DOCUMENT RESUME

ED 312 332 UD 027 029

TITLE	Public Education Access for Children of the Homeless.
INSTITUTION	Florida State Dept. of Education, Tallahassee. Div. of Public Schools.
PUB DATE	Apr 89
NOTE	50p.; Appendix B contains marginally legible type.
PUB TYPE	Legal/Legislative/Regulatory Materials (090) -- Reports - Research/Technical (143) -- Tests/Evaluation Instruments (160)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Access to Education; *Disadvantaged Youth; Educational Legislation; Elementary Secondary Education; Federal Legislation; Federal Programs; *Homeless People; Program Administration; *Program Implementation; Social Services; State Federal Aid; State Programs; *Student Needs; Student Problems; Student Welfare
IDENTIFIERS	*Florida; *Stewart B McKinney Homeless Assistance Act 1987

ABSTRACT

This document presents Florida's application for continued funding of its project for the education of homeless students under the Stewart B. McKinney Homeless Assistance Act. The report is divided into four sections. Section I, "Application," consists of the request and rationale for continued financial support, and a summary of actions taken during the first year of the State's grant, including a Status Report survey distributed to all districts to gather data on Florida's homeless children and youth. Section II, "Introduction," is comprised of the following parts: (1) statement of the problem of homeless education; (2) discussion of federal funding; and (3) a brief overview of the State plan. Section III, "Florida's State Plan," presents a goal statement and lists recommended activities for accomplishment of the following 12 goals: (1) locate and count homeless students; (2) identify educational access problems; (3) resolve identified access problems; (4) determine special educational needs of homeless students; (5) disseminate procedures for placement resolution and choice; (6) monitor responsible action toward all students among school districts; (7) address the school of origin versus school of residence issue; (8) ensure comparable services on the local level; (9) eliminate enrollment delays due to student record requirements; (10) ensure comparable services on the State level; (11) develop a model system for delivery of services; and (12) act to increase sensitivity to homeless student and family issues. Section IV, "Appendices," comprises seven supplementary documents, including the Status Report survey form, an analysis of survey results, explanation of procedures for educational placement of homeless children, and a transcript of the State's Administrative Procedure Act. (AF)

PUBLIC EDUCATION ACCESS FOR CHILDREN OF THE HOMELESS

FLORIDA DEPARTMENT OF EDUCATION
DIVISION OF PUBLIC SCHOOLS
BUREAU OF COMPENSATORY EDUCATION
DROPOUT PREVENTION SECTION

April, 1989

Homeless Education Project
Knott Building (Room L34 Collins)
Tallahassee, Florida 32399-0400
(904) 488-9497 or 487-3508

TABLE OF CONTENTS

I. APPLICATION

I. APPLICATION

A. Request

The Florida Department of Education is applying for continued funding of its Public Education Access for Children of the Homeless project under the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77). Requested financial support received from this act will be used to maintain state policies which ensure homeless children and youth access to free, appropriate public education. The state of Florida will provide public educational services, consistent with state attendance laws, for all its homeless children and youth. The project aims at sustaining its efforts to locate homeless children and youth, to identify barriers to their education, to clarify their special educational needs, and to formulate action plans to ensure appropriate educational services for them.

B. Actions Taken

Continued funding would allow the Florida Department of Education to further develop the activities it began during the first year of its grant. Since the Final Report was filed in December, 1988, a number of initiatives have been started and met.

The Florida Department of Education has designated an Office of Coordinator of Education of Homeless Children and Youth as prescribed by Section 722 (c)(2) of this Act. The Office is now fully staffed with a program specialist and a secretary. It is located in the Dropout Prevention Section of The Bureau of Compensatory Education for the Division of Public Schools.

Under this State Plan, the Department of Education recognizes the district school board as the primary agency with the legal authority to make determinations as required by Section 722(e)(1)(A) of the McKinney Act. Section 230.03(2), Florida Statutes, clearly states that district school boards shall operate, control and supervise all free public schools in their respective districts. Although local school boards have the authority to direct their districts, all their actions must be consistent with state law and rules of the state board [Section 230.01((1), F.S.].

Any disputes regarding the educational placement of homeless children and youth will be resolved by the Procedure for the Resolution of Disputes Regarding the Educational Placement of Homeless Children and Youth (Appendix F).

A Status Report survey (Appendix B) to gather data of Florida's homeless children and youth was distributed to all school districts in January, 1989. Returned surveys have been tabulated and analyzed in Appendix C. This is a preliminary effort to comply with Section 722 (d)(1) of the McKinney Act. An additional census is proposed for next year.

The State Plan [Section 722 (d)(2)] was written, reviewed by the public, and revised for its final submission. Public hearings were held in March, 1989, in Pensacola, Ocala, Ft. Pierce, Miami, and Clearwater. Site selections were based

on the results of the Status Report surveys. Cities in areas reporting the largest numbers of homeless children and youth were scheduled for the hearing. Comments from the public hearings and those written in were considered for the final plan.

The Office of Coordinator of Education of Homeless Children and Youth has reviewed the Florida Statutes for residency requirements as a part of its compulsory school attendance laws [Section 721 (2)]. Statutes cited as potential barriers to education for homeless students include Section 228.121, F.S. (Nonresident tuition fee; tuition fee exemptions.)

This statute states that pupils in grades kindergarten through 12 whose parents or guardians are nonresidents of Florida may be charged a tuition fee of $50, payable at the time of enrollment. A nonresident is defined as a person who has lived in Florida less than one year, has not purchased a home which is occupied by him as his residence prior to the enrollment of children in school, and has not filed a manifestation of domicile in the county where the child is enrolled. Children whose parents are federal military personnel and migratory agricultural workers are exempted from the fee requirement.

According to Section 222.17, F.S., "manifestation of domicile" may be documented by filing in the office of the clerk of the circuit court for the county in which the said person shall reside, a sworn statement showing that he resides in and maintains a place of abode in that county which he recognizes and intends to maintain as his permanent home.

Staff of the Bureau of Compensatory Education have identified potential statutory barriers to educational services. At the request of the legislative staff, these possible barriers have been referred to the state legislature (Appendix E).

Networking has been expanded. Florida's Department of Health and Rehabilitative Services (DHRS) has shared its Comprehensive Homeless Assistance Plan for 1989 with our Office. A list of DHRS regional coordinators for homeless coalitions has been added to our contact file. DHRS has also provided us with addresses for shelters throughout the state.

Interviews and appearances with private advocacy groups for the homeless have been made. Citizen concern for homeless issues has been logged. Interaction with Adult Education personnel and school social workers at the district and state levels has also been initiated.

II. INTRODUCTION

II. INTRODUCTION

A. Statement of Problem

Florida, as well as the rest of the nation, is facing a new social and economic crisis: the increasing number of homeless people. Research studies, government reports, and homeless care providers commonly define a homeless individual as one who has no residence, owned, leased, or shared in which they can live adequately. The rise in the homeless is fueled by "situational circumstances", such as loss of a job, loss of housing, fleeing spouse abuse, and other similar conditions. The fastest growing segment of these "new homeless" are families with children. Most likely they are single parent families headed by a mother.

Estimates on the number of Florida's homeless vary widely. The Florida Department of Health and Rehabilitative Services, using the United States General Accounting Office's computation methodology, calculates there are between 16,000 and 20,000 homeless persons on any given day in the state. The Florida Network of Youth and Family Services assisted 8,500 runaways in 1988. This was a fraction of the 31,000 runaways documented by the Florida Department of Law Enforcement for the same year. A January, 1989, survey of school districts ' , the Department of Education revealed close to 8,000 school age children. Some homeless care provider authorities feel this number is woefully under-reported. For example, the Juvenile Welfare Board of Pinellas County (St. Petersburg) reported established shelters housing 1,659 children during the last fiscal year in their county alone. Public and private sources agree there is no established data collection system that can presently capture an accurate sum of all homeless people in the state.

Although precise totals of the homeless may not be verifiable, the Florida Department of Education (FDOE) acknowledges there are a number of homeless children and youth in the state and that they are entitled to educational services. Concerns that some of these students are denied access to needed services are being verbally reported to the FDOE. No documented cases have been submitted; however, the FDOE is sensitive to these situations. Registration problems are the most frequently cited ones. Some districts do not accept a homeless shelter as an appropriate residential address. Another district has assessed a nonresident fee for some homeless students. Although the assessment fee is permitted by law, it appears to be a hardship for homeless families. Some shelter managers say their residents have trouble getting physical examinations and health records needed for school enrollment.

The Florida Department of Education accepts its responsibility as a leader in removing educational barriers which may exist for homeless students in the state. As a first step, the FDOE has secured a federal administrative grant to focus on the education of homeless children. An essential component of continued federal funding is the development of a state plan to ensure Florida's homeless students receive a free and appropriate education.

B. Federal Funding

The Stewart B. McKinney Homeless Assistance Act (Public Law 100-77) is a comprehensive federal law dealing with the problems of Ameri··s homeless. It provides for a wide range of programs to meet the needs of ho··less people. Most of these programs are for social services; however, educational ones are included.

Title VII, Subtitle B, of the Act is named Education for Homeless Children and Youth. This provision states the policy of the U.S. Congress that homeless children and youth have access to free, appropriate public education on the same basis as children with traditional residencies. The terms "child, "youth", "homeless", "homeless individual", and "free, appropriate public education" are defined in Appendix A. This section also authorizes grants under which states collect information on the number and needs of homeless children, identify problems they face in gaining access to education, and develop plans to solve such problems.

C. State Plan

The Florida Department of Education has developed a plan to address the educational problems of the state's homeless students. The title of the plan is Public Education Access for Children of the Homeless. The plan is designed to meet the legal requirements of the McKinney Act and give the FDOE a flexible tool with which to work with its local school districts. The plan states as its major goal, equal access to educational services for homeless students. Objectives and suggested activities complete the strategy for educating Florida's homeless students. The plan follows the Application section in detail.

Introduction

III. FLORIDA'S STATE PLAN

III. FLORIDA'S STATE PLAN
PUBLIC EDUCATION ACCESS FOR CHILDREN OF THE HOMELESS

GOAL STATEMENT

The goal for the Florida Department of Education's State Plan is to ensure that each homeless student has the same access to all elementary and secondary educational services as children whose parents are fully established residents of the State (McKinney Act Section 721).

OBJECTIVES

Objectives have been established to help us reach this goal. Each objective is supported by recommended activities. The objectives and support tasks are designed to meet not only the basic legal requirements of the Stewart B. McKinney Act but also to enhance the administrative intent of this grant. Program aims directly related to regulations are referenced to the Act's section numbers at the end of the stated objective.

Objective 1

Locate and count the homeless students in the state of Florida [Section 722 (d)(1)].

Recommended Activities:

1.1 Contract with a recognizable research and data analysis agency to conduct an indepth census of the state's homeless school age population.

1.11 Secure homeless shelter addresses from the Department of Health and Rehabilitative Services, Florida Impact, State Homeless Coalitions and others.

