



The Florida Senate

Interim Project Report 2008-131

October 2007

Committee on Governmental Operations

STATUTE OF LIMITATIONS FOR ADMINISTRATIVE ACTIONS

SUMMARY

The issue examined in this report is whether administrative proceedings, like civil or criminal proceedings, generally should be commenced within a time certain, i.e., be subject to a statute of limitations. Almost all civil and criminal proceedings have statutes of limitation. However, given the breadth of the types of administrative actions, and the fact that many types of administrative actions are undertaken to protect the health, safety, and welfare of the public, a general statute of limitations applicable to all administrative actions is not recommended.

One basis for this recommendation is the fact that an informal survey of cities, counties, agencies and administrative law practitioners reveals that "old" actions are rarely undertaken by governmental entities against licensees and those regulated by those entities. Generally, when an agency undertakes an administrative action years after the facts giving rise to the action, it is because the regulating entity was unaware of the facts at the time they arose.

Some types of administrative actions already have specified statutes of limitations, and if the Legislature decides that other specific types of administrative proceedings ought to have statutes of limitation, the statutes can be narrowly tailored to ensure a balance between the regulatory needs of governmental agencies and the interest in closure and finality among those regulated.

in the executive branch of state government"¹ by providing standardized administrative procedures governing executive branch agency actions.

The operative provisions of the APA concern only "agencies" as defined in the APA. The term "agency" is defined in s. 120.52(1), F.S., as each:

- State officer and state department, and each departmental unit described in s. 20.04, F.S.²
- Authority, including a regional water supply authority.
- Board and commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- Regional planning agency.
- Multicounty special district with a majority of its governing board comprised of non-elected persons.
- Educational unit.
- Entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.³

BACKGROUND

The Administrative Procedure Act: The Administrative Procedure Act (APA) "presumptively governs the exercise of all authority statutorily vested

¹ *Gopman v. Dep't of Educ.*, 908 So.2d 1118, 1120 (Fla. 1st DCA 2005).

² Section 20.04, F.S., sets the structure of the executive branch of state government.

³ Counties and municipalities have not generally been made subject to the APA by law or judicial decision, so the APA does not generally govern their administrative procedures.

The definition also includes the Governor in the exercise of all executive powers other than those derived from the State Constitution.⁴

The APA governs the administrative procedures followed in these types of agency action:

- Agency rulemaking;
- Professional and occupational licensing;
- Regulatory actions, including bank charters, alcoholic beverage licenses, insurance company licenses, and certificates of need;
- Environmental permitting and enforcement, developments of regional impact, and local government comprehensive planning;
- Bid protests;
- Certain employment discrimination cases;
- Ethics and election violation cases; and
- Other proceedings in which the substantial interests of a party are determined by an agency.

Statutes of Limitations: Statutes of limitations “are designed to prevent unreasonable delay in the enforcement of legal rights. The purpose of setting a fixed time limit on the right to assert a civil claim is to encourage prompt resolution of controversies and to protect against the risk of injustice.”⁵ A civil action or proceeding must be barred unless begun within the time prescribed by chapter 95, F.S.⁶ The statute of limitations varies from 30 days for actions challenging correctional disciplinary proceedings,⁷ to four years for actions founded on negligence,⁸ to twenty years for an action on a judgment or decree of a court of record of this state.⁹

Criminal proceedings are governed by the statute of limitations contained in s. 775.15, F.S. With numerous specific exceptions, prosecutions for capital felonies, life felonies, or felonies that resulted in a death may be commenced at any time; felony prosecutions must be commenced within 2 to 4 years after the felony is committed; and second degree misdemeanor prosecutions must be commenced within 1 year after the misdemeanor is committed.

In the Florida Statutes, there is no equivalent general statute of limitations for administrative actions. Though ch. 120 specifies various timeframes which must be followed once a proceeding is initiated, there is no generally applicable requirement in chapters 95 or 120, F.S., that an administrative action must be commenced within a time certain.

