

CHAPTER 87-54

House Bill No. 227

A bill to be entitled

An act relating to the Administrative Procedure Act; reenacting and amending chapter 86-108, Laws of Florida, to clarify legislative intent and correct the inadvertent omission of provisions which relate to the record in a case governed by s. 120.57(1), F.S., presentation of testimony, findings of fact, recommended orders, final orders and attorney's fees on appeal, alternate hearing officers, participation of agency head hearing officer in final order, hearing officer reports on applications pursuant to title XXXVIII, and referral of applications for consumptive use permits and to reenact provisions which relate to expedited review of certain permits issued pursuant to chapter 373, F.S., and to applicability of the act; providing an effective date and for retroactive operation.

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

Section 1. Section 1 of chapter 86-108, Laws of Florida, is reenacted and amended to read:

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

120.57. Decisions which affect substantial interests

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

(1) Formal proceedings.--

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

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

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice

requirement may be waived with the consent of all parties. In a preliminary hearing for the revocation of parole, no less than 7 days' notice shall be given. In a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

- a. A statement of the time, place, and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular sections of the statutes and rules involved.
- d. Except for any hearing before an unemployment compensation appeals referee, a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

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

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

5. ALL PLEADINGS, MOTIONS, OR OTHER PAPERS FILED IN THE PROCEEDING MUST BE SIGNED BY A PARTY, THE PARTY'S ATTORNEY, OR THE PARTY'S QUALIFIED REPRESENTATIVE. THE SIGNATURE OF A PARTY, A PARTY'S ATTORNEY, OR A PARTY'S QUALIFIED REPRESENTATIVE CONSTITUTES A CERTIFICATE THAT HE HAS READ THE PLEADING, MOTION, OR OTHER PAPER AND THAT, TO THE BEST OF HIS KNOWLEDGE, INFORMATION, AND BELIEF FORMED AFTER REASONABLE INQUIRY, IT IS NOT INTERPOSED FOR ANY IMPROPER PURPOSES, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY DELAY OR FOR FRIVOLOUS PURPOSE OR NEEDLESS INCREASE IN THE COST OF LITIGATION. IF A PLEADING, MOTION, OR OTHER PAPER IS SIGNED IN VIOLATION OF THESE REQUIREMENTS, THE HEARING OFFICER, UPON MOTION OR HIS OWN INITIATIVE, SHALL IMPOSE UPON THE PERSON WHO SIGNED IT, A REPRESENTED PARTY, OR BOTH, AN APPROPRIATE SANCTION, WHICH MAY INCLUDE AN ORDER TO PAY THE OTHER PARTY OR PARTIES THE AMOUNT OF REASONABLE EXPENSES INCURRED BECAUSE OF THE FILING OF THE PLEADING, MOTION, OR OTHER PAPER, INCLUDING A REASONABLE ATTORNEY'S FEE.

6. ***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.

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. In any proceeding before a hearing officer initiated by a consumptive use permit applicant pursuant to subparagraph 14.***, 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.

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

9. ***Except as provided in subparagraph 13.***, 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.

10. ***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 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 the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action. When there is an appeal, the court in its discretion may award reasonable attorney's fees and costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion.

11. ***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.

12. ***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.

13. ***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.

14 ***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.

Section 2. Section 2 of chapter 86-108, Laws of Florida, is reenacted and amended to read:

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

120.57. Decisions which affect substantial interests

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

(6) IN CASES WHERE A CONCEPTUAL REVIEW PERMIT HAS BEEN ISSUED BY A WATER MANAGEMENT DISTRICT, PETITIONS CHALLENGING THE ISSUANCE OF A CONSTRUCTION OR OPERATING PERMIT IMPLEMENTING THE CONCEPTUAL REVIEW PERMIT, UPON A MOTION OF A PARTY, SHALL BE SUBJECT TO EXPEDITED REVIEW. WITHIN FIFTEEN (15) DAYS OF FILING A MOTION FOR EXPEDITED REVIEW BY THE DISTRICT OR THE APPLICANT, THE HEARING OFFICER SHALL, BY ORDER, ESTABLISH A SCHEDULE FOR THE PROCEEDINGS, INCLUDING DISCOVERY, WHICH PROVIDES FOR A FINAL HEARING WITHIN SIXTY (60) DAYS OF THE ISSUANCE OF THE ORDER. PROPOSED RECOMMENDED ORDERS MUST BE SUBMITTED TO THE HEARING OFFICER, IF AT ALL, WITHIN TEN (10) DAYS OF THE FILING OF THE HEARING TRANSCRIPT. RECOMMENDED ORDERS SHALL BE

SUBMITTED TO THE DISTRICT WITHIN THIRTY (30) DAYS OF THE LAST DAY FOR THE FILING OF THE PROPOSED RECOMMENDED ORDER. THE DISTRICT SHALL ISSUE ITS FINAL ORDER WITHIN FORTY-FIVE (45) DAYS OF THE RECEIPT OF THE RECOMMENDED ORDER. IF THE DISTRICT GRANTS THE CONSTRUCTION OR OPERATING PERMIT, THE PERMITTEE MAY PROCEED UNLESS JUDICIAL REVIEW OF FINAL AGENCY ACTION IS SOUGHT PURSUANT TO S. 120.68 AND A STAY IS APPLIED FOR AND ISSUED.

Section 3. Section 3 of chapter 86-108, Laws of Florida, is reenacted to read:

Section 3. THIS ACT IS NOT APPLICABLE WITH RESPECT TO ANY PLEADING, MOTION, OR OTHER PAPER FILED BEFORE THIS ACT TAKES EFFECT.

Section 4. This act shall take effect upon becoming a law and shall operate retroactively to the effective date of chapter 86-108, Laws of Florida.

Approved by the Governor May 29, 1987.

Filed in Office Secretary of State May 29, 1987.