A bill to be entitled

An act relating to administrative procedures; amending s. 57.111, F.S.; providing conditions under which a proceeding is not substantially justified for purposes of an award under the Florida Equal Access to Justice Act; amending s. 120.54, F.S.; providing procedures for agencies to follow when initiating rulemaking following public hearings; limiting reliance upon an unadopted rule in certain circumstances; amending s. 120.55, F.S.; providing for publication of notices of rule development and of rules filed for adoption; providing additional notice of rule development, proposals, and adoptions; amending s. 120.56, F.S.; providing that a petitioner challenging a proposed rule or unadopted agency statement has the burden of going forward with evidence sufficient to support the petition; amending s. 120.569, F.S.; granting agencies additional time to render final orders in certain circumstances; amending s. 120.57, F.S.; conforming proceedings that oppose agency action based on an invalid or unadopted rule to proceedings used for challenging rules; requiring the agency to issue a notice stating whether the agency will rely on the challenged rule or alleged unadopted rule; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules;

authorizing the administrative law judge to issue a separate final order on certain rules and alleged unadopted rules; prohibiting agencies from rejecting specific conclusions of law; providing for stay of proceedings not involving disputed issues of fact upon timely filing of a rule challenge; providing that the final order terminates the stay; amending s. 120.595, F.S.; requiring a final order in specified administrative proceedings to award all reasonable costs and all reasonable attorney fees to a prevailing party under certain circumstances; revising the criteria used by an administrative law judge to determine whether a party participated in a proceeding for an improper purpose; removing certain exceptions from requirements that attorney fees and costs be rendered against the agency in proceedings in which the petitioner prevails in a rule challenge; requiring service of notice of invalidity to an agency before bringing a rule challenge as a condition precedent to the award of attorney fees and costs; authorizing the recovery of reasonable attorney fees and costs incurred by a prevailing party in litigating entitlement to or quantification of underlying attorney fees and costs; removing certain limitations on such attorney fees and costs; correcting a cross-reference; amending s. 120.68, F.S.; providing for

appellate review of orders rendered in challenges to specified rules or unadopted rules; authorizing extensions for filing certain appeals or petitions for review under certain circumstances; amending s. 120.695, F.S.; removing obsolete provisions with respect to required agency review and designation of minor violations; requiring agency review and certification of minor violation rules by a specified date; requiring the reporting of agency failure to complete the review and file certification of such rules; requiring minor violation certification for all rules adopted after a specified date; requiring public notice; providing nonapplicability; conforming provisions; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

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

(3) As used in this section:

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency. A proceeding is not substantially justified if

the specified law, rule, or order at issue in the current agency action is the subject upon which the prevailing small business party previously petitioned the agency for a declaratory statement under s. 120.565; the current agency action involves identical or substantially similar facts and circumstances as those raised in the previous petition; and:

1. The agency action contradicts the declaratory statement issued by the agency upon the previous petition; or

2. The agency denied the previous petition under s. 120.565 before initiating the current agency action against the prevailing small business party.

Section 2. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

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

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

(d) If the agency initiates rulemaking following a public hearing under paragraph (b), the agency shall publish its notice of rule development within 30 days after the hearing and file its notice of proposed rule within 180 days after the notice of rule development unless, before the 180th day, the agency publishes in the Florida Administrative Register a statement explaining its reasons why a proposed rule has not been filed. If rulemaking is initiated under this paragraph, the agency may not rely on the unadopted rule unless the agency publishes in the Florida Administrative Register a statement explaining why rulemaking under paragraph (1)(a) is not feasible or practicable until conclusion of the rulemaking proceeding.

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

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet

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

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

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and

telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

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

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department

may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

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

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

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

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

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

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

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

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

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

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

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

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

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

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

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

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

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register.

Such notification must include in the text of the e-mail a summary of the content of each notice.

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

(e) Comment on proposed rules.

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

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

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

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

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

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

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

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

120.56 Challenges to rules.—

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

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

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

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

for the alleged invalidity. ~~and~~

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

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

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor

in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

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

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s.

