

SUMMARY
OF CHANGES IN CHAPTER 120
1981 LEGISLATIVE SESSION

Three laws were enacted during the 1981 Legislative Session making substantive changes to Chapter 120, Florida Statutes: Chapters 80-95, 80-289, and 80-391, Laws of Florida.

The following summary of changes was prepared by the staff of the Senate Governmental Operations Committee in the Joint Legislative Management Summary of General Legislation, 1981.

I. Chapter 81-180, Laws of Florida

This chapter exempts policies and procedures of the Department of Law Enforcement relating to criminal intelligence, informants, surveillance, hostages, and security of public figures and witnesses from the definition of a "rule" for Administrative Procedure Act purposes. This will maintain the confidentiality of these policies and procedures by not requiring that they be made public by undergoing rulemaking procedures.

This act also provides that state licensing agencies need not afford licensees an opportunity to show compliance prior to instituting proceedings to revoke, suspend, annul, or withdraw a license. The licensee will have an opportunity to receive a hearing prior to the entry of the final order revoking, suspending, annulling, or withdrawing the license.

II. Chapter 81-296, Laws of Florida

This chapter provides time limits for filing and resolving disputes that arise in the process of bidding for or awarding state contracts. Each agency that contracts for electronic data processing equipment, buildings or facilities, commodities, or transportation related goods or services is required to adopt rules that set forth time and notice requirements for contract or bidding disputes. Agencies will be required to give notice of their bid solicitation decisions, or intended decisions, by hand delivery to interested persons, by certified mail, or by posting the notice where the bids were opened. The notice will be required to state that failure to file a protest of the decision within the statutory time limit constitutes a waiver of the aggrieved party's rights to a hearing under the Administrative

Procedure Act. The statutory time limit for filing the notice of protest is 72 hours. After filing notice of protest, the affected person will need to file the protest in writing within 10 days. The agency, upon receipt of the notice of protest, will either stop the bid solicitation or contract award process, or continue the process if the agency head asserts an emergency situation exists. A mechanism for informal resolution of disputes is provided which permits 14 days within which the agency and the protestor may come to agreement. If the two parties cannot agree to a resolution within the 14 days, the protest shall be heard under the provisions of the Administrative Procedure Act.

III. Chapter 81-309, Laws of Florida

This chapter provides that forms will not be published in the Florida Administrative Code or Florida Administrative Weekly. Agencies will include forms by reference to title, effective date, and a statement of how affected persons can obtain a copy of the form. Forms used by an agency in its dealings with the public will be filed with the Department of State, which will send a copy to the Joint Administrative Procedures Committee. The form will not become effective earlier than 20 days after it is filed with the Department. The Committee will be authorized to review agency rules to determine whether the economic impact statement accompanying the rule is adequate. The Committee could object to the rule on this basis. The agency would then be required to prepare a corrected economic impact statement or notify the Committee that it refuses to correct it.

Agencies will be allowed to incorporate material by reference in a rule if the material exists on the date the rule is adopted. Change in the incorporated material will not be effective with respect to the rule unless the rule is amended to incorporate the material as changed.

If a public hearing is held on a rule, the rule will have to be filed within 21 days after receipt of all material authorized to be submitted at the hearing, within 21 days after receipt of the transcript of the hearing, or within 21 days after adjournment of the final hearing on the rule, whichever occurs latest. If the rule is not adopted within these time limits, the agency will have to withdraw the rule.

This change was prepared by the staff of House Bill Drafting in the Joint Legislative Management Summary of General Legislation, 1981.

IV. Chapter 81-178, Laws of Florida

This chapter deals with civil procedures in tax controversies and applies to Chapters 198 (Estate Taxes), 199 (Intangible Personal Property Taxes), 201 (Excise Tax on Documents), 203 (Gross Receipts Tax), 206 (Motor and Other Fuel Taxes), 208 (Tax on Generation of Hazardous Wastes), 211 (Tax on Severance and Production of Minerals), 212 (Tax on Sales, Use and other Transactions), 220 (Corporate Income Tax), 376 (Pollution Spill Prevention and Control; excise tax on terminal facility operators), and 624 (Insurance Code; premium tax), F.S. It allows taxpayers to contest the legality of any assessment of any tax, interest or penalty under those chapters by filing an action in circuit court or by filing a petition for an administrative hearing under Chapter 120, F.S., the Administrative Procedure Act. The act provides that no action may be brought after 60 days from the date the assessment becomes final and provides for venue and other procedures. If the taxpayer files an action in circuit court, he must pay the contested amount into the court registry or post a bond.

It also authorizes the Department of Revenue to adopt rules for informal conferences for resolution of disputes relating to such assessment, and authorizes the executive director of the Department to enter into written closing agreements with a taxpayer settling his liability for any tax, interest or penalty under the cited chapters, except for motor and special fuel taxes and estimated penalties under the severance tax, corporate income tax, and insurance premium tax. It authorizes the Department to compromise a taxpayer's liability for taxes or interest (except motor and special fuel taxes) on the grounds of doubt as to liability for or collectability of the tax or interest, and to compromise a taxpayer's liability for penalties, with the exceptions cited with respect to written agreements above, if noncompliance is due to reasonable cause. The act provides for the repeal of provisions in conflict with these procedures. The act also authorizes the Department to issue technical assistance advisements to a person, upon written request, as to its position on the tax consequences of a specified transaction or event. An advisement is not to be issued after issuance of the assessment, and has no precedential value except to the taxpayer for that specific transaction. Confidentiality is provided for the advisements.