

## 1998 AMENDMENTS TO THE APA

Chapter 98-166, Laws of Florida, amended §120.80, F.S., to clarify that formal hearings under §120.57(1), F.S., may not be conducted by the Secretary of the Department of Health, the director of the Agency for Health Care Administration, or by a board or member of a board administratively placed under one of these agencies.

Chapter 98-200, Laws of Florida, amended §§120.54, 120.569 and 120.57, F.S., to direct that the uniform rules include detailed procedures to be followed in filing petitions for administrative hearings, to provide for the review, referral and dismissal of these petitions by an agency, and to establish procedures for the issuance of summary final orders and for the relinquishment of jurisdiction back to the agency when a dispute of fact no longer exists. Many of these provisions are statutory codifications of requirements which now appear in administrative rules.

Chapter 98-279, Laws of Florida, amended subsection 120.57(3), F.S., to replace references to the Division of Purchasing of the Department of Management Services with references to the Department of Management Services.

Chapter 98-402, Laws of Florida, amended subsection 120.52(12), F.S., to exclude member governments of regional water supply authorities and certain other entities from the definition of “party” in proceedings under 120.569, 120.57 and 120.68 when such an entity has entered into an interlocal agreement stating that its substantial interests are not affected or stating that it will be bound by alternative dispute resolution in lieu of such proceedings identified in the interlocal agreement.

## 1998 SUMMARY OF CHANGES IN CHAPTER 120

### CHAPTER 98-166

#### **Committee Substitute for Senate Bill No. 2128 Amends 120.80(4)(b) as Follows:**

Section 13. Paragraph (b) of subsection (4) of section 120.80, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

120.80 Exceptions and special requirements; agencies.-

(4) DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.-

(b) Professional regulation.-Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the Secretary of Business and Professional Regulation, ~~the director of the Agency for Health Care Administration,~~ or a board or member of a board within the Department of Business and Professional Regulation ~~or the Agency for Health Care Administration~~ for matters relating to the regulation of professions, as defined by part I of chapter 455.

(15) DEPARTMENT OF HEALTH.-Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the Secretary of Health, the director of the Agency for health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to the regulation of professions, as defined by part II of chapter 455.

### CHAPTER 98-200

#### **Committee Substitute for Senate Bill No. 1440 Amends 120.54(5)(b), 120.569(2) and 120.57(1) as Follows:**

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.

## CHAPTER 98-279

### House Bill No. 4831 Amends 120.57(3)(a) as Follows:

Section 3. Paragraph (a) of subsection (3) of section 120.57, Florida Statutes, is amended to read:

120.57 Additional procedures for particular cases.—

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT BIDDING OR AWARD.—Agencies subject to this chapter shall utilize the uniform rules of procedure, which provide procedures for the resolution

of protests arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the ~~Division of Purchasing of the~~ Department of Management Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Department of Management Services ~~Division of Purchasing~~, notice of a decision or intended decision shall be given by posting such notice in the office of the Department of Management Services ~~Division of Purchasing~~.

(3) For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail or other express delivery service, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

## CHAPTER 98-402

### **Committee Substitute for House Bill No. 4027 Amends 120.52(12) as Follows:**

Section 1. Subsection (12) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(12) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term "party" does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.1962 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.