

1 A bill to be entitled

2 An act relating to administrative procedures; amending
3 s. 120.54, F.S.; providing procedures for agencies to
4 follow when initiating rulemaking after certain public
5 hearings; limiting reliance upon an unadopted rule in
6 certain circumstances; amending s. 120.55, F.S.;
7 providing for publication of notices of rule
8 development and of rules filed for adoption; providing
9 for additional notice of rule development, proposals,
10 and adoptions in the Florida Administrative Register;
11 requiring certain agencies to provide additional e-
12 mail notifications concerning specified rulemaking and
13 rule development activities; providing that failure to
14 follow certain provisions does not constitute grounds
15 to challenge validity of a rule; amending s. 120.56,
16 F.S.; clarifying language; amending s. 120.57, F.S.;
17 conforming proceedings that oppose agency action based
18 on an invalid or unadopted rule to proceedings used
19 for challenging rules; authorizing the administrative
20 law judge to make certain findings on the validity of
21 certain alleged unadopted rules; authorizing a
22 petitioner to file certain collateral challenges
23 regarding the validity of a rule; authorizing the
24 administrative law judge to consolidate proceedings in
25 such rule challenges; providing that agency action may
26 not be based on an invalid or unadopted rule; amending

27 s. 120.68, F.S.; specifying legal authority to file a
 28 petition challenging an agency rule as an invalid
 29 exercise of delegated legislative authority; amending
 30 s. 120.695, F.S.; removing obsolete provisions with
 31 respect to required agency review and designation of
 32 minor violations; requiring agency review and
 33 certification of minor violation rules by a specified
 34 date; requiring minor violation certification for all
 35 rules adopted after a specified date; requiring public
 36 notice; providing applicability; providing an
 37 effective date.

38

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

40

41 Section 1. Paragraph (c) of subsection (7) of section
 42 120.54, Florida Statutes, is amended, and paragraph (d) is added
 43 to that subsection, to read:

44 120.54 Rulemaking.—

45 (7) PETITION TO INITIATE RULEMAKING.—

46 (c) If the agency does not initiate rulemaking or
 47 otherwise comply with the requested action within 30 days after
 48 ~~following~~ the public hearing provided for in ~~by~~ paragraph (b),
 49 ~~if the agency does not initiate rulemaking or otherwise comply~~
 50 ~~with the requested action,~~ the agency shall publish in the
 51 Florida Administrative Register a statement of its reasons for
 52 not initiating rulemaking or otherwise complying with the

53 requested action~~7~~ and of any changes it will make in the scope
54 or application of the unadopted rule. The agency shall file the
55 statement with the committee. The committee shall forward a copy
56 of the statement to the substantive committee with primary
57 oversight jurisdiction of the agency in each house of the
58 Legislature. The committee or the committee with primary
59 oversight jurisdiction may hold a hearing directed to the
60 statement of the agency. The committee holding the hearing may
61 recommend to the Legislature the introduction of legislation
62 making the rule a statutory standard or limiting or otherwise
63 modifying the authority of the agency.

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

77 Section 2. Section 120.55, Florida Statutes, is amended to
78 read:

79 | 120.55 Publication.—

80 | (1) The Department of State shall:

81 | (a)1. Through a continuous revision and publication
82 | system, compile and publish electronically, on a ~~an~~ Internet
83 | website managed by the department, the "Florida Administrative
84 | Code." The Florida Administrative Code shall contain all rules
85 | adopted by each agency, citing the grant of rulemaking authority
86 | and the specific law implemented pursuant to which each rule was
87 | adopted, all history notes as authorized in s. 120.545(7),
88 | complete indexes to all rules contained in the code, and any
89 | other material required or authorized by law or deemed useful by
90 | the department. The electronic code shall display each rule
91 | chapter currently in effect in browse mode and allow full text
92 | search of the code and each rule chapter. The department may
93 | contract with a publishing firm for a printed publication;
94 | however, the department shall retain responsibility for the code
95 | as provided in this section. The electronic publication shall be
96 | the official compilation of the administrative rules of this
97 | state. The Department of State shall retain the copyright over
98 | the Florida Administrative Code.

