

Chapter Law 78-95

House Bill No. 1075

An act relating to administrative procedure; amending various sections and subunits of sections of the Florida Statutes for the purpose of deleting or amending all provisions relating to rulemaking, agency orders, administrative adjudication or judicial review conflicting with or rendered unnecessary by chapter 120, Florida Statutes, as enacted by chapter 74-310, Laws of Florida, and subsequently amended; placing the affected sections of the Florida Statutes of the above agencies in conformity with chapter 120, Florida Statutes, with the following exceptions and clarifications: amending s. 380.10(2), Florida Statutes, relating to emergency orders of the Administration Commission in developments of regional impact; amending s. 120.57(1)(a), Florida Statutes, authorizing the Department of Agriculture and Consumer Services to conduct its own formal hearings under chapter 601, Florida Statutes; amending s. 231.36(6), Florida Statutes, clarifying that district school boards may suspend employees without pay under certain circumstances; amending s. 239.582(1), Florida Statutes, relating to suspension of students for possession or sale of controlled substances; amending s. 601.111(2), Florida Statutes, clarifying that Department of Citrus rules lowering standards during emergencies shall be effective no longer than 1 year; amending s. 601.152, Florida Statutes, clarifying that citrus special marketing campaigns are marketing orders; amending s. 443.07(4) (e), Florida Statutes, limiting venue of review of orders of the Board of Review for unemployment compensation claims; amending ss. 120.57 (1) (a) and 443.15 (2) (a), Florida statutes, allowing Department of Commerce proceedings involving disputed unemployment compensation assessments to be conducted by a special deputy; amending s. 394.457 (6), Florida Statutes, relating to the Department of Health and Rehabilitative Services, providing that hearing officers' orders authorizing continued involuntary hospitalization shall be final and subject to judicial review; amending s. 322.27(1). Florida Statutes, clarifying that the Department of Highway Safety and Motor Vehicles may suspend drivers' licenses without preliminary hearing under certain circumstances; amending s. 322.31. Florida Statutes, providing that judicial review of suspension or revocation of drivers' licenses shall be in circuit court; amending s. 367.051(2), Florida Statutes, clarifying that any consumer, utility or governmental agency in the affected territory may trigger a Public Service Commission hearing on certification of a water and sewer utility; amending various sections of the Florida Statutes to continue requirements for notice prior to rulemaking or hearings that are in excess of and in addition to requirements in chapter 120; amending s. 120.60(2), Florida Statutes, to require agencies to grant or deny licenses in less than 90 days if otherwise required by law; amending s. 120.72(1), Florida Statutes, to amend the legislative intent of the Administrative Procedure Act; providing an effective date.

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

Section 1. Legislative Intent.—

(1) The primary purpose of this act is to repeal or amend various provisions of the Florida Statutes containing procedural language superseded or made redundant by chapter 120 or the Florida Statutes (the Administrative Procedure Act). The act is

designed to place the provisions affected into conformity with chapter 120, except where expressly noted to the contrary.

(2) Any section or subunit of a section repealed by an act of any session shall remain repealed despite any amendment in this act. Any act of the 1978 legislative session other than one resulting from a reviser's bill that amends any provision affected by this act shall supersede this act to the extent that such amendment conflicts with this act.

(3) Deletions of references to chapter 120 in this act do not imply that chapter 120 is not applicable; except where expressly noted otherwise, references to chapter 120 are deleted as unnecessary and repetitious.

(4) Failure of this act to amend or repeal any provision in the Florida Statutes does not imply that the provision is not in conflict with, superseded by or unnecessary in the light of chapter 120

Section 6.

120.57 Decisions which affect substantial interest.—The provisions of this section shall apply in all proceeding 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.

Section 57. Sections 120.60(2) and 120.72(1). Florida Statutes, relating to general provisions of the Administrative Procedure Act, are amended to read:

120.60 Licensing.—

(2) When an application for a license is made as required by law the agency shall conduct the proceeding 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 unless a shorter period of time for agency action is provided by law. The 90-day or shorter time 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 or shorter time period, 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.

120.72 Legislative intent; prior proceedings and rules; exception.—

(1)(a) The intent of the Legislature in enacting this complete revision of chapter 120, Florida Statutes, is to make uniform the rulemaking and adjudicative procedures used by the administrative agencies of this state. To that end, it is the express intent of the Legislature that chapter 120 shall supersede all other provisions in the Florida Statutes, 1977, relating to rulemaking, agency orders, administrative adjudication, licensing procedure, or judicial review or enforcement of administrative action for agencies as defined herein to the extent such provisions conflict with chapter 120, unless expressly provided otherwise by law subsequent to January 1, 1975 ~~the provisions of this act shall replace all other provisions in the Florida Statutes, 1973, relating to rulemaking, agency orders, administrative adjudication, or judicial review of administrative action, except for marketing orders adopted pursuant to chapters 573 and 601.~~

(b) Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 120, Florida Statutes, or to any section or sections or portion of a section of chapter 120, Florida Statutes, shall hereby include, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

Section 58. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 1978.

Filed in Office Secretary of State May 30, 1978.