

By Senator Aronberg

27-370-03

See HB 23

1 A bill to be entitled
2 An act relating to administrative procedures;
3 amending s. 120.54, F.S.; revising provisions
4 with respect to uniform rules; providing
5 requirements with respect to the application of
6 alleged facts to specific rules or statutes;
7 amending s. 120.569, F.S.; revising provisions
8 with respect to decisions that affect
9 substantial interest; providing for initial
10 scheduling orders by the administrative law
11 judge; providing for a discovery period;
12 amending s. 120.57, F.S.; revising provisions
13 with respect to additional procedures
14 applicable to hearings involving disputed
15 issues of material fact; providing that an
16 order relinquishing jurisdiction shall be
17 rendered under certain circumstances; amending
18 s. 120.595, F.S.; redefining the term "improper
19 purpose" and conforming a cross-reference;
20 providing for the award of reasonable
21 attorney's fees and costs under certain
22 circumstances; amending s. 120.60, F.S.;
23 revising provisions with respect to licensing;
24 amending s. 120.68, F.S.; revising provisions
25 with respect to judicial review; providing
26 additional grounds for certain petitions
27 challenging an agency rule as an invalid
28 exercise of delegated legislative authority;
29 providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Paragraph (b) of subsection (5) of section
2 120.54, Florida Statutes, is amended to read:

3 120.54 Rulemaking.--

4 (5) UNIFORM RULES.--

5 (b) The uniform rules of procedure adopted by the
6 commission pursuant to this subsection shall include, but are
7 not ~~be~~ limited to:

8 1. Uniform rules for the scheduling of public
9 meetings, hearings, and workshops.

10 2. Uniform rules for use by each state agency that
11 provide procedures for conducting public meetings, hearings,
12 and workshops, and for taking evidence, testimony, and
13 argument at such public meetings, hearings, and workshops, in
14 person and by means of communications media technology. The
15 rules shall provide that all evidence, testimony, and argument
16 presented shall be afforded equal consideration, regardless of
17 the method of communication. If a public meeting, hearing, or
18 workshop is to be conducted by means of communications media
19 technology, or if attendance may be provided by such means,
20 the notice shall so state. The notice for public meetings,
21 hearings, and workshops utilizing communications media
22 technology shall state how persons interested in attending may
23 do so and shall name locations, if any, where communications
24 media technology facilities will be available. Nothing in this
25 paragraph shall be construed to diminish the right to inspect
26 public records under chapter 119. Limiting points of access to
27 public meetings, hearings, and workshops subject to the
28 provisions of s. 286.011 to places not normally open to the
29 public shall be presumed to violate the right of access of the
30 public, and any official action taken under such circumstances
31 is void and of no effect. Other laws relating to public

1 meetings, hearings, and workshops, including penal and
2 remedial provisions, shall apply to public meetings, hearings,
3 and workshops conducted by means of communications media
4 technology, and shall be liberally construed in their
5 application to such public meetings, hearings, and workshops.

6 As used in this subparagraph, "communications media
7 technology" means the electronic transmission of printed
8 matter, audio, full-motion video, freeze-frame video,
9 compressed video, and digital video by any method available.

10 3. Uniform rules of procedure for the filing of notice
11 of protests and formal written protests.

12 4. Uniform rules of procedure for the filing of
13 petitions for administrative hearings pursuant to s. 120.569
14 or s. 120.57. Such rules shall require the petition to state
15 include:

16 a. The identification of the petitioner.

17 b. ~~A statement of~~ When and how the petitioner received
18 notice of the agency's action or proposed action.

19 c. ~~An explanation of~~ How the petitioner's substantial
20 interests are or will be affected by the action or proposed
21 action.

22 d. ~~A statement of~~ All material facts disputed by the
23 petitioner or a statement that there are no disputed facts.

24 e. ~~A statement of~~ The ultimate facts alleged,
25 including a statement of the specific facts the petitioner
26 contends warrant reversal or modification of the agency's
27 proposed action.

