STORAGE NAME: s2290s1z.sgr ****AS PASSED BY THE LEGISLATURE****
DATE: June 14, 1996 **CHAPTER #**: 96-159, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
STREAMLINING GOVERNMENTAL REGULATIONS
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB's 2290 & 2288

RELATING TO: Administrative Procedures

SPONSOR(S): Senate Committee on Governmental Reform and Oversight and Senators Williams, Dantzler, and Burt

STATUTE(S) AFFECTED: ss. 11.60, 120.52, 120.525, 120.532, 120.533, 120.535, 120.54, 120.541, 120.542, 120.543, 120.545, 120.55, 120.56, 120.565, 120.569, 120.57, 120.573, 120.574, 120.575, 120.58, 120.59, 120.595, 120.60, 120.61, 120.62, 120.63, 120.633, 120.65, 120.66, 120.665, 120.68, 120.69, 120.70, 120.71, 120.72, 120.721, 120.722, 120.80, and 120.81.

COMPANION BILL(S): CS/HB 1179

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL REFORM AND OVERSIGHT YEAS 8 NAYS 0
(2) WAYS AND MEANS (W/D)
(3) RULES AND CALENDAR (W/D)
(4)
(5)

I. SUMMARY:

This bill revises the Administrative Procedure act to clarify and simplify its provisions. It implements the recommendations of the Governor's Administrative Procedure Act Review Commission and includes many of the proposals incorporated in CS/CS/SB 536 by Senator Williams that passed during the 1995 Regular Session which was vetoed by the Governor. The bill rearranges many of the provisions of chapter 120, F.S., in a more orderly and logical manner. It provides that it is the intent of the Legislature to consider rulemaking when enacting legislation. It expands the powers of JAPC. It expands the definitions. It specifies that agencies may only adopt rules that implement, interpret or make specific the powers and duties of the enabling statute. It revises and consolidates the rulemaking procedures in s. 120.54, F.S. It removes the presumption of validity for proposed rules. It requires the agencies to consider the economic impact of rules on small counties and small cities. It provides for the adoption of uniform rules. It creates s. 120.541, F.S., regarding regulatory costs and requires the preparation of a statement of estimated regulatory costs in certain circumstances. It provides for suspension of rules in certain circumstances. The bill revises the rule challenge procedures and combines them in s. 120.56, F.S. It combines the hearing procedures into a general section in s. 120.569, F.S., and maintains the procedures for s. 120.57(1) and (2) proceedings. It provides procedures for a de novo hearing on unadopted rules. It changes the name of the DOAH hearing officers to Administrative Law Judges. It changes the time frames and standards for bid disputes. It provides for mediation and summary hearings in administrative proceedings. It consolidates the attorney fee provisions in s. 120.595, F.S., and provides for attorney fees in rule challenge proceedings and for challenges to agency statements defined as rules. It provides requirements on agency license approval based on another agency's policies. It makes other changes in chapter 120. The bill has an indeterminate fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Administrative Procedure Act was enacted in 1974 as chapter 74-310, Laws of Florida, it replaced the Administrative Procedure Act that was adopted in 1961. Chapter 74-310, Laws of Florida, became effective for most purposes on January 1, 1975. The act provides procedures for citizens and other persons to question or challenge actions taken by agencies that substantially affect them. It also allows for citizen input into agency decision-making through the public notice and public hearing requirements concerning agency actions. Agency action affects citizens and businesses in many ways, for example a citizen or business may be affected by the agency proposing a rule, issuing an order or permit, or by denying a license.

During the 1995 Regular Legislative Session, the Select Committee on Streamlining Governmental Regulations introduced HB 2543 that made numerous changes in chapter 120, Florida Statutes. Its companion bill, CS/CS/SB 536 by the Committee on Rules and Calendar, the Committee on Governmental Reform and Oversight and Senator Charles Williams passed the Legislature, but was vetoed by the Governor. The Governor appointed an Administrative Procedure Act Review Commission pursuant to section 7 of Executive Order 95-256. The commission issued its final report on February 20, 1996 and concentrated its efforts in three areas: "simplifying the APA, increasing flexibility in the application of administrative rules and procedures, and increasing agency accountability to the Legislature and the general public." The commission members represented many of the interested parties who were involved in consideration of the CS/CS/SB 536.

Mr. Robert Rhodes chaired the commission which consisted of 15 members, in addition to the chair and included: Representative David Bitner, Representative Irlo Bronson, Jr., Representative Ken Pruitt, Representative Dean Saunders, Senator Locke Burt, Senator Rick Dantzler, Ms. Martha Edenfield, Mr. Clay Henderson, Mr. Wade Hopping, Hearing Officer Eleanor Hunter, Mr. Jon Mills, Mr. Jon Moyle, Jr., Ms. Linda Shelley, and Mr. Alan Starling.

The commission made numerous recommendations concerning many of the issues raised by the CS/CS/SB 536 and the Governor during the 1995 Regular Legislative Session.

Even though administrative agencies have been in existence since the First Continental Congress, the rise of the "Administrative State" dates from the 1930's when many federal agencies were formed to deal with the problems associated with the Great Depression. The increase in agencies at both the federal and state levels has made administrative agencies extremely important in the daily lives of ordinary citizens and in the operation of businesses.

As Professor Arthur E. Bonfield, a noted administrative law scholar, noted in his treatise on State Administrative Rulemaking:

> It is clear that we live today in an administrative state, that is, in a society dominated by law created by administrative agencies. This situation is unlikely to change in the future. The *process* by which administrative agencies make law, therefore, is very important.

Professor Bonfield also noted that the society must ensure that the performance of law making by agencies is fully legitimate "because it is properly authorized by the elected representative of the people -- the legislature." He emphasized that none of the essential functions of the legislative process should be lost in the course of the rulemaking or the development of agency policy.

The Administrative Procedure Act, chapter 120, Florida Statutes, governs the rulemaking and adjudicative procedures used by the administrative agencies of the state. The Administrative Procedure Act is not applicable to the legislature or the courts.

Section 120.52(1), Florida Statutes defines an "agency" as:

> (a) The Governor in the exercise of all executive powers other than those derived from the constitution.
>
> (b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters 163, 298, 373, 380, and 582 and s. 186.504, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II.
>
> (c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

It further provides that "[a] judge of compensation claims shall not, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act."

Article II, section 3, Florida Constitution, provides that the powers of the "state government shall be divided into the legislative, executive and judicial branches." This section further provides that "(n)o person belonging to one branch shall exercise any powers appertaining to either of the other branches," unless the constitution expressly authorizes it.

The legislative branch and judicial branch are provided for in articles III and V, Florida Constitution, respectively. The executive branch is provided for in article IV of the constitution. Section 6 of article IV, provides that all functions shall be allotted to twenty five departments (not including the Department of Veterans Affairs authorized in section 11 and the Department of Elderly Affairs authorized in section 12). The Game and Fresh Water Fish Commission is specifically created by article IV, section 9, Florida Constitution, which provides that the "commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life . . . . "

A parole and probation commission is authorized to be created by law in paragraph (c), section 8, of the Florida Constitution.

The Legislature, when it enacts a statute, may delegate the power to adopt rules to carry out the provisions of the statute to an agency of the executive branch. Most agencies are created by statute and as creatures of the Legislature do not have any inherent rulemaking authority. If the Legislature has granted an agency rulemaking authority, that authority must have identifiable standards for implementation, otherwise it is an

unconstitutional delegation of legislative authority. Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1979).

Section 120.52(16), Florida Statutes, provides the definition of a "Rule" as

> each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.

This section also provides exclusions from the definition of a rule. "Agency action" is defined as a rule or part thereof, an order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. Agency action also includes any denial of a request made pursuant to section 120.54(5), Florida Statutes, for an agency to adopt, amend, or repeal a rule or provide the minimum public information required by section 120.53, Florida Statutes.

An "Order" is defined under section 120.52(11), Florida Statutes, as:

> a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form.

Originally, section 120.54(3), Florida Statutes, (1974 Supplement) provided that

> . . . any substantially affected person may seek an administrative determination of the validity of the proposed rule on the following grounds: that the proposed rule is an invalid exercise of validly delegated legislative authority; or, that the proposed rule is an exercise of invalidly delegated legislative authority.

and section 120.56, Florida Statutes, (1974 Supplement) provided for the challenge to an existing rule. That provision stated that:

> (2) Any person substantially affected by a rule may seek an administrative determination of the [invalidity] of the rule on the ground:
> (a) That the rule is an invalid exercise of validly delegated legislative authority.
> (b) That the rule is an exercise of invalidly delegated legislative authority.

The 1974 codification of chapter 120, Florida Statutes, did not include any definitions of the “validly delegated legislative authority” or “invalidly delegated legislative authority.”

In a case brought under the old Administrative Procedure Act and before the effective date of chapter 74-310, Laws of Florida, the First District Court held:

> Where the empowering provision of a statute states simply that an agency may make such rules and regulations as may be necessary to carry out the provisions of this Act, the validity of regulations promulgated thereunder will be sustained so long as they are reasonably related to the purposes of the enabling legislation, and are not arbitrary or capricious (citation omitted).
> Florida Beverage Corp., Inc. v. Wynne, 306 So.2d 200, 202 (Fla. 1st DCA 1975).

In Agrico Chemical Co., et al. v. State Dept. of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978), the court established two types of review for rulemaking. The first was for a direct appeal of rulemaking and possibly a hearing held pursuant to section 120.54(3), Florida Statutes, termed a "quasi-legislative" action by the court. The court noted and followed the rule laid down in Wynne, noted above for the "quasi-legislative" rulemaking.

For an appeal from a hearing conducted pursuant to section 120.54(4), Florida Statutes, termed a "quasi-judicial" hearing, the court held that "[b]oth the hearing officer (acting in a detached quasi-judicial capacity) and this Court should determine from the evidence presented whether or not there is competent substantial evidence to support the validity of the rule."

The court further held that the "hearing officer must look to the legislative authority for the rule and determine whether or not the proposed rule is encompassed within that grant." The challenger must show that the agency rule if adopted:

> would exceed its authority; that the requirements of the rule are not appropriate to the ends specified in the legislative act; that the requirements contained in the rule are not reasonably related to the purpose of the enabling legislation or that the proposed rule or the requirements thereof are arbitrary or capricious. (emphasis supplied)

The Supreme Court upheld this distinction in General Telephone Co. v. Florida Public Service Com'n, 446 So.2d 1063 (Fla. 1984), where the court noted:

> The standard for review for a quasi-legislative proceeding must differ from that for a quasi-judicial proceeding, as a qualitative, quantitative standard such as competent substantial evidence is conceptually inapplicable to a proceeding where the record was not compiled in an adjudicatory setting and no factual issues were determined.

In an appeal from a "quasi-legislative" hearing, the standard of review is the one established in Agrico and Wynne.

This distinction was also explained in Adam Smith Enterprises, Inc. v. State Dept. of Environmental Regulation, 553 So.2d 1260, 1269 (Fla. 1st DCA 1989). The court stated:

> [t]he standard of review to be applied by this court to administrative appeals arising out of the rulemaking process is dependent upon the route by which the administrative appeal reaches us. The standard of review to be applied on a direct appeal from an adopted agency rule, arising out of the rulemaking proceedings under Section 120.54(3), is different from the standard to be applied on an appeal from a hearing officer's determination arising out of a Section 120.54(4) or 120.56 rule challenge proceeding.

However, some courts have held that the standard first developed in Wynne and applied in Agrico and General Telephone is applicable for rule challenges regardless of the route they are brought before the court for review.

