Chapter 96-410

Committee Substitute for House Bill No. 751

An act conforming the Florida Statutes to the revision of ch. 120, F.S.; amending specified provisions of the Florida Statutes to conform to the revision of the Administrative Procedure Act; correcting cross references; correcting references to "hearing officer," "hearing examiner," and "economic impact statement"; amending s. 120.60, F.S., as amended; providing for the time period for license approval; providing that once a county qualifies under specified provisions, the county shall retain such qualification; amending s. 218.65, F.S., relating to emergency distributions to county governments from the Local Government Half-cent Sales Tax Clearing Trust Fund; clarifying that the emergency distribution includes the inmate supplemental distribution; providing a contingent effective date.

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

Section 1. Section 11.075, Florida Statutes, is amended to read:

11.075. Estimate of economic impact

Prior to the enactment of any general or special law, each house of the Legislature shall consider the economic impact such legislation will have upon the public and upon the agencies of government assigned to implement or enforce such legislation. ~~For purposes of this section, economic impact shall be defined as in s. 120.54(2)(b)~~. No general or special law shall be declared invalid for failure to comply with the provisions of this act.

Section 2. Subsection (1) of section 11.076, Florida Statutes, is amended to read:

11.076. General laws affecting local financing; special requirements

(1) Any general law, enacted by the Legislature after July 1, 1978, which requires a municipality or county to perform an activity or to provide a service or facility, which activity, service, or facility will require the expenditure of additional funds, must include an economic impact statement, ~~as defined in s. 11.075~~, estimating the amount sufficient to cover the total cost to municipalities and counties to implement such activity, service, or facility and must provide a means to finance such activity, service, or facility. Additionally, any general law which grants an exemption or changes the manner by which property is assessed or changes the authorization to levy local taxes must provide a means to finance such exemptions or changes. Such general law shall provide a means to finance the ongoing cost for those municipalities and counties which are providing the activity, service, or facility on the effective date of such law. Except that, where the Legislature determines that a general law serves both state and local objectives, a means to partially finance such activity, service, or facility may be provided by the Legislature. The means of financing such activity, service, or facility may be through remission of additional funds of the state to said municipality or

county, through specific authority granted the municipality or county to levy a special tax therefor, or through other sources provided by such law. If financing is provided by means other than the levy of a special tax, the method of financing shall bear a reasonable relationship to the actual costs of performing the activity or providing the service or facility, and shall not reduce, supplant, or adversely affect other state or federal revenues shared with or granted to municipalities or counties. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly; reasons for legislative deviation from this section shall be stated with particularity in the preamble of the act.

Section 3. Paragraph (a) of subsection (5) of section 20.255, Florida Statutes, is amended to read:

20.255. Department of Environmental Protection

There is created a Department of Environmental Protection.

(5) Except for those orders reviewable as provided in s. 373.4275, the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, has the exclusive authority to review any order or rule of the department which, prior to July 1, 1994, the Governor and Cabinet, as head of the Department of Natural Resources, had authority to issue or promulgate, other than a rule or order relating to an internal procedure of the department.

(a) Such review may be initiated by a party to the proceeding by filing a request for review with the Land and Water Adjudicatory Commission and serving a copy on the department and on any person named in the rule or order within 20 days after adoption of the rule or the rendering of the order. Where a proceeding on an order has been initiated pursuant to ss. ~~s.~~ 120.569 and 120.57, such review shall be initiated within 20 days after the department has taken final agency action in the proceeding. The request for review may be accepted by any member of the commission. For the purposes of this section, the term "party" shall mean any affected person who submitted oral or written testimony, sworn or unsworn, to the department of a substantive nature which stated, with particularity, objections to or support for the rule or order that are cognizable within the scope of the provisions and purposes of the applicable statutory provisions, or any person who participated as a party in a proceeding instituted pursuant to chapter 120.

Section 4. Section 24.109, Florida Statutes, is amended to read:

24.109. Administrative procedure

(1) The department may at any time adopt emergency rules pursuant to s. 120.54~~(9)~~. The Legislature finds that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to benefit the public. The Legislature further finds that the unique nature of state lottery operations requires, from time to time, that the department respond as quickly as is practicable to changes in the marketplace. Therefore, in adopting such emergency rules, the department need not make the

findings required by s. 120.54(4) ~~(9)~~(a). Emergency rules adopted under this section are exempt from s. 120.54(4)~~(9)~~(c) and shall remain in effect until replaced by other emergency rules or by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

(2) The provisions of s. 120.57(3) ~~120.53(5)~~ apply to the department's contracting process, except that:

(a) A formal written protest of any decision, intended decision, or other action subject to protest shall be filed within 72 hours after receipt of notice of the decision, intended decision, or other action.

(b) As an alternative to any provision in s. 120.57(3)(c)~~120.53(5)(c)~~, the department may proceed with the bid solicitation or contract award process when the secretary of the department sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process in order to avoid a substantial loss of funding to the state or to avoid substantial disruption of the timetable for any scheduled lottery game.

Section 5. Subsection (12) of section 39.074, Florida Statutes, is amended to read:

39.074. Siting of facilities; study; criteria

(12) Actions taken by the department or the Governor and Cabinet pursuant to this section shall not be subject to the provisions of ss. 120.56, 120.569, and 120.57. The decision by the Governor and Cabinet shall be subject to judicial review pursuant to s. 120.68 in the District Court of Appeal, First District.

Section 6. Paragraphs (b) and (d) of subsection (4) of section 57.111, Florida Statutes, are amended to read:

57.111. Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs

(4)

(b)1. To apply for an award under this section, the attorney for the prevailing small business party must submit an itemized affidavit to the court which first conducted the adversarial proceeding in the underlying action, or to the Division of Administrative Hearings which shall assign an administrative law judge ~~a hearing officer~~, in the case of a proceeding pursuant to chapter 120, which affidavit shall reveal the nature and extent of the services rendered by the attorney as well as the costs incurred in preparations, motions, hearings, and appeals in the proceeding.

2. The application for an award of attorney's fees must be made within 60 days after the date that the small business party becomes a prevailing small business party.

(d) The court, or the administrative law judge ~~hearing officer~~ in the case of a proceeding under chapter 120, shall promptly conduct an evidentiary hearing on the application for an award of attorney's fees and shall issue a judgment, or a final order in the case of an administrative law judge ~~a hearing officer~~. The final order of an administrative law judge ~~a hearing officer~~ is reviewable in accordance with the provisions of s. 120.68. If the court affirms the award of attorney's fees and costs in whole or in part, it may, in its discretion, award additional attorney's fees and costs for the appeal.

1. No award of attorney's fees and costs shall be made in any case in which the state agency was a nominal party.

2. No award of attorney's fees and costs for an action initiated by a state agency shall exceed $15,000.

Section 7. Paragraph (b) of subsection (10) and subsection (23) of section 70.51, Florida Statutes, are amended to read:

70.51. Land use and environmental dispute resolution

(10)

(b) If an owner requests special master relief from a development order or enforcement action issued by a state or regional agency, the time for challenging agency action under ss. ~~s.~~ 120.569 and 120.57 is tolled. If an owner chooses to bring a proceeding under ss. ~~s.~~ 120.569 and 120.57 before initiating a special master proceeding, then the owner waives any right to a special master proceeding unless all parties consent to proceeding to mediation.

(23) The procedure established by this section may not continue longer than 165 days, unless the period is extended by agreement of the parties. A decision describing available uses constitutes the last prerequisite to judicial action and the matter is ripe or final for subsequent judicial proceedings unless the owner initiates a proceeding under ss. ~~s.~~ 120.569 and 120.57. If the owner brings a proceeding under ss. ~~s.~~ 120.569 and 120.57, the matter is ripe when the proceeding culminates in a final order whether further appeal is available or not.

Section 8. Paragraph (a) of subsection (1) of section 72.011, Florida Statutes, as amended by chapter 95-417, Laws of Florida, is amended to read:

72.011. Jurisdiction of circuit courts in specific tax matters; administrative hearings and appeals; time for commencing action; parties; deposits

(1)(a) A taxpayer may contest the legality of any assessment or denial of refund of tax, fee, surcharge, permit, interest, or penalty provided for under s. 125.0104, s. 125.0108, chapter 198, chapter 199, chapter 201, chapter 203, chapter 206, chapter 207, chapter 210,

chapter 211, chapter 212, chapter 213, chapter 220, chapter 221, s. 370.07(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185, s. 403.7195, s. 403.7197, s. 538.09, s. 538.25, chapter 550, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, chapter 624, or s. 681.117 by filing an action in circuit court; or, alternatively, the taxpayer may file a petition under the applicable provisions of chapter 120. However, once an action has been initiated under s. 120.56, s. 120.565, s. 120.569, s. 120.57, or s. 120.80(14)(b) ~~120.575~~, no action relating to the same subject matter may be filed by the taxpayer in circuit court, and judicial review shall be exclusively limited to appellate review pursuant to s. 120.68; and once an action has been initiated in circuit court, no action may be brought under chapter 120.

Section 9. Subsection (2) of section 92.142, Florida Statutes, is amended to read:

92.142. Witnesses; pay

(2) An employee of the state who is required, as a direct result of employment, to appear as an official witness to testify in the course of any action in any court of this state, or before an administrative law judge, a hearing officer, hearing examiner, or any board or commission of the state or of its agencies, instrumentalities, or political subdivisions, shall be considered to be on duty during such appearance and shall be entitled to per diem and travel expenses as provided in s. 112.061. Except as provided in s. 92.141 and as provided in this subsection, such employee shall be required to tender to the employing agency any witness fee and other expense reimbursement received by the employee for such appearance.

Section 10. Paragraph (a) of subsection (5) of section 110.123, Florida Statutes, is amended to read:

110.123. State group insurance program

(5) DEPARTMENT OF MANAGEMENT SERVICES; POWERS AND DUTIES.--The Department of Management Services is responsible for the administration of the state group insurance program. The department shall initiate and supervise the program as established by this section and shall adopt such rules as are necessary to perform its responsibilities. To implement this program, the department shall, with prior approval by the Legislature and, for state employee health insurance, by the Agency for Health Care Administration:

(a) Determine the benefits to be provided and the contributions to be required for the state group insurance program. Such determinations, whether for a contracted plan or a self-insurance plan pursuant to paragraph (c), do not constitute rules within the meaning of s. 120.52~~(16)~~ or final orders within the meaning of s. 120.52~~(11)~~. Any physician's fee schedule used in the health and accident plan shall not be available for inspection or copying by medical providers or other persons not involved in the administration of the program. However, in the determination of the design of the program, the department or the Agency for Health Care Administration shall consider existing and complementary benefits provided by the Florida Retirement System and the Social Security System.

Final decisions concerning the existence of coverage or benefits under the state group health insurance plan shall not be delegated or deemed to have been delegated by the department, except that such decisions shall be subject to the review and approval of the Agency for Health Care Administration.

Section 11. Paragraph (q) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205. Career service; exemptions

(2) EXEMPT POSITIONS.--The exempt positions which are not covered by this part include the following, provided that no position, except for positions established for a limited period of time pursuant to paragraph (h), shall be exempted if the position reports to a position in the career service:

(q) All positions not otherwise exempt under this subsection which require as a prerequisite to employment: licensure as a physician pursuant to chapter 458, licensure as an osteopathic physician pursuant to chapter 459, licensure as a chiropractic physician pursuant to chapter 460, including those positions which are occupied by employees who are exempted from licensure pursuant to s. 409.352; licensure as an engineer pursuant to chapter 471, which are supervisory positions; or for 12 calendar months, which require as a prerequisite to employment that the employee have received the degree of Bachelor of Laws or Juris Doctor from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar, except for any attorney who serves as an administrative law judge ~~a hearing officer~~ pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a). Unless otherwise fixed by law, the department shall set the salary and benefits for these positions in accordance with the rules established for the Selected Exempt Service.

Section 12. Paragraph (a) of subsection (1) of section 110.207, Florida Statutes, is amended to read:

110.207. Classification plan

(1) The department shall establish and maintain a uniform classification plan applicable to all positions in the career service and shall be responsible for the overall coordination, review, and maintenance of the plan.

(a) The department shall develop class specifications necessary for the establishment of new classes or for the revision of existing classes and shall adopt the appropriate class title and class code for each class. Such class specifications, titles, and codes shall not constitute rules within the meaning of s. 120.52~~(16)~~.

Section 13. Paragraph (a) of subsection (2) of section 110.209, Florida Statutes, is amended to read:

110.209. Pay plan

(2)(a) The department shall provide for broad, market-based salary ranges for classes within the career service and shall establish guidelines for the employing agencies to move employees through the salary ranges. The employing agencies may determine the appropriate salary within the ranges and guidelines adopted by the department. Such salary range, and the assignment of ranges to positions, shall not constitute rules within the meaning of s. 120.52 ~~(16)~~.

Section 14. Paragraph (b) of subsection (1) of section 112.3145, Florida Statutes, is amended to read:

112.3145. Disclosure of financial interests and clients represented before agencies

(1) For purposes of this section, unless the context otherwise requires, the term:

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a full-time state employee who serves as counsel or assistant counsel to any state agency, a judge of compensation claims, an administrative law judge, or a hearing officer.

2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions.

3. Each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the superintendent or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.

5. Business managers, purchasing agents having the power to make any purchase exceeding $1,000, finance and accounting directors, personnel officers, or grants coordinators for any state agency.

6. Any voting member of the Information Technology Resource Procurement Advisory Council established in the Department of Management Services by s. 287.073.

7. Any person, other than a legislative assistant exempted by the presiding officer of the house by which the legislative assistant is employed, who is employed in the legislative

branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.

8. Each employee of the Commission on Ethics.

Section 15. Paragraph (b) of subsection (8) of section 112.3187, Florida Statutes, is amended to read:

112.3187. Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief

(8) REMEDIES.—

(b) Within 60 days after the action prohibited by this section, any local public employee protected by this section may file a complaint with the appropriate local governmental authority, if that authority has established by ordinance an administrative procedure for handling such complaints or has contracted with the Division of Administrative Hearings under s. 120.65

~~(8)~~ to conduct hearings under this section. The administrative procedure created by ordinance must provide for the complaint to be heard by a panel of impartial persons appointed by the appropriate local governmental authority. Upon hearing the complaint, the panel must make findings of fact and conclusions of law for a final decision by the local governmental authority. Within 180 days after entry of a final decision by the local governmental authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction. If the local governmental authority has not established an administrative procedure by ordinance or contract, a local public employee may, within 180 days after the action prohibited by this section, bring a civil action in a court of competent jurisdiction. For the purpose of this paragraph, the term "local governmental authority" includes any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing.

Section 16. Subsection (4) of section 112.63, Florida Statutes, is amended to read:

112.63. Actuarial reports and statements of actuarial impact; review

(4) Upon receipt, pursuant to subsection (2), of an actuarial report, or upon receipt, pursuant to subsection (3), of a statement of actuarial impact, the division shall review and comment on the actuarial valuations and statements. If the division finds that the actuarial valuation is not complete, accurate, or based on reasonable assumptions, or if the division does not receive the actuarial report or statement of actuarial impact, the division shall notify the local government and request appropriate adjustment. If, after a reasonable period of time, a satisfactory adjustment is not made, the affected local government or the division may petition for a hearing under the provisions of ss. ~~s.~~ 120.569 and 120.57. If the administrative law judge ~~hearing officer~~ recommends in favor of the division, the division shall perform an actuarial review or prepare the statement of actuarial impact. The cost to the division of

performing such actuarial review or preparing such statement shall be charged to the governmental entity of which the employees are covered by the retirement system or plan. If payment of such costs is not received by the division within 60 days after receipt by the governmental entity of the request for payment, the division shall certify to the Comptroller the amount due, and the Comptroller shall pay such amount to the division from any funds payable to the governmental entity of which the employees are covered by the retirement system or plan. If the administrative law judge ~~hearing officer~~ recommends in favor of the local retirement system and the division performs an actuarial review, the cost to the division of performing the actuarial review shall be paid by the division.

Section 17. Subsection (2) of section 119.041, Florida Statutes, is amended to read:

119.041. Destruction of records regulated

(2) Agency orders that comprise final agency action and that must be indexed or listed pursuant to s. 120.53~~(2)~~ have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules and guidelines of the Department of State.

Section 18. Paragraph (m) of subsection (3) of section 119.07, Florida Statutes, is amended to read:

119.07. Inspection, examination, and duplication of records; exemptions

(3)

(m) Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) ~~120.53(5)(a)~~ or within 10 days after bid or proposal opening, whichever is earlier.

Section 19. Subsection (2) of section 121.23, Florida Statutes, is amended to read:

121.23. Disability retirement and special risk membership applications; Retirement Commission; powers and duties; judicial review

The provisions of this section apply to all proceedings in which the administrator has made a written final decision on the merits respecting applications for disability retirement, reexamination of retired members receiving disability benefits, applications for special risk membership, and reexamination of special risk members in the Florida Retirement System. The jurisdiction of the State Retirement Commission under this section shall be limited to written final decisions of the administrator on the merits.

(2) A member shall be entitled to a hearing before the State Retirement Commission pursuant to ss. ~~s.~~ 120.569 and 120.57(1) on the merits of any written adverse decision of the administrator, if he or she files with the commission a written request for such hearing within 21 days after receipt of such written decision from the administrator. For the purpose of such hearings, the commission shall be an "agency head" as defined by s. 120.52~~(3)~~.

(a) The commission shall have the authority to issue orders as a result of a hearing that shall be binding on all parties to the dispute. The commission may order any action that it deems appropriate. In cases involving disability retirement, the State Retirement Commission shall require the member to present competent medical evidence and may require vocational evidence before awarding disability retirement benefits.

(b) Any person who fails to appear in response to a subpoena, answer any question, or produce any evidence pertinent to any hearing or who knowingly gives false testimony therein commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 20. Section 154.312, Florida Statutes, is amended to read:

154.312. Procedure for settlement of disputes

All disputes among counties, the board, the department, a participating hospital, or a regional referral hospital shall be resolved by order as provided in chapter 120. Hearings held under this provision shall be conducted in the same manner as provided in ss. ~~s.~~ 120.569 and 120.57, except that the presiding officer's ~~hearing officer's~~ order shall be final agency action. Cases filed under chapter 120 may combine all disputes between parties. Notwithstanding any other provisions of this part, when a county alleges that a residency determination or eligibility determination made by the department is incorrect, the burden of proof shall be on the county to demonstrate that such determination is, in light of the total record, not supported by the evidence.

Section 21. Subsection (2) of section 161.053, Florida Statutes, is amended to read:

161.053. Coastal construction and excavation; regulation on county basis

(2) Coastal construction control lines shall be established by the department only after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion. No such line shall be set until a public hearing has been held in each affected county. After the department has given consideration to the results of such public hearing, it shall, after considering ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, the dune or bluff line, if any exist, and existing upland development, set and establish a coastal construction control line and cause such line to be duly filed in the public records of any county affected and shall furnish the clerk of the circuit court in each county affected a survey of such line with references made to

permanently installed monuments at such intervals and locations as may be considered necessary. However, no coastal construction control line shall be set until a public hearing has been held by the department and the affected persons have an opportunity to appear. The hearing shall constitute a public hearing and shall satisfy all requirements for a public hearing pursuant to s. 120.54(3). The hearing shall be noticed in the Florida Administrative Weekly in the same manner as a rule. Any coastal construction control line adopted pursuant to this section shall not be subject to a s. 120.56(2) ~~120.54(4)~~ rule challenge or a s. 120.54(3)(c)2.~~(17)~~ drawout proceeding, but, once adopted, shall be subject to a s. 120.56 (3) invalidity challenge. The rule shall be adopted by the department and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~. Upon such filing with the Department of State, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicle on, over, or across any sand dune; or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward thereof, except as hereinafter provided. Control lines established under the provisions of this section shall be subject to review at the discretion of the department after consideration of hydrographic and topographic data that indicate shoreline changes that render established coastal construction control lines to be ineffective for the purposes of this act or at the written request of officials of affected counties or municipalities. Any riparian upland owner who feels that such line as established is unduly restrictive or prevents a legitimate use of the owner's property shall be granted a review of the line upon written request. After such review, the department shall decide if a change in the control line as established is justified and shall so notify the person or persons making the request. The decision of the department shall be subject to judicial review as provided in chapter 120.

Section 22. Subsection (2) of section 161.055, Florida Statutes, is amended to read:

161.055. Concurrent processing of permits

(2) The department may adopt rules requiring concurrent application submittal and establishing a concurrent review and permitting procedure for any activity regulated under this chapter that also requires one or more of the permits, authorizations, or approvals described in paragraph (a) or paragraph (b). The rules must establish concurrent procedures for processing applications under this part with one or more of the permits, authorizations, or approvals described in paragraph (a) or paragraph (b). An applicant that proposes such an activity must submit, as part of the permit application under this chapter, all information necessary to satisfy the requirements for issuance of any required:

(a) Proprietary authorization under chapters 253 and 258 to use submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund; and

(b) Environmental resource permit or dredge and fill permit under part IV of chapter 373.

