



## **HOW TO FILE A COMPLAINT UNDER THE FRS INVESTMENT PLAN**

If you, as a member of the FRS Investment Plan or FRS Pension Plan, are dissatisfied with the services of an Investment Plan or MyFRS Financial Guidance provider or one of its representatives, you have the right to file a Request for Intervention. Interventions may include unresolved customer service complaints involving services or transactions, allegations of misconduct, or allegations of misrepresentation.

Investment Plan and MyFRS Financial Guidance Program providers include:

- Hewitt, the FRS Investment Plan Administrator;
- Ernst and Young, Financial Engines, and any other companies providing Investment Plan education;
- Investment managers providing investment services supporting mutual funds or institutional funds offered in the Investment Plan;
- Marketing companies providing marketing and educational support for their investment products or providing individual counseling; and
- Any other company or state agency providing Investment Plan services (including the State Board of Administration of Florida).

### **STEP 1**

If you have a complaint against a provider, you may complete the attached Form SBA-RFI-01/2009, Request for Intervention, and send it to the State Board of Administration of Florida (SBA) for intervention and resolution. The intervention form may be sent by regular US mail to:

Investment Plan Complaint Resolution  
Office of Defined Contribution Programs  
State Board of Administration of Florida  
P.O. Box 13300  
Tallahassee, FL 32317-3300

by e-mail: [DefinedContributionPrograms@sbafla.com](mailto:DefinedContributionPrograms@sbafla.com)

by fax: 850-413-1489

The form should include:

- your name, address, home, work and fax telephone numbers, email address, Social Security number, and name of employer
- the other parties involved in the dispute, including the names of the personnel you have interacted with
- the facts supporting your complaint
- the desired outcome you are seeking
- the steps you have taken so far to reach a resolution, and
- the reason(s) you are requesting our assistance.

## STEP 2

Upon receipt of the form, an investigation will be conducted. The SBA will prepare and mail to you a final agency action letter detailing the SBA's findings, any proposed resolution, and information on the next steps in the dispute resolution process.

Note: There are some complaints that cannot be handled through the administrative process, such as a request for money damages. In these cases, the complaint must be handled in court. In addition, if the complainant has entered into an arbitration agreement with the vendor complained against, then the arbitration agreement must be adhered to.

## STEP 3

If our proposed resolution as set out in the final agency action letter does not resolve the issue(s), you may request a hearing with the SBA within 21 days of receipt of the final agency action letter by completing the attached Form SBA-PFH-01/2009, Petition for Hearing, and sending it to the SBA. Each party will be provided with the following "Notice of Rights," which will outline your rights to a hearing:

**Notice of Rights:** Pursuant to Chapter 120, Florida Statutes, and the Uniform Rules of Procedure, codified as Chapters 28-101 through 28-110, Florida Administrative Code, a person whose substantial interests are affected by a decision of the State Board of Administration of Florida (SBA) regarding the Public Employee Optional Retirement Program (referred to here as the Investment Plan) may request a hearing with the SBA by filing a petition within 21 days of receipt of the final agency action letter by the SBA. Any person who fails to file a petition within 21 days will have waived his right to a hearing. The hearing may be a formal hearing or an informal hearing pursuant to the provisions of Sections 120.569 and 120.57, Florida Statutes. The petition must be filed (received) in the Office of Defined Contribution Programs, State Board of Administration of Florida, P.O. Box 13300, Tallahassee, FL 32317-3300, within the 21-day period.

All petitions must contain:

1. Your name, Social Security number, home address, email address, home and work telephone numbers, and name of employer.
2. An explanation of how your substantial interests will be affected by the SBA's decision.
3. A statement of when and how you received the final agency action letter from the SBA.
4. A statement of all disputed issues of material fact. If there are none, the petition must indicate this as well.
5. A concise statement of the facts, which you believe entitles you to the desired outcome sought as well as the statutes and rules which support your claim for relief.
6. A statement of the desired outcome sought, stating the precise action you want the SBA or other party to take.
7. Any other information that you contend is material.

