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IN THE CIRCUIT COURT FOR
THE SIXTH JUDICIAL CIRCUIT
AND FOR PINELLAS COUNTY, FLORIDA

The Petition is filed pursuant to:
Fla. R. App. P. 9.100 (e) and
noticed as required by:
Fla. R. App. P. 9.100 (e).

IN RE: Cynthia Graham
Petitioner

v.
Pinellas County Sheriff's Office
And
Pinellas County Sheriff's Civil Service Board

Respondent(s)

_____ /

Caption: Fla. R. App. P. 9.100 (e) (1).

PETITION FOR WRIT OF PROHIBITION

NOW COMES Petitioner/Respondent, Cynthia Graham, by and through the undersigned attorney, who Petitions for a Writ of Prohibition to prevent the Pinellas County Sheriff's Civil Service Board from acting outside its jurisdiction, as a private right, and in support states as follows:

This Petition is to determine the jurisdiction of the Pinellas County Sheriff Civil Service Review Board in review action of the Pinellas County Sheriff's findings in the Inter Office Memorandum Dated August 14, 2015. The Pinellas County Sheriff's Civil Service Review Board is responsible for the

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

Appeal of that action and has contracted its responsibilities to the State of Florida, Department of Management Services, Division of Administrative Hearings. The Appeal is pending before the Division of Administrative Hearings: Case Number: 15-5054, Hearing Officer, J. Bruce Culpepper, presiding and as such, a Respondent in this action.

The underlying action is cited as follows:

Division of Administrative Hearings
Case No. 15-5054

PINELLAS COUNTY SHERIFF'S
OFFICE,
Petitioner,

vs.

CYNTHIA GRAHAM,
Respondent

see: Fla. Rules of Appellate Procedure 9.100 e (2)

(2) Parties. The judge or the lower tribunal is a formal party to the petition for mandamus or prohibition and must be named as such in the body of the petition (but not in the caption). The petition must be served on all parties, including any judge or lower tribunal who is a formal party to the petition

1. THE BASIS FOR INVOKING THE JURISDICTION OF THE COURT:

The Circuit Court's original jurisdiction in this matter is established as follows:

Article V, Section 5(b) of the Florida Constitution,

JURISDICTION- The circuit court...shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs

necessary or proper to the complete exercise of their jurisdiction. ... they shall have the power of direct review of administrative action as prescribed by general law.

Fla. R. App. P. Rule 9.030(c)(3),

(3) Original Jurisdiction. Circuit courts may issue writs of mandamus, prohibition, quo warranto, common law certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction.

Florida Rule of Civil Procedure 1.630 Extraordinary Remedies:

(a) Applicability. This rule applies to actions for the issuance of writs of mandamus, prohibition, quo warranto, certiorari, and habeas corpus

Fla. Rule of App. P 9.040 (a), (b), and (c).

(a) Complete Determination. In all proceedings a court shall have such jurisdiction as may be necessary for a complete determination of the cause.

(b) Forum.

(1) If a proceeding is commenced in an inappropriate court, that court shall transfer the cause to an appropriate court

(c) Remedy. If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.

Fla. R. App. P. 9.100 Original Proceedings

(a) Applicability. This rule applies to those proceedings that invoke the jurisdiction of the courts described in rules 9.030(a)(3), (b)(2), (b)(3), (c)(2), and **(c)(3)** for the issuance of writs of mandamus, prohibition, quo warranto, certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction; and for review of non-final administrative action.

(e) Exception; Petitions for Writs of Mandamus and Prohibition Directed to a Judge or Lower Tribunal. When a petition for a writ of mandamus or prohibition seeks a writ directed to a judge or lower tribunal, the following procedures apply...

2. FACTS ON WHICH PETITIONER RELIES:

OPERATIVE DOCUMENTS AND DATES:

Pinellas County Sheriff's Office
Inter office Memorandum
Charges Re: AI-15-021

Dated: August 14, 2015

(Brief Summary: Pinellas County Sheriff's Deputy Cynthia Graham was found to have knowledge of a weapon in the control room of the Pinellas County Jail and to have been untruthful in statements relating to the investigation. The Pinellas County Sheriff then terminated Detention Deputy Cynthia Graham. and this appeal followed.)

Notice of Appeal
Request for Civil Service Board Review

Dated: August 18, 2015

Division of Administrative Hearings
Initial Order

Dated: September 15, 2015

Date to Commence hearing on Appeal
(30 DAY REQUIREMENT)

Date: September 17th, 2015

Agency Referral

Date September 10, 2015

Details for Case No: 15-005054

Judge: J. BRUCE CULPEPPER

Petitioner: PINELLAS COUNTY SHERIFF'S OFFICE
vs.

Respondent: CYNTHIA GRAHAM

Date Filed: 9/14/2015

Date Assigned: 9/15/2015 3:27:00 PM

Last Docket Entry: 10/21/2015

Location: St. Petersburg, Florida

District: Middle

Agency: Contract Hearings

Division: Pinellas County

Status: Set for Video Hearing.

<https://www.doah.state.fl.us/ALJ/searchDOAH/detail.asp>

Orders on Case No: 15-005054

PINELLAS COUNTY SHERIFF'S OFFICE

vs.

CYNTHIA GRAHAM

There are currently no orders on record for this case.

<https://www.doah.state.fl.us/ALJ/searchDOAH/orders.asp?T=10/31/2015 11:27:01 AM>

(Bold emphasis added below)

LAWS OF FLORIDA, CHAPTER 2008-285

An act relating to the Pinellas County Sheriff's Civil Service System;
amending chapter 89-404, Laws of Florida, as amended

Coding: words *italicized* are deleted; words underlined are additions.

Section 8. Duties and authority of the Civil Service Board.—

(1) The Civil Service Board shall have the following authority and duties:

(b) To hear all appeals of the members of the Classified Service arising from personnel actions brought under the Sheriff's rules, procedures, or policies which result in dismissal, suspension for more than 1 working day without pay, demotion, or reduction in base pay for disciplinary or job performance reasons.

(d) To contract with the Division of Administrative Hearings to have hearings conducted pursuant to chapter 120, Florida Statutes, as provided in section 11(8).

(2) Other than those appeals specified herein (*in subsection (1)*), the Civil Service Board shall not have authority to hear appeals.

Section 11. Hearing procedure.—

(1) **The Civil Service Board shall commence a hearing on an appeal within 30 days from the date upon which the Notice of Appeal was received by the Sheriff, or his or her designee**, and shall proceed diligently to conclude such hearing in an expeditious fashion while affording to all parties a full and fair hearing. The Civil Service Board may grant a continuance of a hearing for good cause shown upon its own or a party's motion.

(8) The Civil Service Board **may, upon stating its reasons**, elect at any stage of the hearing procedure to contract with the Division of Administrative Hearings of the Department of Management Services (*Administration*) to have the hearing conducted pursuant to chapter 120, Florida Statutes, in which case the board shall limit its considerations to the findings and recommendations of the division's (*Department of Administration*) hearing officer.

- **Pinellas County Code of Ordinances, Chapter 74, Article III, Division 2- Civil Service Sec.**
- **Sec. 74-76. - Intent.**

It is the intent of this division to create a civil service system for members of the classified service, as defined herein, within the service of the Sheriff of Pinellas

County, for the **purposes of ensuring fairness and consistency in discipline and dismissal.**

- **Sec. 74-83. - Duties and authority of civil service board.**

(a) The civil service board shall have the following authority and duties:

(2) **To hear all appeals of the members of the classified service** arising from personnel actions brought under the sheriff's rules, procedures, or policies which result in dismissal, suspension for more than one working day without pay, demotion, or reduction in base pay.

- **74-86. - Hearing procedure.**

(a) **The civil service board shall commence a hearing on an appeal within 30 days from the date upon which the notice of appeal was received by the sheriff or his designee,** and shall proceed diligently to conclude such hearing in an expeditious fashion while affording to all parties a full and fair hearing. The civil service board may grant a continuance of a hearing for good cause shown upon its own or a party's motion.

- (h) The civil service board may, **upon stating its reasons,** elect at any stage of the hearing procedure to contract with the division of administrative hearings of the department of administration to have the hearing conducted pursuant to F.S. ch. 120, in which case the board shall limit its considerations to the findings and recommendations of the department of administration hearing officer.

Authority for Strict time requirements.

- F.A.C. 28-106.103 Computation of Time.

In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal

holiday. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, legal holiday means those days designated in Section 110.117, F.S. Except as provided in Rule 28-106.217, F.A.C., five days shall be added to the time limits when service has been made by regular U.S. mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by hand, facsimile transmission, or electronic mail or when the period of time begins pursuant to a type of notice described in Rule 28-106.111, F.A.C.

- No Variance of time limitations for Public Employees and under Equal Protection the strict time compliance should be applicable to the Pinellas County Sheriff's Office.

Florida Stat. § 120.542. Variances and waivers.

- (1) ... A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee.

Pinellas County Sheriff's Civil Service Board Rules of Procedure

3. Appeal Procedure

A. Members entitled to an appeal as provided by the Act shall, as a condition Precedent to being granted a hearing file a written Notice of Appeal. **Such Notice of Appeal must be received by the Sheriff's General Counsel's Office within five (5) Calendar Days of receipt of written notice of the action being appealed. ... Failure to provide such written notice within the five (5) day period shall constitute a voluntary waiver by the member of all rights to appeal.**

- **Pinellas County Code of Ordinances, Chapter 74, Article III, Division 2- Civil Service Sec. 74-84. - Appeals procedure.**

(a) A member of the classified service who has been suspended without pay for more than one working day, demoted, reduced in base pay, or dismissed, and those members of the executive staff to whom rights of appeal are granted pursuant to section 74-78, may obtain a hearing before the civil service board by filing a written notice of appeal with the sheriff or his designee. Filing shall be effected by delivery in person to the sheriff or his designee, or by U.S. mail, registered, return receipt requested. **Such notice of appeal shall be filed within five calendar days of receipt of notice of the suspension, demotion, reduction in pay, or dismissal. Failure to file said written notice within the five-day period prescribed herein shall constitute a voluntary waiver of all rights to an appeal** under this division.