Specific statutes of limitations for administrative proceedings: Some types of administrative proceedings do have specified statutes of limitation. For example, the Department of Revenue (DOR) is usually the Respondent in tax disputes, when a taxpayer disputes an assessment made by DOR, or when a taxpayer disputes the denial of a refund request issued by DOR. A taxpayer may contest either of these agency actions by filing a petition pursuant to chapter 120, not more than 60 days after the assessment becomes final.¹⁰ An application for refund of taxes paid in error must be filed within 3 years after the date the taxes were paid.¹¹

Administrative protests of agency decisions relating to procurement solicitations and contract awards must be made within very short time periods after agencies post their decisions or intended decisions. Persons adversely affected by such decisions must file their notice of protest within 72 hours after the posting of the decision or intended decision, and their formal written protest within 10 days after the date the notice of protest is filed.¹²

Applicability of civil or criminal statutes of limitation to administrative proceedings: Florida courts have opined on the applicability of the civil statute of limitations to certain types of administrative proceedings. For example, Florida appellate courts have held that without specific legislative authority, the statutes of limitations in chapter 95 do not apply to license revocation proceedings.¹³ The court in *Farzad* noted that a disciplinary proceeding brought by the sovereign is not an administrative substitute for a civil action, and therefore not subject to a statute of

⁴ The definition of agency expressly excludes certain legal entities or organizations found in chs. 361 and 348, F.S., and ss. 339.175 and 163.01(7), F.S.

⁵ *Hawkins v. Barnes*, 661 So.2d 1271 (Fla. 5th DCA 1995).

⁶ Section 95.011, F.S.

⁷ Section 95.11(8), F.S.

⁸ Section 95.11(3), F.S.

⁹ Section 95.11(1), F.S.

¹⁰ Section 72.011(1), F.S.

¹¹ Section 215.26(2), F.S.

¹² Section 120.57(3)(b), F.S.

¹³ *Landes v. Dep't of Professional Regulation*, 441 So.2d 686 (Fla. 2nd DCA 1983), *Donalson v. State Department of Health and Rehabilitative Services*, 425 So.2d 145, 147 (Fla. 1st DCA 1983), *Farzad, M.D. v. Department of Business and Professional Regulation*, 443 So.2d 373, 375 (Fla. 1st DCA 1983).

limitations. This distinction between administrative proceedings designed to protect the public interest, and administrative proceedings that essentially act as substitutes for civil actions that may otherwise be subject to a statute of limitations, is important, as most authorities find that actions taken by the sovereign in order to protect the public interest are not subject to civil or criminal statutes of limitation. Even states which apply general statutes of limitation to administrative proceedings do not apply them in proceedings which protect the public interest:

Although courts generally apply general statutes of limitation to administrative proceedings, the opposite is true with respect to proceedings which are in the public interest, such as proceedings to suspend or revoke a license to practice medicine.

...

The rationale behind this rule, when enunciated by the courts, is twofold: first, when the state regulates the medical profession, it is acting in its sovereign capacity and for the public good, and therefore general civil and criminal statutes of limitation do not apply; and second, the purpose of general statutes of limitation is to discourage unnecessary delay, promote justice, and forestall prosecution of stale claims, whereas proceedings to revoke physicians' licenses serve to protect the public by insuring that only properly qualified individuals practice medicine, and the staleness of the charges do not necessarily make them reflect less on the character of the person charged.¹⁴

The First District Court of Appeal has held that enforcement actions brought pursuant to Part I of chapter 162, F.S., which authorizes a county or municipality to adopt an administrative code enforcement system, are administrative actions that are not subject to the statute of limitations in s. 95.11(3)(c), F.S.¹⁵

¹⁴ Applicability of Statutes of Limitation or Doctrine of Laches to Proceeding to Revoke or Suspend License to Practice Medicine, 51 A.L.R. 4th 1147 (1987).

¹⁵ *Sarasota County v. National City Bank of Cleveland*,

More broadly, an administrative law judge of the Division of Administrative Hearings (DOAH) looked to uses of the term “administrative proceeding” in other statutes in concluding that had the Legislature intended that chapter 95 apply to administrative proceedings, it would explicitly have said so.¹⁶ The administrative law judge determined that the statute of limitations in s. 95.11(3), F.S., was not a bar to agency action under the APA, generally. The ALJ also opined that the statute of limitations was not specifically a bar to the agency’s action to provide a Respondent with written notice of violation of fee and reporting requirements and of the agency’s intent to assess a late fee pursuant to s. 252.85(4), F.S., if the fees and reports are not timely submitted.

