardson	X				
David Santiago	X				
W. Gregory Steube			X		
Victor Torres, Jr.	X				
Barbara Watson	X				
John Tobia (Chair)	X				
<b>Total Yeas: 11      Total Nays: 0</b>					

**CS/HB 667 Amendments**

**Amendment 171619**

*Adopted Without Objection*

**Amendment 509173**

*Withdrawn*

**Appearances:**

CS/HB 667

Sam Verghese (Lobbyist) (State Employee) - Waive In Support

Dept. of Business & Professional Regulation

1940 N. Monroe Street

Tallahassee FL

Phone: 850-487-4827

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 667 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED ~~\_\_\_\_\_~~ (Y/N)  
ADOPTED W/O OBJECTION  (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Rulemaking Oversight &  
2 Repeal Subcommittee  
3 Representative Porter offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 36-50  
7  
8

9 -----  
10 **T I T L E A M E N D M E N T**

11 Remove lines 3-7 and insert:  
12 amending s. 475.215,





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<input type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input checked="" type="checkbox"/>	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Rulemaking Oversight &  
 2 Repeal Subcommittee  
 3 Representative Porter offered the following:

**Amendment (with title amendment)**

Remove lines 36-50

-----  
**T I T L E A M E N D M E N T**

Remove lines 3-7 and insert:  
amending s. 475.215,

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**  
**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**HB 1165 : Ratification of Rules Implementing Workers' Compensation Law**

*Temporarily Deferred*

**Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM**

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**HB 1225 : Administrative Procedures**

*Favorable With Committee Substitute*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Bruce Antone	X				
Matt Gaetz	X				
Travis Hutson	X				
Dave Kerner			X		
MaryLynn Magar	X				
Jeanette Nufiez	X				
Lake Ray	X				
David Richardson	X				
David Santiago	X				
W. Gregory Steube	X				
Victor Torres, Jr.	X				
Barbara Watson	X				
John Tobia (Chair)	X				
<b>Total Yeas: 12</b>		<b>Total Nays: 0</b>			

**HB 1225 Amendments**

**Amendment 630645**

*Adopted Without Objection*

**Amendment 742551**

*Adopted Without Objection*

**Appearances:**

Adams, Leticia (Lobbyist) - Waive In Support  
 Florida Chamber of Commerce  
 136 S. Bronough St.  
 Tallahassee FL 32301  
 Phone: (850) 521-1279

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<input type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input checked="" type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input type="checkbox"/>	(Y/N)
OTHER	<input type="checkbox"/>	

1 Committee/Subcommittee hearing bill: Rulemaking Oversight &  
 2 Repeal Subcommittee  
 3 Representative Adkins offered the following:

**Amendment (with title amendment)**

Remove lines 23-299 and insert:

Section 1. Paragraphs (d) and (e) of subsection (3) of section 57.111, Florida Statutes, are amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.-

(3) As used in this section:

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than \$2 million, including both personal and business investments;



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20 b. A partnership or corporation, including a professional  
21 practice, which has its principal office in this state and has  
22 at the time the action is initiated by a state agency not more  
23 than 25 full-time employees or a net worth of not more than \$2  
24 million; or

25 c. An individual whose net worth did not exceed \$2 million  
26 at the time the action is initiated by a state agency when the  
27 action is brought against that individual's license to engage in  
28 the practice or operation of a business, profession, or trade;  
29 or

30 2. Any small business party as defined in subparagraph 1.,  
31 without regard to the number of its employees or its net worth,  
32 in any action under s. 72.011 or in any administrative  
33 proceeding under that section to contest the legality of any  
34 assessment of tax imposed for the sale or use of services as  
35 provided in chapter 212, or interest thereon, or penalty  
36 therefor; or

37 3. Any small business as defined in s. 288.703(6) in any  
38 administrative proceeding pursuant to chapter 120 and any appeal  
39 thereof.

40 (e) A proceeding is "substantially justified" if it had a  
41 reasonable basis in law and fact at the time it was initiated by  
42 a state agency. A proceeding is not substantially justified when  
43 the agency action involves identical or substantially similar  
44 facts and circumstances and the specified law, rule or order on  
45 which the party substantially affected by the agency action  
46 petitioned for a declaratory statement under s. 120.565 and:



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- 47       1. The agency action contradicts a declaratory statement  
48 issued under s. 120.565 to the substantially affected party; or  
49       2. The agency denied the petition under s. 120.565 prior to  
50 initiating the agency action against the substantially affected  
51 party.

52       Section 2. Subsections (18) through (22) of section  
53 120.52, Florida Statutes, are renumbered as subsections (19)  
54 through (23), respectively, and a new subsection (18) is added  
55 to that section, to read:

56       120.52 Definitions.—As used in this act:

57       (18) "Small business" has the same meaning as provided in  
58 s. 288.703.

59       Section 3. Section 120.55, Florida Statutes, is amended to  
60 read:

61       120.55 Publication.—

62       (1) The Department of State shall:

63       (a)1. Through a continuous revision and publication  
64 system, compile and publish electronically, on an Internet  
65 website managed by the department, the "Florida Administrative  
66 Code." The Florida Administrative Code shall contain all rules  
67 adopted by each agency, citing the grant of rulemaking authority  
68 and the specific law implemented pursuant to which each rule was  
69 adopted, all history notes as authorized in s. 120.545(7),  
70 complete indexes to all rules contained in the code, and any  
71 other material required or authorized by law or deemed useful by  
72 the department. The electronic code shall display each rule  
73 chapter currently in effect in browse mode and allow full text  
74 search of the code and each rule chapter. The department may



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75 | contract with a publishing firm for a printed publication;  
76 | however, the department shall retain responsibility for the code  
77 | as provided in this section. The electronic publication shall be  
78 | the official compilation of the administrative rules of this  
79 | state. The Department of State shall retain the copyright over  
80 | the Florida Administrative Code.

81 |         2. Rules general in form but applicable to only one school  
82 | district, community college district, or county, or a part  
83 | thereof, or state university rules relating to internal  
84 | personnel or business and finance shall not be published in the  
85 | Florida Administrative Code. Exclusion from publication in the  
86 | Florida Administrative Code shall not affect the validity or  
87 | effectiveness of such rules.

88 |         3. At the beginning of the section of the code dealing  
89 | with an agency that files copies of its rules with the  
90 | department, the department shall publish the address and  
91 | telephone number of the executive offices of each agency, the  
92 | manner by which the agency indexes its rules, a listing of all  
93 | rules of that agency excluded from publication in the code, and  
94 | a statement as to where those rules may be inspected.

95 |         4. Forms shall not be published in the Florida  
96 | Administrative Code; but any form which an agency uses in its  
97 | dealings with the public, along with any accompanying  
98 | instructions, shall be filed with the committee before it is  
99 | used. Any form or instruction which meets the definition of  
100 | "rule" provided in s. 120.52 shall be incorporated by reference  
101 | into the appropriate rule. The reference shall specifically  
102 | state that the form is being incorporated by reference and shall



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103 include the number, title, and effective date of the form and an  
104 explanation of how the form may be obtained. Each form created  
105 by an agency which is incorporated by reference in a rule notice  
106 of which is given under s. 120.54(3)(a) after December 31, 2007,  
107 must clearly display the number, title, and effective date of  
108 the form and the number of the rule in which the form is  
109 incorporated.

