

CHAPTER 77-453

Senate Bill No. 553

AN ACT relating to the Administrative Procedure Act; amending s. 11.60(2) (e), Florida Statutes, and adding paragraph (i) to said subsection, to grant standing to the Administrative Procedure Committee to seek judicial review of the validity or invalidity of certain administrative rules and to authorize the expenditure of public funds therefore; amending s. 120.54(11) (a), Florida Statutes, to require a statement of comparison with federal rules to be submitted to the committee with certain proposed rules; providing that such judicial review shall not be initiated until the Governor and the agency head have been notified of the committee's proposed action and have been given an opportunity for consultation; amending s. 120.52 (14) (c), Florida Statutes, 1976 Supplement, relating to the definition of "rule"; amending s. 120.54(9) (a), (11), and (12), Florida Statutes, 1976 Supplement; exempting educational and local units of government from required publication of notice of emergency rules in the Florida Administrative Weekly and from required filing of copies with the Administrative Procedure Committee; providing for filing of such rules by an adopting agency with the Department of State or with the agency head and providing effective dates; amending s. 120.55(1) (b), Florida Statutes, 1976 Supplement, conforming language; requiring publication in the Florida Administrative Code of history notes as authorized in s. 120.545(8), Florida Statutes, 1976 Supplement, and requiring publication of all exemptions granted pursuant to s. 120.63, Florida Statutes, 1976 Supplement, in the code or compilation of omitted rules; amending s. 120.57(1) (b), Florida Statutes, 1976 Supplement; broadening the court's discretion to award attorney's fees and costs to an aggrieved party; amending s. 120.60(2) and (4), Florida Statutes, 1976 Supplement, and adding two new subsections; tolling the 90-day period for licensing when certain proceedings are initiated and allowing an agency 45 days after

receipt of a recommended order to act on a license application; exempting certification of certain employee organizations from licensing requirements; to provide proceedings for licensing or for approving mergers pursuant to title XXXVI and title XXXVII, Florida Statutes; providing time limitations for agency action for approval of a new bank, trust company, credit union, or savings and loan association; providing for nonapplicability; amending s. 120.63(2) (a) and (b), Florida Statutes, 1976 Supplement, requiring the Administration Commission, through the Secretary of Administration, to issue an order specifically granting or denying the exemption and specifying the extent of any exemption granted; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) is added to subsection (2) of section 11.60, Florida Statutes, to read:

11.60 Administrative Procedures Committee; creation; membership; powers; duties.--

(2) The committee shall:

(i) Have standing to seek review in the courts of the state, on behalf of the Legislature or the citizens of Florida, of the validity or invalidity of any administrative rule to which the committee has voted an objection and which has not been withdrawn, modified, repealed, or amended to meet the objection. Judicial review under this paragraph shall not be initiated until the Governor and the agency head of the agency have been notified of the committee's proposed action and have been given a reasonable opportunity for consultation with the committee. The committee is hereby authorized to expend public funds from its appropriation of the purpose of seeking judicial review.

Section 2. Paragraph (c) of subsection (14) of section 120.52, Florida Statutes, 1976 Supplement, is amended to read:

120.52 Definitions.--As used in this act:

(14) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(c) The preparation or modification of:

1. Agency budgets.
2. Contractual provisions reached as a result of collective bargaining.
3. Agricultural marketing orders under chapter 573 or chapter 601.
4. Curriculum by an educational unit.

Section 3. Paragraph (a) of subsection (9) and subsections (11) and (12) of section 120.54, Florida Statutes, 1976 Supplement, are amended to read:

120.54 Rulemaking; adoption procedures.--

(9) (a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger by any procedure which is fair under the circumstances and necessary to protect the public interest, provided that:

1. The procedure provides at least the procedural protection given by other statutes, the Florida Constitution, or the United States Constitution.
2. The agency takes only that action necessary to protect the public interest under the emergency procedure.
3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health,

safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one county or a part thereof, shall be published in the first available issue of the Florida Administrative Weekly. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(11) (a) The adopting agency shall file with the committee a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule, a copy of the estimate of economic impact required by subsection (1), a statement of the extent to which the proposed rule establishes standards more restrictive than federal standards or a statement that the proposed rule is no more restrictive than federal standards or that a federal rule on the same subject does not exist, and the notice required by subsection (1) at least 21 days prior to the proposed adoption date. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. This paragraph shall not apply to educational units other than units of the State University System, to local units of government with jurisdiction in only one county or a part thereof, or to emergency rules adopted pursuant to subsection [(9)]. However, agencies, other than those listed herein, adopting emergency rules shall file a copy of each emergency rule with the committee.

