

Chapter 84-203

Senate Bill No. 723

An act relating to administrative procedures; amending s. 120.53, F.S., deleting the requirement that agency rules include a list of forms; amending s. 120.54, F.S., requiring that the request for administrative determination of invalidity sufficiently explain facts or grounds for invalidity; clarifying language authorizing fact-finding hearings in certain cases; requiring the publication of the full text of emergency rules; defining "public hearing" for certain purposes; providing for the tolling of certain time limits under specified conditions; providing that required administrative rules be adopted within 180 days of the effective date of the law imposing the requirement; amending s. 120.545, F.S.; providing that the Joint Administrative Procedures Committee may object to administrative rules on the ground that they are in direct contravention of legislative intent and requiring that legislative records be maintained and made available to the committee; amending s. 120.55, F.S., setting out requirements relating to the incorporation of forms into rules; amending s. 120.57, F.S., authorizing the award of costs and attorney's fees to any prevailing party in appeals of formal administrative hearings; providing that a state university which has adopted rules of procedure for proceedings in which the substantial interests of students are determined is exempt from the proceedings requirements of the Administrative Procedure Act; providing that the Board of Regents shall establish a committee by January 1, 1985, which shall establish rules and guidelines insuring fairness and due process in judicial proceedings involving students in the state university system; amending s. 120.59, F.S., requiring final orders resulting from recommended orders to be filed with the Division of Administrative Hearings of the Department of Administration within 15 days after filing with agency clerk; requiring all notices of orders or intent to issue orders to contain information relating to available

appeals or hearings; amending s. 120.,60, F.S., requiring that all parties be given certified, written notice by mail or hand delivery of action or intended action on license applications and specifying the content of such notices; amending s. 455.213, F.S., requiring the supplementation of certain license applications submitted to administrative agencies; amending ss. 455.225 and 490.009, F.S., correcting cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida

Section 1. Paragraph (b) of subsection (1) of section 120.53, Florida Statutes, 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:

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, ~~including a list 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 instruction and a statement of the manner in which the form or instruction may be obtained without cost. Each agency shall file with the Department of State a copy of each form used by the agency in its dealings with the public. The department shall immediately send a copy of the form to the committee. A form may become effective no earlier than 20 days after it is filed with the department.~~

Section 2. Paragraphs (b) and (c) of subsection (4), paragraph(a) of subsection (9), and paragraph (b) of subsection(11) of section 120.54, Florida Statutes, are amended and subsection (12) is added to said section to read:

120.54 Rulemaking; adoption procedures.—

(4)

(b) The request seeking a determination under this subsection shall be in writing and must be filed with the division within 14 days after the date of publication of the notice. It must state with particularity the provisions of the rule or economic impact statement alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging the proposed rule would be substantially affected by it ~~and facts sufficient to show the invalidity of the proposed rule.~~

(c) Immediately upon receipt of the petition, the division shall forward copies of the petition to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director, if he determines that the petition complies with the above requirements, shall assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn. Within 30 days after conclusion the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare the proposed rule wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall be withdrawn from the committee by the adopting agency and shall not be adopted. No rule shall be filed for adoption until 21 days after the notice required by subsection (1) or until the hearing officer has rendered his decision, as the case may be. However, the agency may proceed with all other steps in the rulemaking process, including the holding of a fact-finding hearing pursuant to subsection (3). 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 no the decision in the first available issue of the Florida Administrative Weekly.

(9)(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, other than those of educational units or its of government with jurisdiction in only one county or part thereof, including the full text of the rule, 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.

(11)

(b) If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of a hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required above, in the office of the agency head; and such rules shall be open to the public pursuant to s. 120.53(2). Filings shall be made no less than 21 days nor more than 90 days after the notice required by subsection (1). If a public hearing is held, the 90-day limit is extended to 21 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. For purposes of this paragraph, the term "public hearing" includes any public meeting held by any agency at which the rule is considered. The filing of a petition for an administrative determination

under the provisions of subsection (4) shall toll the 90 period during which a rule must be filed for adoption until the hearing officer has filed his order with the clerk. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this subsection have been complied with and that there is no administrative determination pending on the rule. The department shall reject any rule not filed within the prescribed time limits or upon which an administrative determination is pending. If a rule has not been adopted within the time limits imposed by this section, the agency proposing the rule shall withdraw, the rule and give notice of its action in the same manner as prescribed in paragraphs (1)(a) and (b).

(12) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided herein within 180 days of the effective date of the act unless the provisions of the act provide otherwise.

Section 3. Paragraphs (a) and (b) of subsection (1) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.--

(1) The Department of State shall:

(a)l. Publish in a permanent compilation entitled "Florida Administrative Code" all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(8), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. The department shall, by July 1, 1981, contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided in this section. This publication shall be the official compilation of the administrative rules of this state.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish a summary or listing all rules of that agency excluded from publication in the code and a statement as to where those rules may be inspected, examined and shall also publish any exemptions granted that agency pursuant to s. 120.63, including the termination date of the exemption and a statement whether the exemption can be renewed pursuant to s. 120.63(2)(b).

4. Forms shall not be published in the Florida Administrative Code but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used ~~included in rules by reference.~~ Any form or instruction which meets the definition of "rule" provided in s. 120.52(15) shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference, and shall include, ~~at a minimum,~~ the number, title, and ~~the~~ effective date of the form and an explanation of how the form may be obtained.

