

# Section 120.69

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## 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 120.69 is created to read:

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition or enforcement as provided in this section in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state; provided, no such action may be commenced:

1. Prior to sixty days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the attorney general and any alleged violator of the agency action, or

2. If an agency has filed and is diligently prosecuting a petition for enforcement.

(c) A petition for enforcement filed by a non-governmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief; temporary or permanent equitable relief; any fine, forfeiture, penalty or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed \$1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:

(a) If enforcement depends on any facts other than appear in the record the court may ascertain such facts under procedures set forth in s. 120.68(6).

(b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.

(c) Should any party willfully fail to comply with an order of the court, the court shall punish him in accordance with the law application to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's action presents an imminent and substantial threat to the public health, safety or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, to the prevailing party whenever the court determines that such an award is appropriate.

### **CHAPTER 88-1**

Appeal of arbitration award.--An arbitration award is a final agency action for purposes of ss. 120.68 and 120.69, Florida Statutes. Any appeal of an award shall be taken to the district court of appeal and shall be limited to review on the record, and not de novo.

### **CHAPTER 95-147**

Section 766. Paragraph (c) of subsection (4) of section 120.69, Florida Statutes, is amended to read:

120.69 Enforcement of agency action

(4) In all enforcement proceedings:

(c) Should any party willfully fail to comply with an order of the court, the court shall punish that party ~~him~~ in accordance with the law applicable to contempt committed by a person in the trial of any other action.

### **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 36. Paragraph (a) of subsection (4) of section 120.69, Florida Statutes, is amended to read:

120.69. Enforcement of agency action

(4) In all enforcement proceedings:

(a) If enforcement depends on any facts other than those appearing in the record, the court may ascertain such facts under procedures set forth in s. 120.68~~(7)(a)(6)~~.