(b) If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file three certified copies of the rule it proposed to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule with the Department of State. Agencies not required to their rules in the Florida Administrative Code shall file one certified copy of the proposed rule and the other material required above in the office of the agency head, and such .rules. shall be open to the public pursuant to s. 120.53(2). Filings shall be made not less

~~than 21 days-nor more than 45 days after the notice required by subsection (1) if no public hearing is held, the adopting agency shall file within 21 days after receipt of all material authorized to be submitted at the hearing or receipt of the transcript, if one is made, whichever is later. Not less than 21 days or more than 45 days after the notice required by subsection (1), or not more than 10 days after the conclusion of the final public hearing, if the hearing extends beyond the 45 days, the adopting agency, if it is required to publish its rules in the Florida Administrative Code, shall file with the Department of State three certified copies of the rule it proposed to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statements of the facts and circumstances justifying the rules. Agencies not required to publish their rules in the Florida Administrative Code shall file all the above material with the Department of State, except that only one certified copy of the proposed rule shall be filed.~~

(12) The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute. After the notice required in subsection (1) and prior to adoption, the agency may withdraw the rule by publishing a notice in the Florida Administrative Weekly and notifying the Department of State, and may make such changes in the rule as are supported by the record of public hearings held on the rule, technical changes which do not affect the substance of the rule, or changes in response to a proposed objection by the committee. Changes supported by the record of a hearing or made in response to a proposed committee objection may include withdrawal of the rule in whole or in part. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered. After a rule has become effective, it may be repealed or amended only through regular rulemaking procedures.

Section 4. Paragraph (b) of subsection (1) of section 120.55, Florida Statutes, 1976 Supplement, is amended to read:

120.55 Publication.--

(1) The Department of State shall:

(b) Publish in a permanent compilation entitled "Florida Administrative Code" all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545 (8), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. Rules general in form but applicable to only one school district, community college district; county, or a part thereof, or to the Florida School for the Deaf and Blind shall not be published in the Florida Administrative Code. ~~Rules so omitted shall be filed in the Department of State, and~~ Exclusion from publication in the Florida Administrative Code shall not affect their validity or effectiveness. ~~The department shall publish a compilation of, and index to, all rules so omitted at least annually~~ The department shall also publish, at the beginning of the section of the code dealing with an agency, any exemptions granted that agency pursuant to s. 120.63, including the termination date of the exemption and whether the exemption can be renewed pursuant to s. 120.63(2)(b).

Section 5. Paragraph (b) of subsection (1) of section 120.57, Florida Statutes, 1976 Supplement, is amended to read:

120.57 Decisions which affect substantial interests.--The provisions of this section shall apply in all proceedings in which the substantial interests of a party are determined by an agency. Unless waived by all parties, subsection (1) shall apply whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) shall apply in all other cases.

(1) FORMAL PROCEEDINGS.--

(b) In cases to which this subsection is applicable, the following procedures shall apply:

1. Requests for hearings shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14-days; however, the 14-day notice requirement may be waived with the consent of all parties. In hearings involving student disciplinary suspensions or expulsions conducted by educational units, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3. Except for proceedings conducted as prescribed in subsection 120.54[(4)] or s. 120.56, all petitions or requests for hearings under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall notify the division within 10 days of receipt of the petition or request, requesting the assignment of a hearing officer and, with the concurrence of the division, [set] the time, date, and place of the hearing. On request of any agency, the division shall assign hearing officers with due regard to the expertise required for the particular matter. Any party may request the disqualification of any

hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. The record in cases governed by this subsection shall consist only of:

- a. All notices, pleadings, motions, and intermediate rulings;
- b. Evidence received or considered;
- c. A statement of matters officially recognized;
- d. Questions and proffers of proof and objections and rulings thereon;
- e. Proposed findings and exceptions;
- f. Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;
- g. All staff memoranda or data submitted to the hearing officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under subsection 120.66(1), if such communications are public records;
- h. All matters placed on the record after an ex parte communication pursuant to subsection 120.66(2); and
- i. The official transcript.

6. The agency shall accurately and completely preserve all testimony in the proceeding and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

7. Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

8. The hearing officer shall complete and submit to the agency and all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, recommended penalty, if applicable, and any other information required by law or agency rule to be contained in the final order. The agency shall allow each party at least 10 days in which to submit written exceptions to the recommended order.

9. The agency may adopt the recommended order as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a recommended order, but may not increase it without a review of the complete record. In the event a court reverses, ~~in reversing~~ an agency's order, ~~finds that such agency action was done in bad faith or maliciously~~, the court in its discretion may award attorney's fees and costs to the aggrieved prevailing party.

