

Section 120.59

CHAPTER 74-310

Section 1. Chapter 120, Florida Statutes, consisting of sections 120.50, 120.51, 120.52, 120.53, 120.54, 120.55, 120.56, 120.57, 120.58, 120.59, 120.60, 120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 120.68, 120.69, 120.70, and 120.71, is created to read:

Section 120.59 is created to read:

120.59 Orders.--

(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within 90 days:

(a) After the hearing is concluded, if conducted by the agency.

(b) After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by a hearing officer, or

(c) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing. The ninety day period may be waived or extended with the consent of all parties.

(2) "Agency action" means the whole or part of a rule or order or the equivalent, or denial of a petition to adopt a rule or issue an order. The terms also include any request made under s. 120.54(3).

(3) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in a final order, which shall be appealable or enjoinable from the date rendered.

(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.

CHAPTER 77-174

Section 1.

120.59 Orders.--

(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within 90 days:

(a) After the hearing is concluded, if conducted by the agency.

(b) After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by a hearing officer, or

(c) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

The 90-day period may be waived or extended with the consent of all parties.

CHAPTER 84-203

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

Subsection (5) is added to section 120.59, Florida Statutes, 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 procedure 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.

CHAPTER 87-385

Section 1. Subsection (6) is added to section 120.59, Florida Statutes, to read:

120.59 Orders.--

(6)(a) In any proceeding pursuant to s. 120.57(1), a prevailing part shall be entitled to recover costs from the nonprevailing adverse party, and shall also be entitled to recover a reasonable attorney fee, as provided herein. The provisions of this subsection shall not apply to a prevailing or nonprevailing party that is an agency.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award costs and a reasonable attorney fee to the prevailing party only where the nonprevailing adverse party has been determined by the hearing officer to have participated in the proceeding for an improper purpose.

(c) In all proceedings pursuant to s. 120.57(1), the hearing officer shall determine whether any party, other than a party that is an agency, participated in the proceeding for an improper purpose as defined in this subsection. In making such determination, the hearing officer shall consider whether the nonprevailing adverse party has participated in two or more other such proceeding involving the same nonagency prevailing party and same project as an adverse party and in such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position; and whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttable presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose.

(d) In any proceeding in which the hearing officer determines that a party participated in the proceeding for an improper purpose, the recommended order shall so designate and shall recommend the award of costs and attorney fees.

(e) For the purpose of this subsection:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of licensing or securing the approval of an activity.

2. "Costs" shall have the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. "Nonprevailing adverse party" shall mean a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a "nonprevailing adverse party." The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

Section 6. Subsection (4) of section 120.59, Florida Statutes, is amended 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 that is available under s. 120.57 or s. 120.68 ~~which may be available to him~~, shall indicate the

procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply.

CHAPTER 91-30

Section 5. Subsections (1) and (2) of section 120.59, Florida Statutes, are amended to read:

120.59 Orders.--

(1)(a) The final order in a proceeding which affects substantial interest must ~~shall~~ be in writing ~~or stated in the record~~ and include findings of fact and conclusions of law separately stated, and it must ~~shall~~ be rendered within 90 days:

1.(a) After the hearing is concluded, if conducted by the agency,

2.(b) After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by a hearing officer, or

3.(c) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing. The 90-day period may be waived or extended with the consent of all parties.

b. Each final order that must be indexed or listed pursuant to s. 120.53 must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference.

c. Each agency order that must be indexed or listed pursuant to s. 120.53 must be sequentially numbered by the agency in the order rendered, according to a numbering system approved by the Department of State pursuant to s. 120.53.

2. Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, must ~~shall~~ be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order must ~~shall~~ include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

CHAPTER 91-191

Section 1. Sections 10, 11, and 12 of House Bill 1879, enacted in the 1991 regular session, are amended to read:

Section 10. On or before ~~March~~ January 1, 1992, each agency shall submit to the Department of State for approval a plan for publishing or otherwise making agency orders available to the public, for sequentially numbering agency orders, for coordinating and establishing procedures for the compilation of subject-matter indexes and lists of agency orders, and for publishing such indexes and lists or providing alternative means of making such indexes and lists available to the public.

Section 11. This act applies to actions instituted on or after ~~March~~ January 1, 1992.

Section 12. This act shall take effect ~~March~~ January 1, 1992, except that this section and section 10 shall take effect upon this act becoming a law.