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

1. Notice of adoption of, and an index to, all rules filed during the preceding week.

2. All hearing notices required by s. 120.54(1), owing the time, place, and date of the hearings and the text of all rules proposed for consideration or a reference

to the location in the Florida Administrative Weekly where the text of the proposed rules is published. ~~Forms shall not be published in the Florida Administrative Weekly but shall be included in the rules by reference. The reference shall state, at a minimum, the title and the effective date of the form and an explanation of how the form may be obtained.~~

3. All notices of meetings, hearings, and workshops conducted in accordance with the provisions of s. 120.53(1)(d), including a statement of the manner in which a copy of the agenda may be obtained.

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

5. A notice of each request for exemption from any provision of this chapter.

6. Notice of petitions for declaratory statement or administrative determinations.

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

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

The department may contract with a publishing firm for publication of the Florida Administrative Weekly.

Section 4. Section 120.57, Florida Statutes, is amended to read:

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

2. Hearings before the Unemployment Appeals Commission in unemployment compensation appeals, unemployment compensation appeals referees, and special deputies pursuant to s. 443.141;

3. Hearings regarding drivers' licensing pursuant to chapter 322

4. Hearings conducted within 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.

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

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

7. 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; and

8. Hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601.

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

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

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

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

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

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

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

3. Except for any proceeding conducted as prescribed in s. 120.54(4) or s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall 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, set the time, date, and place of the hearing. When the Florida Land and Water

Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days of receipt of notice of appeal if the commission elects to request the assignment of a hearing officer. On the request of any agency, the division shall assign a hearing officer with due regard to the expertise required for the particular matter. 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 a case 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 s. 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 party, it shall make a full or partial transcript available at no more than actual cost. In any proceeding before a hearing officer initiated by a consumptive use permit applicant pursuant to subparagraph 13., the applicant shall bear the cost of accurately and completely preserving all testimony and providing full or partial transcripts to the water management district. At the request of any other party, full or partial transcripts shall be provided at no more than cost.

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

8. Except as provided in subparagraph 12., 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, and 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 final order of the agency. 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 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. When there is an appeal ~~In the event a court reverses the order of an agency,~~ the court in its discretion may award reasonable attorney's fees and costs to the ~~aggrieved~~ prevailing party if the court finds that the appeal was frivolous, meritless, an abuse of the appellate process or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion.

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 final order of the agency, provided he has completed all his duties as hearing officer.

12. In any application for a license or merger pursuant to title XXXVIII which is referred by the agency to the division for hearing pursuant to this section, the hearing officer shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

13. In any application for a consumptive use permit pursuant to part II of chapter 373, the water management district on its own motion may, or, at the request of the applicant for the permit, shall, refer the matter to the division for the appointment of a hearing officer to conduct a hearing under this section.

(2) INFORMAL PROCEEDINGS.—In any case 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 action of the agency, 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 action of the agency or of its 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 decisions 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 does not apply to agency investigations preliminary to agency action.

(5) This section does not apply to any proceeding in which the substantial interest of a student are determined by a state university system. The Board of Regents shall establish a committee, at least half of whom shall be appointed by the Council of Student Body Presidents, which shall establish by January 1, 1985, rules and guidelines insuring fairness and due process in judicial proceedings involving students in the state university system. This section shall not become effective until January 1, 1985.

Section 5. Subsection (4) of section 120.59, Florida Statutes, is amended, and subsection (5) is added to said section, to read:

120.59 Orders.--

(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. Each notice shall inform the recipient of any administrative hearing or judicial review which may be available to him and shall indicate the procedures which must be followed to obtain a hearing or judicial review and state the time limits which apply.

(5) If a recommended order is submitted to an agency, the agency shall return a copy of its final order to the division within 15 days after the order is filed with the agency clerk.

Section 6. Subsections (3), (4), (5), (6), (7), (8) and (9) of section 120.60, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), (8), (9), and (10), respectively, and a new subsection (3) is added to said section to read: .

120.60 Licensing.--

(3) Each applicant shall be given written notice either personally or by mail that the agency intends to grant or deny or has granted or denied the application for license. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has requested notice of agency action. Each notice shall inform the recipient of any administrative hearing or judicial review which may be available to him, shall indicate the procedure which must be followed, and shall state applicable time limits. The issuing agency shall certify that the notice was given. The certification shall show the time and date the notice was mailed or delivered and shall be filed with the agency clerk.

Section 7. Subsection 455.213, Florida Statutes, is amended to read:

455.213 General licensing provisions.--

(1) Any person desiring to be licensed shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department and shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which might affect the agency' decision, which takes place between the initial filing of the application and the final grant or denial of the license

Section 8. Subsection (7) of section 455.225, Florida Statutes, is amended to read:

455.225 Disciplinary proceedings.--

(7) Any proceeding for the purpose of summary suspension of a license pursuant to s. 120.60(8) ~~(7)~~ shall be conducted by the secretary or his designee, who shall issue the final summary order.

Section 9. Paragraph (d) of subsection (1) of section 490.009, Florida Statutes, is amended to read:

490.009 Discipline.--

(1) When the department or, in the case of psychologists, the board finds that an applicant or licensee whom it regulates under this chapter has committed any of the acts set forth in subsection (2), it may issue an order imposing one or more of the following penalties:

(d) Immediate suspension of a license pursuant to s. 120.60 (8) ~~(7)~~

Section 10. This act shall take effect October 1, 1984.

Approved by the Governor June 13, 1984.

Filed in Office Secretary of State June 14, 1984.