1.12 Obtain a list of contacts to assist with "street people" census from Florida Network of Youth and Family Services, Florida Department of Law Enforcement, Juvenile Welfare Board, public health nurses, and HRS housing assistance agents.

1.13 Consider hiring enumerators who "know" the targeted population, such as school social workers, shelter managers, shelter residents, and public health nurses.

1.2 Confer with representatives of the U.S. Census Bureau.

1.3 Acquire census data from State Homeless Coalitions' surveys.

1.4 Establish local school district procedures for an annual survey of homeless students to ensure data collection uniformity, eliminate duplication, and verify information.

1.5 Consult with adjacent states regarding situations in which homeless students may be crossing state lines.

Objective 2

Identify possible educational access problems encountered by homeless students [Section 722 (d)(1)].

Recommended Activities:

2.1 Interview homeless families and youth.

2.2 Survey educational authorities, public health officials, advocacy groups,shelter managers, and others.

2.3 Set up a state wide advisory task force.

2.31 Include homeless persons advocacy groups, shelter managers, school officials, social services personnel, and state PTA.

2.4 Log citizen concerns regarding access problems.

Objective 3

Design practices which will resolve any identified educational access problems encountered by homeless students identified [Section 722 (d)(1)].

Recommended Activities

3.1 Examine state and local school districts practices for compliance with stated registration policy.

3.2 Encourage state and local school district personnel to become thoroughly familiar with all alternatives for registration requirements.

3.3 Refer school entry questions to appropriate state level agencies.

3.4 Designate a school district level contact person who would act as a homeless student advocate to expedite any access problems.

3.41 Consider school social workers to operate as a homeless student advocate.

3.42 Explore state funding increase to expand role of school social worker to conduct field work, such as shelter visits, and to provide transportation assistance to health facilities.

3.5 Hold inservice training sessions to clarify issues.

Objective 4

Determine special educational needs of homeless students and make appropriate recommendations for services [Section (d)(1)].

Recommended Activities:

4.1 Interview homeless families and youth.

4.2 Survey educational authorities, human development specialists, shelter managers, advocacy groups, and others.

4.3 Solicit input from advisory task force.

4.4 Cooperate with informed sources in governmental and private sectors.

4.5 Consult with state and local school district level student services personnel.

4.6 Develop state inservice training component dealing with special needs of the homeless.

4.61 Provide local school districts with technical assistance for inservice training.

Objective 5

Disseminate to district school boards procedures for placement resolution and for placement choice regardless of the student living with a homeless parent or being temporarily placed elsewhere by the parents [Section 722 (e)(1)(B); (e)(4)].

Recommended Activities:

5.1 Send to each district school board a copy of the Procedure for the Resolution of Disputes Regarding the Educational Placement of Homeless Children and Youth (Appendix F).

5.2 Provide technical assistance to districts for implementation of placement resolution procedures.

5.3 Discuss procedures at state meeting of district school boards association.

5.4 Send copies of placement resolution procedures to service provider agencies.

5.5 Meet with homeless advocacy groups and homeless people to explain procedures.

Objective 6

Remind school districts to continue their responsible action toward all students, regardless of their homeless status [Section 722 (e)(2)].

Recommended Activities:

6.1 Communicate with districts whose practices may be negating local and state policies.

6.2 Cite specific statutes and policies which call for local educational agencies to provide fair and equal treatment for all students.

6.3 Refer local districts to court order that directs schools to educate all students, e.g. undocumented aliens.

6.4 Hold inservice meetings to clarify unclear issues.

Objective 7

Address the school of origin vs. the school of residence issue and how it relates to the best interest of the homeless student [Section 722 (e)(3)].

Recommended Activities:

7.1 Establish a case by case appeal process with final resolution at state level.

7.11 Counsel with parents of homeless children and/or homeless youth.

7.12 Confer with school officials involved.

7.13 Reach a decision at the local level.

7.14 Appeal any questions to state level authorities.

7.15 Communicate decisions to school districts and homeless parents.

7.2 Encourage local school districts to be sensitive to homeless students' plight when applying existing attendance waiver procedures.

7.3 Hold inservice training meetings to clarify unclear issues.

Objective 8

Ensure homeless students will receive services, for which they are eligible, comparable to those offered to other students, including educational, transportation, and meal programs [Section 722 (E)(5)].

Recommended Activities:

8.1 Communicate to local school districts the need to utilize all existing programs to assist homeless students.

8.11 Encourage the use of temporary placement procedures for homeless students eligible for Exceptional Student Education programs.

8.12 Identify homeless students who meet at-risk program eligibility criteria and expedite their entrance into these programs, e.g., compensatory education, dropout prevention, and limited English proficiency.

8.13 Remind local school districts that homeless students may qualify for exceptional student education and vocational education programs.

8.14 Encourage local school districts to include homeless students in free/reduced school meals services, Chapter 1 programs, and school transportation.

8.2 Consult with state level personnel responsible for state compensatory, Chapter 1, dropout prevention, bilingual, and exceptional education programs.

8.21 Determine the extent and nature of services currently being provided by local school districts.

8.22 Encourage program directors of special programs to include homeless students in their programs.

8.23 Design inservice training meetings, if needed, to sensitize student service personnel.

Objective 9

Eliminate delays in enrollment of homeless students due to local school districts' student record requirements [Section 722 (6)(A)(B)].

Recommended Activities:

9.1 Design procedures to make school records of homeless students readily available.

9.11 Survey state and local student services personnel for suggestions to expedite transmission of records.

9.12 Review present entry/exit procedures.

9.2 Encourage local school districts to fully utilize Florida's computerized student information data base (Florida Information Resource Network) for maintenance and transmission of student records.

9.3 Encourage local school districts to begin to provide instruction upon evidence that the homeless student's immunization program has been started and not delay until the full registration is completed.

9.4 Remind the Department of Health and Rehabilitative Services (DHRS) that immunizations required for school enrollment shall be available at no cost from the local county health units.

9.41 Encourage the DHRS to remind their local county health units of the no cost policy.

Objective 10

Provide to each homeless student services comparable to other students in school [Section 722 (e)(5)].

10.1 Confer with state level school transportation authorities.

10.11 Remind local school districts of their responsibility to provide transportation to homeless students for educational services, including special programs within their district.

10.2 Encourage local school districts to review bus routes and schedules and arrange to accommodate residential sites of homeless people (such as public/private shelters, campground, and others).

Objective 11

Develop local school district/community agency guidelines for a model system to ensure appropriate delivery of existing educational services: identification, enrollment/placement, assessment, and monitoring [Section 722 (e)(3)(4)(5)(6)].

Recommended Activities:

11.1 Develop a mini-grant program to fund the creation of more formalized methods of targeting, serving, and monitoring homeless students.

11.2 Confer with the Department of Health and Rehabilitative Services and community agencies to establish a service network to assist in identifying, enrolling, and monitoring homeless students.

11.3 Target local school districts where coordination with service agencies are currently successful.

11.4 Review the existing Migrant Student Records Tracking System, the Florida Information Resource Network (FIRN), and the proposed individual dropout student tracking system, for ways to monitor homeless students and their records.

11.5 Disseminate a written discription of successful school/community agency service delivery systems to school idistricts, social service agencies, and homeless coaliations.

Objective 12

Act as a service center for school districts and the general public in order to increase sensitivity to issues of homeless student and their families.

Recommended Activities:

12.1 Establish a contact person in each of the 67 school districts to coordinate activities and disseminate information.

12.2 Distribute information on homeless issues to homeless care providers, school districts, and the general public.

12.3 Publish and disseminate a directory of state and local social service agencies which provide services to homeless children and youth.

12.4 Train local school district personnel in model service delivery system practices.

IV. APPENDICES

APPENDIX A

DEFINITIONS RELATED TO SECTION VII(B) OF THE STEWART B. MCKINNEY ACT

1. "Child" and "youth"

For purposes of this section, "child" and "youth" includes those persons who, were they children of residents of the State, would be entitled to a free public education.

2. "Homeless" and "homeless individual"

A homeless individual is one who (1) lacks a fixed, regular, and adequate residence or (2) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill), an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings [Section 103(a)(1)(2) of the Act].

The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained by an Act of Congress or a State law [Section 103(c)].

3. "Free, appropriate public education"

A free, appropriate public education means the educational programs and services that are provided the children of a resident of a State, and that are consistent with State school attendance laws [Section 721(1)]. It includes educational services for which the child meets the eligibility criteria, such as compensatory education programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education, programs for the gifted and talented; and school meals programs [Section 722(e)(5)].

STATUS REPORT - EDUCATION OF HOMELESS CHILDREN AND YOUTH UNDER THE STEWART B..MCKINNEY HOMELESS ASSISTANCE ACT DEPARTMENT OF EDUCATION

APPENDIX B
Form Approved
OMB No. 1810-0536
Expiration Date 9/90

GENERAL INSTRUCTIONS

:CIFICS: Please provide the following information requested pursuant to Section 722(d) of the Stewart B. McKinney Homeless Assistance Act and return to:

Administrator
Dropout Prevention Section
Florida Department of Education
Knott Bldg. (Room L34 Collins)
Tallahassee, FL 32399-0400

'INITIONS: For purposes of this reporting form, the following definitions apply:

meless"- A homeless individual is one who (1) lacks a fixed, regular, and adequate residence or (2) has a primary nighttime residence in a supervised dly or privately operated shelter for temporary accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally n institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designed for, or ordinarily as a regular sleeping accomodation for human beings (Section 103 (a)(1)(2) of the Act).

term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained by an Act of Congress or a State law tion 103(c)).

ld" and "Youth"- Persons who,if residents of your district, would be entitled to free public education.

) List numbers of homeless children & youth in your district by school level groups.

School Level	Numbers of Children/Youth
Elementary (K-6)	_____ (See attached letter)
Middle/Jr. High (7-9)	_____
High School (10-12)	_____

Indicate the source of the ' .rmation in item I.(a).

_____

_____

_____

_____

List in rank & order numbers of children housed according to locations or nomeless children and youth in your district. (Total should equal total in item 1.(a).

Type of Housing	Numbers of Children/Youth
Public operated shelters	_____
Privately operated shelters	_____
Relatives or friends	_____
Other (specify)_____	_____

(b) Indicate the source of the information provided in II.(a).

III.(a) List in order of numbers of homeless children, those municipalities having the greatest numbers of homeless children and youth.

Name of Municipality	Numbers of Children/Youth

(b) Indicate the source of the information provided in III.(a).

IV. The sum of (a) and (b) should equal the total number reported in item I.(a).

(a) How many homeless children and youth are presently attending school in your State?

(b) How many homeless children and youth are not attending school in your State?

(c) Indicate the source of information provided in IV(a) and (b).

V. Indicate the reasons the homeless children and youth are not attending school in your State, and provide the basis for these conclusions.

(Use additional sheets if necessary.)