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

105 effectiveness of such rules.

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

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

128 5. The department shall allow adopted rules and material
129 incorporated by reference to be filed in electronic form as
130 prescribed by department rule. When a rule is filed for adoption

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

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

144 1. All notices required by s. 120.54(2) and (3)(a)
145 ~~120.54(3)(a)~~, showing the text of all rules proposed for
146 consideration.

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

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

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

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

157 6. A list of rules filed for adoption in the previous 7
 158 days.

159 7. A list of all rules filed for adoption pending
 160 legislative ratification under s. 120.541(3). A rule shall be
 161 removed from the list once notice of ratification or withdrawal
 162 of the rule is received.

163 ~~8.6.~~ Any other material required or authorized by law or
 164 deemed useful by the department.

165
 166 The department may contract with a publishing firm for a printed
 167 publication of the Florida Administrative Register and make
 168 copies available on an annual subscription basis.

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

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

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

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

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

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

182 (c) Subscribe to an automated e-mail notification of

183 selected notices to be sent out before or concurrently with
 184 publication of the electronic Florida Administrative Register.
 185 Such notification must include in the text of the e-mail a
 186 summary of the content of each notice.

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

190 (e) Comment on proposed rules.

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

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

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

205 (6)~~(5)~~ Any publication of a proposed rule promulgated by
 206 an agency, whether published in the Florida Administrative
 207 Register or elsewhere, shall include, along with the rule, the
 208 name of the person or persons originating such rule, the name of

209 the agency head who approved the rule, and the date upon which
 210 the rule was approved.

211 (7)~~(6)~~ Access to the Florida Administrative Register
 212 ~~Internet~~ website and its contents, including the e-mail
 213 notification service, shall be free for the public.

214 (8)~~(7)~~(a) All fees and moneys collected by the Department
 215 of State under this chapter shall be deposited in the Records
 216 Management Trust Fund for the purpose of paying for costs
 217 incurred by the department in carrying out this chapter.

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

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

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

228 120.56 Challenges to rules.—

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

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

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

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

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

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

261 material; however, the agency may rebut this presumption by
 262 showing that the substantial interests of the petitioner and the
 263 fairness of the proceedings have not been impaired.

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

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

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

282 (a) A ~~substantially affected person may seek an~~
 283 ~~administrative determination of the invalidity of a proposed~~
 284 ~~rule by filing a petition~~ alleging the invalidity of a proposed
 285 rule shall be filed ~~seeking such a determination with the~~
 286 ~~division~~ within 21 days after the date of publication of the

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

310 (3) CHALLENGING ~~EXISTING~~ RULES IN EFFECT; SPECIAL
 311 PROVISIONS.—

312 (a) A petition alleging ~~substantially affected person may~~

313 ~~seek an administrative determination of the invalidity of an~~
314 existing rule may be filed at any time during which the
315 ~~existence of the rule is in effect~~. The petitioner has the a
316 burden of proving by a preponderance of the evidence that the
317 existing rule is an invalid exercise of delegated legislative
318 authority as to the objections raised.

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

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

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

339 is proceeding expeditiously and in good faith to adopt the
340 statement as a rule.

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

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

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

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

365 shall enter a final order to that effect.

366 (g)~~(f)~~ All proceedings to determine a violation of s.
 367 120.54(1)(a) shall be brought pursuant to this subsection. A
 368 proceeding pursuant to this subsection may be consolidated with
 369 a proceeding under subsection (3) or under any other section of
 370 this chapter. This paragraph does not prevent a party whose
 371 substantial interests have been determined by an agency action
 372 from bringing a proceeding pursuant to s. 120.57(1)(e).