120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward with evidence sufficient to support the petition. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.~~ A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule ~~and is not limited to challenging the change to the proposed rule~~.

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

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

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. ~~If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving~~

(c) The petitioner has the burden of going forward with evidence sufficient to support the petition. The agency then has the burden to prove by a preponderance of the evidence that the statement does not meet the definition of an unadopted rule, the statement was adopted as a rule in compliance with s. 120.54, or that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(d) ~~(c)~~ The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in

the first available issue of the Florida Administrative Register.

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

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

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

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

120.569 Decisions which affect substantial interests.—

(2)

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

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

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge, except that, at the election of the agency, the time for rendering the final order may be extended up to 10 days after entry of a mandate on any appeal from a final order under s. 120.57(1)(e)4.; or

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

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

120.57 Additional procedures for particular cases.—

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

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative~~

~~law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

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

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

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

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

d. The agency has 15 days from the date of receipt of a challenge under this subparagraph to serve the challenging party with a notice whether the agency will continue to rely upon the rule or the alleged unadopted rule as a basis for the action determining the party's substantive interests. Failure to timely serve the notice constitutes a binding stipulation that the agency shall not rely upon the rule or unadopted rule further in the proceeding. The agency shall include a copy of this notice with the referral of the matter to the division under s.

120.569(2)(a).

e. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

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

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

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

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

d. Is not arbitrary or capricious. A rule is arbitrary if

it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

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

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

4. If the agency timely serves notice of continued reliance upon a challenged rule or an alleged unadopted rule under sub-subparagraph 2.d., the administrative law judge shall determine whether the challenged rule is an invalid exercise of delegated legislative authority or whether the challenged agency statement constitutes an unadopted rule and if that unadopted rule meets the requirements of subparagraph 3. The determination shall be rendered as a separate final order no earlier than the date on which the administrative law judge serves the recommended order.

5.~~3.~~ The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs (k) and (l), except that the administrative law judge's determination ~~regarding an unadopted rule~~ under subparagraph 4. ~~1. or subparagraph 2.~~ shall be included as a conclusion of law that the agency may not reject ~~not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with~~

~~essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review~~.

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

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

(a) The agency shall:

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

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

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

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. No later than the date provided by the agency under subparagraph (a)2. for presenting material in opposition to the agency's proposed action or refusal to act, the party may file a petition under s. 120.56 challenging the rule, portion of rule, or unadopted rule upon which the agency bases its proposed action or refusal to act. The filing of a challenge under s. 120.56 pursuant to this paragraph shall stay all proceedings on the agency's proposed action or refusal to act until entry of the final order by the administrative law judge, which shall provide additional notice that the stay of the pending agency action is terminated and any further stay pending appeal of the

final order must be sought from the appellate court.

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

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

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

6. The official transcript.

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

Section 7. Section 120.595, Florida Statutes, is amended to read:

120.595 Attorney ~~Attorney's~~ fees and costs.—

(1) CHALLENGES PURSUANT TO SECTION 120.56 OR ~~TO AGENCY ACTION PURSUANT TO~~ SECTION 120.57(1).—

(a) This ~~The provisions of this~~ subsection is ~~are~~ supplemental to, and does ~~do~~ not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding conducted pursuant to s. 120.56 or s. 120.57(1) shall award all reasonable costs and all ~~a~~ reasonable attorney fees ~~attorney's fee~~ to the prevailing party only if the administrative law judge determines ~~only where~~ that the nonprevailing adverse party ~~has been determined by the administrative law judge to have~~ participated in the proceeding

for an improper purpose.

(c) In proceedings conducted pursuant to s. 120.57(1), it shall be rebuttably presumed that a nonprevailing adverse party participated in the current proceeding for an improper purpose if the administrative law judge determines that:

1. The nonprevailing adverse party participated in two or more other such proceedings involving the same prevailing party and project as an adverse party and in which the nonprevailing adverse party did not establish either the factual or legal merits of its position.