VI. (a) List, in order of importance, the special educational needs of the homeless children and youth.

(b) List, in order of importance, the difficulties you have encountered in identifying these needs.

To the best of my knowledge, the facts and figures in this document are accurate.

June 29, 1988

Chief State School Officer — Date

Florida Department of Education

APPENDIX C

SURVEY RESULTS FROM STATUS REPORT ON EDUCATION OF HOMELESS CHILDREN AND YOUTH

A request for data on homeless students was sent to all 67 school districts and selected HRS District Homeless Coordinators in January, 1989. To date 41 surveys have been returned. A total of nearly 8,000 homeless children and youth were reported by 19 school districts. Twenty-two stated they had no known homeless students or the number was unknown.

School Level Groups

Two-thirds of the districts reporting some homeless students, broke out the figures by specific grade level groups. The remaining districts gave a total for all grade levels. Totals reported by school-level groups are listed below:

Elementary (k-6) - 358
Middle/Jr. High (7-9) - 197
High School (10-12) - 239

These data were compiled mainly by school personnel such as school based administrators, school social workers, guidance counselors, and migrant program specialists. Considerable contributions were made by the Department of Health and Rehabitative Services and the Agriculture and Labor Program. Over a dozen private community services provided direct data gathering assistance.

Type Of Housing

Data on the Type of Housing in which the homeless dwell showed over 3,500 in privately operated shelters, by far the most common form of residence. Nearly 500 homeless students reported staying with relatives and/or friends. Close to 400 relied on some form of public assistance vouchers or funds to stay in such quarters as motels. The smallest number of homeless stayed in cars, tents, and "on the street".

Housing information was given by school personnel, HRS agents, shelter managers, and the homeless.

Municipalities

Largest concentrations of homeless students are found in the major urbanized areas: Jacksonville, Miami, Tampa, St. Petersburg, and Ft. Lauderdale. One notable exception to this was in Ft. Pierce, a small city which reported nearly twice as many homeless as Orlando, a large city.

School Attendance

Survey item (4) asked for a differentiation between the number of homeless children nd youth residing in a district and how many of them were actually attending schools. Most districts who reported any homeless students say they are all attending school. Two districts do show a difference between those in residence and those attending school: Okaloosa: 210/23; Pinellas 44/13.

Reasons for Non-Attendance

Reasons for homeless students not attending school were varied. the most frequently chosen response was "family keeps students at home", followed closely by "no immunizations or records", and "no permanent address" (for youth). A sample of other causes included "children working for economic survival", "parents leave so early for work, no one gets children ready for school", and "abusive situations". It is unclear who gave the responses to this question.

Educational Needs

A number of special educational needs of homeless students was identified. Compensatory and exceptional education were consistently named as needs. The most frequently listed necessity was specialized guidance and counseling. Tutorial assistance was listed several times as a need. A major area of improvement cited was a more flexible administrative/regulatory response to the particular plight of homeless students.

Difficulties in identifying n eds centered on one over-riding problem: no formal data gathering mechanism is in place to collect adequate information on the targeted population. Many agencies which serve the homeless do not keep records on age of children or their school enrollment. School registration processes do not illicit "homeless" status from applicants. The data collection dilemma is exacerbated by the transient nature of the homeless and the desire of some of them to avoid any contact with the "system".

STATUS REPORT

Education of Homeless Children and Youth in Florida

School Districts Reporting as of April, 1989

Districts Reporting Some Homeless Students

1.	Bay	1
2	Broward	544
3.	Dade	1,219 (1)
4.	De Soto	50
5.	Duval	3,000 (2)
6.	Escambia	107
7.	Gadsden	28
8.	Hernando	8
9.	Hillsborough	1,136 (4)
10.	Leon	55
11.	Marion	142 (5)
12.	Martin	12
13.	Okaloosa	157
14.	Orange	209
15.	Pasco	17
16.	Pinellas	57 (6)
17.	St. Johns	30
18.	St. Lucie	518
19.	Wakulla	3

Districts Reporting No Known or UnKnown Homeless Students

1. Bradford
2. Calhoun
3. Charlotte
4. Citrus
5. Clay
6. Collier (3)
7. Flagler
8. Hamilton
9 Hardee
10. Indian River
11. Jefferson
12. Lee
13. Levy
14. Liberty
15. Monroe
16. Nassau
17. Okeechobee
18. Palm Beach
19. Polk
20. Sarasota
21. Union
22. District (No name given)

FOOTNOTES FOR STATUS REPORT

(1) Children under 18 in two shelters.

(2) Eleven member agencies of the Emergency Services Council estimates the number of homeless school age children and youth served in 1988 in excess of 3,000.

(3) Reported 8-21 children in a shelter, but gave no school ages.

(4) Estimates given by community agencies, not school district.

(5) Represents one runaway shelter.

(6) Fifty-seven reported by school district. Pinellas County Juvenile Welfare Board reports 1,659 children were housed in shelters and 750 runaway homeless youth were served in the last fiscal year.

APPENDIX D

FLORIDA DEPARTMENT OF EDUCATION
Betty Castor
Commissioner of Education

M E M O R A N D U M

TO: Linda Harkey, Legislative Aide

FROM: Altha Manning

DATE: March 24, 1989

RE: Possible Statutory Barriers to Education for Homeless Students

****

In response to your request, our Office has identified the following statutes as potential barriers to educational access for homeless students:

(1) F.S. 228.121
(2) F.S. 232.03
(3) F.S. 232.0315
(4) F.S. 232.032

Please give consideration to ways to modify these laws. We may also need a statute which ensures public school services to homeless students. This statute would then override any barriers that currently might exist in district procedures/policies.

Other ideas on legislative changes may emerge from the regional public hearings; however, we wanted to meet your deadline of March 27, mentioned in the earlier telephone conversation with Roger Henry.

Thank you for your interest and assistance.

cc: Evelyn Syfrett
Vera Williams
Roger Henry

Tallahassee, Florida 32399

APPENDIX E

POTENTIAL STATUTORY BARRIERS TO EDUCATION FOR HOMELESS STUDENTS

Section 228.121, F.S., Nonresident tuition fee; tuition fee exemptions.

This statute states that pupils in grades kindergarten through 12 whose parents or guardians are nonresidents of Florida may be charged a tuition fee of $50, payable at the time of enrollment. A nonresident is defined as a person who has lived in Florida less than one year, has not purchased a home which is occupied by him as his residence prior to the enrollment children in school, and has not filed a manifestation of domicile in the county where the child is enrolled. Children whose parents are federal military personnel and migratory agricultural workers are exempted from the fee requirement.

According to Section 222.17, F.S., "manifestation of domicile" may be documented by filing in the office of the clerk of the circuit court for the county in which the said person shall reside, a sworn statement showing that he resides in and maintains a place of abode in that county which he recognizes and intends to maintain as his permanent home.

Section 232.03, F.S., Evidence of date of birth required.

Under this statute, the superintendent may require evidence of the age of any child believed to be within the limits of compulsory attendance as provided by law. If a certified birth certificate, the preferred evidence is unavailable, other evidences may be acceptable. One evidence which may appeal to homeless families permit parents to sign an affidavit of age, accompanied by a certificate of age signed by a public health office or a public school physician.

Section 232.0315, F.S., School entry health

This statute requires a certificate of a school-entry health examination performed within one year prior to enrollment in school. School districts may permit a student up to 30 school days to present such a certificate.

Section 232.032, F.S., Immunization against communicable diseases; school attendance requirements; exemptions.

Under this statute, each child must present or have on file with the school a certificate of immunization prior to admittance.

APPENDIX F

PROCEDURE FOR THE RESOLUTION OF DISPUTES REGARDING THE EDUCATIONAL PLACEMENT OF HOMELESS CHILDREN AND YOUTH

Each of Florida's 67 counties constitute a school district. Section 230.01, Florida Statutes. District school boards operate, control and supervise all free public schools in their respective districts. Section 230.03(2), Florida Statutes.

Florida's law governing compulsory school attendance was amended by the 1989 Florida Legislature by creating Section 232.01(1)(f), Florida Statutes, which reads as follows:

> "(f) Homeless children, as defined in s. 228.041, must have access to a free public education and must be admitted to school in the the school district in which they or their families live. School districts shall assist homeless children to meet the requirements of, ss. 232.03, 232.0315, and 232.032, as well as local requirements for documentation."

Additionally, Florida law provides that school boards shall cooperate with boards of adjoining districts in maintaining schools.

Section 230.23(4)(d), Florida Statutes, reads as follows:

> "(4) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS.--Adopt and provide for the execution of plans for the establishment, organization, and operation of the schools of the district, as follows:
>
> * * *
>
> (d) Cooperate with boards of adjoining districts in maintaining schools.--Aprove plans for cooperating with school boards of adjoining districts in this state or in adjoining states for establishing school attendance areas composed of territory lying within the districts and for the joint maintenance of district-line schools or other schools which are to serve those attendance areas. The conditions of such cooperation shall be as follows:
>
> 1. Establishment.--The establishment of a school to serve attendance areas lying in more than one district and the plans for maintaining the school and providing educational services to pupils shall be effected by annual resolutions spread upon the minutes of each school board concerned, which resolutions shall set out the territorial limits of the areas from which

children are to attend the school and the plan to be followed in maintaining and operating the school.
2. Control.--Control of the school or schools involved shall be vested in the school board of the district in which the school or schools are located unless otherwise agreed by the school boards.
3. Settlement of disagreements.--In the event that an agreement cannot be reached relating to such attendance area or to the school or schools therein, the matter may be referred jointly by the cooperating school boards or by either school board to the Department of Education for decision under regulations so the state board, and its decision shall be binding on both school boards."

Aside from any homeless students affected by the above provisions, it is anticipated that disputes as to which district the child will attend school will probably be rare since Florida law requires the child to be admitted in the district in which they or their families live.

In the event of such a dispute, or a dispute arising within a district, Florida's Administrative Procedures Act provides for a procedure to resolve disputed between anyone and any agency, including the state education agency (Department of Education) and local education agencies (school districts).

The Administrative Procedure Act (APA), Chapter 120, Florida Statutes, provides for formal and informal proceedings when the substantial interests of a party are determined by an agency. Section 120.57, Florida Statutes, (See Appendix G) provides for notice and an opportunity to be heard. For formal proceedings, an impartial hearing officer is assigned by the Florida Department of Administration, Division of Administrative Hearings, to conduct the hearing. The law also outlines the procedures for informal proceedings and specifies when formal or informal proceedings are applicable.
The APA has been in existence since 1979 and is the mechanism used for resolving disputes between state or local government agencies and persons whose substantial interests are affected by agency action. This would include disputes regarding educational placement of homeless children.

CHAPTER 120

ADMINISTRATIVE PROCEDURE ACT

120.50 Exception to application of chapter.—This chapter shall not apply to:

(1) The Legislature.

(2) The courts.

