

1979 CHANGES  
TO THE  
ADMINISTRATIVE PROCEDURE ACT

Four laws were enacted during the 1979 Legislative Session making substantive changes to Chapter 120, Florida Statutes: Chapters 79-20, 79-142, 79-190, and 79-299, Laws of Florida.

I. Chapter 79-20, Laws of Florida

This law amends the definition of “rule” under §120.52(14), F.S., to exclude from the definition “any tests, test scoring criteria, practices or procedures relating to student assessment developed or administered by the Department of Education pursuant to §§229.57, 232.245, 232.246 or 232.247, F.S.”

II. Chapter 79-142, Laws of Florida

The Department of Insurance and the Department of Banking and Finance are affected by this law which amends §120.60, F.S., relating to licensing. The Department of Insurance is allowed 180 days, or 30 days after the conclusion of a public hearing, within which to approve or deny an application for a certificate of authority to transact insurance. The 180 day time limit currently allowed to the Department of Banking and Finance for approving or denying licenses for certain financial institutions is, by this law, made applicable to applications for acquisition of majority control of such institutions when the acquisition involves a foreign national. New credit unions are added to the institutions required to show approval of insurance of accounts before an application is automatically approved as a result of a failure to issue or deny it within the prescribed time limitations. This law takes effect October 1, 1979.

III. Chapter 79-190, Laws of Florida

This law, which creates the Executive Office of the Governor and reorganizes several state agencies, also amends § 120.65, F.S., to require the Department of Administration to provide administrative support and service to the Division of Administrative Hearings. However, the Division is not subject to control, supervision or direction by the Department.

#### IV. Chapter 79-299, Laws of Florida

This law contains most of the 1979 changes to the Administrative Procedure Act. Those changes are as follows:

##### A. Definitions

The definition of the term “agency” was clarified by the insertion of a comma in paragraph §120.52(1) (c), F.S. The insertion of the comma after the word “municipalities” makes it clear that local and regional units of government that are not otherwise included in the definition of agency are subject to the Act only if there is separate legislation or an existing judicial decision which makes that unit subject to the Act.

The definition of the term “order” was changed to provide that an agency decision must be filed with the person designated as the agency’s clerk in order for it to be final and that the clerk is to indicate the date of filing on the order.

The term “party” is also amended to make it clear that parolees are not to be considered parties for purposes of obtaining proceedings under §§120.54(16) and 120.57, F.S., when the proceeding relates to the revocation of parole.

##### B. Rulemaking

In the area of rulemaking, §120.54(4) (c), F.S., is amended to allow agencies to continue with all steps in the rulemaking process, except the filing of the rule for adoption, while a petition for an administrative determination of the invalidity of the rule is pending.

When there are changes to a proposed rule, other than technical changes, an agency is now required to provide a statement of the changes by certified mail or actual delivery to any person who has requested such a statement at the public hearing. Providing this statement of changes and filing the changes with the Administrative Procedures Committee must be done 7 days prior to filing the rule for adoption.

The time within which agencies must file rules for adoption when there has been no hearing or when there is a hearing but no material is authorized to be submitted and no transcript is made, is extended from 45 days after the notice to 90 days after the notice. At the time the rule is filed for adoption, the agency adopting the rule must certify that the time limitations have been complied with and that there is no administrative determination pending on the rule. The Department of State

is required to reject the filing of any rule not filed in compliance with the time limitations or upon which an administrative determination is pending

C. Licensing

A change in the area of licensing provides that when an agency orders the emergency restriction or limitation of a license in response to an immediate serious danger to the public health, safety or welfare, a formal suspension or revocation proceeding is required to be promptly instituted and acted upon.

D. Miscellaneous

Section 120.565, F.S., has been amended to provide that educational units shall give notice of petitions for declaratory statements and the disposition of such petitions in the same manner as they give notice of rules, rather than giving notice in the Florida Administrative Weekly.

With regard to the duties of the Department of State, the Department is required to remove from the Code, with the consent of the affected agency, any rules the authority for which has been repealed. The number of sets of the Florida Administrative Code and of the Florida Administrative Weekly the Department is required to furnish to the Administrative Procedures Committee is increased from seven to ten.

Section 120.53, F.S., was amended to permit an agency to meet its obligation to provide copies of its orders and a subject matter index of its rules and orders by designating an official reporter to publish and index those orders which result from a §120.57, F.S., proceeding.