Authority to require Summary Hearing Notice.

Fla. Stat. § 120.574. Summary hearing.

- (1)
 - (a) **Within 5 business days following the division's receipt of a petition or request for hearing, the division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and provides general information regarding practice and procedure before the division. The initial order shall also contain a statement advising the addressees that a summary hearing is available upon the agreement of all parties under subsection (2) and briefly describing the expedited time sequences, limited discovery, and final order provisions of the summary procedure.**

The due-process clause of the 14th Amendment of the United States Constitution, and article I, section 9, of the Florida Constitution,

Constitution of the United States of America. Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Florida.

Article 1, SECTION 9. Due process.—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself

Letter dated September 10, 2015 from Michelle Wallace, Senior Assistant County Attorney to Claudia Llado, Clerk Division of Administrative hearings fails to “state any reasons” as required by **LAWS OF FLORIDA, CHAPTER 2008-285** Section 11 (8).

3. NATURE OF RELIEF SOUGHT:

A writ of prohibition prevents a lower tribunal from acting outside its jurisdiction or exceeding its judicial powers over a matter.

1. This Petition for the Writ of Prohibition defines that the hearing in this Appeal did not commence within the 30 day time period as required and as defined above. The failure to commence the hearing timely terminated jurisdiction (authority) in this matter. Division Of Administrative Hearing Judge J. Brian Culpepper is to be ordered to terminate the proceeding due to lack of jurisdiction.

2. The Pinellas County Sheriff has failed to commence the hearing on the appeal within the 30 days of the filing of the Notice of Appeal and has lost the right to contest the appeal. The findings of the Pinellas County Sheriff's Office Memorandum dated August 14, 2015 are to be quashed and of no further effect.

3. Pinellas County Sheriff's Detention Deputy Cynthia Graham shall be restored to her former status with all rights, title, compensation, benefits and retroactive compensation, Nunc pro tunc, from August 14, 2015 to the present day.

4. ARGUMENT

FAILURE TO COMMENCE HEARING WITHIN 30 DAYS

The failure to commence hearing within 30 days of the Notice of Appeal terminates the jurisdiction (authority) of the Pinellas County Sheriff's Civil Service Review Board to hear this appeal and establishes a default status for the Pinellas County Sheriff.

1. The Pinellas County Sheriff's Office findings of August 14, 2015 and termination of Detention Deputy Cynthia Graham are subject to appeal by and through the Pinellas County Sheriff's Civil Service Review Board are authorized only within a specific time frame to commence the hearing on the appeal thirty (30) days from the date of the Notice of Appeal.

a. The Respondent timely filed the Notice of Appeal on August 18, 2015. The Pinellas County Sheriff's Civil Service Review Board did not timely commence the hearing as of the 30 day elapsed date of September 17, 2015. As of this date, the hearing has yet to be commenced.

b. There is nothing in any of the enabling legislation, procedural regulations or by any other source that would allow the appeals hearing to be commenced outside of the thirty (30) day time frame specifically identified.

c. The failure of the Pinellas County Sheriff's Office to commence a hearing on the appeal of Cynthia Graham through the Pinellas County Sheriff's Civil Service Board constitutes a loss of jurisdiction (authority) to review the appeal and places the Pinellas County Sheriff in a default position voiding the actions of the Pinellas County Sheriff as found in the Inter Office Memorandum Dated August 14, 2015. The effect of the Pinellas County Sheriff's default is to restore Cynthia Graham to full active duty, Nunc Pro Tunc from August 14, 2015.

d. The limits on appeal (5) days is sufficient to cause a loss of those rights to the employee. See Pinellas County Sheriff's Civil Service Board's Rules of Procedure (3)(a). and Pinellas County Code of Ordinances Sec 74-84. The strict time limitation to commence the hearing within 30 days is the same for the Pinellas County Sheriff's Office through the stated intent of establishing fairness and consistency.

FAILURE TO STATE REASONS FOR REFERRAL

2. The Pinellas County Sheriff's Civil Review Board may contract out the hearing, as part of the hearing procedure "upon stating its reasons", such

statement being a condition precedent. However, the transmittal letter of September 10, 2015 fails to state any reason. The transfer of the hearing to the Division of Administrative Hearings is not only untimely but the referral has failed to state any reason.

a. In this case, the Pinellas County Sheriff's Civil Review Board has failed to "state its' reasons" for contracting out the appeal to the Florida Division of Administrative Hearings. In fact, there is no action by the Pinellas County Sheriff's Civil Review Board in that the transmittal letter to the Division of Administrative Hearings was through Michelle Wallace, Senior Assistant County Attorney with no reference to any authority by act or consideration of the Pinellas County Sheriff's Civil Review Board to contract this referral.

b. The failure of the Pinellas County Sheriff's Civil Review Board to "state its reasons" as part of the hearing process prior to contracting with the Florida Division of Administrative Hearings voids the contract with the Department of Administrative Hearings as the authority of the Pinellas County Sheriff's Civil Service Board (the Board) is enacted only when and "upon stating its' reasons". This element requires consideration and approval by the Pinellas County Sheriff's Civil Service Review Board on a case by case basis to allow the formulation of the reason as "part of the hearing process" which would require some consideration and act on their part as an element of that hearing process

would be required to give notice of that act or consideration to Detention Deputy Cynthia Graham.

(1) By failing to convene for the purpose of considering “its reasons” for contracting with the Department of Administrative hearings, the Board failed to create a forum by which it could establish “its reasons” for contracting with the Florida Department of Administrative Hearings. Since there was no forum to establish “its reasons” the Board could not state any reasons. Since the Board could not state its reasons, it could not contract with the Board of Administrative to conduct the hearing. Only upon the condition precedent of the Board stating its reasons (“upon stating its reasons”) to contracting with the Florida Division of Administrative Hearings since such authority is contingent the condition of “upon stating its reasons”. Since no forum had been established, and no reasons had been formulated the Board had not established “its reasons” and therefore could not state its reasons and could not reasons had been formulated as part of the hearing process

c. There is nothing in any of the enabling legislation, procedural regulations or by any other source that would allow the appeals hearing to be commenced outside of the 30 day time frame specifically identified.

FAILURE TO ADVISE MEDIATION

3. The Pinellas County Sheriff's Office in the Inter Office Memorandum fails to advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing pursuant to the requirements of Fla. Stat. 120.573 entitled: Mediation of disputes.

a. By failing to advise whether mediation is available and by failing to commence an appeals hearing before the passing of the 30 days after the Notice of Appeal the Pinellas County Sheriff's Civil Service Board has lost the jurisdiction to hear the appeal and Pinellas County Sheriff's Office by default has lost the right to defend the appeal through the Pinellas County Sheriff's Office. By the failures of the Pinellas County Sheriff's Office statutory obligation failure to timely convene the Pinellas County Sheriff's Civil Service Board, through its own acts and through its own processes it has brought this default status to itself through no fault of the Respondent Cynthia Graham.

FAILURE TO ADVISE OF SUMMARY PROCEDURE

4. The Department of Administrative hearings continues the failure to inform of the possibility of an expedited summary procedure in that it has not provided to the Respondent, Cynthia Graham, a notice within 5 days that a summary procedure is available to her. See below: Fla. Stat. § 120.574. Summary hearing

5. The Respondent is being harmed by the failure of allowing her the benefit of due process as provided in Art.1 Sec.9 . Fla. Const., and Amend. XIV U.S. Const. The onerous burden of a strict time frame is imposed upon the Respondent. This denial of due process insures that the termination of her pay will cause her to be burdened with financial hardship. She is placed in a position of occupational "limbo" in which she cannot seek meaningful professional employment while still seeking to exercise her rights to vindicate herself and be restored to her position as Deputy Sheriff. The whole purpose of the appeals hearing commencing within thirty (30) days from the Notice of Appeal is to avoid the very bind that she now finds herself in.

WHEREFORE, the matters contained in the Pinellas County Sheriff's Inter Office Memorandum , dated August 14, 2015, shall be null and void for failure to provide a hearing on the Notice of Appeal within the 30 day obligations, failure to state reasons for referral; notice of mediation; notice of summary procedure as imposed on the Pinellas County Sheriff's Office through the Pinellas County Sheriff's Civil Service Board enabling statues Ch. 2008-285, Laws of Florida, Pinellas County Ordinances Chapter 74, Article III, Division 2- Civil Service Sec. 74.86 (a) whereby the Pinellas County Sheriff's Civil Service Board has no further jurisdiction in the matter. Additionally, the Failure of the Pinellas County Sheriff's Civil Service Board to state 'its' reasons" for contracting with the

Department of Administrative Hearings and the failure of the Pinellas County Sheriff's office to advise of the possibility of a mediation have placed the Pinellas County Sheriff's Office in a position of default in the appeal, having failed to meet the requirements of the enabling statutes Ch. 2008-285, Laws of Florida, Pinellas County Ordinances Chapter 74, Article III, Division 2- Civil Service Sec. 74.86 (a). The Respondent, Cynthia Graham, shall be fully restored to her position as a Deputy Sheriff with all rights, title and compensation, and retroactive compensation, Nunc Pro Tunc, from August 14, 2015 forward to the present day.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent this 2nd day of November, 2015 to:

a. The Pinellas County Sheriff's Office and the Pinellas County Sheriff's Civil Service Board by email to attorney Paul Rozelle, Esq. at prozelle@pcsonet.com and amarcott1@pcsonet.com and

b. Hearing Officer J. Bruce Culpepper by U.S. Mail at The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060 by direction of the office. This 3rd day of November, 2015.

CERTIFICATE OF FONT

I hereby certify that this document has been submitted in Times New Roman 14-point font as required by Fla. R. Civ. P. 9.050 (l).

s/ Electronically signed:

Jan T. Govan, Esq.
Attorney for Cynthia Graham
Govan Law Group P.A.
542 Bay Avenue
Clearwater, FL 33756

Telephone: (727) 298-1101
Designated Email:
jangovan@govanlawgroup.com
ritawhaley@govanlawgroup.com

APPENDIX
Fla. R. App. P. 9.220
complete copies attached as separate file

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5. LAWS OF FLORIDA, CHAPTER 2008-285
Council Substitute for House Bill No. 1085
An act relating to the Pinellas County Sheriff's Civil Service System;
amending chapter 89-404, Laws of Florida, as amended.
6. Pinellas County Code of Ordinances, Chapter 74, Article III, Division 2- Civil
Service Sec.