In Florida Waterworks Ass'n v. Florida Public Service Com'n, 472 So.2d 237 (Fla. 1st DCA 1985), the court held that the standard of review of the hearing officer's order under

section 120.54(4), Florida Statutes, would be the same as that under section 120.54(3), Florida Statutes.

In a decision prior to the Adam Smith case, the court in Department of Admin., Div. of Retirement v. Albanese, 445 So.2d 639, 641 (Fla. 1st DCA 1984), purportedly followed the decision in Agrico, but modified the decision by requiring a challenger to prove all of the criteria laid down in Agrico. This decision was followed in Grove Isle, Ltd. v. State Dept. of Environmental Regulation, 454 So.2d 571, 573 (Fla. 1st DCA 1984). The court in Agrico required the challenger to prove only one of the criteria.

Stephen T. Maher, former Associate Professor of Law, University of Miami Law School and former Chair of The Florida Bar's Administrative Law Section was critical of the distinction between quasi-legislative and quasi-judicial reviews in his article, We're No Angels: Rulemaking and Judicial Review in Florida, 18 F.S.U. Law Review 767, 817 (1991). He noted that the Florida courts that have previously rejected the competent substantial evidence standard in section 120.68(10), Florida Statutes, [codified as section 120.68(7)(b), Florida Statutes] for direct appeals of rulemaking, have based their decisions on the grounds that the nature of the record produced in rulemaking does not permit such a review based on competent substantial evidence. He noted however, that in Florida, as opposed to the federal system, "it is possible to create a record capable of competent substantial evidence review through the use of the draw out [codified as section 120.54(3)(c)2., Florida Statutes]."

Mr. Maher further noted that:

> Rulemaking records now available are inadequate for judicial review of rules using the competent substantial evidence standard mandated by section 120.68(10) because the draw out has been made virtually unavailable as a result of judicial interpretations.

The court has also held that agencies are "accorded wide discretion in the exercise of their lawful rulemaking authority, clearly conferred or fairly implied and consistent with the agencies' general statutory duties." Dept. of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d 515, 517 (Fla. 1st DCA 1984).

The authority of an agency to adopt rules may be "fairly implied" from several statutory sections when coupled with the authority to adopt such rules as the agency deems necessary to effectively administer and enforce the law, consistent with the legislative intent. General Motors Corporation v. Florida Department of Highway Safety and Motor Vehicles, 625 So.2d 76 (Fla. 1st DCA 1993).

One court has further stated that a rule will be upheld if:

> it is within the range of permissible interpretations of the statute, and the interpretation has acquired legitimacy through rulemaking processes in which those challenging the rule fully participated or had an opportunity to participate.

State Department of Health and Rehabilitative Services v. Framat Realty, Inc., 407 So.2d 238, 241 (Fla. 1st DCA 1981). Recently, the First District Court of Appeal held that if the rule has been adopted through the rulemaking proceedings, "the rule will be upheld if it is reasonably related to the legislative purpose and is not arbitrary or capricious". Pershing Industries Inc. v. Department of Banking and Finance, 591 So.2d 991, 993 (Fla. 1st DCA

1991) and Department of Labor and Employment Security v. Bradley, 636 So.2d 802,807 (Fla. 1st DCA 1994).

In 1987, the Legislature passed CS/SB 608 which was enacted as chapter 87-385, Laws of Florida. This act provided a definition of "invalid exercise of delegated legislative authority." This definition is codified at section 120.52(8), Florida Statutes, which provides that agency action that goes beyond the "powers, functions, and duties delegated by the Legislature" is an "invalid exercise of delegated legislative authority." Both a proposed rule may be challenged pursuant to section 120.54(4), Florida Statutes, and an existing rule may be challenged pursuant to section 120.56, Florida Statutes, as an invalid exercise of delegated legislative authority if:

(a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;
(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(7);
(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7);
(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or
(e) The rule is arbitrary or capricious.

According to the Senate Bill Analysis for CS/SB 608, this provision codified the definition of "invalid exercise of delegated legislative authority" established in prior case law. The analysis noted that numerous appellate courts had defined this term. The definition provided that a rule would be invalid if: the agency "materially failed to follow the applicable rulemaking procedures", citing Florida State University v. Dann, 400 So.2d 1304 (Fla. 1st DCA 1981); the agency "has exceeded its grant of rulemaking authority", citing 4245 Corp. v. Division of Beverage, 371 So.2d 1032 (Fla. 1st DCA 1978); the agency rule "enlarges, modifies, or contravenes the specific provisions of the law implemented", citing Grove Isle, Ltd. v. State Department of Environmental Regulation, 454 So.2d 571 (Fla. 1st DCA 1984); the agency adopts a rule that is impermissibly "vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency, citing Barrow v. Holland, 125 So.2d 749 (Fla. 1960); or the agency adopts a rule that is "arbitrary or capricious", citing Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978).

As noted in Adam Smith, the standards to hold a rule to be an "invalid exercise of delegated legislative authority", includes the criteria listed in section 120.52(8), Florida Statutes, not just the "arbitrary and capricious" standard established in Agrico.

Agency action is generally determined through the use of rules and orders. Agencies also develop action through the use of policies that are not promulgated as rules. Agency policy, prior to the enactment of section 120.535, Florida Statutes, could be developed through formal rulemaking or through the use of adjudication on a case-by-case basis at the discretion of the agency. The court had held that "administrative agencies may develop policies by adjudication and that formal rulemaking is not initially necessary in all cases." City of Tallahassee v. Florida Public Service Commission, 433 So.2d 505 (Fla. 1983). The court in this case indicated that an agency should codify its policy as a rule when its position in a particular area solidified and became established. The court further held that "*ad hoc* pronouncements either through orders of the [agency] or through decisions made after adversary proceedings should be viewed as *de facto*

rules, or as expressed in MacDonald v. Department of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977), “incipient policy."

In 1991, the Legislature enacted chapter 91-30, Laws of Florida, which is now codified at section 120.535, Florida Statutes. This section provides that rulemaking is not a matter of agency discretion. Each agency statement that meets the definition of a rule must be adopted as a rule as soon as “feasible and practicable.”

Rulemaking is presumed feasible unless the agency proves that:

1. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or
2. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking; or
3. The agency is currently using the rulemaking procedure expeditiously and in good faith to adopt rules which address the statement.

Rulemaking is presumed practicable unless the agency proves that:

1. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or
2. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

Chapter 74-310, Laws of Florida also created the Administrative Procedures Committee as a "standing joint committee" of the Legislature. The committee is charged with maintaining a continuous review of rulemaking and the adoption process. Section 11.60, Florida Statutes, provides the duties of the committee along with other provisions throughout chapter 120, Florida Statutes. The committee membership consists of six members, three appointed by the Speaker of the House of Representatives and the President of the Senate respectively.

Section 120.53, Florida Statutes, provides for the adoption of the rules of procedure and for public inspection. This section requires agencies to adopt rules describing its organization and how the public may obtain information, make submissions and make requests. It further requires that the agencies adopt rules of practice for all formal and informal proceedings, presentation of arguments and evidence, and for the scheduling of meetings, hearings, and workshops. The rules must ensure that a copy of the agenda is received at least 7 days prior to the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. Each agency is required to give notice of meetings, hearings, and workshops in the same manner that is required for rulemaking under section 120.54(1), Florida Statutes.

This section also provides the agency shall make available for public inspection and copying at no more than cost all rules, orders, current subject matter index, and other orders. It also provides that all adopted rules must be indexed within 90 days after the rules are filed and all orders must be indexed or listed within 120 days after they are rendered.

For protests arising from the contract bidding process, the provisions of section 120.53(5), Florida Statutes, apply. This section provides the procedure for bid protests and requires that a notice of protest be filed within 72 hours after the posting of the bid

tabulation or receipt of the notice of agency decision. A formal written protest must be filed within 10 days after the date the notice of protest is filed. Failure to file a formal written protest under these provisions constitutes a waiver of the right to file a protest. A timely filed protest stops the bid solicitation or contract award process until the protest has been resolved by final agency action. An agency shall, on its own initiative or on request of a protester, provide an opportunity for resolving the protest by mutual agreement of the parties within 7 days of the formal protest.

If the case is not resolved it proceeds under the provisions of section 120.57, Florida Statutes. If the protest does not involve a disputed issue of material fact, then an informal hearing will be held. If it involves a disputed issue of material fact it will be referred to the Division of Administrative Hearings. A hearing officer assigned by the division is required to conduct a hearing within 15 days of the protest and render a recommended order within 30 days after the hearing or receipt of the transcript. However, the parties may waive these time frames.

The Supreme Court has established the standard for challenging agency decisions regarding bid solicitations or contract awards. In Department of Transportation v. Groves-Watkins Constructors, 530 So.2d 912, 914 (Fla. 1988), the court held:

> . . . although the APA provides the procedural mechanism for challenging an agency's decision to award or reject all bids, the scope of inquiry is limited to whether the purpose of competitive bidding has been subverted. In short, the hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly.

Section 120.54, Florida Statutes, prescribes the rulemaking requirements of the Administrative Procedure Act. It requires that prior to adopting, amending, or repealing any rule (that is not an emergency rule), an agency must give notice of its intended action. This notice must give a short and plain explanation of the purpose and effect of the proposed rule and the specific legal authority authorizing the action.

Section 120.54(1)(a), Florida Statutes, provides that the notice shall be mailed to the Administrative Procedures Committee, and to all persons requesting advance notice at least 14 days before the mailing. The agency must also provide notice to the particular class of persons to whom the rule is directed. Educational units must provide notice, in a newspaper of general circulation in the affected area, by mail to all persons requesting notice and to organizations representing persons affected by the rule, and by posting notice in appropriate places to notify those person to whom the rule is directed at least 21 days prior to the intended action.

Agencies are required by section 120.54(1)(b), Florida Statutes, to provide public notice of a proposed rule at least 28 days prior to filing the rule for adoption. State agencies provide this notice by publication in the Florida Administrative Weekly. The proposed rule must be available for inspection and copying by the public at the time the noticed is published.

Section 120.54(1)(c), Florida Statutes, allows agencies to give a notice of rule development prior to publishing the required notice of proposed rules. The notice of rule development provides information concerning the subject, purpose and effect, the legal authority, and, if available, the preliminary text, of the rule under development. If an agency provides a notice of rule development, the agency must hold a rule development workshop if requested by an affected person. The agency must publish a notice of a rule

development workshop in the Florida Administrative Weekly at less 14 days prior to the date of the workshop.

Agencies are required, under section 120.54(2)(a), Florida Statutes, to consider the impact on small businesses prior to the adoption, amendment, or repeal of any rule. A small business is defined in section 288.703(1), Florida Statutes, as:

> an independently owned and operated business concern that employs 100 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $3 million and an average net income after federal income taxes, excluding any carryover losses, for the preceding 2 years of not more than $2 million. As applicable to sole proprietorships, the $3 million net worth requirement shall include both personal and business investments.

Whenever possible, agencies are required to "tier" a rule to reduce any disproportionate impact on small businesses and to avoid regulating businesses that do not contribute significantly to the problem the rule is designed to regulate. Under this section, agencies may define small businesses as more than 50 persons if the agency finds that such a definition is necessary to adapt any rule to the needs and problems of small business. The definition of small business in section 288.703(1), Florida Statutes, was amended by chapter 94-322, Laws of Florida to increase the number of persons employed to 100 or fewer. The cross reference was not changed in section 120.54(2), Florida Statutes.

The agency must consider the following methods to reduce the impact on small businesses:

1. Establishing less stringent compliance or reporting requirements in the rule for small business.
2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
3. Consolidating or simplifying the rule's compliance or reporting requirements for small business.
4. Establishing performance standards to replace design or operational standards in the rule for small business.
5. Exempting small business from any or all requirements of the rule.