28 f. ~~A statement of~~ The specific rules or statutes that
29 the petitioner contends require reversal or modification of
30 the agency's proposed action and to explain how the alleged
31 facts relate to the specific rules or statutes.

1 g. ~~A statement of~~ The relief sought by the petitioner,
2 stating precisely the action petitioner wishes the agency to
3 take with respect to the proposed action.

4 5. Uniform rules of procedure for the filing and
5 prompt disposition of petitions for declaratory statements.

6 6. Provision of a method by which each agency head
7 shall provide a description of the agency's organization and
8 general course of its operations.

9 7. Uniform rules establishing procedures for granting
10 or denying petitions for variances and waivers pursuant to s.
11 120.542.

12 Section 2. Paragraph (o) is added to subsection (2) of
13 section 120.569, Florida Statutes, to read:

14 120.569 Decisions which affect substantial
15 interests.--

16 (2)(o) On the request of any party, the administrative
17 law judge shall enter an initial scheduling order to
18 facilitate the just, speedy, and inexpensive determination of
19 the proceeding. The initial scheduling order shall establish
20 a discovery period, including a deadline by which all
21 discovery shall be completed, and the date by which the
22 parties shall identify expert witnesses and their
23 opinions. The initial scheduling order also may require the
24 parties to meet and file a joint report by a date certain.

25 Section 3. Paragraph (i) of subsection (1) of section
26 120.57, Florida Statutes, is amended to read:

27 120.57 Additional procedures for particular cases.--

28 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS
29 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

30 (i) When, in any proceeding conducted pursuant to this
31 subsection, a dispute of material fact no longer exists, any

1 party may move the administrative law judge to relinquish
2 jurisdiction to the agency. An order relinquishing
3 jurisdiction shall be rendered if the administrative law judge
4 determines from ~~in ruling on such a motion, the administrative~~
5 ~~law judge may consider~~ the pleadings, depositions, answers to
6 interrogatories, and admissions on file, together with
7 supporting and opposing affidavits, if any, that no genuine
8 issue as to any material fact exists. If the administrative
9 law judge enters an order relinquishing jurisdiction, the
10 agency may promptly conduct a proceeding pursuant to
11 subsection (2), if appropriate, but the parties may not raise
12 any issues of disputed fact that could have been raised before
13 the administrative law judge. An order entered by an
14 administrative law judge relinquishing jurisdiction to the
15 agency based upon a determination that no genuine dispute of
16 material fact exists, need not contain findings of fact,
17 conclusions of law, or a recommended disposition or penalty.

18 Section 4. Paragraphs (c) and (e) of subsection (1)
19 and subsection (5) of section 120.595, Florida Statutes, are
20 amended to read:

21 120.595 Attorney's fees.--

22 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
23 120.57(1).--

24 (c) In proceedings pursuant to s. 120.57(1), and upon
25 motion, the administrative law judge shall determine whether
26 any party participated in the proceeding for an improper
27 purpose as defined by this subsection ~~and s. 120.569(2)(e)~~. In
28 making such determination, the administrative law judge shall
29 consider whether the nonprevailing adverse party has
30 participated in two or more other such proceedings involving
31 the same prevailing party and the same project as an adverse

1 party and in which such two or more proceedings the
2 nonprevailing adverse party did not establish either the
3 factual or legal merits of its position, and shall consider
4 whether the factual or legal position asserted in the instant
5 proceeding would have been cognizable in the previous
6 proceedings. In such event, it shall be rebuttably presumed
7 that the nonprevailing adverse party participated in the
8 pending proceeding for an improper purpose.

9 (e) For the purpose of this subsection:

10 1. "Improper purpose" means participation in a
11 proceeding pursuant to s. 120.57(1) primarily to harass or to
12 cause unnecessary delay or for frivolous purpose or to
13 needlessly increase the cost of litigation,licensing,or
14 securing the approval of an activity.

15 2. "Costs" has the same meaning as the costs allowed
16 in civil actions in this state as provided in chapter 57.

