CHAPTER 74-310

Committee Substitute for Senate Bill No. 892

AN ACT relating to administrative procedures; creating chapter 120, Florida Statutes, consisting of sections 120.50, 120.51, 120.52, 120;53, 120.54, 120.55, 120.56, 120.57, 120.58, 120.59, 120.60, 120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 120.68, 120.69, 120.70, and 120.71, providing a short title; providing definitions; requiring state agencies to adopt model rules of procedure; providing procedures for rule making, filing and publication; providing an appropriation; providing for declaratory rulings by agencies; providing minimum standards for proceedings; providing procedures for agency orders and licensing; providing for representation by counsel; providing standards for agency investigations; providing exemption procedures; providing hearing officers; providing judicial review; providing penalties; providing for enforcement of agency action; providing waiver; repealing chapter 120, Florida Statutes, relating to administrative procedures; creating §11.60, Florida Statutes, providing for the administrative procedures committee, its membership, powers and duties; providing severability; providing an effective date.

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

Section 1. Chapter 120, Florida Statutes, consisting of sections 120.50, 120.51, 120.52, 120.53, 120.54, 120.55, 120.56, 120.57, 120.58, 120.59, 120.60, 120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 120.68, 120.69, 120.70, and 120.71, is created to read:

120.50 This chapter shall not apply to the legislature or the courts.

120.51 Short title.-This chapter may be known and cited as "Administrative Procedure Act".

120.52 Definitions.-As used in this act: (1) "Agency" means

(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 §20.04, commission, regional planning agency, board, district and authority including but not limited to those described in chapters 160, 163, 298, 373, 380 and 582; and

(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.

(2) "Agency action" means the whole or part of a rule or order or the equivalent, or denial of a petition to adopt a rule or issue an order. The term also includes any request made under §120.54(3).

(3) "Agency head" means the person or collegeal body in a department or other governmental unit statutorily responsible for final agency action.

(4) "Committee" means the administrative procedures committee.

(5) "Division" means the division of administrative hearings of the department of administration.

(6) "License" means a franchise, permit, certification, registration, charter or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes where issuance of the license is merely a ministerial act.

(7) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, amendment, or imposition of terms for the exercise of a license;

(8) "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.

(9) "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; and

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

(10) "Person" means any person described in §1.01, any unit of government in or outside the state, and any agency described in §120.52(1).

(11) "Proposed order" means the advance text, under §120.58(1)(d), of the order which a colegal agency head plans to enter as its final order. When a hearing officer assigned by the division conducts a hearing, the recommended order is the proposed order.

(12) "Recommended order" means the official recommendation of a hearing officer assigned by the division to an agency for the final disposition of a proceeding under §120.57.

(13) "Rule" means 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 the amendment or repeal of a rule. The term does not include internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public, legal memoranda or opinions issued to an agency by the attorney general or agency legal opinions prior to their use in connection with the agency action or the preparation or modification of agency budgets, contractural provisions reached as a result of collective bargaining, or agricultural marketing orders under chapters 573 or 601.

120.53 Adoption of rules of procedure and public inspection.-

(1) In addition to other requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures including copies of all forms and instructions used by the agency; and

(c) Adopt rules of procedure appropriate for the presentation of arguments concerning issues of law or policy, and for the presentation of evidence on any pertinent fact that may be in dispute.

(d) Adopt rules for the scheduling of meetings, hearings, and work- shops including the establishment of agendas therefor, one of which shall be that an agenda shall be prepared at least seven days before the event by the agency, and made available for distribution on request of any interested persons. The agenda shall contain the items to be considered in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time.

(2) Each agency shall make available for public inspection and copying at no more than cost all rules formulated, adopted, or used by the agency in the discharge of its functions; all agency orders; and a current subject matter index, identifying for the public any rule or order issued or adopted after the effective date of this act. All rules adopted pursuant to this act shall be indexed within ninety days. The secretary of state shall by rule establish uniform indexing procedures.

(3) No agency rule or order is valid for any purpose until it has been made available for public inspection as herein required unless the person or party against whom enforcement .is sought has actual knowledge of it.