Upon receipt of a petition, the SBA will review the petition for compliance with the SBA's requirements and timeliness. If appropriate, the petition can be denied for lack of compliance and for failure to file within the stated timeline. If the SBA elects to request that an administrative law judge of the Division of Administrative Hearings (DOAH) be assigned to conduct the hearing, the SBA will forward the petition and all materials filed with the SBA to the DOAH within 15 days after receipt of the petition and will notify you of its action. The SBA will issue an order in the proceedings. Once this order becomes final, your rights to appeal will be governed by Section 120.68, Florida Statutes.

**FRS Investment Plan  
Request for Intervention**  
Investment Plan Complaint Resolution  
Office of Defined Contribution Programs  
P.O. Box 13300  
Tallahassee, FL 32317-3300

If you have a complaint against an Investment Plan or MyFRS Financial Guidance Program provider or one of its representatives, you have the right to file a Request for Intervention. You may complete this form and send it to the State Board of Administration of Florida (SBA) for intervention and resolution. Send the form either by mail to the address listed above, by e-mail to [DefinedContributionPrograms@sbafla.com](mailto:DefinedContributionPrograms@sbafla.com), or by fax to 850-413-1489.

Upon receipt of the Request for Intervention, the SBA will research your concerns and send you a final agency action letter detailing the SBA's findings, any proposed resolution, and information on the next steps in the dispute resolution process. If you are not satisfied with this decision, you may request a hearing with the SBA within 21 days of receipt of the SBA's final agency action letter.

I understand that by signing this form I have agreed to release to the SBA any personally identifiable information shared with or generated by any service provider to the FRS, including the MyFRS Financial Guidance Program. Any information released will be used for the limited purpose of resolving your complaint.

Name: \_\_\_\_\_ SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_  
Street Apt.

\_\_\_\_\_ City State Zip Code Email Address

Home Telephone Number: \_\_\_\_\_ Work Telephone Number: \_\_\_\_\_

Employer: \_\_\_\_\_

Please describe in detail the information requested below. Use additional sheets if necessary.

List all parties involved in the dispute including names of applicable personnel: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Describe the facts supporting your complaint: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**FRS Investment Plan  
Request for Intervention**  
Investment Plan Complaint Resolution  
Office of Defined Contribution Programs  
P.O. Box 13300  
Tallahassee, FL 32317-3300

Describe the facts supporting your complaint: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe your desired outcome: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List the steps you have taken so far to reach a resolution: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Explain the reason(s) you are requesting our assistance: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please sign your name, and print your name below your signature:

\_\_\_\_\_

Signature

\_\_\_\_\_

Date Signed

\_\_\_\_\_

Print Name

**FRS Investment Plan  
Petition for Hearing**

Investment Plan Complaint Resolution  
Office of Defined Contribution Programs  
P.O. Box 13300  
Tallahassee, FL 32317-3300

If you are dissatisfied with the SBA's proposed resolution as set out in the final agency action letter regarding your Request for Intervention against an Investment Plan or MyFRS Financial Guidance Program provider, you may petition for a hearing with the SBA by completing and submitting this form (petition) within 21 days of receipt of the final agency action letter. The following "Notice of Rights" outlines your rights to a hearing:

**Notice of Rights:** Pursuant to Chapter 120, Florida Statutes, and the Uniform Rules of Procedure, codified as Chapters 28-101 through 28-110, Florida Administrative Code, a person whose substantial interests are affected by a decision of the State Board of Administration of Florida (SBA) regarding the Public Employee Optional Retirement Program (referred to here as the Investment Plan) may request a hearing with the SBA by filing a petition within 21 days of receipt of the final agency action letter by the SBA. Any person who fails to file a petition within 21 days will have waived his right to a hearing. The hearing may be a formal hearing or an informal hearing pursuant to the provisions of Sections 120.569 and 120.57, Florida Statutes. The petition must be filed (received) in the Office of Defined Contribution Programs (see address above) within the 21-day period.

Upon receipt of the petition, the SBA will review it for compliance with the SBA's requirements and timeliness. If appropriate, the petition can be denied for lack of compliance and for failure to file within the stated timeline. If the SBA elects to request that an administrative law judge of the Division of Administrative Hearings (DOAH) be assigned to conduct the hearing, the SBA will forward the petition and all materials filed with the SBA to the DOAH within 15 days after receipt of the petition and will notify you of its action. The SBA will issue an order in the proceedings. Once this order becomes final, your rights to appeal will be governed by Section 120.68, Florida Statutes.

