

CHANGES IN CHAPTER 120 RESULTING FROM THE 1977 LEGISLATIVE SESSION

Chapter 120, The Administrative Procedure Act, was directly affected by only two laws enacted by the 1977 Legislature: Chapter 77-53 (House Bill 526) and Chapter 77-453 (Senate Bill 553). Other laws amending other Chapters of the Florida Statutes may have an indirect effect upon the APA, but they have not been placed in proper form for staff review at this time.

Chapter 77-53 (House Bill 526)

The Division of Pari-mutuel Wagering of the Department of Business Regulation is exempt from the notice and hearing requirements of Section 120.57(1) (a) and (b) in a limited number of cases relating to violations of laws or rules which are likely to affect the outcome of races or jai alai games. Only those hearings which may result in a fine or suspension are affected and the Division is required to adopt rules providing alternative procedures which include a reasonable notice.

Chapter 77-453 (Senate Bill 553)

All procedures of the Department of Banking and Finance relating to licensing or the approval of mergers for banks, credit unions, and savings and loan associations are exempt from the provisions of Section 120.57(1) and 120.58, Florida Statutes. New procedures for handling these hearings are now provided in the licensing section of the Administrative Procedure Act, but the provisions setting out the content of the record in these cases, found in Section 120.57(1)(b)5., are retained. The Division is no longer required to use a hearing

officer from the Division of Administrative Hearings but the act does not give the hearing officer who does conduct these hearings subpoena power nor authority to effect discovery. The requirement that a person be substantially affected by proposed agency action in order to request a hearing is replaced by a provision that any person may request such a hearing as prescribed by the rules of the agency. Notice of the receipt of an application for a license or merger under this amendment must be noticed by the Department within 21 days of receipt and applications for new banks, credit unions, and savings and loan associations must be approved or denied within 180 days rather than 90 days as is required for all other licenses or permits. A new requirement that the applicant show approval of insurance by the FDIC or the FSLIC is imposed as a prerequisite to licensing. All these changes relating to proceedings of the Department of Banking and Finance are automatically repealed on June 30, 1978.

Proceedings of the Public Employees Relations Commission relating to the certification of employee organizations under Section 447.307 are exempt from all licensing provisions of the Administrative Procedure Act.

When the Governor and Cabinet, sitting as the Administration Commission, grants or denies an application for an exemption from the Act, it must do so by issuing an order through the Secretary of Administration.

Educational units and units of government having jurisdiction in only one county or less and which are not required to publish their rules in the Florida Administrative Code are no longer required to file their rules with the Department of State nor to submit them to the Committee. Rules which are not required to be filed with the Department of State become effective when adopted by the agency head or on a later date specified by rule or statute. All

educational units and single county governmental units are no longer required to give notice of emergency rules in the Florida Administrative Weekly nor to submit emergency rules to the Committee. The preparation or modification of curricula by educational units is removed from the definition of “rule.”

The 90-day period within which a license application must be granted or denied is tolled whenever a hearing under Section 120.57 is initiated and conducted by a hearing officer from the Division of Administrative Hearings. The running of the 90-day period resumes with the submission of the recommended order, the final deadline is extended to 45 days after the recommended order is submitted unless the regular deadline is later.

The 21 to 45 day period during which a proposed rule must be adopted or withdrawn is now set to begin with the receipt of the transcript or other material submitted at a public hearing when one is held on a rule, rather than on the date of the notice.

Under the 1977 amendments, each agency is required to file a statement with the Committee of the extent to which each proposed rule imposes standards more restrictive than federal standards or to state that the proposed rule is not more restrictive or that there are no federal standards on the subject of the rule.

When a court reverses an agency decision, the discretionary award of attorney’s fees is no longer limited to cases alleging bad faith or malice. The courts now have discretion to award attorney’s fees in all cases.

Provision is made in the 1977 amendments for the termination of exemptions granted while the Legislature is in session at the adjournment of the current session rather than allowing them to continue for a full year. Exemptions will also terminate on the effective date of legislation incorporating the exemption or any part of it.

CHANGES IN SECTION 11.60, FLORIDA STATUTES,
RESULTING FROM THE 1977 LEGISLATIVE SESSION

Chapter 77-453, Laws of Florida (Senate Bill 553), amended Section 11.60(2), Florida Statutes, to grant new powers and to impose new duties upon the Joint Administrative Procedures Committee.

Under this amendment, the Committee is granted standing to bring actions in the courts of the state for the purpose of obtaining a judicial determination of the validity or invalidity of a narrow category of administrative rules. The only rules affected are those to which the Committee has certified its objection and which the agency involved has refused to amend, modify, withdraw or repeal in response to that objection.

Before the Committee can seek judicial review the Governor and the head of the agency must be notified and be given a reasonable opportunity for consultation with the Committee.

The Committee is authorized to expend public funds from its appropriation for this purpose.