120.54 Rule making; adoption procedures.-The rule making provisions of this chapter shall not apply to the judges of industrial claims or unemployment compensation appeals referees.

(1) Prior to the adoption, amendment or repeal of any rule not described in subsection (8), an agency shall give notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, a summary of the proposed rule, and the specific legal authority under which its adoption is authorized.

(a) The notice shall be mailed to the committee and to all persons named in the proposed rule and to all persons who have made requests of the agency for advance notice of its proceedings at least fourteen days prior to such mailing The agency shall give such notice to those particular classes of persons to whom the intended action is directed as prescribed by rule. The notice shall contain the location where a text of the proposed rule can be obtained if the text is not included in the notice.

(b) The notice shall be published in the Florida administrative weekly not less than twenty-one days prior to the intended action; except that notice of actions proposed by school districts, community college districts or units of government with jurisdiction in only one county or a part thereof need not be published in the Florida administrative weekly nor transmitted to the committee.

(2) If the intended action concerns any rule other than one relating exclusively to organization, procedure or practice, on the request of any affected person received within fourteen days after the date of publication of the notice, the agency shall give affected persons an opportunity to present evidence and argument on all issues under consideration appropriate to inform it of their contentions.

(3) The adopting agency shall file with the division a copy of each rule it proposes to adopt at least twenty-one days prior to its intended action. If the proposed rule contains any provision not relating exclusively to organization, practice or procedure, then 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. The request seeking a determination under this section shall be in writing and must be received within fourteen days after the date of publication of the notice. It must state with particularity facts sufficient to show the person challenging the proposed rule would be substantially affected by it and facts sufficient to show the grounds on which the

proposed rule is alleged to be invalid, which may be stated in the alternative. The hearing shall be held within thirty days following receipt of the written request therefor. Within thirty days after conclusion of the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. 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 adopted until twenty-one days after the notice required by subsection (1) or until the hearing officer has rendered his decision, as the case may be. 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. Hearings held under this provision shall be conducted in the same manner as provided in §120.57 and shall be judicially reviewable as provided for agency orders. The agency proposing the rule and the person requesting the hearing shall be adversary parties; other substantially affected persons may join the proceeding as parties or intervenors on appropriate terms which will not substantially delay the proceedings. The remedy provided by this subsection is in addition to any other remedies available.

(4) Any person regulated by an agency or having a substantial interest in an agency rule may petition an agency to adopt, amend or repeal a rule, or to provide the minimum public information required by §120.53. The petition shall specify the proposed rule and action requested. Not later than thirty calendar days after the date of filing a petition, the agency shall initiate rule making proceedings under this act, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(5) In rule making proceedings, the agency may recognize any material which may be judicially noticed and it may provide that materials so recognized shall be incorporated into the record of the proceeding. Before completing the record of any proceeding, all parties shall be provided a list of such materials and given a reasonable opportunity to examine and to offer written comments on or written rebuttal thereto.

(6) Each rule adopted shall be accompanied by a reference to the specific rule making authority pursuant to which the rule was adopted and a reference to the section or subsection of law being implemented, interpreted, or made specific.

(7) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and reference to the rules repealed or amended, which statement need not be printed in the Florida administrative code. No rule shall be amended by reference only; amendments shall set out the amended rule in full in the same manner as required by the constitution for laws.

(8) (a) If an agency finds that an immediate danger to the public health, safety or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger by any procedure which is fair under the circumstances and is necessary to protect the public interest, provided that:

1. The procedure provides at least the procedural protection given by other statutes, the Florida constitution or the United States constitution;

2. The agency takes only that action necessary to protect the public interest under the emergency procedure; and

3. The agency publishes in writing at the time of or prior to its action the specific facts and reasons for finding an immediate danger to the public health, safety or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety or welfare shall include but not be limited to those rules pertaining to perishable agricultural commodities.

(c) An emergency rule adopted under this subsection may not be effective for a period longer than ninety days and shall not be renewable; however, the agency may take identical action by normal rule making procedures;

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or at a date less than twenty days

thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety or welfare.