Name: \_\_\_\_\_ SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_  
Street Apt.

\_\_\_\_\_ City State Zip Code Email Address

Home Telephone Number: \_\_\_\_\_ Work Telephone Number: \_\_\_\_\_

Employer: \_\_\_\_\_

Please describe in detail the information requested below. Use additional sheets if necessary.

Explain how your substantial interests will be affected by the SBA's final agency action letter:

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**FRS Investment Plan  
Petition for Hearing**

Investment Plan Complaint Resolution  
Office of Defined Contribution Programs  
P.O. Box 13300  
Tallahassee, FL 32317-3300

When and how did you receive notice of the SBA's final agency action letter: \_\_\_\_\_

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List all of your disputed issues. If none, please so indicate: \_\_\_\_\_

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Provide a concise statement of the facts, which you believe entitles you to the outcome you are seeking as well as the statutes and rules which support your claim for relief:

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Provide a statement of the specific facts you contend warrant reversal or modification of the SBA's final agency action letter:

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Provide a statement of the specific statutes or rules which you contend require reversal or modification of the SBA's final agency action letter:

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Provide a statement of the outcome you are seeking, stating the precise action you want the SBA or the other party to take:

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**FRS Investment Plan  
Petition for Hearing**

Investment Plan Complaint Resolution  
Office of Defined Contribution Programs  
P.O. Box 13300  
Tallahassee, FL 32317-3300

Provide any other information you contend is material: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please sign your name, and print your name below your signature:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name



## Florida Administrative Code & Administrative Procedures Act References

Entire Florida Administrative Code is located at:  
<https://www.flrules.org/gateway/Division.asp?DivID=398>

Entire Administrative Procedures Act is located at:  
[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=Ch0120/ch0120.htm](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0120/ch0120.htm)

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### **120.569 Decisions which affect substantial interests.--**

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. [120.573](#) or s. [120.574](#). Unless waived by all parties, s. [120.57](#)(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. [120.57](#)(2) applies in all other cases. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. [120.57](#), or s. [120.68](#); shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(2)(a) Except for any proceeding conducted as prescribed in s. [120.56](#), a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division within 15 days after receipt of the petition or request. A request for a hearing shall be granted or denied within 15 days after receipt. On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. [120.57](#)(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. [120.57](#)(1). Any party may request the disqualification of the administrative law judge by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

(b) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. The notice shall include:

1. A statement of the time, place, and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. [120.54](#)(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).

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

(f) The presiding officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt. However, no presiding officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to

a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(g) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

(h) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(i) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

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

(k)1. Any person subject to a subpoena may, before compliance and on timely petition, request the presiding officer having jurisdiction of the dispute to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material.

2. A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this chapter by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subparagraph 1. The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

3. Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. [112.061](#) if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(l) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;
2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge; or
3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

(m) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, must be accompanied by a concise and explicit statement of the underlying facts of record which support the findings.

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

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

**History.**--s. 18, ch. 96-159; s. 7, ch. 97-176; s. 4, ch. 98-200; s. 4, ch. 2003-94; s. 6, ch. 2006-82.

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### **120.57 Additional procedures for particular cases.--**

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

(a) Except as provided in ss. [120.80](#) and [120.81](#), an administrative law judge assigned by the division shall conduct all hearings under this subsection, except for hearings before agency heads or a member thereof. If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive

any additional evidence or argument, if any, which the new administrative law judge finds necessary.

(b) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut the material.

(c) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(d) Notwithstanding s. [120.569\(2\)\(g\)](#), similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

(e)1. Any agency action that determines the substantial interests of a party and that is based on an unadopted rule is subject to de novo review by an administrative law judge.

2. The agency action shall not be presumed valid or invalid. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority derived from the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

3. The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs (k) and (l), except that the administrative law judge's determination regarding the unadopted rule shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. [120.68](#), if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review.