History.—s. 1, ch. 74-310, s. 3, ch. 77-468, s. 1, ch. 78-162.
cf.—ss. 193.1142, 193.1145 Approval of assessment rolls.

120.51 Short title.—This chapter may be known and cited as the "Administrative Procedure Act."

History.—s. 1, ch. 74-310.

120.52 Definitions.—As used in this act:

(1) "Agency" means:

(a) The Governor in the exercise of all executive powers other than those derived from the constitution.

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters 163, 298, 373, 380, and 582 and s. 186.504, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II.

(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

A deputy commissioner shall not, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act.

(2) "Agency action" means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(5).

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.

(4) "Committee" means the Administrative Procedures Committee.

(5) "Communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

(6) "Division" means the Division of Administrative Hearings of the Department of Administration.

(7) "Educational unit" means a local school district, a community college district, the Florida School for the Deaf and the Blind, or a unit of the State University System other than the Board of Regents.

(8) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(9) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(10) "Order" means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing and filed with the person designated by the agency as clerk. The clerk shall indicate the date of filing on the order. This subsection is not applicable to an assessment of tax, penalty, or interest by the Department of Revenue. Assessments by the Department of Revenue shall be deemed final as provided in the statutes and rules governing the assessment and collection of taxes.

(11) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or partici-

pate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s. 944.02(5) may obtain or participate in proceedings under s. 120.54(3), (4), (5), or (9) or s. 120.56 and may be parties under s. 120.68 to seek judicial review of those proceedings. Prisoners shall not be considered parties in any other proceedings and may not seek judicial review under s. 120.68 of any other agency action. Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

(12) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(13) "Proposed order" means the advance text, under s. 120.58(1)(e), of the order which a collegial agency head plans to enter as its final order. When a hearing officer assigned by the division conducts a hearing, the recommended order is the proposed order.

(14) "Recommended order" means the official recommendation of a hearing officer assigned by the division to an agency or of any other duly authorized presiding officer, other than an agency head or member thereof, for the final disposition of a proceeding under s. 120.57.

(15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.

2. Contractual provisions reached as a result of collective bargaining.

3. Agricultural marketing orders under chapter 573 or chapter 601.

4. Curricula by an educational unit.

(d) Agency action which has the effect of altering established hunting or fishing seasons when such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting in an electronic media.

(e) Any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 229.57, s. 232.245, s. 232.246, or s. 232.247 or any other statewide educational test required by law.

(f) Law enforcement policies and procedures of the Department of Law Enforcement which relate to:

1. The collection, management, and dissemination of active criminal intelligence information and active criminal investigative information; management of criminal investigations; and management of undercover investigations and the selection, assignment, and fictitious identity of undercover personnel.

2. The recruitment, management, identity, and remuneration of confidential informants or sources.

3. Surveillance techniques, the selection of surveillance personnel, and electronic surveillance including court-ordered and consensual interceptions of communication conducted pursuant to chapter 934.

4. The safety and release of hostages.

5. The provision of security and protection to public figures.

6. The protection of witnesses.

(g) The enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, Organized Militia, and unorganized militia, as provided in s. 2, Art. X of the State Constitution.

History.—s. 1, ch. 74-310; s. 1, ch. 75-191; s. 1, ch. 76-131; s. 1, ch. 77-174; s. 12, ch. 77-290; s. 2, ch. 77-453; s. 1, ch. 78-28; s. 1, ch. 78-425; s. 1, ch. 79-20; s. 55, ch. 79-40; s. 1, ch. 79-299; s. 2, ch. 81-119; s. 1, ch. 81-180; s. 7, ch. 82-180; s. 1, ch. 83-8; s. 2, ch. 83-273; s. 10, ch. 84-170; s. 15, ch. 85-80; s. 1, ch. 85-168

cf.—s. 11.60 Administrative Procedures Committee, creation, membership, powers, duties.

s. 27.37 Council on Organized Crime, exclusion from definition of "agency."

s. 110.207 Career service class specifications, titles, and codes; exclusion from definition of "rule."

s. 110.209 Career service salary ranges and assignment of ranges to positions; exclusion from definition of "rule."

s. 760.10 Referral of complaint to Commission on Human Rights; exclusion from definition of "agency action."

120.53 Adoption of rules of procedure and public inspection.—

(1) In addition to other requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

(c) Adopt rules of procedure appropriate for the presentation of arguments concerning issues of law or policy, and for the presentation of evidence on any pertinent fact that may be in dispute.

(d) Adopt rules for the scheduling of meetings, hearings, and workshops, one of which shall be that an agenda shall be prepared by the agency in time to ensure that a copy of the agenda may be received at least 7

days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda shall contain the items to be considered, in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time. The agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to such meeting. In addition, each agency shall give notice of meetings, hearings, and workshops in the same manner as that prescribed for rulemaking in s. 120.54(1), except that the notice requirement does not apply to emergency meetings. The notice shall include a statement of the general subject matter to be considered and shall be given not less than 7 days before the event.

(2) Each agency shall make available for public inspection and copying, at no more than cost:

(a) All rules formulated, adopted, or used by the agency in the discharge of its functions.

(b) All agency orders.

(c) A current subject-matter index, identifying for the public any rule or order issued or adopted after January 1, 1975.

All rules adopted pursuant to this act shall be indexed within 90 days. The Department of State shall by rule establish uniform indexing procedures.

(3) No agency rule or order is valid for any purpose until it has been made available for public inspection as herein required unless the person or party against whom enforcement is sought has actual knowledge of it.

(4) An agency may comply with paragraphs (2)(b) and (c) by designating by rule an official reporter which publishes and indexes by subject matter each agency order rendered after a proceeding which affects substantial interests has been held.

(5) An agency which enters into a contract pursuant to the provisions of ss. 282.301-282.313, chapter 255, chapter 287, or chapters 334-349 shall adopt rules specifying procedures for the resolution of protests arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is affected adversely by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the agency decision or intended decision and shall file a formal written protest within 10 days after the date he filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under chapter 120. The formal written protest shall state with particularity the facts and law upon which the protest is based.

(c) Upon receipt of a notice of protest which has been timely filed, the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d) The agency, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to s. 120.57(2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the division director shall expedite the hearing and assign a hearing officer who shall conduct a hearing within 15 days of the receipt of the formal written protest by the division. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) The Administration Commission shall promulgate model rules of procedure pursuant to the provisions of s. 120.54(10) for the filing of notice of protests and formal written protests.

(6) Each state agency, as defined in s. 216.011, shall adopt rules providing a procedure for conducting meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such meetings, hearings, and workshops, by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for meetings, hearings, and workshops utilizing communications media

technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this subsection shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public; and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to meetings, hearings, and workshops conducted by means of communications media technology and shall be liberally construed in their application to such meetings, hearings, and workshops.

History.—s. 1, ch. 74-310; s. 2, ch. 75-191; s. 2, ch. 76-131; s. 2, ch. 79-299; s. 1, ch. 81-296, s. 2, ch. 81-309, s. 8, ch. 83-92, s. 34, ch. 83-217, s. 3, ch. 83-273, s. 1, ch. 84-203, s. 77, ch. 85-180

cf.—s. 213.22 Department of Revenue technical assistance advisements; exception s. 947.071 Parole and Probation Commission, rulemaking procedures

120.54 Rulemaking; adoption procedures.—

(1) Prior to the adoption, amendment, or repeal of any rule not described in subsection (9), an agency shall give notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, the specific legal authority under which its adoption is authorized, and a summary of the estimate of the economic impact of the proposed rule on all persons affected by it.

(a) Except as otherwise provided in this paragraph, the notice shall be mailed to the committee, to all persons named in the proposed rule, and to all persons who have made requests of the agency for advance notice of its proceedings at least 14 days prior to such mailing. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed. Notice of intent by an educational unit to adopt, amend, or repeal any rule not described in subsection (9) shall be made:

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Such publication, mailing, and posting of notice shall occur at least 21 days prior to the intended action.

(b) The notice shall be published in the Florida Administrative Weekly not less than 28 days prior to the intended action, except that notice of actions proposed by educational units or units of government with jurisdiction in only one county or a part thereof need not be published in the Florida Administrative Weekly or transmitted to the committee. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

(2)(a) Each agency, prior to the adoption, amendment, or repeal of any rule, shall consider the impact of such proposed action on small business as defined in the Florida Small and Minority Business Assistance Act of 1985 and, whenever possible, shall tier such rule to reduce disproportionate impacts on small business and to avoid regulating businesses which do not contribute significantly to the problem the rule is designed to regulate. An agency may define "small business" to include more than 25 persons if it finds that such a definition is necessary to adapt any rule to the needs and problems of small business. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small business:

1. Establishing less stringent compliance or reporting requirements in the rule for small business.

2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

3. Consolidating or simplifying the rule's compliance or reporting requirements for small business.

4. Establishing performance standards to replace design or operational standards in the rule for small business.

5. Exempting small business from any or all requirements of the rule.

(b) Each agency shall provide information on its proposed action by preparing a detailed economic impact statement. The economic impact statement shall include:

1. An estimate of the cost to the agency of the implementation of the proposed action, including the estimated amount of paperwork;

2. An estimate of the cost or the economic benefit to all persons directly affected by the proposed action,

3. An estimate of the impact of the proposed action on competition and the open market for employment, if applicable;

4. A detailed statement of the data and method used in making each of the above estimates, and

5. An analysis of the impact on small business as defined in the Florida Small and Minority Business Assistance Act of 1985.

(c) If an economic impact statement is required before an agency takes action on an application or petition by any person, the statement shall be prepared within a reasonable time after the application is made or the petition is filed.

(d) The failure to provide an adequate statement of economic impact is a ground for holding the rule invalid; however, beginning October 1, 1978, no rule shall be declared invalid for want of an adequate statement of economic impact unless the issue is raised in an administrative or judicial proceeding within 1 year of the effective date of the rule to which the statement applies.

(3)(a) If the intended action concerns any rule other than one relating exclusively to organization, procedure, or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice, give affected persons an opportunity to present evidence and argument on all issues under consideration appropriate to inform it of their contentions. Prisoners, as defined in s. 944.02(5), may be limited by the Department of Corrections to an oppor-

tunity to submit written statements concerning intended action on any department rule. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted at a public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

(b) If the agency determines that the proposed action will affect small business as defined by the agency as provided in paragraph (2)(a), the agency shall send written notice of such rule to the Small and Minority Business Advocate, the Minority Business Enterprise Assistance Office, and the Division of Economic Development of the Department of Commerce not less than 21 days prior to the intended action.

1. Within the 21-day period after written notice has been sent and the day on which the intended action is to take place, the agency shall give the Small and Minority Business Advocate, the Minority Business Enterprise Assistance Office, and the Division of Economic Development of the Department of Commerce an opportunity to present evidence and argument and to offer alternatives regarding the impact of the rule on small business.

2. Each agency shall adopt those alternatives offered pursuant to this subsection which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small business.

