

# CHAPTER 86-108

## House Bill No. 792

An act relating to the Administrative Procedure Act; amending s. 120.57, F.S.; prescribing requirements with respect to the signing of pleadings, motions, and other papers filed in certain proceedings under ch. 120, F.S.; providing for effect of a signature on such a paper; authorizing a hearing officer to impose an appropriate sanction for violation of the signing requirements, including ordering the violator to pay the other party's reasonable expenses, including attorney's fees; authorizes expedited review of certain permits issued pursuant to chapter 373, F.S.; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 120.57, Florida Statutes, is amended to read:

120.57 Decisions which affect substantial interests.--The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless such proceedings are exempt pursuant to subsection (5). Unless waived by all parties, subsection (1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) applies in all other cases.

(1) FORMAL PROCEEDINGS.--

(b) In any case to which this subsection is applicable, the following procedures apply:

1. A request for a hearing shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. In a preliminary hearing for the revocation of parole, no less than 7 days' notice shall be given. In a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. Except for any hearing before an unemployment compensation appeals referee, a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3. Except for any proceeding conducted as prescribed in s. 120.54(4) or s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall so notify the division within 10 days of receipt of the petition or request. When the Florida Land and Water Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days of receipt of the notice of appeal if the commission elects to request the assignment of a hearing officer. On the request of any agency, the division shall assign a hearing officer with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to the formal proceeding, except as a party litigant, as long as the division has jurisdiction over the formal proceeding. Any party may request the disqualification of the hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. All pleadings, motions, or other papers filed in the proceeding must be signed by a party, the party's attorney, or the party's qualified representative. The signature of a party, a party's attorney, or a party's qualified representative constitutes a certificate that he has read the pleading, motion, or other paper and that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the hearing officer, upon motion or his own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Section 2. Subsection (6) is added to section 120.57, Florida Statutes, to read:

120.57 Decisions which affect substantial interests.--

6 In cases where a conceptual review permit has been issued by a water management district, petitions challenging the issuance of a construction or operating permit implementing the conceptual review permit, upon a motion of a party, shall be subject to expedited review. Within fifteen (15) days of filing a motion for expedited review by the district or the applicant, the hearing officer shall, by order, establish a schedule for the proceedings, including discovery, which provides for a final hearing within sixty (60) days of the issuance of the order. Proposed recommended orders must be submitted to the hearing officer, if at all, within ten (10) days of the filing of the hearing transcript. Recommended orders shall be submitted to the district within thirty (30) days of the last day for the filing of the proposed recommended order. The district shall issue its final order within forty-five (45) days of the receipt of the recommended order. If the district grants the construction or operating permit, the

permittee may proceed unless judicial review of final agency action is sought pursuant to s.120.68 and a stay is applied for and issued.

Section 3. This act is not applicable with respect to any pleading, motion, or other paper filed before this act takes effect.

Section 4. This act shall take effect July 1, 1986, or upon becoming law, whichever occurs first.

Approved by the Governor June 13, 1986.

Filed in Office Secretary of State June 13, 1986.

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