

CHAPTER 75-191

Senate Bill No. 1320

AN ACT relating to the Administrative Procedure Act; adding a new sub-section (6) to s. 120.52, Florida Statutes, 1974 Supplement, defining "educational units"; amending s. 120.53(1) (d), Florida Statutes, 1974 Supplement, to provide agenda rules for special meetings of the school board; amending s. 120.54(1), Florida Statutes, 1974 Supplement, adding a new subsection (12) thereto, and amending subsection (3), (8)(a), (9), (10), and (11) of said section; requiring an estimate of the economic impact of a proposed rule; providing notice procedures for educational units; providing that notice of intended action by educational units shall not be published in the Florida Administrative Weekly or transmitted to the Committee; deleting the requirement that copies of all rules be filed with the Division of Administrative Hearings of the Department of Administration; providing an exception; providing that the director of such division shall determine if petitions meet statutory requirements and shall assign a hearing officer; providing that the hearing officer's order is final agency action; requiring publication of emergency rules in the first available issue of the Florida Administrative Weekly; providing that agency rules which modify the model rules shall be in substantial compliance with the model rules; providing grounds for objection to a proposed rule; providing for notification of objection by the committee; providing that three copies of the rules be timely filed; deleting the requirement that copies be sent to the President of the Senate and the Speaker of the House; requiring that disapproval of a rule by the committee be filed with the Department of State and be published in the Florida Administrative Weekly; amending s. 120.55(1), Florida Statutes, 1974 Supplement, and adding a new "paragraph (c) to subsection (3) of said section; and amending sub-section (4) of said section; requiring distribution of certain publications to the Administrative Procedures Committee; amending s. 120.56, Florida Statutes, 1974 Supplement, to remove references to declaratory statements and to conform to the provisions of s. 120.54(3), Florida Statutes, as amended by this act creating s. 120.565, Florida Statutes, to provide for declaratory statement; amending s. 120.57, Florida Statutes, 1974 Supplement; providing for postponement of rulemaking proceeding; providing a time within which a hearing shall be granted or denied; providing for waiver of notice; deleting provisions relating to hearing officers other than those of the Division of Administrative Hearings; providing for petitions or requests for hearings and for hearing officers; defining the contents of the record; providing for presentation of oral evidence in informal proceedings; adding matters officially recognized to the record; amending s. 120.58(1), Florida Statutes, 1974 Supplement, limiting the application of paragraph (a) of said subsection; providing per diem and travel and witness fees; amending s. 120.65(2) and (4), Florida Statutes, 1974 Supplement, and adding new subsections (3) and (4) to said section, to provide for designation of hearing officers and to extend until July 1, 1976, provisions relating to the payment of certain costs to the division trust fund; amending s. 120.66(1), Florida

Statutes, 1974 Supplement, to define ex parte communications in relation to rule-making under s. 120.54j creating s. 120.73, Florida Statutes, to provide that this chapter shall not supersede chapter 86, Florida Statutes, or any right to a proceeding in the circuit court, and requiring reinstatement of certain agency actions; providing an effective date.

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

Section 1. Subsections (6), (7), (8), (9), (10), (11), (12), and (13) of section 120.52, Florida Statutes, 1974 Supplement, are renumbered as subsections (7), (8), (9), (10), (11), (12), (13), and (14), respectively, and a new subsection (6) is added to said section to read:

120.52 Definitions. -As used in this act:

(6) *"Educational units" means local school districts, community colleges districts, the Florida School for the Deaf and Blind, and units of the state university system other than the board of Regents.*

Section 2. Paragraph (d) of subsection (1) of section 120.53, Florida Statutes, 1974 Supplement, is amended to read:

120.53 Adoption of rules of procedure and public inspection. -

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

(d) Adopt rules for the scheduling of meetings, hearings, and work-shops including the establishment of ~~agenda~~ agendas therefor, one of which shall be that an agenda shall be prepared by the agency at least 7 days before the event 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. *Agenda for special meetings of district school boards under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to such meeting.*

Section 3. Subsections (1) and (3), paragraph (a) of subsection (8), and subsections (9), (10), and (11) of section 120.54, Florida Statutes, 1974 Supplement, are amended, present subsection (12) is renumbered and combined with subsection (13), and a new subsection (12) is added to said section, to read:

120.54 Rulemaking; adoption procedures.-

(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. *In addition, the agency shall set forth an estimate of the economic impact of the proposed rule on all persons affected by it. If the agency determines that such a statement is not possible, the reasons why the costs of the proposed rule cannot be estimated shall be stated in the notice. The notice shall*

contain the location where the text of the proposed rule can be obtained if such text is not included in the notice.