Sec. 74-76. - Intent.

Sec. 74-83. - Duties and authority of civil service board.

Sec. 74-84. - Appeals procedure

Sec. 74-86. - Hearing procedure

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8. Fla. Stat. 120.542 Variances and Waivers

9. Pinellas County Sheriff's
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10. Fla. Stat. 120.574- Summary Hearing

11. Constitution of the United States of America. Amendment XIV

Section 1.

12. Constitution of the State of Florida.

Article 1, SECTION 9. Due process

SUMMARY OF INDEXED ITEMS.
FULL TEXTS ATTACHED.

OPERATIVE DOCUMENTS AND DATES:

Pinellas County Sheriff's Office
Inter office Memorandum
Charges Re: AI-15-021

Dated: August 14, 2015

Notice of Appeal
Request for Civil Service Board Review

Dated: August 18, 2015

Division of Administrative Hearings
Initial Order

Dated: September 15, 2015

Date to Commence hearing on Appeal

Dated: September 17, 2015

**AUTHORITY REQUIRING APPEAL HEARING TO COMMENCE THIRTY
(30) DAYS AFTER NOTICE OF APPEAL:**

LAWS OF FLORIDA, CHAPTER 2008-285

Council Substitute for House Bill No. 1085

An act relating to the Pinellas County Sheriff's Civil Service System;
amending chapter 89-404, Laws of Florida, as amended.

Section 8. Duties and authority of the Civil Service Board.—

1) The Civil Service Board shall have the following authority and duties:

(d) To contract with the Division of Administrative Hearings to have
hearings conducted pursuant to chapter 120, Florida Statutes, as provided
in section 11(8).

Section 11. Hearing procedure.—

(1) The Civil Service Board shall commence a hearing on an appeal
within 30 days from the date upon which the Notice of Appeal was received
by the Sheriff, or his or her designee, and shall proceed diligently to conclude
such hearing in an expeditious fashion while affording to all parties a full
and fair hearing. The Civil Service Board may grant a continuance of a
hearing for good cause shown upon its own or a party's motion.

(8) The Civil Service Board may, upon stating its reasons, elect at any
stage of the hearing procedure to contract with the Division of Administrative
Hearings of the Department of Management Services Administration
to have the hearing conducted pursuant to chapter 120, Florida Statutes, in
which case the board shall limit its considerations to the findings and
recommendations
of the division's Department of Administration hearing officer

- **Pinellas County Code of Ordinances, Chapter 74, Article III, Division 2- Civil Service Sec.**
- **Sec. 74-76. - Intent.**

It is the intent of this division to create a civil service system for members of the classified service, as defined herein, within the service of the Sheriff of Pinellas County, for the purposes of ensuring fairness and consistency in discipline and dismissal.

- **Sec. 74-83. - Duties and authority of civil service board.**

- (a)

- The civil service board shall have the following authority and duties:

- (2)

- To hear all appeals of the members of the classified service arising from personnel actions brought under the sheriff's rules, procedures, or policies which result in dismissal, suspension for more than one working day without pay, demotion, or reduction in base pay.

- **74-86. - Hearing procedure.**

- (a)

- The civil service board shall commence a hearing on an appeal within 30 days from the date upon which the notice of appeal was received by the sheriff or his designee, and shall proceed diligently to conclude such hearing in an expeditious fashion while affording to all parties a full and fair hearing. The civil service board may grant a continuance of a hearing for good cause shown upon its own or a party's motion.

- (h)

- The civil service board may, upon stating its reasons, elect at any stage of the hearing procedure to contract with the division of administrative hearings of the department of administration to have the hearing conducted pursuant to F.S. ch. 120, in which case the board shall limit its considerations to the findings and recommendations of the department of administration hearing officer.

Authority for Strict time requirements.

- F.A.C. 28-106.103 Computation of Time.
-

In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, legal holiday means those days designated in Section 110.117, F.S. Except as provided in Rule 28-106.217, F.A.C., five days shall be added to the time limits when service has been made by regular U.S. mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by hand, facsimile transmission, or electronic mail or when the period of time begins pursuant to a type of notice described in Rule 28-106.111, F.A.C.

• No Variance of time limitations for Public Employees and under Equal Protection the strict time compliance should be applicable to the Pinellas County Sheriff's Office.

Florida Stat. § 120.542. Variances and waivers.

- (1) ... A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee.

**Pinellas County Sheriff's
Civil Service Board Rules of Procedure**

3. Appeal Procedure

A. Members entitled to an appeal as provided by the Act shall, as a condition Precedent to being granted a hearing file a written Notice of Appeal. Such Notice of Appeal must be received by the Sheriff's General Counsel's Office within five (5) Calendar Days of receipt of written notice of the action being appealed. ...

Failure to provide such written notice within the five (5) day period shall constitute a voluntary waiver by the member of all rights to appeal.

- **Pinellas County Code of Ordinances, Chapter 74, Article III, Division 2- Civil Service Sec. 74-84. - Appeals procedure.**

(a)

A member of the classified service who has been suspended without pay for more than one working day, demoted, reduced in base pay, or dismissed, and those members of the executive staff to whom rights of appeal are granted pursuant to section 74-78, may obtain a hearing before the civil service board by filing a written notice of appeal with the sheriff or his designee. Filing shall be effected by delivery in person to the sheriff or his designee, or by U.S. mail, registered, return receipt requested. Such notice of appeal shall be filed within five calendar days of receipt of notice of the suspension, demotion, reduction in pay, or dismissal. **Failure to file said written notice within the five-day period prescribed herein shall constitute a voluntary waiver of all rights to an appeal under this division.**

Authority to require Summary Hearing Notice.

Fla. Stat. § 120.574. Summary hearing.

- (1)
 - (a) Within 5 business days following the division's receipt of a petition or request for hearing, the division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and provides general information regarding practice and procedure before the division. The initial order shall also contain a statement advising the addressees that a summary hearing is available upon the agreement of all parties under subsection (2) and briefly describing the expedited time sequences, limited discovery, and final order provisions of the summary procedure.

violates the due-process clause of the 14th Amendment of the United States Constitution, and article I, section 9, of the Florida Constitution, because it does not provide for notice or an opportunity to be heard before or immediately upon the 30 day hearing commencement date

Constitution of the United States of America. Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Florida.

Article 1, SECTION 9. Due process.—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

**PINELLAS COUNTY SHERIFF'S OFFICE
INTER-OFFICE MEMORANDUM**

DATE: AUGUST 14, 2015

TO: DEPUTY CYNTHIA GRAHAM, #55248

FROM: SHERIFF BOB GUALTIERI

SUBJECT: CHARGES RE: AI-15-021

An investigation has been conducted by the Administrative Investigation Division, Professional Standards Bureau, of the Pinellas County Sheriff's Office. As a result of this investigation, the Administrative Review Board has determined you committed the following violation.

On April 10, 2015, while on duty in Pinellas County, Florida, you violated the Pinellas County Sheriff's Civil Service Act Laws of Florida, 89-404 as amended by Laws of Florida 08-285, Section 6, Subsection 4, by violating the provisions of law or the rules, regulations, and operating procedures of the Office of the Sheriff.

1. You violated Pinellas County Sheriff's Office General Order 3-1.1, Rule and Regulation 5.4, Duties and Responsibilities.

Synopsis: You relieved the night shift 1F Control Room post and were advised that a firearm had been left in a lockless cabinet, in that control room, by another deputy. The loaded and charged gun, accompanied by two full magazines, was displayed to you and you acknowledged its presence in the unsecured cabinet. You took no action to rectify this acute situation.

To compound this integrity compromise of the maximum security facility of the Pinellas County Jail, you were also acting in the capacity of Field Training Officer. You and your recruit were notified of the presence of the gun and discussed it in the control room. You misled your recruit with flippant and impotent remarks. You had an obligation, not only to restore security, but to teach your trainee proper and effective security measures.

You failed to fulfill these responsibilities.

2. You violated Pinellas County Sheriff's Office General Order 3-1.1, Rule and Regulation 5.6, Truthfulness.

Synopsis: You affirmed, to three Administrative Investigation Division (AID) Sergeants, that you were aware of the presence of a gun in the 1F Control Room while you were assigned to and accountable for the security of that control room. Consequently, you were identified as a subject in this case.

During your subject interview, you provided testimony which contradicted the statements you originally made to the AID investigators. When presented with this conflict, you denied making the statements to the three investigators.

Four (4) additional staff members, two of whom were equally culpable for this incident, consistently attested to your awareness that a firearm was carelessly stored in the control room. In the same interview, you, again, denied being notified of the presence of the weapon and made counter accusations against some of the members.

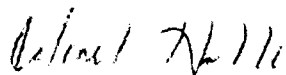
In a second subject interview, this being your third meeting with AID investigators, you maintained your denial and repeatedly swore that witness testimony was false and made "no sense." To the contrary, however, witness' testimonies were logical and independent yet consistent and they were supported by recorded video of this incident.

At your Administrative Review Board, you were, again, presented with witness testimony and video evidence which bore stark contrast to your sworn statements. Your replies to direct questions from the Board were evasive and insufficient to prove your candor in this case.

Disciplinary Points and Recommended Discipline Range:

You were found to be in violation of two Level 5 Rules/Regulations, totaling sixty (60) points. In accordance with agency policy, these points, which were affected by no modified points from previous discipline, resulted in sixty (60) progressive discipline points and recommended discipline ranges from seven (7) days suspension to termination.

Disciplinary action shall be consistent with progressive discipline, for cause in accordance with the provisions of the Pinellas County Civil Service Act.