Currently, small counties and small municipalities are not included in the provisions authorizing agencies to be flexible on the implementation of their rules.

Section 120.54(2)(b), Florida Statutes, provides that prior to the adoption, amendment, or repeal of any non-emergency rule, an agency may prepare an Economic Impact Statement on the rule. Agencies are required to prepare an Economic Impact Statement for proposed rules that it determines have a substantial economic impact which include:

> a substantial increase in costs or prices paid by consumers, individual industries, or state or local government agencies, or would result in significant adverse effects on competition, employment, investment, productivity, innovation, or international trade, and alternative approaches to the regulatory objective exist and are not precluded by law;

The agency must also prepare an Economic Impact Statement if within 14 days of the notice of rule development or if there is no notice of rule development, within 21 days of

publication of notice of agency action, the agency receives a request from the Governor, a body corporate or politic, at least 100 people who are required to sign the request, an organization representing at least 100 persons, or any domestic nonprofit corporation or association. An agency's determination of the substantial economic impact is not subject to challenge.

When an Economic Impact Statement is prepared, a draft copy of the Economic Impact Statement must be available 14 days prior to "any" public hearing on the proposed rule. The statute does not clearly provide when the final Economic Impact Statement for a proposed rule must be available. The economic impact statement must include:

1. An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;
2. An estimate of the cost or the economic benefit to all persons directly affected by the proposed action;
3. An estimate of the impact of the proposed action on competition and the open market for employment, if applicable;
4. An analysis of the impact on small business as defined in the Florida Small and Minority Business Assistance Act of 1985:
5. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of not adopting the rule;
6. A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;
7. A description of any reasonable alternative methods, where applicable, for achieving the purpose of the proposed rule which were considered by the agency, and a statement of the reasons for rejecting those alternatives in favor of the proposed rule; and
8. A detailed statement of the data and methodology used in making the estimates required by this paragraph.

A challenge to a rule based on the Economic Impact Statement must be filed within one year of the effective date of the rule. Standing to challenge the Economic Impact Statement for a rule is limited to those persons and entities who request the preparation of an Economic Impact Statement and submit information to the agency specifying their concerns about the rule. The grounds for holding a rule invalid based on a challenge to the Economic Impact Statement are limited to an agency's failure to adhere to the preparation procedures or the failure to consider submitted information and then only if the failure substantially impairs the fairness of the rulemaking proceedings.

Also within 21 days of the publication of the notice, under section 120.54(3)(a), Florida Statutes, any person affected by a proposed rule, other than a procedural or organizational rule, may request a public hearing or submit written comments regarding the rule. An agency may schedule a public hearing on the rule and if requested, must schedule a public hearing on the rule. Agencies are required to consider pertinent information submitted at the public hearing or within 21 days after the publication of the notice. This information is required to be made a part of the record of the rulemaking proceeding.

If the agency determines that the proposed rule will affect small business, it is required to send written notice to the Small and Minority Business Advocate, the Minority Business

Enterprise Assistance Office and the Division of Economic Development of the Department of Commerce not less than 21 days prior to the intended action. Within that time frame these offices must be given an opportunity to present evidence and argument and to offer alternatives concerning the impact on small business. The agency must adopt the alternatives that are feasible, consistent with the rule, and reduce the impact on small business. If the agency does not adopt the alternatives, it is required to notify the Administrative Procedure Committee of it reasons for not doing so.

If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, under subsection (9), it may adopt rules to address the immediate danger by any procedure which is fair under the circumstances and necessary to protect the public's interest providing that it provides minimum constitutional procedural protections, it takes only the action necessary due to the emergency, and publishes in writing prior to, or at the time of, its action, the facts and reasons for its action.

Subsection (10) of section 120.54, Florida Statutes, provides that the Administration Commission (composed of the Governor and Cabinet -- see section 14.202, Florida Statutes) shall promulgate model rules of procedure which shall be the rules of procedure for each agency subject to the provisions of chapter 120, Florida Statutes.

An agency may adopt specific rules of procedure covered by the model rules and may seek modification of the model rules to allow receipt of federal funds, permit citizens to receive federal tax benefits, or as required for the most efficient operation of the agency as determined by the Administration Commission. Agency rules that are adopted to comply with the provisions of sections 120.53 and 120.565, Florida Statutes, must be in substantial compliance with the model rules. There are many agencies that have promulgated their own separate procedural rules. Chapter 28, Florida Administrative Code, contains the model rules and Chapter 60Q, Florida Administrative Code, governs proceedings before the Division of Administrative Hearings.

The adopting agency is required, by section 120.54(11), Florida Statutes, to file the following information with the Administrative Procedures Committee at least 21 days prior to the proposed adoption date: a copy of each rule proposed for adoption, a detailed written statement of the facts and circumstances justifying the proposed rule, a copy of the economic impact statement, a statement of the effect of the rule in comparison to any federal requirements, and a copy of the notice filed pursuant to section 120.54(1), Florida Statutes.

An agency files three copies of its proposed rule, amendment, or repeal with the Department of State along with a summary of the rule, a summary of any hearings on the rule, and a detailed statement of the facts and circumstances justifying the rule. A rule is adopted upon filing and is effective 20 days after filing or on the date specified by statute. Filings are made no less than 28 days or more than 90 days after the publication of notice of proposed action. If a public hearing is held, the 90 day time limit is extended to 21 days after the final hearing on the rule, receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the hearing transcript if one is made, whichever is latest. At the time the rule is filed, the agency is required to certify that the time limitations have been complied with and that there is no administrative determination pending. If a rule has not been adopted within these time limits, the agency is required to withdraw the rule and give notice of its action in the same manner as required by subsections (1) and (2) of section 120.54, Florida Statutes. Rules that are

not required to be filed with the Department of State become effective when adopted by the agency head or at a later date specified in the rule or by statute.

Under section 120.54(12)(b), Florida Statutes, all agencies must choose the regulatory alternative that imposes the lowest net cost to society that is allowed by the law being implemented. If the lowest cost is not chosen, the agency must provide a statement of the reasons for rejecting the lower cost alternative. A rule may not be challenged based on this provision.

After providing notice of a proposed rule and prior to adoption of the rule, an agency is permitted to withdraw the rule in whole or in part or make changes to the rule that are supported by the record of public hearings on the rule, technical changes that do not affect the substance of the rule, changes in response to written material received by the agency within 21 days of the notice and made part of the record, and changes in response to proposed objections by the Administrative Procedures Committee. After adoption of a rule and prior to the its effective date, an agency may modify or withdraw the rule only in response to an Administrative Procedures Committee objection. Agencies must publish a notice when a rule is modified or withdrawn. However, there is no statutory requirement that agencies publish notice of changes to proposed rules which occur prior to rule adoption. If the committee objects to a proposed rule and the agency does not modify the rule, the committee must file a notice of disapproval detailing its objections, with the Department of State which is published in the Florida Administrative Weekly and as a history note to the rule in the Florida Administrative Code.

Section 120.54(15) Florida Statutes, provides that:

> [n]o agency has inherent rulemaking authority; nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to the rules.

This section allows an agency to adopt rules necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules cannot be enforced until the statute is effective.

Section 120.54(17), Florida Statutes, provides that when a person timely asserts that their substantial interests are affected by a rulemaking proceeding and that the proceeding does not protect those interests, the agency may convene a separate hearing under section 120.57, Florida Statutes. This provision has been termed the “draw out” provision. This provision has been rarely used; many times parties file separate proceedings under the rule challenge provisions of sections 120.54(4) and 120.56, Florida Statutes, as well as the hearing provisions under section 120.57, Florida Statutes.

A person who is substantially affected by a proposed or existing agency rule may challenge the rule on the basis of an "invalid exercise of delegated legislative authority" as defined in section 120.52(8), Florida Statutes. These challenges are determined in an administrative forum, and the case is heard by a hearing officer assigned by the Division of Administrative Hearings. Hearing officers also may hear the proceedings under section 120.57, Florida Statutes, that are brought by citizens when their substantial interests are affected by agency action.

A substantially affected person may challenge a proposed rule under section 120.54(4), Florida Statutes. A challenge must be filed within 21 days of the agency notice of rule adoption, amendment, or repeal that is required to be published in the Florida

Administrative Weekly. A "substantially affected person" is a person whose interest will be adversely affected by the proposed agency action.

Similarly, a substantially affected person may challenge an existing rule under section 120.56, Florida Statutes. In a rule challenge proceeding, the hearing officer's order is a final order not a recommended order.

When a proposed rule or existing rule is challenged, it has a presumption of validity and the burden is on the challenger to prove its invalidity. The standard of review by the court is the same whether a person is challenging a proposed rule or an existing rule. Florida Waterworks Assn. v. Florida Public Service Commission, 473 So.2d 237 (Fla. 1st DCA 1985). The burden is on the person who attacks the rule to prove by a preponderance of the evidence that the agency :

> would exceed its authority; that the requirements of the rule are not appropriate to the end specified in the legislative act; that the requirements contained in the rule are not reasonably related to the purpose of the enabling legislation or that the proposed rule or the requirements thereof are arbitrary or capricious.

Department of Labor and Employment Security, Division of Workers' Compensation v. Bradley, 636 So.2d 802, 807 (Fla. 1st DCA 1994), Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759, 763 (Fla. 1st DCA 1978).

There are no provisions in chapter 120, Florida Statutes, for the award of attorneys fees and costs in a proceeding challenging a proposed rule or an existing rule. Persons successfully challenging rules can be awarded attorney fees and costs under the courts' general discretionary authority if the challenged agency action is a "gross abuse of the agency's discretion." Greynolds Park Manor, Inc. v. State, Department of Health and Rehabilitative Services, 491 So.2d 1157, 1160 (Fla. 1st DCA 1986). Even if the court is authorized to award fees the ". . . courts should be reluctant to impose fees and costs against an agency if, for example, the agency's order is reversed only because it erroneously interpreted a provision of law. . . . " City of Ocoee v. Central Fla. Professional Firefighters Assoc., 389 So.2d 296, 300 (Fla. 5th DCA 1980). Attorney fees and costs are authorized in other sections of the Administrative Procedure Act and in section 57.111, Florida Statutes, the "Equal Access to Justice Act."

A person can be entitled to reasonable costs and attorney fees under section 120.535(1), Florida Statutes, if an agency statement has been found by a hearing officer to be a rule and the agency has relied on the statement for agency action that has affected the substantial interests of that person. The agency can avoid paying the attorney fees and costs if it expeditiously and in good faith proceeds to adopt the statement as a rule.

Section 120.57(1)(b)5., Florida Statutes, provides for attorney fees and costs against a party, a party's attorney, or a party's qualified representative if they file a paper for an improper or frivolous purpose, or to needlessly increase the cost of litigation. Section 120.57(1)(b)10., Florida Statutes, provides for attorney fees and costs to the prevailing party on appeal, if the appeal was frivolous, meritless, an abuse of the appellate process, or if the agency action that precipitated the appeal was a gross abuse of the agency's discretion.

Attorney fees may be awarded to the prevailing party, in a taxpayer contest proceeding under section 120.575, Florida Statutes, if the losing party fails to raise a justifiable issue of law or fact in the petition or the response.

If a party is seeking to enforce a subpoena, an order for discovery, or an order imposing sanctions, the prevailing party may be awarded all or part of their attorney fees and costs under section 120.58(3), Florida Statutes, if the court determines the award should be granted under the Florida Rules of Civil Procedure.