2. The factual or legal position asserted in the current proceeding would have been cognizable in the previous proceeding ~~and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection~~. ~~In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose~~.

(d) In a ~~any~~ proceeding in which the administrative law judge determines that a party participated in the proceeding for an improper purpose, the recommended order shall ~~so~~ designate that party and shall determine the award of costs and attorney ~~attorney's~~ fees.

(e) For purposes ~~the purpose~~ of this subsection, the term:

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

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

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

(f) For challenges brought under s. 120.57(1)(e), when the agency relies on a challenged rule or an alleged unadopted rule pursuant to s. 120.57(1)(e)2.d., if the appellate court or the administrative law judge declares the rule or portion of the rule to be invalid or that the agency statement is an unadopted rule which does not meet the requirements of s. 120.57(1)(e)4., a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney fees, unless the agency demonstrates that special circumstances exist that make the award unjust. An award of attorney fees as provided by this paragraph may not exceed $50,000.

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

~~purpose as defined by paragraph (1)(e). No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist which would make the award unjust. An ~~agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

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

(a) If the appellate court or administrative law judge determines that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), or that the agency must

immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement pursuant to s. 120.56(4)(f) ~~120.56(4)(e)~~, a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the petitioner before ~~prior to~~ the date the notice was published~~, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the~~

~~required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7)~~. An award of attorney ~~attorney's~~ fees as provided by this paragraph may not exceed $50,000.

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

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

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney ~~attorney's~~ fees and reasonable costs to the prevailing party if the court finds that

the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney ~~attorney's~~ fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) NOTICE OF INVALIDITY.—A party failing to serve a notice of proposed challenge under this subsection is not entitled to an award of reasonable costs and reasonable attorney fees under this section.

(a) Before filing a petition challenging the validity of a proposed rule under s. 120.56(2), an adopted rule under s. 120.56(3), or an agency statement defined as an unadopted rule under s. 120.56(4), a substantially affected person shall serve the agency head with notice of the proposed challenge. The notice shall identify the proposed or adopted rule or the unadopted rule that the person proposes to challenge and a brief explanation of the basis for that challenge. The notice must be received by the agency head at least 5 days before the filing of a petition under s. 120.56(2), and at least 30 days before the filing of a petition under s. 120.56(3) or s. 120.56(4).

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

(7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For purposes of this chapter, s. 57.105(5), and s. 57.111, in addition to an award of reasonable attorney fees and costs, the prevailing party, if the prevailing party is not a state agency, shall also recover reasonable attorney fees and costs incurred in litigating entitlement to, and the determination or quantification of, reasonable attorney fees and costs for the underlying matter. Reasonable attorney fees and costs awarded for litigating entitlement to, and the determination or quantification of, reasonable attorney fees and costs for the underlying matter are not subject to the limitations on amounts provided in this chapter or s. 57.111.

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

Section 8. Subsections (1), (2), and (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

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

(b) A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings, or a final order under s. 120.57(1)(e)4., is immediately reviewable if review of the final

agency decision would not provide an adequate remedy.

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

(b) All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date that ~~rendition of~~ the order being appealed was filed with the agency clerk. If a party receives notice of the filing of the order later than the 25th day after the filing of the order with the agency clerk, the time by which the party must file a notice of appeal or petition for review is extended until 10 days after the date that the party received the notice of the filing of the order. If the appeal is of an order rendered in a proceeding initiated under s. 120.56, or a final order under s. 120.57(1)(e)4., the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(c) ~~(b)~~ When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a

proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

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

Section 9. Section 120.695, Florida Statutes, is amended to read:

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

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the

Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

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

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

~~direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.~~

(c)1. No later than June 30, 2016, and after such date within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1). For each agency failing to timely complete the review and file the certification as required by this section, the rules ombudsman shall promptly report such failure to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the committee.

2. Beginning on July 1, 2016, each agency shall:

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

b. Ensure that all investigative and enforcement personnel are knowledgeable of the agency's designations under this section.

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

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

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

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

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

Section 10. This act shall take effect July 1, 2015.