

Section 120.66

CHAPTER 74-310

Section 1. Chapter 120, Florida Statutes, consisting of sections 120.50, 120.51, 120.52, 120.53, 120.54, 120.55, 120.56, 120.57, 120.58, 120.59, 120.60, 120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 120.68, 120.69, 120.70, and 120.71, is created to read:

Section 120.66 is created to read:

120.66 Ex parte communications.--

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threats, or offer of reward shall be made to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; or

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

(c) Nothing in this subsection shall apply to an advisory staff which does not participate in the proceeding or to any rulemaking.

(2) A hearing officer who is involved in the decisional process, and who receives an ex parte communication is violation of subsection (1), shall place on the record of the pending matter all written communications received, a memorandum stating the substance of all oral communications received, all written responses to the communication, and a memorandum stating the substance of all oral responses made and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within ten days after notice of such communication. The hearing officer may, if he deems it necessary to eliminate the effect of an ex parte communication received by him, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed \$500 or be subjected to such other disciplinary action as his superiors may determine.

CHAPTER 75-191

Section 10. Subsection (1) of section 120.66, Florida Statutes, 1974 Supplement, is amended to read:

120.66 Ex parte communications.--

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threats, or offer of reward shall be made to the hearing officer or to agency head, after the agency head has received a recommended order by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution of advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

Nothing in this subsection shall apply to an advisory staff which does not participate in the proceeding or to any rulemaking proceedings under s. 120.54.

CHAPTER 76-131

Section 12. Subsection (1) of section 120.66, Florida Statutes, is amended to read:

120.66 Ex parte communications.--

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threats, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

Nothing in this subsection shall apply to an advisory staff members who do ~~which does~~ not testify participate in the proceeding or to any rulemaking proceedings under s. 120.54.

CHAPTER 77-174

Section 1.

120.66 Ex parte communications.--

- (3) Any person who makes an ex parte communication prohibited by subsection (1), and any hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed \$500 or be subjected to ~~by~~ such other disciplinary action as his superiors may determine.

CHAPTER 78-425

Section 10. Subsection (1) of section 120.66, Florida Statutes is amended to read:

120.66 Ex parte communications.--

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threats, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

CHAPTER 95-147

Section 765. Paragraph (b) of subsection (1) and subsections (2) and (3) of section 120.66, Florida Statutes, are amended to read:

120.66 Ex parte communications

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the hearing officer by:

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his or her authorized representative or counsel.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A hearing officer who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The hearing officer may, if the officer ~~he~~ deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed \$500 or be subjected to such other disciplinary action as his or her superiors may determine.

CHAPTER 96-159

Section 1. It is the intent of the Legislature to consider the impact of any agency rulemaking required by proposed legislation and to determine whether the proposed legislation provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

Section 33. Section 120.66, Florida Statutes, is amended to read:

120.66 Ex parte communications

(1) In any proceeding under ~~ss. s-20.569 and~~ 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the presiding ~~hearing~~ officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding the party's authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, ~~or his or her authorized representative or counsel~~.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A presiding hearing officer who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The presiding hearing officer may, if ~~the officer deems it~~ necessary to eliminate the effect of an ex parte communication ~~received by him or her~~, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any presiding hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed \$500 or be subjected to ~~such~~ other disciplinary action as ~~his or her superiors may determine~~.

CHAPTER 97-176

Section 14. Subsections (2) and (3) of section 120.66, Florida Statutes,

1996 Supplement, are amended to read:

120.66 Ex parte communications.—

(2) A presiding officer, including an agency head or designee, who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The presiding officer may, if necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the entity that appointed the presiding officer ~~division~~ shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any presiding officer, including an agency head or designee, who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed \$500 or be subjected to other disciplinary action.