

# CHAPTER 76-131

## House Bill No. 4144

AN ACT relating to administrative procedures; amending s. 120.52(14), Florida Statutes, to provide that certain forms are rules and to narrow the exemption from the definition of rule for internal management memoranda; amending s. 120.53(1) (b) and (d), Florida Statutes, to permit the publishing of a list of forms instead of copies and to require notice of all meetings, hearings, and workshops to be published; amending s. 120.54(3) (a) and (c), (10), (11), and (13), Florida Statutes, and adding subsection (15) thereto: deleting the invalidity of a statute as ground for invalidating a proposed rule and requiring a copy of certain petitions and decisions be transmitted to the Joint Administrative Procedures Committee and to the Department of State; bringing existing rules under the same committee review as proposed rules; setting out the actions an agency may take during the various stages of rule promulgation; permitting an agency to promulgate rules prior to the effective date of the law implemented; transferring a rulemaking provision to the proper section of the statutes: creating s. 120.545, Florida Statutes, providing for committee review of proposed and existing agency rules; providing for procedures relative thereto; amending s. 120.55(1) (c) and (g), and (3) (a), Florida Statutes; increasing the subscription price of the Florida Administrative Weekly from \$5 to \$25 and providing for publication of the manner in which an agenda may be obtained; providing copies of the Florida Administrative Code and Weekly to the committee; amending s. 120.56(1)-(3), Florida Statutes, to delete the invalidity of a statute as ground for invalidating a rule and to require a copy of certain petitions and decisions to be transmitted to the Joint Administrative Procedures Committee and to the Department of State; amending s. 120.565, Florida Statutes, to require notice of petition for declaratory statement and its disposition; amending s. 120.57, Florida Statutes; transferring provisions relating to rulemaking procedures to the proper statute; providing for exemption of hearings in connection with programs administered by the former Division of Family Services of the Department of Health and Rehabilitative Services from a provision of the act: exempting district school boards from certain hearing officer and notice provisions, and exempting the Public Employees Relations Commission from certain hearing officer provisions; providing an exception with respect to certain record-keeping requirements; amending s. 120.58(1) (b), Florida Statutes, to clarify that an agency does not have jurisdiction to subpoena legislators and their employees to testify relative to legislative activities; amending s. 120.60(2), Florida Statutes, and adding a subsection; setting limits upon the time permitted an agency to request additional information and to make decisions on license applications: providing for automatic issue of licenses under specified circumstances and limiting permissible exceptions; amending s. 120.63(2) (a), Florida Statutes, to require publication of petitions for exemptions; amending s. 120.66(1), Florida Statutes, relating to ex parte communications, excepting advisory staff members who do not testify from the provisions thereof; amending s. 120.68(3), Florida Statutes, to provide for supersedes as a matter of right in license suspension or revocation appeals: repealing s. 120.65(6) and (7), Florida Statutes, as amended, to abolish the Division of Administrative Hearings Revolving Trust Fund and to delete the requirement that the division charge agencies for its services; providing an effective date.

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

Section 1." Subsection (14) of section 120.52, Florida Statutes, *is* amended to read:

120.52 Definitions.--As used in this act:

(14)

“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 any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a)

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internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b)

Legal memoranda or opinions issued to an agency by the attorney general or agency legal opinions prior to their use in connection with an ~~the~~ agency action, or

(c) The preparation or modification of:

1. Agency budgets,
2. Contractual provisions reached as a result of collective bargaining, or
3. Agricultural marketing orders under chapter 573 or chapter 601.

Section 2. Paragraphs (b) and (d) of subsection (1) of section 120.53, Florida Statutes, are amended to read:

120.53

Adoption of rules of procedure and public inspection.--

(1)

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

(b)

Adopt rules of practice setting for the nature and requirements of all formal and informal procedures, including a list ~~copies~~ of all forms and instructions used by the agency in its dealing with the public. The list of forms and instructions shall include the title of each form or instructions, and a statement of the manner in which the form or instruction may be obtained without cost.

