

Section 120.81

CHAPTER 96-159

Section 1. It is the intent of the Legislature to consider the impact of any agency rulemaking required by proposed legislation and to determine whether the proposed legislation provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

Section 42. Section 120.81, Florida Statutes, is created to read:

120.81 Exceptions and special requirements; general areas

(1) EDUCATIONAL UNITS.--

(a) The preparation or modification of curricula by an educational unit is not a rule as defined by this chapter.

(b) Notwithstanding s. 120.52(15), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 229.57, s. 232.245, s. 232.246, or s. 232.247, or any other statewide educational tests required by law, are not rules.

(c) Notwithstanding s. 120.54(3)(a), notice of intent by an educational unit to adopt, amend, or repeal a rule or notice by an educational unit of a petition for a declaratory statement need not be published in the Florida Administrative Weekly or transmitted to the committee; however, the notice, for other than an emergency rule, shall be made at least 21 days prior to the intended action:

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

(d) Notwithstanding s. 120.54(3)(a)4., educational units, other than units of the State University System and the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by that subparagraph.

(e) Notwithstanding s. 120.57(1)(a), hearings which involve student disciplinary suspensions or expulsions may be conducted by educational units.

(f) Sections 120.57 and 120.569 do not apply to any proceeding in which the substantial interests of a student are determined by the 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 rules and guidelines ensuring fairness and due process in judicial proceedings involving students in the State University System.

(g) Notwithstanding ss. 120.569 and 120.57, in a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice of hearing requirement may be waived by the agency head or the hearing officer without the consent of parties.

(h) For purposes of s. 120.68, a district school board whose decision is reviewed under the provisions of s. 231.36 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action.

(i) Notwithstanding s. 120.525(2), the agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to the meeting.

(2) LOCAL UNITS OF GOVERNMENT.—

(a) Notwithstanding s. 120.54(3)(a)4., local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee of the documents required to be filed by that subparagraph.

(b) Notwithstanding s. 120.54(3)(a), notice of intent by a unit of government with jurisdiction in only one county to adopt, amend, or repeal a rule need not be published in the Florida Administrative Weekly or transmitted to the committee.

(3) PRISONERS AND PAROLEES.--

(a) Notwithstanding s. 120.52(12), prisoners, as defined by s. 944.02(5) shall not be considered parties in any proceedings other than those under s. 120.54(3)(c) or (7), and may not seek judicial review under s. 120.68 of any other agency action. Prisoners are not eligible to seek an administrative determination of an agency statement under s. 120.56(4). Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

(b) Notwithstanding s. 120.54(3)(c), prisoners, as defined by s. 944.02(5), may be limited by the Department of Corrections to an opportunity to present evidence and argument on issues under consideration by submission of written statements concerning intended action on any department rule.

(c) Notwithstanding ss. 120.569 and 120.57, in a preliminary hearing for revocation of parole, no less than 7 days' notice of hearing shall be given.

(4) REGULATION OF PROFESSIONS.--Notwithstanding s. 120.569(2)(e), in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

(a) The testimony of the victim of the sexual misconduct need not be corroborated.

(b) Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

1. It is first established to the administrative law judge in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct; or

2. If consent by the victim of the sexual misconduct is at issue and it is first established to the administrative law judge in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(c) Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is inadmissible.

(5) HUNTING AND FISHING REGULATION.--Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Marine Fisheries Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting by electronic media.

(6) RISK IMPACT STATEMENT.--The Department of Environmental Protection shall prepare a risk impact statement for any rule that is proposed for approval by the Environmental Regulation Commission and that establishes or changes standards or criteria based on impacts to or effects upon human health. The Department of Agriculture and Consumer Services shall prepare a risk impact statement for any rule that is proposed for adoption that establishes standards or criteria based on impacts to or effects upon human health.

(a) This subsection does not apply to rules adopted pursuant to federally delegated or mandated programs where such rules are identical or substantially identical to the federal regulations or laws being adopted or implemented by the Department of Environmental Protection or Department of Agriculture and Consumer Services, as applicable. However, the Department of Environmental Protection and the Department of Agriculture and Consumer Services shall identify any risk analysis information available to them from the Federal Government that has formed the basis of such a rule.

(b) This subsection does not apply to emergency rules adopted pursuant to this chapter.

(c) The Department of Environmental Protection and the Department of Agriculture and Consumer Services shall prepare and publish notice of the availability of a clear and concise risk impact statement for all applicable rules. The risk impact statement must explain the risk to the public health addressed by the rule and shall identify and summarize the source of the scientific information used in evaluating that risk.