110 5. The department shall allow adopted rules and material  
111 incorporated by reference to be filed in electronic form as  
112 prescribed by department rule. When a rule is filed for adoption  
113 with incorporated material in electronic form, the department's  
114 publication of the Florida Administrative Code on its Internet  
115 website must contain a hyperlink from the incorporating  
116 reference in the rule directly to that material. The department  
117 may not allow hyperlinks from rules in the Florida  
118 Administrative Code to any material other than that filed with  
119 and maintained by the department, but may allow hyperlinks to  
120 incorporated material maintained by the department from the  
121 adopting agency's website or other sites.

122 (b) Electronically publish on an Internet website managed  
123 by the department a continuous revision and publication entitled  
124 the "Florida Administrative Register," which shall serve as the  
125 official publication and must contain:

126 1. All notices required by ss. 120.54(2) and 120.54(3)(a),  
127 showing the text of all rules proposed for consideration.

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





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131 3. A notice of each request for authorization to amend or  
132 repeal an existing uniform rule or for the adoption of new  
133 uniform rules.

134 4. Notice of petitions for declaratory statements or  
135 administrative determinations.

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

138 6. A listing of rules filed for adoption in the previous 7  
139 calendar days.

140 7. A listing of all rules filed for adoption pending  
141 legislative ratification under s. 120.541(3) until notice is  
142 received of ratification or withdrawal of such rule.

143 8. Any other material required or authorized by law or  
144 deemed useful by the department.

145

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

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

151 (d) Charge each agency using the Florida Administrative  
152 Register a space rate to cover the costs related to the Florida  
153 Administrative Register and the Florida Administrative Code.

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

156 (2) The Florida Administrative Register Internet website  
157 must allow users to:



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

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

162 (c) Subscribe to an automated e-mail notification of  
163 selected notices to be sent out before or concurrently with  
164 publication of the electronic Florida Administrative Register.  
165 Such notification must include in the text of the e-mail a  
166 summary of the content of each notice.

167 (d) View agency forms and other materials submitted to the  
168 department in electronic form and incorporated by reference in  
169 proposed rules.

170 (e) Comment on proposed rules.

171 (3) Publication of material required by paragraph (1)(b)  
172 on the Florida Administrative Register Internet website does not  
173 preclude publication of such material on an agency's website or  
174 by other means.

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

178 (5) Each agency that provides an e-mail alert service to  
179 inform licensees or other registered recipients of important  
180 notices, shall use such service to notify recipients of each  
181 notice required under ss. 120.54(2) and 120.54(3)(a), including  
182 but not limited to notice of rule development, notice of  
183 proposed rules, and notice of filing rules for adoption, and  
184 provide internet links to the appropriate rule page on the



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185 Secretary of State website, or internet links to an agency  
186 website that contains the proposed rule or final rule.

187 (6) Any publication of a proposed rule promulgated by an  
188 agency, whether published in the Florida Administrative Register  
189 or elsewhere, shall include, along with the rule, the name of  
190 the person or persons originating such rule, the name of the  
191 agency head who approved the rule, and the date upon which the  
192 rule was approved.

193 (67) Access to the Florida Administrative Register  
194 Internet website and its contents, including the e-mail  
195 notification service, shall be free for the public.

196 (78) (a) All fees and moneys collected by the Department of  
197 State under this chapter shall be deposited in the Records  
198 Management Trust Fund for the purpose of paying for costs  
199 incurred by the department in carrying out this chapter.

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

204 Section 4. Paragraph (b) of subsection (1), paragraph (a)  
205 of subsection (2), and subsection (4) of section 120.56, Florida  
206 Statutes, are amended to read:

207 120.56 Challenges to rules.—

208 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A  
209 RULE OR A PROPOSED RULE.—

210 (b) The petition challenging the validity of a proposed or  
211 adopted rule or an agency statement defined as a rule under this



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212 ~~section seeking an administrative determination~~ must state with  
213 particularity:

214 1. ~~¶~~The provisions alleged to be invalid and a statement  
215 ~~with sufficient explanation of the facts establishing a prima~~  
216 ~~facie case of or grounds for the alleged invalidity;~~ and

217 2. ~~¶~~Facts sufficient to show that the petitioner person  
218 ~~challenging a rule~~ is substantially affected by the challenged  
219 ~~adopted rule or agency statement defined as a rule it, or that~~  
220 ~~the person challenging a proposed rule~~ would be substantially  
221 affected by the proposed ruleit.

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

223 (a) A substantially affected person may seek an  
224 administrative determination of the invalidity of a proposed  
225 rule by filing a petition seeking such a determination with the  
226 division within 21 days after the date of publication of the  
227 notice required by s. 120.54(3)(a); within 10 days after the  
228 final public hearing is held on the proposed rule as provided by  
229 s. 120.54(3)(e)2.; within 20 days after the statement of  
230 estimated regulatory costs or revised statement of estimated  
231 regulatory costs, if applicable, has been prepared and made  
232 available as provided in s. 120.541(1)(d); or within 20 days  
233 after the date of publication of the notice required by s.  
234 120.54(3)(d). The petition must state with particularity the  
235 objections to the proposed rule and the reasons that the  
236 proposed rule is an invalid exercise of delegated legislative  
237 authority. The petitioner has the burden of presenting a prima  
238 facie case demonstrating the invalidity of the proposed  
239 rule~~going forward~~. The agency then has the burden to prove by a



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240 preponderance of the evidence that the proposed rule is not an  
241 invalid exercise of delegated legislative authority as to the  
242 objections raised. ~~A person who is substantially affected by a~~  
243 ~~change in the proposed rule may seek a determination of the~~  
244 ~~validity of such change.~~ A person who is not substantially  
245 affected by the proposed rule as initially noticed, but who is  
246 substantially affected by the rule as a result of a change, may  
247 challenge any provision of the resulting rule ~~and is not limited~~  
248 ~~to challenging the change to the proposed rule.~~

249 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED  
250 RULES; SPECIAL PROVISIONS.—

251 (a) Any person substantially affected by an agency  
252 statement that is an unadopted rule may seek an administrative  
253 determination that the statement violates s. 120.54(1)(a). The  
254 petition shall include the text of the statement or a  
255 description of the statement and shall state with particularity  
256 facts sufficient to show that the statement constitutes an  
257 unadopted rule ~~under s. 120.52 and that the agency has not~~  
258 ~~adopted the statement by the rulemaking procedure provided by s.~~  
259 ~~120.54.~~

260 (b) The administrative law judge may extend the hearing  
261 date beyond 30 days after assignment of the case for good cause.  
262 Upon notification to the administrative law judge provided  
263 before the final hearing that the agency has published a notice  
264 of rulemaking under s. 120.54(3), such notice shall  
265 automatically operate as a stay of proceedings pending adoption  
266 of the statement as a rule. The administrative law judge may  
267 vacate the stay for good cause shown. A stay of proceedings



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268 pending rulemaking shall remain in effect so long as the agency  
269 is proceeding expeditiously and in good faith to adopt the  
270 statement as a rule. ~~If a hearing is held and the petitioner~~  
271 ~~proves the allegations of the petition, the agency shall have~~  
272 ~~the burden of proving~~

273 (c) The petitioner has the burden of presenting a prima  
274 facie case demonstrating the agency statement constitutes an  
275 unadopted rule. The agency then has the burden to prove by a  
276 preponderance of the evidence that the statement does not meet  
277 the definition of an unadopted rule, the statement was adopted  
278 as a rule in compliance with s. 120.54, or that rulemaking is  
279 not feasible or not practicable under s. 120.54(1)(a).