10. If the hearing officer assigned to a hearing becomes unavailable, the division shall assign another hearing officer who shall use any existing record and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

11. A hearing officer who is a member of an agency head may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer.

Section 6. Subsections (2) of section 120.60, Florida Statutes, 1976 Supplement, is amended, a new subsection (3) is created, subsection (3) is renumbered subsection (4), subsection (4) is amended and renumbered (5), and subsections (5) and (6) are renumbered subsections (6) and (7) and a new subsection (8) is created to read:

120.60 Licensing.--

(2) When an application for a license is made as required by law, the agency shall conduct the proceedings required with reasonable dispatch and with due regard to the rights and privileges of all affected parties or aggrieved persons. Within 30 days after receipt of an application for a license, the agency shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the agency is permitted by law to require. Failure to correct an error or omission or to supply additional information shall not be grounds for denial of the license unless the agency timely notified the applicant within this 30 day period. The agency shall notify the applicant if the activity for which he seeks a license is exempt from the licensing requirement and return any tendered application fee within 30 days after receipt of the original application or within 10 days after receipt of the timely requested additional information or correction of errors or omissions. Every application for license shall be approved or denied within 90 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. The 90-day period shall be tolled by the initiation of a proceeding under s. 120.57 and shall resume 10 days after the recommended order is submitted to the agency and the parties. Any application for a license not approved or denied within the 90-day period or within 15 days after conclusion of a public hearing held on the application, or within 45 days after the recommended order is submitted to the agency and the parties, whichever is latest, shall be

deemed approved and, subject to the satisfactory completion of an examination, if required as a prerequisite to licensure, [the license] shall be issued. The Public Service Commission, when issuing a license, and any other agency, if specifically exempted by law, shall be exempt from the time limitations within this subsection. Each agency, upon issuing or denying a license, shall state with particularity the grounds or basis for the issuance or denial of same, except where issuance is a ministerial act. On denial of a license application on which there has been no hearing, the denying agency shall inform the applicant of any right to a hearing pursuant to s. 120.57.

(3) Unless otherwise specified in this subsection, proceedings for licensing or for approving mergers pursuant to title XXXVI and title XXXVII, Florida Statutes, shall not be subject to sections 120.57(1) and 120.58, Florida Statutes.

(a) In cases to which this subsection is applicable, the agency shall adopt rules of procedure which will require:

1. The publication of notice within 21 days of receipt of application in the Florida Administrative Weekly;

2. That within 21 days of publication of notice, any person may request a public hearing as provided by agency rule;

3. That upon the timely asserted request of any party the person presiding at the hearing shall swear witnesses and take their testimony under oath, and permit the parties to conduct cross-examination.

4. That the record shall contain those items specified in s. 120.57(1)(b)(5), Florida Statutes.

5. That the agency shall accurately and completely preserve all testimony and evidence and, on the request of any person, it shall make a full or partial transcript available at no more than cost.

(b) Review of the final agency order shall be in accordance with section 120.68, Florida Statutes.

(c) Notwithstanding subsection (2) above every application for license for a new bank, new trust company, new credit union, or new savings and loan

association shall be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. Any application for such a license not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing held on the application, whichever is the latest, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts by the Federal Deposit Insurance Corporation for a new bank, and by the Federal Savings and Loan Insurance Corporation for a new savings and loan association.

~~(3)~~(4) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application has been finally acted upon by the agency [or], in case the application is denied or the terms of the license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

~~(4)~~(5) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency has given reasonable notice by certified mail or actual service to the licensee of facts or conduct which warrant the intended action and the licensee has been given an opportunity to show that he has complied with all lawful requirements for the retention of the license.

~~(5)~~(6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension of a license, it shall show compliance in its order with the requirements imposed by subsection 120.54(9) on agencies making emergency rules. Summary suspension may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

~~(6)~~(7) If the Administration Commission grants an exemption from any provision of this section as provided in s. 120.63, the exemption shall be for a single application only and shall not be renewable.

(8) This section shall not apply to certification of employee organizations pursuant to s. 447.307.

Section 7. This act shall not apply to any contested application which has been referred to the Division of Administrative Hearings by the agency on the effective date of this act, nor shall the time limit for automatic approval contained in paragraph (c) of section 120.60(3), Florida Statutes, as created by this act begin until the effective date of this act for those new bank, trust company, savings and loan or credit union applications which were on file with the department on the effective date of this act.

Section 8. Paragraphs (a) and (b) of subsection (2) of section 120.63, Florida Statutes, 1976 Supplement, are amended to read:

120.63 Exemption from act.--

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in subsection 120.54(1). Upon the conclusion of the hearing, the commission, through the Secretary of Administration, shall issue an order specifically granting or denying the exemption and specifying any processes or proceedings exempted and the extent of the exemption, and shall transmit to the committee and to the Department of State a copy of the petition, a certified copy of the order granting or denying the petition, and a copy of any alternative procedures prescribed and shall give notice of the petition and the commission's response in the Florida Administrative Weekly.

(b) An exemption, and any alternative procedure prescribed, shall terminate 90 days following adjournment sine die of the current or next regular legislative session after issuance of the exemption, or upon on the effective date of any

subsequent legislation incorporating the exemption of any partial exemption related thereto, whichever is earlier. The exemption issued by the commission and
shall be renewable upon the same or similar facts not more than once. Such renewal shall terminate as would an original exemption. 90 days following adjournment sine die of the next regular legislative session following the renewal.

Section 9. This act shall take effect upon becoming a law, and the provisions of s. 120.60(3), Florida Statutes, as created by this act shall be void and inoperative on June 30, 1978.

Approved by the Governor June 30, 1977.

Filed in Office Secretary of State June 30, 1977.