(d) Nothing in this subsection shall be construed to create a new cause of action or basis for challenging a rule nor diminish any existing cause of action or basis for challenging a rule.

CHAPTER 97-176

Committee Substitute for Senate Bill No. 1066

Section 17. Subsections (1) and (2) of section 120.81, Florida Statutes, 1996 Supplement, are amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(a) The preparation or modification of curricula by an educational unit is not a rule as defined by this chapter.

(b) Notwithstanding s. 120.52(15), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 229.57, s. 232.245, s. 232.246, or s. 232.247, or any other statewide educational tests required by law, are not rules.

(c) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Weekly, but notice shall be made ~~s. 120.54(3)(a), notice of intent by an educational unit to adopt, amend, or repeal a rule or notice by an educational unit of a petition for a declaratory statement need not be published in the Florida Administrative Weekly or transmitted to the committee; however, the notice, for other than an emergency rule, shall be made at least 21 days prior to the intended action:~~

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

(d) ~~Notwithstanding s. 120.54(3)(a)4.,~~ Educational units, other than units of the State University System and the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 or s. 120.55(1)(a)4. that subparagraph.

(e) Notwithstanding s. 120.57(1)(a), hearings which involve student disciplinary suspensions or expulsions may be conducted by educational units.

(f) Sections 120.569 and 120.57 do not apply to any proceeding in which the substantial interests of a student are determined by the State University System or a community college district. 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 rules and guidelines ensuring fairness and due process in judicial proceedings involving students in the State University System.

(g) Notwithstanding ss. 120.569 and 120.57, in a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice of hearing requirement may be waived by the agency head or the hearing officer without the consent of parties.

(h) For purposes of s. 120.68, a district school board whose decision is reviewed under the provisions of s. 231.36 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action.

(i) Notwithstanding s. 120.525(2), the agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to the meeting.

(j) Students are not persons subject to regulation for the purposes of petitioning for a variance or waiver to rules of educational units under s. 120.542.

(2) LOCAL UNITS OF GOVERNMENT.—

(a) ~~Notwithstanding s. 120.54(3)(a)4.,~~ Local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 that subparagraph.

(b) Notwithstanding any other provision of this chapter, units of government with jurisdiction in only one county or part thereof need not publish required notices in the

~~Florida Administrative Weekly, but shall publish these notices in the manner required by their enabling acts for notice of rulemaking or notice of meeting. Notices relating to rules are not required to include the full text of the rule or rule amendment s. 120.54(3)(a), notice of intent by a unit of government with jurisdiction in only one county to adopt, amend, or repeal a rule need not be published in the Florida Administrative Weekly or transmitted to the committee.~~

CHAPTER 99-02

House Bill No. 1037

Section 49. Subsection (4) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(4) REGULATION OF PROFESSIONS.--Notwithstanding s. 120.569(2)(g) ~~120.569(2)(e)~~, in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

(a) The testimony of the victim of the sexual misconduct need not be corroborated.

(b) Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

1. It is first established to the administrative law judge in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct; or

2. If consent by the victim of the sexual misconduct is at issue and it is first established to the administrative law judge in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(c) Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is inadmissible.

Reviser's note.--Amended to conform to the redesignation of subunits of s. 120.569(2) by s. 4, ch. 98-200, Laws of Florida.

CHAPTER 99-245

Committee Substitute for Committee Substitute for Senate Bill No. 864

Section 65. Subsection (5) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(5) HUNTING AND FISHING REGULATION.--Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Fish and Wildlife Conservation ~~Marine Fisheries~~ Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting by electronic media.

CHAPTER 99-379

House Bill No. 2125

Section 7. Present paragraphs (a) through (j) of subsection (1) of section 120.81, Florida Statutes, are redesignated as paragraphs (b) through (k), respectively, and a new paragraph (a) is added to that subsection, to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(a) Notwithstanding s. 120.536(1) and the flush left provisions of s. 120.52(8), district school boards may adopt rules to implement their general powers under s. 230.22.

CHAPTER 99-398

Committee Substitute for House Bill Nos. 751, 753, and 755

Section 29. For the purpose of incorporating the amendments made by this act to section 229.57, Florida Statutes, 1998 Supplement, and 232.245, Florida Statutes, in references thereto, paragraph (b) of subsection (1) of section 120.81, Florida Statutes, is reenacted to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(b) Notwithstanding s. 120.52(15), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 229.57, s. 232.245, s. 232.246, or s. 232.247, or any other statewide educational tests required by law, are not rules.