Applicability of Laches to Administrative Proceedings: Laches is defined as “unreasonable delay in pursuing a right or claim -- almost always an equitable one -- in a way that prejudices the party against whom relief is sought.”¹⁷ In the absence of specific statutory authority, there are a couple of published decisions addressing whether the doctrine of laches is applicable as a defense in administrative proceedings. Though the *Sarasota County* court did not determine the issue, it commented on the possibility that other legal theories were potential bars to delayed enforcement in code violation cases:

...[W]e do not rule out the possibility that an administrative enforcement proceeding could be barred by some legal theory relating to delayed enforcement. The record in this proceeding does not allow us to determine whether some theory of laches, estoppel, or due process might bar an enforcement proceeding.¹⁸

The *Farzad* court, in its decision, found explicitly that laches, usually utilized in equitable proceedings, is inapplicable to an administrative medical license revocation proceeding, relying on the authority in the cases cited in 63 A.L.R.2d 1080 (1959).¹⁹ A later

Ohio, 902 So.2d 233, 234 (Fla. 2nd DCA 2005).

¹⁶ *Dep’t of Community Affairs v. Goodson Paving, Inc.*, DOAH Case No. 99-2725 (Recommended Order dated Dec. 1, 1999).

¹⁷ *Black's Law Dictionary* (8th ed. 2004).

¹⁸ *Sarasota County v. National City Bank of Cleveland*, *Ohio*, 902 So.2d 233, 235 (Fla. 2nd DCA 2005).

¹⁹ *Farzad* at 376.

decision by the First District Court of Appeal held that laches should not be a defense to proceedings conducted by the sovereign to protect the public.²⁰

METHODOLOGY

Staff queried twelve state agencies, and a small sample of cities and counties, relating to past experience in administrative proceedings in which a statute of limitations argument was presented, and how a potential statute of limitations would impact them. Staff analyzed juridical and administrative decisions relating to statutes of limitations in administrative proceedings.

FINDINGS

Survey of Governmental Entities: In order to determine how a general administrative statute of limitations might impact governmental entities, a sample of cities, counties, and agencies were queried. State agencies with large numbers of proceedings at DOAH were asked whether they had been involved in administrative proceedings in which a party had argued for application of a statute of limitations, and whether there ought to be a statute of limitations for administrative actions. Cities and counties were asked to consider whether a hypothetical administrative statute of limitations of general applicability in ch. 95, F.S., would impact their administrative proceedings.

As a general matter, agencies reported very few administrative proceedings in which either a respondent or a petitioner had argued for application of a statute of limitations. While this appears to offer anecdotal evidence that parties are not raising the statute of limitations argument because there is little problem with governmental entities pursuing administrative actions after unreasonable amounts of time, an alternative explanation is that the argument isn't made because Florida courts have so far held that the ch. 95, F.S., statute of limitations does not apply to administrative proceedings.

The Division of Administrative Hearings: A response from DOAH noted that there is infrequently a lengthy delay between the activity complained of by a state agency and the agency's initiation of a disciplinary proceeding, and that it was rare that a

licensee alleges that the delay prevents an adequate defense to the charges. In such an event, the test is whether the delay itself caused harm to the licensee, thus precluding the prosecution from proceeding.²¹ The response from DOAH further stated that an allegation that a licensee has been harmed due to a lengthy delay between the incident and the prosecution should be pled and/or proven pursuant to existing legal doctrines and should be determined on a case-by-case basis.²²

Agencies: State agencies identified the following types of proceedings as those which could be affected by a statute of limitations:

Retirement benefits or creditable service - The Division of Retirement at the Department of Management Services (DMS) must occasionally defend itself in administrative actions for factual scenarios that sometimes occurred 20 or 30 years ago. Employees may not realize that some of their early employment may have been in a temporary or OPS position, and was therefore not creditable, until they are preparing to retire. While it may appear reasonable to entertain time limits on these types of actions, there are potential constitutional issues involved with limiting those rights, since they may deal with an "earned" benefit. There are also fiduciary issues relating to system trust funds. Allowing unlimited challenges also allows for larger liabilities to the trust funds, and may therefore require higher funding initially. Also, defending these claims is difficult because evidence has been lost or destroyed, and witnesses have retired, moved on, or passed away.

The DMS provided two cases to illustrate some of the issues. In one case, a member worked for several years in the 1970's, which the member mistakenly thought was employment creditable for a retirement benefit. After changing jobs and continued work for approximately 27 years, the member applied for retirement. The member was informed he did not have enough creditable service to retire with full benefits. The Division prevailed based on evidence still in existence.²³ If, though, the member had been able to

²¹ *Carter v. Dept. of Professional Regulation, Bd. of Optometry*, 633 So. 2d 3 (Fla. 1994).

