

Chapter 91-45

AN ACT relating to the Florida Statutes; amending ss. 11.30(2), 15.0913, 18.101(3), 20.15(6), (7), 24.102(2)(b), 24.112(9)(a), 24.113(2), 27.51(1), 39.426(6), 39.429(1), 48.195(2), 55.10(7), 61.1301(2)(a), (d), (f), 61.14(5)(a), 103.101(4), 106.15(4), 110.209(2)(a), 112.061(4)(b), (7)(b), 112.3144(3)(c), 120.55(1)(a), 122.07(2), 125.011, 125.012(15), (21), (23), 125.014, 125.019, 132.34(9), 145.051(2)(b), 145.071(2)(b), 145.09(3)(b), 161.054(3), 163.3227(1)(a), 163.3229, 163.340(12)(b), 163.358(4), 163.387(2)(a), 163.517(3), 164.105, 164.106(2), 170.01(3), 170.03, 170.16, 177.031(10), 185.02(1), 186.515, 196.012(5), 196.1975(9)(b), 196.199(2)(a), 199.183(2)(b), 203.04(1), 205.022(6)(b), 207.0281(2), 212.06(1)(c), 214.03(2), 215.63(1), 218.32(4), 228.2001(2)(d), 228.401(2), 229.781, 230.331(2), (3), 230.645(9), 231.095(1)(b), 235.41(1), 237.34(2)(a), and 240.533(2), Florida Statutes, and ss. 11.45(1)(a), 20.30(4)(o), (5)(k), 20.315(15), 39.001(3)(b), 39.01(10)(c), (40)(a), 39.076(3)(k), 39.41(7), 39.4105(5), 39.469(2)(b), 106.26(11), 110.1127(3)(a), (e), 110.123(7), 110.207(1)(a), 119.07(1)(b), (3)(q), 120.53(5), 121.031(3)(a), 125.0104(3)(b), 154.209(16), (17)(b), 163.01(7)(e), (15)(b), 210.05(3)(b), 212.0305(2), 212.05(1)(a), (c), 212.08(15)(e), 216.031(10), 216.301(3), 236.081(4)(a), (6)(c), (11), (12), (13)(a), 240.209(3)(e), 240.35(4), (9), 240.539(4), (6)(a), and 242.335(3)(a), Florida Statutes (1990 Supplement), pursuant to s. 11.242, Florida Statutes; deleting provisions which have expired, served their purpose, or have been impliedly repealed or superseded; revising or correcting cross-references; correcting grammatical typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; improving the clarity of the statutes and facilitating their correct interpretation; and correcting errors in the editing, publishing, and printing of the Florida Statutes.

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

Section 20. Paragraph (a) of subsection (1) of section 120.55, Florida Statutes, is amended to read:

120.55. Publication

(1) The Department of State shall:

(a)1. 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 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 of all rules of that agency excluded from publication in the code and a statement as to where those rules may be inspected or 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. Any form or instruction which meets the definition of "rule" provided in s. 120.52(16) ~~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 the number, title, and effective date of the form and an explanation of how the form may be obtained.

Reviser's note.--Amended to conform to the renumbering of subsections of s. 120.52 by s. 2, ch. 87-385, Laws of Florida.

Section 79. Subsection (5) of section 120.53, Florida Statutes (1990 Supplement), is amended to read:

120.53. Adoption of rules of procedure and public inspection

(5) An agency which enters into a contract pursuant to the provisions of ss. 282.303 ~~282.301-282.313~~, chapter 255, chapter 287, or chapters 334-349 shall adopt rules specifying procedures for the resolution of protests arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the Division of Purchasing of the Department of General Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Division of Purchasing, notice of a decision or intended decision shall be given by posting such notice in the office of the Division of Purchasing.

3. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail or other express delivery service, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is affected adversely by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the agency decision or intended decision and shall file a formal written protest within 10 days after the date he filed the notice of protest. With respect to a protest of the specifications contained in an invitation to bid or in a request for proposals, the notice of protest shall be filed in writing within 72 hours after the receipt of notice of the project plans and specifications or intended project plans and specifications in an invitation to bid or request for proposals, and the formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based.

(c) Upon receipt of the formal written protest which has been timely filed the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d) The agency, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to s. 120.57(2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the division director shall expedite the hearing and assign a hearing officer who shall conduct a hearing within 15 days of the receipt of the formal written protest by the division and render a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the hearing officer, whichever is later. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) The Administration Commission shall promulgate model rules of procedure pursuant to the provisions of s. 120.54(10) for the filing of notice of protests and formal written protests.

Reviser's note.--Amended to conform to s. 31, ch. 87-137, Laws of Florida, which repealed ss. 282.301 and 282.302.