The timeframes for license approval or denial set forth in s. 120.60 (1)~~(2)~~ do not commence until all required information is received. The rules authorized under this section

may also require submittal of such information as is necessary to determine whether the proposed activity will occur on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, and shall contain provisions for permit processing and issuance of orders which are consistent with s. 373.427 and provisions for providing notice of applications which are consistent with s. 373.413. Authorization under this subsection may not be issued unless the requirements for issuance of any additional required authorizations, permits, waivers, variances, and approvals described in paragraph (a) or paragraph (b) are also satisfied.

Section 23. Subsection (7) of section 163.3167, Florida Statutes, is amended to read:

163.3167. Scope of act

(7) A local government that is being requested to pay costs may seek an administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57 to challenge the amount of costs and to determine if the statutory prerequisites for payment have been complied with. Final agency action shall be taken by the state land planning agency. Payment shall be withheld as to disputed amounts until proceedings under this subsection have been completed.

Section 24. Subsection (9) and paragraph (k) of subsection (10) of section 163.3177, Florida Statutes, are amended to read:

163.3177. Required and optional elements of comprehensive plan; studies and surveys

(9) The state land planning agency shall, by February 15, 1986, adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements required by this act. Such rules shall not be subject to rule challenges under s. 120.56(2) ~~120.54(4)~~ or to drawout proceedings under s. 120.54(3)(c)2. ~~(17).~~ Such rules shall become effective only after they have been submitted to the President of the Senate and the Speaker of the House of Representatives for review by the Legislature no later than 30 days prior to the next regular session of the Legislature. In its review the Legislature may reject, modify, or take no action relative to the rules. The agency shall conform the rules to the changes made by the Legislature, or, if no action was taken, the agency rules shall become effective. The rule shall include criteria for determining whether:

(a) Proposed elements are in compliance with the requirements of part II, as amended by this act.

(b) Other elements of the comprehensive plan are related to and consistent with each other.

(c) The local government comprehensive plan elements are consistent with the state comprehensive plan and the appropriate regional policy plan pursuant to s. 186.508.

(d) Certain bays, estuaries, and harbors that fall under the jurisdiction of more than one local government are managed in a consistent and coordinated manner in the case of local

governments required to include a coastal management element in their comprehensive plans pursuant to paragraph (6)(g).

(e) Proposed elements identify the mechanisms and procedures for monitoring, evaluating, and appraising implementation of the plan. Specific measurable objectives are included to provide a basis for evaluating effectiveness as required by s. 163.3191.

(f) Proposed elements contain policies to guide future decisions in a consistent manner.

(g) Proposed elements contain programs and activities to ensure that comprehensive plans are implemented.

(h) Proposed elements identify the need for and the processes and procedures to ensure coordination of all development activities and services with other units of local government, regional planning agencies, water management districts, and state and federal agencies as appropriate.

The state land planning agency may adopt procedural rules that are consistent with this section and chapter 120 for the review of local government comprehensive plan elements required under this section. The state land planning agency shall provide model plans and ordinances and, upon request, other assistance to local governments in the adoption and implementation of their revised local government comprehensive plans. The review and comment provisions applicable prior to October 1, 1985, shall continue in effect until the criteria for review and determination are adopted pursuant to this subsection and the comprehensive plans required by s. 163.3167(2) are due.

(10) The Legislature recognizes the importance and significance of chapter 9J- 5, F.A.C., the Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance of the Department of Community Affairs that will be used to determine compliance of local comprehensive plans. The Legislature reserved unto itself the right to review chapter 9J-5, F.A.C., and to reject, modify, or take no action relative to this rule. Therefore, pursuant to subsection (9), the Legislature hereby has reviewed chapter 9J-5, F.A.C., and expresses the following legislative intent:

(k) So that local governments are able to prepare and adopt comprehensive plans with knowledge of the rules that will be applied to determine consistency of the plans with provisions of this part, it is the intent of the Legislature that there should be no doubt as to the legal standing of chapter 9J-5, F.A.C., at the close of the 1986 legislative session. Therefore, the Legislature declares that changes made to chapter 9J-5, F.A.C., prior to October 1, 1986, shall not be subject to rule challenges under s. 120.56(2) ~~120.54(4)~~, or to drawout proceedings under s. 120.54 (3)(c)2.~~(17).~~ The entire chapter 9J-5, F.A.C., as amended, shall be subject to rule challenges under s. 120.56(3), as nothing herein shall be construed to indicate approval or disapproval of any portion of chapter 9J-5, F.A.C., not specifically addressed herein. No challenge pursuant to s. 120.56(3) may be filed from July 1, 1987, through April 1, 1993. Any amendments to chapter 9J-5, F.A.C., exclusive of the amendments adopted prior to October 1, 1986, pursuant to this act, shall be subject to the full

chapter 120 process. All amendments shall have effective dates as provided in chapter 120 and submission to the President of the Senate and Speaker of the House of Representatives shall not be required.

Section 25. Paragraph (c) of subsection (3) of section 163.3181, Florida Statutes, is amended to read:

163.3181. Public participation in the comprehensive planning process; intent; alternative dispute resolution

(3) A local government considering undertaking a publicly financed capital improvement project may elect to use the procedures set forth in this subsection for the purpose of allowing public participation in the decision and resolution of disputes. For purposes of this subsection, a publicly financed capital improvement project is a physical structure or structures, the funding for construction, operation, and maintenance of which is financed entirely from public funds.

(c) If an affected person requests an administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57, that person shall file the petition no later than 30 days after the public hearing or no later than 30 days after the change or new information is made available to the public, whichever is later. Affected local governments, the state land planning agency, or other affected persons may intervene. Following the initiation of an administrative hearing, the administrative law judge ~~hearing officer~~ shall, by order issued within 15 days after receipt of the petition, establish a schedule for the proceedings, including discovery, which provides for a final hearing within 60 days of the issuance of the order. Proposed recommended orders must be submitted to the administrative law judge, if at all, within 10 days of the filing of the hearing transcript. Recommended orders shall be submitted to the state land planning agency within 30 days of the last day for the filing of the proposed recommended order ~~using the timeframes for expedited review set forth in s. 120.57(6~~). The state land planning agency shall issue its final order within 45 days of receipt of the recommended order.

Section 26. Subsections (9), (10), and (12), and paragraphs (b), (d), (f), and (g) of subsection (16) of section 163.3184, Florida Statutes, are amended to read:

163.3184. Process for adoption of comprehensive plan or plan amendment

(9) PROCESS IF LOCAL PLAN OR AMENDMENT IS IN COMPLIANCE.—

(a) If the state land planning agency issues a notice of intent to find that the comprehensive plan or plan amendment transmitted pursuant to s. 163.3167, s. 163.3187, s. 163.3189, or s. 163.3191 is in compliance with this act, any affected person may file a petition with the agency pursuant to ss. ~~s.~~ 120.569 and 120.57 within 21 days after the publication of notice. In this proceeding, the local plan or plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable.

(b) The hearing shall be conducted by an administrative law judge ~~a hearing officer~~ of the Division of Administrative Hearings of the Department of Management Services, who shall hold the hearing in the county of and convenient to the affected local jurisdiction and submit a recommended order to the state land planning agency. The state land planning agency shall allow 10 days for the filing of exceptions to the recommended order and shall issue a final order within 30 days after receipt of the recommended order if the state land planning agency determines that the plan or plan amendment is in compliance. If the state land planning agency determines that the plan or plan amendment is not in compliance, the agency shall submit, within 30 days after receipt, the recommended order to the Administration Commission for final agency action.

(10) PROCESS IF LOCAL PLAN OR AMENDMENT IS NOT IN COMPLIANCE.—

(a) If the state land planning agency issues a notice of intent to find the comprehensive plan or plan amendment not in compliance with this act, the notice of intent shall be forwarded to the Division of Administrative Hearings of the Department of Management Services, which shall conduct a proceeding under ss. ~~s.~~ 120.569 and 120.57 in the county of and convenient to the affected local jurisdiction. The parties to the proceeding shall be the state land planning agency, the affected local government, and any affected person who intervenes. No new issue may be alleged as a reason to find a plan or plan amendment not in compliance in an administrative pleading filed more than 21 days after publication of notice unless the party seeking that issue establishes good cause for not alleging the issue within that time period. Good cause shall not include excusable neglect. In the proceeding, the local government's determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance. The local government's determination that elements of its plans are related to and consistent with each other shall be sustained if the determination is fairly debatable.

(b) The administrative law judge ~~hearing officer~~ assigned by the division shall submit a recommended order to the Administration Commission for final agency action.

(c) Prior to the hearing, the state land planning agency shall afford an opportunity to mediate or otherwise resolve the dispute. If a party to the proceeding requests mediation or other alternative dispute resolution, the hearing may not be held until the state land planning agency advises the administrative law judge ~~hearing officer~~ in writing of the results of the mediation or other alternative dispute resolution. However, the hearing may not be delayed for longer than 90 days for mediation or other alternative dispute resolution unless a longer delay is agreed to by the parties to the proceeding. The costs of the mediation or other alternative dispute resolution shall be borne equally by all of the parties to the proceeding.

(12) GOOD FAITH FILING.--The signature of an attorney or party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or for economic advantage, competitive reasons, or frivolous purposes or needless increase in the

cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the administrative law judge ~~hearing officer~~, upon motion or his or her own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to 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.

(16) COMPLIANCE AGREEMENTS.—

(b) Upon filing by the state land planning agency of a compliance agreement executed by the agency and the local government with the Division of Administrative Hearings, any administrative proceeding under ss. ~~s.~~ 120.569 and 120.57 regarding the plan or plan amendment covered by the compliance agreement shall be stayed.

(d) A local government may adopt a plan amendment pursuant to a compliance agreement in accordance with the requirements of paragraph (15)(a). The plan amendment shall be exempt from the requirements of subsections (2) through (7). The local government shall hold a single adoption public hearing pursuant to the requirements of subparagraph (15)(b)2. and paragraph (15)(c). Within 10 working days after adoption of a plan amendment, the local government shall transmit the amendment to the state land planning agency as specified in the agency's procedural rules, and shall submit one copy to the regional planning agency and to any other unit of local government or government agency in the state that has filed a written request with the governing body for a copy of the plan amendment, and one copy to any party to the ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57 granted intervenor status.

(f)1. If the local government adopts a comprehensive plan amendment pursuant to a compliance agreement and a notice of intent to find the plan amendment in compliance is issued, the state land planning agency shall forward the notice of intent to the Division of Administrative Hearings and the administrative law judge ~~hearing officer~~ shall realign the parties in the pending ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57, which shall thereafter be governed by the process contained in paragraphs (9)(a) and (b), including provisions relating to challenges by an affected person, burden of proof, and issues of a recommended order and a final order, except as provided in subparagraph 2. Parties to the original proceeding at the time of realignment may continue as parties without being required to file additional pleadings to initiate a proceeding, but may timely amend their pleadings to raise any challenge to the amendment which is the subject of the cumulative notice of intent, and must otherwise conform to the rules of procedure of the Division of Administrative Hearings. Any affected person not a party to the realigned proceeding may challenge the plan amendment which is the subject of the cumulative notice of intent by filing a petition with the agency as provided in subsection (9). The agency shall forward the petition filed by the affected person not a party to the realigned proceeding to the Division of Administrative Hearings for consolidation with the realigned proceeding.

2. If any of the issues raised by the state land planning agency in the original subsection (10) proceeding are not resolved by the compliance agreement amendments, any intervenor

in the original subsection (10) proceeding may require those issues to be addressed in the pending ~~s. 120.57~~ consolidated realigned proceeding under ss. 120.569 and 120.57. As to those unresolved issues, the burden of proof shall be governed by subsection (10).

3. If the local government adopts a comprehensive plan amendment pursuant to a compliance agreement and a notice of intent to find the plan amendment not in compliance is issued, the state land planning agency shall forward the notice of intent to the Division of Administrative Hearings, which shall consolidate the proceeding with the pending proceeding and immediately set a date for hearing in the pending ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57. Affected persons who are not a party to the underlying ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57 may challenge the plan amendment adopted pursuant to the compliance agreement by filing a petition pursuant to subsection (10).

(g) If the local government fails to adopt a comprehensive plan amendment pursuant to a compliance agreement, the state land planning agency shall notify the Division of Administrative Hearings, which shall set the hearing in the pending ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57 at the earliest convenient time.

Section 27. Paragraphs (a) and (b) of subsection (3) of section 163.3187, Florida Statutes, are amended to read:

163.3187. Amendment of adopted comprehensive plan

(3)(a) The state land planning agency shall not review or issue a notice of intent for small scale development amendments which satisfy the requirements of

paragraph (1)(c). Any affected person may file a petition with the Division of Administrative Hearings pursuant to ss. ~~s.~~ 120.569 and 120.57 to request a hearing to challenge the compliance of a small scale development amendment with this act within 30 days following the local government's adoption of the amendment, shall serve a copy of the petition on the local government, and shall furnish a copy to the state land planning agency. An administrative law judge ~~A hearing officer~~ shall hold a hearing in the affected jurisdiction not less than 30 days nor more than 60 days following the filing of a petition and the assignment of an administrative law judge ~~a hearing officer~~. The parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the local government's determination that the small scale development amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this act. In any proceeding initiated pursuant to this subsection, the state land planning agency may intervene.

(b)1. If the administrative law judge ~~hearing officer~~ recommends that the small scale development amendment be found not in compliance, the administrative law judge ~~hearing officer~~ shall submit the recommended order to the Administration Commission for final agency action. If the administrative law judge ~~hearing officer~~ recommends that the small scale development amendment be found in compliance, the administrative law judge ~~hearing officer~~ shall submit the recommended order to the state land planning agency.

2. If the state land planning agency determines that the plan amendment is not in compliance, the agency shall submit, within 30 days following its receipt, the recommended order to the Administration Commission for final agency action. If the state land planning agency determines that the plan amendment is in compliance, the agency shall enter a final order within 30 days following its receipt of the recommended order.

Section 28. Paragraphs (a) and (b) of subsection (3) of section 163.3189, Florida Statutes, are amended to read:

163.3189. Process for amendment of adopted comprehensive plan

(3)(a) At any time after the department has issued its notice of intent and the matter has been forwarded to the Division of Administrative Hearings, the local government proposing the amendment may demand formal mediation or the local government proposing the amendment or an affected person who is a party to the proceeding may demand informal mediation or expeditious resolution of the amendment proceedings by serving written notice on the state land planning agency, all other parties to the proceeding, and the administrative law judge ~~hearing officer~~.

(b) Upon receipt of a notice pursuant to paragraph (a), the administrative law judge ~~hearing officer~~ shall set the matter for final hearing no more than 30 days after receipt of the notice. Once a final hearing pursuant to this paragraph has been set, no continuance in the hearing, and no additional time for post-hearing submittals, may be granted without the written agreement of the parties absent a finding by the administrative law judge ~~hearing officer~~ of extraordinary circumstances. Extraordinary circumstances do not include matters relating to workload or need for additional time for preparation or negotiation.

Section 29. Subsection (11) and paragraph (f) of subsection (12) of section 163.3191, Florida Statutes, are amended to read:

163.3191. Evaluation and appraisal of comprehensive plan

(11) The Administration Commission may impose the sanctions provided by s. 163.3184(11) against any local government that fails to implement its report through timely and sufficient amendments to its local plan except for reasons of excusable delay. Sanctions shall be prospective only and begin after a final order has been issued by the Administration Commission and a reasonable period of time has been allowed for the local government to comply with an adverse determination by the Administration Commission through adoption of plan amendments that are in compliance. The state land planning agency may initiate, and an affected person may intervene in, such a proceeding by filing a petition with the Division of Administrative Hearings, which shall appoint an administrative law judge ~~a hearing officer~~ and conduct a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57(1) and submit a recommended order to the Administration Commission. The commission may implement this subsection by rule.

(12)

(f) The state land planning agency's decision to grant, modify, or terminate a written agreement on local planning requirements authorized by this subsection shall be subject to a formal administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57(1) upon petition by an affected person as defined in s. 163.3184(1).

Section 30. Subsections (5), (6), and (8) of section 163.3213, Florida Statutes, are amended to read:

163.3213. Administrative review of land development regulations

(5)(a) If the state land planning agency determines that the regulation is consistent with the local comprehensive plan, the substantially affected person who filed the original petition with the local government may, within 21 days, request a hearing from the Division of Administrative Hearings, and an administrative law judge ~~a hearing officer~~ shall hold a hearing in the affected jurisdiction no earlier than 30 days after the state land planning agency renders its decision pursuant to subsection (4). The parties to a hearing held pursuant to this paragraph shall be the petitioning, substantially affected person, any intervenor, the state land planning agency, and the local government. The adoption of a land development regulation by a local government is legislative in nature and shall not be found to be inconsistent with the local plan if it is fairly debatable that it is consistent with the plan. The hearing shall be held pursuant to ss. ~~s.~~ 120.569 and 120.57(1), except that the order of the administrative law judge ~~hearing officer~~ shall be a final order and shall be appealable pursuant to s. 120.68.

(b) If the state land planning agency determines that the regulation is inconsistent with the local comprehensive plan, the state land planning agency shall, within 21 days, request a hearing from the Division of Administrative Hearings, and an administrative law judge ~~a hearing officer~~ shall hold a hearing in the affected jurisdiction not earlier than 30 days after the state land planning agency renders its decision pursuant to subsection (4). The parties to a hearing held pursuant to this paragraph shall be the petitioning, substantially affected person, the local government, any intervenor, and the state land planning agency. The adoption of a land development regulation by a local government is legislative in nature and shall not be found to be inconsistent with the local plan if it is fairly debatable that it is consistent with the plan. The hearing shall be held pursuant to ss. ~~s.~~ 120.569 and 120.57(1), except that the order of the administrative law judge ~~hearing officer~~ shall be the final order and shall be appealable pursuant to s. 120.68.

(6) If the administrative law judge ~~hearing officer~~ in his or her order finds the land development regulation to be inconsistent with the local comprehensive plan, the order will be submitted to the Administration Commission. An appeal pursuant to s. 120.68 may not be taken until the Administration Commission acts pursuant to this subsection. The Administration Commission shall hold a hearing no earlier than 30 days or later than 60 days after the administrative law judge ~~hearing officer~~ renders his or her final order. The sole issue before the Administration Commission shall be the extent to which any of the sanctions

described in s. 163.3184(11)(a) or (b) shall be applicable to the local government whose land development regulation has been found to be inconsistent with its comprehensive plan. If a land development regulation is not challenged within 12 months, it shall be deemed to be consistent with the adopted local plan.

(8) The signature of an attorney or party constitutes a certificate that he or she has read the petition, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or for economic advantage, competitive reasons, or frivolous purposes or needless increase in the cost of litigation. If a petition, motion, or other paper is signed in violation of these requirements, the administrative law judge ~~hearing officer~~, upon motion or his or her own initiative, shall impose upon the person who signed it or upon a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the petition, motion, or other paper, including a reasonable attorney's fee.

Section 31. Section 186.508, Florida Statutes, is amended to read:

186.508. Strategic regional policy plan adoption; consistency with state comprehensive plan

(1) Each regional planning council shall submit to the Executive Office of the Governor its proposed strategic regional policy plan on a schedule adopted by rule by the Executive Office of the Governor to coordinate implementation of the strategic regional policy plans with the evaluation and appraisal reports required by s. 163.3191. The Executive Office of the Governor, or its designee, shall review the proposed strategic regional policy plan for consistency with the adopted state comprehensive plan and shall, within 60 days, return the proposed strategic regional policy plan to the council, together with any revisions recommended by the Governor. The Executive Office of the Governor must consider the findings of the Statewide Health Council's review of the consistency of the health elements of the strategic regional policy plans with the health element of the state comprehensive plan in formulating recommended revisions to the strategic regional policy plans if the regional planning council has elected to address health issues in its strategic regional policy plan. The Governor's recommended revisions shall be included in the plans in a comment section. However, nothing herein shall preclude a regional planning council from adopting or rejecting any or all of the revisions as a part of its plan prior to the effective date of the plan. The rules adopting the strategic regional policy plan shall not be subject to rule challenge under s. 120.56(2) ~~120.54(4)~~ or to drawout proceedings under s. 120.54(3)(c)2.~~(17)~~, but, once adopted, shall be subject to an invalidity challenge under s. 120.56(3) by substantially affected persons, including the Executive Office of the Governor. The rules shall be adopted by the regional planning councils within 90 days after receipt of the revisions recommended by the Executive Office of the Governor, and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6. ~~(13)~~.

(2) If a local government within the jurisdiction of a regional planning council challenges a portion of the council's regional policy plan pursuant to s. 120.56, the applicable portion of that local government's comprehensive plan shall not be required to be consistent with the challenged portion of the regional policy plan until 12 months after the challenge has been resolved by an administrative law judge ~~a hearing officer~~.

(3) All amendments to the adopted regional policy plan shall be subject to all challenges pursuant to chapter 120.