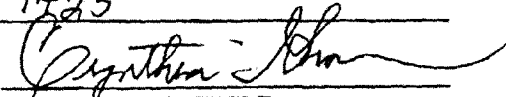


COLONEL PAUL HALLE
DEPARTMENT OF DETENTION AND CORRECTIONS
FOR BOB GUALTIERI, SHERIFF

I have received a copy:

Date 8/14/15

Time 1423



SIGNATURE

BG:CMC:kmm

CHAPTER 2008-285

Council Substitute for House Bill No. 1085

An act relating to the Pinellas County Sheriff's Civil Service System; amending chapter 89-404, Laws of Florida, as amended; deleting intent relating to collective bargaining; limiting application; revising the definition of "personnel"; revising positions covered in the Classified and Unclassified Services; providing effect of participating in the Florida Retirement System's Senior Management Service Class; providing for Certified Executive Staff; providing additional causes for member suspension or dismissal; providing duties of the Civil Service Board regarding appeals; providing authority of the Division of Administrative Hearings under certain circumstances; revising provisions relating to the timeframe for filing a notice of appeal and for disposing of appeals and making findings of fact and stating a conclusion; removing a provision relating to certified personnel status as appointed officers; providing an effective date.

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

Section 1. Chapter 89-404, Laws of Florida, as amended by chapter 90-395, Laws of Florida, is amended to read:

Section 1. Intent.—It is the intent of this act to create a civil service system for members of the Classified Service, as defined herein, within the service of the Sheriff of Pinellas County, for the purposes of ensuring fairness and consistency in discipline and dismissal. ~~It is also the intent of this act to maintain the existing legal limitations on the right of collective bargaining and other rights under part II of chapter 447, Florida Statutes, and to not grant such rights to any deputy, member, or personnel of the Office of the Pinellas County Sheriff who, prior to the effective date of this act, did not possess such rights pursuant to law.~~

Section 2. Personnel of Pinellas County Sheriff; applicability of the act; authority of the Sheriff.—

(1) The provisions of this act shall apply to all certified, noncertified, and Certified Executive Staff persons within the Office of the Pinellas County Sheriff, except as otherwise provided herein. The provisions of this act shall not apply to the Sheriff, special deputy sheriffs appointed pursuant to s. 30.09(4), Florida Statutes, contract personnel, the general counsel, the associate general counsel, the director of human resources, the director of support services, the director of fiscal affairs, the public information coordinator, the director of labor relations, the jail medical director, the grants administrator, the sheriff's executive secretary, any person who is eligible to participate in the Florida Retirement System's Senior Management Service Class legal advisors, chaplains, or individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission, unless any such part-time deputy sheriff is also a full-time member in the Office of the Sheriff.

(2) For the purposes of this act, the term "personnel" shall refer to all persons working for the Pinellas County Sheriff's Office; ~~provided that nothing stated herein shall be construed as changing the status of certified personnel from appointed officers to members covered by the provisions of chapter 447, Florida Statutes.~~

(3) The Sheriff shall have the authority to adopt such rules and regulations as are necessary for the implementation and administration of this act. However, nothing in this act shall be construed as affecting the budgetmaking powers of the Board of County Commissioners of Pinellas County.

Section 3. Classified and Unclassified Services; Certified Executive Staff; status of members of the Classified Service, Unclassified Service, and Certified Executive Staff.—

(1) The Classified Service shall consist of full-time positions held by ~~detention deputy sheriffs corrections officers, law enforcement~~ deputy sheriffs and noncertified personnel, ~~except those persons not covered by the act as set forth in section 2(1),~~ who have attained permanent status as defined herein and who are serving in any position except those persons serving in the Unclassified Service or as members of the Sheriff's Certified Executive Staff.

(2)(a) The Unclassified Service shall consist of the following positions: all part-time positions, all full-time personnel who have not attained permanent status as defined herein, all volunteer or ~~unpaid nonsalaried~~ positions, school crossing guards, reserve deputies, ~~and special deputies, and personnel eligible to participate in the Florida Retirement System's Senior Management Service Class subsequent to membership in the Classified Service.~~ Members of the Unclassified Service shall serve at the pleasure of the Sheriff and may be suspended, demoted, or terminated at any time without cause and without any right to appeal to the Civil Service Board.

(b) Consistent with the requirements of section 121.055(1)(b), Florida Statutes, all personnel who are members of the Classified Service who are selected by the Sheriff to serve in positions whereby they are eligible to serve in the Florida Retirement System's Senior Management Service Class are no longer members of the Classified Service and serve without civil service protection. These personnel may be suspended, demoted, or terminated at any time without cause and without any right to appeal to the Civil Service Board.

(3) For the purposes of this act, the Sheriff's Certified Executive Staff shall consist of all certified personnel who have attained the rank of captain or above, ~~the Public Information Coordinator, the Sheriff's executive secretary and all noncertified personnel whose salary is equal to or greater than the base salary for the rank of law enforcement captain.~~

(4) Members of the Sheriff's Certified Executive Staff shall serve in those positions at the pleasure of the Sheriff. Except as provided herein, such personnel may be suspended, demoted, or dismissed at any time without cause and without any right of appeal to the Civil Service Board. However, persons serving as members of the Sheriff's Certified Executive Staff who

have, previous to their appointment to the Certified Executive Staff, attained permanent status in the Classified Service may be returned to the highest rank ~~or position~~ such person achieved in the Classified Service without cause and without any right to appeal such return to Classified Service.

Section 4. Permanent status; effect of rehire; extension of probation; status upon election or appointment of new Sheriff.—

(1) After ~~classified~~ personnel of the Sheriff, to whom the provisions of this act apply, have served in any such position for a period of 1 calendar year without break in service, such personnel shall have attained permanent status in the Office of the Sheriff, unless such personnel are placed on an extended probation or are eligible to participate in the Florida Retirement System's Senior Management Service Class.

(2) When Classified Service personnel are terminated, resign, or are otherwise separated from service, and are rehired at a later date, they shall be required to complete 1 calendar year of service, without break in service, following such rehire before attaining permanent status in the Office of the Sheriff.

(3) Personnel in the Classified Service who are required to serve a probationary period attendant to a promotion shall retain permanent status in the Office of the Sheriff, but may be demoted to their prior rank during such probationary period for any reason and without the right of appeal as provided in this act.

(4) When, in the sole discretion of the Sheriff, an extension of a probationary period for newly hired or newly promoted personnel is warranted, such probationary period may be extended for a period up to 6 additional months. ~~In the case of newly hired personnel,~~ the affected personnel shall be required to satisfactorily complete the extended probationary period before attaining permanent status in the Office of the Pinellas County Sheriff.

Section 5. Effect of election or appointment of new Sheriff on status of personnel.—

(1) When a newly elected or appointed Sheriff assumes office, the new Sheriff shall continue the members of the Classified Service at their existing rank and/or salary level unless cause for demotion or dismissal, as provided herein, exists.

(2) When a newly elected or appointed Sheriff assumes office, persons then serving as members of the Sheriff's Certified Executive Staff who, previous to their appointment to the Certified Executive Staff, had attained permanent status in the Classified Service, shall not be suspended without pay for more than 1 working day or dismissed unless cause as provided herein exists. However, such personnel may be demoted to the highest rank achieved in the Classified Service without cause and without any right to appeal.

Section 6. Members of Classified Service; certain members of the Certified Executive Staff; suspension, demotion, or dismissal only for cause.—

(1) Members of the Classified Service may only be suspended, for a period in excess of 1 working day, reduced in rank or base pay, or dismissed from service for cause. Members of the Certified Executive Staff who have, previous to their appointment to the Certified Executive Staff, achieved permanent status in the Classified Service may only be dismissed or suspended for a period in excess of 1 working day or demoted to a rank or rate of base pay less than the highest rank or base pay the member attained while in the Classified Service for cause. Prior to such action described above, the member shall be furnished with written notice of the proposed action and an explanation of the reasons for the action, and offered an opportunity to respond to the reasons for the action. ~~However, nothing stated herein shall be construed as changing the status of deputy sheriffs from appointed officers to employees covered by the provisions of chapter 447, Florida Statutes.~~

(2) In situations where the delay occasioned by furnishing members of the Classified Service ~~personnel~~ such written notice and opportunity to respond could result in damage or injury, personnel may be suspended or dismissed for cause immediately and provided such written notice and opportunity to respond within 24 hours.

(3) Written notice of disciplinary action to a ~~department~~ member shall be deemed to be effective upon hand delivery, or upon mailing to the member's last known address.

(4) Cause for suspension, dismissal, or demotion shall include, but not be limited to: negligence, inefficiency, or inadequate job performance; inability to perform assigned duties, incompetence, dishonesty, insubordination, violation of the provisions of law or the rules, regulations, and operating procedures of the Office of the Sheriff, conduct unbecoming a public servant, misconduct, or proof and/or admission of use of illegal drugs. Cause for suspension or dismissal shall also include a member's acceptance into a pretrial diversion or intervention program, the adjudication of guilt by a court of competent jurisdiction, a plea of guilty or of nolo contendere, or a verdict of guilty where adjudication of guilt is withheld and the accused is placed on probation, with respect to any felony or misdemeanor. The filing of felony or misdemeanor charges against Sheriff's Office personnel may also constitute cause for suspension. Subsequent dropping of charges shall result in automatic reinstatement, except where charges were dropped because of completion of a pretrial intervention or diversion program, provided that independent departmental charges are not pending.

(5) The listing of causes for suspension, demotion, or dismissal in this section is not intended to be exclusive. The Sheriff may, by departmental rule, add to this listing of causes for suspension, dismissal, or demotion.

Section 7. Creation and qualifications of the Civil Service Board.—

(1) The Sheriff of Pinellas County is hereby authorized to create a Civil Service Board which shall be composed of five members which shall be determined as follows:

(a) Two members of the Civil Service Board shall be appointed by the Sheriff after being elected in an election among the members of the Classi-

fied Service. The Sheriff shall appoint the two persons receiving the highest number of votes in such election.

(b) Two members shall be appointed by the Sheriff.

(c) The fifth member shall be selected by the majority of the other four Board members within 15 days of their appointments. In the event that the selection process of the fifth member results in an impasse, within 15 days, the fifth member shall be appointed by the Chief Judge of the Sixth Judicial Circuit.

(d) The five members of the Board shall then select a sixth or alternate member who shall serve upon the inability of any other member to serve.

(e) The fifth member shall be chairperson of the Civil Service Board, unless the Board elects otherwise.