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

1. All notices, pleadings, motions, and intermediate rulings.

2. Evidence admitted.

3. Those matters officially recognized.

4. Proffers of proof and objections and rulings thereon.

5. Proposed findings and exceptions.

6. Any decision, opinion, order, or report by the presiding officer.

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

8. All matters placed on the record after an ex parte communication.

9. The official transcript.

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

(h) Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(i) When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. An order relinquishing jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists. If the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed fact that could have been raised before the administrative law judge. An order entered by an administrative law judge relinquishing jurisdiction to the agency based upon a determination that no genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a recommended disposition or penalty.

(j) Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative

rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(m) If a recommended order is submitted to an agency, the agency shall provide a copy of its final order and any exceptions to the division within 15 days after the order is filed with the agency clerk.

(n) Notwithstanding any law to the contrary, when statutes or rules impose conflicting time requirements for the scheduling of expedited hearings or issuance of recommended or final orders, the director of the division shall have the authority to set the proceedings for the orderly operation of this chapter.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--In any case to which subsection (1) does not apply:

(a) The agency shall:

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

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

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:



1. The notice and summary of grounds.
2. Evidence received.
3. All written statements submitted.
4. Any decision overruling objections.
5. All matters placed on the record after an ex parte communication.
6. The official transcript.
7. Any decision, opinion, order, or report by the presiding officer.

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION OR AWARD.--Agencies subject to this chapter shall use the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award process. Such rules shall at least provide that:

(a) The agency shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: "Failure to file a protest within the time prescribed in section [120.57](#)(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.

(c) Upon receipt of the formal written protest that has been timely filed, the agency shall stop the solicitation or contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the

solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d)1. The agency shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of a formal written protest.

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

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

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the director of the division shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days of the entry of a recommended order. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) In a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. In a protest to an invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an

administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

(g) For purposes of this subsection, the definitions in s. [287.012](#) apply.

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

(5) APPLICABILITY.--This section does not apply to agency investigations preliminary to agency action.

**History.**--s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-453; ss. 6, 11, ch. 78-95; s. 6, ch. 78-425; s. 8, ch. 79-7; s. 7, ch. 80-95; s. 4, ch. 80-289; s. 57, ch. 81-259; s. 2, ch. 83-78; s. 9, ch. 83-216; s. 2, ch. 84-173; s. 4, ch. 84-203; ss. 1, 2, ch. 86-108; s. 44, ch. 87-6; ss. 1, 2, ch. 87-54; s. 5, ch. 87-385; s. 1, ch. 90-283; s. 4, ch. 91-30; s. 1, ch. 91-191; s. 22, ch. 92-315; s. 7, ch. 94-218; s. 1420, ch. 95-147; s. 1, ch. 95-328; s. 19, ch. 96-159; s. 1, ch. 96-423; s. 8, ch. 97-176; s. 5, ch. 98-200; s. 3, ch. 98-279; s. 47, ch. 99-2; s. 6, ch. 99-379; s. 2, ch. 2002-207; s. 5, ch. 2003-94; s. 7, ch. 2006-82.

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## **120.68 Judicial review.--**

(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. [120.56](#), the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(b) When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may

consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

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

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with paragraph (7)(a).

(5) The record for judicial review shall be compiled in accordance with the Florida Rules of Appellate Procedure.

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

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

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

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

(7) The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that:

- (a) There has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts;

(b) The agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. [120.569](#) and [120.57](#); however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact;

(c) The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure;

(d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action; or

(e) The agency's exercise of discretion was:

1. Outside the range of discretion delegated to the agency by law;

2. Inconsistent with agency rule;

3. Inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or

4. Otherwise in violation of a constitutional or statutory provision;

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

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

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

(10) If an administrative law judge's final order depends on any fact found by the administrative law judge, the court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside the final order of the administrative law judge or remand the case to the administrative law judge, if it finds that the final order depends on any finding of fact that is not supported by competent substantial evidence in the record of the proceeding.

**History.**--s. 1, ch. 74-310; s. 13, ch. 76-131; s. 38, ch. 77-104; s. 1, ch. 77-174; s. 11, ch. 78-425; s. 4, ch. 84-173; s. 7, ch. 87-385; s. 36, ch. 90-302; s. 6, ch. 91-30; s. 1, ch. 91-191; s. 10, ch. 92-166; s. 35, ch. 96-159; s. 15, ch. 97-176; s. 8, ch. 2003-94.