Section 32. Subsection (3) of section 189.421, Florida Statutes, is amended to read:

189.421. Failure of district to disclose financial reports

(3) If the department determines that a good faith effort has not been made to file the report or that a reasonable time has passed and the reports have not been forthcoming, it may file a petition for hearing, pursuant to ss. ~~s.~~ 120.569 and 120.57, on the question of the inactivity of the district. The proceedings and hearings required by ss. 189.416-189.422 shall be conducted by an administrative law judge ~~a hearing officer~~ assigned by the Division of Administrative Hearings of the Department of Management Services and shall be governed by the provisions of the Administrative Procedure Act. Such hearing shall be held in the county in which the district is located, pursuant to all the applicable provisions of chapter 120. Notice of the hearing shall be served on the district's registered agent and published at least once a week for 2 successive weeks prior to the hearing in a newspaper of general circulation in the area affected. The notice shall state the time, place, and nature of the hearing and that all interested parties may appear and be heard. Within 30 days of the hearing, the administrative law judge ~~hearing officer~~ shall file a report with the department in the manner provided in chapter 120.

Section 33. Subsection (1) of section 189.422, Florida Statutes, is amended to read:

189.422. Action of the department

(1) If the department determines, after receipt of the report from the administrative law judge ~~hearing examiner~~, that there is an inactive district under the criteria established in s. 189.4044, it shall file such determination with the Secretary of State pursuant to s. 189.4044.

Section 34. Paragraph (a) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005. Establishment of district

(1) The exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(a) A petition for the establishment of a community development district shall be filed by the petitioner with the Florida Land and Water Adjudicatory Commission. The petition shall contain:

1. A metes and bounds description of the external boundaries of the district. Any real property within the external boundaries of the district which is to be excluded from the district shall be specifically described, and the last known address of all owners of such real property shall be listed. The petition shall also address the impact of the proposed district on any real property within the external boundaries of the district which is to be excluded from the district.

2. The written consent to the establishment of the district by the owner or owners of 100 percent of the real property to be included in the district or documentation demonstrating that the petitioner has control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the district.

3. A designation of five persons to be the initial members of the board of supervisors, who shall serve in that office until replaced by elected members as provided in s. 190.006.

4. The proposed name of the district.

5. A map of the proposed district showing current major trunk water mains and sewer interceptors and outfalls if in existence.

6. Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services. These estimates shall be submitted in good faith but shall not be binding and may be subject to change.

7. A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the district by the future land use plan element of the effective local government comprehensive plan of which all mandatory elements have been adopted by the applicable general-purpose local government in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act.

8. A ~~An economic impact~~ statement of estimated regulatory costs in accordance with the requirements of s. 120.541 ~~120.54(2)~~.

Section 35. Paragraph (a) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05. Sales, storage, use tax

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the

things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

b. Each occasional or isolated sale of an aircraft, boat, mobile home, or motor vehicle of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government shall be subject to tax at the rate provided in this paragraph. The department shall by rule adopt any nationally recognized publication for valuation of used motor vehicles as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price which is less than 80 percent of the average loan price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the parties to the sale have provided to the tax collector an affidavit signed by each party, or other substantial proof, stating the actual sales price. Any party to such sale who reports a sales price less than the actual sales price is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department shall collect or attempt to collect from such party any delinquent sales taxes. In addition, such party shall pay any tax due and any penalty and interest assessed plus a penalty equal to twice the amount of the additional tax owed. Notwithstanding any other provision of law, the Department of Revenue may waive or compromise any penalty imposed after July 1, 1985, pursuant to this subparagraph.

2. This paragraph does not apply to the sale of a boat or airplane by or through a registered dealer under this chapter to a purchaser who, at the time of taking delivery, is a nonresident of this state, does not make his or her permanent place of abode in this state, and is not engaged in carrying on in this state any employment, trade, business, or profession in which the boat will be used in this state, or is a corporation none of the officers or directors of which is a resident of, or makes his or her permanent place of abode in, this state. This exemption shall not be allowed unless:

a. The purchaser removes a qualifying boat, as described in sub-subparagraph f., from the state within 90 days after the date of purchase or the purchaser removes a nonqualifying boat or an airplane from this state within 10 days after the date of purchase or, when the boat or airplane is repaired or altered, within 20 days after completion of the repairs or alterations;

b. The purchaser, within 30 days from the date of departure, shall provide the department with written proof that the purchaser licensed, registered, titled, or documented the boat or airplane outside the state. If such written proof is unavailable, within 30 days the purchaser shall provide proof that the purchaser applied for such license, title, registration, or

documentation. The purchaser shall forward to the department proof of title, license, registration, or documentation upon receipt.

c. The purchaser, within 10 days of removing the boat or airplane from Florida, shall furnish the department with proof of removal in the form of receipts for fuel, dockage, slippage, tie-down, or hangaring from outside of Florida. The information so provided must clearly and specifically identify the boat or aircraft;

d. The selling dealer, within 5 days of the date of sale, shall provide to the department a copy of the sales invoice, closing statement, bills of sale, and the original affidavit signed by the purchaser attesting that he or she has read the provisions of this section;

e. The seller makes a copy of the affidavit a part of his or her record for as long as required by s. 213.35; and

f. Unless the nonresident purchaser of a boat of 5 net tons of admeasurement or larger intends to remove the boat from this state within 10 days after the date of purchase or when the boat is repaired or altered, within 20 days after completion of the repairs or alterations, the nonresident purchaser shall apply to the selling dealer for a decal which authorizes 90 days after the date of purchase for removal of the boat. The department is authorized to issue decals in advance to dealers. The number of decals issued in advance to a dealer shall be consistent with the volume of the dealer's past sales of boats which qualify under this sub-subparagraph. The selling dealer or his or her agent shall mark and affix the decals to qualifying boats in the manner prescribed by the department, prior to delivery of the boat.

(I) The department is hereby authorized to charge dealers a fee sufficient to recover the costs of decals issued.

(II) The proceeds from the sale of decals will be deposited into the administrative trust fund.

(III) Decals shall display information to identify the boat as a qualifying boat under this sub-subparagraph, including, but not limited to, the decal's date of expiration.

(IV) The department is authorized to require dealers who purchase decals to file reports with the department and may prescribe all necessary records by rule. All such records are subject to inspection by the department.

(V) Any dealer or his or her agent who issues a decal falsely, fails to affix a decal, mismarks the expiration date of a decal, or fails to properly account for decals will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VI) Any nonresident purchaser of a boat who removes a decal prior to permanently removing the boat from the state, or defaces, changes, modifies, or alters a decal in a manner affecting its expiration date prior to its expiration, or who causes or allows the same to be done by another, will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VII) The department is authorized to adopt rules necessary to administer and enforce this subparagraph and to publish the necessary forms and instructions.

(VIII) The department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4)~~(9)~~ to administer and enforce the provisions of this subparagraph. If the purchaser fails to remove the qualifying boat from this state within 90 days after purchase or a nonqualifying boat or an airplane from this state within 10 days after purchase or, when the boat or airplane is repaired or altered, within 20 days after completion of such repairs or alterations, or permits the boat or airplane to return to this state within 6 months from the date of departure, or if the purchaser fails to furnish the department with any of the documentation required by this subparagraph within the prescribed time period, the purchaser shall be liable for use tax on the cost price of the boat or airplane and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2) and is mandatory and shall not be waived by the department. The 90-day period following the sale of a qualifying boat tax exempt to a nonresident may not be tolled for any reason.

Section 36. Section 212.0599, Florida Statutes, is amended to read:

212.0599. Rules which implement chs. 87-6, 87-101, and 87-548

(1) Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of chapter 87-6 or chapter 87-101, Laws of Florida, shall not be subject to a s. 120.56(2) ~~120.54(4)~~ rule challenge or a s. 120.54(3)(c)2.~~(17)~~ drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~.

(2) The Legislature hereby finds that the failure to promptly implement the provisions of chapter 87-548, Laws of Florida, would present an immediate threat to the welfare of the state because revenues needed for operation of the state would not be collected. Therefore, the executive director of the Department of Revenue is hereby authorized to adopt emergency rules pursuant to s. 120.54(4)~~(9)~~ for purposes of implementing chapter 87- 548, Laws of Florida. Notwithstanding any other provision of law, such emergency rules shall remain effective for 6 months from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of chapter 87-548, Laws of Florida, shall not be subject to a s. 120.56(2) ~~120.54(4)~~ rule challenge or a s.

120.54(3)(c)2.~~(17)~~ drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~. This subsection shall take effect January 1, 1988.

Section 37. Subsection (8) of section 213.015, Florida Statutes, is amended to read:

213.015. Taxpayer rights

There is created a Florida Taxpayer's Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements which explain, in simple, nontechnical terms, the rights and obligations of the Department of Revenue and taxpayers. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax assessment and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed Florida taxpayers in the Florida Statutes and the departmental rules are:

(8) The right to seek review, through formal or informal proceedings, of any adverse decisions relating to determinations in the audit or collections processes and the right to seek a reasonable administrative stay of enforcement actions while the taxpayer pursues other administrative remedies available under Florida law (see ss. 120.80(14)(b) ~~120.575~~, 213.21(1), 220.717, and 220.719(2)).

Section 38. Subsection (2) of section 213.06, Florida Statutes, is amended to read:

213.06. Rules of department; circumstances requiring emergency rules

(2) The executive director of the department may adopt emergency rules pursuant to s. 120.54 on behalf of the department when the effective date of a legislative change occurs sooner than 60 days after the close of a legislative session in which enacted and the change affects a tax rate or a collection or reporting procedure which affects a substantial number of dealers or persons subject to the tax change or procedure. The Legislature finds that such circumstances qualify as an exception to the prerequisite of a finding of immediate danger to the public health, safety, or welfare as set forth in s. 120.54(4)~~(9)~~(a) and qualify as circumstances requiring an emergency rule.

Section 39. Section 213.065, Florida Statutes, is amended to read:

213.065. Rule adoption to implement ch. 89-171

The executive director of the Department of Revenue is hereby authorized to adopt emergency rules pursuant to s. 120.54(4)~~(9)~~ for purposes of implementing the applicable provisions of chapter 89-171, Laws of Florida. Rules of the Department of Revenue related

to and in furtherance of the orderly implementation of the applicable provisions of chapter 89-171, Laws of Florida, shall not be subject to s. 120.54(3)(c)2.~~(17)~~ drawout proceeding, but, once adopted, shall be subject to s. 120.56 (3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~.

Section 40. Section 213.066, Florida Statutes, is amended to read:

213.066. Rule adoption to implement ch. 92-319

The Legislature hereby finds that the failure to promptly implement the provisions of chapter 92-319, Laws of Florida, would present an immediate threat to the welfare of the state because revenues needed for operation of the state would not be collected. Therefore, the executive director of the Department of Revenue is hereby authorized to adopt emergency rules pursuant to s. 120.54(4)~~(9)~~ for purposes of implementing chapter 92- 319, Laws of Florida. Notwithstanding any other provision of law, such emergency rules shall remain effective for 6 months from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of chapter 92-319, Laws of Florida, shall not be subject to a rule challenge pursuant to s. 120.56(2) ~~120.54(4)~~ or a drawout proceeding pursuant to s. 120.54(3)(c)2.~~(17)~~, but, once adopted, shall be subject to an invalidity challenge pursuant to s. 120.56(3). Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~. This section shall take effect July 8, 1992.

Section 41. Paragraph (a) of subsection (1) of section 213.21, Florida Statutes, is amended to read:

213.21. Informal conferences; compromises

(1)(a) The Department of Revenue may adopt rules for establishing informal conference procedures within the department for resolution of disputes relating to assessment of taxes, interest, and penalties and for informal hearings under ss. ~~s.~~ 120.569 and 120.57(2).

Section 42. Subsection (1) of section 213.22, Florida Statutes, is amended to read:

213.22. Technical assistance advisements

(1) The department may issue informal technical assistance advisements to persons, upon written request, as to the position of the department on the tax consequences of a stated transaction or event, under existing statutes, rules, or policies. After the issuance of an assessment, a technical assistance advisement may not be issued to a taxpayer who requests an advisement relating to the tax or liability for tax in respect to which the assessment has been made. Technical assistance advisements shall have no precedential value except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement.

Any modification of an advisement shall be prospective only. A technical assistance advisement is not an order issued pursuant to s. 120.565 or s. 120.569 ~~120.59~~ or a rule or policy of general applicability under s. 120.54. The provisions of s. 120.53(1)~~(2)~~ are not applicable to technical assistance advisements.

Section 43. Subsection (5) of section 215.26, Florida Statutes, is amended to read:

215.26. Repayment of funds paid into State Treasury through error

(5) When a taxpayer has pursued administrative remedies before the Department of Revenue pursuant to s. 213.21 and has failed to comply with the time limitations and conditions provided in ss. 72.011 and 120.80(14)(b) ~~120.575~~, a claim of refund under subsection (1) shall be denied by the Comptroller. However, the Comptroller may entertain a claim for refund under this subsection when the taxpayer demonstrates that his or her failure to pursue remedies under chapter 72 was not due to neglect or for the purpose of delaying payment of lawfully imposed taxes and can demonstrate reasonable cause for such failure.

Section 44. Paragraph (b) of subsection (3) of section 215.422, Florida Statutes, is amended to read:

215.422. Warrants, vouchers, and invoices; processing time limits; dispute resolution; agency or judicial branch compliance

(3)

(b) If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch shall pay to the vendor, in addition to the amount of the invoice, interest at a rate as established pursuant to s. 55.03(1) on the unpaid balance from the expiration of such 40-day period until such time as the warrant is issued to the vendor. Such interest shall be added to the invoice at the time of submission to the Comptroller for payment whenever possible. If addition of the interest penalty is not possible, the agency or judicial branch shall pay the interest penalty payment within 15 days after issuing the warrant. The provisions of this paragraph apply only to undisputed amounts for which payment has been authorized. Disputes shall be resolved in accordance with rules developed and adopted by the Chief Justice for the judicial branch, and rules adopted by the Department of Banking and Finance or in a formal administrative proceeding before an administrative law judge ~~a hearing officer~~ of the Division of Administrative Hearings for state agencies, provided that, for the purposes of ss. ~~s.~~ 120.569 and 120.57(1), no party to a dispute involving less than $1,000 in interest penalties shall be deemed to be substantially affected by the dispute or to have a substantial interest in the decision resolving the dispute. In the case of an error on the part of the vendor, the 40-day period shall begin to run upon receipt by the agency or the judicial branch of a corrected invoice or other remedy of the error. The provisions of this paragraph do not apply when the filing requirement under subsection (1) or subsection (2) has been waived in whole by the Department of Banking and Finance. The various state agencies and the judicial branch shall be responsible for initiating the penalty payments required by this subsection

and shall use this subsection as authority to make such payments. The budget request submitted to the Legislature shall specifically disclose the amount of any interest paid by any agency or the judicial branch pursuant to this subsection. The temporary unavailability of funds to make a timely payment due for goods or services does not relieve an agency or the judicial branch from the obligation to pay interest penalties under this section.

Section 45. Paragraphs (c) and (d) of subsection (2) and subsection (7) of section 215.684, Florida Statutes, are amended to read:

215.684. Limitation on engaging services of securities broker or bond underwriter convicted of fraud

(2) Upon notification under chapter 517 that a person or firm has been convicted or has pleaded as provided in subsection (1), the Comptroller shall issue a notice of intent to take action to disqualify such person or firm, which notice must state that:

(c) The substantial rights of such person or firm as a securities broker or bond underwriter are being affected and the person or firm has the rights accorded pursuant to ss. ~~s.~~ 120.569 and 120.57; and

(d) Such person or firm may petition to mitigate the duration of his or her disqualification, based on the criteria established in subsection (3) and may request that such mitigation be considered as part of any hearing under ss. ~~s.~~ 120.569 and 120.57.

(7) A person or firm requesting a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57 may consent to a disqualification beginning prior to the disposition of the proceedings, in which case the period of disqualification shall run from such agreed upon date.

Section 46. Paragraph (m) of subsection (4) and paragraph (c) of subsection (6) of section 230.23, Florida Statutes, are amended to read:

230.23. Powers and duties of school board

The school board, acting as a board, shall exercise all powers and perform all duties listed below:

(4) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS.--Adopt and provide for the execution of plans for the establishment, organization, and operation of the schools of the district, as follows:

(m) Exceptional students.--Provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the state board as acceptable, including provisions that:

1. The school board provide the necessary professional services for diagnosis and evaluation of exceptional students.

2. The school board provide the special instruction, classes, and services, either within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved nonpublic schools or community facilities which meet standards established by the state board.

3. The school board annually provide information describing the Florida School for the Deaf and the Blind and all other programs and methods of instruction available to the parent or guardian of a sensory-impaired student.

4. The school board, once every 3 years, submit to the department its proposed procedures for the provision of special instruction and services for exceptional students.

5. No student be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the state board. The parent or guardian of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. Such notice shall contain a statement informing the parent or guardian that he or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack thereof. Such hearings shall be exempt from the provisions of ss. 120.569, 120.57, and 286.011, and any records created as a result of such hearings shall be confidential and exempt from the provisions of s. 119.07(1), to the extent that the state board adopts rules establishing other procedures. These exemptions from ss. 119.07(1) and 286.011 are subject to the Open Government Sunset Review Act in accordance with s. 119.14. The hearing shall be conducted by an administrative law judge ~~a hearing officer~~ from the Division of Administrative Hearings of the Department of Management Services. The decision of the administrative law judge ~~hearing officer~~ shall be final, except that any party aggrieved by the finding and decision rendered by the administrative law judge ~~hearing officer~~ shall have the right to bring a civil action in the circuit court. In such an action, the court shall receive the records of the administrative hearing and shall hear additional evidence at the request of either party. In the alternative, any party aggrieved by the finding and decision rendered by the administrative law judge ~~hearing officer~~ shall have the right to request an impartial review of the administrative law judge's ~~hearing officer's~~ order by the district court of appeal as provided by s. 120.68. Notwithstanding any law to the contrary, during the pendency of any proceeding conducted pursuant to this section, unless the district school board and the parents or guardian otherwise agree, the child shall remain in his or her then current educational assignment or, if applying for initial admission to a public school, shall be assigned, with the consent of the parents or guardian, in the public school program until all such proceedings have been completed.

6. In providing for the education of exceptional students, the superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students to the maximum extent appropriate. Segregation of exceptional students shall occur only if the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

7. The principal of the school in which the student is taught shall keep a written record of the case history of each exceptional student showing the reason for the student's withdrawal from the regular class in the public school and his or her enrollment in or withdrawal from a special class for exceptional students. This record shall be available for inspection by school officials at any time.

8. The district school board shall establish the amount to be paid by the district school board for each individual exceptional student contract with a nonpublic school.

(6) CHILD WELFARE.--Provide for the proper accounting for all children of school age, for the attendance and control of pupils at school, and for proper attention to health, safety, and other matters relating to the welfare of children in the following fields, as prescribed in chapter 232.

(c) Control of pupils.—

1. Adopt rules and regulations for the control, discipline, in-school suspension, suspension, and expulsion of pupils and decide all cases recommended for expulsion. Such rules shall clearly specify disciplinary action that shall be imposed if a student possesses alcoholic beverages or electronic telephone pagers or is involved in the illegal use, sale, or possession of controlled substances, as defined in chapter 893, on school property or while attending a school function. School boards are encouraged to include in these provisions alternatives to expulsion and suspension such as in-school suspension, assignment to second chance schools, and guidelines on identification and referral of students to alcohol and substance abuse treatment agencies. To the extent that funding is available, it is the intent of the Legislature that all persons of compulsory school age who have not received a high school diploma be placed in an appropriate program which may include, but not be limited to, traditional schools, second chance schools jointly provided by the district school board and the Department of Juvenile Justice, disciplinary schools, and other alternatives to expulsion programs. Suspension hearings are exempted from the provisions of chapter 120. Expulsion hearings shall be governed by ss. ~~s.~~ 120.569 and 120.57(2) and are exempt from s. 286.011. However, the pupil's parent or legal guardian must be given notice of the provisions of s. 286.011 and may elect to have the hearing held in compliance with that section. The school board shall have the authority to prohibit the use of corporal punishment, provided that the school board adopts or has adopted a written program of alternative control or discipline, which may include, but is not limited to, timeout rooms, in- school suspension, student peer review, parental involvement, and other forms of positive reinforcement, such as classes on appropriate classroom behavior.

2. Have the authority as the school board of a receiving school district to honor the final order of expulsion of a student by another school board in accordance with the following procedures:

a. A final order of expulsion shall be recorded in the records of the receiving school district.

b. The expelled student applying for admission to the receiving school district shall be advised of the final order of expulsion.

c. The superintendent of schools of the receiving school district may recommend to the school board that the final order of expulsion be waived and the student be admitted to the school district, or that the final order of expulsion be honored and the student not be admitted to the school district. If the student is admitted by the school board, with or without the recommendation of the superintendent, the student may be placed in an appropriate educational program at the direction of the school board.