(d)

Adopt rules for the scheduling of meetings, hearings, and workshops, ~~including the establishment of agenda thereof~~, one of which shall be that an agenda shall be prepared by the agency in time to insure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy 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 causes, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time. The agenda for a special meeting of a district school board 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. In addition, each agency shall give notice of meetings, hearings and workshops in the same manner as that prescribed for rulemaking in s. 120.54(1) except that the notice requirement shall not apply to emergency meetings. The notice shall include a statement of the general subject matter to be considered and shall be given not less than 7 days before the event.

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

Section 3. Paragraphs (a) and (c) of subsection (3), and subsections (10), (11), and (13) of section 120.54, Florida Statutes, are amended, and subsection (15) is added to said section, to read:

120.54 Rulemaking; adoption procedures.--

(3) (a) Any substantially affected person may seek an administrative determination of the validity ~~–[invalidity]~~ of any proposed rule ~~which contains any provision not relating exclusively to organization, practice, or procedure on the ground;-~~

~~1..~~that the proposed rule is an invalid exercise of ~~validly~~ delegated legislative authority.

~~2.~~

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~~That the proposed rule is an exercise of invalidity delegated legislative authority.~~

(c)

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

proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly

(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. 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, and the committee shall give priority to modified rules when setting its agenda. This paragraph shall not apply to educational units other than units of the State University System, to 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.~~

(b) Not less than 21 ~~Twenty-one~~ days nor more than 45 days after the notice required by subsection (1), or not more than 10 days, after the conclusion of the final public hearing, if the hearing extends beyond the 45 ~~24~~ days, the adopting agency if it is required to publish its rules in the Florida Administrative Code; shall file with the Department of State three certified copies of the rule it proposed to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file all the above material with the Department of State except that only one certified copy of the proposed rule shall be filed.

(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. After the notice required in subsection (1) and proper to adoption, the agency may withdraw the rule by publishing a notice in the Florida Administrative Weekly and notifying the Department of State, and may make such changes in the rule as are supported by the record of public hearings held on the rule, technical changes which do not affect the substance of the rule, or changes in response to a proposed objection by the committee. Changes supported by the record of a hearing or made in response to a proposed committee objection may include withdrawal of the rule in whole or in part. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date, by not more than 60 days, when the committee has notified the

agency that an objection to the rule is being considered. After a rule has become effective, it may be repealed or amended only through regular rulemaking procedures.

(13)

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 applies shall apply to rules. However, an agency may adopt rules necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be enforced until the statute upon which they are based is effective.

(15)

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Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that his substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect his interest, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of s. 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

Section 4.

Section 120.545, Florida Statutes, is created to read:

120.545      Committee review of agency rules.—

(1)

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As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempt by s. 120.54(10)(a), and its accompanying material and may examine any existing rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, whether the rule is in proper form and whether the notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule. If the committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the agency whose rule has been examined and include with the certification a statement detailing its objection with particularity.

(2)

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Within 30 days of receipt of the objection, if the agency is headed by an individual, or within 45 days of receipt of the objection, if the agency is headed by a colleial body, the agency shall:

(a)      If the rule is a proposed rule:

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Modify the rule to meet the committee's objection.

2.

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Withdraw the rule in its entirety, or

3.

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Refuse to modify or withdraw the rule.

(b)

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If the rule is an effective rule:

1.

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Notify the committee that it has elected to amend the rule to meet the committee's objection and initiate the amendment procedure.

2.

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Notify the committee that it has elected to repeal the rule and initiate the repeal procedure, or

3.

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Notify the committee that it refuses to amend or repeal the rule.

(3)

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If the agency elects to modify a proposed rule to meet the committee's objection, it shall make only such modifications as are necessary to meet the objection and shall resubmit the rule to the committee. The agency shall give notice of its election to modify a proposed rule to meet the committee's objection in the first available issue of the Florida Administrative Weekly, but shall not be required to conduct a public hearing. If the agency elects to amend an effective rule to meet the committee's objection, it shall notify the committee in writing and shall initiate the amendment procedure by giving notice in the next available issue of the Florida Administrative Weekly. The committee shall give priority to rules so modified or amended when setting its agenda.