3. If an agency does not adopt all alternatives offered pursuant to this subsection, it shall, prior to rule adoption or amendment and pursuant to subsection (11), file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days of the filing of such notice, the agency shall send a copy of such notice to the Small and Minority Business Advocate, the Minority Business Enterprise Assistance Office, and the Division of Economic Development of the Department of Commerce.

(4)(a) Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule on the ground that the proposed rule is an invalid exercise of delegated legislative authority.

(b) The request seeking a determination under this subsection shall be in writing and must be filed with the division within 21 days after the date of publication of the notice. It must state with particularity the provisions of the rule or economic impact statement alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging the proposed rule would be substantially affected by it.

(c) Immediately upon receipt of the petition, the division shall forward copies of the petition to the agency whose rule is challenged the Department of State, and the committee. Within 10 days after receiving the petition, the division director, if he determines that the petition complies with the above requirements, shall assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn. Within 30 days after conclusion of the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare the proposed rule wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall be withdrawn from the committee by the adopting agency and shall not be adopted. No rule shall be filed for adoption until 28 days after the notice required by subsection (1) or until the hearing officer has rendered his decision, as the case may be. However, the agency may proceed with all other steps in the rulemaking process, including the holding of a fact-finding hearing pursuant to subsection (3). In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

(d) Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 except that the hearing officer's order shall be final agency action. The agency proposing the rule and the person requesting the hearing shall be adversary parties. Other substantially affected persons may join the proceeding as parties or intervenors on appropriate terms which will not substantially delay the proceedings. Failure to proceed under this subsection shall not constitute failure to exhaust administrative remedies.

(5) Any person regulated by an agency or having a substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by s. 120.53. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days after the date of filing a petition, the agency shall initiate rulemaking proceedings under this act, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(6) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of such materials and given a reasonable opportunity to examine them and offer written comments thereon or written rebuttal thereto.

(7) Each rule adopted shall be accompanied by a reference to the specific rulemaking authority pursuant to which the rule was adopted and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented, interpreted, or made specific.

(8) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and reference to the rules repealed or amended, which statement need not be printed in the Florida Administrative Code. Pursuant to rule of the Department of State, a rule may incorporate material by reference but only as such material exists on the date the rule is adopted. For purposes of such rule, changes in such material shall have no effect with respect to the

rule unless the rule is amended to incorporate such material as changed. No rule shall be amended by reference only. Amendments shall set out the amended rule in full in the same manner as required by the constitution for laws.

(9)(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger by any procedure which is fair under the circumstances and necessary to protect the public interest, provided that:

1. The procedure provides at least the procedural protection given by other statutes, the Florida Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one county or a part thereof, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Weekly. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include, but not be limited to, those rules pertaining to perishable agricultural commodities.

(c) An emergency rule adopted under this subsection may not be effective for a period longer than 90 days and shall not be renewable, except during the pendency of a challenge to proposed rules addressing the subject of the emergency rule. However, the agency may take identical action by normal rulemaking procedures.

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or at a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of an immediate danger to the public health, safety, or welfare.

(10) The Administration Commission shall promulgate one or more sets of model rules of procedure which shall be reviewed by the committee and filed with the Department of State. On filing with the department, the appropriate model rules shall be the rules of procedure for each agency subject to this act to the extent that each agency does not adopt a specific rule of procedure covering the subject matter contained in the model rules applicable to that agency. An agency may seek modification of the model rules of procedure to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or permit persons in this state to receive tax benefits under federal law or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the modification shall be published in the Florida Administrative Weekly. Agency rules adopted to comply with ss. 120.53 and 120.565 must be in substantial compliance with the model rules.

(11)(a) The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of the estimate of economic impact required by subsection (2); a statement of the extent to which the proposed rule establishes standards more restrictive than federal standards or a statement that the proposed rule is no more restrictive than federal standards or that a federal rule on the same subject does not exist; a written statement of the impact on small business as defined in the Florida Small and Minority Business Assistance Act of 1985; and the notice required by subsection (1). After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a detailed statement of such change by certified mail or actual delivery to any person who requests it in writing at the public hearing. The agency shall file the change with the committee, and provide the statement of change to persons requesting it, at least 7 days prior to filing the rule for adoption. Educational units, other than units of the State University System and the Florida School for the Deaf and the Blind, and local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee. This paragraph does not apply to emergency rules adopted pursuant to subsection (9). However, agencies, other than those listed herein, adopting emergency rules shall file a copy of each emergency rule with the committee.

(b) If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required above, in the office of the agency head; and such rules shall be open to the public pursuant to s. 120.53(2). Filings shall be made no less than 28 days or more than 90 days after the notice required by subsection (1). If a public hearing is held, the 90-day limit is extended to 21 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. For purposes of this paragraph, the term "public hearing" includes any public meeting held by any agency at which the rule is considered. The filing of a petition for an administrative determination under the provisions of subsection (4) will toll the 90-day period during which a rule must be filed for adoption until the hearing officer has filed his order with the clerk. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this subsection have been complied with and that there is no administrative determination pending on the rule. The de-

partment shall reject any rule not filed within the prescribed time limits or upon which an administrative determination is pending. If a rule has not been adopted within the time limits imposed by this section, the agency proposing the rule shall withdraw the rule and give notice of its action in the same manner as is prescribed in paragraphs (1)(a) and (b).

(12) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided herein within 180 days of the effective date of the act unless the provisions of the act provide otherwise.

(13)(a) The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute.

(b) After the notice required in subsection (1) and prior to adoption, the agency may withdraw the rule in whole or in part or may make such changes in the rule as are supported by the record of public hearings held on the rule, technical changes which do not affect the substance of the rule, changes in response to written material relating to the rule received by the agency within 21 days after the notice and made a part of the record of the proceeding, or changes in response to a proposed objection by the committee. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published and shall notify the Department of State if the rule is required to be filed with the Department of State. After a rule has become effective, it may be repealed or amended only through regular rulemaking procedures.

(14) If the committee disapproves a proposed rule and the agency does not modify the rule, the committee shall file with the Department of State a notice of the disapproval detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule when it is published in the Florida Administrative Code, a reference to the committee's disapproval and to the issue of the weekly in which the full text thereof appears.

(15) No agency has inherent rulemaking authority; nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules. However, an agency may adopt rules necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be enforced until the statute upon which they are based is effective.

(16) The rulemaking provisions of this chapter do not apply to compensation appeals referees.

(17) Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that his substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect his interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of s. 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

History.—s. 1, ch. 74-310; s. 3, ch. 75-191; s. 3, ch. 76-131; ss. 1, 2, ch. 76-276; s. 1, ch. 77-174; s. 13, ch. 77-290; s. 3, ch. 77-453; s. 2, ch. 78-28; s. 2, ch. 78-425; s. 7, ch. 79-3, s. 3, ch. 79-299, s. 69, ch. 79-400, s. 5 ch. 80-391; s. 1, ch. 81-309, s. 2, ch. 83-351; s. 1, ch. 84-173; s. 2, ch. 84-203; s. 7, ch. 85-104; s. 1, ch. 86-30.

cf.—s. 161 161 Beach erosion control hearings: additional notice requirement
s. 403.8055 Department adoption of federal standards.

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.54(11)(a), and its accompanying material, and may examine any existing rule, for the purpose of determining whether:

(a) The rule is within the statutory authority upon which it is based;

(b) The statutory authority for the rule has been repealed;

(c) The rule reiterates or paraphrases statutory material;

(d) The rule is in proper form;

(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule; and

(f) The economic impact statement accompanying the rule is adequate to accurately inform the public of the economic effect of the rule.

If the committee objects to a proposed or existing rule, it shall, within 5 days of the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity.

(2) Within 30 days of receipt of the objection, if the agency is headed by an individual, or within 45 days of receipt of the objection, if the agency is headed by a collegial body, the agency shall:

(a) If the rule is a proposed rule:

1. Modify the rule to meet the committee's objection;

2. Withdraw the rule in its entirety; or

3. Refuse to modify or withdraw the rule.

(b) If the rule is an existing rule:

1. Notify the committee that it has elected to amend the rule to meet the committee's objection and initiate the amendment procedure;

2. Notify the committee that it has elected to repeal the rule and initiate the repeal procedure; or

3. Notify the committee that it refuses to amend or repeal the rule.

(c) If the rule is either an existing or a proposed rule and the objection is to the economic impact statement:

1. Prepare a corrected economic impact statement, give notice of the availability of the corrected economic impact statement in the first available issue of the Florida Administrative Weekly, and file copies of the corrected statement with the committee and the Department of State; or

2. Notify the committee that it refuses to prepare a corrected economic impact statement.

(3) If the agency elects to modify a proposed rule to meet the committee's objection, it shall make only such modifications as are necessary to meet the objection and shall resubmit the rule to the committee. The agency shall give notice of its election to modify a proposed rule to meet the committee's objection in the first available issue of the Florida Administrative Weekly, but shall not be required to conduct a public hearing. If the agency elects to amend an existing rule to meet the committee's objection, it shall notify the committee in writing and shall initiate the amendment procedure by giving notice in the next available issue of the Florida Administrative Weekly. The committee shall give priority to rules so modified or amended when setting its agenda.

(4) If the agency elects to withdraw a proposed rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall give notice of the withdrawal in the next available issue of the Florida Administrative Weekly. The rule shall be withdrawn without a public hearing, effective upon publication of the notice in the Florida Administrative Weekly. If the agency elects to repeal an existing rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice in the next available issue of the Florida Administrative Weekly.

(5) If an agency elects to amend or repeal an existing rule as a result of a committee objection, it shall complete the process within 90 days after giving notice in the Florida Administrative Weekly.

(6) Failure of the agency to respond to a committee objection to a proposed rule within the time prescribed in subsection (2) shall constitute withdrawal of the rule in its entirety. In this event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the proposed rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Weekly. Upon publication of the notice, the proposed rule shall be stricken from the files of the Department of State and the files of the agency.

(7) Failure of the agency to respond to a committee objection to an existing rule within the time prescribed in subsection (2) shall constitute a refusal to repeal the rule.

(8) If the committee objects to a proposed or existing rule and the agency refuses to modify, amend, withdraw, or repeal the rule, the committee shall file with the Department of State a notice of the objection, detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule in the Florida Administrative Code, a reference to the committee's objection and to the issue of the Weekly in which the full text thereof appears.

History.—s. 4, ch. 76-131; s. 1, ch. 77-174; s. 6, ch. 80-391; s. 3, ch. 81-309.

120.55 Publication.—

(1) The Department of State shall:

(a)1. Publish in a permanent compilation entitled "Florida Administrative Code" all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(8), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. The department shall, by July 1, 1981, contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided in this section. This publication shall be the official compilation of the administrative rules of this state.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish a summary or listing of all rules of that agency excluded from publication in the code and a statement as to where those rules may be inspected or examined and shall also publish any exemptions granted that agency pursuant to s. 120.63, including the termination date of the exemption and a statement whether the exemption can be renewed pursuant to s. 120.63(2)(b).