280 (ed) The administrative law judge may determine whether  
281 all or part of a statement violates s. 120.54(1)(a). The  
282 decision of the administrative law judge shall constitute a  
283 final order. The division shall transmit a copy of the final  
284 order to the Department of State and the committee. The  
285 Department of State shall publish notice of the final order in  
286 the first available issue of the Florida Administrative Weekly.

287 ~~(de)~~ If an administrative law judge enters a final order  
288 that all or part of an unadopted rule ~~agency statement~~ violates  
289 s. 120.54(1)(a), the agency must immediately discontinue all  
290 reliance upon the unadopted rule ~~statement~~ or any substantially  
291 similar statement as a basis for agency action.

292 (ef) If proposed rules addressing the challenged unadopted  
293 rule ~~statement~~ are determined to be an invalid exercise of  
294 delegated legislative authority as defined in s. 120.52(8)(b)-  
295 (f), the agency must immediately discontinue reliance on the



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296 unadopted rule ~~statement~~ and any substantially similar statement  
297 until rules addressing the subject are properly adopted, and the  
298 administrative law judge shall enter a final order to that  
299 effect.

300 (fg) All proceedings to determine a violation of s.  
301 120.54(1)(a) shall be brought pursuant to this subsection. A  
302 proceeding pursuant to this subsection may be consolidated with  
303 a proceeding under subsection (3) or under any other section of  
304 this chapter. This paragraph does not prevent a party whose  
305 substantial interests have been determined by an agency action  
306 from bringing a proceeding pursuant to s. 120.57(1)(e).

307 Section 5. Paragraph (1) of subsection (2) of section  
308 120.569, Florida Statutes, is amended to read:

309 120.569 Decisions which affect substantial interests.—

310 (2)

311 (1) Unless the time period is waived or extended with the  
312 consent of all parties, the final order in a proceeding which  
313 affects substantial interests must be in writing and include  
314 findings of fact, if any, and conclusions of law separately  
315 stated, and it must be rendered within 90 days:

316 1. After the hearing is concluded, if conducted by the  
317 agency;

318 2. After a recommended order is submitted to the agency  
319 and mailed to all parties, if the hearing is conducted by an  
320 administrative law judge, provided that, at the election of the  
321 agency, the time for rendering the final order may be extended  
322 until 10 days after entry of final judgment on any appeal from a  
323 final order under s. 120.57(1)(e)5.; or



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324 3. After the agency has received the written and oral  
325 material it has authorized to be submitted, if there has been no  
326 hearing.

327 Section 6. Paragraphs (e) and (h) of subsection (1) and  
328 subsection (2) of section 120.57, Florida Statutes, are amended  
329 to read:

330 120.57 Additional procedures for particular cases.—

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

333 (e)1. An agency or an administrative law judge may not  
334 base agency action that determines the substantial interests of  
335 a party on an unadopted rule or a rule that is an invalid  
336 exercise of delegated legislative authority. ~~The administrative~~  
337 ~~law judge shall determine whether an agency statement~~  
338 ~~constitutes an unadopted rule.~~ This subparagraph does not  
339 preclude application of valid adopted rules and applicable  
340 provisions of law to the facts.

341 2. In a matter initiated by agency action proposing to  
342 determine the substantive interests of a party, the party's  
343 timely petition for hearing may challenge the proposed agency  
344 action as based on a rule that is an invalid exercise of  
345 delegated legislative authority or based on an unadopted rule.  
346 For challenges brought under this subsection:

347 a. The challenge shall be pled as a defense with the  
348 particularity required in s. 120.56(1)(b);

349 b. Paragraph 120.56(3)(a) applies to a challenge alleging a  
350 rule is an invalid exercise of delegated legislative authority;





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351 c. Paragraph 120.56(4)(c) applies to a challenge alleging  
352 an unadopted rule.

353 d. The agency shall have 15 days from the date of receiving  
354 a challenge under this paragraph to serve the challenging party  
355 a notice that the agency will continue to rely upon the rule or  
356 the alleged unadopted rule as a basis for the action determining  
357 the party's substantive interests. Failure to timely serve the  
358 notice shall constitute a binding stipulation that the agency  
359 shall not rely upon the rule or unadopted rule further in the  
360 proceeding. The agency shall include a copy of this notice with  
361 the referral of the matter to the division under s.  
362 120.569(2)(a).

363 e. Nothing in this subparagraph precludes the consolidation  
364 of any proceeding under s. 120.56 with any proceeding under this  
365 paragraph.

366 3. Notwithstanding subparagraph 1., if an agency  
367 demonstrates that the statute being implemented directs it to  
368 adopt rules, that the agency has not had time to adopt those  
369 rules because the requirement was so recently enacted, and that  
370 the agency has initiated rulemaking and is proceeding  
371 expeditiously and in good faith to adopt the required rules,  
372 then the agency's action may be based upon those unadopted rules  
373 if, subject to de novo review by the administrative law judge  
374 determines rulemaking is neither feasible nor practicable and  
375 the unadopted rules would not constitute an invalid exercise of  
376 delegated legislative authority if adopted as rules. The agency  
377 action—An unadopted rule shall not be presumed valid or invalid.  
378 The agency must demonstrate that the unadopted rule:



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379 a. Is within the powers, functions, and duties delegated  
380 by the Legislature or, if the agency is operating pursuant to  
381 authority vested in the agency by ~~derived from~~ the State  
382 Constitution, is within that authority;

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

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

387 d. Is not arbitrary or capricious. A rule is arbitrary if  
388 it is not supported by logic or the necessary facts; a rule is  
389 capricious if it is adopted without thought or reason or is  
390 irrational;

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

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

395 4. The administrative law judge shall determine under  
396 subparagraph 2. whether a rule is an invalid exercise of  
397 delegated legislative authority or an agency statement  
398 constitutes an unadopted rule and shall determine whether an  
399 unadopted rule meets the requirements of subparagraph 3. The  
400 determination shall be rendered as a separate final order no  
401 earlier than the date the administrative law judge serves the  
402 recommended order.

403 35. The recommended and final orders in any proceeding  
404 shall be governed by the provisions of paragraphs (k) and (l),  
405 except that the administrative law judge's determination  
406 ~~regarding an unadopted rule~~ under subparagraph 4 1. ~~or~~



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407 ~~subparagraph 2. shall be included as a conclusion of law that~~  
408 ~~the agency shall not reject not be rejected by the agency unless~~  
409 ~~the agency first determines from a review of the complete~~  
410 ~~record, and states with particularity in the order, that such~~  
411 ~~determination is clearly erroneous or does not comply with~~  
412 ~~essential requirements of law. In any proceeding for review~~  
413 ~~under s. 120.68, if the court finds that the agency's rejection~~  
414 ~~of the determination regarding the unadopted rule does not~~  
415 ~~comport with the provisions of this subparagraph, the agency~~  
416 ~~action shall be set aside and the court shall award to the~~  
417 ~~prevailing party the reasonable costs and a reasonable~~  
418 ~~attorney's fee for the initial proceeding and the proceeding for~~  
419 ~~review.~~

420 (h) Any party to a proceeding in which an administrative  
421 law judge of the Division of Administrative Hearings has final  
422 order authority may move for a summary final order when there is  
423 no genuine issue as to any material fact. A summary final order  
424 shall be rendered if the administrative law judge determines  
425 from the pleadings, depositions, answers to interrogatories, and  
426 admissions on file, together with affidavits, if any, that no  
427 genuine issue as to any material fact exists and that the moving  
428 party is entitled as a matter of law to the entry of a final  
429 order. A summary final order shall consist of findings of fact,  
430 if any, conclusions of law, a disposition or penalty, if  
431 applicable, and any other information required by law to be  
432 contained in the final order. This paragraph shall not apply to  
433 proceedings authorized by paragraph (e).