Section 120.59(6), Florida Statutes, provides that a hearing officer must award costs and reasonable attorney fees to a prevailing party if the nonprevailing adverse party participated in a proceeding under section 120.57(1), Florida Statutes, for an improper purpose. An “improper purpose” is defined as:

> . . . 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 licensing or securing the approval of an activity.

However, this section does not apply to a party that is an agency.

Finally, the court may award all or a part of the costs of litigation, reasonable attorney fees and expert witness fees to the prevailing party in a proceeding to enforce agency action pursuant to section 120.69, Florida Statutes.

Section 120.545, Florida Statutes, provides duties in addition to those found at section 11.60, Florida Statutes, for the Administrative Procedures Committee. It provides that "the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.54(1)(a), and its accompanying material, and each emergency rule, and may examine any existing rule(s) . . . " The committee has the power to object to any rule on the basis of the statutory criteria.

Under section 120.545, Florida Statutes, the Administrative Procedures Committee, as a “legislative check on legislatively created authority,” conducts a review of all proposed rules to determine whether: (a) the rule is an invalid exercise of delegated legislative authority; (b) the statutory authority for the rule has been repealed; (c) the rule reiterates or paraphrases statutory material; (d) the rule is in proper form; (e) the notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule; (f) an economic impact statement was prepared that informs the public of the economic effect of the rule, if such statement is required or requested by the committee; (g) the rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements; (h) the rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements; (i) the rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule; (j) the rule could be made less complex or more easily comprehensible to the general public; (k) the rule reflects the approach to the regulatory objective involving the lowest net cost to society to the degree consistent with the provisions of law which the rule implements; (l) the rule will require additional appropriations; or (m) if the rule is an emergency rule, there exists an emergency justifying the promulgation of such rule, whether the agency has exceeded the scope of its statutory authority, and whether the rule was promulgated in compliance with the requirements and limitations of section 120.54(9), Florida Statutes.

If the committee objects to a rule, it must certify the objection to the agency within five days of the objection and include a statement of its objection. The committee also must notify the Speaker of the House of Representatives and the President of the Senate of the objection at the same time.

Within 30 days of the receipt of the objection, if the agency is headed by an individual, and within 45 days of the receipt of the objection, if the agency is headed by a collegial body, the agency must: (a) modify the proposed rule to meet the committee's objection; (b) withdraw the proposed rule; or (c) refuse to modify or withdraw the proposed rule.

If the objection is to an existing rule, the agency must notify the committee that: (a) it has elected to amend the rule to meet the objection; (b) it has elected to repeal the rule; or (c) it refuses to amend or repeal the rule.

If the objection is to the Economic Impact Statement, the agency must either prepare a corrected statement, notice the corrected statement in the next available issue of the Florida Administrative Weekly, and file copies of the statement with the committee and the department, or notify the committee that the agency refuses to prepare a corrected statement.

If the agency elects to modify a proposed rule to meet the objection, it must make the modifications to meet the objection, resubmit the rule to the committee, and give notice of the modification in the first available issue of the Florida Administrative Weekly. The agency is not required to conduct a public hearing. If an agency elects to amend an existing rule to meet an objection, it must notify the committee in writing and initiate the amendment or repeal process by giving notice in the next available issue of the Weekly. If the agency elects to withdraw the rule, it must notify the committee in writing and give notice of the withdrawal in the next available issue of the Weekly. The rule is withdrawn upon notice in the Weekly. If the agency repeals the rule, it must notify the committee and institute rule repeal procedures also by giving notice in the next available issue of the Weekly.

Failure to respond to the committee’s objection to a proposed rule constitutes the withdrawal of the rule and the committee must notify the department of the withdrawal. The department must publish the notice in the next available issue of the Weekly.

The Department of State is given the responsibility to publish all rules adopted by the agencies under section 120.55, Florida Statutes. This compilation of rules is entitled the "Florida Administrative Code" and it is the official compilation of the administrative rules of the state. The code cites specific rulemaking authority for each rule, all history notes, and a complete index to all the rules contained in the code. Supplements are required monthly. The department is required by section 120.55(1)(a)1., Florida Statutes , to contract with a publishing firm for the publication of the code. Currently, Darby Printing Co., of Atlanta, Georgia has contracted with the department to print the code.

Section 120.57, Florida Statutes, provides the procedures when the substantial interests of a party are determined by an agency unless the proceedings involve the substantial interests of a student in the State University System. Usually a hearing under this section is requested when a citizen is requesting some action from an agency or an agency is requiring or requesting some action from a citizen. Unless waived by all parties, whenever a proceeding involves a disputed issue of fact, the hearing will proceed as a formal proceeding under subsection (1). Unless otherwise agreed, the informal proceeding under subsection (2), applies in all other cases.

Subsection (1) provides that a hearing officer assigned by the Division of Administrative Hearings shall conduct all the formal hearings under this subsection except for several enumerated exceptions. An agency head, except for the head of the Department of Business and Profession Regulation and the members of the regulatory boards, may conduct a hearing under this subsection. A request for a hearing is to be granted or denied within 15 days of its receipt and all parties are required to have reasonable notice of not less than 14 days, except of revocation of parole (7 days) and student suspension or expulsion hearings (may be waived without the parties' consent). All parties have the opportunity to respond, present evidence and argument on all issues, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and order, to file exceptions to any order or hearing officer recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications.

The hearing officer completes and submits a recommended order to the agency and all parties which includes the findings of fact, conclusions of law, interpretation of administrative rules, and recommended penalty, if applicable, and any other information required by agency rule to be contained in the final order. The agency is required to allow each party at least 10 days to submit written exceptions to the recommended order.

The agency may adopt the recommended order as the final order of the agency. The agency may reject or modify the conclusions of law and interpretations of administrative rules in the recommended order. The agency may not reject or modify the hearing officer's findings of fact, unless the agency reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence. "Competent substantial evidence" is that "evidence as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred [or] . . . such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." Duval Utility Co. v. Fla. Public Service Commission, 380 So. 2d 1028 (Fla. 1980).

Informal hearings, under subsection (2), are conducted by a hearing officer assigned by an agency and include disputes that do not involve a disputed issue of material fact. These hearings are required to be conducted by giving reasonable notice to the parties and an opportunity to present written or oral evidence in opposition to the agency action or nonaction, or a written statement challenging the justification of agency action. The agency must explain any objection that is overruled within 7 days.

The evidence, record, and subpoenas in agency proceedings are governed by section 120.58, Florida Statutes. In section 120.57 proceedings, all irrelevant, immaterial, or unduly repetitious evidence is to be excluded from the proceedings, but all other evidence that is commonly relied upon by a reasonably prudent person in the conduct of their affairs is admissible. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but cannot be used to support a finding by itself.

Hearing officers and other duly empowered presiding officers can swear witnesses and take their testimony under oath, may issue subpoenas and effect discovery pursuant to the Florida Rules of Civil Procedure. The officers can impose sanctions, except for contempt. Persons may contest subpoenas and seek enforcement of subpoenas, discovery or orders imposing sanctions by filing a petition for enforcement in the circuit court.

Section 120.59, Florida Statutes, provides for the issuance of orders. The final order in a proceeding which affects the substantial interests of a person must be in writing and include findings of fact 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 a hearing officer, or
3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

The 90 day period may be waived or extended with the consent of all of the parties.

Findings of fact must not track statutory language and must be accompanied by a concise and explicit statement of the facts in the record supporting the findings. If a party has submitted proposed findings of fact or filed any written application or request, the order must include a ruling on each item.

Parties are to be notified either personally or by mail of any order and, unless waived, a copy of the order must be delivered or mailed to each party or the attorney of record. Each notice is required to inform the recipient of any administrative hearing or judicial review available under sections 120.57 and 120.68, Florida Statutes.

Licensing provisions are governed by section 120.60, Florida Statutes. This section provides that, unless provided by statute enacted after the effective date of chapter 74-310, Laws of Florida, licensing is subject to section 120.57, Florida Statutes. When an application is made, the agency is required to conduct the proceedings required with "reasonable dispatch and with due regard to the rights and privileges of all affected parties or aggrieved persons." The agency is required to examine the application within 30 days and notify the applicant of any errors or omissions and request any additional information authorized by law. The agency must notify the applicant during this 30 day time frame if failure to correct the deficiencies is grounds for denial of the license. The agency is required to return any application fee within 30 days if the activity need not be licensed or within 10 days of the receipt of the requested additional information.

Every license is required to be approved or denied within 90 days after receipt of the original application or requested additional information, unless a shorter time period is provided by law. The time period is tolled by a proceeding under section 120.57, Florida Statutes and resumes 10 days after the recommended order is submitted to the agency, within 15 days after the conclusion of a public hearing held on the application, or within 45 days after the recommended order is submitted to the agency and the parties. Any application which is not approved within the time period is deemed approved, and subject to satisfactory completion of any required examination, the license must be issued. Each applicant is required to be given written notice, either personally or by mail, that the agency intends to, or has granted or denied the license application. The notice requirement is the same as that for an order under the act.

When a licensee has made an application for a license renewal that is timely and sufficient and the license does not automatically expire by statute, the license does not expire until it is finally acted upon by the agency. If the application is denied or the terms of the license are limited, the license does not expire until the last day for seeking review of the agency order or a later date fixed by court order.

Unless a licensee has had an opportunity to request a 120.57 proceeding, an agency must give the licensee reasonable notice of the facts or conduct which warrant the revocation, suspension, annulment, or withdrawal of any license by personal service or certified mail. If personal service or certified mail is unsuccessful, the agency must publish a notice for four consecutive weeks in a newspaper published in the county of the licensee's last known address.

If an agency finds that there is an immediate serious danger to the public health, safety, or welfare, it may suspend, restrict or limit a license if it shows in its order that it has complied with the emergency provisions of section 120.54(9), Florida Statutes. If this is done, a formal proceeding must be promptly instituted and acted upon.

A party who is adversely affected by final agency action is entitled to judicial review of the action under section 120.68, Florida Statutes. A preliminary, procedural, or intermediate action or ruling is immediately reviewable, if the review of the final agency decision would not provide an adequate remedy.

Except for matters that are subject to Supreme Court review as provided by law, proceedings for review under chapter 120, Florida Statutes, are initiated by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings are conducted according to the Florida Rules of Appellate Procedure.

The filing of a petition does not automatically stay the enforcement of an agency decision. If the agency decision suspends or revokes a license, then supersedeas must be granted as a matter of right under reasonable conditions. However, an agency may petition the court to find that the issuance of the supersedeas would constitute a probable danger to the health, safety, or welfare of the state. An agency may also grant a stay upon appropriate terms.

The court is required to remand the case for further agency action if it finds that the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or by failure to follow prescribed procedure. Failure to comply with section 120.53, Florida Statutes is presumed to be a material error in procedure.

If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it is required to:

(a) Set aside or modify the agency action, or
(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

If an agency's action depends on any fact found by the agency in a proceeding that meets the requirements of section 120.57, Florida Statutes, the court is prohibited from substituting its judgment for that of the agency on the weight of the evidence on any disputed finding of fact. The court is required to set aside the agency action or remand the case to the agency, if the agency action depends on any finding of fact not supported by competent substantial evidence. If the agency's action depends upon facts found at a fact-finding hearing ordered by the court, the court shall set aside, modify, or order agency action if the facts compel an action as a matter of law or it may remand the case back to the agency for further examination and action.

The court is required to remand the case to the agency if it finds that the agency in its exercise of discretion is:

(a) Outside the range of discretion delegated to the agency by law;
(b) Inconsistent with an agency rule;
(c) Inconsistent with an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or
(d) Otherwise in violation of a constitutional or statutory provision.