(a) *Except as otherwise provided in this paragraph, the notice shall be mailed to the committee, 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 14 days prior to such mailing. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed. Notice of intent by an educational unit to adopt, amend, or repeal any rule not described in subsection (8), shall be made by publication in a newspaper of general circulation in the affected area, by mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule, and by posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified. Such publication, mailing, and posting of notice shall occur at least 14 days prior to the intended action. ~~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 21 days prior to the intended action; except that notice of actions proposed by *educational units school districts community colleges 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.

(3) *Any substantially affected person may seek an administrative determination of the validity of any proposed rule which contains any provision not relating exclusively to organization, practice, or procedure on the following grounds: ~~The adopting agency shall file a copy of each rule it proposes to adopt with the division at least 21 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 subsection shall be in writing and must be filed with the division received within 14 days after the date of publication of the notice. It must state with particularity facts sufficient to show that the person challenging the proposed rule would be substantially affected by it and facts sufficient to show the grounds, which may be stated in the alternative, on which the proposed rule is alleged to be invalid, which may be stated in the alternative.~~ 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. ~~The hearing shall be held within 30 days following receipt of the written request therefore.~~ Within 30 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 21 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 s. 120.57 *except that the hearing officer's order shall be final agency action. 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. *Failure to proceed under this subsection shall not constitute failure to exhaust administrative remedies. The remedy provided by this subsection is in addition to any other remedies available.*

(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 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.

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. *In any event, notice of emergency rules shall be published in the first available issue of the Florida Administrative Weekly.* The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

~~(9) Ninety days after the effective date of this subsection~~ The Administration Commission shall *promulgate* ~~file~~ one or more sets of model rules of procedure *which shall be reviewed by the committee and filed* with the Department of State. On filing with the department, the appropriate model rules shall be the rules of procedure for each agency subject to this act to the extent that each agency *does* ~~has not adopt~~ *adopted* a specific rule of procedure covering the subject matter contained in the model rules applicable to that agency. An agency may *seek modification of* ~~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 or 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 *modification* ~~amendment~~ shall be published in the Florida Administrative Weekly. *Agency rules adopted to comply with ss. 120.58 and 120.565 must be in substantial compliance with the model rules.*

(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 21 days prior to ~~the proposed adoption date 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 file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. As a legislative check on legislatively created authority, 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 *whether the rule is in proper form, and whether the notice issued pursuant to subsection (1) is sufficient to give adequate notice of the effect of the rule*. After examining the proposed rule, the chairman of the committee may notify the agency and the Department of State that the committee is considering an objection to the rule. If it disapproves the rule, the committee shall, prior to the time the rule becomes effective, certify the fact to the agency proposing the rule, together with a statement detailing with particularity its objections to the proposed rule. The agency submitting the rule shall, within 30 days of the committee's objection, 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. Failure of the agency to act within 30 days shall constitute withdrawal of the rule in its entirety. Proposed rules modified to meet committee objections shall be resubmitted to the committee, ~~in the manner set forth above~~, and the committee shall give priority to modified rules when setting its agenda.

~~(b) Twenty-one~~ After the final public hearing on a rule, 21 days after the notice required by subsection (1), or after *the final public hearing, if the hearing extends beyond the 21 days*, refusal of the agency to modify the rule, as the case may be, the adopting agency shall file with the Department of State *three* a certified ~~copies~~ *copy* of the rule it proposes to adopt, a summary of the rule, a summary of *any* the hearings held on the rule, and a 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 its disapproval, together with a statement detailing with particularity its objections to the proposed rule, with the Department of State for publication in the Administrative Weekly.~~

~~(c) This subsection~~ Paragraph (a) shall not apply to ~~school districts and community college districts~~, *educational units other than units of the state university system*, or local units of government with jurisdiction in only one county or a part thereof or to emergency rules adopted pursuant to subsection (8). However, agencies adopting emergency rules shall file a copy of each emergency rule with the committee.

(11) The proposed rule shall be adopted on filing ~~***[with the Department of State]~~ and become effective 20 days after filing, 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 *** [of the Senate] and the Speaker ***[of the House of Representatives]~~ for referral to the appropriate committee.