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

437 (a) The agency shall:

438 1. Give reasonable notice to affected persons of the  
439 action of the agency, whether proposed or already taken, or of  
440 its decision to refuse action, together with a summary of the  
441 factual, legal, and policy grounds therefor.

442 2. Give parties or their counsel the option, at a  
443 convenient time and place, to present to the agency or hearing  
444 officer written or oral evidence in opposition to the action of  
445 the agency or to its refusal to act, or a written statement  
446 challenging the grounds upon which the agency has chosen to  
447 justify its action or inaction.

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

450 (b) An agency may not base agency action that determines  
451 the substantial interests of a party on an unadopted rule or a  
452 rule that is an invalid exercise of delegated legislative  
453 authority. No later than the date provided by the agency under  
454 subparagraph (a)2. for presenting material in opposition to the  
455 agency's proposed action or refusal to act, the party may file a  
456 petition under s. 120.56 challenging the rule, portion of rule,  
457 or the unadopted rule on which the agency bases its proposed  
458 action or refusal to act. The filing of a challenge under s.  
459 120.56 pursuant to this paragraph shall stay all proceedings on  
460 the agency's proposed action or refusal to act until entry of  
461 the final order by the administrative law judge, which shall



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462 provide additional notice that the stay of the pending agency  
463 action is terminated and any further stay pending appeal of the  
464 final order must be sought from the appellate court.

465 (c) The record shall only consist of:

- 466 1. The notice and summary of grounds.
- 467 2. Evidence received.
- 468 3. All written statements submitted.
- 469 4. Any decision overruling objections.
- 470 5. All matters placed on the record after an ex parte  
471 communication.
- 472 6. The official transcript.
- 473 7. Any decision, opinion, order, or report by the  
474 presiding officer.

475 Section 7. Section 120.573, Florida Statutes, is amended  
476 to read:

477 120.573 Mediation of disputes.-

478 (1) Each announcement of an agency action that affects  
479 substantial interests shall advise whether mediation of the  
480 administrative dispute for the type of agency action announced  
481 is available and that choosing mediation does not affect the  
482 right to an administrative hearing. If the agency and all  
483 parties to the administrative action agree to mediation, in  
484 writing, within 10 days after the time period stated in the  
485 announcement for election of an administrative remedy under ss.  
486 120.569 and 120.57, the time limitations imposed by ss. 120.569  
487 and 120.57 shall be tolled to allow the agency and parties to  
488 mediate the administrative dispute. The mediation shall be  
489 concluded within 60 days of such agreement unless otherwise



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490 agreed by the parties. The mediation agreement shall include  
491 provisions for mediator selection, the allocation of costs and  
492 fees associated with mediation, and the mediating parties'  
493 understanding regarding the confidentiality of discussions and  
494 documents introduced during mediation. If mediation results in  
495 settlement of the administrative dispute, the agency shall enter  
496 a final order incorporating the agreement of the parties. If  
497 mediation terminates without settlement of the dispute, the  
498 agency shall notify the parties in writing that the  
499 administrative hearing processes under ss. 120.569 and 120.57  
500 are resumed.

501 (2) Any party to a proceeding conducted pursuant to a  
502 petition seeking an administrative determination of the  
503 invalidity of an existing rule, proposed rule, or unadopted  
504 agency statement under s. 120.56 or a proceeding conducted  
505 pursuant to a petition seeking a declaratory statement under s.  
506 120.565 may request mediation of the dispute under this section.

507 Section 8. Section 120.595, Florida Statutes, is amended  
508 to read:

509 120.595 Attorney's fees.—

510 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
511 120.57(1).—

512 (a) The provisions of this subsection are supplemental to,  
513 and do not abrogate, other provisions allowing the award of fees  
514 or costs in administrative proceedings.

515 (b) The final order in a proceeding pursuant to s.  
516 120.57(1) shall award reasonable costs and ~~a~~ reasonable  
517 attorney's fees to the prevailing party if the administrative



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518 law judge determines only where the nonprevailing adverse party  
519 ~~has been determined by the administrative law judge to have~~  
520 participated in the proceeding for an improper purpose.

521 1.(e) Other than as provided below in paragraph (1)(d),  
522 ~~in~~ proceedings pursuant to s. 120.57(1), and upon motion, the  
523 administrative law judge shall determine whether any party  
524 participated in the proceeding for an improper purpose as  
525 defined by this subsection. ~~In making such determination, the~~  
526 ~~administrative law judge shall consider whether t~~The  
527 nonprevailing adverse party shall be presumed to have  
528 participated in the pending proceeding for an improper purpose  
529 if:

530 a. Such party was an adverse party ~~has participated in two~~  
531 or more other such proceedings involving the same prevailing  
532 party and the same subject; project as an adverse party and

533 b. In those ~~which such two or more~~ proceedings the  
534 nonprevailing adverse party did not establish either the factual  
535 or legal merits of its position; ~~and shall consider~~

536 c. Whether the factual or legal position asserted in the  
537 pending instant proceeding would have been cognizable in the  
538 previous proceedings; ~~and. In such event, it shall be rebuttably~~  
539 ~~presumed that the nonprevailing adverse party participated in~~  
540 ~~the pending proceeding for an improper purpose~~

541 d. The nonprevailing adverse party has not rebutted the  
542 presumption of participating in the pending proceeding for an  
543 improper purpose.

544 2. (d) ~~In any proceeding in which the administrative law~~  
545 ~~judge determines that~~ If a party is determined to have



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546 participated in the proceeding for an improper purpose, the  
547 recommended order shall include such findings of fact and  
548 conclusions of law to establish the conclusion ~~so designate~~ and  
549 shall determine the award of costs and attorney's fees.

550 (e) For the purpose of this subsection:

551 1. "Improper purpose" means participation in a proceeding  
552 pursuant to s. 120.57(1) primarily to harass or to cause  
553 unnecessary delay or for frivolous purpose or to needlessly  
554 increase the cost of litigation, licensing, or securing the  
555 approval of an activity.

556 2. "Costs" has the same meaning as the costs allowed in  
557 civil actions in this state as provided in chapter 57.

558 3. "Nonprevailing adverse party" means a party that has  
559 failed to have substantially changed the outcome of the proposed  
560 or final agency action which is the subject of a proceeding. In  
561 the event that a proceeding results in any substantial  
562 modification or condition intended to resolve the matters raised  
563 in a party's petition, it shall be determined that the party  
564 having raised the issue addressed is not a nonprevailing adverse  
565 party. The recommended order shall state whether the change is  
566 substantial for purposes of this subsection. In no event shall  
567 the term "nonprevailing party" or "prevailing party" be deemed  
568 to include any party that has intervened in a previously  
569 existing proceeding to support the position of an agency.

570 (d) For challenges brought under s. 120.57(1)(e), if the  
571 appellate court or the administrative law judge declares a rule  
572 or portion of a rule to be invalid or that the agency statement  
573 is an unadopted rule which does not meet the requirements of s.