(9) Ninety days after the effective date of this section the administration commission shall file one or more sets of model rules of procedure with the department of state. On filing with the department of state, the appropriate model rules shall be the rules of procedure for each agency subject to this act to the extent each agency has not adopted a specific rule of procedure covering the subject matter contained in the model rules applicable to that agency. An agency may amend the model rules of procedure to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds, to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the administration commission. The reasons for the amendment shall be published in the Florida administrative weekly.

(10) (a) The adopting agency shall file with the committee a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule and the notice required by subsection (1) at least twenty-one days prior: to its intended action. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall fine any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. The committee shall examine the proposed rule and its accompanying material for the purpose of determining whether the proposed rule is within the statutory authority on which it is based, as a legislative check on legislatively created authority. If it disapproves the rule, the committee shall certify the fact to the agency proposing the rule, together with a statement detailing with particularity its objections to the proposed rule prior to the time the rule becomes effective. The agency submitting the rule shall either modify the proposed rule to meet the objections found by the committee, withdraw the proposed rule in its entirety, or refuse to modify the rule within thirty days; failure of the agency to act within thirty days shall constitute withdrawal of the rule in its entirety. Proposed rules modified to meet committee objections shall be resubmitted in the manner set forth above, and the committee shall give priority to modified rules when setting its agenda.

(b) After the final public hearing on a rule, twenty-one days after the notice required by subsection (1), or after refusal of the agency to modify the rule, as the case may be, the adopting agency shall file with the department of state a certified copy of the rule it proposes to adopt, the summary of the rule, the summary of the hearings and the detailed written statement of the facts and circumstances justifying the rule. If the committee disapproves the rule and the agency does not modify the rule, the committee shall file the disapproval together with the statement detailing with particularity its objections to the proposed rule with the department of state for publication in the administrative weekly.

(c) Subsection (10) shall not apply to school districts, community college districts, local units of government with jurisdiction in only one county or a part; thereof, or to emergency rules adopted pursuant to subsection (8); provided, agencies adopting emergency rules shall file a copy of each emergency rule with the committee.

(11) The proposed rule shall be adopted on filing and become effective twenty days after filing or on a later date specified in the rule or on a date required by statute. The adopting agency shall furnish a copy to the president and the speaker for referral to the appropriate committee.

(12) No agency has authority to establish penalties for violation of a rule unless the legislature when establishing a penalty specifically provides that the penalty shall apply to rules.

(13) No agency has inherent rule making authority.

120.55 Publication.-

(1) The department of state shall:

(a) Conduct a systematic and continuing study of the rules of this state for the purpose of reducing their number and bulk, and removing redundancies and unnecessary repetitions, and it shall make such changes in style and form as are required by paragraph (d);

(b) Publish in a permanent compilation entitled Florida administrative code all rules adopted by each agency and complete indexes to all rules contained in the code. Supplementation shall be made as often as is practicable, but at least monthly. Rules general in form but applicable to only one school district, community college district, county, or a part thereof shall not be published in the Florida administrative code. Rules so omitted shall be filed in the department of state and exclusion from publication in the Florida administrative code shall not affect their validity or effective- ness. The department of state shall publish a compilation of and index to all rules so omitted at least annually;

(c) Publish weekly a pamphlet entitled the Florida administrative weekly which shall contain a summary of and an index to all rules filed during the preceding week; all hearing notices required by §120.54(1) showing the time, place and date of the hearing and the summary of all rules proposed for consideration; other material required by law; and other material deemed useful by the department.

(d) Prescribe by rule the style and form required for rules submitted for filing and establish the form for their certification;

(e) Correct grammatical, typographical and like errors not affecting the construction or meaning of the rules and insert history notes;

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

(g) Make copies of the Florida administrative code and weekly available for sale at no more than cost.

(2) Each agency shall print or distribute copies of its rules at its own expense or purchase copies for distribution from the secretary of state.

(3) (a) The department of state shall furnish one copy of the Florida administrative code and weekly without charge, upon request, 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 of Florida; two

sets to each state department and three sets to the library of the attorney general, to each law school library in Florida, and to the secretary of the senate and clerk of the house.

