

AMENDMENTS TO CHAPTER 120  
1978 Session of the Legislature

Chapter 120, The Administrative Procedure Act, was amended by both Houses in the 1978 session. In addition to non-substantive technical changes, including the deletion of obsolete material, the following substantive changes were made:

1. SECTION 120.52(1)(b). Joint Electric Power Supply Projects are excluded from the definition of "Agency" and are, thus taken out of the Act.
  
2. SECTION 120.52(13). The definition of "Recommended Order" is amended to include the official recommendation of "...any other duly authorized presiding officer other than an agency head or member thereof,..." This amendment has the effect of binding the agency head to the findings of fact made by any person conducting a §120.57 hearing to the same extent as if the hearing were conducted by a hearing officer from the Division of Administrative Hearings unless the hearing is held before the agency head or member of the agency head. This amendment will primarily affect:
  - a. The Public Service Commission,
  - b. The Board of Review in unemployment compensation appeals,
  - c. Unemployment compensation appeals referees,
  - d. The Department of Highway Safety and Motor Vehicles in hearings regarding drivers licenses,
  - e. The Department of Health and Rehabilitative Services in hearings on matters formerly administered by the Division of Family Services, .
  - f. The Division of Administrative Hearings in hearings in which the Division is a party,
  - g. All educational units in hearings involving student disciplinary suspensions or expulsions,
  - h. The Public Employee Relations Commission in hearings for the determination of the appropriateness the bargaining unit.

In addition, it should be noticed that this amendment affects ALL AGENCIES in hearings conducted under the provisions of section 120.57(2).

3. SECTION 120.52(14). Alterations in established hunting or fishing seasons by the Game and Fresh Water Fish Commission are excluded from the definition of "Rule" provided adequate notice in newspapers and radio or television is given.
4. SECTION 120.54(1)(b). Proposed rules must now be made available for inspection and copying at the time of the publication of the notice.
5. SECTION 120.54(2). The content of the Statement of Economic Impact is substantially revised. The requirement that professionally accepted methodology be used in its preparation is deleted, but a detailed statement of the data and methods used is required. Present provisions relating to least-cost methods and cost-benefit comparisons are eliminated as are references to determinations of the most efficient allocation of resources. The cost to the agency of implementing the rule, including estimated cost of paperwork, must now be estimated and included in the statement.

A further amendment to this section provides a statute of limitations of one year for rule challenges based upon failure to provide an adequate economic impact statement. This provision does not take effect until October 1, 1978.

6. SECTION 120.54(3). The requirement that the "opportunity to present evidence and argument" in rulemaking proceedings consists of a public hearing is made clear and the agency is required to consider and make a part of the record of the rulemaking proceeding any material submitted to it within the first 14 days after the notice of the proceeding. A subsequent amendment to section 120.54(12)(b) permits the agency to make changes in rules based upon the material so submitted if the change is made prior to adoption and the Committee is notified of the change.
7. SECTION 120.54(7). This section is amended to make it clear that the term "law implemented" means a Florida Statute or a Law of Florida as opposed to a Federal law or a Federal or State rule.
8. SECTION 120.54(11)(b). The time period during which a rule must be adopted when there is a hearing, but no transcript is prepared or material authorized to be

submitted, is made the same as that for rules upon which there is no hearing.

9. SECTION 120.54(12)(b). See comment 6. above.
10. SECTION 120.55(1)(b). University rules relating to internal personnel or business and finance are now not required to be published in the Florida Administrative Code, but the Department of State is required to publish in the Code a summary or listing of these and all other rules filed with the Department and not published and to state where these rules may be examined.
11. SECTION 120.55(3)(a). The Division of Administrative Hearings is added to the list of those who receive three free copies of the Florida Administrative Code and the Florida Administrative Weekly and the free allocation of both publications to the Supreme Court and the District Courts of Appeal is increased from three to four.
12. SECTION 120.56(4). The Division of Administrative Hearings is granted implied jurisdiction to determine the validity of emergency rules and a timetable for these determinations is provided.
13. SECTION 120.565. The description of declaratory statements is narrowed to specify that these statements must set out the agency's opinion as to the applicability of specific provisions of law, rule or order as it applies to the petitioner in his particular set of circumstances. This amendment is designed to prevent rulemaking by declaratory statement.
14. SECTION 120.57(1)(b). The notice period for preliminary hearings for the revocation of parole is set at not less than seven days and for the revocation hearing, not less than five days.
15. SECTION 120.57(1)(b) 8. and 12. These two subparagraphs are amended to require a hearing officer from the Division of Administrative Hearings to submit a written report rather than a recommended order in hearings relating to the granting of licenses or mergers for financial institutions conducted for the Department of Banking and Finance, thus not binding the Comptroller by the hearing officer's findings of fact.

16. SECTION 120.58(1)(e). In hearings for the granting of parole and in preliminary hearings for parole revocations, proposed orders need not be served upon the parties whether or not a majority of those who are to make the final decision have heard the case or read the record.
17. SECTION 120.58(3). Language relating to "contempt of the agency" is deleted and the penalty for that offense is removed. Agencies will henceforth seek enforcement of subpoenas and orders directing discovery in the circuit courts with contempt of the court the penalty for failure to comply with an order of the court.
18. SECTION 120.60(3). New exceptions for the Department of Banking and Finance from the licensing provisions of the Act are provided to replace those which expire July 1, 1978. In proceedings for action on applications for licenses and for mergers of financial institutions, the Department is required to give notice in the Florida Administrative Weekly within 21 days of receipt of an application. Within 21 days of the notice, any person may request a hearing and the Department must provide by rule for participation by the general public. Failure to request a hearing within the specified 21 days constitutes the waiver of any right to a hearing. This waiver provision applies to the applicant for the license as well as to all other persons. Either the applicant or the licensee is required to publish at his own cost a notice of the hearing, in a format prescribed by department rule in a newspaper of general circulation in the area affected by the application. When there is both a licensee and an applicant involved in a hearing, the amendment does not specify which must bear the cost of the ad. The temporary extension of the 90 day period during which licenses must be granted or denied, to 180 days, presently in effect for this type of licensing procedure, is made permanent.
19. SECTION 120.60(5). Agencies unable to obtain service of process in license suspension or revocation cases by actual service or by certified mail are now permitted to use constructive service in the same manner as is provided in Chapter 49.
20. SECTION 120.65(2). The Bar membership requirement for hearing officers of the Division of Administrative Hearings is increased from three to five years.

21. SECTION 120.66(1). The exception from the ex parte communications prohibition, presently extended to advisory staff members who do not testify in the proceeding, is narrowed to include only those advisory staff members who do not testify on behalf of the agency.
22. SECTION 120.68(1). District school boards whose decisions are modified by the State Board of Education are given standing to seek judicial review of the State Board's order.
23. SECTION 120.68(3). Language is added to this subsection to provide that a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas in licensing and in all other appeals of an agency's final order.
24. SECTION 120.71(1). A conflict with section 112.3143 of the Florida Statutes, is removed. Section 112.3143 requires a member of an agency head sitting in an administrative proceeding to participate in the decision and then to reveal his conflict. Section 120.71 permits him to be disqualified for the same reasons that a judge may be recused. The conflict was resolved in favor of disqualification.

The act takes effect upon becoming law, but a grandfather clause is provided for bank, savings and loan and credit union license hearings begun prior to June 30, 1978.