(1) Four members of the Civil Service Board shall constitute a quorum.

(2) Membership qualifications and term:

(a) All members of the Civil Service Board shall be at least 21 years of age, of good moral character, of good reputation in the community, citizens of the United States, permanent residents of Florida, and permanent residents of Pinellas County for at least 2 years prior to the date of their appointment.

(b) No member of the Board may be:

1. A member of any national, state, or county committee of a political party;

2. A candidate for or incumbent of any elected public office;

3. A member of the Pinellas County Sheriff's Office, or the spouse, parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew, by consanguinity or affinity of a member; or

4. Positioned as to have a conflict of interest in the terms of his or her related business, duties, or responsibilities in connection with the Civil Service Board.

(c) The members of the Board shall serve a term of 1 year from the date of their election or appointment as the case may be.

(d) Members of the Board will receive no salary, but will be paid a stipend as determined by the Sheriff to offset expenses incurred in performing the duties of the Civil Service Board.

Section 8. Duties and authority of the Civil Service Board.—

(1) The Civil Service Board shall have the following authority and duties:

(a) To adopt and amend reasonable rules and regulations for its hearing procedures.

(b) To hear all appeals of the members of the Classified Service arising from personnel actions brought under the Sheriff's rules, procedures, or policies which result in dismissal, suspension for more than 1 working day without pay, demotion, or reduction in base pay for disciplinary or job performance reasons.

(c) To hear appeals of members of the Certified Executive Staff who have, previous to their appointment to the Certified Executive Staff, achieved permanent status in the Classified Service, arising from personnel actions brought under the Sheriff's rules, procedures, or policies which result in dismissal or suspension for more than 1 working day or demotion to base pay less than the highest rank or base pay the member attained while in the Classified Service.

(d) To contract with the Division of Administrative Hearings to have hearings conducted pursuant to chapter 120, Florida Statutes, as provided in section 11(8).

(2) Other than those appeals specified herein ~~in subsection (1)~~, the Civil Service Board shall not have authority to hear appeals.

(3) The authority of the Civil Service Board, and the authority of the Division of Administrative Hearings acting under contract, shall not include the establishment or deletion of the categories of conduct which constitute cause for suspension, demotion, or dismissal. In hearing appeals, the Civil Service Board shall:

(a) Determine whether the aggrieved member engaged in conduct prohibited by section 6 or by a departmental rule promulgated by the Sheriff;

(b) Determine whether the action taken against the aggrieved member is consistent with action taken against other members; and

(c) Make findings of fact and state a conclusion as specified in subsection (6).

(4) The Civil Service Board may also provide assistance and advice to the Sheriff in matters concerning disciplinary actions and may take any other actions authorized by the Sheriff.

(5) The Civil Service Board, pursuant to its authority to hear appeals of members of the Classified Service, shall have the power to schedule hearings, administer oaths, take or allow the taking of depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents, testimony, and other items to effect such other discovery as it deems fit and proper upon the written request of either party.

(a) The chairperson of the Civil Service Board or his or her ~~his/her~~ designee shall be authorized to sign all notices, subpoenas, and final orders, on behalf of the Board. In the case of disobedience or failure of any person to comply with a subpoena issued by the Board or any of its members, or upon the refusal of a witness to testify on any matter on which he or she may be

lawfully interrogated, a Judge of the Circuit Court of Pinellas County, on application of the Civil Service Board, shall compel obedience by proceedings as for contempt.

(b) The service of a subpoena shall be made in the manner provided by the Florida Rules of Civil Procedure. Each witness subpoenaed by the Civil Service Board shall receive for his or her attendance, from the party requesting the subpoena, fees and mileage in the amount as provided for witnesses in civil cases. Personnel of the Sheriff's Office appearing before the Civil Service Board while on duty shall not receive witness fees or reimbursements for mileage.

(6) Within 10 days of the conclusion of the appeals hearing, or receipt of the proposed recommended order from the Division of Administrative Hearings, whichever is longer, unless the parties agree to a longer period, the Civil Service Board, by a majority vote, shall dispose of the appeal and shall make findings of fact and state a conclusion; such findings of fact and conclusion shall be separately stated and shall be in writing. Such conclusion shall either sustain, modify, or not sustain the action being appealed. Upon a finding that cause did not exist for a suspension, demotion, reduction in pay, or dismissal, the Civil Service Board shall reinstate the appellant and direct the Sheriff to pay the appellant for the period of any suspension, demotion, loss of pay, or dismissal. The Civil Service Board shall not have ~~the authority to impose any penalty more severe than that which formed the basis of the appeal.~~ Should the Civil Service Board be unable to reach a majority decision on any appeal, the personnel action taken shall be sustained.

(7) The decision of the Civil Service Board shall be final and binding on all parties concerned.

Section 9. Appeals procedure.—

(1) A member of the Classified Service who has been suspended without pay for more than 1 working day, demoted, reduced in base pay, or dismissed, and those members of the Certified Executive Staff to whom rights of appeal are granted pursuant to section 3, may obtain a hearing before the Civil Service Board by filing a written Notice of Appeal with the Sheriff or his or her designee. Filing shall be effected by delivery in person to the Sheriff or his or her designee, when that person is designated by the Sheriff in writing, or by U.S. mail, registered, return receipt requested. Such Notice of Appeal shall be received by 5 p.m. on the fifth filed within 5 calendar day after days of receipt of notice of the suspension, demotion, reduction in pay, or dismissal. The day upon which the member receives the notice of suspension, demotion, reduction in pay, or dismissal shall not be counted in computing the 5 days, and the 5-day period shall begin on the first day after receipt of the notice, regardless of whether that day is a weekend day or holiday. The burden is on the member requesting the appeal hearing to establish timely service in accordance with the provisions herein. Failure to file a said written notice requesting the appeal hearing as required ~~within the 5-day period prescribed~~ herein shall constitute a voluntary waiver of all rights to an appeal under this act.

(2) The Notice of Appeal shall contain:

(a) A statement that the person filing the Notice of Appeal is entitled to an appeal pursuant to the terms of this act as a present or former member of the Classified Service;

(b) A statement of the disciplinary action complained of and the basis for the appeal; and

(c) A request for relief consistent with relief that may be ordered by the Civil Service Board as set forth herein.

(3) The appellant shall be limited in the scope of his or her appeal to the issues raised in the Notice of Appeal.

Section 10. Settlements and precedent.—In order to encourage resolutions of appeals prior to hearing, any settlement of an appeal acceptable to the appellant shall not establish a precedent against either the Sheriff, any member of the Classified Service, or any member of the Certified Executive Staff to whom the right of appeal is afforded by this act. Such settlement shall not conflict in any manner with the provisions of this act and shall not be used in any subsequent appeal hearing.

Section 11. Hearing procedure.—

(1) The Civil Service Board shall commence a hearing on an appeal within 30 days from the date upon which the Notice of Appeal was received by the Sheriff, or his or her designee, and shall proceed diligently to conclude such hearing in an expeditious fashion while affording to all parties a full and fair hearing. The Civil Service Board may grant a continuance of a hearing for good cause shown upon its own or a party's motion.

(2) The Civil Service Board shall establish appropriate rules and procedures for the conduct of all hearings pursuant to this act. All testimony of the parties and witnesses shall be made under oath or affirmation. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in and of itself to support a finding ~~which shall be~~ admissible over objections in civil actions.

(3) Each party shall be entitled to call witnesses on his or her own behalf, to compel the attendance of witnesses through the service of subpoenas, to cross-examine the witnesses, to represent himself or herself, or to be represented by any other representative of his or her choosing, and to be present at such hearing.

(4) Each party shall bear his or her own costs and fees incurred with respect to such hearings. No costs or fees shall be reimbursed by one party to the other regardless of the decision of the Civil Service Board under this act.

(5) Appeal hearings shall be open to the public in accordance with the provisions of chapter 286, Florida Statutes.

(6) The Civil Service Board, its members, the Sheriff, witnesses while giving truthful testimony, and all the representatives of the parties shall be immune from all civil liability arising from actions taken pursuant to the provisions of this act.

(7) A tape recording shall be made of each Civil Service Board hearing and minutes of the hearing shall be kept. Either party shall be entitled to engage the services of a certified court reporter to record such hearing. The party engaging services of the court reporter shall be solely responsible for payment for such services.

(8) The Civil Service Board may, upon stating its reasons, elect at any stage of the hearing procedure to contract with the Division of Administrative Hearings of the Department of Management Services Administration to have the hearing conducted pursuant to chapter 120, Florida Statutes, in which case the board shall limit its considerations to the findings and recommendations of the division's ~~Department of Administration~~ hearing officer.

Section 12. Exemption from chapter 120, Florida Statutes.—Unless the election is made to proceed under section 11(8), the actions of the Civil Service Board and the Sheriff taken pursuant to this act shall be exempt from the provisions of chapter 120, Florida Statutes.

Section 13. Members' Advisory Council.—There shall be a five-person Members' Advisory Council, which shall serve in an advisory capacity to the Sheriff concerning personnel matters, policies, rules, and regulations affecting members of the Classified Service. The departmental representation of the Members' Advisory Council shall be determined by the Sheriff. All members of the Members' Advisory Council shall be permanent members of the department and members of the Classified Service. One member shall be elected from each of five areas to be determined by the Sheriff and shall be elected to serve by secret ballot of all members of the Classified Service within each respective area. Members of the Members' Advisory Council shall serve a 1-year term of office beginning July 1 of each year. The initial council shall serve from the date elected until July 1 of the following year.

~~Section 14. Certified personnel to maintain status as appointed officers. Nothing herein shall be construed as altering the traditional status of certified personnel as appointed officers, who, as such, are excluded from coverage as employees under chapter 447, Florida Statutes.~~

Section ~~14~~ 15. Sheriff to adopt rules and regulations for review of citizen complaints and other actions.—The Sheriff shall, contemporaneous with the effective date of this act, by department rule or regulation, establish a procedure to review and resolve citizen complaints and disciplinary actions for which an appeal is not provided by this act.

Section ~~15~~ 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are ~~declared severable~~.