²² In a phone conversation on September 21, 2007, the Chair of the Administrative Law Section of the Florida Bar advised that the Section's position was consistent with that of the Division of Administrative Hearings.

²³ *Larger v. Department of Management Services, DOAH Case No. 01-1619 (Recommended Order dated October 18, 2001).*

²⁰ *Devine v. Dept. of Professional Regulation, Bd. of Dentistry*, 451 So.2d 994, 997 (Fla. 1st DCA 1984).

show that the early service had been creditable service, a statute of limitations would have prevented him from doing so.

In another case from two years ago, the wife of a deceased member applied for benefits approximately 10 years after the death of her husband, and asked that they be paid retroactively. She acknowledged that she had received three notification letters from the division in 1996, but chose, due to “faulty advice” from the division, not to receive the benefits at that time. An administrative law judge from the DOAH ruled in her favor, though the division ultimately won the case on appeal,²⁴ after considerable time and expense. Requests for retroactive benefits are made on a regular basis. When allowed after so many years, such cases can have a significant impact on the soundness of the funding for the retirement system.

The Department of Business and Professional Regulation (DBPR) noted that imposing a statute of limitations on administrative actions might hinder the ability of the department to carry out its purpose to protect the health, safety and welfare of the public. The DBPR ensures that those licensed by the department comply with the laws and rules governing the profession for as long as they are licensed. The passage of time does not diminish the purpose of agency action, for example, to revoke or suspend a professional license, require continuing education, order restitution, or impose an administrative fine.

The Department of Highway Safety and Motor Vehicles (DHSMV) takes administrative action in several regulatory areas, including driver license cases, motor vehicle dealers and manufacturers, mobile home dealers and manufacturers, and recreational vehicle dealers and manufacturers, in order to protect the health, safety, and welfare of the public. The DHSMV advises that a statute of limitations would hamper the department’s ability to protect the public health, safety and welfare by imposing an artificial and technical limitation on the department’s ability to remove an unsafe driver from the road or an unscrupulous motor vehicle dealer from the business.

The Department of Education expressed concern over an across-the-board statute of limitations on the initiation of agency action. The department noted that in teacher licensing cases, there may be a long gap between a teacher’s misconduct and the discovery and

investigation of that misconduct. The department referenced a 2004 administrative proceeding taken against a teacher involving sexual misconduct with students that had occurred in 1986, but had not been reported until many years later. The department advises that if a statute of limitations is to be created for administrative actions, it could be created in the relevant portion of an agency statute to address the specific functions that should have some time limit.

Cities and Counties: Some cities and counties identified the following types of proceedings which could be affected by a hypothetical 4-year statute of limitations on *local* administrative rules:

County code enforcement cases or county construction licensing board disciplinary cases could be implicated. In code enforcement proceedings, if a violation, such as failure to obtain an interior permit, is not discovered until after any statute of limitations, the inability of the city to enforce the code could severely impact improving dilapidated areas.

Some cities identified the following types of proceedings which could be affected by a hypothetical 4-year statute of limitations on *state* administrative rules:

Proceedings brought pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act,²⁵ which has a shorter time period process. A longer statute of limitations could create a potential back-door new time period for property owner/adjacent property owners.

RECOMMENDATIONS

The idea of a general statute of limitations for administrative actions has a certain appeal, considering that almost all civil and criminal actions are governed by statutes of limitation. However, though the power of government is brought to bear on its citizens in both administrative proceedings and criminal actions, the distinction is that in administrative actions, incarceration for the citizen is not a possible outcome.

Commentaries from entities that routinely engage in administrative actions suggest that a broad statute of limitations may hinder the ability of governmental entities to protect the health, safety and welfare of the public. The Legislature has enacted specific statutes of

²⁴ *Hoffman v. State of Florida*, 1st DCA Case Number 1D06-2307.

²⁵ Section 70.001, F.S.

limitation for some types of administrative actions, notably in areas like tax appeals and bid protests, in which petitioners are given a limited time period in which to contest the decisions of a governmental authority. Statutes of limitation do not appear in regulatory and licensure statutes, where the governmental entity may take action years after a party has committed the acts that are the focus of the administrative action.

When considering if other types of administrative actions should be governed by statutes of limitation, the Legislature should consider the balance to be struck between enabling regulatory agencies to protect the public, and the expectation of regulated parties in timely adjudication of administrative proceedings affecting them.