Section 47. Section 230.234, Florida Statutes, is amended to read:

230.234. Legal services for employees; reimbursement for judgments in civil actions

The school boards of the several districts are authorized to provide legal services for officers and employees of said boards who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities. The school board shall provide for reimbursement of reasonable expenses for legal services for officers and employees of said boards who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities upon successful defense by the employee or officer. However, in any case in which the officer or employee pleads guilty or nolo contendere or is found guilty of any such action, the officer or employee shall reimburse the board for any legal services which the board may have supplied pursuant to this section. A school board may also reimburse an officer or employee of the school board for any judgment which may be entered against him or her in a civil action arising out of and in the course of the performance of his or her assigned duties and responsibilities. Each expenditure by a school board for legal defense of an officer or employee, or for reimbursement pursuant to this section, shall be made at a public meeting with notice pursuant to s. <u>120.525(1)</u> ~~120.53(1)(d)~~. The providing of such legal services or reimbursement under the conditions described above is declared to be a district school purpose for which district school funds may be expended.

Section 48. Paragraph (c) of subsection (8) of section 230.33, Florida Statutes, is amended to read:

230.33. Duties and responsibilities of superintendent

The superintendent shall exercise all powers and perform all duties listed below and elsewhere in the law; provided, that in so doing he or she shall advise and counsel with the school board. The recommendations, nominations, proposals, and reports required by law and rule to be made to the school board by the superintendent shall be either recorded in the minutes or shall be made in writing, noted in the minutes, and filed in the public records of the board. It shall be presumed that, in the absence of the record required in this paragraph, the recommendations, nominations, and proposals required of the superintendent were not contrary to the action taken by the school board in such matters.

(8) CHILD WELFARE.--Recommend plans to the school board for the proper accounting for all children of school age, for the attendance and control of pupils at school, for the proper attention to health, safety, and other matters which will best promote the welfare of children in the following fields, as prescribed in chapter 232:

(c) Control of pupils.--Propose rules and regulations for the control, discipline, in-school suspension, suspension, and expulsion of pupils and review and modify recommendations for suspension and expulsion of pupils and transmit to the school board for action recommendations for expulsion of pupils. When the superintendent makes a recommendation for expulsion to the school board, he or she shall give written notice to the pupil and the pupil's parent or guardian of the recommendation, setting forth the charges against the pupil and advising the pupil and his or her parent or guardian of the pupil's right to due process as prescribed by ss. ~~s.~~ 120.569 and 120.57(2). When school board action on a recommendation for the expulsion of a pupil is pending, the superintendent may extend the suspension assigned by the principal beyond 10 school days if such suspension period expires before the next regular or special meeting of the school board.

Section 49. Subsection (5) of section 231.262, Florida Statutes, is amended to read:

231.262. Complaints against teachers and administrators; procedure; penalties

(5) Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An administrative law judge ~~A hearing officer~~ shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge ~~hearing officer~~ shall make recommendations in accordance with the provisions of subsection (6) to the appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

Section 50. Paragraphs (c) and (e) of subsection (10) of section 231.263, Florida Statutes, are amended to read:

231.263. Recovery network program for educators

(10)

(c) If a treatment contract with the program is a condition of a deferred prosecution agreement, and the commissioner determines that the person is ineligible for further assistance, the commissioner may agree to modify the terms and conditions of the deferred prosecution agreement or may issue an administrative complaint, pursuant to s. 231.262, alleging the charges regarding which prosecution was deferred. The person may dispute the determination as an affirmative defense to the administrative complaint by including with his or her request for hearing on the administrative complaint a written statement setting forth the facts and circumstances that show that the determination of ineligibility was erroneous. If

administrative proceedings regarding the administrative complaint, pursuant to ss. ~~s.~~ 120.569 and 120.57, result in a finding that the determination of ineligibility was erroneous, the person is eligible to participate in the program. If the determination of ineligibility was the only reason for setting aside the deferred prosecution agreement and issuing the administrative complaint and the administrative proceedings result in a finding that the determination was erroneous, the complaint shall be dismissed and the deferred prosecution agreement reinstated without prejudice to the commissioner's right to reissue the administrative complaint for other breaches of the agreement.

(e) If the person voluntarily entered into a treatment contract with the program, the commissioner shall issue a written notice stating the reasons for the determination of ineligibility. Within 20 days after the date of such notice, the person may contest the determination of ineligibility pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 51. Paragraph (a) of subsection (3) of section 231.291, Florida Statutes, is amended to read:

231.291. Personnel files

Public school system employee personnel files shall be maintained according to the following provisions:

(3)(a) Public school system employee personnel files are subject to the provisions of s. 119.07(1), except as follows:

1. Any complaint and any material relating to the investigation of a complaint against an employee shall be confidential and exempt from the provisions of s. 119.07(1) until the conclusion of the preliminary investigation or until such time as the preliminary investigation ceases to be active. If the preliminary investigation is concluded with the finding that there is no probable cause to proceed further and with no disciplinary action taken or charges filed, a statement to that effect signed by the responsible investigating official shall be attached to the complaint, and the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation is concluded with the finding that there is probable cause to proceed further or with disciplinary action taken or charges filed, the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation ceases to be active, the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). For the purpose of this subsection, a preliminary investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation shall be presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made.

2. An employee evaluation prepared pursuant to s. 231.17(3), s. 231.29, or s. 231.36 or rules adopted by the State Board of Education or local school board under the authority of those sections shall be confidential and exempt from the provisions of s. 119.07(1) until the end of the school year immediately following the school year in which the evaluation was

made. No evaluation prepared before July 1, 1983, shall be made public pursuant to this section.

3. No material derogatory to an employee shall be open to inspection until 10 days after the employee has been notified pursuant to paragraph (2)(c).

4. The payroll deduction records of an employee shall be confidential and exempt from the provisions of s. 119.07(1).

5. Employee medical records, including psychiatric and psychological records, shall be confidential and exempt from the provisions of s. 119.07(1); provided, however, at any hearing relative to the competency or performance of an employee, the administrative law judge, hearing officer, or panel shall have access to such records.

The exemptions contained in this paragraph are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 52. Paragraph (e) of subsection (3) of section 231.36, Florida Statutes, is amended to read:

231.36. Contracts with instructional staff, supervisors, and principals

(3)

(e) A professional service contract shall be renewed each year unless the superintendent, after receiving the recommendations required by s. 231.29(4), charges the employee with unsatisfactory performance as determined under the provisions of s. 231.29 and notifies the employee in writing, no later than 6 weeks prior to the end of the postschool conference period, of performance deficiencies which may result in termination of employment, if not corrected during the subsequent year of employment (which shall be granted for an additional year in accordance with the provisions in subsection (1)). Except as otherwise hereinafter provided, this action shall not be subject to the provisions of chapter 120, but the following procedures shall apply:

1. On receiving notice of unsatisfactory performance, the employee, on request, shall be accorded an opportunity to meet with the superintendent or the superintendent's designee for an informal review of the determination of unsatisfactory performance.

2. An employee notified of unsatisfactory performance may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, for the subsequent year of employment.

3. During the subsequent year, the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically so that he or she will be kept apprised of progress achieved.

4. Not later than 6 weeks prior to the close of the postschool conference period of the subsequent year, the superintendent, after receiving and reviewing the recommendation required by s. 231.29(4), shall notify the employee, in writing, whether the performance deficiencies have been corrected. If so, a new professional service contract shall be issued to the employee. If the performance deficiencies have not been corrected, the superintendent may notify the school board and the employee, in writing, that the employee shall not be issued a new professional service contract; however, if the recommendation of the superintendent is not to issue a new professional service contract, and if the employee wishes to contest such recommendation, the employee will have 15 days from receipt of the superintendent's recommendation to demand, in writing, a hearing. In such hearing, the employee may raise as an issue, among other things, the sufficiency of the superintendent's charges of unsatisfactory performance. Such hearing shall be conducted at the employee's election in accordance with one of the following procedures:

a. A direct hearing conducted by the school board within 45 days of receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. ~~s.~~ 120.569 and 120.57 ~~(1)(a)1~~. A majority vote of the membership of the school board shall be required to sustain the superintendent's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

b. A hearing conducted by an administrative law judge ~~a hearing officer~~ assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 45 days of receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge ~~hearing officer~~ shall be made to the school board. A majority vote of the membership of the school board shall be required to sustain or change the administrative law judge's ~~hearing officer's~~ recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

Section 53. Section 242.333, Florida Statutes, is amended to read:

242.333. Legal services for officers and employees; reimbursement for judgments in civil actions

The Board of Trustees for the Florida School for the Deaf and the Blind is authorized to provide legal services for officers and employees of the board of trustees who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities. The board of trustees may provide for reimbursement of reasonable expenses for legal services for officers and employees of said board of trustees who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities upon successful defense by the employee or officer. However, in any case in which the officer or employee pleads guilty or nolo contendere or is found guilty of any such action, the officer or employee shall reimburse the board of trustees for any legal services which the board of trustees may have supplied pursuant to this section. The board of trustees may also reimburse an officer or employee

thereof for any judgment which may be entered against him or her in a civil action arising out of and in the course of the performance of his or her assigned duties and responsibilities. Each expenditure by the board of trustees for legal defense of an officer or employee, or for reimbursement pursuant to this section, shall be made at a public meeting with notice pursuant to s. 120.525(1) ~~120.53(1)(d)~~. The providing of such legal services or reimbursement under the conditions described above is declared to be a school purpose for which school funds may be expended.

Section 54. Paragraph (p) of subsection (1) of section 246.207, Florida Statutes, is amended to read:

246.207. Powers and duties of board

(1) The board shall:

(p) Publish and index all policies and agency statements. If a policy or agency statement meets the criteria of a rule, as defined in s. 120.52~~(16)~~, the board shall adopt it as a rule.

Section 55. Subsections (3) and (4) of section 246.226, Florida Statutes, are amended to read:

246.226. Disciplinary proceedings

(3) The determination of probable cause shall be made by a majority vote of the probable cause panel. The panel shall be composed pursuant to board rule. The proceedings of such panel shall be exempt from the provisions of ss. 120.525 ~~120.53(1)(d)~~ and 286.011 until the panel declares a finding of probable cause. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. After the panel declares a finding of probable cause, the board may issue an administrative complaint and prosecute such complaint pursuant to the provisions of chapter 120.

(4) The board members who did not serve on the probable cause panel shall review the recommended order of the administrative law judge ~~hearing officer~~ and shall issue a final order for each such hearing. Such order shall constitute final agency action.

Section 56. Paragraph (a) of subsection (3) of section 246.2265, Florida Statutes, is amended to read:

246.2265. Additional regulatory powers while disciplinary proceedings are pending; cease and desist orders

(3) Cease and desist orders issued pursuant to this section shall take effect immediately upon issuance and shall remain in effect until the board takes final agency action. A cease and desist order shall be reviewable at the request of the institution, officer, employee, or agent to whom it is directed as follows:

(a) If formal proceedings have been requested and the matter has been referred to the Division of Administrative Hearings, a motion to abate or modify the cease and desist order may be filed with the division. Any interlocutory order of the presiding administrative law judge ~~hearing officer~~ shall be binding on the parties until final agency action is taken by the board.

Section 57. Subsection (14) of section 253.03, Florida Statutes, is amended to read:

253.03. Board of trustees to administer state lands; lands enumerated

(14) For applications not reviewed pursuant to s. 373.427, the department must review applications for the use of state-owned submerged lands, including a purchase, lease, easement, disclaimer, or other consent to use such lands and must request submittal of all additional information necessary to process the application. Within 30 days after receipt of the additional information, the department must review the information submitted and may request only that information needed to clarify the additional information, to process the appropriate form of approval indicated by the additional information, or to answer those questions raised by, or directly related to, the additional information. An application for the authority to use state-owned submerged land must be approved, denied, or submitted to the board of trustees for approval or denial within 90 days after receipt of the original application or the last item of timely requested additional information. This time is tolled by any notice requirements of s. 253.115 or any hearing held under ss. ~~s.~~ 120.569 and 120.57. If the review of the application is not completed within the 90-day period, the department must report quarterly to the board the reasons for the failure to complete the report and provide an estimated date by which the application will be approved or denied. Failure to comply with these time periods shall not result in approval by default.

Section 58. Subsection (2) of section 253.126, Florida Statutes, is amended to read:

253.126. Legislative intent

The limitations and restrictions imposed by this chapter as amended by chapter 67-393 upon the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters, as defined in s. 253.12, shall apply to the state, its agencies and all political subdivisions and governmental units. No other general or special act shall operate to grant exceptions to this section unless this section is specifically repealed thereby.

(2) The provisions of chapter 120 shall be accorded any person where substantial interests will be affected by an activity proposed to be conducted by such agency pursuant to its certification and the department's acceptance. If a proceeding is conducted pursuant to ss. ~~s.~~ 120.569 and 120.57, the department may intervene as a party. Should an administrative law judge ~~a hearing officer~~ of the Division of Administrative Hearings of the Department of Management Services submit a recommended order pursuant to ss. ~~s.~~ 120.569 and 120.57, the Department of Environmental Protection shall issue a final department order adopting, rejecting, or modifying the recommended order pursuant to such action.

Section 59. Subsection (3) of section 255.102, Florida Statutes, is amended to read:

255.102. Contractor utilization of minority business enterprises

(3) If an agency considers any other criteria in determining whether a contractor has made a good faith effort, the agency shall adopt such criteria in accordance with s. 120.54 ~~120.535~~, and, where required by that section, by rule, after May 31, 1994. In adopting such criteria, the agency shall identify the specific factors in as objective a manner as possible to be used to assess a contractor's performance against said criteria.

Section 60. Paragraph (c) of subsection (3) of section 255.25, Florida Statutes, is amended to read:

255.25. Approval required prior to construction or lease of buildings

(3)

(c) Any person who files an action protesting a decision or intended decision pertaining to a competitive bid for space to be leased by the agency pursuant to s. 120.57(3)(b) ~~120.53(5)(b)~~ shall post with the state agency at the time of filing the formal written protest a bond payable to the agency in an amount equal to 1 percent of the estimated total rental of the basic lease period or $5,000, whichever is less, which bond shall be conditioned upon the payment of all costs which may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the agency prevails after completion of the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him or her. If the person protesting the award prevails, the bond shall be returned to that person and he or she shall recover from the agency all costs and charges which shall be included in the final order of judgment, excluding attorney's fees.

Section 61. Paragraphs (b) and (c) of subsection (2) of section 287.042, Florida Statutes, are amended to read:

287.042. Powers, duties, and functions

The division shall have the following powers, duties, and functions:

(2)

(b) As an alternative to any provision in s. 120.57(3)(c) ~~120.53(5)(c)~~, the division may proceed with the bid solicitation or contract award process of a term contract bid when the director of the division sets forth in writing particular facts and circumstances which demonstrate that the delay incident to staying the bid process or contract award process

would be detrimental to the interests of the state. After the award of a contract resulting from a bid in which a timely protest was received and in which the state did not prevail, the contract may be canceled and reawarded to the prevailing party.

(c) Any person who files an action protesting a decision or intended decision pertaining to contracts administered by the division or a state agency pursuant to s. 120.57(3)(b) ~~120.53(5)(b)~~ shall post with the division or the state agency at the time of filing the formal written protest a bond payable to the division or state agency in an amount equal to 1 percent of the division's or the state agency's estimate of the total volume of the contract or $5,000, whichever is less, which bond shall be conditioned upon the payment of all costs which may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of decisions or intended decisions of the division pertaining to agencies' requests for approval of exceptional purchases, the bond shall be in an amount equal to 1 percent of the requesting agency's estimate of the contract amount for the exceptional purchase requested or $5,000, whichever is less. In lieu of a bond, the division or state agency may, in either case, accept a cashier's check or money order in the amount of the bond. If, after completion of the administrative hearing process and any appellate court proceedings, the agency prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. This section shall not apply to protests filed by the Minority Business Advocacy and Assistance Office. Upon payment of such costs and charges by the person protesting the award, the bond, cashier's check, or money order shall be returned to him or her. If the person protesting the award prevails, he or she shall recover from the agency all costs and charges which shall be included in the final order of judgment, excluding attorney's fees.

Section 62. Paragraphs (e) and (f) of subsection (3) and subsection (4) of section 287.133, Florida Statutes, are amended to read:

287.133. Public entity crime; denial or revocation of the right to transact business with public entities

(3)

(e)1. Upon receiving reasonable information from any source that a person has been convicted, the department shall investigate the information and determine whether good cause exists to place that person or an affiliate of that person on the convicted vendor list. If good cause exists, the department shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the convicted vendor list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the convicted vendor list. No person or affiliate may be placed on the convicted vendor list without receiving an individual notice of intent from the department.

2. Within 21 days of receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing pursuant to ss. ~~s.~~ 120.569 and 120.57(1) to determine whether it

is in the public interest for that person or affiliate to be placed on the convicted vendor list. A person or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this section except where they are in conflict with the following provisions:

a. The petition shall be filed with the department. The department shall be a party to the proceeding for all purposes.

b. Within 5 days after the filing of the petition, the department shall notify the Division of Administrative Hearings of the request for a formal hearing. The director of the Division of Administrative Hearings shall, within 5 days after receipt of notice from the department, assign an administrative law judge ~~a hearing officer~~ to preside over the proceeding. The administrative law judge ~~hearing officer~~, upon request by a party, may consolidate related proceedings.

c. The administrative law judge ~~hearing officer~~ shall conduct the formal hearing within 30 days after being assigned, unless otherwise stipulated by the parties.

d. Within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge ~~hearing officer~~ shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. Such final order shall place or not place the person or affiliate on the convicted vendor list.

e. The final order of the administrative law judge ~~hearing officer~~ shall be final agency action for purposes of s. 120.68.

f. At any time after the filing of the petition, informal disposition may be made pursuant to s. 120.57(4)~~(3)~~. In that event, the administrative law judge ~~hearing officer~~ shall enter a final order adopting the stipulation, agreed settlement, or consent order.

3. In determining whether it is in the public interest to place a person or affiliate on the convicted vendor list, the administrative law judge ~~hearing officer~~ shall consider the following factors:

a. Whether the person or affiliate committed a public entity crime.

b. The nature and details of the public entity crime.

c. The degree of culpability of the person or affiliate proposed to be placed on the convicted vendor list.

d. Prompt or voluntary payment of any damages or penalty as a result of the conviction.

e. Cooperation with state or federal investigation or prosecution of any public entity crime, provided that a good faith exercise of any constitutional, statutory, or other right

during any portion of the investigation or prosecution of any public entity crime shall not be considered a lack of cooperation.

f. Disassociation from any other persons or affiliates convicted of the public entity crime.

g. Prior or future self-policing by the person or affiliate to prevent public entity crimes.

h. Reinstatement or clemency in any jurisdiction in relation to the public entity crime at issue in the proceeding.

i. Compliance by the person or affiliate with the notification provisions of paragraph (a).

j. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

k. Mitigation based upon any demonstration of good citizenship by the person or affiliate.

4. In any proceeding under this section, the department shall be required to prove that it is in the public interest for the person to whom it has given notice under this section to be placed on the convicted vendor list. Proof of a conviction of the person or that one is an affiliate of such person shall constitute a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the convicted vendor list. Prompt payment of damages or posting of a bond, cooperation with investigation, and termination of the employment or other relationship with the employee or other natural person responsible for the public entity crime shall create a rebuttable presumption that it is not in the public interest to place a person or affiliate on the convicted vendor list. Status as an affiliate must be proven by clear and convincing evidence. If the administrative law judge ~~hearing officer~~ determines that the person was not convicted or is not an affiliate of such person, that person or affiliate shall not be placed on the convicted vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the convicted vendor list may offer evidence on any relevant issue. An affidavit alone shall not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person so convicted. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the convicted vendor list, that person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the convicted vendor list, based upon evidence addressing the factors in subparagraph 3.

(f)1. A person on the convicted vendor list may petition for removal from the list no sooner than 6 months from the date a final order is entered disqualifying that person from the public purchasing and contracting process pursuant to this section, but may petition for removal at any time if the petition is based upon a reversal of the conviction on appellate review or pardon. The petition shall be filed with the department, and the proceeding shall be conducted pursuant to the procedures and requirements of this subsection.

2. A person may be removed from the convicted vendor list subject to such terms and conditions as may be prescribed by the administrative law judge ~~hearing officer~~ upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge ~~hearing officer~~ shall give consideration to any relevant factors, including, but not limited to, the factors identified in subparagraph (d)3. Upon proof that a person's conviction has been reversed on appellate review or that he or she has been pardoned, the administrative law judge ~~hearing officer~~ shall determine that removal of the person or an affiliate of that person from the convicted vendor list is in the public interest.

3. If a petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The department may petition for removal prior to the expiration of such period if, in its discretion, it determines that removal would be in the public interest.

(4) The conviction of a person for a public entity crime, or placement on the convicted vendor list, shall not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such conviction or placement on the convicted vendor list. However, the administrative law judge ~~hearing officer~~ in a proceeding instituted under this section may declare voidable any specific contract, franchise, or other binding agreement entered into after July 1, 1989, by a person placed on the convicted vendor list and a public entity, but only if the administrative law judge ~~presiding officer~~ finds as fact that the person to be placed on the list has not satisfied the criteria set forth in sub- subparagraphs (3)(d)3.d., f., and g.