Section ~~16~~ 17. Chapter 84-514, Laws of Florida, as amended by chapter 87-424, Laws of Florida, is hereby repealed.

Section ~~17~~ 18. This act shall take effect July 1, 1989, or upon becoming a law, whichever occurs later.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.

Sec. 74-76. - Intent.

It is the intent of this division to create a civil service system for members of the classified service, as defined herein, within the service of the sheriff of Pinellas County, for the purposes of ensuring fairness and consistency in discipline and dismissal. It is also the intent of this division to maintain the existing legal limitations on the right of collective bargaining and other rights under F.S. ch. 447, pt. II (F.S. § 447.201 et seq.), and to not grant such rights to any deputy, member, or personnel of the office of the Pinellas County sheriff who, prior to the effective date of this division, did not possess such rights pursuant to law.

(Laws of Fla. ch. 89-404, § 1)

Sec. 74-83. - Duties and authority of civil service board.



- (a) The civil service board shall have the following authority and duties:
 - (1) To adopt and amend reasonable rules and regulations for its hearing procedures.
 - (2) To hear all appeals of the members of the classified service arising from personnel actions brought under the sheriff's rules, procedures, or policies which result in dismissal, suspension for more than one working day without pay, demotion, or reduction in base pay.
 - (3) To hear appeals of members of the executive staff who have, previous to their appointment to the executive staff, achieved permanent status in the classified service, arising from personnel actions brought under the sheriff's rules, procedures, or policies which result in dismissal or suspension for more than one working day or demotion to base pay less than the highest rank or base pay the member attained while in the classified service.
 - (4) To contract with the division of administrative hearings conduct pursuant to F.S. ch. 120, as provided in section 74-86(h).
- (b) Other than those appeals specified in subsection (a) above, the civil service board shall not have authority to hear appeals.
- (c) The authority of the civil service board shall not include the establishment or deletion of the categories of conduct which constitute cause for suspension, demotion, or dismissal. In hearing appeals, the civil service board shall:
 - (1) Determine whether the aggrieved member engaged in conduct prohibited by section 74-81 or by a departmental rule promulgated by the sheriff;
 - (2) Determine whether the action taken against the aggrieved member is consistent with action taken against other members; and
 - (3) Make findings of fact and state a conclusion as specified in subsection (f).
- (d) The civil service board may also provide assistance and advice to the sheriff in matters concerning disciplinary actions and may take any other actions authorized by the sheriff.
- (e) The civil service board, pursuant to its authority to hear appeals of members of the classified service, shall have the power to schedule hearings, administer oaths, take or allow the taking of depositions, issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents, testimony, and other items to effect such other discovery as it deems fit and proper upon the written request of either party.
 - (1) The chairperson of the civil service board or his/her designee shall be authorized to sign all notices, subpoenas, and final orders on behalf of the board. In the case of disobedience or failure of any person to comply with a

subpoena issued by the board or any of its members, or upon the refusal of a witness to testify on any matter on which he or she may be lawfully interrogated, a judge of the circuit court of Pinellas County, on application of the civil service board, shall compel obedience by proceedings as for contempt.

- (2) The service of a subpoena shall be made in the manner provided by the Florida Rules of Civil Procedure. Each witness subpoenaed by the civil service board shall receive for his attendance, from the party requesting the subpoena, fees and mileage in the amount as provided for witnesses in civil cases. Personnel of the sheriff's office appearing before the civil service board while on duty shall not receive witness fees or reimbursements for mileage.
- (f) Within ten days of the conclusion of the appeals hearing, the civil service board, by a majority vote, shall dispose of the appeal and shall make findings of fact and state a conclusion; such findings of fact and conclusion shall be separately stated and shall be in writing. Such conclusion shall either sustain, modify, or not sustain the action being appealed. Upon a finding that cause did not exist for a suspension, demotion, reduction in pay, or dismissal, the civil service board shall reinstate the appellant and direct the sheriff to pay the appellant for the period of any suspension, demotion, loss of pay, or dismissal. The civil service board shall not have the authority to impose any penalty more severe than that which formed the basis of the appeal. Should the civil service board be unable to reach a majority decision on any appeal, the personnel action taken shall be sustained.
- (g) The decision of the civil service board shall be final and binding on all parties concerned.

(Laws of Fla. ch. 89-404, § 8; Laws of Fla. ch. 90-395, § 2)

Sec. 74-84. - Appeals procedure.



- (a) A member of the classified service who has been suspended without pay for more than one working day, demoted, reduced in base pay, or dismissed, and those members of the executive staff to whom rights of appeal are granted pursuant to section 74-78, may obtain a hearing before the civil service board by filing a written notice of appeal with the sheriff or his designee. Filing shall be effected by delivery in person to the sheriff or his designee, or by U.S. mail, registered, return receipt requested. Such notice of appeal shall be filed within five calendar days of receipt of notice of the suspension, demotion, reduction in pay, or dismissal. Failure to file said written notice within the five-day period prescribed herein shall constitute a voluntary waiver of all rights to an appeal under this division.
- (b) The notice of appeal shall contain:
 - (1) A statement that the person filing the notice of appeal is entitled to an appeal pursuant to the terms of this division as a present or former member of the classified service;
 - (2) A statement of the disciplinary action complained of and the basis for the appeal; and
 - (3) A request for relief.
- (c) The appellant shall be limited in the scope of his or her appeal to the issues raised in the notice of appeal.

(Laws of Fla. ch. 89-404, § 9)

Sec. 74-86. - Hearing procedure.



- (a) The civil service board shall commence a hearing on an appeal within 30 days from the date upon which the notice of appeal was received by the sheriff or his designee, and shall proceed diligently to conclude such hearing in an expeditious fashion while affording to all parties a full and fair hearing. The civil service board may grant a continuance of a hearing for good cause shown upon its own or a party's motion.
- (b) The civil service board shall establish appropriate rules and procedures for the conduct of all hearings pursuant to this division. All testimony of the parties and witnesses shall be made under oath or affirmation. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in and of itself to support a finding unless it would be admissible over objections in civil actions.
- (c) Each party shall be entitled to call witnesses on his or her own behalf, to compel the attendance of witnesses through the service of subpoenas, to cross examine the witnesses, to represent himself or herself, or to be represented by any other representative of his or her choosing, and to be present at such hearing.
- (d) Each party shall bear his or her own costs and fees incurred with respect to such hearings. No costs or fees shall be reimbursed by one party to the other regardless of the decision of the civil service board under this division.
- (e) Appeal hearings shall be open to the public in accordance with the provisions of F.S. ch. 286.
- (f) The civil service board, its members, the sheriff, witnesses while giving truthful testimony, and all the representatives of the parties shall be immune from all civil liability arising from actions taken pursuant to the provisions of this division.
- (g) A tape recording shall be made of each civil service board hearing and minutes of the hearing shall be kept. Either party shall be entitled to engage the services of a certified court reporter to record such hearing. The party engaging services of the court reporter shall be solely responsible for payment for such services.
- (h) The civil service board may, upon stating its reasons, elect at any stage of the hearing procedure to contract with the division of administrative hearings of the department of administration to have the hearing conducted pursuant to F.S. ch. 120, in which case the board shall limit its considerations to the findings and recommendations of the department of administration hearing officer.

(Laws of Fla. ch. 89-404, § 11)

28-106.103 Computation of Time.

In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, legal holiday means those days designated in Section 110.117, F.S. Except as provided in Rule 28-106.217, F.A.C., five days shall be added to the time limits when service has been made by regular U.S. mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by hand, facsimile transmission, or electronic mail or when the period of time begins pursuant to a type of notice described in Rule 28-106.111, F.A.C.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07.

PINELLAS COUNTY SHERIFF'S CIVIL SERVICE BOARD
RULES OF PROCEDURE

1. PURPOSE:

In accordance with the authority given to the Sheriffs Civil Service Board ("Board") by Chapter 89-404, Laws of Florida, as amended (the "Act") and in accordance with the Board's desire to conduct its hearing procedures in a fair and impartial manner, the following rules of procedure are hereby adopted. These rules shall be binding upon the Board in its hearings and shall only be subject to change by the affirmative vote of three or more members. The Board may adopt further guidelines as it deems necessary to assist the parties in preparing for the conduct of proceedings, however, such guidelines shall not have the force or effect of these rules. The adoption of these rules supersedes all Board Rules adopted previously.

2. GENERAL:

A. Service required by the parties shall be by mail or hand delivery and evidenced by a certificate of service. Service by mail shall be complete upon mailing. In those proceedings conducted by the Division of Administrative Hearings ("DOAH") any filing with DOAH must comply with Chapter 28-106.104, Florida Administrative Code.

B. Service on the Board shall be made by delivery to its counsel at the Office of the County Attorney, 315 Court Street, 6th Floor, Clearwater, FL 33756.

C. Except as otherwise provided for herein, time shall be computed as provided in Florida Rules of Civil Procedure, Rule 1.090.

3. APPEAL PROCEDURE:

A. Members entitled to an appeal as provided in the Act shall, as a condition precedent to being granted a hearing, file a written Notice of Appeal. Such Notice of Appeal must be received by the Sheriff's General Counsel's Office within five (5) calendar days of receipt of written notice of the action being appealed. Notice shall be deemed effective upon actual receipt. Failure to provide such written notice within the five (5) day period shall constitute a voluntary waiver by the member of all rights to appeal.

B. The member's Notice of Appeal shall contain, as a minimum, the following items:

(1) a statement that the person filing the Notice of Appeal is entitled to an appeal pursuant to the terms of the Act, as a present or former member of the Classified Service;

(2) a brief statement of the action which is being appealed and the basis for the appeal;

(3) a copy of the written notice notifying the member of the action which is being appealed; and

(4) a specific request for relief.

C. The appealing member shall be limited in the scope of his or her appeal to the issues which are raised in the Notice of Appeal.

4. NOTICE TO MEMBER, BOARD AND INTERESTED PARTIES:

Within five (5) calendar days of receipt of the member's Notice of Appeal, the Sheriff's General Counsel's Office shall transmit to the Board's legal counsel the entire

appeal package. Unless the Board elects to hear an appeal, the Board's legal counsel shall transmit the appeal package to the DOAH's office in Tallahassee and request that DOAH schedule a hearing as expeditiously as possible. In the event DOAH transmits information back to the Board's legal counsel, it shall be furnished by U. S. mail by the Board's legal counsel to all interested parties.