However, the court is not permitted to substitute its judgment for that of the agency on an issue of discretion.

Subsection (15) provides that a petition challenging an agency rule as an invalid exercise of delegated legislative authority may not be filed unless it is to review an order entered pursuant to a section 120.54(4) or section 120.56 proceeding, unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

The First District Court of Appeal has held that when appellate proceedings arise from the same underlying administrative proceeding and appeals from that proceeding are brought in two different District Courts of Appeal, the court lacks authority to transfer and consolidate the appellate proceedings in one district court. See Coscan Florida, Inc. v. Metropolitan Dade County, 567 So.2d 19 (Fla. 1st DCA 1990).

B. EFFECT OF PROPOSED CHANGES:

This bill enacts the recommendations of the Governor's Administrative Procedure Act Review Commission (hereafter the Governor's Commission) and the provisions of the 1995 CS/CS/SB 536 by the Committee on Rules & Calendar, the Committee on Governmental Reform and Oversight and Senator Williams, that the Governor did not find objectionable. The bill uses the "simplified" version of the Administrative Procedure Act which was recommended by the Governor's Commission as its base document. This revision of chapter 120, Florida Statutes, rearranges the provisions of the chapter for clarity and readability. The revision itself made no substantive changes to the provisions of the Administrative Procedure Act. As the commission noted in its report:

> The Commission recommends adoption of the simplified draft with the express understanding that it makes no substantive changes to the APA. The Commission also recommends that the simplified draft serve as the basis for future substantive changes that may be considered by the Legislature, including those identified in this report.

Added to this revision are the recommendations of the Governor's Commission and other provisions of CS/CS/SB 536.

Legislative Oversight
This bill addresses the commission's recommendation that the Legislature consider and identify agency rulemaking requirements in any legislation to be enacted by providing it is the intent of the Legislature to consider the impact of agency rulemaking required by any proposed legislation. It is the intent of the Legislature to determine whether the proposed legislation provides adequate and appropriate standards and guidelines to direct the agency's implementation of its provisions.

This bill amends section 11.60, Florida Statutes, to add specific requirements to the annual report that the Administrative Procedures Committee submits to the Legislature each year. The report will include the number of rule objections voted by the committee, the number of rule suspensions recommended by the committee, the number of administrative determinations filed on the invalidity of a proposed or existing rule, the number of petitions for judicial review filed on the invalidity of a proposed or existing rule, and the outcomes of such actions.

The provision authorizing the committee to have standing to seek administrative review of the validity or invalidity of any rule that has been objected to by a vote of the committee is deleted. The provision authorizing the committee to seek judicial review is retained. The ability to seek judicial review is only available if the rule has not been withdrawn, modified, repealed, or amended to meet the committee's objection. The committee has never utilized these provisions and it is doubtful that the Legislature would seek review with an administrative agency, the Division of Administrative Hearings, of a decision of one of its standing committees. The Governor and the agency head are given 60 days to consult with the committee in such a circumstance before the review is initiated.

The duties of the committee are expanded to require the committee to maintain a continuous review of the administrative rulemaking process and establish measurement criteria to evaluate whether the agencies are complying with the provisions concerning proper exercise of delegated authority. The committee is also charged with maintaining a systematic and continuous review of the statutes authorizing rulemaking and is required to make recommendations to the appropriate standing committees on any changes to agency rulemaking authority. The annual report is required to include a schedule for the review, a status of the review, and any recommendations provided to the standing committees during the preceding year.

Definitions

The definition of "Agency" under section 120.52(1), Florida Statutes, is amended to specify the districts included under the provisions of chapter 120. The Commission on Ethics and the Game and Fresh Water Fish Commission are included in the definition of agency when these entities are acting pursuant to authority granted by statute. Finally, the financing entities created by interlocal agreements between counties, cities, or a combination of cities and counties are exempt from the definition of agency. However, these entities are not exempt from the definition if one of the parties is otherwise an agency pursuant to this act; for example, if the interlocal agreement includes another entity specified in section 120.52, Florida Statutes.

The expressway authorities established in chapter 348, Florida Statutes, are excluded from the definition of agency. Due to a scrivener’s error in the engrossing of the amendments on the house floor, the provisions or an expressway authority pursuant to chapter 348 after “subsection” in the last line of paragraph (b) should have been stricken. The House Journal has been corrected to show the amendment as it was adopted by the House.

“Communications media technology” is deleted from the definitions section and included in the uniform rules provisions under section 120.54, Florida Statutes. The definition of “Order” is deleted and a definition for “Final order” is provided. The definition for “Final order” rearranges the definition of “Order” for clarity.

The definition of "Invalid exercise of delegated legislative authority" is expanded. A proposed rule or existing rule is an invalid exercise of delegated legislative authority if a rule is not supported by competent substantial evidence or if the rule imposes regulatory costs on a regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

The definition is further amended to provide that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule. A specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. This provision would prevent an agency from adopting a rule that is based only on its general rulemaking authority and not on a specific statute to be implemented as required by section 120.54(3)(a), Florida Statutes.

This section also provides that no agency shall have the authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. These two provisions would overrule the decisions that followed the rule established prior to the enactment of the section 120.52(8), Florida Statutes, that “rules and regulations would be upheld so long as they are reasonably related to the purpose of the enabling legislation and are not arbitrary or capricious.” General Telephone Co. of Florida v. Florida Public Service Commission, 446 So.2d 1063; Department of Labor and Employment Security, Division of Workers’ Compensation v. Bradley, 636 So.2d 802 (Fla. 1st DCA 1994); Florida Waterworks Ass’n v. Florida Public Service Com’n, 473 So.2d 237 (Fla. 1st DCA 1985); Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d 515 (Fla. 1st DCA 1984) Agrico Chemical Co. v. State, Department of Environmental Protection, 365 So.2d 759 (Fla. 1st DCA 1978); Florida Beverage Corp. v. Wynne, 306 So.2d 200 (Fla. 1st DCA 1975).

Further, this provision states that statutory language which grants rulemaking authority or which generally describes the powers and functions of an agency is to be construed to extend no further than the particular powers and duties conferred by that statute.

“Official reporter” is defined. The definition of “Order” is deleted because it is unnecessary with the addition of the definition of “Final order”. Similarly, the definition of “Proposed order” is also deleted. The definition of “Recommended order” is amended.

Hearing officers in the Division of Administrative Hearings are renamed Administrative Law Judges throughout the bill. The term presiding officer is used in the bill to denote situations where the hearing officer could be an administrative law judge or duly empowered agency hearing officer.

The definition of a “Rule” is amended to exclude the requirement that agencies adopt the description of the agency’s organization as a rule. Some specific exemptions from the definition of a rule were transferred to the exceptions section of the bill.

The terms "Small county" and "Small city" are defined as any county with an unincarcerated population of 75,000 or less and any municipality with an unincarcerated population of 10,000 or less respectively. The population is based on the most recent decennial census.

“Variance” is defined as:

> a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

"Waiver" is defined as:

> a decision by an agency not to apply all or part of a rule to a person who is subject to the rules. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

Meetings, Hearings, and Workshops

The general provisions for public meetings, hearings, and workshops have been consolidated into one new section 120.525, Florida Statutes.

Indexing

The provisions relating to indexing of rules and orders have been consolidated into section 120.53, Florida Statutes. Each agency still must conform to the requirements of this section, but do not have to adopt rules to implement the requirements. The requirement that agencies adopt rules for their organization, and rules of practice and procedure is eliminated. The agencies still must maintain the same material as required by current law. These materials are all subject to the public records law, chapter 119, Florida Statutes. The subject matter index required under this section will also include each final agency order from a summary hearing proceeding under section 120.574, Florida Statutes, and each final order from a mediation under section 120.573, Florida Statutes.

The Department of State provisions dealing with coordination of indexing have been consolidated into section 120.533, Florida Statutes.

General Legislative Intent

Section 9 of the bill reiterates the provisions included in the definition of "Invalid exercise of delegated legislative authority", under section 120.52(8), Florida Statutes. This section states that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule. A specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. This provision would prevent an agency from adopting a rule that is based only on its general rulemaking authority and not on a specific statute to be implemented as required by section 120.54(3)(a), Florida Statutes. This section also reiterates that no agency shall have the authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. As noted above, these two provisions would overrule the decisions that followed the rule established prior to the enactment of the section 120.52(8), Florida Statutes, that "rules and regulations would be upheld so long as they are reasonably related to the purpose of the enabling legislation and are not arbitrary or capricious." General Telephone Co. of Florida v. Florida Public Service Commission, 446 So.2d 1063; Department of Labor and Employment Security, Division of Workers' Compensation v. Bradley, 636 So.2d 802 (Fla. 1st DCA 1994);

Florida Waterworks Ass'n v. Florida Public Service Com'n, 473 So.2d 237 (Fla. 1st DCA 1985); Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d 515 (Fla. 1st DCA 1984) Agrico Chemical Co. v. State, Department of Environmental Protection, 365 So.2d 759 (Fla. 1st DCA 1978); Florida Beverage Corp. v. Wynne, 306 So.2d 200 (Fla. 1st DCA 1975).

It also reiterates that any statutory language which grants rulemaking authority or which generally describes the powers and functions of an agency is to be construed to extend no further than the particular powers and duties conferred by that statute.

The agencies are required, by October 1, 1997, to provide the Administrative Procedures Committee with a list of rules that were adopted before July 1, 1996 that exceed the rulemaking authority granted in this section. If only a portion of a rule exceeds the authority of this section , the agencies are required to identify the language that exceeded the authority granted by this section. The Administrative Procedures Committee is required to compile the list and provide the cumulative listing of these rules to the President of the Senate and the Speaker of the House. The Legislature is required to consider, at the 1998 regular session, whether specific legislation authorizing the identified rules should be enacted. This section requires agencies to initiate proceedings to repeal the listed rules by January 1,1999. The Administrative Procedures Committee is also required to submit a report to the Legislature, by February 1, 1999, identifying those rules that have not had repeal proceedings initiated. Any substantially affected person or the Administrative Procedures Committee is authorized to petition an agency, after July 1, 1999, to repeal any rule because it exceeds the rulemaking authority permitted by this section. An agency shall initiate rulemaking to address the petition no later than 30 days, if headed by an individual, or 45 days if headed by a collegial body, or the agency must deny the petition in writing stating its reasons for denial.

All rules filed with the Department of State after October 1, 1996, are required to be based on rulemaking authority no broader than that permitted by this section. A rule adopted before October 1, 1996, cannot be challenged on the grounds that it exceeds the rulemaking authority permitted by this section before July 1, 1999. This section does not prevent rule challenges under other provisions of chapter 120 nor does this section affect the legal status of rules otherwise determined to be invalid.

Rulemaking

The provisions dealing with rulemaking procedures have been consolidated into section 120.54, Florida Statutes. The provisions of section 120.535, Florida Statutes, providing that each agency statement defined as a rule by section 120.52, Florida Statutes, must be adopted as a rule as soon as feasible and practicable, has been incorporated into this section. The rule challenge provisions of section 120.535, Florida Statutes, have been transferred to section 120.56, Florida Statutes. Section 120.535, Florida Statutes, has been repealed.

The bill provides that no statutory provision shall be delayed in its implementation, unless the statute prohibits the application of the statute until rules are adopted.

Agencies are required to adopt the least costly regulatory alternative that substantially accomplishes the statutory objective and is allowed by law.