(4)

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If the agency elects to withdraw a proposed rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall give notice of the withdrawal in the next available issue of the Florida Administrative Weekly. The rule shall be withdrawn without a public hearing effective upon publication of the notice in the Florida Administrative Weekly. If the agency elects to repeal a rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice in the next available issue of the Florida Administrative Weekly.

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If an agency elects to amend or repeal a rule as a result of a committee objection, it shall complete the process within 90 days after giving notice in the Florida Administrative Weekly.

(6)

Failure of the agency to respond to a committee objection to a proposed rule within the time prescribed in subsection (2) shall constitute withdrawal of the rule in its entirety. In this event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the proposed rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Weekly. Upon publication of the notice, the proposed rule shall be stricken from the files of the Department of State and the files of the agency.

(7)

Failure of the agency to respond to a committee objection to an effective rule within the time prescribed in subsection (2) shall constitute a refusal to repeal the rule.

(8)

If the committee objects to a rule and the agency refuses to modify, amend, withdraw or repeal the rule, the committee shall file with the Department of State a notice of the objection detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule in the Florida Administrative Code, a reference to the committee's objection and to the issue of the weekly in which the full text thereof appears.

Section 5. Paragraphs (c) and (g) of subsection (1) of section 120.55, Florida Statutes, are amended, paragraphs (i) and (j) are added to said subsection, and paragraph (a) of subsection (3) of said section is amended to read:

120.55

Publication:

(1)

The Department of State shall:

(c)

Publish a weekly publication entitled the "Florida Administrative Weekly" which shall contain;

1.

A summary of, and an index to, all rules filed during the preceding week.

2.

All hearing notices required by subsection 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 paragraph 120.53(1)(d), including a statement of the manner in ~~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 this chapter

6.

Notice of petitions for declaratory statements or administrative determinations.

7.

A Summary of each objection filed by the Administrative Procedures Committee during the preceding week to any rule.

8. Any other material required or authorized by law or deemed useful by the department.

(g) Make copies of the Florida Administrative Code available for sale at no more than cost and copies of the Florida Administrative Weekly on an annual subscription basis for not more than \$25 ~~5~~ per year.

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

1. One set to each federal and state court having jurisdiction over the residents of the state; each Florida senator, congressman, and state legislator; the legislative library, each state university library, the state library; and each standing committee of the senate and house of representatives.

2. Two sets to each state department.

3. Three sets to the library of the attorney general, each law school library in Florida, the secretary of the senate, and the clerk of the house.

4. Seven sets to the committee.

Section 6. Subsections (1), (2), and (3) of section"120.56, Florida Statutes, are amended to read:

120.56 Administrative determination of rule.--

(1) Any person substantially affected by a rule may seek an administrative determination of the validity ~~invalidity~~ of the rule on the ground-

(a)

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he rule is an invalid exercise of ~~validity~~ delegated legislative authority.

(b)

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~~That the rule is an exercise of invalidity delegated legislative authority.~~

(2) The petition seeking an administrative determination under this section shall be in writing and shall 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 be filed with the division which shall, immediately upon filing, forward a copy of the petition to the agency whose rule is challenged, the Department of State and the committee. Within 10 days after receiving the petition, the division director 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) Within 30 days after the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit a copy of the hearing officer's decision to the Department of State and the committee. 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. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Weekly in the first available issue after the rule has become void.

Section 7. Section 120.565, Florida Statutes, is amended to read:

120.565

Declaratory statement by agencies.—Each agency shall provide by rule the procedure for 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. The agency shall give notice of each petition and its disposition in the Florida Administrative Weekly and transmit copies of each petition and its disposition to the committee. Agency disposition of petitions shall be final agency action.

Section 8.