(b) The department of state shall furnish one copy of the Florida administrative weekly, at no cost, to the depository libraries of the Florida state library, to each clerk of the circuit court and to each state department, for posting for public inspection.

(4) (a) There is hereby created in the state treasury a revolving fund to be known as the department of state's publication revolving trust fund and there is hereby appropriated to said revolving trust fund from the general revenue fund of the state the sum of $25,000.

(b) All fees and moneys collected by the department of state under this chapter shall be deposited in the revolving trust fund for the purpose of paying for the publication and distribution of the Florida administrative code and weekly and for associated costs incurred by the department of state in carrying out this chapter.

(c) The unencumbered balance in the revolving trust fund at the beginning of each fiscal year shall not exceed $25,000 and any excess shall be transferred to the general revenue fund. An amount sufficient to bring the revolving trust fund up to $25,000 is appropriated and shall be transferred from the general revenue fund for the purposes set forth in this section.

120.56 Declaratory statement by agencies; administrative determination of rule.-

(1) Each agency shall provide by rule the procedure for the filing and prompt disposition of petitions for declaratory statements as to the applicability of any statutory provision or of any rule or order of the agency. Agency disposition of petitions shall be final agency action.

(2) Any person substantially affected by a rule may seek an administrative determination of the validity of the rule on the following grounds; that the rule is an invalid exercise of validly delegated legislative authority; or, that the rule is an exercise of invalidly delegated legislative authority.

(a) The petition seeking an administrative determination under this section shall be in writing and state with particularity facts sufficient to show the person seeking relief is substantially affected by the rule and facts sufficient to show the grounds on which the rule is alleged to be invalid, which may be stated in the alternative. The petition may be filed with the division or with the agency whose rule is involved. Within ten days after receiving the petition, the division director shall assign a hearing officer, who shall conduct a hearing within thirty days thereafter, unless the petition is withdrawn.

(b) Within thirty days after the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The hearing officer may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing appeal expires or at a later date specified in the decision.

(3) Hearings held under this provision shall be conducted in the same manner as provided in §120.57 and shall be judicially reviewable as provided for agency orders. The agency whose rule is attacked and the petitioner shall be adversary parties; other substantially affected persons may join the proceedings as parties or intervenors on appropriate terms which shall not unduly delay the proceedings. This failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

120.57 Decisions which affect substantial interests.-The provisions of this section shall apply in all proceedings, in which the substantial interests of a party are determined by an agency. Rule-making proceedings shall be governed solely by §120.54 unless and to the extent that a party timely asserts that his substantial interests will be affected in the proceedings and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that rule-making proceedings are not adequate to protect a party's interests, it shall convene a separate proceeding and proceed under the provisions of this section. The agency may request similarly situated parties to join and participate in such a proceeding. Unless waived by consent of all parties and the agency involved,

subsection (1) shall apply to the extent that the proceeding involves a disputed issue of material fact. Unless otherwise agreed subsection (2) shall apply in all other cases.

(1) FORMAL PROCEEDINGS.-A hearing officer assigned by the division shall conduct all hearings under this section except for hearings: before agency heads other than those within the department of professional and occupational regulation; before a member of an agency head other than agency heads within the department of professional and occupational regulation; before the industrial relations commission, judges of industrial claims, unemployment compensation appeals referees, public service commission or its examiners, or hearings regarding drivers licensing pursuant to chapter 322; hearings within the division of family services of the department of health and rehabilitative services; and hearings in which the division is a party. When the division is a party, an attorney assigned by administration commission shall be the hearing officer. In cases to which this subsection is applicable, the following procedures shall apply:

(a) All parties shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen days, which shall include:

1. A statement of the time, place and nature of the hearing;

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

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

4. 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 three days prior to the date set for the hearing.

(b) For two years after the effective date of this act the agency or its designee may conduct the hearing if a full time hearing officer conducts the hearing or if the division advises the agency that it cannot provide a hearing officer within a reasonable time.