4. Forms shall not be published in the Florida Administrative Code, but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52(15) shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained.

(b) Publish a weekly publication entitled the "Florida Administrative Weekly," which shall contain:

1. Notice of adoption of, and an index to, all rules filed during the preceding week.

2. All hearing notices required by s. 120.54(1), showing the time, place, and date of the hearings and the text of all rules proposed for consideration or a reference to the location in the Florida Administrative Weekly where the text of the proposed rules is published.

3. All notices of meetings, hearings, and workshops conducted in accordance with the provisions of s. 120.53(1)(d), including a statement of the manner in which a copy of the agenda may be obtained.

4. A notice of each request for authorization to amend or repeal an existing model rule or for the adoption of new model rules.

5. A notice of each request for exemption from any provision of this chapter.

6. Notice of petitions for declaratory statements or administrative determinations.

7. A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week.

8. Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for publication of the Florida Administrative Weekly.

(c) Prescribe by rule the style and form required for rules submitted for filing and establish the form for their certification.

(d) Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.

(e) Make copies of the Florida Administrative Weekly available on an annual subscription basis computed to cover a pro rata share of 50 percent of the costs related to the publication of the Florida Administrative Weekly.

(f) Charge each agency using the Florida Administrative Weekly a space rate computed to cover a pro rata share of 50 percent of the costs related to the Florida Administrative Weekly.

(2) Each agency shall print or distribute copies of its rules, citing the specific rulemaking authority pursuant to which each rule was adopted.

(3) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Code or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the supervisor or person who approved the rule, and the date upon which the rule was approved.

(4)(a) The Department of State shall furnish the Florida Administrative Code and the Florida Administrative Weekly, without charge and upon request, as follows:

1. One set to each federal and state court having jurisdiction over the residents of the state, the Legislative Library; each state university library; the State Library, each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator upon request of the Senate President's or House Speaker's Office.

2. Two sets to each state department.

3. Three sets to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House.

4. Ten sets to the committee.

(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.

(5)(a) There is hereby created in the State Treasury a revolving fund to be known as the "Publication Revolving Trust Fund" of the Department of State.

(b) All fees and moneys collected by the Department of State under this chapter shall be deposited in the revolving trust fund for the purpose of paying for the publication and distribution of the Florida Administrative Code and the Florida Administrative Weekly and for associated costs incurred by the department in carrying out this chapter.

(c) The unencumbered balance in the revolving trust fund at the beginning of each fiscal year shall not exceed $100,000, and any excess shall be transferred to the General Revenue Fund.

(d) It is the intent of the Legislature that the Florida Administrative Weekly be supported entirely from funds collected for subscriptions to and advertisements in the Florida Administrative Weekly. To that end, the Department of State is authorized to add a surcharge of 10 percent to any charge relating to the Florida Administrative Weekly until such time as the Publication Revolving Trust Fund has transferred to the General Revenue Fund an amount equal to all funds appropriated to the trust fund.

History.—s. 1, ch. 74-310; s. 1, ch. 75-107; s. 4, ch. 75-191; s. 5, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 77-453; s. 3, ch. 78-425; s. 4, ch. 79-299; s. 7, ch. 80-391; s. 4, ch. 81-309; s. 1, ch. 82-19; s. 1, ch. 82-47; s. 3, ch. 83-351; s. 3, ch. 84-203.

120.56 Administrative determination of rule by hearing officer.—

(1) Any person substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(2) The petition seeking an administrative determination under this section shall be in writing and shall state with particularity facts sufficient to show the person seeking relief is substantially affected by the rule and facts sufficient to show the invalidity of the rule. The petition shall be filed with the division which shall, immediately upon filing, forward copies of the petition to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if he determines that the petition complies with the above requirements, assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn.

(3) Within 30 days after the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires or at a later date specified in the decision. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Weekly in the first available issue after the rule has become void.

(4) Challenges to the validity of an emergency rule shall be subject to the following time schedules. Within 7 days after receiving the petition, the division director shall, if he determines that the petition complies with

subsection (2), assign a hearing officer who shall conduct a hearing within 14 days thereafter, unless the petition is withdrawn. Within 14 days after the hearing, the hearing officer shall render his decision and otherwise comply with the provisions of subsection (3) not inconsistent herewith.

(5) Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 except that the hearing officer s order shall be final agency action. The petitioner and the agency whose rule is attacked shall be adversary parties. Other substantially affected persons may join the proceedings as parties or intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

History.—s. 1, ch 74-310, s. 5, ch. 75-191; s. 6, ch. 76-131; s 1, ch 77-174; s 4, ch 78-425
cf —s 72 011 Jurisdiction of circuit courts in specific tax matters

120.565 Declaratory statement by agencies.—Each agency shall provide by rule the procedure for the filing and prompt disposition of petitions for declaratory statements. A declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances only. The agency shall give notice of each petition and its disposition in the Florida Administrative Weekly, except that educational units shall give notice in the same manner as provided for rules in s. 120.54(1)(a), and transmit copies of each petition and its disposition to the committee. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch 75-191; s. 7, ch 76-131, s. 5, ch 78-425, s 5, ch 79-299
cf —s. 72 011 Jurisdiction of circuit courts in specific tax matters

120.57 Decisions which affect substantial interests.—The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless such proceedings are exempt pursuant to subsection (5). Unless waived by all parties, subsection (1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) applies in all other cases.

(1) FORMAL PROCEEDINGS.—

(a) A hearing officer assigned by the division shall conduct all hearings under this subsection, except for:

1 Hearings before agency heads or a member thereof other than an agency head or a member of an agency head within the Department of Professional Regulation;

2. Hearings before the Unemployment Appeals Commission in unemployment compensation appeals, unemployment compensation appeals referees, and special deputies pursuant to s 443.141;

3. Hearings regarding drivers' licensing pursuant to chapter 322;

4 Hearings conducted within the Department of Health and Rehabilitative Services in the execution of those social and economic programs administered by the former Division of Family Services of said department prior to the reorganization effected by chapter 75-48, Laws of Florida;

5 Hearings in which the division is a party, in which case an attorney assigned by the Administration Commission shall be the hearing officer;

6. Hearings which involve student disciplinary suspensions or expulsions and which are conducted by educational units;

7. Hearings of the Public Employees Relations Commission in which a determination is made of the appropriateness of the bargaining unit, as provided in s. 447.307; and

8. Hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601.

(b) In any case to which this subsection is applicable, the following procedures apply:

1. A request for a hearing shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. In a preliminary hearing for the revocation of parole, no less than 7 days' notice shall be given. In a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. Except for any hearing before an unemployment compensation appeals referee, a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3 Except for any proceeding conducted as prescribed in s. 120.54(4) or s. 120.56, a petition or request for a hearing under this section shall be filed with the agency If the agency elects to request a hearing officer from the division, it shall so notify the division within 10 days of receipt of the petition or request. When the Florida Land and Water Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days of receipt of the notice of appeal if the commission elects to request the assignment of a hearing officer. On the request of any agency, the division shall assign a hearing officer with due regard to the expertise required for the particular matter The referring agency shall take no further action with respect to the formal proceeding, except as a party litigant, as long as the division has jurisdiction over the formal proceeding. Any party may request the disqualification of the hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and

orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. All pleadings, motions, or other papers filed in the proceeding must be signed by a party, the party's attorney, or the party's qualified representative. The signature of a party, a party's attorney, or a party's qualified representative constitutes a certificate that he has read the pleading, motion, or other paper and that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the hearing officer, upon motion or his own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

[2]6. The record in a case governed by this subsection shall consist only of:

a. All notices, pleadings, motions, and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters officially recognized;

d. Questions and proffers of proof and objections and rulings thereon;

e. Proposed findings and exceptions;

f. Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;

g. All staff memoranda or data submitted to the hearing officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records.

h. All matters placed on the record after an ex parte communication pursuant to s. 120.66(2); and

i. The official transcript.

[2]7. The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost. In any proceeding before a hearing officer initiated by a consumptive use permit applicant pursuant to subparagraph 13., the applicant shall bear the cost of accurately and completely preserving all testimony and providing full or partial transcripts to the water management district. At the request of any other party, full or partial transcripts shall be provided at no more than cost.

[2]8. Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

[2]9. Except as provided in subparagraph 12., the hearing officer shall complete and submit to the agency and all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, and recommended penalty, if applicable, and any other information required by law or agency rule to be contained in the final order. The agency shall allow each party at least 10 days in which to submit written exceptions to the recommended order.

[2]10. The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may [3]accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action. When there is an appeal, the court in its discretion may award reasonable attorney's fees and costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion.

[2]11. If the hearing officer assigned to a hearing becomes unavailable, the division shall assign another hearing officer who shall use any existing record and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

[2]12. A hearing officer who is a member of an agency head may participate in the formulation of the final order of the agency, provided he has completed all his duties as hearing officer.

[2]13. In any application for a license or merger pursuant to title XXXVIII which is referred by the agency to the division for hearing pursuant to this section, the hearing officer shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

[2]14. In any application for a consumptive use permit pursuant to part II of chapter 373, the water management district on its own motion may, or, at the request of the applicant for the permit, shall, refer the matter to the division for the appointment of a hearing officer to conduct a hearing under this section.

(2) INFORMAL PROCEEDINGS.—In any case to which subsection (1) does not apply:

(a) The agency shall, in accordance with its rules of procedure:

1. Give reasonable notice to affected persons or parties of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or of its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the persons or parties are

overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:

1. The notice and summary of grounds;
2. Evidence received or considered;
3. All written statements submitted by persons and parties;
4. Any decision overruling objections;
5. All matters placed on the record after an ex parte communication pursuant to s. 120.66(2); and
6. The official transcript.

(3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(4) This section does not apply to agency investigations preliminary to agency action.

(5) This section does not apply to any proceeding in which the substantial interests of a student are determined by the State University System. The Board of Regents shall establish a committee, at least half of whom shall be appointed by the Council of Student Body Presidents, which shall establish by January 1, 1985, rules and guidelines ensuring fairness and due process in judicial proceedings involving students in the State University System. This section shall not become effective until January 1, 1985.

[1](6) In cases where a conceptual review permit has been issued by a water management district, petitions challenging the issuance of a construction or operating permit implementing the conceptual review permit, upon a motion of a party, shall be subject to expedited review. Within 15 days of filing a motion for expedited review by the district or the applicant, the hearing officer shall, by order, establish a schedule for the proceedings, including discovery, which provides for a final hearing within 60 days of the issuance of the order. Proposed recommended orders must be submitted to the hearing officer, if at all, within 10 days of the filing of the hearing transcript. Recommended orders shall be submitted to the district within 30 days of the last day for the filing of the proposed recommended order. The district shall issue its final order within 45 days of the receipt of the recommended order. If the district grants the construction or operating permit, the permittee may proceed unless judicial review of final agency action is sought pursuant to s. 120.68 and a stay is applied for and issued.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-453; ss. 6, 11, ch. 78-95; s. 6, ch. 78-425; s. 6, ch. 79-7; s. 7, ch. 80-95; s. 4, ch. 80-289; s. 57, ch. 81-259; s. 2, ch. 83-78; s. 9, ch. 83-216; s. 2, ch. 84-173; s. 4, ch. 84-203; ss. 1, 2, ch. 86-108.