Section 63. Paragraph (d) of subsection (3) and paragraph (d) of subsection (4) of section 288.701, Florida Statutes, are amended to read:

288.701. Assistance to small businesses

(3) DUTIES OF THE DIVISION OF ECONOMIC DEVELOPMENT OF THE DEPARTMENT OF COMMERCE.--The Division of Economic Development of the Department of Commerce shall establish and administer programs or shall coordinate with existing programs to:

(d) Provide, in cooperation with the Florida Small Business Development Center, Minority Business Development Centers, and other existing small and minority business assistance programs, a system for the development, collection, summarization, and dissemination of information helpful to any person in establishing or operating a small and minority business, including information on:

1. The identification and development of new business opportunities.

2. Feasibility studies.

3. Market research.

4. The operation, management, and financing of small and minority businesses.

5. Programs of federal, state, and local governmental agencies which benefit small and minority businesses.

6. The incentives listed in s. 290.007 which are available in enterprise zones in this state.

7. The right provided in s. 120.54(7)~~(5)~~ of any person regulated by an agency or having a substantial interest in an agency rule to petition such agency to adopt, amend, or repeal a rule or to provide the minimum public information required by ss. ~~s.~~ 120.525 and 120.53.

(4) ANNUAL REPORTS.--On October 1 of each year, beginning with October 1, 1994, the Division of Economic Development of the Department of Commerce shall make a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives with respect to the implementation of this section. The report due on October 1, 1994, must contain information covering the period from January 1, 1993, until June 30, 1994. Thereafter, each report must contain information covering the period from July 1 through June 30 of the previous year. The report shall contain information on:

(d) The activities of the division acting in its capacity as ombudsman under paragraph (3)(c), including a review of state agency rules adopted or amended in the past year which adversely and disproportionately impact small business and recommendations on any existing rules that the division determines should be reviewed for significant alternatives as provided in s. 120.54 (3)~~(2)~~.

Section 64. Subsection (5) of section 290.049, Florida Statutes, is amended to read:

290.049. Advisory council

(5) The council shall meet at the call of its chairperson, at the request of a majority of its members, or at the request of the department; however, the council must meet prior to any significant program revisions or publication of proposed rules pursuant to s. 120.54(3)~~(1)~~ relating to the program. The council shall meet at least twice each year.

Section 65. Paragraph (b) of subsection (1) and subsection (4) of section 310.151, Florida Statutes, are amended to read:

310.151. Rates of pilotage; Pilotage Rate Review Board

(1)

(b)1. To carry out the provisions of this section, the Pilotage Rate Review Board is created within the Department of Business and Professional Regulation. Members shall be appointed by the Governor, subject to confirmation by the Senate. Members shall be

appointed for 4-year terms, except as otherwise specified in this paragraph. No member may serve more than two consecutive 4-year terms or more than 11 years on the board. The board shall consist of seven members. No member may have ever served as a state pilot or deputy pilot, and no member may currently serve or have served as a direct employee, contract employee, partner, corporate officer, sole proprietor, or representative of any vessel operator, shipping agent, or pilot association or organization, except that one member shall be or have been a person licensed by the United States Coast Guard as an unlimited master, without a first-class pilot's endorsement, initially appointed to a 2-year term. One member shall be a certified public accountant with at least 5 years' experience in financial management, initially appointed to a 3-year term. One member shall be a former hearing officer or administrative law judge of the Division of Administrative Hearings, as defined in s. 120.65, or a former judge who has served on the Supreme Court or any district court of appeal, circuit court, or county court, initially appointed to a 4-year term. Except as otherwise provided in subparagraph 2., the remaining members shall be appointed by the Governor from among persons not prohibited pursuant to this paragraph. Members of the board shall be appointed so as to be geographically distributed, with the southern, central, northeastern, and northwestern regions of the state having at least one member each.

2. Three members shall be the consumer members of the Board of Pilot Commissioners serving on that board as of January 1, 1994. Of those members, one shall be appointed to a 1-year term, one shall be appointed to a 2-year term, and one shall be appointed to a 3-year term. Each of those members shall be eligible for reappointment in the same fashion as other members of the board, but, thereafter, no member of the board shall be a current or former member of the Board of Pilot Commissioners. The service of the consumer members of the Board of Pilot Commissioners on this board, while they are maintaining concurrent membership with the Board of Pilot Commissioners, shall be considered duties in addition to and related to their duties on the Board of Pilot Commissioners. In the event that any of the three board members stipulated according to this subparagraph are unable to serve, the Governor shall fill the position or positions by appointment from among persons not prohibited pursuant to this paragraph.

(4) The applicant shall be given written notice, either in person or by certified mail, that the board intends to modify the pilotage rates in that port and that the applicant may, within 21 days after receipt of the notice, request a hearing pursuant to the Administrative Procedure Act. Notice of the intent to modify the pilotage rates in that port shall also be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to any person who has formally requested notice of any rate change in the affected port area. Within 21 days after receipt or publication of notice, any person whose substantial interests will be affected by the intended board action may request a hearing pursuant to the Administrative Procedure Act. If the board concludes that the petitioner has raised a disputed issue of material fact, the board shall designate a hearing, which shall be conducted by formal proceeding before an administrative law judge ~~a hearing officer~~ assigned by the Division of Administrative Hearings pursuant to ss. ~~s.~~ 120.569 and 120.57(1), unless waived by all parties. The failure to request a hearing within 21 days after receipt or publication of notice shall constitute a waiver of any right to an administrative hearing and shall cause the order modifying the pilotage rates in that port to be entered. If an

administrative hearing is requested pursuant to this subsection, notice of the time, date, and location of the hearing shall be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to the applicant and to any person who has formally requested notice of any rate change for the affected port area.

Section 66. Paragraph (a) of subsection (1) of section 320.699, Florida Statutes, is amended to read:

320.699. Administrative hearings and adjudications; procedure

(1) A motor vehicle dealer, or person with entitlements to or in a motor vehicle dealer, who is directly and adversely affected by the action or conduct of an applicant or licensee which is alleged to be in violation of any provision of ss. 320.60-320.70, may seek a declaration and adjudication of its rights with respect to the alleged action or conduct of the applicant or licensee by:

(a) Filing with the department a request for a proceeding and an administrative hearing which conforms substantially with the requirements of ss. ~~s.~~ 120.569 and 120.57; or

Section 67. Paragraph (i) of subsection (8) of section 325.207, Florida Statutes, is amended to read:

325.207. Inspection stations; department contracts; inspection requirements; recordkeeping

(8) Any contract authorized under this section shall contain:

(i) A procedure for determining the damages payable by the state to the contractor if the Legislature abolishes the inspection program at any time prior to the conclusion of the contract term. This procedure must specify that the contractor and the department have 120 days from the effective date of the termination of the program to negotiate an amount to be paid to the contractor as reasonable compensation for its loss resulting from the termination of the contract due to the termination of the program. If the contractor and the department are not able to agree to an amount by the end of the 120-day period, the department shall determine the amount of reasonable compensation and notify the contractor in writing of its determination within 14 days of the end of the negotiation period and shall offer the contractor a point of entry to a ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57 pursuant to the department's rules of procedure. This provision must specify that payment of such compensation to the contractor is subject to appropriation of funds for this purpose by the Legislature and that the department agrees in good faith to request the Legislature to appropriate the funds to pay such reasonable compensation. The damages recoverable by the contractor if the Legislature abolishes the program shall be limited to the funds appropriated by the Legislature pursuant to this section.

Section 68. Subsection (1) of section 325.208, Florida Statutes, is amended to read:

325.208. Protests of contract awards and requests for proposals

(1) The provisions of s. 120.57(3) ~~120.53(5)~~ shall control all protests of requests for proposals and contract awards, except that any person who wishes to file an action protesting the specifications or requirements of the request for proposals may do so within 10 days after publication of the request for proposals and may not file any other protest with respect to requests for proposals, and any subsequent protest action shall be filed in response to the contract award only and in accordance with the provisions of chapter 120.

Section 69. Section 331.326, Florida Statutes, is amended to read:

331.326. Information relating to trade secrets confidential

The records of the authority regarding matters encompassed by this act are public records subject to the provisions of chapter 119. Any information held by the authority which is a trade secret, as defined in s. 812.081, including trade secrets of the authority, any spaceport user, or the space industry business, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed. If the authority determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final ~~an~~ order as defined in s. 120.52~~(11)~~. Any meeting or portion of a meeting of the authority's board of supervisors is exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution when the board is discussing trade secrets. Any public record generated during the closed portions of such meetings, such as minutes, tape recordings, and notes, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 70. Paragraphs (b) and (c) of subsection (5) of section 337.11, Florida Statutes, are amended to read:

337.11. Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration

(5)

(b) The bond required by this subsection shall be conditioned upon the payment of all costs which may be adjudged against the person filing the protest in the administrative hearing in which the action is brought and any subsequent appellate court proceeding. If, after completion of the administrative hearing process and any appellate court proceedings, the department prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person filing the protest, the bond shall be returned to him or her. If the person filing the protest prevails, he or she shall recover from the department all costs and charges which

shall be included in the final order or judgment, excluding attorney's fees. The entire amount of the bond shall be forfeited if the administrative law judge ~~hearing officer~~ determines that a protest was filed for a frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for the department or parties.

(c) As an alternative to any provision in s. 120.57(3)(c) ~~120.53(5)(c)~~, the department may proceed with the bid solicitation or contract award process when the head of the department sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process in order to avoid a substantial loss of funding to the state.

Section 71. Paragraph (b) of subsection (1) of section 337.16, Florida Statutes, is amended to read:

337.16. Disqualification of delinquent contractors from bidding; determination of contractor nonresponsibility; denial, suspension, and revocation of certificates of qualification; grounds; hearing

(1) A contractor shall not be qualified to bid when an investigation by the department discloses that such contractor is delinquent on a previously awarded contract, and in such case the contractor's certificate of qualification shall be suspended or revoked. Any contractor whose certificate of qualification is suspended or revoked for delinquency shall also be disapproved as a subcontractor during the period of suspension or revocation, except when a prime contractor's bid has used prices of a subcontractor who becomes disqualified after the bid and before the request for authorization to sublet is presented.

(b) The department shall inform the contractor in writing of its intent to deny, suspend, or revoke his or her certificate of qualification to bid on work let by the department for delinquency and inform the contractor of his or her right to a hearing, the procedure which must be followed, and the applicable time limits. If a hearing is requested within 10 days after the receipt of the notice of intent, the hearing shall be held within 30 days after receipt by the administrative law judge ~~hearing officer~~ of the request for the hearing. The recommended order shall be issued within 15 days after the hearing. The contractor's application for a certificate of qualification shall be denied or the contractor's current certificate of qualification shall be suspended for the number of days that it is administratively determined that the contractor was delinquent even if the delinquency is cured during the pendency of the hearing proceedings.

Section 72. Paragraph (d) of subsection (2) of section 337.165, Florida Statutes, is amended to read:

337.165. Contract crime; denial or revocation of a certificate of qualification

(2)

(d) A contractor or affiliate whose certificate has been denied or revoked may, at any time after denial or revocation, petition for and be granted a hearing to determine his or her eligibility for reapplication or reinstatement upon such terms and conditions as may be prescribed upon finding that reapplication or reinstatement is in the public interest. The petition shall be filed with the department. Any hearing conducted by the department shall be conducted within 30 days after receipt of the petition, unless otherwise stipulated by the parties. If the contractor or affiliate requests in his or her petition that the hearing be conducted by the Division of Administrative Hearings of the Department of Management Services, the department shall, within 5 days after receipt of the petition, notify the division of the request. The director of the Division of Administrative Hearings shall, within 5 days after the notice by the department, assign an administrative law judge ~~a hearing officer~~, who shall conduct the hearing within 30 days thereafter, unless otherwise stipulated by the parties. The department shall be a party in interest in any hearing conducted by the Division of Administrative Hearings. In determining whether reapplication or reinstatement would be in the public interest, the department or division administrative law judge ~~hearing officer~~ shall give consideration to any relevant mitigating circumstances, which may include, but are not limited to, the following:

1. The degree of culpability;

2. Prompt and voluntary payment of damages to the state as a result of the contractor's violation of state or federal antitrust laws;

3. Cooperation with any state or federal prosecution or investigation of a contract crime;

4. Disassociation with those involved in a contract crime;

5. Reinstatement in other state or federal jurisdictions; and

6. The needs of the department in completing its programs in a timely, cost- effective manner.

The department or division administrative law judge ~~hearing officer~~ shall also consider the failure of the contractor or affiliate to comply with the notification provisions of subsection (5). Any hearing requested under this paragraph shall be conducted and concluded without undue delay. The administrative law judge ~~hearing officer~~ shall, within 30 days after the hearing, complete and submit a final order to the department, which order may not be altered or amended by the department. If eligibility for reapplication or reinstatement is denied, the contractor or affiliate may not petition for a subsequent hearing for a period of 9 months following the date of the order of denial or revocation. However, a hearing prior to the expiration of such period may be authorized by the department if, in its discretion, it determines that a hearing is in the public interest.

Section 73. Subsection (1) of section 337.167, Florida Statutes, is amended to read:

337.167. Administrative procedures; stays and injunctions

(1) A certificate to bid on a department contract, or to supply services to the department, is intended to assist the department in determining in advance the performance capabilities of entities seeking to supply goods and services to the department and is not a "license" as defined in s. 120.52~~(9)~~. The denial or revocation of a certificate is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of ss. ~~s.~~ 120.569 and 120.57 are applicable to the denial or revocation of such certificate.

Section 74. Subsection (2) of section 341.3333, Florida Statutes, is amended to read:

341.3333. Application for franchise; confidentiality of application and trade secrets

(2) Each applicant, in response to the request for proposals, shall file its application with the department at the location and within the time and date limitations specified in the request for proposals. Applications filed before the deadline shall be kept sealed by the department until the time and date specified for opening. Such sealed applications shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the department provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) ~~120.53(5)(a)~~ or until 10 days after application opening, whichever is earlier. Thereafter, the applications are public. However, the applicant may segregate the trade secret portions of the application and request that the department maintain those portions as confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon award of a franchise, the franchisee may segregate portions of materials required to be submitted by the department and request that the department maintain those portions as confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such portions designated by an applicant or by the franchisee shall remain confidential and exempt from the provisions of s. 119.07(1) only if the department finds that the information satisfies the criteria established in s. 119.14(4)(b)3. These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 75. Subsection (4) of section 341.3337, Florida Statutes, is amended to read:

341.3337. Determination and award of franchise

(4) The provisions of chapter 120 govern the actions of the department, except that s. 120.57(3) ~~120.53(5)~~, relating to protests arising from the contract-bidding process, does not apply to the award of the franchise or the selection of a franchisee.

Section 76. Subsections (4) and (6) of section 341.343, Florida Statutes, are amended to read:

341.343. Review of application

(4) Within 10 days after receipt of a certification application, the department shall request the Division of Administrative Hearings to designate an administrative law judge ~~a hearing officer~~ to conduct the certification hearing.

(6) If an amendment to a certification application is proposed later than the time period described in subsection (5), the proposed amendment must be reviewed by the Department of Environmental Protection, the Department of Community Affairs, and the Department of Transportation to determine the impact of the amendment on matters within their respective jurisdictions. Within 30 days after the receipt of the proposed amendment, if any of the foregoing agencies determines that the amendment is such that either additional time or information is required in order to adequately review and analyze the proposed amendment or additional local government hearings are appropriate, the agency shall advise the administrative law judge ~~hearing officer~~ and all parties in writing of the need for the additional time. Upon receipt, the administrative law judge ~~hearing officer~~ shall delay the date of the certification hearing in order to give all parties ample opportunity to review and analyze the impacts of the proposed amendment or to conduct the necessary local government hearing.

Section 77. Subsection (1) of section 341.345, Florida Statutes, is amended to read:

341.345. Alternate corridors or transit station locations

(1) Within 60 days after the publication of the notice of the certification application, any party may propose alternate high-speed rail transportation system corridor routes or transit station locations for consideration pursuant to the provisions of ss. 341.3201-341.386 by filing a notice of a proposed alternate corridor or transit station location with the department, the administrative law judge ~~hearing officer~~, all parties to the proceeding, and any local governments in the jurisdictions of which the alternate corridor or transit station location is proposed. Such filing must include a description of the proposed corridor, a statement of the reasons the proposed alternate should be certified, the most recent United States Geological Survey quadrangle maps on the scale of 1:24,000 that specifically delineate the corridor boundaries of the corridor or facility in question, and all information and data that is required for a certification application.

Section 78. Section 341.346, Florida Statutes, is amended to read:

341.346. Appointment of administrative law judge ~~hearing officer~~; powers and duties

(1) Within 10 days after receipt of a request by the department to designate an administrative law judge ~~a hearing officer~~, the director of the Division of Administrative Hearings shall designate an administrative law judge ~~a hearing officer~~ to conduct the hearings required by ss. 341.3201-341.386. Whenever practicable, the division director shall assign an administrative law judge ~~a hearing officer~~ who has prior experience or training in this type of certification proceeding. Upon being advised that an administrative law judge ~~a hearing officer~~ has been designated, the department shall immediately file a copy of the

certification application and all supporting documents with the administrative law judge ~~hearing officer~~, who shall docket the application.

(2) The administrative law judge ~~hearing officer~~ shall have all powers and duties granted to administrative law judges ~~hearing officers~~ by chapter 120 and by the laws and rules of the department, including the authority to resolve disputes over the completeness of a certification application.

Section 79. Section 341.3465, Florida Statutes, is amended to read:

341.3465. Alteration of time limitations

Any time limitation specified in ss. 341.3201-341.386 may be altered by stipulation by the department and the applicant, if approved by an administrative law judge ~~a hearing officer~~, if the administrative law judge ~~hearing officer~~ has jurisdiction over the proceeding; by the department, if no administrative law judge ~~hearing officer~~ has jurisdiction; or by the board, if it has jurisdiction; unless objected to by any party within 5 days after notice, or for good cause shown by any party.

Section 80. Subsections (1) and (4) of section 341.348, Florida Statutes, are amended to read:

341.348. Reports and studies

(1) In order to verify or supplement the information in a certification application, reports of the agencies specified in s. 341.352(2) shall be prepared, submitted to the department and the administrative law judge ~~hearing officer~~, and made available for other parties to review or copy. Neither the failure to submit a report nor the inadequacy of the report is a ground to deny or condition certification. Each reviewing agency shall initiate the activities required by this section as soon as each application is received. Each agency shall keep the franchisee informed as to the progress of its studies and any issues raised by the studies.

(4) The Department of Transportation shall prepare a written analysis of the agency reports on the certification application, which analysis shall be filed with the designated administrative law judge ~~hearing officer~~ and all parties no later than 30 days after the due date for receipt of the local government reports prepared pursuant to this section. The analysis must include:

(a) In regard to the reports and studies required by s. 341.348, a list and a summary of the reports and studies and the location where the reports or study results are available for public inspection and copying.

(b) The comments received from a party which is not an agency.

(c) The reports and recommendations of the planning and environmental advisory committee.

(d) The conditions of certification considered appropriate by the department.

(e) The recommendations of the department relating to the disposition of the certification application.

Section 81. Section 341.352, Florida Statutes, is amended to read:

341.352. Certification hearing

(1) No later than 6 months after the applications have been determined to be complete, the administrative law judge ~~hearing officer~~ shall conduct a certification hearing, pursuant to ss. ~~s.~~ 120.569 and 120.57, at a convenient location in the vicinity of the proposed high-speed rail transportation system.

(2)(a) The parties to the certification proceeding are:

1. The franchisee.

2. The Department of Commerce.

3. The Department of Environmental Protection.

4. The Department of Transportation.

5. The Department of Community Affairs.

6. The Game and Fresh Water Fish Commission.

7. Each water management district.

8. Each local government.

9. Each regional planning council.

10. Each metropolitan planning organization.

(b) Any party listed in paragraph (a) may waive its right to participate in the proceeding. If any listed party fails to file, on or before the 30th day prior to the certification hearing, a notice of its intent to be a party, such party is deemed to have waived its right to be a party, unless its participation in the proceeding would not prejudice the rights of any party to the proceeding.

(c) Notwithstanding the provisions of chapter 120 to the contrary, after the filing with the administrative law judge ~~hearing officer~~ of a notice of intent to be a party by an agency or corporation or association described in subparagraph 1. or subparagraph 2., or a petition for

intervention by a person described in subparagraph 3., no later than 30 days prior to the date set for the certification hearing, any of the following entities also shall be a party to the proceeding:

1. Any state agency not listed in paragraph (a), as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association that is formed, in whole or in part, to promote conservation of natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote the orderly development, or maintain the residential integrity, of the area in which the proposed high- speed rail transportation system is to be located.