(c) If any hearing officer other than an agency head or a member thereof is not a full time hearing officer employed by the division, a full time hearing officer shall be appointed for the duration of the hearing. This officer shall rule upon proffers of proof and questions of evidence and dispose of procedural requests or similar matters.

(d) All hearing officers except for agency heads, members thereof or public service commission hearing examiners in rate-making proceedings shall be employees of or on contract to the division. On request of any agency the division shall assign hearing officers to conduct hearings with due regard to the expertise required for the particular matter. Any party may request the disqualification of any hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

(e) 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, challenge or rebut it.

(f) The record in cases governed by this subsection shall consist only of:

1. All notices, pleadings, motions and intermediate rulings;

2. Evidence received or considered;

3. A statement of matters officially recognized;

4. Questions and proffers of proof, objections and rulings thereon;

5. Proposed findings and exceptions;

6. Any decision, opinion, recommended order or report by the officer presiding at the hearing;

7. All staff memoranda or data submitted to the hearing officer during the hearing or prior to its disposition after notice of the submission to all parties;

8. All matters placed on the record after an ex parte communication pursuant to §120.66(2);

9. The official transcript.

(g) The agency shall accurately and completely preserve all testimony in the proceeding, and it shall make, on the request of any party, a full or partial transcript available at no more than actual cost.

(h) Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

(i) The hearing officer shall complete and submit to the agency and all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, recommended penalty, if applicable, and any other information required by law or agency rule to be contained in the final order. The agency shall allow each party at least ten days in which to submit written exceptions to the recommended order.

(j) The agency may accept the recommended order and adopt it as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a recommended order but may not increase it without a review of the complete record. In the event a court, in reversing an agency's order, finds that such agency action was done in bad faith or maliciously, the court may award attorney's fees and costs to the aggrieved prevailing party.

(k) If the hearing officer assigned to a hearing becomes unavailable, the division shall assign another hearing officer who shall use any existing record and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

(1) A hearing officer who is a member of an agency head may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer.

(2) INFORMAL PROCEEDINGS.-In cases to which subsection (1) does not apply:

(a) The agency shall, in accordance with its rules of procedure:

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

2. Give affected persons or parties, or their counsel, an opportunity to present to the agency or hearing officer written evidence in opposition to the agency's action or refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction at a convenient time and place;

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

(b) The record shall only consist of:

1. The notice and summary of grounds;

2. Evidence received or considered;

3. All written statements submitted by persons and parties;

4. Any decision overruling objections;

5. All matters placed on the record after an ex parte communication pursuant to §120.66(2); and

6. The official transcript.

(3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(4) This section shall not apply to agency investigations preliminary to agency action.

120.58 Agency action; evidence, record and subpoenas.-

(1) In agency proceedings for a rule or order:

(a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(b) An agency, or its duly empowered presiding officer, or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida rules of civil procedure.

(c) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(d) If a majority of those who are to render the final order have not heard the case or read the record, a decision adverse to a party other than the agency itself shall not be made until a proposed order is served upon the parties and they are given an opportunity to file exceptions and present briefs and oral arguments to those who are to render the decision. The proposed order shall contain necessary findings of fact and conclusions of law and a reference to the source of each. The proposed order shall be prepared by the individual who conducted the hearing if available or by one who has

read the record. The parties by written stipulation may waive compliance with this paragraph.

(e) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(2) Any person subject to a subpoena or order directing discovery may, before compliance and on timely petition, request the agency having jurisdiction of the dispute to invalidate the subpoena or order on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material, but the decision of the agency on any such request shall not be proposed agency action governed by §120.57.

(3) Any person failing to comply with a subpoena or order directing discovery issued under the authority of this act shall be in contempt of the agency issuing the subpoena or order and subject to any penalties which the agency is authorized by law to prescribe; however, no person shall be in contempt while the subpoena or order is being challenged under subsection (2). In the absence of agency action on the default within thirty days the party requesting the subpoena or order may bring proceedings in an appropriate court for enforcement of the subpoena or order, and a failure to comply with an order of the court shall result in a finding of contempt of court. In the absence of statutory authority for remedy the violator may receive a fine not to exceed $500.