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574 120.57(1)(e)4., a judgment or order shall be rendered against  
575 the agency for reasonable costs and reasonable attorney's fees,  
576 unless the agency demonstrates that special circumstances exist  
577 which would make the award unjust. Reasonable costs and  
578 reasonable attorney fees shall be awarded only for the period  
579 beginning 15 days following the receipt of the petition for  
580 hearing challenging the rule or unadopted rule. If the agency  
581 prevails in the proceedings, the appellate court or  
582 administrative law judge shall award reasonable costs and  
583 reasonable attorney fees against a party if the appellate court  
584 or administrative law judge determines that a party participated  
585 in the proceedings for an improper purpose as defined by  
586 paragraph (1)(c). An award of attorney fees as provided by this  
587 subsection shall not exceed \$50,000.

588 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO  
589 SECTION 120.56(2).--If the appellate court or administrative law  
590 judge declares a proposed rule or portion of a proposed rule  
591 invalid pursuant to s. 120.56(2), a judgment or order shall be  
592 rendered against the agency for reasonable costs and reasonable  
593 attorney's fees, unless the agency demonstrates ~~that its actions~~  
594 ~~were substantially justified or~~ special circumstances exist  
595 which would make the award unjust. ~~An agency's actions are~~  
596 ~~"substantially justified" if there was a reasonable basis in law~~  
597 ~~and fact at the time the actions were taken by the agency.~~ If  
598 the agency prevails in the proceedings, the appellate court or  
599 administrative law judge shall award reasonable costs and  
600 reasonable attorney's fees against a party if the appellate  
601 court or administrative law judge determines that a party



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602 participated in the proceedings for an improper purpose as  
603 defined by paragraph (1)(ec). ~~No~~ An award of attorney's fees as  
604 provided by this subsection shall not exceed \$50,000.

605 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO  
606 SECTION 120.56(3) AND (5).—If the appellate court or  
607 administrative law judge declares a rule or portion of a rule  
608 invalid pursuant to s. 120.56(3) or (5), a judgment or order  
609 shall be rendered against the agency for reasonable costs and  
610 reasonable attorney's fees, unless the agency demonstrates that  
611 ~~its actions were substantially justified or special~~  
612 circumstances exist which would make the award unjust. ~~An~~  
613 ~~agency's actions are "substantially justified" if there was a~~  
614 ~~reasonable basis in law and fact at the time the actions were~~  
615 ~~taken by the agency.~~ If the agency prevails in the proceedings,  
616 the appellate court or administrative law judge shall award  
617 reasonable costs and reasonable attorney's fees against a party  
618 if the appellate court or administrative law judge determines  
619 that a party participated in the proceedings for an improper  
620 purpose as defined by paragraph (1)(ec). ~~No~~ An award of  
621 attorney's fees as provided by this subsection shall exceed  
622 \$50,000.

623 (4) CHALLENGES TO ~~AGENCY ACTION~~ UNADOPTED RULES PURSUANT  
624 TO SECTION 120.56(4).—

625 (a) If the appellate court or administrative law judge  
626 determines that all or part of ~~an agency statement~~ unadopted  
627 rule violates s. 120.54(1)(a), or that the agency must  
628 immediately discontinue reliance on the ~~statement~~ unadopted rule  
629 and any substantially similar statement pursuant to s.



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630 120.56(4)(e), a judgment or order shall be entered against the  
631 agency for reasonable costs and reasonable attorney's fees,  
632 unless the agency demonstrates that the statement is required by  
633 the Federal Government to implement or retain a delegated or  
634 approved program or to meet a condition to receipt of federal  
635 funds.

636 (b) Upon notification to the administrative law judge  
637 provided before the final hearing that the agency has published  
638 a notice of rulemaking under s. 120.54(3)(a), such notice shall  
639 automatically operate as a stay of proceedings pending  
640 rulemaking. The administrative law judge may vacate the stay for  
641 good cause shown. A stay of proceedings under this paragraph  
642 remains in effect so long as the agency is proceeding  
643 expeditiously and in good faith to adopt the statement as a  
644 rule. The administrative law judge shall award reasonable costs  
645 and reasonable attorney's fees incurred ~~accrued~~ by the  
646 petitioner before ~~prior to~~ the date the notice was published,  
647 ~~unless the agency proves to the administrative law judge that it~~  
648 ~~did not know and should not have known that the statement was an~~  
649 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~  
650 ~~and paragraph (a) shall be awarded only upon a finding that the~~  
651 ~~agency received notice that the statement may constitute an~~  
652 ~~unadopted rule at least 30 days before a petition under s.~~  
653 ~~120.56(4) was filed and that the agency failed to publish the~~  
654 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~  
655 ~~addresses the statement within that 30-day period. Notice to the~~  
656 ~~agency may be satisfied by its receipt of a copy of the s.~~  
657 ~~120.56(4) petition, a notice or other paper containing~~



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658 ~~substantially the same information, or a petition filed pursuant~~  
659 ~~to s. 120.54(7)~~. An award of attorney's fees as provided by this  
660 paragraph may not exceed \$50,000.

661 (c) Notwithstanding the provisions of chapter 284, an  
662 award shall be paid from the budget entity of the secretary,  
663 executive director, or equivalent administrative officer of the  
664 agency, and the agency is ~~shall not be~~ entitled to payment of an  
665 award or reimbursement for payment of an award under any  
666 provision of law.

667 (d) If the agency prevails in the proceedings, the  
668 appellate court or administrative law judge shall award  
669 reasonable costs and attorney's fees against a party if the  
670 appellate court or administrative law judge determines that the  
671 party participated in the proceedings for an improper purpose as  
672 defined in paragraph (1)(ec) or that the party or the party's  
673 attorney knew or should have known that a claim was not  
674 supported by the material facts necessary to establish the claim  
675 or would not be supported by the application of then-existing  
676 law to those material facts.

677 (5) APPEALS.—When there is an appeal, the court in its  
678 discretion may award reasonable attorney's fees and reasonable  
679 costs to the prevailing party if the court finds that the appeal  
680 was frivolous, meritless, or an abuse of the appellate process,  
681 or that the agency action which precipitated the appeal was a  
682 gross abuse of the agency's discretion. Upon review of agency  
683 action that precipitates an appeal, if the court finds that the  
684 agency improperly rejected or modified findings of fact in a  
685 recommended order, the court shall award reasonable attorney's



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686 fees and reasonable costs to a prevailing appellant for the  
687 administrative proceeding and the appellate proceeding.

688 (6) NOTICE OF INVALIDITY. A party failing to serve a  
689 Notice of Invalidity under this subsection shall not be entitled  
690 to an award of reasonable costs and attorney fees under this  
691 section except as provided in paragraph (d).

692 (a) Prior to filing a petition challenging the validity of  
693 a proposed rule under s. 120.56(2), an adopted rule under s.  
694 120.56(3), or an agency statement defined as an unadopted rule  
695 under s. 120.56(4), the substantially affected person shall  
696 serve the agency head with notice of the proposed challenge. The  
697 notice shall identify the proposed or adopted rule or the  
698 unadopted rule the person proposes to challenge and a brief  
699 explanation of the basis for that challenge. The notice shall be  
700 received by the agency head no later than 5 days prior to the  
701 filing of a petition under s. 120.56(2), and no later than 30  
702 days prior to the filing of a petition under s. 120.56(3) or s.  
703 120.56(4).