(12) *If the committee disapproves a proposed rule and the agency does not modify the rule, the committee shall file with the Department of State a notice of the disapproval detailing with particularity its objection to the rule. The*

Department of State shall publish this notice in the Florida Administrative Weekly and shall publish a reference to the committee's disapproval and to the issue of the weekly in which a full text appears as a history note to the rule when it is published in the Florida Administrative Code.

~~(13)(12)~~ No 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 shall apply to rules.

~~(13) No agency has inherent rulemaking authority~~

Section 4. Paragraph (b), (c) and (g) of subsection (1) of section 120.55, Florida Statutes, 1974 Supplement, are amended, paragraph (h) of subsection (1) of section 120.55, Florida Statutes, 1974 Supplement is created, and paragraph (c) is added to subsection (3) of said section and subsection (4) of said section is amended to read:

120.55 Publication.-

(1) The Department of State shall:

(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 *or to the Florida School for the Deaf and Blind* 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 effectiveness. The department shall publish a compilation of, and index to, all rules so omitted at least annually.

(c) Publish a weekly publication entitled the "Florida Administrative Weekly" which shall, contain:

1. A summary of and index to all proposed rules filed during the preceding week.

2 All hearing notices required by s. 120.54(1), showing the time, place and date of the hearings and the summaries of all rules proposed for consideration.

3. *All notices of meetings, hearings and workshops conducted in accordance with the provisions of s. 120.5S(1)(d), including a statement of the location at which a copy of the agenda may be obtained.*

4. *Notice of each request for authorization to amend or repeal an existing model rule or for the adoption of new model. rules.*

5. *Notice of each request for exemption from any provision of Chapter 120.*

6. *Notice of petitions for declaratory statements or administrative determinations.*

7. *A summary of each objection filed by the Joint Administrative Procedures Committee during the preceding week to any rule.*

~~3.8. Any Other material required or authorized by law. or~~

4. ~~Other material~~ deemed useful by the department.

(g) Make copies of the Florida Administrative Code ~~and the Florida Administrative Weekly~~ available for sale at no more than cost *and copies of the Florida Administrative Weekly on an annual subscription basis for not more than five (\$5) dollars per year.*

(h) *Charge each agency using the Florida Administrative Weekly a space rate computed to cover all costs related to the Florida Administrative Weekly.*

(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 the Florida Administrative Weekly and for associated costs incurred by the department 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~~ *\$100,000*, 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.~~

(d) *It is the intent of the legislature that the Florida Administrative Weekly be supported entirely from funds collected for subscriptions to and advertisements in the Florida Administrative Weekly. To that end, the department of state is authorized to add a surcharge of 10% to any charge relating to the Florida Administrative Weekly until such time as the Publication Revolving Trust Fund has transferred to the general revenue fund an amount equal to all funds appropriated to the trust fund.*

Section 5. Section 120.56, Florida Statutes, 1974 Supplement, is amended to read:

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.~~

(1)~~—(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.

(2) ~~(3)~~ 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 *shall* ~~may~~ be filed with the division ~~or with the agency whose rule is involved~~. Within 10 days after receiving the petition, the division director shall, *if he determines that the petition complies with the above requirements*, assign a hearing officer, who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn.

(3) ~~(4)~~ Within 30 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 an appeal expires or at a later date specified in the decision.

(4) ~~(5)~~ Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 *except that the hearing officer's order shall be final agency action and shall be judicially reviewable as provided for agency orders*. The petitioner and the agency whose rule is attacked 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. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

Section 6. Section 120.565, Florida Statutes is created 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 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.

Section 7. Section 120.57, Florida Statutes is created to read:

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. Rulemaking proceedings shall be governed solely by s. 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 rulemaking 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. *The rulemaking proceeding shall not be concluded prior to the issuance of the final order in the separate 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) A hearing officer assigned by the division shall conduct all hearings under this ~~subsection~~ ~~section~~, except for:

1. Hearings before agency heads other than those within the Department of Professional and Occupational Regulation;

2. Hearings before a member of an agency head other than agency heads within the Department of Professional and Occupational Regulation;

3. Hearings before the Industrial Relations Commission, judges of industrial claims, unemployment compensation appeals referees, and the Public Service Commission or its examiners;

4. Hearings regarding drivers' licensing pursuant to chapter 322;

5. Hearings within the Division of Family Services of the Department of Health and Rehabilitative Services; and

6. Hearings in which the division is a party; when the division is a party, an attorney assigned by the Administration Commission shall be the hearing officer.