120.59 Orders.-

(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record, shall include findings of fact and conclusions of law separately stated, and be rendered within ninety days:

(a) After the hearing is concluded if conducted by the agency,

(b) After a recommended order is submitted to the agency and mailed to all parties if conducted by a hearing officer, or

(c) After the agency has received the written and oral material it has authorized to be submitted if there has been no hearing. The ninety day period may be waived or extended with the consent of all parties.

(2) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(3) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in a final order, which shall be appealable or enjoinable from the date rendered.

(4) Parties shall be notified either personally or by mail of any order and, unless waived, a copy of the final order shall be delivered or mailed to each party or to his attorney of record.

120.60 Licensing.-

(1) Unless otherwise provided by statute enacted subsequent to the effective date of this act, licensing is subject to the provisions of §120.57.

(2) When an application for a license is made as required by law, the agency shall conduct the proceedings required with reasonable dispatch and with due regard to the rights and privileges of all affected parties or aggrieved persons. Each agency upon issuing or denying a license shall state with particularity the grounds or basis for the issuance or denial of same, except where issuance is a ministerial act. On denial of a license application on which there has been no hearing, the denying agency shall inform the applicant of any right to a hearing pursuant to §120.57.

(3) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application has been finally acted upon by the agency, and, in case the application is denied or the terms of the license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency has given reasonable notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee has been given an opportunity to show that he has complied with all lawful requirements for the retention of the license.

(5) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension of a license, it shall show compliance in its order with the requirements imposed by §120.54(8) on agencies making emergency rules. Summary suspension may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

120.61 Official recognition.- Where official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

120.62 Agency investigations.-

(1) No process, requirement of a report, inspection or other investigative act or demand shall be issued, made or enforced in any manner or for any purpose except as authorized by law. Every person who responds to a request or demand by any agency or representative thereof for written data or for an oral statement shall be entitled to a transcript or his oral statement at no more than cost.

(2) Any person compelled to appear or who appears voluntarily before any hearing officer or agency in an investigation or in any agency proceeding has the right, at his own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

120.63 Exemption from act.-

(1) Upon application of any agency, the administration commission may exempt any process or proceeding governed by this act from one or more requirements of this act when:

(a) The agency head has certified that the requirement would conflict with any provisions of federal law or rules with which the agency must comply or in order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(b) The administration commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The administration commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the administration commission shall hold a public hearing after notice given as provided in §120.54(1).

(b) An exemption, and any alternative procedure prescribed, shall terminate ninety days following adjournment sine die of the next regular legislative session after issuance of the exemption, and it shall be renewable upon the same or similar facts no more than once. Such renewal shall terminate ninety days following adjournment sine die of the next regular legislative session following the renewal.

120.65 Hearing officers.-

(1) There is hereby created the division of administrative hearings within the department of administration to be headed by a director who shall be appointed by the administration commission and confirmed by the senate. The division shall be exempt from the provisions of chapter 216.

(2) The division shall employ, or contract for, hearing officers to conduct hearings required by chapter 120 or other law. No person may be employed by the division as a full time hearing officer unless he has been a member of The Florida Bar in good standing for the preceding three years.

(3) By rule, the division may establish further qualifications for hearing officers and shall establish procedures by which candidates will be considered for employment or contract, the manner in which public notice will be given of vacancies in the staff of hearing officers, and procedures for the assignment of hearing officer.

(4) Beginning July 1, 1975, all costs of administering the division shall be paid to the division trust fund on a pro rata basis by the agencies using its services. The division shall submit statements to the agencies at least quarterly.

(5) There is hereby created in the state treasury a revolving fund to be known as the division of administrative hearings revolving trust fund. All fees and other moneys collected by the division for services rendered under this act shall be deposited in the revolving trust fund and expenses of the division shall be paid from the fund.

(6) The division is authorized to provide hearing officers on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(7) The division shall have the authority to adopt reasonable rules to carry out the provisions of this act.

120.66 Ex parte communications.-

(1) In any proceeding under §120.57, no ex parte communication relative to the merits, or threat or offer of reward, shall be made to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually-related matter; or

(b) A party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or his authorized representative or counsel.