CHAPTER 2000-214

Committee Substitute for Committee Substitute for Senate Bill No. 2390

Section 4. Paragraphs (a) and (b) of subsection (3) of section 120.81, Florida Statutes, are amended to read:

120.81 Exceptions and special requirements; general areas.—

(3) PRISONERS AND PAROLEES.—

(a) Notwithstanding s. 120.52(12), prisoners, as defined by s. 944.02(~~5~~), shall not be considered parties in any proceedings other than those under s. 120.54(3)(c) or (7), and may not seek judicial review under s. 120.68 of any other agency action. Prisoners are not eligible to seek an administrative determination of an agency statement under s. 120.56(4). Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

(b) Notwithstanding s. 120.54(3)(c), prisoners, as defined by s. 944.02(~~5~~), may be limited by the Department of Corrections to an opportunity to present evidence and argument on issues under consideration by submission of written statements concerning intended action on any department rule.

CHAPTER 2002-387

Senate Bill No. 20-E

Section 897. Paragraphs (a), (c), (e), (g), (i), and (j) of subsection (1) of section 120.81, Florida Statutes, are amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(a) Notwithstanding s. 120.536(1) and the flush left provisions of s. 120.52(8), district school boards may adopt rules to implement their general powers under s. 1001.41 ~~230.22~~.

(c) Notwithstanding s. 120.52(15), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. ~~1003.43~~ ~~229.57~~, s. 1003.438, s. ~~1008.22~~ ~~232-245~~, or s. ~~1008.25~~ ~~232-246~~, or s. ~~232.247~~, or any other statewide educational tests required by law, are not rules.

(e) Educational units, other than ~~the state universities~~ ~~units of the State University System~~ and the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 or s. 120.55(1)(a)4.

(g) Sections 120.569 and 120.57 do not apply to any proceeding in which the substantial interests of a student are determined by a state university ~~the State University System~~ or a community college district. ~~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 rules and guidelines ensuring fairness and due process in judicial proceedings involving students in the State University System.~~

(i) For purposes of s. 120.68, a district school board whose decision is reviewed under the provisions of s. ~~1012.33~~ ~~231.36~~ and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action.

(j) Notwithstanding s. 120.525(2), the agenda for a special meeting of a district school board under authority of s. ~~1001.372(1)~~ ~~230.16~~ shall be prepared upon the calling of the meeting, but not less than 48 hours prior to the meeting.

CHAPTER 2010-78

House Bill No. 7237

Section 4. Paragraph (e) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(e) Educational units, other than ~~the state universities~~ and the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 or s. 120.55(1)(a)4.

CHAPTER 2011-225

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 993 and House Bill No. 7239

Section 9. Paragraph (1) is added to subsection (1) of section 120.81, Florida Statutes, to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(1) Sections 120.54(3)(b) and 120.541 do not apply to the adoption of rules pursuant to s. 1012.22, s. 1012.27, s. 1012.34, s. 1012.335, or s. 1012.795.

CHAPTER 2013-14

Senate Bill No. 688

Section 13. Paragraph (d) of subsection (1) and paragraph (b) of subsection (2) of section 120.81, Florida Statutes, are amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register ~~Weekly~~, but notice shall be made:

1. By publication in a newspaper of general circulation in the affected area;
2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and
3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

(2) LOCAL UNITS OF GOVERNMENT.—

(b) Notwithstanding any other provision of this chapter, units of government with jurisdiction in only one county or part thereof need not publish required notices in the Florida Administrative Register ~~Weekly~~, but shall publish these notices in the manner

required by their enabling acts for notice of rulemaking or notice of meeting. Notices relating to rules are not required to include the full text of the rule or rule amendment.

CHAPTER 2013-35

Committee Substitute for Senate Bill No. 1096

Section 37. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.428 ~~1003.43~~, s. 1003.429, s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

CHAPTER 2014-17

Senate Bill No. 934

Section 21. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.428, ~~s. 1003.429~~, s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Reviser's note.—Amended to conform to the repeal of s. 1003.429 by s. 20, ch. 2013-27, Laws of Florida.

Section 190. This act shall take effect on the 60th day after adjournment sine die of the session of the Legislature in which enacted.

CHAPTER 2014-39

House Bill No. 7031

Section 3. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. ~~1003.4282~~ ~~1003.428~~, s. ~~1003.429~~, s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

CHAPTER 2014-184

Committee Substitute for Committee Substitute for Senate Bill No. 850

Section 24. Effective July 1, 2015, paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.428, s. 1003.429, s. ~~1003.438~~, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

CHAPTER 2021-17

Committee Substitute for House Bill No. 35

Section 10. Paragraph (d) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in a newspaper qualified under chapter 50 ~~of general circulation~~ in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.