[1]Note.—Section 3, ch. 86-108, provides that "[t]his act is not applicable with respect to any pleading, motion, or other paper filed before [June 13, 1986]."

[2]Note.—Section 1, ch. 86-108, purported to amend "paragraph (b) of subsection (1)," but did not set out in full the amended paragraph to include original subparagraphs 5 through 13. These subparagraphs which were set out in full in original HB 792 were stricken from the bill by Amendment 5 (see 1986 House Journal, pp. 357-358). Because the amendment was irregular in form, the status of these subparagraphs in terms of repeal by the Legislature is not clear. Pending clarification, original subparagraphs 5 through 13 are set forth here, renumbered as subparagraphs 6 through 14.

[3]Note.—The words "or reduce" have been deleted following this word "accept" to conform to the amendment of subparagraph 9. by s. 2, ch. 84-173. As a result of editorial error, the deletion was not accomplished in the 1984 Supplement to the Florida Statutes.

cf.—s. 57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.
s. 72.011 Jurisdiction of circuit courts in specific tax matters.

120.575 Taxpayer contest proceedings.—

(1) In any administrative proceeding brought pursuant to chapter 120 as authorized in s. 72.011(1), the taxpayer or other substantially affected party shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent."

(2) In any administrative proceeding brought pursuant to s. 120.57, the department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the department made the assessment.

(3)(a) Before a taxpayer may file a petition under this chapter, he shall pay to the department the amount of taxes, penalties, and accrued interest assessed by the department which are not being contested by the taxpayer. Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

(b) The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment by the Department of Revenue.

History.—s. 12, ch. 81-178; s. 35, ch. 85-342.

120.58 Agency action; evidence, record and subpoenas.—

(1) In agency proceedings for a rule or order:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This paragraph applies only to proceedings under s. 120.57.

(b) An agency or its duly empowered presiding officer or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt. However, no agency or its duly empowered presiding officer or any hearing officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(c) Any public employee subpoenaed to appear at an agency proceeding is entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such

fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(d) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(e) If a majority of those who are to render the final order have not heard the case or read the record, a decision adverse to a party other than the agency itself shall not be made until a proposed order is served upon the parties and they are given an opportunity to file exceptions and present briefs and oral arguments to those who are to render the decision. The proposed order shall contain necessary findings of fact and conclusions of law and a reference to the source of each. The proposed order shall be prepared by the individual who conducted the hearing, if available, or by one who has read the record. The parties by written stipulation may waive compliance with this paragraph. The provisions of this paragraph do not apply in the granting of parole or preliminary hearings for the revocation of parole.

(f) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(2) Any person subject to a subpoena may, before compliance and on timely petition, request the agency or hearing officer having jurisdiction of the dispute to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material, but the decision of the agency or hearing officer on any such request will not be proposed agency action governed by s. 120.57.

(3) A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this act by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subsection (2). The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

History.—s. 1, ch. 74-310; s. 8, ch. 75-191; s. 9, ch. 76-131; s. 7, ch. 78-425; s. 3, ch. 84-173.

120.59 Orders.—

(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within 90 days:

(a) After the hearing is concluded, if conducted by the agency,

(b) After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by a hearing officer, or

(c) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

The 90-day period may be waived or extended with the consent of all parties.

(2) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(3) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.

(4) Parties shall be notified either personally or by mail of any order; and, unless waived, a copy of the final order shall be delivered or mailed to each party or to his attorney of record. Each notice shall inform the recipient of any administrative hearing or judicial review which may be available to him, shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply.

(5) If a recommended order is submitted to an agency, the agency shall return a copy of its final order to the division within 15 days after the order is filed with the agency clerk.

History.—s. 1, ch. 74-310; s. 1, ch. 77-174; s. 5, ch. 84-203.

120.60 Licensing.—

(1) Unless otherwise provided by statute enacted subsequent to the effective date of this act, licensing is subject to the provisions of s. 120.57.

(2) When an application for a license is made as required by law, the agency shall conduct the proceedings required with reasonable dispatch and with due regard to the rights and privileges of all affected parties or aggrieved persons. Within 30 days after receipt of an application for a license, the agency shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the agency is permitted by law to require. Failure to correct an error or omission or to supply additional information shall not be grounds for denial of the license unless the agency timely notified the applicant within this 30-day period. The agency shall notify the applicant if the activity for which he seeks a license is exempt from the licensing requirement and return any tendered application fee within 30 days after receipt of the original application or within 10 days after receipt of the timely requested additional information or correction of errors or omissions. Every application for license shall be approved or denied

within 90 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions unless a shorter period of time for agency action is provided by law. The 90-day or shorter time period will be tolled by the initiation of a proceeding under s. 120.57 and will resume 10 days after the recommended order is submitted to the agency and the parties. Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after the recommended order is submitted to the agency and the parties, whichever is latest, shall be deemed approved; and, subject to the satisfactory completion of an examination, if required as a prerequisite to licensure, the license shall be issued. The Public Service Commission, when issuing a license, and any other agency, if specifically exempted by law, shall be exempt from the time limitations within this subsection. Each agency, upon issuing or denying a license, shall state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. On denial of a license application on which there has been no hearing, the denying agency shall inform the applicant of any right to a hearing pursuant to s. 120.57.

(3) Each applicant shall be given written notice either personally or by mail that the agency intends to grant or deny, or has granted or denied, the application for license. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has requested notice of agency action. Each notice shall inform the recipient of any administrative hearing or judicial review which may be available to him, shall indicate the procedure which must be followed, and shall state the applicable time limits. The issuing agency shall certify that the notice was given. The certification shall show the time and date the notice was mailed or delivered and shall be filed with the agency clerk.

(4) The provisions of subsection (2) notwithstanding, every application for a certificate of authority as required by s. 624.401 shall be approved or denied within 180 days after receipt of the original application. Any application for such a certificate of authority which is not approved or denied within the 180-day period, or within 30 days after conclusion of a public hearing held on the application, shall be deemed approved, subject to the satisfactory completion of conditions required by statute as a prerequisite to license.

(5) In proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

(a)1. The Department of Banking and Finance shall have published in the Florida Administrative Weekly notice of the application within 21 days of receipt.

2. Within 21 days of publication of notice, any person may request a hearing, which upon request shall be conducted pursuant to s. 120.57 except that the Department of Banking and Finance shall by rule provide for participation by the general public; nowever, the failure to request a hearing within 21 days of publication of notice shall constitute waiver of any right to a hearing.

(b) Should a hearing be requested pursuant to subparagraph 2. of paragraph (a), the applicant or licensee shall publish at his own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Department of Banking and Finance may by rule specify the format and size of such notice.

(c) Notwithstanding subsection (2), and except as provided in paragraph (d), every application for license for a new bank, new trust company, new credit union, or new savings and loan association shall be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. Any application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is the latest, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, or a new credit union by the appropriate insurer.

(d) In the case of every application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of every application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Department of Banking and Finance shall request that a public hearing be conducted pursuant to s. 120.57. Notice of such hearing shall be published by the applicant as provided in paragraph (b). The failure of any such foreign national to appear personally at the hearing shall be grounds for denial of the application. Notwithstanding the provisions of subsection (2) and paragraph (c), every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

(6) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application has been finally acted upon by the agency or, in case the application is denied or the terms of the license are limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(7) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to s. 120.57. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, simple notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published

in the county of the licensee's last known address as it appears on the records of the board. If no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county. If the address is in some state other than this state or in a foreign territory or country, the notice may be published in Leon County. Notwithstanding the provisions of this section, cancellation, suspension, or revocation of a driver's license shall be by personal delivery to the licensee or by first-class mail as provided in s. 322.251.

(8) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, it shall show compliance in its order with the requirements imposed by s. 120.54(9) on agencies making emergency rules. Summary suspension, restriction, or limitation may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

(9) If the Administration Commission grants an exemption from any provision of this section as provided in s. 120.63, the exemption shall be for a single application only and shall not be renewable.

(10) This section does not apply to certification of employee organizations pursuant to s. 447.307.

History.—s. 1, ch. 74-310; s. 10, ch. 76-131; s. 1, ch. 77-174; ss. 6, 9, ch. 77-453, s. 57, ch. 78-95, s. 8, ch. 78-425; s. 1, ch. 79-142; s. 6, ch. 79-299, s. 2, ch. 81-180, s. 6, ch. 84-203; s. 2, ch. 84-265; s. 1, ch. 85-82.

cf.—s. 161.141 Beach nourishment and restoration and erosion control projects; s. 403.815 Public notice; waiver of hearings.

120.61 Official recognition.— When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

History.—s. 1, ch. 74-310.

120.62 Agency investigations.—

(1) No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript of his oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any hearing officer or agency in an investigation or in any agency proceeding has the right, at his own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

History.—s. 1, ch. 74-310.

120.63 Exemption from act.—

(1) Upon application of any agency, the Administration Commission may exempt any process or proceeding governed by this act from one or more requirements of this act:

(a) When the agency head has certified that the requirement would conflict with any provision of federal law or rules with which the agency must comply;

(b) In order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(c) When the commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in s. 120.54(1). Upon the conclusion of the hearing, the commission, through the Executive Office of the Governor, shall issue an order specifically granting or denying the exemption and specifying any processes or proceedings exempted and the extent of the exemption; transmit to the committee and to the Department of State a copy of the petition, a certified copy of the order granting or denying the petition, and a copy of any alternative procedures prescribed; and give notice of the petition and the commission's response in the Florida Administrative Weekly.

(b) An exemption and any alternative procedure prescribed shall terminate 90 days following adjournment sine die of the then-current or next regular legislative session after issuance of the exemption order, or upon the effective date of any subsequent legislation incorporating the exemption or any partial exemption related thereto, whichever is earlier. The exemption granted by the commission shall be renewable upon the same or similar facts not more than once. Such renewal shall terminate as would an original exemption.

History.—s. 1, ch. 74-310, s. 11, ch. 76-131; s. 1, ch. 77-53; s. 8, ch. 77-453, s. 87, ch. 79-190; s. 7, ch. 79-299, s. 70, ch. 79-400; s. 58, ch. 81-259.