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

376 120.57 Additional procedures for particular cases.—

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

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

387 2. In a matter initiated as a result of agency action
 388 proposing to determine the substantial interests of a party, the
 389 party's timely petition for hearing may challenge the proposed
 390 agency action based on a rule that is an invalid exercise of

391 delegated legislative authority or based on an alleged unadopted
 392 rule. For challenges brought under this subparagraph:

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

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

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

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

403 3.2. Notwithstanding subparagraph 1., if an agency
 404 demonstrates that the statute being implemented directs it to
 405 adopt rules, that the agency has not had time to adopt those
 406 rules because the requirement was so recently enacted, and that
 407 the agency has initiated rulemaking and is proceeding
 408 expeditiously and in good faith to adopt the required rules,
 409 then the agency's action may be based upon those unadopted rules
 410 if, subject to de novo review by the administrative law judge
 411 determines that rulemaking is neither feasible nor practicable
 412 and the unadopted rules would not constitute an invalid exercise
 413 of delegated legislative authority if adopted as rules. An
 414 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
 415 ~~invalid~~. The agency must demonstrate that the unadopted rule:

416 a. Is within the powers, functions, and duties delegated

417 by the Legislature or, if the agency is operating pursuant to
418 authority vested in the agency by ~~derived from~~ the State
419 Constitution, is within that authority;

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

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

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

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

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

432 ~~4.3-~~ The recommended and final orders in any proceeding
433 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
434 except that the administrative law judge's determination
435 regarding an unadopted rule under subparagraph 1. or
436 subparagraph 2. shall not be rejected by the agency unless the
437 agency first determines from a review of the complete record,
438 and states with particularity in the order, that such
439 determination is clearly erroneous or does not comply with
440 essential requirements of law. In any proceeding for review
441 under s. 120.68, if the court finds that the agency's rejection
442 of the determination regarding the unadopted rule does not

443 | comport with ~~the provisions of~~ this subparagraph, the agency
444 | action shall be set aside and the court shall award to the
445 | prevailing party the reasonable costs and a reasonable attorney
446 | ~~attorney's~~ fee for the initial proceeding and the proceeding for
447 | review.

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

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

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

468 | (a) The agency shall:

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

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

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

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

485 (c)-(b) The record shall only consist of:

- 486 1. The notice and summary of grounds.
- 487 2. Evidence received.
- 488 3. All written statements submitted.
- 489 4. Any decision overruling objections.
- 490 5. All matters placed on the record after an ex parte
491 communication.
- 492 6. The official transcript.
- 493 7. Any decision, opinion, order, or report by the
494 presiding officer.

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

497 120.68 Judicial review.—

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

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

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

514 Section 6. Section 120.695, Florida Statutes, is amended
 515 to read:

516 120.695 Notice of noncompliance; designation of minor
 517 violation of rules.—

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

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

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

543 (b) Each agency shall review all of its rules and
544 designate those for which a violation would be a minor violation
545 and for which a notice of noncompliance must be the first
546 enforcement action taken against a person or business subject to

547 regulation. A violation of a rule is a minor violation if it
548 does not result in economic or physical harm to a person or
549 adversely affect the public health, safety, or welfare or create
550 a significant threat of such harm. ~~If an agency under the~~
551 ~~direction of a cabinet officer mails to each licensee a notice~~
552 ~~of the designated rules at the time of licensure and at least~~
553 ~~annually thereafter, the provisions of paragraph (a) may be~~
554 ~~exercised at the discretion of the agency. Such notice shall~~
555 ~~include a subject-matter index of the rules and information on~~
556 ~~how the rules may be obtained.~~

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

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

571 a. Publish all rules that the agency has designated as
572 rules the violation of which would be a minor violation, either

573 as a complete list on the agency's website or by incorporation
574 of the designations in the agency's disciplinary guidelines
575 adopted as a rule.

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

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

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

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

590 1. The Department of Corrections;

591 2. Educational units;

592 3. The regulation of law enforcement personnel; or

593 4. The regulation of teachers.

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

596 Section 7. This act shall take effect July 1, 2016.