Agencies are required to provide notice of development of proposed rules by publishing the notice in the Florida Administrative Weekly before providing notice of adopting a rule

under section 120.54(3), Florida Statutes. The bill continues the requirement that an agency is required to hold a public workshop for rule development if requested in writing by any affected person, unless the agency head states in writing why a workshop is not necessary. The failure to provide an explanation, when required, may be considered a material error in procedure pursuant to section 120.56(1)(c). If a workshop is held, the agency is required to have personnel available to answer questions and respond to comments about the rule proposal. The agency is authorized to have the workshop facilitated or mediated by a neutral third person or to employ any other type of dispute resolution alternative that is appropriate for the rule development process. This provision is intended to give the citizens early notification of proposed rules and an opportunity to get involved and work with the agency prior to the notice of rule adoption.

The bill authorizes the use of negotiated rulemaking in developing or adopting rules. This procedure has been helpful at the federal level when complex rules are being drafted or when strong opposition to the rules is anticipated. Negotiated rulemaking can be utilized at any time or not at all -- at the agencies' discretion. An agency is encouraged to consider the following when evaluating the use of negotiated rulemaking: whether a balanced committee of interested persons can be assembled to negotiate in good faith, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule.

The Administrative Conference of the United States has endorsed the use of negotiated rulemaking at the federal level. The forward to its source book states:

> The cost of the rulemaking process, in terms of dollars spent, conflict, and delay, is widely recognized as a major impediment to efficient and effective regulation. . . . Several years ago, the Administrative Conference recognized that public participation in rulemaking is essential, . . . Specifically, the Conference suggested that by bringing interested parties together in a cooperative setting at the front end of the rulemaking process, much of the litigation that presently occurs at the conclusion of a rulemaking would be obviated. This concept of *negotiated rulemaking* gives the people who have real interests at stake in a particular rule the opportunity to work toward finding solutions to shared problems. [Negotiated rulemaking] has the capacity to reduce the likelihood of litigation, to produce faster and less costly rulemaking -- and to create objectively better rules.

If an agency chooses to use negotiated rulemaking, it is required to publish a notice of the rulemaking in the Florida Administrative Weekly which includes a listing of the representative groups invited to participate in the process. Any person who believes that their interests would not be adequately represented could apply to participate in the group within 30 days of the notice. The makeup of the negotiating committee is within the discretion of the agency. The meetings of the negotiating committee are open to the public and a neutral facilitator or mediator is required to chair the meetings. There is no requirement that this person must be a paid facilitator or mediator, a volunteer could be used.

In addition to the requirements of current law, the notice of adoption of proposed rules must include a statement that any person who wishes to provide the agency with information regarding the statement of regulatory costs or to provide a proposal for a less costly regulatory alternative must do so in writing within 21 days of the publication of the notice. The economic impact statement is changed to a statement of regulatory costs.

The bill provides that any agency adopting, amending, or repealing any rule must consider the impact of the rule on small counties and small cities in addition to small businesses currently required by law. This provision continues the requirement that agencies consider the impact and, if possible, must "tier" the rules to reduce the impact on small businesses and includes small counties and small cities in that requirement. It also continues to allow an agency to define a small business, and allows an agency to define a small city, and a small county to include more persons and population than is defined in section 120.52, Florida Statutes, if it is necessary to adapt a rule to meet the needs and problems of small businesses, small cities, and small counties. The bill continues the methods for reducing the impact of proposed rules on small businesses and includes small counties, small cities, or any combination of these entities in these provisions.

Currently, a rule is adopted upon its filing with the Department of State. This bill requires an agency to certify that all statutory rulemaking requirements have been met upon filing a rule with the department. The Administrative Procedures Committee is also required to certify that the agency has responded in writing to its inquiries. The Department of State is required to reject all rules that are not certified as meeting these requirements.

The Administration Commission has promulgated model rules of procedure in Chapter 28, Florida Administrative Code. Under the current section 120.54(10), Florida Statutes, agencies may adopt specific rules "covering the subject matter contained in the model rules applicable to that agency." This provision allows agencies to promulgate their own rules of procedure in addition to the model rules. As the Florida Administrative Practice Manual of The Florida Bar notes: "Reference always should be made to the rules of the particular agency involved , as well as to the Model Rules of Procedure, Fla. Admin. Code, Chapters 28-1 to 28-8." In an effort to consolidate the procedural rules in one chapter, subsection (5) provides that the Administration Commission must promulgate uniform rules of procedure by July 1, 1997, and that agencies must comply with the uniform rules by July 1, 1998. The Administration Commission may grant exceptions to the uniform rules; agencies may receive an exception by filing a petition for an exception with the commission. The commission is authorized to approve exceptions to the extent necessary to implement other statutes, to conform to any requirement for the receipt of federal funds or permit tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the commission.

The bill also requires that in all rulemaking proceedings an agency must compile a rulemaking record which the agency is required to retain as long as the rule is in effect. The record must include: (1) all notices given for the proposed rule; (2) the SERC; (3) a written summary of hearings on the proposed rule; (4) written comments and responses to written comments; (5) all notices and findings for emergency rules: (6) all materials filed by an agency with the JAPC; (7) all materials filed with the Department of State; and (8) all written inquiries from standing committees of the Legislature concerning the rule.

Regulatory Costs

A new section is created dealing with the fiscal impact of rules. The Governor's Commission recommended that the "Economic Impact Statement" provided in current law be replaced with a simpler and more meaningful "Statement of Estimated Regulatory Costs." A new section 120.541, Florida Statutes, provides for a statement of estimated regulatory costs. It provides that any substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative. The person

must submit the proposal within 21 days of the notice of adoption, amendment or repeal of a rule. The proposal may include the alternative of not adopting a rule, but it must include an explanation of how the lower costs and objectives of the law will be achieved by not adopting any rule.

When a lower cost regulatory alternative is presented to an agency, the agency must prepare a statement of estimated regulatory costs and either adopt the alternative or give its reasons for rejecting the alternative in favor of the proposed rule. Failure of the agency to prepare or revise the statement of estimated regulatory costs is a material failure to follow the applicable rulemaking procedures or requirements provided in chapter 120, Florida Statutes. The agency must provide the statement to the person submitting the alternative and to the public prior to filing the rule for adoption.

A rule may not be declared invalid because it imposes regulatory costs that could be reduced by the adoption of less costly alternatives. In addition, a rule may not be declared invalid based upon a challenge to the agency's statement of estimated regulatory costs unless: the issue is raised within one year of the effective date of the rule; the substantial interests of person challenging the agency's rejection of the lower cost alternative is materially affected; and the agency failed to prepare or revise the statement as required, or the challenge is to the agency's rejection of the lower cost alternative.

The statement of estimated regulatory costs must include:

a) A good faith estimate of the number of persons or entities likely to be required to comply with the rule, along with a general description of the types of individuals the rule will likely affect.
b) A good faith estimate of the cost to an agency and other state and local government entities for implementing and enforcing the rule and any anticipated effect on state or local revenues.
c) A good faith estimate of the "transactional costs" likely to be incurred by the regulated public and local government. Transactional costs are direct costs on a regulated person including filing fees, cost of licensing, the cost of equipment, operating costs, and the cost of monitoring and reporting.
d) An analysis of the impact on small businesses, small counties and small cities.
e) Any additional information that the agency determines to be useful.
f) A description of any good faith written proposal submitted by a regulated person and a statement adopting the proposal or a statement of the reasons for rejecting the proposal.

Variances and Waivers

The bill creates section 120.542, Florida Statutes, to provide for variances and waivers to agency rules. The Governor's Commission recommended that these provisions be enacted and found that the rigid adherence to rules can sometimes result in unreasonable, unfair, and unintended results. This section authorizes agencies to grant variances and waivers to their rules, but does not authorize the agencies to grant variances or waivers to statutes. This section compliments any existing variance and waiver provisions enacted in other statutes.

A variance or waiver shall be granted when the person subject to the rule demonstrates that the purpose of the rule being implemented will be or has been achieved by other means and the application of the rule would create a "substantial hardship" or would violate "principles of fairness." Substantial hardship means a demonstrated economic,

technological, legal, or other type of hardship to the person requesting the variance or waiver. Principles of fairness are violated when the literal application of a rule affects a person significantly differently than it affects other similarly situated persons who are subject to the rule. The Administration Commission is required to adopt uniform rules for granting and denying petitions for variances and waivers. The rules may include procedures for granting or denying emergency and temporary variances and waivers.

Agencies are required to tell persons about the remedies available under this section and must provide persons who inquire about possible relief with copies of this section, the uniform rules, and, if requested, a copy of the underlying statute.

The petition requesting a variance or waiver must specify: the rule from which a variance or waiver is requested, the type of action requested, the specific facts justifying a variance or waiver, and the reason why the variance or waiver would serve the purposes of the implemented statute. The agency must notice the petition in the Florida Administrative Weekly within 15 days of receipt. The petition must be granted or denied within 90 days of receipt. If it is not granted or denied during that time, it is deemed approved. The order granting the variance or waiver must contain a statement of facts and reasons justifying the decision and must be supported by substantial competent evidence. The decision can be challenged under sections 120.569 and 120.57, Florida Statutes. Such a proceeding is limited to the agency action on the request for a variance or waiver, however, the proceeding may be consolidated with any other proceeding under this chapter. Each agency must maintain a record of the type and disposition of each petition.

Agencies are to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on October 1 of each year listing the number of petitions filed requesting variances and waivers, and the disposition of each petition. Temporary or emergency variances and waivers are to be identified separately in the report.

Administrative Procedures Committee

Section 120.545, Florida Statutes, is amended to allow the Administrative Procedures Committee to examine any rule to determine whether the rule imposes regulatory costs upon a regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives. This provision is in addition to the other provisions in section 120.545, Florida Statutes. The reference to Economic Impact Statements is deleted.

The bill adds a new subsection (10) to section 120.545, Florida Statutes, to provide a limited rule suspension procedure. If the committee objects to a proposed or existing rule, and the agency fails to initiate action to meet the objection, within 60 days after the objection, or fails to proceed in good faith to complete such action, the committee is authorized to recommend to the Speaker of the House of Representatives and the President of the Senate that legislation be introduced to modify or suspend the adoption of the proposed rule, or to amend or repeal all or part of the existing rule. If the committee votes to recommend legislation to modify or suspend the adoption of a rule, or to amend or repeal an existing rule, the committee must notify the agency within 5 days of its decision. The committee can request an agency to temporarily suspend an existing rule or suspend the adoption of a proposed rule pending consideration of proposed legislation during the next regular Legislative session.

Within 30 days of the notification of committee action, if the agency is headed by an individual, or within 45 days if the agency is headed by a collegial body, the agency is required to either temporally suspend the rule or the adoption of a proposed rule or notify the committee of its refusal to do so.

If the agency elects to temporarily suspend the rule or suspend the adoption of the proposed rule, it must give notice to that effect in the Florida Administrative Weekly. The rule or rule adoption process is suspended upon publication of the notice. The agency may not base any action on the rules that are suspended prior to the expiration of the suspension. Any administrative determination or judicial review of the rule can be continued as provided by law. Failure of the agency to respond to the committee notification within the time limits constitutes a refusal to suspend the rule or proposed rule.

If a bill to suspend the adoption of a proposed rule is enacted, the rule is suspended until specific legislative authority for the proposed rule has been enacted. If the bill does not become law, any temporary suspension expires. If a bill to modify a proposed rule or amend an existing rule becomes a law, the suspension expires upon publishing the notice of such action in the Florida Administrative Weekly. If a bill to repeal a rule is enacted, the suspension remains in effect until the notification of repeal is published. The Department of State is required to publish in the next available issue of the Florida Administrative Weekly, the final legislative action taken. The department is required to conform any rule suspended or modified by the Legislature in the Florida Administrative Code and is also required to publish a reference to the law as a history note to the rule.