17 3. "Nonprevailing adverse party" means a party that
18 has failed to have substantially changed the outcome of the
19 proposed or final agency action which is the subject of a
20 proceeding. In the event that a proceeding results in any
21 substantial modification or condition intended to resolve the
22 matters raised in a party's petition, it shall be determined
23 that the party having raised the issue addressed is not a
24 nonprevailing adverse party. The recommended order shall state
25 whether the change is substantial for purposes of this
26 subsection. In no event shall the term "nonprevailing party"
27 or "prevailing party" be deemed to include any party that has
28 intervened in a previously existing proceeding to support the
29 position of an agency.

30 (5) APPEALS.--When there is an appeal, the court in
31 its discretion may award reasonable attorney's fees and

1 reasonable costs to the prevailing party if the court finds
2 that the appeal was frivolous, meritless, or an abuse of the
3 appellate process, or that the agency action which
4 precipitated the appeal was a gross abuse of the agency's
5 discretion. Upon review of agency action that precipitates an
6 appeal, if the court finds that the agency improperly rejected
7 or modified findings of fact in a recommended order, the court
8 shall award reasonable attorney's fees and reasonable costs to
9 a prevailing appellant for the administrative proceeding and
10 the appellate proceeding. If the court finds that the agency
11 improperly rejected or modified a conclusion of law or an
12 interpretation of an administrative rule over which it does
13 not have substantive jurisdiction, the court may award
14 reasonable attorney's fees and reasonable costs of the appeal
15 to the prevailing appellant.

16 Section 5. Subsection (1) of section 120.60, Florida
17 Statutes, is amended to read:

18 120.60 Licensing.--

19 (1) Upon receipt of an application for a license, an
20 agency shall examine the application and, within 30 days after
21 such receipt, notify the applicant of any apparent errors or
22 omissions and request any additional information the agency is
23 permitted by law to require. An agency shall not deny a
24 license for failure to correct an error or omission or to
25 supply additional information unless the agency timely
26 notified the applicant within this 30-day period. An
27 application shall be considered complete upon receipt of all
28 requested information and correction of any error or omission
29 for which the applicant was timely notified or when the time
30 for such notification has expired. Every application for a
31 license shall be approved or denied within 90 days after

1 receipt of a completed application unless a shorter period of
2 time for agency action is provided by law. The 90-day time
3 period shall be tolled by the initiation of a proceeding under
4 ss. 120.569 and 120.57. Any ~~an~~ application for a license that
5 is not ~~must be~~ approved or denied within the 90-day or shorter
6 time period, within 15 days after ~~the~~ conclusion of a public
7 hearing held on the application, or within 45 days after a
8 recommended order is submitted to the agency and the parties,
9 whichever action and timeframe is latest and applicable, is
10 considered approved unless the recommended order recommends
11 that the agency deny the license. Subject to the satisfactory
12 completion of an examination if required as a prerequisite to
13 licensure, any license that is considered approved shall be
14 issued and may include such reasonable conditions as are
15 authorized by law ~~later. The agency must approve any~~
16 ~~application for a license or for an examination required for~~
17 ~~licensure if the agency has not approved or denied the~~
18 ~~application within the time periods prescribed by this~~
19 ~~subsection.~~

20 Section 6. Subsection (9) of section 120.68, Florida
21 Statutes, is amended to read:

22 120.68 Judicial review.--

23 (9) No petition challenging an agency rule as an
24 invalid exercise of delegated legislative authority shall be
25 instituted pursuant to this section, except to review an order
26 entered pursuant to a proceeding under s. 120.56 or an
27 agency's findings of immediate danger, necessity, and
28 procedural fairness prerequisite to the adoption of an
29 emergency rule pursuant to s. 120.54(4), unless the sole issue
30 presented by the petition is the constitutionality of a rule
31 and there are no disputed issues of fact.

1 Section 7. This act shall take effect upon becoming a
2 law.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31