5. APPEAL HEARINGS:

Appeals heard by DOAH shall be conducted according to the rules followed by DOAH in accordance with Florida Statutes. Appeals heard by the Board shall be conducted according to the procedures provided herein, with the Board issuing a Final Order as provided in Section 7.0.

6. APPEALING PARTY FAILS TO APPEAR:

If after filing a Notice of Appeal, the party fails to appear for any scheduled proceeding or fails to contest a motion to dismiss submitted by the Sheriff to the presiding DOAH Administrative Law Judge ("ALJ") or to the Board, such party shall be deemed to have waived his/her appeal, and accepted the decision of the Sheriff as final. Said party agrees that the Administrative Law Judge is authorized by this Rule to dismiss said appeal and submit a Recommended Order to that effect and the Board, by its Chairperson, shall be authorized to adopt such Recommended Order as the Board's or to call a meeting to consider the adoption by the Board of the Recommended Order as the Final Order of the Board. In the event no meeting is called, the Board, by its Chairperson, shall enter its Final order adopting the Recommended Order of DOAH.

7. FINAL BOARD ACTION:

When an appeal is heard by DOAH, the Board shall review the ALJ's Recommended Order, and any exceptions thereto, as follows:

A. Filing Written Exceptions and Responses to the Recommended Order:

(1) A party aggrieved by the recommended order shall have fifteen (15) days from the ALJ's service of the Recommended Order to serve written exceptions to the recommended order on the Board and the other party. A party's written exceptions shall not exceed fifteen (15) typed, double-spaced pages, excluding any attachments.

(2) A party opposed to the written exceptions shall have fifteen (15) days from service of the written exceptions to serve a response to the exceptions on the Board and the other party. Responses to the written exceptions shall not exceed fifteen (15) typed, double-spaced pages, excluding any attachments.

(3) Each exception shall specify with particularity the finding of fact, conclusion of law, penalty, or recommendation(s) which is objectionable and the reasons therefor. The exceptions themselves shall state with specificity if the finding of fact excepted to is not supported by competent substantial evidence, or that the proceedings did not comply with the essential requirements of law, or that the conclusion of law excepted to departs from the essential requirements of law.

(4) Facts from the record upon which exceptions to findings of fact or conclusions of law are based, which are not set forth in the Recommended Order, shall be provided by the party filing the exceptions with citations to the

record as (R.____).

(5) If not otherwise provided by DOAH, and either party so elects, a written transcript shall be prepared and served on the other party at the electing party's cost. In the event either party orders a transcript of a proceeding, then that party shall bear the cost of the original transcript, subject to the non-ordering party paying the costs of its copy. The transcript shall also be filed with the Board through its counsel within thirty (30) days of the date of the Recommended Order, unless the Board grants an extension.

B. Setting the Hearing:

(1) After the time for filing exceptions and responses has passed, the Board shall schedule a hearing to review the ALJ's Recommended Order and any exceptions thereto. The hearing shall be at the next available meeting of the Board which shall not be later than sixty (60) days from the last date for filing written exceptions or responses.

(2) If there is an ALJ hearing transcript, it shall be provided in either hard copy or electronic form by the County Attorney's Office to the Board members in their entirety for review prior to the scheduled meeting.

(3) The hearing shall be scheduled and notification of the hearing shall be provided to the parties of the hearing not less than five (5) days prior to the scheduled hearing. In the event any irreconcilable conflict exists on the hearing date, the party with the conflict shall immediately notify the Board's counsel and request a rescheduled hearing. In the event of a request for a rescheduled hearing, the Board shall attempt to schedule another hearing within fourteen (14) days.

C. Conducting the Hearing:

(1) At the hearing, the Board shall rule on each exception filed, make findings, and make a final determination on the ALJ's Recommended Order.

(2) Each party, or its representative, shall be given thirty (30) minutes (total) to present oral argument as to why the exceptions should be accepted or rejected and why the ALJ's recommended order should be adopted, modified or rejected. A party may reserve part of this time for rebuttal or surrebuttal.

(3) The parties may file a proposed final order for consideration by the Board prior to or at its hearing.

(4) Board hearings shall be recorded and minutes prepared by the Board Reporter following each hearing and a copy of the minutes will be provided to the Board within twenty (20) days of the hearing. No transcript shall be provided.

(5) If either party desires a certified transcript, that party may arrange a court reporter for such purpose, at its own cost.

(6) Non-Board member attendees, other than the parties and their counselor representative, present at the hearing may request permission of the Board Chair to speak, but shall not be permitted to provide further evidence. Any comments permitted shall be limited to the merits of the case being considered and shall not exceed three (3) minutes in duration.

(7) The Board members shall either cast their individual votes by paper ballot which will be confirmed for accuracy and announced by the Recorder, or voice vote, as determined by the Board.

D. Board's Final Order:

(1) The Board shall issue a Final Order at the conclusion of the hearing, after deliberating in the sunshine in accordance with Fla. Stat. §286.011.

(2) In issuing the Final Order, the Board shall make a finding on each of the following issues:

(a) Did the member engage in some or all of the prohibited conduct for which discipline was imposed?

(b) Was the discipline imposed/action taken against the member consistent with action taken against other members who engaged in the same or similar conduct?

(3) Before making a determination on each of the above issues, the Board shall:

(a) Accept or reject each exception raised: If the Board accepts an exception, it shall state the basis with particularity, citing to support in the record as (R.____), its reason for doing so.

(b) Make a determination on the ALJ's Findings of Fact. The Board shall accept, reject or modify the ALJ's findings of fact. The Board may not reject or modify an ALJ's finding of fact, unless it determines from a review of the entire record that the finding was not based on competent substantial evidence and states so with particularity, citing to support in the record as (R.____) for its finding.

(c) Make a determination on the ALJ's Conclusions of Law. The Board shall accept, reject or modify each of the ALJ's conclusions of law.

The Board may not reject or modify an ALJ's conclusion of law, unless it states the basis with particularity and finds that its substituted conclusion of law is as reasonable as or more reasonable than that which was rejected or modified.

(d) Make a determination on the ALJ's Recommended Penalty. The Board shall accept, reject, or modify the recommended penalty in accordance with the following guidelines:

(i) If the Board finds that the member did engage in the prohibited conduct for which discipline was imposed and that the penalty is consistent with action taken against other members for the prohibited conduct engaged in by the member, the Board shall sustain the penalty.

(ii) If the Board finds that the member did not engage in the prohibited conduct for which discipline was imposed, the Board shall reject the penalty.

(iii) If the Board finds that the member did engage in the prohibited conduct for which discipline was imposed but the penalty is not consistent with action taken against other members for prohibited conduct engaged in by the member, the Board shall modify or reject the penalty, as follows:

a) If the Board modifies the penalty it shall state the basis with particularity, citing to support in the record as (R.____), that the modified penalty is consistent with action taken against other members for prohibited conduct engaged in by the member.

b) If there is no support in the record to establish that a modified penalty is consistent with action taken against other members for the prohibited conduct engaged in by the member, the Board must reject the penalty and remand the case to the Sheriff for imposition of an alternative penalty consistent with the Sheriffs General Orders and actions taken against other similarly situated members.

(iv) If the Board finds that the member did engage in some, but not all, of the prohibited conduct for which discipline was imposed, the Board shall either accept, modify or reject the penalty.

a) If the Board rejects the penalty, it must remand the case to the Sheriff for imposition of an alternative penalty consistent with the Sheriffs General Orders and actions taken against other similarly situated members.

b) If the Board accepts or modifies the penalty, it shall state the basis with particularity, citing to support in the record as (R.____), that the accepted or modified penalty is consistent with action taken against other members for prohibited conduct engaged in by the member.

c) If there is no support in the record to establish that an accepted or a modified penalty is consistent with action taken against other members for the prohibited conduct engaged in by the member, the Board must reject the penalty entirely and remand the case to the Sheriff for imposition of an alternative penalty as provided in the

Sheriffs General Orders and actions taken against other similarly situated members.

(4) The Board's legal counsel shall prepare and provide copies of the Board's Final Order to the parties within ten (10) days of the Board hearing.

E. Final Action without Board Hearing:

In cases where neither party files exceptions, the Chairperson shall be authorized to adopt the ALJ's Recommended Order as the Board's final order, or to call a meeting to consider the adoption by the Board of the Recommended Order as the Final Order of the Board. In the event no meeting is called, the Board, by its Chairperson, shall enter its Final Order, adopting the Recommended Order of DOAH.

Revised and Approved January 28, 2010

Select Year:

The 2015 Florida Statutes

Title X	Chapter 120	View Entire Chapter
PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	ADMINISTRATIVE PROCEDURE ACT	

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. [120.52](#) shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

- a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or
- b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking.

2. Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:

- a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or
- b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

(b) 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 in this section within the times provided in s. [120.74\(4\)](#) and (5).

(c) No statutory provision shall be delayed in its implementation pending an agency's adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules.

(d) In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(e) 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.

(f) An agency may adopt rules authorized by law and necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be effective until the statute

upon which they are based is effective. An agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute.

(g) Each rule adopted shall contain only one subject.

(h) 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 these materials and given a reasonable opportunity to examine them and offer written comments or written rebuttal.

(i)1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Register, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Register, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency shall not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Register.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(j) A rule published in the Florida Administrative Code must be indexed by the Department of State within 90 days after the rule is filed. The Department of State shall by rule establish procedures for indexing rules.

(k) An agency head may delegate the authority to initiate rule development under subsection (2); however, rulemaking responsibilities of an agency head under subparagraph (3)(a)1., subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be delegated or transferred.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and
2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. An agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a rule development workshop shall be by publication in the Florida Administrative Register not less than 14 days prior to the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be

noticed and open to the public pursuant to the provisions of this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. Nothing in this subparagraph is intended to affect the rights of an affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2); a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register not less than 28 days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. 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.