Department of State

Section 120.55, Florida Statutes, is amended to provide that the Department of State retains the copyright to the Florida Administrative Code and to increase the department's balance in its revolving trust fund from $100,000 to $300,000. The department is also required to publish the address and telephone number of the executive offices of each agency and the manner by which the agency indexes its rules at the beginning of each section of the code dealing with that agency.

Challenges to Rules

The challenges to proposed rules, existing rules and agency statements that are defined as rules are consolidated into section 120.56, Florida Statutes. This section includes provisions from sections 120.535, 120.54, and 120.56, Florida Statutes.

This section is amended to provide that the failure of an agency to follow applicable rulemaking procedures or requirements would be presumed to be material. 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. The bill allows a continuance of a rule challenge proceeding for good cause or agreement of the parties.

The Governor's Commission recommended that the provisions of section 120.535, Florida Statutes, be retained and they are incorporated into sections 120.54 and 120.56, Florida Statutes. The commission noted that rules help provide certainty to the regulated community and help inform the public of an agency's policies.

The bill also provides that, in addition to the current time limit of 21 days after the notice is filed, a proposed rule may be challenged within 10 days of the final hearing on the

proposed rule, within 20 days after the preparation of the statement of estimated regulatory costs, or within 20 days after publication of the notice of change required in section 120.54. Any person who is substantially affected by a change in a proposed rule will be able to seek a determination of the validity of the change within the 20 day period. If a person is not affected by the proposed rule, but then is affected by the change, that person can challenge the entire rule or portion thereof within that period.

Many times, persons affected by a proposed rule will file a challenge to the rule, even when they believe the issues will be resolved, in order to preserve their right to challenge. This practice is costly both to the state and the private party. By allowing extra time to challenge a proposed rule, a party will be able to determine the content of the proposed rule and avoid a challenge if the issues have been resolved with the agency. The current provisions, allowing a rule challenge within 21 days of the notice of adoption, remain unchanged.

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 burden then shifts to the agency to prove that the proposed rule in not an invalid exercise of delegated legislative authority as to those objections raised in the petition.

No rule may be filed for adoption until 28 days after the rule has been noticed for adoption, 21 days after the notice of any nontechnical changes to the rule, 14 days after the public hearing on the rule, 21 days after the preparation of a statement of estimated regulatory costs if prepared, or until the administrative law judge has rendered a decision.

A proposed rule is not presumed to be either valid or invalid under the provisions of this section, however an existing rule continues to be presumed valid.

If a person seeks an administrative determination that an agency statement violates the provisions of section 120.54(1)(a), Florida Statutes, and the petitioner proves the allegations of the petition, the agency then has the burden of proving that rulemaking is not feasible or practicable under section 120.54(1)(a), Florida Statutes.

If the administrative law judge enters a final order that an agency statement violates section 120.54(1)(a), Florida Statutes, the agency must immediately discontinue all reliance upon the statement or substantially similar statement. If prior to the final order, the agency proceeds expeditiously and in good faith to adopt the statement as a rule, then the agency can rely on that statement or substantially similar statement if the statement meets the requirements of section 120.57(1)(e), Florida Statutes. If the agency does not adopt rules which address the statement within 180 days after publishing the proposed rules, the bill continues the existing law that a presumption is created that the agency has not acted expeditiously and in good faith.

Declaratory Statements

The provisions concerning declaratory statements are revised for clarity. The bill provides in section 120.565, Florida Statutes, that an agency shall issue a declaratory statement or deny the petition for a declaratory statement within 60 days of the filing of the petition.

Decisions Affecting Substantial Interest and Hearings

The hearing provisions are also combined in two sections. Common procedures from sections 120.57, 120.58 and 120.59, Florida Statutes, are combined into a new section 120.569, Florida Statutes. Subsections 120.57(1) and 120.57(2), Florida Statutes, remain, but are limited to special provisions relating to formal hearings and informal hearings.

The provisions of the current section 120.57(1)(b)15., Florida Statutes, have been changed and codified at section 120.57(1)(e), Florida Statutes. This paragraph now provides that an unadopted rule that affects the substantial interests of a party is subject to de novo review by an administrative law judge pursuant to section 120.57, Florida Statutes.

It provides that the agency may not reject the administrative law judge's determination regarding the unadopted rule, unless the agency reviews the entire record and states with particularity in the order that the conclusions are clearly erroneous or do not comply with the essential requirements of law. If the court, upon appellate review, finds that the agency's rejection of the administrative law judge's conclusions do not comply with these provisions, the agency action shall be set aside and reasonable cost and reasonable attorney fees shall be awarded for the initial and appellate proceedings.

Also included in section 120.57, Florida Statutes, are the procedures for bid disputes. Both the Governor's Commission and the Administrative Law Section of The Florida Bar recommended to change the time limits for bid disputes. The bill provides that the hearing must be commenced within 30 days after receipt of the formal written protest and the administrative law judge must enter a recommended order within 30 days after the hearing or receipt of the transcript. Each party is allowed 10 days to submit exceptions to the recommended order and the agency must enter a final order within 30 days of receipt of the recommended order. The provisions of this paragraph may be waived by the parties.

Further, the commission and the section recommended that the standards established in Department of Transportation v. Groves-Watkins Constructors, 530 So.2d 912 (Fla. 1988) be changed. Section 120.57(3)(f), Florida Statutes, provides that no submissions made after the bid or proposal opening which amends or supplements the bid or proposal shall be considered. It provides that the burden of proof is on the party protesting the agency action. It overrules the provisions of Groves-Watkins by providing that in a competitive-procurement protest, other than a rejection of all of the bids, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, rule, policies, or bid or proposal specifications. It provides that the standard of proof shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. The Groves-Watkins standard is maintained when an agency has rejected all bids, in this case the standard is whether the agency's action is illegal, arbitrary, dishonest, or fraudulent.

Mediation

In an effort to help reduce the time and expense of the administrative process, a new section 120.573, Florida Statutes, is created to authorize the use of mediation in administrative disputes. The bill provides that whenever an agency makes a decision that affects a person's substantial interests, the agency must indicate whether mediation is available to resolve any disputes arising from the decision. If all parties agree to mediation, then the time period for electing a formal hearing is tolled to allow the parties

to mediate the dispute. The mediation is required to be concluded within 60 days unless the parties agree otherwise. This prevents any of the parties from delaying the proceedings unnecessarily. The mediation agreement must address: selection of the mediator, cost allocation, confidentiality, and any other provisions agreed to by the parties. If the mediation is successful, the agency will enter a final order incorporating the agreement. If the mediation is not successful, then the parties may proceed to a hearing under section 120.569 and 120.57, Florida Statutes.

Summary Hearings

The bill also creates a simplified summary hearing process for administrative disputes. The Division of Administrative Hearings is required, within five days of receipt of a petition or request for a hearing, to serve and issue on all original parties an initial order that assigns the case, provides information on practice before the division, and advises the parties on the availability of a summary hearing. Any party may file a motion for summary hearing within 15 days of the division's order. If all parties agree, then the proceeding will be conducted within 30 days of the agreement. If no motion is filed, the case proceeds under section 120.57, Florida Statutes. This section limits the number of motions, discovery, and requires a record of the proceedings. The hearing officer's decision would be rendered within 30 days of the final hearing or filing of the transcript, whichever is later, and the hearing officer's order is the final agency action. The bill also provides that the division maintain a register of the total number of formal proceedings filed with the division.

Attorney Fees

Most of the attorney fees provisions have been consolidated into a new section 120.595, Florida Statutes. The current provisions dealing with improper purpose have been amended to provide that attorney fees and costs may be awarded to a prevailing party when a hearing officer determines that any party participated in a proceeding for an improper purpose as defined in this section.

For challenges to proposed and existing agency rules, the Governor's Commission recommended that if a proposed rule, existing rule, or portion of a rule is declared invalid, the administrative law judge shall award reasonable costs and reasonable attorney's fees to the petitioner, unless the agency demonstrates that its actions were substantially justified or that special circumstances exist that would make the award unjust. "Substantially justified" is defined the same as in section 57.111, Florida Statutes, as an action that has "a reasonable basis in law and fact at the time the actions were taken by the agency." An agency may be awarded attorney fees and costs if a party has participated in the proceeding for an improper purpose. An "improper purpose" is defined as "participation in a proceeding primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of licensing or securing the approval of an activity." An award of attorney fees under these provisions shall not exceed $15,000. These provisions are included in subsections (2) and (3) of section 120.595, Florida Statutes.

The Governor's Commission also recommended that if an administrative law judge enters a final order that all or part of an agency statement violates section 120.54(1)(a), Florida Statutes, then the petitioner is entitled to an award of reasonable costs and attorney fees. This provision enhances the current attorney fee provisions in section 120.535, Florida Statutes.

Licensing

Section 120.60, Florida Statutes, is revised to clarify and delete obsolete language. Provisions relating to the time for approval or denial of a license were inadvertently changed. The current law was reinstated by CS/HB 751.

Subsection (7) provides that an agency may not include, as a condition of approval of any license, any provision that is based upon a statement, policy, or guideline of another agency, unless it is within the expertise of that agency. The licensing agency must provide a licensee with an opportunity to challenge the provision. If the licensing agency bases the condition of approval or denial of a license on the statement, policy, or guideline of another agency, that other agency may be joined by a party to an administrative proceeding determining the validity of the provision.

Administrative Law Judges

Section 120.65, Florida Statutes, is amended to change the name of the hearing officers in the Division of Administrative Hearings to administrative law judges. The cross references in chapter 120 have been changed to conform with these provisions. This change was recommended by the Governor's Commission and the Administrative Law Section of The Florida Bar.

Judicial Review

The bill revises section 120.68, Florida Statutes. In addition, the section is amended to provide for consolidation of review proceedings if they are filed in more than one district court of appeal. The court may transfer the proceedings upon its own motion, upon motion of a party to one of the appellate proceedings or by stipulation of the parties.

Section 120.68(10), Florida Statutes, now provides that:

> If an administrative law judge's final order depends on any fact found by the administrative law judge, the court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside the final order of the administrative law judge or remand the case to the administrative law judge, if it finds that the final order depends on any finding of fact that is not supported by competent substantial evidence in the record of the proceeding.

This new provision tracks the language of the former section 120.68(10), Florida Statutes, [codified at section 120.68(7)(b), Florida Statutes] for administrative law judge final orders.

The court, in Adam Smith v. State Dept. of Environmental Regulation, 553 So.2d 1260, 1273 (1st DCA 1989) held that:

> when reviewing a hearing officer's determination arising out of either a Section 120.54(4) or 120.56 quasi-judicial rule challenge proceeding, the appellate court's standard of review is whether the hearing officer's findings are supported by competent substantial evidence.

The court reasoned that proceedings under "[s]ections 120.54(4) and 120.56 are conducted in the same manner as adjudicatory hearings under [s]ection 120.57."

Because the proceedings are adjudicatory they are controlled by the standard set forth in section 120.68(10), Florida Statutes [codified as section 120.68(7)(b), Florida Statutes]. The court noted that "contrary to DER's assertions, it is the hearing officer's findings which are being reviewed by this court under the above standard [section 120.68(10), Florida Statutes] -- not the agency's rules."

In this case the court reviewed the procedural aspects of the Administrative Procedure Act and noted that the phrase "invalid exercise of delegated legislative authority" as used in the act was now statutorily defined in section 120.52(8), Florida Statutes.

