

Rule with future effective date

Number: AGO 76-80

Date: November 12, 1998

Subject:
Rule with future effective date

GAME AND FRESH WATER FISH COMMISSION--MAY ADOPT RULE HAVING FUTURE EFFECTIVE DATE

To: O. E. Frye, Jr., Director, Game and Fresh Water Fish Commission, Tallahassee

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QUESTIONS:

1. May the Game and Fresh Water Fish Commission adopt a rule to become effective at a future date, more than 30 days in advance, under the Administrative Procedure Act?
2. Would such an advance effective date be nullified by the provisions of s. 372.021, F. S.?

SUMMARY:

The Game and Fresh Water Fish Commission may adopt a rule to become effective at a future date, as long as that date is at least 20 days after filing the rule with the Department of State. The revised Administrative Procedure Act (Ch. 120, F. S.) has replaced the rulemaking procedures and requirements previously found in s. 372.021, F. S.

The Game and Fresh Water Fish Commission is an "agency" as defined in s. 120.52, F. S., and therefore the Administrative Procedure Act (Ch. 120, F. S.) prescribes the procedures which must be followed by the commission in the exercise of its substantive powers and responsibilities. There is no exclusion for the commission or its rulemaking procedures in the Administrative Procedure Act. See ss. 120.50 and 120.54(14).

Section 120.54, F. S., sets forth the procedures to be followed by "agencies" to which the Administrative Procedure Act applies in the adoption and promulgation of rules. Subsection (11) of s. 120.54 states that a "proposed rule shall be adopted on filing with the Department of State and become effective 20 days after filing, on a later date specified in the rule, or on a date required by statute."

Section 120.72(1), F. S., mandates that in enacting a complete revision of Ch. 120, F. S., in 1974, the Florida Legislature intended to make uniform the rulemaking and adjudicative procedures used by administrative agencies of this state, and to that extent the provisions of the revised Ch. 120 replaced all other provisions in the Florida Statutes 1973 relating to, among other things, rulemaking. As previously addressed in AGO 075-312, the revised Administrative

Procedure Act (Ch. 120) has therefore replaced and superseded all other rulemaking procedural requirements found in the Florida Statutes 1973. See *also* *Alford v. Duval County School Board*, 324 So.2d 174 (1 D.C.A. Fla., 1975); *Office of the Public Defender v. Hunter*, 323 So.2d 316 (1 D.C.A. Fla., 1975).

Section 372.021(2), F. S., provides that the Game and Fresh Water Fish Commission may adopt rules and regulations which "shall become effective 30 days after the filing of a certified copy with the Department of State." This provision was initially adopted in 1943 with the enactment of Ch. 21945, 1943, Laws of Florida. Section 5 of Ch. 21945 specifically noted that provisions in that act relating to the promulgation and filing of rules by the commission are directory and not mandatory.

Since s. 372.021, F. S., to which your question refers, was enacted in 1943 and found in the Florida Statutes 1973, and since it prescribed rulemaking procedures, it is my opinion that Ch. 120, F. S., has repealed the rulemaking requirements prescribed in s. 372.021(2) and that therefore the commission, in adopting its rules, will be governed by s. 120.54. As previously noted, s. 120.54(11) does provide for a rule to become effective at a future date which exceeds 20 days after filing. Therefore, the commission may adopt a rule to become effective more than 20 days after filing if the actual effective date is specified in the rule.