704 (b) Reasonable costs and reasonable attorney fees shall be  
705 awarded only for the period beginning after the date the agency  
706 head receives the Notice of Invalidity under paragraph (a).

707 (c) Within the time limits specified in paragraph (a), if  
708 the agency provides the substantially affected person with  
709 written notice that the agency will not adopt the proposed rule  
710 or will not rely upon the adopted rule or the agency statement  
711 defined as an unadopted rule until after the agency has complied  
712 with the requirements of s. 120.54 to amend the proposed rule or  
713 the adopted rule or adopt the unadopted rule, such written



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714 notice shall constitute a special circumstance under this  
715 section.

716 (d) This subsection does not apply to defenses raised and  
717 challenges authorized by s. 120.57(1)(e) or s. 120.57(2)(b).

718 (7) OTHER SECTIONS NOT AFFECTED.—Other provisions,  
719 including ss. 57.105 and 57.111, authorize the award of  
720 attorney's fees and costs in administrative proceedings. Nothing  
721 in this section shall affect the availability of attorney's fees  
722 and costs as provided in those sections.

723 Section 9. Subsections (1), (2), and (9) of section  
724 120.68, Florida Statutes, are amended to read:

725 120.68 Judicial review.—

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

728 (b) A preliminary, procedural, or intermediate order of the  
729 agency or of an administrative law judge of the Division of  
730 Administrative Hearings, or a final order under s.  
731 120.57(1)(e)4., is immediately reviewable if review of the final  
732 agency decision would not provide an adequate remedy.

733 (2) (a) Judicial review shall be sought in the appellate  
734 district where the agency maintains its headquarters or where a  
735 party resides or as otherwise provided by law.

736 (b) All proceedings shall be instituted by filing a notice  
737 of appeal or petition for review in accordance with the Florida  
738 Rules of Appellate Procedure within 30 days after the date that  
739 rendition of the order being appealed was filed with the agency  
740 clerk. Such time is hereby extended for any party ten days from  
741 receipt by such party of the notice of the order if such notice



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742 is received after the 25th day from the filing of the order. If  
743 the appeal is of an order rendered in a proceeding initiated  
744 under s. 120.56, or a final order under s. 120.57(1)(e)4., the  
745 agency whose rule is being challenged shall transmit a copy of  
746 the notice of appeal to the committee.

747 (bc) When proceedings under this chapter are consolidated  
748 for final hearing and the parties to the consolidated proceeding  
749 seek review of final or interlocutory orders in more than one  
750 district court of appeal, the courts of appeal are authorized to  
751 transfer and consolidate the review proceedings. The court may  
752 transfer such appellate proceedings on its own motion, upon  
753 motion of a party to one of the appellate proceedings, or by  
754 stipulation of the parties to the appellate proceedings. In  
755 determining whether to transfer a proceeding, the court may  
756 consider such factors as the interrelationship of the parties  
757 and the proceedings, the desirability of avoiding inconsistent  
758 results in related matters, judicial economy, and the burden on  
759 the parties of reproducing the record for use in multiple  
760 appellate courts.

761 (9) No petition challenging an agency rule as an invalid  
762 exercise of delegated legislative authority shall be instituted  
763 pursuant to this section, except to review an order entered  
764 pursuant to a proceeding under s. 120.56, under s.  
765 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's  
766 findings of immediate danger, necessity, and procedural fairness  
767 prerequisite to the adoption of an emergency rule pursuant to s.  
768 120.54(4), unless the sole issue presented by the petition is



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769 the constitutionality of a rule and there are no disputed issues  
770 of fact.

771

772

773

774 -----

775

**T I T L E   A M E N D M E N T**

776

Between lines 2 and 3, insert:

777

s. 57.111, F.S.; providing an additional definition of small  
778 business; describing when a proceeding is not substantially  
779 justified for purposes of an award under the Florida Equal  
780 Access to Justice Act; amending

781

782

Remove lines 5-14 and insert:

783

120.55, F.S.; providing for publication of notices of rule  
784 development and of rules filed for adoption; providing  
785 additional notice of rule development, proposals and adoptions;  
786 amending s. 120.56, F.S.; providing that the petitioner  
787 challenging a proposed rule or unadopted has the burden of  
788 establishing a prima facie case; amending s. 120.569, F.S.;  
789 providing for extension of time to render final agency action in  
790 certain circumstances; amending s. 120.57, F.S.; conforming  
791 proceedings opposing agency action based on an invalid rule or  
792 unadopted rule to proceedings for challenging rules; requiring  
793 notice whether the agency will rely on the challenged rule or  
794 unadopted rule; providing for the administrative law judge to  
795 make certain findings and enter final order on the validity of  
796 the rule or the use of unadopted rule; providing for stay of





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797 | proceedings not involving disputed issues of fact on timely  
798 | filing of rule challenge; amending s. 120.573, F.S.; authorizing  
799 | any party to request mediation of rule challenge and declaratory  
800 | statement proceedings; amending s. 120.595, F.S.; providing for  
801 | an award of attorney fees and costs in challenges brought under  
802 | s. 120.57(1)(e), F.S.; removing certain exceptions from  
803 | requirements that attorney fees and costs be rendered against  
804 | the agency in proceedings in which the petitioner prevails in a  
805 | rule challenge; requiring service of notice of invalidity to  
806 | agency prior to bringing rule challenge as condition precedent  
807 | for award of attorney fees and costs; amending s. 120.68, F.S.;  
808 | providing for appellate review of orders rendered in challenges  
809 | to rules or unadopted rules under s. 120.57, F.S.;

810



Amendment No. 1a

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<input type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input checked="" type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input type="checkbox"/>	(Y/N)
OTHER	<input type="checkbox"/>	

1 Committee/Subcommittee hearing bill: Rulemaking Oversight &  
 2 Repeal Subcommittee  
 3 Representative Gaetz offered the following:

4  
 5 **Amendment to Amendment (1) by Representative Adkins (with**  
 6 **title amendment)**

7 Between lines 717 and 718 of the amendment, insert:

8 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.-For the  
 9 purposes of this chapter, s. 57.105(5), and s. 57.111, in  
 10 addition to an award of attorney fees and costs, the prevailing  
 11 party shall also recover attorney fees and costs incurred in  
 12 litigating entitlement to, and the determination or  
 13 quantification of, attorney fees and costs for the underlying  
 14 matter. Attorney fees and costs awarded for litigating  
 15 entitlement to, and the determination or quantification of,  
 16 attorney fees and costs for the underlying matter shall not be  
 17 subject to the limitations on amounts set out in this chapter or  
 18 s. 57.111.