4. 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 copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities. –

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define “small business” to include businesses employing more than 200 persons, may define “small county” to include those with populations of more than 75,000, and may define “small city” to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule’s compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman’s receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.* –

1. If the intended action concerns any rule other than one relating exclusively to 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 of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. 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. When a public hearing is held, the agency must ensure that staff are available to explain the agency’s proposal and to respond to questions or comments regarding the rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is

scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. 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 to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's 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 the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 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.

(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

- a. When the committee objects to the rule;
- b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;
- c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or
- d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

4. 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, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; 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 by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 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. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the department; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. 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 notice required by subparagraph (a) 1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(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. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State 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 or a part of one county, including the full text of the rules, shall be published in the first available issue of the *Florida Administrative Register* and provided to the committee along with any material incorporated by reference in the rules. 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 rules pertaining to perishable agricultural commodities or rules pertaining to the interpretation and implementation of the requirements of chapters 97-102 and chapter 105 of the Election Code.

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or
2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on 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 immediate danger to the public health, safety, or welfare.

(5) UNIFORM RULES.—

(a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirements of this chapter. On filing with the department, the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

2. An agency may seek exceptions to the uniform rules of procedure by filing a petition with the Administration Commission. The Administration Commission shall approve exceptions to the extent necessary to implement other statutes, to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to 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 exceptions shall be published in the Florida Administrative Register.

3. Agency rules that provide exceptions to the uniform rules shall not be filed with the department unless the Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules shall publish a separate chapter in the Florida Administrative Code that delineates clearly the provisions of the agency's rules that provide exceptions to the uniform rules and specifies each alternative chosen from among those authorized by the uniform rules. Each chapter shall be organized in the same manner as the uniform rules.

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

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

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and 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 public 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 public 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 paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public 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 public meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, "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.

3. Uniform rules of procedure for the filing of notice of protests and formal written protests. The Administration Commission may prescribe the form and substantive provisions of a required bond.

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

- a. The identification of the petitioner, including the petitioner's e-mail address, if any, for the transmittal of subsequent documents by electronic means.
 - b. A statement of when and how the petitioner received notice of the agency's action or proposed action.
 - c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.
 - d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.
 - e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.
 - f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.
 - g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.
5. Uniform rules for the filing of request for administrative hearing by a respondent in agency enforcement and disciplinary actions. Such rules shall require a request to include:
- a. The name, address, e-mail address, and telephone number of the party making the request and the name, address, and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers shall be made;
 - b. A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent shall identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner; and
 - c. A reference by file number to the administrative complaint that the party has received from the agency and the date on which the agency pleading was received.

The agency may provide an election-of-rights form for the respondent's use in requesting a hearing, so long as any form provided by the agency calls for the information in sub-subparagraphs a. through c. and does not impose any additional requirements on a respondent in order to request a hearing, unless such requirements are specifically authorized by law.

6. Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory statements. The rules shall also describe the contents of the notices that must be published in the Florida Administrative Register under s. 120.565, including any applicable time limit for the filing of petitions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

7. Provision of a method by which each agency head shall provide a description of the agency's organization and general course of its operations. The rules shall require that the statement concerning the agency's organization and operations be published on the agency's website.

8. Uniform rules establishing procedures for granting or denying petitions for variances and waivers pursuant to s. 120.542.

(6) **ADOPTION OF FEDERAL STANDARDS.**—Notwithstanding any contrary provision of this section, in the pursuance of state implementation, operation, or enforcement of federal programs, an agency is empowered to adopt rules substantively identical to regulations adopted pursuant to federal law, in accordance with the following procedures:

(a) The agency shall publish notice of intent to adopt a rule pursuant to this subsection in the Florida Administrative Register at least 21 days prior to filing the rule with the Department of State. The agency shall provide a copy of the notice of intent to adopt a rule to the committee at least 21 days prior to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the agency shall consider any written comments received within 14 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with the Department of State. Substantive changes from the rules as noticed shall require republishing of notice as required in this subsection.

(b) Any rule adopted pursuant to this subsection shall become effective upon the date designated by the agency in the notice of intent to adopt a rule; however, no such rule shall become effective earlier than the effective date of the substantively identical federal regulation.

(c) Any substantially affected person may, within 14 days after the date of publication of the notice of intent to adopt a rule, file an objection to rulemaking with the agency. The objection shall specify the portions of the proposed rule to which the person objects and the specific reasons for the objection. The agency shall not proceed pursuant to this subsection to adopt those portions of the proposed rule specified in an objection, unless the agency deems the objection to be frivolous, but may proceed pursuant to subsection (3). An objection to a proposed rule, which rule in no material respect differs from the requirements of the federal regulation upon which it is based, is deemed to be frivolous.

(d) Whenever any federal regulation adopted as an agency rule pursuant to this subsection is declared invalid or is withdrawn, revoked, repealed, remanded, or suspended, the agency shall, within 60 days thereafter, publish a notice of repeal of the substantively identical agency rule in the Florida Administrative Register. Such repeal is effective upon publication of the notice. Whenever any federal regulation adopted as an agency rule pursuant to this subsection is substantially amended, the agency may adopt the amended regulation as a rule. If the amended regulation is not adopted as a rule within 180 days after the effective date of the amended regulation, the original rule is deemed repealed and the agency shall publish a notice of repeal of the original agency rule in the next available Florida Administrative Register.

(e) Whenever all or part of any rule proposed for adoption by the agency is substantively identical to a regulation adopted pursuant to federal law, such rule shall be written in a manner so that the rule specifically references the regulation whenever possible.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having 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 this chapter. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(b) If the petition filed under this subsection is directed to an unadopted rule, the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Register that the agency will hold a public hearing on the petition within 30 days after publication of the notice. The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter.

(c) Within 30 days following the public hearing provided for by paragraph (b), if the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action, and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(8) **RULEMAKING RECORD.**—In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

- (a) All notices given for the proposed rule.
- (b) Any statement of estimated regulatory costs for the rule.
- (c) A written summary of hearings on the proposed rule.
- (d) The written comments and responses to written comments as required by this section and s.

120.541.

- (e) All notices and findings made under subsection (4).
- (f) All materials filed by the agency with the committee under subsection (3).
- (g) All materials filed with the Department of State under subsection (3).
- (h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(6).

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; s. 3, ch. 87-385; s. 36, ch. 90-302; ss. 2, 4, 7, ch. 92-166; s. 63, ch. 93-187; s. 758, ch. 95-147; s. 6, ch. 95-295; s. 10, ch. 96-159; s. 6, ch. 96-320; s. 9, ch. 96-370; s. 3, ch. 97-176; s. 3, ch. 98-200; s. 4, ch. 99-379; s. 9, ch. 2001-75; s. 2, ch. 2003-94; s. 50, ch. 2005-278; s. 3, ch. 2006-82; ss. 5, 6, ch. 2008-104; s. 7, ch. 2008-149; s. 4, ch. 2009-187; ss. 1, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 49, ch. 2011-142; s. 8, ch. 2011-208; s. 1, ch. 2011-225; s. 2, ch. 2012-27; s. 1, ch. 2012-63; s. 4, ch. 2013-14; s. 13, ch. 2013-15; s. 1, ch. 2015-162.

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The 2015 Florida Statutes

<u>Title X</u>	<u>Chapter 120</u>	<u>View Entire</u>
PUBLIC OFFICERS, EMPLOYEES, AND	ADMINISTRATIVE PROCEDURE	<u>Chapter</u>
RECORDS	ACT	

120.574 Summary hearing.—

(1)(a) Within 5 business days following the division's receipt of a petition or request for hearing, the division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and provides general information regarding practice and procedure before the division. The initial order shall also contain a statement advising the addressees that a summary hearing is available upon the agreement of all parties under subsection (2) and briefly describing the expedited time sequences, limited discovery, and final order provisions of the summary procedure.

(b) Within 15 days after service of the initial order, any party may file with the division a motion for summary hearing in accordance with subsection (2). If all original parties agree, in writing, to the summary proceeding, the proceeding shall be conducted within 30 days of the agreement, in accordance with the provisions of subsection (2).

(c) Intervenors in the proceeding shall be governed by the decision of the original parties regarding whether the case will proceed in accordance with the summary hearing process and shall not have standing to challenge that decision.

(d) If a motion for summary hearing is not filed within 15 days after service of the division's initial order, the matter shall proceed in accordance with ss. 120.569 and 120.57.

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

(a) Motions shall be limited to the following:

1. A motion in opposition to the petition.
2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (b). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if it can be completed not later than 5 days prior to the final hearing.
3. A motion for continuance of the final hearing date.
4. A motion requesting a prehearing conference, or the administrative law judge may require a prehearing conference, for the purpose of identifying: the legal and factual issues to be considered at the final hearing; the names and addresses of witnesses who may be called to testify at the final hearing; documentary evidence that will be offered at the final hearing; the range of penalties that may be imposed upon final hearing; and any other matter that the administrative law judge determines would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.
5. During or after any preliminary hearing or conference, any party or the administrative law judge may suggest that the case is no longer appropriate for summary disposition. Following any argument requested by the parties, the administrative law judge may enter an order referring the case back to the

formal adjudicatory process described in s. 120.57(1), in which event the parties shall proceed accordingly.

(b) Not later than 5 days prior to the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.

(c) 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, and to be represented by counsel or other qualified representative.

(d) The record in a case governed by this subsection shall consist only of:

1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence received.
3. A statement of matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Matters placed on the record after an ex parte communication.
6. The written decision of the administrative law judge presiding at the final hearing.
7. The official transcript of the final hearing.

(e) The agency shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.

(f) The decision of the administrative law judge shall be rendered within 30 days after the conclusion of the final hearing or the filing of the transcript thereof, whichever is later. The administrative law judge's decision, which shall be final agency action subject to judicial review under s. 120.68, shall include the following:

1. Findings of fact based exclusively on the evidence of record and matters officially recognized.
2. Conclusions of law.
3. Imposition of a fine or penalty, if applicable.
4. Any other information required by law or rule to be contained in a final order.

History.—s. 21, ch. 96-159; s. 10, ch. 97-176; s. 11, ch. 2000-158; s. 10, ch. 2000-336.

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