3. Any person whose substantial interests are affected and being determined by the proceeding.

(d) Any agency, the property or works of which agency may be affected by the proceeding, shall be made a party upon the request of the agency or any party to this proceeding.

(3) When appropriate, any person may be given an opportunity to present oral or written communications to the administrative law judge ~~hearing officer~~. If the administrative law judge ~~hearing officer~~ proposes to consider such communications, all parties shall be given an opportunity to cross-examine with respect to, or to challenge or rebut, such communications.

(4) At the conclusion of the certification hearing, the administrative law judge ~~hearing officer~~ shall, after consideration of all the evidence of record, issue a recommended order to the board disposing of the applications. The administrative law judge ~~hearing officer~~ shall issue the recommended order no later than 60 days after the transcripts of the certification hearing and the public hearings are filed with the Division of Administrative Hearings.

Section 82. Subsection (1) of section 341.353, Florida Statutes, is amended to read:

341.353. Final disposition of certification application

(1) Within 30 days after receipt of the administrative law judge's ~~hearing officer's~~ recommended order, the board shall act upon the certification application by written order, which order shall approve the certification in whole, approve the certification with modifications and conditions that the board considers appropriate, or deny the certification. The order must state the reasons for issuance or denial of certification.

Section 83. Section 341.406, Florida Statutes, is amended to read:

341.406. Amendments to the application

Amendments to the application must be submitted to the Department of Transportation, the administrative law judge ~~hearing officer~~, and all other parties to the hearing no later than 60 days prior to the certification hearing in order to allow parties ample opportunity to examine and consider such amendments and prepare testimony and evidence for the hearing.

Section 84. Subsections (1) and (2) and paragraph (b) of subsection (5) of section 341.408, Florida Statutes, are amended to read:

341.408. Hearing on certification; appointment of administrative law judge ~~hearing officer~~; notice; parties; proceedings

(1) No later than 30 days after the department has made a selection of an applicant for certification, the Department of Transportation shall request the director of the Division of Administrative Hearings to designate an administrative law judge ~~a hearing officer~~ to conduct a hearing on certification of applicants for the project and on the disposition of any objections to the department's selection of an applicant for certification or to conditions upon such certification proposed by the department. The division director shall designate an administrative law judge ~~a hearing officer~~ within 7 days after receipt of the request from the department. Upon being advised that an administrative law judge ~~a hearing officer~~ has been designated, the Department of Transportation shall file a copy of the applications and all supporting documents with the administrative law judge ~~hearing officer~~.

(2) The certification hearing provided herein shall be held at a central location in proximity to the proposed project no later than 150 days after the appointment of an administrative law judge ~~a hearing officer~~. The administrative law judge ~~hearing officer~~ shall conduct the hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. At the conclusion of the hearing and no later than 30 days after the proposed findings of fact and conclusions of law are filed by the parties with the Division of Administrative Hearings and the administrative law judge ~~hearing officer~~, the administrative law judge ~~hearing officer~~ shall issue a recommended order disposing of the applications, which recommended order shall include findings of fact and conclusions of law with respect to the criteria provided in ss. 341.405 and 341.409 of this act.

(5)

(b) Any person or entity wishing to participate in the certification hearing must file with the administrative law judge ~~hearing officer~~ a notice of intent to be a party. If any such person or entity, including those parties enumerated in paragraph (a), fails to file a notice of intent to be a party on or before the 15th day prior to the certification hearing, such person or entity shall be deemed to have waived the right to be a party unless the person or entity's nonparticipation would prejudice the rights of any party to the proceeding.

Section 85. Subsections (1) and (2) of section 341.409, Florida Statutes, are amended to read:

341.409. Final disposition; board ruling on certification

(1) No later than 30 days after receipt of any exceptions to the administrative law judge's ~~hearing officer's~~ recommended order which is filed in accordance with ss. ~~s.~~ 120.569 and 120.57, the board shall act upon the applications by written final order in which it may adopt the recommended order as its final order or may reject or modify the conclusions of law and interpretation of administrative rules contained in the recommended order. It may not, however, reject or modify the findings of fact unless the board first determines from a review of the complete record and states with particularity in its order, that the findings of fact were not based upon competent substantial evidence or that the proceedings upon which the findings were based did not comply with the essential requirements of law.

(2) In determining what action to take with regard to applications for certification, the department, the administrative law judge ~~hearing officer~~, and the board shall consider whether, and the extent to which, the location of the project and the construction and maintenance of the project will:

(a) Facilitate the implementation of a magnetic levitation demonstration project in this state;

(b) Aid in the development of high-technology industry and research in this state;

(c) Help create a safe and efficient transportation system;

(d) Effect a reasonable balance between the need for a magnetic levitation demonstration project as a means of exploring high-technology transportation systems and the impact upon the environment resulting from the location, construction, operation, and maintenance of such a project;

(e) Comply with nonprocedural requirements of the agencies;

(f) Be consistent with applicable local government comprehensive plans and land development regulations;

(g) Efficiently use or unduly burden water, sewer, solid waste disposal, public transportation facilities, or other necessary public facilities;

(h) Be consistent with the applicable criteria and related policies adopted by local governments, regional planning councils, and the state;

(i) Utilize existing utility or road corridors;

(j) Be consistent with the purposes and goals of the Florida High-Speed Rail Transportation Act and any existing high-speed rail franchise awarded pursuant to this chapter; and

(k) Ensure consistent, complimentary, and compatible land uses and harmonious architectural styles and aesthetics between transit stations and adjacent land uses and architectural styles.

Section 86. Subsection (3) of section 341.413, Florida Statutes, is amended to read:

341.413. Modification of certification

(3) If an objection is filed pursuant to paragraph (1)(a) or if the parties are unable to reach a mutual agreement pursuant to paragraph (1)(b), the applicant may file a petition requesting a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. For petitions filed pursuant to this section, the board shall take final action on the administrative law judge's ~~hearing officer's~~ recommended order in accordance with chapter 120.

Section 87. Section 341.415, Florida Statutes, is amended to read:

341.415. Alteration of time limitations

Any time limitation in this act may be altered by the administrative law judge ~~hearing officer~~ upon stipulation between the Department of Transportation and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party.

Section 88. Subsection (3) of section 348.0004, Florida Statutes, is amended to read:

348.0004. Purposes and powers

(3) Any provision of law to the contrary notwithstanding, the consent of any municipality is not necessary for any project of an existing or new authority, whether or not the project lies in whole or in part within the boundaries of the municipality, if the project is consistent with the locally adopted comprehensive plan. However, if a project is inconsistent with the affected municipal comprehensive plan, the project may not proceed without a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57, at which it is determined that the project is consistent with the adopted metropolitan planning organization transportation improvement plan, if any, and the applicable strategic regional plan, and at which regional interests are determined to clearly override the interests of the municipality.

Section 89. Subsection (7) of section 350.01, Florida Statutes, is amended to read:

350.01. Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings

(7) This section does not prohibit a commissioner, designated by the chair, from conducting a hearing as provided under ss. ~~s.~~ 120.569 and 120.57(1) and the rules of the commission adopted pursuant thereto.

Section 90. Paragraph (f) of subsection (2) of section 350.041, Florida Statutes, is amended to read:

350.041. Commissioners; standards of conduct

(2) STANDARDS OF CONDUCT.--

(f) A commissioner, during his or her term of office, may not make any public comment regarding the merits of any proceeding under ss. ~~s.~~ 120.569 and 120.57 currently pending before the commission.

Section 91. Section 350.123, Florida Statutes, is amended to read:

350.123. Oaths; depositions; protective orders

The commission may administer oaths, take depositions, issue protective orders, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence necessary for the purpose of any investigation or proceeding. Challenges to, and enforcement of, such subpoenas and orders shall be handled as provided in s. 120.569 ~~120.58~~.

Section 92. Section 350.125, Florida Statutes, is amended to read:

350.125. Administrative law judges ~~hearing officers~~

Any provision of law to the contrary notwithstanding, the commission shall utilize administrative law judges ~~hearing officers~~ of the Division of Administrative Hearings of the Department of Management Services to conduct hearings of the commission not assigned to members of the commission.

Section 93. Subsection (2) of section 364.335, Florida Statutes, is amended to read:

364.335. Application for certificate

(2) If the commission grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a proceeding pursuant to ss. ~~s.~~ 120.569 and 120.57. The commission may, on its own motion, institute a proceeding under ss. ~~s.~~ 120.569 and 120.57 to determine whether the grant of such certificate is in the public interest. The commission shall order such proceeding conducted in or near the territory applied for, if feasible. If any person requests a public hearing on the application, such hearing shall, if feasible, be held in or near the territory applied for, and the transcript of the public hearing and any material submitted at or prior to the hearing shall be considered part of the record of the application and any proceeding related to the application.

Section 94. Section 367.031, Florida Statutes, is amended to read:

367.031. Original certificate

Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service or an order recognizing that the system is exempt from regulation as provided by s. 367.022. A utility must obtain a certificate of authorization or an exemption order from the commission prior to being issued a permit by the Department of Environmental Protection for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to ss. ~~s.~~ 120.569 and 120.57, or the application will be deemed granted.

Section 95. Subsections (3) and (4) of section 367.045, Florida Statutes, are amended to read:

367.045. Certificate of authorization; application and amendment procedures

(3) If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission does not receive written objection to the notice, the commission may dispose of the application without hearing. If the applicant is dissatisfied with the disposition, it may bring a proceeding under ss. ~~s.~~ 120.569 and 120.57.

(4) If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission receives from the Public Counsel, a governmental authority, or a utility or consumer who would be substantially affected by the requested certification or amendment a written objection requesting a proceeding pursuant to ss. ~~s.~~ 120.569 and 120.57, the commission shall order such proceeding conducted in or near the area for which application is made, if feasible. Notwithstanding the ability to object on any other ground, a county or municipality has standing to object on the ground that the issuance or amendment of the certificate of authorization violates established local comprehensive plans developed pursuant to ss. 163.3161-163.3211. If a

consumer, utility, or governmental authority or the Public Counsel requests a public hearing on the application, such hearing must, if feasible, be held in or near the area for which application is made; and the transcript of such hearing and any material submitted at or before the hearing must be considered as part of the record of the application and any proceeding related thereto.

Section 96. Subsection (2) of section 368.106, Florida Statutes, is amended to read:

368.106. Statement of intent to increase rates; major changes; hearing; suspension of rate schedules; determination of rate level

(2) Except when a rate is deemed just and reasonable pursuant to s. 368.105(3), if there is filed with the commission an initial rate, or a change or modification in any rate in effect, the commission shall, on complaint by any person whose substantial interests are affected by the rate, or may, on its own motion, at any time before such rate would have taken effect, order a

hearing pursuant to ss. ~~s.~~ 120.569 and 120.57 to determine whether the rate is just and reasonable.

Section 97. Paragraph (j) of subsection (3) of section 370.07, Florida Statutes, is amended to read:

370.07. Wholesale and retail saltwater products dealers; regulation

(3) APALACHICOLA BAY OYSTER SURCHARGE.—

(j) The Executive Director of the Department of Revenue is hereby authorized to adopt emergency rules pursuant to s. 120.54(4)~~(9)~~ for purposes of implementing this subsection. Notwithstanding any other provisions of law, such emergency rules shall remain effective for 6 months from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of this subsection shall not be subject to a s. 120.56(2) ~~120.54(4)~~ rule challenge or a s. 120.54(3)(c)2.~~(17)~~ drawout proceeding but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~.

Section 98. Paragraph (d) of subsection (4) of section 370.142, Florida Statutes, is amended to read:

370.142. Spiny lobster trap certificate program

(4) TRAP CERTIFICATE TECHNICAL ADVISORY AND APPEALS BOARD.--There is hereby established the Trap Certificate Technical Advisory and Appeals Board. Such board shall consider and advise the department on disputes and other problems arising from the implementation of the spiny lobster trap certificate program. The board may also provide information to the department on the operation of the trap certificate program.

(d) ~~By July 1, 1992,~~ The ~~board shall adopt~~ procedural rules adopted by the board shall conform to the requirements of chapter 120 ~~pursuant to s. 120.53~~.

Section 99. Subsection (7) of section 373.2295, Florida Statutes, is amended to read:

373.2295. Interdistrict transfers of groundwater

(7) Notwithstanding the provisions of chapter 120, the department shall, within 30 days after its receipt of a request for review of the water management district's action, approve, deny, or modify the water management district's action on the proposed interdistrict transfer and use of groundwater. The department shall issue a notice of its intended action. Any substantially affected person who requested review pursuant to paragraph (6)(a) may request an administrative hearing pursuant to chapter 120 within 14 days after notice of the department's intended action. The parties to such proceeding shall include, at a minimum, the affected water management districts and the applicant. The proceedings initiated by a petition

under ss. ~~s.~~ 120.569 and 120.57, following the department's issuance of a notice of intended agency action, is the exclusive proceeding authorized for the review of agency action on the interdistrict transfer and use of groundwater. This procedure is to give effect to the legislative intent that this section provide a single, efficient, simplified, coordinated permitting process for the interdistrict transfer and use of groundwater.

Section 100. Subsections (5) and (6) of section 373.421, Florida Statutes, are amended to read:

373.421. Delineation methods; formal determinations

(5) A formal determination obtained under this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable under s. 120.565. Sections 120.569 and 120.57 ~~and 120.59~~ apply to formal determinations under this section.

(6) The district or the department may also issue nonbinding informal determinations or otherwise institute determinations on its own initiative as provided by law. A nonbinding informal determination of the extent of surface waters and wetlands issued by the South Florida Water Management District or the Southwest Florida Water Management District, between July 1, 1989, and the effective date of the methodology ratified in s. 373.4211, shall be validated by the district if a petition to validate the nonbinding informal determination is filed with the district on or before October 1, 1994, provided:

(a) The petitioner submits the documentation prepared by the agency, and signed by an agency employee in the course of the employee's official duties, at the time the nonbinding informal determination was issued, showing the boundary of the surface waters or wetlands;

(b) The request is accompanied by the appropriate fee in accordance with the fee schedule established by district rule;

(c) Any supplemental information, such as aerial photographs and soils maps, is provided as necessary to ensure an accurate determination;

(d) District staff verify the delineated surface water or wetland boundary through site inspection; and

(e) Following district verification, and adjustment if necessary, of the boundary of surface waters or wetlands, the petitioner submits a survey certified pursuant to chapter 472, which depicts the surface water or wetland boundaries. The certified survey shall contain a legal description of, and the acreage contained within, the boundaries of the property for which the determination is sought. The boundaries must be witnessed to the property boundaries and must be capable of being mathematically reproduced from the survey.

Validated informal nonbinding determinations issued by the South Florida Water Management District and the Southwest Florida Water Management District shall remain valid for a period of 5 years from the date of validation by the district, as long as physical

conditions on the property do not change so as to alter the boundaries of surface waters or wetlands. A validation obtained under this section is final agency action. Sections 120.569 and 120.57 ~~and 120.59~~ apply to validations under this section.

Section 101. Subsection (7) of section 373.4211, Florida Statutes, is amended to read:

373.4211. Ratification of chapter 17-340, Florida Administrative Code, on the delineation of the landward extent of wetlands and surface waters

Pursuant to s. 373.421, the Legislature ratifies chapter 17-340, Florida Administrative Code, approved on January 13, 1994, by the Environmental Regulation Commission, with the following changes:

(7) Rule 17-340.300(2)(d), Florida Administrative Code, is changed to read:

"(c) Those areas, other than pine flatwoods and improved pastures, with undrained hydric soils which meet, in situ, at least one of the criteria listed below. A hydric soil is considered undrained unless reasonable scientific judgment indicates permanent artificial alterations to the onsite hydrology have resulted in conditions which would not support the formation of hydric soils.

"1. Soil classified according to United States Department of Agriculture's Keys to Soil Taxonomy (4th ed. 1990) as Umbraqualfs, Sulfaquents, Hydraquents, Humaquepts, Histosols (except Folists), Argiaquolls, or Umbraquults.

"2. Saline sands (salt flats-tidal flats).

"3. Soil within a hydric mapping unit designated by the U.S.D.A.-S.C.S. as frequently flooded or depressional, when the hydric nature of the soil has been field verified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida. If a permit applicant, or a person petitioning for a formal determination pursuant to subsection 373.421(2), F.S., disputes the boundary of a frequently flooded or depressional mapping unit, the applicant or petitioner may request that the regulating agency, in cooperation with the U.S.D.A.- S.C.S., confirm the boundary. For the purposes of section ~~subsection~~ 120.60~~(2)~~, F.S., a request for a boundary confirmation pursuant to this subparagraph shall have the same effect as a timely request for additional information by the regulating agency. The regulating agency's receipt of the final response provided by the U.S.D.A.- S.C.S. to the request for boundary confirmation shall have the same effect as a receipt of timely requested additional information.

"4. For the purposes of this paragraph only, 'pine flatwoods' means a plant community type in Florida occurring on flat terrain with soils which may experience a seasonable high water table near the surface. The canopy species consist of a monotypic or mixed forest of long leaf pine or slash pine. The subcanopy is typically sparse or absent. The ground cover is dominated by saw palmetto with areas of wire grass, gallberry, and other shrubs, grasses, and forbs, which are not obligate or facultative wet species. Pine flatwoods do not include those wetland communities as listed in the wetland definition contained in subsection 17-

340.200(19) which may occur in the broader landscape setting of pine flatwoods and which may contain slash pine. Also for the purposes of this paragraph only, 'improved pasture' means areas where the dominant native plant community has been replaced with planted or natural recruitment of herbaceous species which are not obligate or facultative wet species and which have been actively maintained for livestock through mechanical means or grazing."

Section 102. Subsections (1) and (2) of section 373.427, Florida Statutes, are amended to read:

373.427. Concurrent permit review

(1) The department, in consultation with the water management districts, may adopt procedural rules requiring concurrent application submittal and establishing a concurrent review procedure for any activity regulated under this part that also requires any authorization, permit, waiver, variance, or approval described in paragraphs (a)-(d). The rules must address concurrent review of applications under this part and any one or more of the authorizations, permits, waivers, variances, and approvals described in paragraphs (a)-(d). Applicants that propose such activities must submit, as part of the permit application under this part, all information necessary to satisfy the requirements for:

(a) Proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the board of trustees;

(b) Coastal construction permits under s. 161.041;

(c) Coastal construction control line permits under s. 161.053; and

(d) Waiver or variance of the setback requirements under s. 161.052.

The rules adopted under this section may also require submittal of such information as is necessary to determine whether the proposed activity will occur on submerged lands owned by the board of trustees. Notwithstanding s. 120.60~~(2)~~, an application under this part is not complete and the timeframes for license approval or denial shall not commence until all information required by rules adopted under this section is received. For applications concurrently reviewed under this section, the agency that conducts the concurrent application review shall issue a notice of consolidated intent to grant or deny the applicable authorizations, permits, waivers, variances, and approvals. The issuance of the notice of consolidated intent to grant or deny is deemed in compliance with s. 120.60~~(2)~~ timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. If an administrative proceeding pursuant to ss. ~~s.~~ 120.569 and 120.57 is timely requested, the case shall be conducted as a single consolidated administrative proceeding on all such concurrently processed applications. Once the rules adopted pursuant to this section become effective, they shall establish the concurrent review

procedure for applications submitted to both the department and the water management districts, including those applications for categories of activities requiring authorization to use board of trustees-owned submerged lands for which the board of trustees has not delegated authority to take final agency action without action by the board of trustees.

(2) In addition to the provisions set forth in subsection (1) and notwithstanding s. 120.60, the procedures established in this subsection shall apply to concurrently reviewed applications which request proprietary authorization to use board of trustees-owned submerged lands for activities for which there has been no delegation of authority to take final agency action without action by the board of trustees.

(a) Unless waived by the applicant, within 90 days of receipt of a complete application, the department or water management district shall issue a recommended consolidated intent to grant or deny on all of the concurrently reviewed applications, and shall submit the recommended consolidated intent to the board of trustees for its consideration of the application to use board of trustees-owned submerged lands. The recommended consolidated intent shall not constitute a point of entry to request a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. Unless waived by the applicant, the board of trustees shall consider the board of trustees-owned submerged lands portion of the recommended consolidated intent at its next regularly scheduled meeting for which notice may be properly given, and the board of trustees shall determine whether the application to use board of trustees-owned submerged lands should be granted, granted with modifications, or denied. The board of trustees shall then direct the department or water management district to issue a notice of intent to grant or deny the application to use board of trustees-owned submerged lands. Unless waived by the applicant, within 14 days following the action by the board of trustees, the department or water management district shall issue a notice of consolidated intent to grant or deny on the application to use board of trustees-owned submerged lands, in accordance with the directions of the board of trustees, together with all of the concurrently reviewed applications.

(b) The timely issuance of a recommended consolidated intent to grant or deny as set forth in paragraph (a) is deemed in compliance with s. 120.60 ~~(2)~~ timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands.