Amendment No. 1a

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**T I T L E A M E N D M E N T**

Remove line 807 of the amendment and insert:  
for award of attorney fees and costs; providing for award of  
additional attorney fees and costs for litigating entitlement to  
and amount of attorney fees and costs in administrative actions  
and that such awards of additional fees and costs are not  
subject to certain statutory limits; amending s. 120.68, F.S.;

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**PCB RORS 13-01 : AHCA Administrative Authority**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Bruce Antone	X				
Matt Gaetz			X		
Travis Hutson	X				
Dave Kerner			X		
MaryLynn Magar	X				
Jeanette Nuñez	X				
Lake Ray	X				
David Richardson	X				
David Santiago	X				
W. Gregory Steube			X		
Victor Torres, Jr.	X				
Barbara Watson	X				
John Tobia (Chair)	X				
<b>Total Yeas: 10</b>		<b>Total Nays: 0</b>			

Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM

**COMMITTEE MEETING REPORT**  
**Rulemaking Oversight & Repeal Subcommittee**

**3/27/2013 10:30:00AM**

**Location:** 306 HOB

**Presentation/Workshop/Other Business Appearances:**

Anderson, Susan (Lobbyist) - Information Only  
Department of Elder Affairs, Long-Term Care Ombudsman Program  
4040 Esplanade Way Ste 280  
Tallahassee FL  
Phone: 850)414-2054

Manalo, Jon (Lobbyist) - Information Only  
Department of Elder Affairs  
4040 Esplanade Way  
Tallahassee FL  
Phone: 850)414-2000

**Committee meeting was reported out: Wednesday, March 27, 2013 2:43:52PM**

**PRESENTATION: DEPT. OF ELDER AFFAIRS**  
**DEVELOPMENT OF STATEMENT OF ESTIMATED REGULATORY COSTS (SERC)**

Assisted Living Facilities (ALFs) are regulated under Part I of Chapter 429, F.S.

- Department of Elder Affairs (DOEA) has primary jurisdiction and rulemaking authority under Part I.
- Agency for Health Care Administration (AHCA) licenses ALFs and enforces the statutes.
- Under the statute, training is provided by Dept. of Children and Family Services (DCF).

DOEA will present and be prepared to answer questions from the Subcommittee concerning the data, methodology, and assumptions used to support its Statement of Estimated Regulatory Costs (SERC) in current rulemaking, and its conclusion that the proposed rule amendment(s) will not require ratification.

- DOEA currently is revising 25 rules and subparts in Chapter 58A-5, F.A.C., “Federal Aging Programs,” primarily regulating ALFs.
- **DOEA’s SERC emphasized the economic impact of changes to Rule 58A-5.0191, F.A.C., “Administrator, Manager, and Staff Training Requirements,” including:**
  - Increased core training for administrators and managers.
  - A new, additional testing requirement (requiring a minimum score of 75% to pass) for administrators and managers of ALFs that provide limited mental health services (LMH).
  - A new testing requirement (with the same 75% minimum score) for staff having direct contact with residents in LMH ALFs.
  - DOEA estimates there are more than 1,000 licensed LMH ALFs in Florida.
- According to the SERC, DOEA estimates the increased training costs alone under Rule 58A-5.0191 over the first 5 years would increase regulatory costs by **\$947,423**.
- The SERC does not account for changes to other rules included in the same proceeding.
- Representatives of the ALF industry first informed Subcommittee staff about the potential impact on small and medium ALF of these changes in training requirements. Staff review of the proposed rule changes and the SERC raised concerns about factors DOEA apparently did not consider:
  - Test development by department personnel.
  - Publication and security of test instruments.
  - Test administration.
  - Translation of materials for English as Second Language staff.
  - Annual training and testing costs for new administrators & managers entering the system.

➤ Licensee labor costs for:

- Enhanced training of staff and administrators
- Testing of staff
- Retesting of staff and administrators
- Turnover arising from failure to meet higher standards
- Facility administration burdens and scheduling changes resulting from the compliance requirements (time off work for staff and managers)
- Employer cost for remedial training of employees, including reading and test taking skills.
  -
- Department staff has reviewed these concerns and will address how they account for or discount the factors raised by staff.

**If the rule does have a \$1 million impact over the first five years, it cannot go into effect without legislative ratification**

PROPOSED CHANGES TO CHAPTER 58A-5, FLORIDA ADMINISTRATIVE CODE  
STATEMENT OF ESTIMATED REGULATORY COSTS  
FEBRUARY 2013

Section 120.541, Florida Statutes, sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (f), Florida Statutes, provide that certain information must be addressed in any SERC.

*(a) An economic analysis showing whether the rule directly or indirectly is likely: (1) to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate in the five-year period following rule adoption; (2) to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate in the five-year period following rule adoption; or (3) to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate in the five-year period following rule adoption?*

After careful analysis of all available economic data, the Department has determined it is unlikely that the proposed rule changes will meet any of the above triggers. A full discussion of the estimated direct and indirect regulatory impact of the proposed rule changes follows.

*(b) Provide a good faith estimate of the number of individuals and entities likely to be required to comply with this rule, together with a general description of the types of individuals likely to be affected by the rule.*

As discussed below, the most recent data available to the Department indicates that there are presently, 2,442 Administrators and, at most, 601 Managers who will be impacted by the proposed increased continuing educational requirements contained in Chapter 58A-5, F.A.C. Further, there are, on average, 794 successful applicants for the core training competency examination annually who will be potentially impacted by the proposed increased core training curriculum requirements contained in Chapter 58A-5, F.A.C. In a more general sense, however, the proposed changes to Chapter 58A-5, F.A.C., affect all staff members of Standard Licensed and Specialty Licensed assisted living facilities in the state.

*(c) Provide a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.*

The changes proposed to Chapter 58A-5, F.A.C., do not impose costs related to implementation or enforcement of the rule on either the Department or any other state agency, and do not affect state or local revenues. Further, the proposed rule will not negatively impact the delivery of services by state agencies, and will not otherwise divert state resources.

*(d) Provide a good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.*



First, the Department has determined that the main economic impact of changes proposed to Chapter 58A-5, F.A.C., in this Notice of Proposed Rule and subsequent Notice of Change is likely generated through increased staff training and educational requirements, as proposed by the Negotiated Rulemaking Committee tasked with reviewing and implementing Phase I Recommendations of the Governor's Assisted Living Facility Workgroup.

Specifically, there are two notable staff training and educational increases proposed in Section 58A-5.0191, F.A.C.: (1) a proposed increase to the biennial continuing education requirement for Administrators and Managers of assisted living facilities from 12 to 18 hours; and (2) a proposed increase in the requisite core training curriculum hours from 26 to 40 hours.

### **Proposed Increase to Administrators' and Managers' Biennial Continuing Education Requirement**

The Department has determined that, for the 3,043 licensed assisted living facilities in the state, there are presently 2,442 Administrators and, at most, 601 Managers (as of February, 2013). Providing a precise tally for the number of Managers who have been appointed by Administrators to supervise facilities pursuant to current Section 58A-5.019(b), F.A.C., is impossible because, presently, there is no statutory or rule prohibition preventing Administrators from serving as Managers of separate facilities. Testimony offered during the Negotiated Rulemaking sessions indicated that, in certain instances, this has created something of a "shell game" whereby Administrators of multiple facilities (up to a maximum of three) are able to effectively sidestep the requirement in current Section 58A-5.0191(b), F.A.C., to "appoint in writing a separate manager for each facility," by themselves serving as Managers for other facilities.

In partial response to this, amended language in proposed Section 58A-5.019(1)(d), F.A.C., provides that, "[a]n individual serving as a manager must satisfy the same qualifications, background screening, core training and competency test requirements, and continuing education requirements of an administrator pursuant to paragraph (1)(a) of this rule. In addition, a manager may not serve as a manager of more than a single facility, except as provided in paragraph (1)(c) of this rule, and may not simultaneously serve as an administrator of any other facility" (emphasis added).