(c) Nothing in this section shall apply to an advisory staff which does not participate in the proceeding or to rule-making.

(2) A hearing officer who is involved in the decisional process, and who receives an ex parte communication in violation of subsection (1), shall place on the record of the pending matter all written communications received, a memorandum stating the substance of all oral communications received, all written responses to the communication, and a memorandum stating the substance of all oral responses made and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within ten days after notice of such communication. The hearing officer may, if he deems it necessary to eliminate the effect of an ex parte communication received by him, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1) and any hearing officer who fails to place in the record any such communication is in violation of this act and may be assessed a civil penalty not to exceed $500 or by such other disciplinary action as his superiors may determine.

120.68 Judicial review.-

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

(2) Except in matters for which judicial review by the supreme court is provided by law, all proceedings for review shall be instituted 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 shall be conducted in accordance with the Florida appellate rules.

(3) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(4) Judicial review of any agency action shall be confined to the record transmitted, and any additions made thereto in accordance with subsection (7).

(5) The record for judicial review shall consist of the following:

(a) The agency's written document expressing the order, the statement of reasons therefor, if issued, and the record under §120.57, if review of proceedings under that section is sought.

(b) The agency's written document expressing the action, the statement of reasons therefor, if issued and the materials considered by the agency under §120.54 if review is sought of proceedings under that section.

(c) The agency's written document expressing the action, and such other written documents identified by the agency as having been considered by it before its action and used as a basis for its action if review is sought of proceedings under §120.56 or if there has been no proceeding under §§120.54 or 120.57.

(6) When there has been no hearing prior to agency action, and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt fact-finding proceeding under this act after giving a reasonable opportunity to reconsider its determination on the record of the proceedings.

(7) The reviewing court shall deal separately with disputed issues of agency procedure, interpretations of law, determinations of fact, or policy within the agency's exercise of delegated discretion.

(8) The court shall remand the case for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. Failure of any agency to comply with §120.53 shall be presumed to be a material error in procedure.

(9) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(10) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of §120.57 of the act, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record.

(11) If the agency's action depends on facts determined pursuant to §120.68(6) the court shall set aside, modify, or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(12) The court shall remand the case to the agency if it finds the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; to be inconsistent with an agency rule, an officially stated agency policy, or a prior agency practice if deviation there from is not explained by the agency; or to be otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(13) The reviewing court's decision may be mandatory, prohibitory or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings, or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties, and may order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(14) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this :section, it shall affirm the agency's action.

120.69 Enforcement of agency action.-

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition for enforcement as provided in this section in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state; provided, no such action may be commenced:

1. Prior to sixty days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the attorney general and any alleged violator of the agency action, or

2. If an agency has filed and is diligently prosecuting a petition for enforcement.

(c) A petition for enforcement filed by a non-governmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief; temporary or permanent equitable relief; any fine, forfeiture, penalty or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed $1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:

(a) If enforcement depends on any facts other than appear in the record, the court may ascertain such facts under procedures set forth in §120.68(6).

(b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.

(c) Should any party willfully fail to comply with an order of the court, the court shall punish him in accordance with the law applicable to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's action presents an imminent and substantial threat to the public health, safety or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, to the prevailing party whenever the court determines that such an award is appropriate.

120.70 Annual report.-

(1) Not later than February 1 of each year, the director shall issue a written report to the administrative procedures committee and the administration commission including at least the following information:

(a) A summary of the extent and effect of agencies' utilization of hearing officers, court reporters and other personnel in proceedings under this act;

(b) His recommendations for change or improvement in the administrative procedure act or any agency's practice or policy with respect thereto.