(c) Any petition for an administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57 must be filed within 14 days of the notice of consolidated intent to grant or deny. Unless waived by the applicant, within 60 days after the recommended order is submitted, or at the next regularly scheduled meeting for which notice may be properly given, whichever is latest, the board of trustees shall determine what action to take on any recommended order issued under ss. ~~s.~~ 120.569 and 120.57 on the application to use board of trustees-owned submerged lands, and shall direct the department or water management district on what action to take in the final order concerning the application to use board of trustees-owned submerged lands. The department or water management district shall determine what action to take on any

recommended order issued under ss. ~~s.~~ 120.569 and 120.57 regarding any concurrently processed permits, waivers, variances, or approvals required by this chapter or chapter 161. The department or water management district shall then take final agency action by entering a consolidated final order addressing each of the concurrently reviewed authorizations, permits, waivers, or approvals. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. Any provisions relating to authorization to use board of trustees-owned submerged lands shall be as directed by the board of trustees. Issuance of the consolidated final order within 45 days after receipt of the direction of the board of trustees regarding the application to use board of trustees-owned submerged lands is deemed in compliance with the timeframes for issuance of final orders under s. 120.60~~(2)~~. The final order shall be subject to the provisions of s. 373.4275.

Section 103. Subsection (1) of section 373.4275, Florida Statutes, is amended to read:

373.4275. Review of consolidated orders

(1) Beginning on the effective date of the rules adopted under s. 373.427(1), review of any consolidated order rendered pursuant to s. 373.427(1) shall be governed by the provisions of s. 373.114(1). However, the term "party" shall mean any person who participated as a party in a ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57 on the concurrently reviewed authorizations, permits, waivers, variances, or approvals, or any affected person who submitted to the department, water management district, or board of trustees oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the authorization, permit, waiver, variance, or approval, provided that such testimony was cognizable within the scope of this chapter or the applicable provisions of chapter 161, chapter 253, or chapter 258 when the consolidated notice of intent includes an authorization, permit, waiver, variance, or approval under those chapters. In such cases, the standard of review shall also ensure consistency with the applicable provisions and purposes of chapter 161, chapter 253, or chapter 258 when the consolidated order includes an authorization, permit, waiver, variance, or approval under those chapters. If the consolidated order subject to review includes approval or denial of proprietary authorization to use submerged lands on which the board of trustees has previously acted, as described in s. 373.427(2), the scope of review under this section shall not encompass such proprietary decision, but the standard of review shall also ensure consistency with the applicable provisions and purposes of chapter 161 when the consolidated order includes a permit, waiver, or approval under that chapter.

(a) The final order issued under this section shall contain separate findings of fact and conclusions of law, and a ruling that individually addresses each authorization, permit, waiver, variance, and approval that was the subject of the review.

(b) If a consolidated order includes proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund for an activity for which the authority has been delegated to take final agency action without action of the board of trustees, the following additional provisions and exceptions to s. 373.114(1) apply:

1. The Governor and Cabinet shall sit concurrently as the Land and Water Adjudicatory Commission and the Board of Trustees of the Internal Improvement Trust Fund in exercising the exclusive authority to review the order;

2. The review may also be initiated by the Governor or any member of the Cabinet within 20 days after the rendering of the order in which case the other provisions of s. 373.114(1)(a) regarding acceptance of a request for review do not apply; and

3. If the Governor and Cabinet find that an authorization to use submerged lands is not consistent with chapter 253 or chapter 258, any authorization, permit, waiver, or approval authorized or granted by the consolidated order must be rescinded or modified or the proceeding must be remanded for further action consistent with the order issued under this section.

Section 104. Paragraph (b) of subsection (5) of section 376.12, Florida Statutes, is amended to read:

376.12. Liabilities and defenses of terminal facilities and vessels

(5) Any person claiming to have suffered damages as a result of a discharge of pollutants prohibited by s. 376.041 may, within 180 days after the date of such discharge, apply to the department for reimbursement from the Florida Coastal Protection Trust Fund. It shall be the responsibility of the claimant to provide the department with the required documentation concerning the damages suffered as a direct result of the discharge. The department shall prescribe appropriate forms and details for such application, which application shall include a provision requiring the applicant to make a sworn verification of the damage claim to the best of his or her knowledge. The secretary of the department may, upon petition and for good cause shown, waive the 180-day limitation for filing damage claims.

(b) If either the claimant or the person determined by the secretary to be responsible for the discharge disagrees with the amount of the damage award, such person may request a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 105. Paragraph (h) of subsection (12) of section 376.3071, Florida Statutes, is amended to read:

376.3071. Inland Protection Trust Fund; creation; purposes; funding

(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—

(h) Review.—

1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that the department may require within such 60-day period. If the

applicant believes any request for additional information is not authorized, the applicant may request a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. Once the department requests additional information, the department may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information.

2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.

3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 106. Subsection (3) of section 376.3074, Florida Statutes, is amended to read:

376.3074. Noncompliance fees

(3) A notice of a noncompliance fee shall inform the person that he or she may request an administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. If an informal administrative determination is sought, the determination may be made by a district director of the department or his or her designee. The notice shall contain a statement that a person failing to pay the fee within the time allowed, or failing to appear to contest the citation after requesting a hearing, shall be deemed to have waived the right to contest imposition of the noncompliance fee, and in such case, the person may be required to pay an amount up to the maximum fine or penalty. If the person fails to pay the assessed fee or waives his or her right to a hearing, the department may initiate a civil enforcement action pursuant to this chapter.

Section 107. Paragraph (k) of subsection (3) of section 376.3078, Florida Statutes, is amended to read:

376.3078. Drycleaning facility restoration; funds; uses; liability; recovery of expenditures

(3) REHABILITATION LIABILITY.--In accordance with the eligibility provisions of this section, no real property owner or no person who owns or operates, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility shall be subject to administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents. Subject to the delays that may occur as a result of the prioritization of sites under this section for any qualified site, costs for activities

described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, without recourse to reimbursement or recovery from the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility.

(k) The owner, operator, and real property owner may apply for the Drycleaning Contamination Cleanup Program by jointly submitting a completed application package to the department pursuant to the rules adopted by the department. If the application cannot be jointly submitted, then the applicant shall provide notice of the application to other interested parties. After reviewing the completed application package, the department shall notify the applicant in writing as to whether the drycleaning facility or wholesale supply facility is eligible for the program. If the department denies eligibility for a completed application package, the notice of denial shall specify the reasons for the denial and shall constitute agency action subject to the provisions of chapter 120. For the purposes of ss. ~~s.~~ 120.569 and 120.57, the real property owner and the owner and operator of a drycleaning facility or wholesale supply facility which is the subject of a decision by the department with regard to eligibility shall be deemed to be parties whose substantial interests are determined by the department's decision to approve or deny eligibility.

Section 108. Subsection (6) of section 376.70, Florida Statutes, is amended to read:

376.70. Tax on gross receipts of drycleaning facilities

(6) The Legislature declares that the failure to promptly implement the provisions of this section would present an immediate threat to the welfare of the state. Therefore, the executive director of the Department of Revenue is authorized to adopt emergency rules pursuant to s. 120.54(4) ~~(9)~~ to implement this section. Notwithstanding any other provision of law, such emergency rules shall remain effective for 180 days from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of this section shall not be subject to a s. 120.56(2) ~~120.54(4)~~ rule challenge or a s. 120.54(3)(c)2.~~(17)~~ drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~.

Section 109. Subsection (10) of section 376.75, Florida Statutes, is amended to read:

376.75. Tax on production or importation of perchloroethylene

(10) The Legislature declares that the failure to promptly implement the provisions of this section would present an immediate threat to the welfare of the state. Therefore, the executive director of the Department of Revenue is authorized to adopt emergency rules pursuant to s. 120.54(4) ~~(9)~~ to implement this section. Notwithstanding any other provision of law, such emergency rules shall remain effective for 180 days from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of this section shall not be subject to a s. 120.56(2) ~~120.54(4)~~ rule challenge or a s. 120.54(3)(c)2.~~(17)~~ drawout proceeding, but, once adopted, shall be subject to a s.

120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.~~(13)~~.

Section 110. Subsection (4) of section 378.211, Florida Statutes, is amended to read:

378.211. Violations; damages; penalties

(4) As a condition precedent to the institution of any action authorized by subsection (1), subsection (2), or subsection (3), the department shall issue a written notice of violation to the operator setting forth in detail the alleged violation and specifying a reasonable time, not to exceed 90 days, in which to initiate corrective action. If the operator disputes the matters contained in the notice of violation, the operator may request a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. If a hearing is requested, the time for initiating corrective action shall not begin to run until a final order is entered. The civil penalties provided in subsection (2) shall not begin to accrue until the expiration of the time for initiating corrective action provided in the notice of violation issued by the department. Upon the expiration of the period provided in the notice, the department, in its discretion, may institute the action provided for under subsection (1), subsection (2), or subsection (3), if the violation specified in the notice of violation has not been corrected.

Section 111. Subsection (1) of section 378.405, Florida Statutes, is amended to read:

378.405. Reclamation review procedure

(1) All agency reviews conducted under this part are subject to this section. Within 30 days after receipt of an operator's conceptual reclamation plan, the department, the secretary, or the affected agency shall review the plan and shall request submittal of all additional information the agency is permitted by law to require. If the applicant believes any agency request for additional information is not authorized by law or agency rule, the applicant may request a hearing under ss. ~~s.~~ 120.569 and 120.57. Within 30 days after receipt of such additional information, the agency must review it and may request only such further information as is needed to clarify the additional information.

Section 112. Paragraph (a) of subsection (3) of section 378.901, Florida Statutes, is amended to read:

378.901. Life-of-the-mine permit

(3) Notwithstanding the provisions of s. 378.405, an application for a life- of-the-mine permit must be reviewed as follows:

(a) Within 30 days after receipt of an application for a permit under this section, the bureau shall review the application and shall request submittal of any additional information that the bureau requires. If the operator believes that the bureau is not authorized by law or rule to require any of the requested additional information, the operator may request a

hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. Within 30 days after receipt of the additional information, the bureau shall review it and may further request only that information needed to clarify the additional information or to answer new questions raised by or directly related to the additional information.

Section 113. Paragraph (b) of subsection (1) and subsection (12) of section 380.05, Florida Statutes, are amended to read:

380.05. Areas of critical state concern

(1)

(b) Within 45 days following receipt of a recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the recommendation with or without modification and by rule designate the area of critical state concern. Any rule that designates an area of critical state concern must include:

1. A detailed boundary description of the area.

2. Principles for guiding development.

3. A clear statement of the purpose for the designation.

4. A precise checklist of actions which, when implemented, will result in repeal of the designation by the Administration Commission, and the agencies or entities responsible for taking those actions.

5. A list of those issues or programs for which mechanisms must be in place to assure ongoing implementation of the actions taken to result in repeal of the designation.

6. A list of the state agencies which, in addition to those specified in subsection (22), administer programs that affect the purpose of the designation.

The rule shall become effective 20 days after being filed with the Secretary of State, except that an emergency rule adopted by the commission and designating an area of critical state concern shall become effective immediately on being filed. Any rule adopted pursuant to this paragraph shall be presented to the Legislature for review pursuant to paragraph (c). A ~~An economic impact~~ statement of estimated regulatory costs prepared pursuant to s. 120.541 ~~120.54(2)(a)~~ shall not be a ground for a challenge of the rule; however, a landowner shall not be precluded from using adverse economic results as grounds for challenge. Such principles for guiding development shall apply to any development undertaken subsequent to the legislative review pursuant to paragraph (c) of the designation of the area of critical state concern with or without modification but prior to the adoption of land development rules and regulations or a local comprehensive plan for the critical area pursuant to subsections (6) and (8). No boundaries or principles for guiding development shall be adopted without a specific finding by the commission that the boundaries or principles are consistent with the purpose

of the designation. The commission is not authorized to adopt any rule that would provide for a moratorium on development in any area of critical state concern.

(12) Upon the request of a substantially interested person pursuant to s. 120.54(7)~~(5)~~, a local government or regional planning agency within the designated area, or the state land planning agency, the commission may by rule remove, contract, or expand any designated boundary. Boundary expansions are subject to legislative review pursuant to paragraph (1)(c). No boundary may be modified without a specific finding by the commission that such changes are consistent with necessary resource protection. The total boundaries of an entire area of critical state concern shall not be removed by the commission unless a minimum time of 1 year has elapsed from the adoption of regulations and a local comprehensive plan pursuant to subsection (1), subsection (6), subsection (8), or subsection (10). Before totally removing such boundaries, the commission shall make findings that the regulations and plans adopted pursuant to subsection (1), subsection (6), subsection (8), or subsection (10) are being effectively implemented by local governments within the area of critical state concern to protect the area and that adopted local government comprehensive plans within the area have been conformed to principles for guiding development for the area.

Section 114. Paragraph (a) of subsection (9) and paragraph (d) of subsection (23) of section 380.06, Florida Statutes, are amended to read:

380.06. Developments of regional impact

(9) CONCEPTUAL AGENCY REVIEW.--

(a)1. In order to facilitate the planning and preparation of permit applications for projects that undergo development-of-regional-impact review, and in order to coordinate the information required to issue such permits, a developer may elect to request conceptual agency review under this subsection either concurrently with development-of-regional-impact review and comprehensive plan amendments, if applicable, or subsequent to a preapplication conference held pursuant to subsection (7).

2."Conceptual agency review" means general review of the proposed location, densities, intensity of use, character, and major design features of a proposed development required to undergo review under this section for the purpose of considering whether these aspects of the proposed development comply with the issuing agency's statutes and rules.

3. Conceptual agency review is a licensing action subject to chapter 120, and approval or denial constitutes final agency action, except that the 90-day time period specified in s. 120.60(1) ~~120.62(2)~~ shall be tolled for the agency when the affected regional planning agency requests information from the developer pursuant to paragraph (10)(b). If proposed agency action on the conceptual approval is the subject of a proceeding under ss. s. 120.569 and 120.57, final agency action shall be conclusive as to any issues actually raised and adjudicated in the proceeding, and such issues may not be raised in any subsequent proceeding under ss. s. 120.569 and 120.57 on the proposed development by any parties to the prior proceeding.

4. A conceptual agency review approval shall be valid for up to 10 years, unless otherwise provided in a state or regional agency rule, and may be reviewed and reissued for additional periods of time under procedures established by the agency.

(23) ADOPTION OF RULES BY STATE LAND PLANNING AGENCY.—

(d) Regional planning agencies that perform development-of-regional-impact and Florida Quality Development review are authorized to assess and collect fees to fund the costs, direct and indirect, of conducting the review process. The state land planning agency shall adopt rules to provide uniform criteria for the assessment and collection of such fees. The rules providing uniform criteria shall not be subject to rule challenge under s. 120.56(2) ~~120.54(4)~~ or to drawout proceedings under s. 120.54(3)(c)2.~~(17)~~, but, once adopted, shall be subject to an invalidity challenge under s. 120.56(3) by substantially affected persons. Until the state land planning agency adopts a rule implementing this paragraph, rules of the regional planning councils currently in effect regarding fees shall remain in effect. Fees may vary in relation to the type and size of a proposed project, but shall not exceed $75,000, unless the state land planning agency, after reviewing any disputed expenses charged by the regional planning agency, determines that said expenses were reasonable and necessary for an adequate regional review of the impacts of a project.

Section 115. Subsection (4) of section 380.065, Florida Statutes, is amended to read:

380.065. Certification of local government review of development

(4) After a local government has been certified to conduct development-of- regional-impact review, that review responsibility may be revoked by the Administration Commission upon a determination, subject to the provisions of ss. ~~s.~~ 120.569 and 120.57, that one or more of the criteria specified in subsection (2) are not being met.

Section 116. Paragraph (b) of subsection (5) of section 381.0065, Florida Statutes, is amended to read:

381.0065. Onsite sewage treatment and disposal systems; regulation

(5) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065- 381.0067 or chapter 386 or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065- 381.0067 or chapter 386 or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed $500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. ~~s.~~ 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067 or chapter 386 or part III of chapter 489, shall deposit any fines it collects in the county public health unit trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065- 381.0067, chapter 386, and part III of chapter 489. This section does not prohibit the department from enforcing ss. 381.0065-381.0067 or chapter 386 or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

Section 117. Subsection (3) of section 381.0086, Florida Statutes, is amended to read:

381.0086. Rules; variances; penalties

(3) Any variance granted by the department must be in writing, must state the standard involved, and must state as conditions of the variance the specific alternative measures taken to protect the health and safety of the occupants. In denying the request, the department must provide written notice under ss. ~~s.~~ 120.569 and 120.57 of the applicant's right to an administrative hearing to contest the denial within 21 days after the date of receipt of the notice.

Section 118. Subsection (4) of section 381.0087, Florida Statutes, is amended to read:

381.0087. Enforcement; citations

(4) The citing official shall inform the recipient, by written notice pursuant to ss. s. 120.569 and 120.57, of the right to an administrative hearing to contest the citation of the agency within 21 days after the date of receipt of the citation. The citation must contain a conspicuous statement that if the citation recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient is deemed to have waived the right to contest the citation and must pay an amount up to the maximum fine or penalty.

Section 119. Paragraph (c) of subsection (2) of section 388.4111, Florida Statutes, is amended to read:

388.4111. Public lands; arthropod control

(2)

(c) If the land management agency and the local arthropod control agency are unable to agree on a public lands control plan, the Florida Coordinating Council on Mosquito Control may recommend a control plan to the department, which shall propose a recommended public lands control plan. If the land management agency and the local arthropod control agency fail to agree to such recommended public lands control plan within 30 days of the rendering of such plan, either agency may petition the Land and Water Adjudicatory Commission to determine whether the proposed control plan employs methods which are the minimum necessary and economically feasible to abate a public health or nuisance problem and which impose the least hazard to fish, wildlife, and other natural resources protected or managed in such areas. Unless both parties waive their right to a hearing, the Land and Water Adjudicatory Commission shall direct a hearing officer to hold a hearing within the jurisdiction of the local arthropod control agency pursuant to the provisions of ss. ~~s.~~ 120.569 and 120.57 and submit a recommended order. The commission shall, within 60 days of receipt of the recommended order, issue a final order adopting a public lands control plan. Consistent with s. 120.57(1)(j)~~(b)10.~~, the commission may adopt or modify the proposed control plan. The commission shall adopt rules on the conduct of appeals before the commission.

Section 120. Subsection (3) of section 393.065, Florida Statutes, is amended to read:

393.065. Application and eligibility determination

(3) The department shall notify each applicant, in writing, of its eligibility decision. Any applicant determined by the department to be ineligible for developmental services shall have the right to appeal this decision pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 121. Subsection (8) of section 393.0651, Florida Statutes, is amended to read:

393.0651. Family or individual support plan

The department shall provide for an appropriate family support plan for children ages birth to 18 years of age and an individual support plan for each client. The parent or guardian of the client or, if competent, the client, or, when appropriate, the client advocate, shall be consulted in the development of the plan and shall receive a copy of the plan. Each plan shall include the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan shall include provisions for the most appropriate level of care for the client. Within the specification of needs and services for each client, when residential care is necessary, the department shall move toward placement of clients in residential facilities based within the client's community. The ultimate goal of each plan, whenever possible, shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community. For children under 6 years of age, the family support plan shall be developed within the 45- day application period as specified in s. 393.065(1); for all applicants 6 years of age or older, the family or individual support plan shall be developed within the 60-day period as specified in that subsection.

(8) Any client, or any parent of a minor client, or guardian, authorized guardian advocate, or client advocate for a client, who is substantially affected by the client's initial family or individual support plan, or the annual review thereof, shall have the right to file a notice to challenge the decision pursuant to ss. ~~s.~~ 120.569 and 120.57. Notice of such right to appeal shall be included in all support plans provided by the department.

Section 122. Paragraph (a) of subsection (1) of section 393.125, Florida Statutes, is amended to read:

393.125. Hearing rights

(1) REVIEW OF DEPARTMENT DECISIONS.—

(2)

(a) Any developmental services applicant or client, or his or her parent, guardian, guardian advocate, or authorized representative, who has any substantial interest determined by the department, shall have the right to request an administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 123. Subsection (7) of section 394.457, Florida Statutes, is amended to read:

394.457. Operation and administration

(7) ADMINISTRATIVE LAW JUDGES ~~HEARING OFFICERS~~.—

(a) One or more administrative law judges ~~hearing officers~~ shall be assigned by the Division of Administrative Hearings to conduct hearings for continued involuntary placement.

(b) Hearings on requests for orders authorizing continued involuntary placement filed in accordance with s. 394.467(4) shall be conducted in accordance with the provisions of ss. ~~s.~~ 120.569 and 120.57(1), except that any order entered by the administrative law judge ~~hearing officer~~ shall be final and subject to judicial review in accordance with s. 120.68, except that orders concerning patients committed after successfully pleading not guilty by reason of insanity shall be governed by the provisions of s. 916.16.

Section 124. Paragraph (d) of subsection (2), paragraph (e) of subsection (3), and subsection (4) of section 394.467, Florida Statutes, are amended to read:

394.467. Involuntary placement

(2) ADMISSION TO A TREATMENT FACILITY.--

(d) The treatment facility may retain a patient for a period not to exceed 6 months from the date of the order for involuntary placement. If continued involuntary placement is necessary at the end of that period, the administrator shall apply to the administrative law judge ~~hearing examiner~~ for an order authorizing continued involuntary placement.