When the new section 120.68(10), Florida Statutes, is read "in para material" with the prior enactment of section 120.68(15), Florida Statutes [codified as section 120.68(9), Florida Statutes], the provisions of section 9, and the amendments to the definition of "invalid exercise of delegated legislative authority", it is clear that it is the hearing officer's order that is being reviewed based on the competent substantial evidence test using the criteria found in section 120.52(8), Florida Statutes.

The First District Court of Appeal affirmed in Ballie v. Department of Natural Resources, Div. of Beaches and Shores, 632 So.2d 1114 (Fla 1st DCA 1994), that pursuant to section 120.68(15), Florida Statutes, [codified as 120.68(9), Florida Statutes] direct appeals from rulemaking are no longer authorized by statute.

Review under section 120.68(7)(b), Florida Statutes, [formerly section 120.68(10), Florida Statutes] is still available for proceedings conducted pursuant to sections 120.569 and 120.57, Florida Statutes.

Other Provisions

Section 120.62 dealing with agency investigations, and section 120.66 dealing with ex parte communications are reworded for clarity and to delete obsolete language. Section 120.71, Florida Statutes, is renumbered as section 120.665, Florida Statutes. The Legislative Intent provisions for the prior Administrative Procedure Act amendments have been repealed and a new intent section provided.

Exceptions

Exceptions to chapter 120, Florida Statutes, have been moved to sections 120.80 and 120.81, Florida Statutes. Provisions are added to section 120.80. Florida Statutes, to allow the Public Service Commission to implement the Telecommunications Act of 1996, Pub. L. No. 104-104. It provides the commission may employ procedures and appellate jurisdiction consistent with that act.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that it is the intent of the legislature to consider agency rulemaking authority in proposed legislation.

Section 2. Amends section 11.60, Florida Statutes, to modify the responsibilities of the Administrative Procedures Committee.

Section 3. Amends section 120.52, Florida Statutes, to provide for additional definitions.

Section 4. Creates section 120.525, Florida Statutes, to consolidate the public meeting, hearings, and workshop provisions into one section. Transfers provisions from sections 120.53, and 120.54, Florida Statutes.

Section 5. Revises section 120.53, Florida Statutes, to consolidate the indexing requirements for orders and rules. Transfers provisions from sections 120.54 and 120.59, Florida Statutes.

Section 6. Repeals section 120.532, Florida Statutes. Provisions are transferred to section 120.53, Florida Statutes.

Section 7. Revises section 120.533, Florida Statutes, to provide for coordination of indexing by the Department of State.

Section 8. Repeals section 120.535, Florida Statutes. The provisions of this section are transferred to sections 120.54, 120.56, and 120.595, Florida Statutes.

Section 9. Provides that agencies may adopt or apply only rules that implement the powers and duties granted by the enabling statute. Provides for review procedures.

Section 10. Revises the rulemaking provisions of section 120.54, Florida Statutes. Transfers provisions from sections 120.53, 120.535, and 120.543, Florida Statutes. Provisions are transferred to sections 120.80 and 120.81, Florida Statutes.

Section 11. Creates section 120.541, Florida Statutes, to provide for a statement of estimated regulatory costs for rulemaking.

Section 12. Creates section 120.542, Florida Statutes, to provide for waiver and variances from agency rules.

Section 13. Repeals section 120.543, Florida Statutes. These provisions are transferred to section 120.54, Florida Statutes.

Section 14. Amends section 120.545, Florida Statutes, to expand the duties of the Administrative Procedures Committee, including a suspension of rules provision.

Section 15. Amends section 120.55, Florida Statutes, dealing with the Department of State and publication of the Administrative Code.
Section 16. Revises section 120.56, Florida Statutes, relating to rule challenges. Transfers provisions from sections 120.535 and 120.54. Transfers provisions to 120.80, Florida Statutes.

Section 17. Revises section 120.565, Florida Statutes, relating to declaratory statements.

Section 18. Creates section 120.569, Florida Statutes, to consolidate common hearing procedures from sections 120.57, 120.58, and 120.59.

Section 19. Revises section 120.57, Florida Statutes. Transfers provisions from sections 120.53, 120.58 and 120.59, Florida Statutes. Provisions are transferred to sections 120.80 and 120.81, Florida Statutes.

Section 20. Creates section 120.573, Florida Statutes, to provide for mediation of disputes under the act.

Section 21. Creates section 120.574, Florida Statutes, to provide for a summary hearing process.

Section 22. Repeals section 120.575, Florida Statutes. This section is transferred to section 120.80, Florida Statutes.

Section 23. Repeals section 120.58, Florida Statutes. These provisions are transferred to sections 120.569 and 120.57, Florida Statutes.

Section 24. Repeals section 120.59, Florida Statutes. These provisions are transferred to sections 120.569, 120.57, and 120. 595, Florida Statutes.

Section 25. Creates section 120.595, Florida Statutes, relating to attorney fees and costs. Provisions are transferred from sections 120.535, 120.57, and 120.59, Florida Statutes.

Section 26. Revises section 120.60, Florida Statutes, relating to licensing. Provisions transferred to section 120.80, Florida Statutes.

Section 27. Repeals section 120.61, Florida Statutes. These provisions are transferred to section 120.57, Florida Statutes.

Section 28. Amends section 120.62, Florida Statutes, relating to agency investigations.

Section 29. Corrects a cross reference.

Section 30. Repeals section 120.633, Florida Statutes. These provisions are transferred to section 120.80, Florida Statutes.

Section 31. Amends section 120.65, Florida Statutes, changes the name of hearing officers to administrative law judges and deletes obsolete language. Transfers provisions from section 120.70, Florida Statutes.

Section 32. Corrects cross references in section 120.655, Florida Statutes.

Section 33. Corrects cross references and clarifies language in section 120.66, Florida Statutes.

Section 34. Renumbers section 120.71, Florida Statutes, as section 120.665, Florida Statutes and clarifies language.

Section 35. Revises and amends section 120.68, Florida Statutes, to provide for consolidation of cases and for review and remand of an administrative law judge's final order.

Section 36. Corrects a cross reference in section 120.69, Florida Statutes.

Section 37. Repeals section 120.70, Florida Statutes. These provisions are transferred to section 120.65, Florida Statutes.

Section 38. Revises section 120.72, Florida Statutes, relating to legislative intent.

Section 39. Repeals section 120.721, Florida Statutes, relating to the effect of chapter 75-22, Laws of Florida, on rules.

Section 40. Repeals section 120.722, Florida Statutes, relating to legislative intent of chapter 78-95, Laws of Florida.

Section 41. Creates section 120.80, Florida Statutes, relating to agency exceptions. Provisions are transferred from various sections of chapter 120, Florida Statutes.

Section 42. Creates section 120.81, Florida Statutes, relating to general exceptions. Provisions are transferred from various sections of chapter 120, Florida Statutes.

Section 43. Provides direction to Statutory Revision to conform the statutes to changes made by this act if no conforming bill passes. CS/HB 751 passed which conformed the statutes to the changes made in this act.

Section 44. Provides an effective date of October 1, 1996.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

If attorney fees and costs are awarded under this bill, it will add an indeterminate cost to the rulemaking process. The new attorney fee provisions are capped at $15,000. The limitation of rulemaking authority and requirement to repeal those rules that exceed this authority may also adds costs for staff time and other costs associated with this requirement.

2. Recurring Effects:

The bill may increase the costs associated with rule promulgation by an indeterminate amount. Additional costs may result from requirements for publication of additional notices required under this act. There may also be additional costs associated with proper maintenance and retention of rulemaking records. The judicial system estimates that the bill will have an impact on the appellate court system.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Reducing the impact of rules on small counties and small cities may have some positive fiscal impact by reducing the cost of complying with certain rules.

2. Recurring Effects:

Reducing the impact of rules on small counties and small cities may have some positive fiscal impact by reducing the cost of complying with certain rules.

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3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Parties successfully challenging proposed and existing rules under this bill and specific appellees may benefit with the award of attorney fees and costs. The private sector may also benefit by being able to submit lower cost regulatory alternatives to the agencies.

3. Effects on Competition, Private Enterprise and Employment Markets:

The markets in small counties and small cities may enjoy reduced costs of regulations that are “tiered” under this act.

D. FISCAL COMMENTS:

The total costs for publication of all notices in the Florida Administrative Weekly is currently approximately $ 400,000 annually.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Section 120.60, Florida Statutes, as amended by this bill, chapter 96-159, Laws of Florida, was amended by CS/HB 751 to reinstate the current law regarding time frames for the approval or denial of license applications. Please see section 328 of that bill, chapter 96-410, Laws of Florida.

Bill History -- This bill was considered by the Senate Committee on Governmental Reform and Oversight on March 21, 1996 and reported favorably as a committee substitute that combined SB's 2290 and 2288. It was withdrawn from the Senate Committee on Ways and Means and the Senate Committee on Rules and Calendar on March 27, 1996. The bill was passed as amended by the Senate 38 to 0 on April 3, 1996. The House substituted CS/SB's 2290 and 2288 for the CS/HB 1179 and adopted amendments on April 17, 1996. Additional amendments were adopted by the House on April 18, 1996 and the bill was passed by the House 118 to 0. The Senate concurred in the House amendments and passed the bill as amended 39 to 0 on April 25, 1996. The bill was signed by the Governor on May 1, 1996.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The following amendments were adopted to the committee substitute on the Senate floor:

Amendment #1 -- struck the word "agency" on page 20, line 11;
Amendments #2 and #5 -- changed the population for small counties from 50,000 to 75,000;
Amendment #3 -- inserted the word "only" after "rule" on page 25, line 14;
Amendment #4 -- clarified that an agency may choose negotiated rulemaking;
Amendment #6 -- provided for uniform rules for conducting public meetings, hearings, and workshops;
Amendment #7 -- deleted the word "retroactively" on page 77, line 29;
Amendment #8 -- inserted the word "licensure" before "disciplinary" on page 79, line 11 to provided an exception to using the preponderance of the evidence standard in licensure disciplinary cases;
Amendment #9 -- deleted the clause "including findings of fact that form the basis for an agency statement";
Amendment #10 -- corrected "or" to "of";
Amendment #11 -- clarified that Public Employee Relations Commission hearings need not be conducted by a Division of Administrative Hearings administrative law judge;
Amendment #12 -- reinstated provisions concerning interim rate proceedings of the Public Service Commission in current law;
Amendment #13 -- deleted obsolete language dealing with the Water Management Districts; and
Amendment #14 -- provided for reviser's bill to conform statutes, if necessary.

The committee substitute was further amended on the House floor on second and third readings. The following amendments were adopted on second reading:

Amendments #1 and #2 -- conformed references from "model" to "uniform";
Amendment #3 -- deleted unnecessary language dealing with bid disputes; and
Amendment #4 -- corrected grammar "guidelines" to "guideline".

The following amendments were adopted on third reading:
Amendment #5 -- provided that it is the intent of the Legislature to consider the impact of any agency rulemaking required by proposed legislation and to determine if the legislation provides adequate standards and guidelines for the agency;

Amendment #6 -- clarified that the expressway authorities created pursuant to chapter 348, F.S., are not agencies for the purposes of this act; and
Amendment #7 -- provided an exception to the preponderance of the evidence standard for cases that are penal in nature.

VII. SIGNATURES:

COMMITTEE ON STREAMLINING GOVERNMENTAL REGULATIONS:

Prepared by:	Staff Director:
Patrick L. “Booter” Imhof	Jimmy O. Helms

FINAL ANALYSIS PREPARED BY COMMITTEE ON STREAMLINING GOVERNMENTAL REGULATIONS:

Prepared by:	Staff Director:
Patrick L. “Booter” Imhof	Jimmy O. Helms