

Chapter Law 79-299

House Bill No. 1653

An act relating to administrative procedures; amending s. 120.52(1) (c), (9) and (10), Florida Statutes, 1978 Supplement, redefining the terms “order” and “party” for the purposes of the Administrative Procedure Act; adding subsection (4) to s. 120.53, Florida Statutes, authorizing agencies to designate an official reporter to publish and index agency orders; amending s. 120.54(4) (c) and (11) (b), Florida Statutes, 1978 Supplement, authorizing agencies to proceed with all steps in the rulemaking process, except filing for adoption, while a petition for administrative determination is pending; increasing the time limit on the filing of rules; requiring agencies to certify that time limitations for filing rules have been complied with and that no administrative determination is pending and requiring the Department of State to reject rules upon which an administrative determination is pending or which are not within the prescribed time limitations; requiring that a statement of changes to a proposed rule be delivered to persons requesting such statement; setting a time for providing statements of changes; amending s. 120.55(1) (f) and (3) (a), Florida Statutes, 1978 Supplement, and adding a new paragraph (f) to subsection (1); requiring the Department of State to remove from the Florida Administrative Code rules the authority for which has been repealed and increasing the number of copies of the Florida Administrative Code and the Florida Administrative Weekly to be furnished to the Administrative Procedures Committee; amending s. 120.565, Florida Statutes, 1978 Supplement, providing that educational units shall give notice of petitions for declaratory statements and the disposition of those statements in the manner provided for noticing rules; amending s. 120.60(6), Florida Statutes, relating to the exemption of the Department of State, relating to the exemption of the division of Pari-mutuel Wagering from the hearing and notice requirements of the act; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) and subsections (9) and (10) of section 120.52, Florida Statutes, 1978 Supplement, are amended to read:

120.52 Definitions. --As used in this act:

(1) “Agency” means:

(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.

Neither the Industrial Relations Commission nor the judges of industrial claims shall, in the adjudication of workmen's compensation claims, be considered an agency or part of an agency for the purposes of this act.

(9) "Order" means 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. An agency decision shall be final when reduced to writing and filed with the person designated by the agency as clerk. The clerk shall indicate the date of filing on the order.

(10) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s. 944.02(5) shall not be considered parties for the purposes of obtaining proceedings under s. 120.54(16) or s. 120.57, nor shall parolees be considered parties for these purposes when the proceeding relates to the revocation of parole.

Section 2. Subsection (4) is added to section 120.53, Florida Statutes, to read:

120.53 Adoption of rules of procedure and public inspection.—

(2) Each agency shall make available for public inspection and copying, at no more than cost

(a) All rules formulated, adopted, or used by the agency in the discharge of its functions.

(b) All agency orders.

(c) A current subject-matter index, identifying for the public any rule or order issued or adopted after January 1, 1975.

All rules adopted pursuant to this act shall be indexed within 90 days. The Department of State shall by rule establish uniform indexing procedures.

(4) Each agency may comply with subsection (2) (b) and 20 (c) by designating by rule an official reporter which publishes and indexes by subject matter all the agency's orders rendered after a proceeding which affects substantial interests has been held.

Section 3. Paragraph (c) of subsection (4) and paragraph (b) of subsection (11) of section 120.54, Florida Statutes, 1978 Supplement, are amended to read:

120.54 Rulemaking adoption procedures. –

(4)

(c) Immediately upon receipt of the petition, the division shall forward copies of the petition to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director, if he determines that the petition complies with the above requirements, shall assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn. Within 30 days after conclusion of the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare the proposed rule wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall be withdrawn from the committee by the adopting agency and shall not be adopted. No rule shall be filed for adoption ~~adopted~~ until 21 days after the notice required by

subsection (1) or until the hearing officer has rendered his decision, as the case may be. However the agency may proceed with all other steps in the rulemaking process. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

(11)(a) The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule, a copy of the estimate of economic impact required by subsection (1), a statement of the extent to which the proposed rule establishes standards more restrictive than federal standards or a statement that the proposed rule on the same subject does not exist, and the notice required by subsection (1). After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefore with the committee or advise the committee that there are not changes. In addition, when any change is made in a proposed rule other than a technical change, the adopting agency shall provide a detailed statement of such changes by certified mail or actual delivery to any person who requests it in writing at the public hearing. The agency shall file the changes with the committee and provide the statement of changes to persons requesting it, at least 7 days prior to filing the rule for adoption. This paragraph shall not apply to Educational units, other tan units of the State University System, and to local units of government with jurisdiction in only one county or part thereof, shall not be required to make filings with the committee. This paragraph shall not apply to or ~~to~~ emergency rules adopted pursuant to subsection (9). However, agencies, other than those listed herein, adopting emergency rules shall file a copy of each emergency rule with the committee.

(b) If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with, the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required above, in the office of the agency head, and such rules shall be open to the public pursuant to s. 120.53(2). Filings shall be made not less than 21 days or more than 90 ~~45~~ days after the notice required by subsection (1), if no public hearing is held. If a public hearing is held, the adopting agency shall file within 21 days after receipt of all material authorized to be submitted at the hearing or after receipt of the transcript, if one is made, whichever is later. If a public hearing is held and no material is authorized to be submitted and no transcript is made, filings shall be made not less than 21 days or more than

90 45 days after the notice required in subsection (1). At the time a rule is filed, the agency shall certify that the time limitations prescribed by this subsection have been complied with and that there is no administrative determination pending on the rule. The department shall reject any rule not filed within the prescribed time limits or upon which an administrative determination is pending.

Section 4. Paragraphs (g) and (h) of subsection (1) of section 120.55, Florida Statutes, 1978 Supplement, are redesignated as paragraphs (h) and (i), respectively, paragraph (f) is amended and redesignated, and a new paragraph (f) is added to said subsection, and paragraph (a) of subsection (3) of said section is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(f) Remove from the code any rules the authority for which has been repealed.

(g) (f) Before making any change in any rules as provided in paragraphs (a), ~~(e)~~ or (f), obtain the advice and consent of the affected agency.

(3) (a) The Department of State shall furnish the Florida Administrative Code and the Florida Administrative Weekly, without charge and upon request, as follows:

1. One set to each federal and state court having jurisdiction over the residents of the state; each Florida senator, congressman, and state legislator; the Legislative Library; each state university library; the State Library; and each standing committee of the Senate and House of Representatives.

2. Two sets to each state department.

3. Three sets to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House.

4. Ten ~~Seven~~ sets to the committee.

Section 5. Section 120.565, Florida Statutes, 1978 Supplement, is amended to read:

120.565 Declaratory statement by agencies.--Each agency shall provide by rule the procedure for the filing and prompt disposition of petitions for declaratory statements. A declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances only. The agency shall give notice of each petition and its disposition in the Florida Administrative Weekly, except that educational units shall give notice in the same manner as provided for rules in s. 120.54(1) (a), and transmit copies of each petition and its disposition to the committee. Agency disposition of petitions shall be final agency action.

Section 6. Subsection (6) of s. 120.60, Florida Statutes, is amended to read:

120.60 Licensing.—

(6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction or limitation may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

Section 7. Subsection (3) of section 120.63, Florida Statutes, is transferred and renumbered as section 120.633, Florida Statutes.

Section 8. This act shall take effect July 1, 1979.

declaratory statements and the disposition of those statements in the manner provided for noticing rules.