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

1. *Requests for hearings shall be granted or denied within 15 days of receipt.*

2. ~~1.~~ All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days, *unless waived by all parties*, which 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. 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.

~~2. For 2 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.~~

~~3. If any hearing officer other than an agency head or a member thereof is not a full-time 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.~~

~~3. 4. All hearing officers, except for agency heads or members thereof or ****Public Service Commission hearing examiners**, shall be employees or, or on~~

~~contract to, the division.~~ Except for proceedings conducted as prescribed in s. 120.54(3) or s. 120.56, all petitions or requests for hearings under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall notify the division within 10 days of a receipt of petition or request, requesting the assignment of a hearing officer and, with the concurrence of the division, setting the time, date and place of the hearing. On request of any agency, the division shall assign hearing officers 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.

4. ~~5.~~ 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 finding 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 than all parties shall be given an opportunity to cross-examine or challenge or rebut it.

~~5.6.~~ The record in cases governed by this subsection shall consist only of:

- a All notices, pleadings, motions, and intermediate rulings;
- b Evidence received or considered;
- c A statement of matters officially recognized;
- d Questions and proffers of proof and objections and rulings thereon;
- e. Proposed findings and exceptions;
- f. Any decision, opinion, *proposed or* recommended order, or report by the officer presiding at the hearing;
- g. 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;
- h. All matters placed on the record after an ex parte communication pursuant to x. 120.66(2); and
- i. The official transcript.

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

7. ~~8.~~ Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

8. ~~9.~~ 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 10 days in which to submit written exceptions to the recommended order.

9. ~~40~~ The agency may adopt the recommended order 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 finding 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.

10. ~~41~~ 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

11. ~~42~~ 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, at a convenient time and place, to present to the agency or hearing officer written *or oral* 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..

3.. If the objections of the persons or parties are overruled, provide a written explanation within 7 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 s. 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.

Section 8. Subsection (1) of section 120.58, Florida Statutes, 1974 Supplement, is amended to read:

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 persons ~~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. *This paragraph only applies to proceedings under s.120.57.*

(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) Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061, if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(d) ~~e~~ Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(e) ~~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.

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

Section 9. Subsection (2) and (4) of section 120.65, Florida Statutes, 1974 Supplement, are amended, present subsections (3), (5), (6), and (7) are renumbered as subsections (5), (7), (8), and (9), respectively, and new subsections (3) and (4) are added to said section to read:

120.65 Hearing officers.-

(2) The division shall employ *full-time*; ~~or contract for~~; hearing officers to conduct hearings required by this chapter 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 3 years.

(3) If the division cannot furnish a division hearing officer promptly in response to an agency request, the director shall designate in writing a qualified full-time employee of an agency, other than the requesting agency, to conduct the hearing. The director shall have the discretion to designate a hearing officer who is a qualified full-time employee of an agency, other than the requesting agency, which is located in that part of the state where the parties and witnesses reside.

(4) The director shall have the discretion to designate qualified lay- persons to conduct hearings. If a layperson is so designated, the director shall assign a hearing officer to assist in the conduct of the hearing, to rule upon proffers of proof, questions of evidence, disposition of procedural requests and similar matters.

(6) ~~(4)~~ Beginning July 1, 1976, ~~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.

Section 10. Subsection (1) of section 120.66, Florida Statutes, 1974 Supplement, is amended to read:

120.66 Ex parte communications.-

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the hearing officer *or to the agency head after the agency head has received a recommended order* 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.

(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.

Nothing in this subsection shall apply to an advisory staff which does not participate in the proceeding or to *any* rulemaking *proceedings under s. 120.54*.

Section 11. Section 120.73, Florida Statutes, is created to read:

120.73 Circuit Court proceedings; declaratory judgments.-Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 36. If any action has been dismissed or otherwise disposed of on the ground that a provision of the statutes granting the right to a trial or the jurisdiction to render declaratory judgments was repealed by chapter 74-310, Laws of Florida, such action shall be reinstated by order of the court upon the filing of a petition by the plaintiff at any time during the 60 day period immediately following the effective date of this act.

Section 12. This act shall take effect upon becoming a law.

Approved by the Governor June 25, 1975.

Filed in Office Secretary of State June 26, 1975.