In its Notice of Change, the Department has modified this requirement some in response to public input received on this issue, as proposed Section 58A-5.019(c), F.A.C., now provides that, "an administrator supervising a maximum of three assisted living facilities, each licensed for 16 or fewer beds and all within a 15 mile radius of each other, is only required to appoint one manager to assist in the operation and maintenance of those facilities."

Proposed Section 58A-5.0191(2)(d), F.A.C., provides a list of continuing education providers who may offer continuing education training in satisfaction of the above requirement. Although several providers on the list likely offer, or will offer, continuing education courses at a cost to Administrators and Managers that is significantly less than that which is offered by core trainers registered with the Department, the Department recognizes that pricing data obtained from core trainers presently offering continuing education courses is likely the best available data from which to analyze and estimate anticipated regulatory impacts created by the proposed rule changes.

Therefore, the Department has determined that this 12 hour continuing education training is presently being offered for anywhere from \$65 to \$150, and that the average price appears to be roughly \$120. Since the increase from 12 to 18 continuing education hours can be understood as a 50% increase, it is anticipated that the likely cost increase per Administrator/Manager would be \$60 biennially (or \$30 annually). This calculation makes no assumptions for possible efficiencies or cost reduction measures

which might foreseeably be employed or realized by continuing education providers as they restructure their training courses to satisfy the proposed requirements.

As stated above, assuming that there are 2,442 Administrators and, arguendo, 400 Managers presently supervising assisted living facilities in the state, assuming a \$30 annual increase as a result of the increased continuing education training requirement, (and assuming no efficiencies or cost reduction measures realized by training providers), the Department believes that the increase from 12 to 18 continuing education hours can be reasonably expected to result in an annualized private sector cost increase of \$85,260.

### **Proposed Increase to Core Training Curriculum**

Proposed Section 58A-5.0191(2)(a), F.A.C., provides that Administrators and Managers must complete “an approved assisted living facility core training course consisting of a minimum of 40 hours of training” prior to registering for the core competency test. Under current Section 58A-5.0191(1)(a), F.A.C., such core training curriculum must “consist of a minimum of 26 hours.” This proposed increase of 14 hours is less pronounced than the increase recommended by the Negotiated Rulemaking Committee, which had approved through consensus an increase from 26 to 56 hours. In its Notice of Change, the Department has proposed a July 1, 2014 effective date for the above increase in training hours in proposed Section 58A-5.0191(2)(b)3., F.A.C.

The Department does not collect or maintain data regarding the number of individuals who annually enroll in approved core training curriculum classes. However, based on data made available by the University of South Florida, the Department has determined that there are, on average over the last five years, 794 applicants who successfully pass the core competency test each year. Further, based on a review and indexing of available pricing figures, the Department has determined that the current 26 hour core training curriculum is being offered for anywhere from \$199 (an online training course) to \$450, and that the average price appears to be, roughly, \$350 (\$353).

Since the increase from 26 to 40 core training curriculum hours can be understood as roughly representing a 50% increase, based on the above pricing figures it is anticipated that the likely one-time cost increase per successful applicant would be \$175. As above, this calculation makes no assumptions for possible efficiencies or cost reduction measures which might foreseeably be employed or realized by core trainers as they restructure their training courses to satisfy the proposed requirements.

As stated above, assuming that there are 794 applicants who successfully pass the core competency test each year, assuming a \$175 annual increase as a result of the increased core training curriculum hours, (and assuming no efficiencies or cost reduction measures realized by training providers), the Department believes that the increase from 26 to 40 curriculum hours can be reasonably expected to result in an annualized private sector increase of \$138,950. Given the delayed implementation of this requirement, and assuming a rule adoption date of April 1, 2013, it is the Department’s belief that there would be no direct or indirect private sector impact in the first year, and a \$104, 273 private sector impact in the second year.

The Department’s full five-year projection of anticipated regulatory costs created as a result of the above increases in Administrator and Manager training and educational requirements is included as Appendix 1.

*(e) Provide an analysis of the impact on small businesses as defined by Section 288.703, Florida Statutes, and an analysis of the impact on small counties and small cities as defined in Section 120.52,*

*Florida Statutes. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.*

Section 288.703(6), F.S., defines "small business" as "an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments." It is the Department's belief that, although data indicates that the vast majority of state assisted living facilities qualify as "small businesses" pursuant to Part IV, Chapter 288, F.S., that the proposed rule changes do not disproportionately affect small businesses in the state. As discussed above, the proposed increased biennial continuing education requirement for existing Administrators and Managers of assisted living facilities should result in no more than a \$60 biennial increase. Moreover, the proposed increased core training curriculum requirement for all prospective Administrators and Managers should result in no more than a one-time \$175 increase, and the Department believes that this increase does not represent a prohibitively substantial bar to entry into the profession.

There will be no impact on small counties or small cities as defined in Section 120.52, F.S.

*(f) Provide any additional information that the agency determines may be useful.*

As a general consideration, although the Department regulates core training providers and curricula pursuant to Chapter 58T-1, F.A.C., it has not been given legislative authority to regulate the training fees charged by approved core trainers for providing either core training or continuing education for Administrators and Managers of assisted living facilities. In this sense, the Department believes it is difficult to accurately or reliably forecast the fiscal impact of increased training and educational requirements proposed by the rule on the core training and continuing education market. Therefore, every effort has been made by the Department in this SERC to wholly rely on pricing data it has available to it, rather than to project or anticipate how the market will respond or adapt to these proposed increases.

However, the Department contends that it is reasonable to assume that, in coming years, there will be a continued natural migration of training providers towards increasing utilization of online training techniques. Presumably, this should result in some degree of market stabilization, and it appears reasonable to assume that there should be anticipated cost efficiencies realized as well. For instance, although the average fee charged for the 26 hour core training curriculum presently required by Section 58A-5.0191, F.A.C., is \$353, as indicated above, the Department has identified one core trainer who offers this training online for \$199.

In a possible effort to infuse a measure of competition into the core training market, and also to assist in this natural migration towards the utilization of online training, the Department intends to explore the possibility of expanding its listing of approved core training providers and courses to include available pricing information as well as an indication of whether, and which, providers offer online training options. Although the Department believes that such market competition should foreseeably result in cost savings to trainees, no such cost assumptions were employed by the Department in calculating these estimated regulatory costs.

*(g) Provide a description of any regulatory alternatives submitted under paragraph 120.541(1)(a), Florida Statutes, and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.*

No lower cost regulatory alternative to the proposed rule has been submitted to the Department.

**APPENDIX 1**

**Biennial Continuing Education Increase for ALF Administrators/Managers – 12 to 18 Hours**

2,442 (Administrators) + 400 (Managers) X \$30 (Annual Increase) = \$85,260 annually

**Core Competency Curriculum Training Increase – 26 to 40 Hours**

794 (Average Successful Competency Exam Applicants) X \$175 (Annual Increase) = \$138,950

**Five-Year Regulatory Cost Projection (Assuming April 1, 2013 Effective Date)**

Year 1 (April 1, 2013 – March 31, 2014): \$85,260

Year 2 (April 1, 2014 – March 31, 2015): \$85,260 + \$104,273 (July 1, 2014 Implementation)

Year 3 (April 1, 2015 – March 31, 2016): \$85,260 + \$138,950

Year 4 (April 1, 2016 – March 31, 2017): \$85,260 + \$138,950

Year 5 (April 1, 2017 – March 31, 2018): \$85,260 + \$138,950

**Grand Total:                   \$947,423**