120. 71 Disqualification of agency personnel.-

(1) Any individual serving alone or with others as an agency head shall be disqualified from serving in an agency proceeding for bias, prejudice, interest or other causes for which a judge may be recused. If the disqualified individual holds his position by appointment, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the governor may appoint a substitute to serve in the matter from which the individual is disqualified. '

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

Section 2. Section 11.60, Florida Statutes, is created to read:

11.60 Administrative procedures committee; creation; membership; powers; duties.-

(1) There is created a standing joint committee of the legislature designated as the administrative procedures committee, composed of six members appointed as follows: three members of the house of representatives appointed by the speaker of the house, one of whom shall be a member of the minority party, and three members of the senate appointed by the president of the senate, one of whom shall be a member of the minority party. The president shall appoint the chairman in even years and the vice-chairman in odd years, and the speaker shall appoint the chairman in odd years and the vice-chairman in even years, from among the committee membership. Vacancies shall be filled in the same manner as the original appointment. Members shall serve without additional compensation but shall be reimbursed for expenses.

(2) The committee shall maintain a continuous review of the statutory authority on which each administrative rule is based and, whenever repeal, amendment, holding by a court of last resort or other factor eliminates or significantly changes such authority, the committee shall advise the agency concerned of the fact. The committee shall review administrative rules and advise the agencies concerned of its findings; have the duties prescribed by chapter 120 concerning the adoption and promulgation of rules; and generally review agency action pursuant to chapter 120 and the operation of the administrative procedure act. The committee shall report to the legislature at least annually, no later than the first week of the regular session, and recommend needed legislation or other appropriate action.

(3) The committee shall adopt rules and regulations necessary for its own organization and operation and for that of its staff, consistent with general law and the rules of each house; appoint an executive director and general counsel by majority vote of the members of the committee and fill any vacancy in that office in the same manner; have general administrative responsibility for the operations of its staff. Expenses required for the work of the committee shall be included in and paid from the appropriation for legislative expense.

Section 3. (1) The intent of the legislature in enacting this complete revision of chapter 120, Florida Statutes, is to make uniform the rule-making and adjudicative procedures used by the administrative agencies of this state. To that end, it is the express intent of the legislature that the provisions of this act shall replace all other provisions in the Florida Statutes, 1973, relating to rule making, agency orders, administrative adjudication or judicial review, except marketing orders adopted pursuant to chapters 573 and 601, Florida Statutes, and that the division of statutory revision of the joint legislative management committee is directed to prepare a reviser's bill to conform the Florida Statutes to such intent.

(2) All administrative adjudicative proceedings begun prior to the effective date of this act shall be continued to a conclusion under the provisions of the Florida Statutes, 1973; except that administrative adjudicatory proceedings which have not progressed to the stage of a hearing may, with the consent of all parties and the agency conducting the proceeding, be conducted in accordance with the provisions of this act as nearly as is feasible.

(3) Notwithstanding any provision of chapter 120, Florida Statutes, all public utilities and companies regulated by the public service commission shall be entitled to proceed under the interim rate provisions of chapter 364, Florida Statutes, or the procedures for interim rates contained in Committee Substitute for House Bill 1542 of the 1974 legislative session, or as otherwise provided by law.

(4) (a) All prior rules not adopted following a public hearing as provided by statute shall be void and unenforceable after October 1 , 1975, and shall be stricken from the files of the department of state and from the files of the adopting agency.

(b) All rules in effect on, or filed with the department of state prior to, the effective date of this act, except those adopted following a public hearing as provided by statute, shall be forthwith reviewed by the agency concerned on the written request of a person substantially affected by the rule involved and this provision. The agency concerned shall initiate the rule making procedures provided by this act within ninety days after receiving such written request. If the agency concerned fails to initiate the rule making procedures within ninety days, the operation of the rule shall be suspended. This provision shall control §120.54(4), Florida Statutes.

(c) All existing rules shall be indexed by January 1, 1975.

Section 4. Chapter 120, Florida Statutes, consisting of sections 120.011, 120.021, 120.031, 120.041, 120.042, 120.051, 120.061, 120.071, 120.09, 120.20, 120.21, 120.22, 120.23, 120.24, 120.25, 120.26, 120.27, 120.28, 120.30, 120.31 and 120.321, is hereby repealed.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. Sections 120.54(9) and 120.65, Florida Statutes, and section 2 of this act shall take effect October 1, 1974. The remainder of this act shall take effect January 1, 1975.

Approved by the Governor June 25, 1974.

Filed in Office Secretary of State June 25. 1974.