120.633 Division of Pari-mutuel Wagering; partial exemption from hearing and notice requirements.— The Division of Pari-mutuel Wagering is exempted from the hearing and notice requirements of s. 120.57(1)(a) and (b), but only for stewards, judges, and boards of judges when the hearing is to be held for the purpose of the imposition of fines or suspensions as provided by rules of the Division of Pari-mutuel Wagering, but not for revocations, and only upon violations (1) through (6) below. The Division of Pari-mutuel Wagering shall adopt rules establishing alternative procedures, including a hearing upon reasonable notice, for the following violations:

(1) Horse riding, harness riding, greyhound interference, and jai alai game actions in violation of chapters 550 and 551.

(2) Application and usage of drugs and medication to horses, greyhounds, and jai alai players in violation of chapters 550 and 551.

(3) Maintaining or possessing any device which could be used for the injection or other infusion of a prohibited drug to horses, greyhounds, and jai alai players in violation of chapters 550 and 551.

(4) Suspensions under reciprocity agreements between the Division of Pari-mutuel Wagering and regulatory agencies of other states.

(5) Assault or other crimes of violence on premises licensed for pari-mutuel wagering.

(6) Prearranging the outcome of any race or game.
History.—s. 1, ch. 77-53; s. 7, ch. 79-299.
Note.—Former s. 120.63(3).

120.65 Hearing officers.—

(1) There is hereby created the Division of Administrative Hearings within the Department of Administration, to be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The division shall be a separate budget entity and the director shall be its agency head for all purposes. The Department of Administration shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Administration in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The director has the right to appeal actions by the Executive Office of the Governor that affect amendments to the division's approved operating budget or any personnel actions pursuant to chapter 216 to the Administration Commission, which shall decide such issue by majority vote. The appropriations committees may advise the Administration Commission on the issue. If the President of the Senate and the Speaker of the House of Representatives object in writing to the effects of the appeal, the appeal may be affirmed by the affirmative vote of two-thirds of the commission members present.

(3) Each state agency as defined in chapter 216 and each political subdivision shall make its facilities available, at a time convenient to the provider, for use by the division in conducting proceedings pursuant to this chapter.

(4) The division shall employ full-time hearing officers to conduct hearings required by this chapter or other law. No person may be employed by the division as a full-time hearing officer unless he has been a member of The Florida Bar in good standing for the preceding 5 years.

(5) If the division cannot furnish a division hearing officer promptly in response to an agency request, the director shall designate in writing a qualified full-time employee of an agency other than the requesting agency to conduct the hearing. The director shall have the discretion to designate a hearing officer who is a qualified full-time employee of an agency other than the requesting agency which is located in that part of the state where the parties and witnesses reside.

(6) The director shall have the discretion to designate qualified laypersons to conduct hearings. If a layperson is so designated, the director shall assign a hearing officer to assist in the conduct of the hearing and to rule upon proffers of proof, questions of evidence, disposition of procedural requests, and similar matters.

(7) By rule, the division may establish:

(a) Further qualifications for hearing officers and shall establish procedures by which candidates will be considered for employment or contract.

(b) The manner in which public notice will be given of vacancies in the staff of hearing officers.

(c) Procedures for the assignment of hearing officers.

(8) The division is authorized to provide hearing officers on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(9) The division shall have the authority to adopt reasonable rules to carry out the provisions of this act.
History.—s. 1, ch. 74-310, s. 9, ch. 75-191, s. 14, ch. 76-131, s. 9, ch. 78-425, s. 46, ch. 79-190; s. 1, ch. 86-297.

120.66 Ex parte communications.—

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A hearing officer who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The hearing officer may, if he deems it necessary to eliminate the effect of an ex parte communication received by him, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed $500 or be subjected to such other disciplinary action as his superiors may determine.
History.—s. 1, ch. 74-310, s. 10, ch. 75-191, s. 12, ch. 76-131; s. 1, ch. 77-174, s. 10, ch. 78-425.

120.68 Judicial review.—

(1) A party who is adversely affected by final agency action is entitled to judicial review. For purposes of this section, a district school board whose decision is reviewed under the provisions of s. 231.36 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action. A preliminary, procedural, or intermediate agency action or ruling, including any order of a hearing officer, is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) Except in matters for which judicial review by the Supreme Court is provided by law, all proceedings for

review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings shall be conducted in accordance with the Florida Appellate Rules.

(3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency may also grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. In any event, the order shall specify the conditions, if any, upon which the stay or supersedeas is granted.

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with subsection (6).

(5) The record for judicial review shall consist of the following:

(a) The agency's written document expressing the order, the statement of reasons therefor, if issued, and the record under s. 120.57, if review of proceedings under that section is sought.

(b) The agency's written document expressing the action, the statement of reasons therefor, if issued, and the materials considered by the agency under s. 120.54, if review is sought of proceedings under that section.

(c) The agency's written document expressing the action, and other written documents identified by the agency as having been considered by it before its action and used as a basis for its action, if review is sought of proceedings under s. 120.56 or s. 120.565 or if there has been no proceeding under s. 120.54 or s. 120.57.

(6) When there has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt, factfinding proceeding under this act after having a reasonable opportunity to reconsider its determination on the record of the proceedings.

(7) The reviewing court shall deal separately with disputed issues of agency procedure, interpretations of law, determinations of fact, or policy within the agency's exercise of delegated discretion.

(8) The court shall remand the case for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. Failure of any agency to comply with s. 120.53 shall be presumed to be a material error in procedure.

(9) If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(a) Set aside or modify the agency action, or

(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(10) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of s. 120.57, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record.

(11) If the agency's action depends on facts determined pursuant to subsection (6), the court shall set aside, modify, or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(12) The court shall remand the case to the agency if it finds the agency's exercise of discretion to be:

(a) Outside the range of discretion delegated to the agency by law;

(b) Inconsistent with an agency rule;

(c) Inconsistent with an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or

(d) Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(13)(a) The decision of the reviewing court may be mandatory, prohibitory, or declaratory in form; and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings, or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties; and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(14) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agenc action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

History.—s 1, ch 74-310, s 13, ch 76-131; s 38, ch 77-104; s 1, ch 77-174 s 11, ch 78-425, s 4, ch 84-173

cf.—s 57 111 Civil actions and administrative proceedings initiated by state agencies, attorneys' fees and costs

s 72 011 Jurisdiction of circuit courts in specific tax matters

120.69 Enforcement of agency action.—

(1) Except as otherwise provided by statute.

(a) Any agency may seek enforcement of an action by filing a petition for 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. However, no such action may be commenced:

1. Prior to 60 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.

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

(c) A petition for enforcement filed by a nongovernmental 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 those appearing 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 applicable 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 to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

History.—s. 1, ch. 74-310.

120.70 Annual report.—Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(1) A summary of the extent and effect of agencies' utilization of hearing officers, court reporters, and other personnel in proceedings under this act.

(2) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto.

History.—s. 1, ch. 74-310.

120.71 Disqualification of agency personnel.—

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual holds his position by appointment, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute to serve in the matter from which the individual is disqualified.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

(3) The Administration Commission shall adopt rules of procedure to implement this section.

History.—s. 1, ch. 74-310; s. 12, ch. 78-425; s. 2, ch. 83-329.

120.72 Legislative intent; prior proceedings and rules; exception.—

(1)(a) The intent of the Legislature in enacting this complete revision of chapter 120 is to make uniform the rulemaking and adjudicative procedures used by the administrative agencies of this state. To that end, it is the express intent of the Legislature that chapter 120 shall supersede all other provisions in the Florida Statutes, 1977, relating to rulemaking, agency orders, administrative adjudication, licensing procedure, or judicial review or enforcement of administrative action for agencies as defined herein to the extent such provisions conflict with chapter 120, unless expressly provided otherwise by law subsequent to January 1, 1975, except for marketing orders adopted pursuant to chapters 573 and 601.

(b) Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter

120 or to any section or sections or portion of a section of chapter 120 shall hereby include, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

(2) All administrative adjudicative proceedings conducted pursuant to any provision of the Florida Statutes which were begun prior to January 1, 1975, shall be continued to a conclusion, including judicial review, under the provisions of the Florida Statutes, 1973, except that administrative adjudicatory proceedings which have not progressed to the stage of a hearing may, with the consent of all parties and the agency conducting the proceeding, be conducted in accordance with the provisions of this act as nearly as is feasible.

(3) Notwithstanding any provision of this chapter, all public utilities and companies regulated by the Public Service Commission shall be entitled to proceed under the interim rate provisions of chapter 364 or the procedures for interim rates contained in chapter 74-195, Laws of Florida, or as otherwise provided by law.

(4)(a) All prior rules not adopted following a public hearing as provided by statute shall be void and unenforceable after October 1, 1975, and shall be stricken from the files of the Department of State and from the files of the adopting agency.

(b) Any rule in effect on, or filed with the Department of State prior to, January 1, 1975, except one adopted following a public hearing as provided by statute, shall be forthwith reviewed by the agency concerned on the written request of a person substantially affected by the rule involved and this provision. The agency concerned shall initiate the rulemaking procedures provided by this act within 90 days after receiving such written request. If the agency concerned fails to initiate the rulemaking procedures within 90 days, the operation of the rule shall be suspended. This provision shall control s. 120.54(5).

(c) All existing rules shall be indexed by January 1, 1975.

History.—s. 3, ch. 74-310; s. 1, ch. 76-207; s. 1, ch. 77-174; s. 57, ch. 78-95; s. 13, ch. 78-425.

120.721 Effect of chapter 75-22, Laws of Florida, on rules.—Any rule or regulation of a public agency involved in or affected by the reorganization of the executive agencies as set forth in chapter 75-22, Laws of Florida, which was valid when adopted under the authority granted by the Legislature to adopt such rule, to the extent it is not inconsistent with chapter 75-22, Laws of Florida, shall remain in effect until it expires by its terms or is specifically repealed or revised as provided by law.

History.—s. 23, ch. 75-22.

120.722 Legislative intent of chapter 78-95, Laws of Florida.—

(1) The primary purpose of chapter 78-95, Laws of Florida, is to repeal or amend various provisions of the Florida Statutes containing procedural language superseded or made redundant by chapter 120 (the Administrative Procedure Act). Chapter 78-95 is designed to place the provisions affected into conformity with chapter 120 except where expressly noted to the contrary.

(2) Any section or subunit of a section repealed by an act of any session shall remain repealed despite any amendment in chapter 78-95. Any act of the 1978 legislative session, other than one resulting from a reviser's bill, that amends any provision affected by chapter 78-95 shall supersede chapter 78-95 to the extent that such amendment conflicts with chapter 78-95.

(3) Deletions of references to chapter 120 in chapter 78-95 do not imply that chapter 120 is not applicable; except where expressly noted otherwise, references to chapter 120 are deleted as unnecessary and repetitious.

(4) Failure of chapter 78-95 to amend or repeal any provision in the Florida Statutes does not imply that that provision is not in conflict with, superseded by, or unnecessary in light of chapter 120.

History.—s. 1, ch. 78-95.

120.73 Circuit court proceedings; declaratory judgments.—Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86.

History.—s. 11, ch. 75-191; s. 14, ch. 78-425.