Section 120.57, Florida Statutes, is amended 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 ~~whenever 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, except for:

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

~~2.~~

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~~Hearings before a member of an agency head other than agency heads within the Department of Professional and Occupational Regulation,~~

~~2~~ 3

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

~~3~~

4

Hearings regarding drivers' licensing pursuant to chapter 322;

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5.

Hearings conducted within the ~~Division of Family Services~~ of the Department of Health and Rehabilitative Services in the execution of those social and economic programs administered by the former Division of Family Services of said department prior to the reorganization effected by chapter 75-48, Laws of Florida; and

~~5.~~

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

~~6.~~

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Hearings which involve student disciplinary suspensions or expulsions and which are conducted by educational units; and

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Hearings of the Public Employees Relations Commission in which a determination is made of the appropriateness of the bargaining unit as provided in s. 447.307.

(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. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days however; the 14 day notice requirement may be unless waived with the consent of by all parties, - In hearings involving student disciplinary suspensions or expulsions conducted by educational units, the 14 day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The 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.

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

5. 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 except communications by advisory staff as permitted under s. 120.66(1) if such communications are public records;

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

i. The official transcript.

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

8. 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. 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 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.

10. 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. 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 subsection 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 9. Paragraph (b) of subsection (1) of section 120.58, Florida Statutes, is amended to read:

120.53 Agency action; evidence, record and subpoenas.--

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

(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. However, no agency nor its duly empowered presiding officer nor any hearing officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

Section 10. Subsection (2) of section 120.60, Florida Statutes, is amended, and subsection (6) is added to said section to read:

120.60 Licensing. -- .

(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. Within 30 days after receipt of an application for a license the agency shall examine the application, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. Failure to correct an error or omission or to supply additional information shall not be grounds for denial of the

license unless the agency timely notified the applicant within this 30 day period. The agency shall notify the applicant if the activity for which he seeks a license is exempt from the licensing requirement and return an tendered application fee within 30 days after receipt of the original application or within 10 days after receipt of additional timely requested information, correction of errors or omissions. Every application for license shall be approved or denied within 90 days after receipt of the original application or receipt of the additional timely requested information, correction of errors or omissions. Any application for license not approved or denied within the 90 day period or within 15 days after conclusion of a public hearing held on the application, whichever is latest. Shall be deemed approved and, subject to the satisfactory completion of an examination if required as a prerequisite to licensure, shall be issued. The Public Service Commission when issuing a license, and any other agency if specifically exempted by lw, shall be exempt from the time limitations within this subsection. 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 s. 120.57.

6.If the Administration Commission grants an exception from any provision of this section as provided in s. 120.63, the exemption shall be for a single application only and shall not be renewable.

Section 11. Paragraph (a) of subsection (2) of section 120.63, Florida Statutes, is amended to read:

120.63 Exemption from act.—

(2)The 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 commission shall hold a public hearing notice given as provided in subsection 120.54(1). Upon the conclusion of the hearing, the commission shall transmit a copy of the petition, a certified copy of the order granting or denying the petition and a copy of any alternative procedures prescribed, to the committee, and shall give notice of the petition and the commission’s response in the Florida Administrative Weekly .

Section 12. Subsection (1) of section 120.66, Florida Statutes, is amended to read:

120.66 In any proceeding user s. 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head after the agency head has received a recommended order or 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.

(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 member who do ~~which~~ ~~does not testify~~ ~~participate~~ in the proceeding or to any rulemaking proceedings under s. 120.54.

Section 13. Subsection (3) of section 120.68, Florida Statutes, is amended to read:

120.68 Judicial review.—

(3)The filing of the petition does not itself stay enforcement of the agency decision but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency determines that a supersedeas would constitute a probable danger to the health, safety or welfare of the state. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but, in any event, the order shall specify the conditions upon which the stay or supersedeas is granted.

Section 14. Subsections (6) and (7) of section 120.65, Florida Statutes, as created by chapter 74-310 and as amended by chapter 75-191 Laws of Florida, are hereby repealed.

Section 15. This act shall take effect upon becoming a law.

Approved by the Governor June 15, 1976.

Filed in Office Secretary of State June 16, 1976.