

CHAPTER 98-200

Committee Substitute for Senate Bill No. 1440

An act relating to administrative procedures; amending 370.06, F.S.; authorizing the Department of Environmental Protection to issue certain special activity licenses; authorizing rulemaking for issuance of broodstock special activities licenses; amending s. 370.12; authorizing rulemaking for issuance of special permits for marine turtles; providing a definition; amending s. 120.54, F.S.; requiring the Administration Commission to adopt uniform rules of procedure for certain administrative hearings; providing requirements; amending s. 120.569, F.S.; providing requirements for petitions or requests for administrative hearings; providing procedural requirements for agencies; providing for dismissal; requiring notice; authorizing agencies to refer petitions to the Division of Administrative Hearings under certain circumstances; amending s. 120.57, F.S.; providing for motions for a summary final order in administrative hearings under certain circumstances; providing requirements for such orders; providing requirements for relinquishing jurisdiction of certain proceedings to an agency; providing procedures; amending ss. 14.202, 17.29, 18.22, 20.171, 63.233, 175.341, 177.504, 185.23, 198.08, 199.202, 201.11, 207.011, 210.10, 210.75, 212.17, 212.18, 213.06, 215.62, 215.95, 217.14, 220.182, 220.183, 229.053, 229.515, 230.22, 230.32, 231.261, 235.01, 240.209, 240.227, 240.311, 240.319, 242.331, 246.041, 246.051, 246.071, 246.207, 246.213, 253.03, 253.73, 257.14, 258.007, 258.43, 259.035, 259.041, 265.284, 265.605, 267.031, 280.19, 284.17, 288.709, 292.05, 310.151, 310.185, 319.17, 320.011, 320.69, 320.824, 324.042, 326.003, 327.04, 330.29, 334.044, 339.175, 350.127, 366.05, 367.121, 368.05, 369.20, 369.22, 369.251, 370.021, 370.092, 370.15, 373.043, 373.044, 373.113, 373.171, 373.337, 373.418, 376.07, 377.22, 377.703, 378.205, 378.404, 380.05, 380.0651, 381.0011, 384.33, 391.026, 392.66, 394.879, 395.1055, 403.061, 403.1835, 403.504, 403.523, 403.704, 403.716, 403.805, 403.861, 403.869, 403.9404, 406.04, 408.15, 414.45, 427.013, 430.08, 440.591, 443.171, 455.203, 455.521, 457.104, 458.309, 459.005, 460.405, 461.005, 463.005, 464.006, 465.005, 465.022, 466.004, 466.038, 467.005, 468.1135, 468.1685, 468.204, 468.384, 468.402, 468.507, 468.522, 468.606, 468.705, 468.802, 470.005, 471.008, 472.008, 473.304, 474.206, 475.05, 475.614, 476.064, 477.016, 478.43, 480.035, 481.2055, 481.306, 482.051, 483.805, 484.005, 484.044, 486.025, 488.02, 489.108, 489.507, 490.004, 491.004, 492.104, 494.0011, 496.424, 497.103, 497.105, 498.007, 500.459, 501.014, 501.143, 501.626, 502.014, 503.031, 504.32, 516.22, 516.23, 517.03, 520.994, 526.09, 531.41, 548.003, 553.76, 560.105, 561.11, 570.07, 571.05, 571.24, 574.14, 578.11, 580.036, 583.04, 585.002, 593.103, 616.165, 616.256, 617.01301, 620.1835, 620.81055, 624.308, 624.4431, 626.943, 627.805, 627.9408, 628.535, 633.01, 633.517, 634.021, 634.302, 634.402, 635.081, 636.067, 641.403, 641.56, 648.26, 651.015, 655.012, 681.118, 717.138, 718.501, 719.501, 721.26, 723.006, 916.20, 943.03, 944.09, 947.07, 960.045, 985.405, F.S.; restating rulemaking authority for numerous state officers, departments, divisions, boards, and other entities; repealing s. 258.011, F.S., relating to rules for state parks; amending s. 633.70, F.S.; conforming a cross-reference to a change made by the act; amending s. 334.044, F.S.; providing specific rulemaking authority; repealing s. 334.044(15), F.S., relating to certain rulemaking authority; amending s. 370.092, F.S.; providing specific rulemaking authority for the regulation of nets and boats of a specific

length; directing the Marine Fisheries Commission to adopt rules prohibiting the possession and sale of mullet taken in illegal gill and entangling nets; amending s. 370.093, F.S.; authorizing the Marine Fisheries Commission to adopt rules implementing s. 370.093, F.S.; providing an effective date.

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

Section 3. Paragraph (b) of subsection (5) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(5) UNIFORM RULES.—

(b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but not be limited to:

1. Uniform rules for the scheduling of public meetings, hearings, and workshops.
2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, “communications media technology” means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.
3. Uniform rules of procedure for the filing of notice of protests and formal written protests.

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall include:

a. The identification of the petitioner.

b. A statement of when and how the petitioner received notice of the agency's action or proposed action.

c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.

d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.

e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.

f. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action.

g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.

5.4. Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory statements.

6.5. Provision of a method by which each agency head shall provide a description of the agency's organization and general course of its operations.

7.6. Uniform rules establishing procedures for granting or denying petitions for variances and waivers pursuant to s. 120.542.

Section 4. Paragraphs (c) through (l) of subsection (2) of section 120.569, Florida Statutes, are renumbered as paragraphs (e) through (n), respectively, and new paragraphs (c) and (d) are added to said section, to read:

120.569 Decisions which affect substantial interests.—

(2)

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a

timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).

Section 5. Paragraphs (h), (i), (j), (k), and (l) of subsection (1) of section 120.57, Florida Statutes, are renumbered as paragraphs (j), (k), (l), (m), and

(n), respectively, and new paragraphs (h) and (i) are added to said subsection, to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(h) Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(i) When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. In ruling on such a motion, the administrative law judge may consider the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any. If the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed fact that could have been raised before the administrative law judge. An order entered by an administrative law judge relinquishing jurisdiction to the agency based upon a determination that no genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a recommended disposition or penalty.