(3) PROCEDURE FOR HEARING ON INVOLUNTARY PLACEMENT.--

(e) The treatment facility may accept and retain a patient admitted involuntarily for a period not to exceed 6 months whenever the patient is accompanied by a court order and adequate documentation of the patient's mental illness. Such documentation shall include a psychiatric evaluation and any psychological and social work evaluations of the patient. If further involuntary placement is necessary at the end of that period, the administrator shall apply to the administrative law judge ~~hearing examiner~~ for an order authorizing continued involuntary placement.

(4) PROCEDURE FOR CONTINUED INVOLUNTARY PLACEMENT.--

(a) If continued placement of an involuntary patient is necessary, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the patient, request an order authorizing continued involuntary placement. This request shall be accompanied by a statement from the patient's physician or clinical psychologist justifying the request and a brief summary of the patient's treatment during the time he or she was involuntarily placed. In addition, the administrator shall submit an individualized plan for the patient for whom he or she is requesting continued involuntary placement. Notification of this request for retention shall be mailed to the patient and his or her guardian or representative along with a completed petition, requiring only a signature, for a hearing regarding the continued hospitalization and a waiver-of-hearing form. The waiver-of- hearing form shall require express and informed consent and shall state that the patient is entitled to a

hearing under the law; that he or she is entitled to be represented by an attorney at the hearing and, if he or she cannot afford an attorney, that one will be appointed; and that, if it is shown at the hearing that the patient does not meet the criteria for involuntary placement, he or she is entitled to be released. In a proceeding involving a person 18 years of age or older, the hearing may be waived by express and informed consent in writing by the patient after the advice of counsel. If the patient or his or her guardian or representative does not sign the petition, or if the patient does not sign a waiver within 15 days, the administrative law judge ~~hearing officer~~ shall notice a hearing with regard to the patient involved in accordance with ss. ~~s.~~ 120.569 and 120.57(1). In a proceeding involving a person under the age of 18, the hearing shall not be waived; however, if, at the hearing, the administrative law judge ~~hearing examiner~~ finds that attendance at the hearing is not consistent with the best interests of the patient, he or she may waive the presence of the patient from all or any portion of the hearing.

(b) Any time continued involuntary placement is requested, the administrative law judge ~~hearing officer~~ may, on his or her own motion, notice a hearing.

(c) Any time continued involuntary placement is requested by the administrator, the administrator may request a hearing; and the administrative law judge ~~hearing officer~~ shall hold a hearing within 30 days of such request.

(d) The administrator shall not transfer any patient to voluntary status when he or she has reasonable cause to believe that the patient is dangerous to himself or herself or others. In any case in which the administrator has reasonable cause to believe that an involuntary patient is dangerous to himself or herself or others, the administrator shall request continued involuntary placement. In any case in which a request for continued involuntary placement is necessary, but the administrator after reviewing the case believes there is not reasonable cause to believe that the patient meets the criteria for involuntary placement at the time of application for transfer to voluntary status and the patient needs continued placement, the patient shall be transferred to a voluntary status.

(e) If the patient or his or her guardian or representative returns the signed petition noted in paragraph (a), the administrative law judge ~~hearing officer~~ shall notice a hearing in accordance with ss. ~~s.~~ 120.569 and 120.57(1). The patient and his or her guardian or representative shall be informed of the right to counsel by the administrative law judge ~~hearing officer~~. In the event a patient cannot afford counsel in a hearing before an administrative law judge ~~a hearing officer~~, the public defender in the county where the hearing is to be held shall act as attorney for the patient. The hearing shall be conducted in accordance with chapter 120.

(f) If the patient by express and informed consent waives his or her hearing after the advice of counsel or if at a hearing it is shown that the patient continues to meet the criteria for involuntary placement, the administrative law judge ~~hearing officer~~ shall sign the order for continued involuntary placement. The treatment facility shall be authorized to retain the patient for a period not to exceed 6 months. The same procedure shall be repeated prior to the expiration of each additional 6-month period the patient is retained.

(g) If continued involuntary placement is necessary for an individual admitted while serving a criminal sentence, but whose sentence is about to expire, or for an individual involuntarily placed while a minor, but who is about to reach the age of 18, the administrator shall petition the administrative law judge ~~hearing officer~~ for an order authorizing continued involuntary placement.

(h) At any hearing hereunder for a patient who has been previously adjudicated incompetent to consent to treatment, the administrative law judge ~~hearing examiner~~ shall consider testimony and evidence regarding the patient's competence. If the administrative law judge ~~hearing examiner~~ finds evidence that the patient is competent to consent to treatment, he or she may issue to the court in which the patient was adjudicated incompetent to consent to treatment a recommended order that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

Section 125. Subsection (7) of section 395.4025, Florida Statutes, is amended to read:

395.4025. Selection of state-approved trauma centers

(7) Any hospital that wishes to protest a decision made by the department based on the department's preliminary or in-depth review of applications or on the recommendations of the site visit review team pursuant to this section shall proceed as provided in chapter 120. Hearings held under this subsection shall be conducted in the same manner as provided in ss. ~~s~~. 120.569 and 120.57. Cases filed under chapter 120 may combine all disputes between parties.

Section 126. Subsection (6) of section 400.414, Florida Statutes, is amended to read:

400.414. Denial, revocation, or suspension of license; imposition of administrative fine; grounds

(6) An action taken by the agency to suspend, deny, or revoke a facility's license under this part, in which the agency claims that the facility owner or an employee of the facility has threatened the health, safety, or welfare of a resident of the facility, shall, upon receipt of the facility's request for a hearing, be heard by the Division of Administrative Hearings of the Department of Management Services within 120 days after the request for a hearing, unless that time period is waived by both parties. The administrative law judge ~~hearing officer~~ must render a decision within 30 days after the hearing.

Section 127. Subsection (7) of section 401.425, Florida Statutes, is amended to read:

401.425. Emergency medical services quality assurance; immunity from liability

(7) For the purpose of any disciplinary proceeding conducted by the department, the department shall have the power to issue subpoenas which shall compel the production of information, documents, or records from an Emergency

Medical Review Committee. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569 ~~120.58~~.

Section 128. Paragraph (b) of subsection (8) of section 402.48, Florida Statutes, is amended to read:

402.48. Health care services pools

(8)

(b) Each health care services pool shall give written notification to the department within 20 days after any change in the method of assuring financial responsibility or upon cancellation or nonrenewal of professional liability insurance. Unless the pool demonstrates that it is otherwise in compliance with the requirements of this section, the department shall suspend the license of the pool pursuant to ss. ~~s.~~ 120.569 and 120.57. Any suspension under this section shall remain in effect until the pool demonstrates compliance with the requirements of this section.

Section 129. Paragraph (b) of subsection (14) of section 403.061, Florida Statutes, is amended to read:

403.061. Department; powers and duties

The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(14) Establish a permit system whereby a permit may be required for the operation, construction, or expansion of any installation that may be a source of air or water pollution and provide for the issuance and revocation of such permits and for the posting of an appropriate bond to operate.

(b) The provisions of chapter 120 shall be accorded any person when substantial interests will be affected by an activity proposed to be conducted by the Department of Transportation pursuant to its certification and the acceptance of the department. If a proceeding is conducted pursuant to ss. ~~s.~~ 120.569 and 120.57, the department may intervene as a party. Should an administrative law judge ~~a hearing officer~~ of the Division of Administrative Hearings of the Department of Management Services submit a recommended order pursuant to ss. ~~s.~~ 120.569 and 120.57, the department shall issue a final department order adopting, rejecting, or modifying the recommended order pursuant to such action.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 130. Subsections (5), (6), (7), and (8) of section 403.0872, Florida Statutes, are amended to read:

403.0872. Operation permits for major sources of air pollution; annual operation license fee

Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section, which is the only department operation permit for a major source of air pollution required for such source. Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the following procedures and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail:

(5) Any person whose substantial interests are affected by a draft permit or the denial determination may request an administrative hearing under ss. ~~s.~~ 120.569 and 120.57, in accordance with the rules of the department. A draft permit must notify the permit applicant of any review process applicable to the permit decision of the department. The department shall prescribe, by rule, a suitable standard format for such notification.

(6) If a hearing is not requested under ss. ~~s.~~ 120.569 and 120.57, the draft permit will become the department's proposed permit but does not become final until the time for federal review of the proposed permit has elapsed. The department shall furnish the United States Environmental Protection Agency a copy of each proposed permit and its written response to any comments regarding the permit submitted by contiguous states. If no objection to the proposed permit is made by the United States Environmental Protection Agency within the time established by 42 U.S.C. s. 7661d, the proposed permit must become final no later than 55 days after the date on which the proposed permit was mailed to the United States Environmental Protection Agency. The department shall issue a conformed copy of the final permit as soon as is practicable thereafter.

(7) If a draft permit is the subject of an administrative hearing under ss. s. 120.569 and 120.57, a proposed permit containing changes, if any, resulting from the hearing process, after the conclusion of the hearing, must be issued and a copy must be provided to the applicant, to the United States Environmental Protection Agency, and to any contiguous state whose air quality could be affected or which is within 50 miles of the source, as soon as practicable. The proposed permit shall not become final until the time for review, by the United States Environmental Protection Agency, of the proposed permit has elapsed. If comments from a contiguous state regarding the permit are received, the department must

provide a written response to the applicant, to the state, and to the United States Environmental Protection Agency. If no objection to the proposed permit is made by the United States Environmental Protection Agency within the time established by 42 U.S.C. s. 7661d, the proposed permit must become final no later than 55 days after the date on which the proposed permit was mailed to the United States Environmental Protection Agency. The department shall issue a conformed copy of the final permit as soon as is practicable thereafter.

(8) If the administrator of the United States Environmental Protection Agency timely objects to a proposed permit under this section, the department must not issue a final permit until the objection is resolved or withdrawn. A copy of the written objection of the administrator must be provided to the permit applicant as soon as practicable after the department receives it. Within 45 days after the date on which the department serves the applicant with a copy of an objection by the United States Environmental Protection Agency to a proposed permit, the applicant may file a written reply to the objection. The written reply must include any supporting materials that the applicant desires to include in the record relevant to the issues raised by the objection. The written reply must be considered by the department in issuing a final permit to resolve the objection of the administrator. A final permit issued by the department to resolve an objection of the administrator is not subject to ss. ~~s.~~ 120.569 and 120.57.

Section 131. Subsection (1) and paragraph (b) of subsection (3) of section 403.0876, Florida Statutes, are amended to read:

403.0876. Permits; processing

(1) Within 30 days after receipt of an application for a permit under this chapter, the department shall review the application and shall request submittal of all additional information the department is permitted by law to require. If the applicant believes any departmental request for additional information is not authorized by law or departmental rule, the applicant may request a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. Within 30 days after receipt of such additional information, the department shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department for such additional information is not authorized by law or departmental rule, the department, at the applicant's request, shall proceed to process the permit application.

(3)

(b) At the applicant's discretion and notwithstanding any other provisions of chapter 120, a permit processed under this subsection is subject to an expedited administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57. To request such hearing, the applicant must notify the Division of Administrative Hearings, the department, and all other parties in writing within 15 days after his receipt of notice of assignment of an administrative law judge ~~a hearing~~

~~officer~~ from the division. The division shall conduct a hearing within 45 days after receipt of the request for such expedited hearing.

Section 132. Subsection (4) of section 403.0885, Florida Statutes, is amended to read:

403.0885. Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program

(4) The department shall respond, in writing, to any written comments on a pending application for a state NPDES permit which the department receives from the executive director, or his designee, of the Game and Fresh Water Fish Commission on matters within the commenting agency's jurisdiction. The department's response shall not constitute agency action for purposes of ss. ~~s.~~ 120.569 and 120.57 or other provisions of chapter 120.

Section 133. Subsection (2) of section 403.111, Florida Statutes, is amended to read:

403.111. Confidential records

(2) Nothing in this section shall be construed to prevent the use of such records in judicial or administrative proceedings when ordered to be produced by appropriate subpoena or by order of the court or an administrative law judge ~~a hearing officer~~. No such subpoena or order of the court or administrative law judge ~~hearing officer~~ shall abridge or alter the rights or remedies of persons affected in the protection of trade secrets or secret processes, in the manner provided by law, and such persons affected may take any and all steps available by law to protect such trade secrets or processes.

Section 134. Subsection (11) of section 403.503, Florida Statutes, is amended to read:

403.503. Definitions

As used in this act:

(11) "Designated administrative law judge ~~hearing officer~~" means the administrative law judge ~~hearing officer~~ assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct the hearings required by this act.

Section 135. Subsection (2) of section 403.5064, Florida Statutes, is amended to read:

403.5064. Distribution of application; schedules

(2) Within 7 days after completeness has been determined, the department shall prepare a schedule of dates for submission of statements of issues, determination of sufficiency, and submittal of final reports from affected and other agencies and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.508(4). This schedule shall be timely provided by the

department to the applicant, the administrative law judge ~~hearing officer~~, all agencies identified pursuant to subsection (1), and all parties.

Section 136. Section 403.5065, Florida Statutes, is amended to read:

403.5065. Appointment of administrative law judge ~~hearing officer~~

Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate an administrative law judge ~~a hearing officer~~ to conduct the hearings required by this act. The division director shall designate an administrative law judge ~~a hearing officer~~ within 7 days after receipt of the request from the department. In designating an administrative law judge ~~a hearing officer~~ for this purpose, the division director shall, whenever practicable, assign an administrative law judge ~~a hearing officer~~ who has had prior experience or training in electrical power plant site certification proceedings. Upon being advised that an administrative law judge ~~a hearing officer~~ has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated administrative law judge ~~hearing officer~~, who shall docket the application.

Section 137. Subsection (2) of section 403.5066, Florida Statutes, is amended to read:

403.5066. Determination of completeness

Within 15 days after receipt of an application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness, not the sufficiency, of the application.

(2) If the applicant contests the determination by the department that an application is incomplete, the administrative law judge ~~hearing officer~~ shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 30 days after the filing of the statement by the department. The administrative law judge ~~hearing officer~~ shall render a decision within l0 days after the hearing.

(a) If the administrative law judge ~~hearing officer~~ determines that the application was not complete as filed, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(b) If the administrative law judge ~~hearing officer~~ determines that the application was complete at the time it was filed, the time schedules referencing a complete application under this act shall commence upon such determination.

Section 138. Subsections (1) and (2) of section 403.5067, Florida Statutes, are amended to read:

403.5067. Determination of sufficiency

Within 45 days after the distribution of the complete application or amendment, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the sufficiency of the application or amendment. The department's statement shall be based upon consultation with the affected agencies, which shall submit to the department recommendations on the sufficiency of the application within 30 days after distribution of the complete application.

(1) If the department declares the application or amendment insufficient, the applicant may withdraw the application or amendment. If the applicant declines to withdraw the application or amendment, the applicant may, at its option:

(a) Within 40 days after the department filed its statement of insufficiency or such later date as authorized by department rules, file additional information necessary to make the application or amendment sufficient. If the applicant makes its application or amendment sufficient within this time period, the time schedules under this act shall not be tolled by the department's statement of insufficiency;

(b) Advise the department and the administrative law judge ~~hearing officer~~ that the information necessary to make the application or amendment sufficient cannot be supplied within the time period authorized in paragraph (a). The time schedules under this act shall be tolled from the date of the notice of insufficiency until the application or amendment is determined sufficient; or

(c) Contest the statement of insufficiency by filing a request for hearing with the administrative law judge ~~hearing officer~~ within 15 days after the filing of the statement of insufficiency. If a hearing is requested by the applicant, all time schedules under this act shall be tolled as of the department's statement of insufficiency, pending the administrative law judge's ~~hearing officer's~~ decision concerning the dispute. A hearing shall be held no later than 30 days after the filing of the statement by the department, and a decision shall be rendered within 10 days after the hearing.

(2)(a) If the administrative law judge ~~hearing officer~~ determines, contrary to the department, that an application or amendment is sufficient, all time schedules under this act shall resume as of the date of the administrative law judge's ~~hearing officer's~~ determination.

(b) If the administrative law judge ~~hearing officer~~ agrees that the application is insufficient, all time schedules under this act shall remain tolled until the applicant files additional information and the application or amendment is determined sufficient by the department or the administrative law judge ~~hearing officer~~.

Section 139. Subsection (4) of section 403.507, Florida Statutes, is amended to read:

403.507. Preliminary statements of issues, reports, and studies

(4) The department shall prepare a written analysis, which shall be filed with the designated administrative law judge ~~hearing officer~~ and served on all parties no later than 240 days after the complete application is filed with the department, but no later than 60 days prior to the hearing, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the rules of the department.

(b) Copies of the studies and reports required by this section and s. 403.519.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(e) The recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

(f) Copies of the department's draft of the operation permit for a major source of air pollution, which must also be provided to the United States Environmental Protection Agency for review within 5 days after issuance of the written analysis.

Section 140. Subsections (1), (2), (3), (4), (5), (6), and (7) of section 403.508, Florida Statutes, are amended to read:

403.508. Land use and certification proceedings, parties, participants

(1) The designated administrative law judge ~~hearing officer~~ shall conduct a land use hearing in the county of the proposed site within 90 days after receipt of a complete application for electrical power plant site certification by the department. The place of such hearing shall be as close as possible to the proposed site.

(2) The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. The designated administrative law judge's ~~hearing officer's~~ recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 45 days after receipt of the recommended order by the board. If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site unless certification is subsequently denied or withdrawn. If it is determined by the board that the proposed site does not conform, it shall be the responsibility of the applicant to make the necessary application for rezoning. Should the application for rezoning be denied, the applicant may appeal this decision to the board, which may, if it determines after notice and hearing that it is in the public interest to authorize the use of the land as a site

for an electrical power plant, authorize a variance to the adopted land use plan and zoning ordinances. In the event a variance is denied, no further action may be taken on the complete application by the department until the proposed site conforms to the adopted land use plan or zoning ordinances.

(3) A certification hearing shall be held by the designated administrative law judge ~~hearing officer~~ no later than 300 days after the complete application is filed with the department; however, an affirmative determination of need by the Public Service Commission pursuant to s. 403.519 shall be a condition precedent to the conduct of the certification hearing. The certification hearing shall be held at a location in proximity to the proposed site. The certification hearing shall also constitute the sole hearing allowed by chapter 120 to determine the substantial interest of a party regarding any required agency license or any related permit required pursuant to any federally delegated or approved permit program. At the conclusion of the certification hearing, the designated administrative law judge ~~hearing officer~~ shall, after consideration of all evidence of record, submit to the board a recommended order no later than 60 days after the filing of the hearing transcript. In the event the administrative law judge ~~hearing officer~~ fails to issue a recommended order within 60 days after the filing of the hearing transcript, the administrative law judge ~~hearing officer~~ shall submit a report to the board with a copy to all parties within 60 days after the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended order will be issued.

(4)(a) Parties to the proceeding shall include:

1. The applicant.

2. The Public Service Commission.

3. The Department of Community Affairs.

4. The Game and Fresh Water Fish Commission.

5. The water management district.

6. The department.

7. The regional planning council.

8. The local government.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Upon the filing with the administrative law judge ~~hearing officer~~ of a notice of intent to be a party at least 15 days prior to the date of the land use hearing, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed electrical power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency described in subparagraph (c)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated administrative law judge ~~hearing officer~~ and upon such conditions as he may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are being affected pursuant to s. 403.509(4), shall be made a party upon the request of the department or the applicant.

(5) When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge ~~hearing officer~~. If the designated administrative law judge ~~hearing officer~~ proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(6) The designated administrative law judge ~~hearing officer~~ shall have all powers and duties granted to administrative law judges ~~hearing officers~~ by chapter 120 and this chapter and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness and sufficiency of an application for certification.

(7) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge ~~hearing officer~~ to ensure the orderly presentation of witnesses and evidence, shall be:

(a) The applicant.

(b) The department.

(c) State agencies.

(d) Regional agencies, including regional planning councils and water management districts.

(e) Local governments.

(f) Other parties.

Section 141. Subsections (1) and (2) of section 403.509, Florida Statutes, are amended to read:

403.509. Final disposition of application

(1) Within 60 days after receipt of the designated administrative law judge's ~~hearing officer's~~ recommended order, the board shall act upon the application by written order, approving certification or denying the issuance of a certificate, in accordance with the terms of this act, and stating the reasons for issuance or denial. If the certificate is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge ~~hearing officer~~ or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

Section 142. Section 403.5095, Florida Statutes, is amended to read:

403.5095. Alteration of time limits

Any time limitation in this act may be altered by the designated administrative law judge ~~hearing officer~~ upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party.

Section 143. Subsection (2) of section 403.516, Florida Statutes, is amended to read:

403.516. Modification of certification

(2) Petitions filed pursuant to paragraph (1)(c) shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge ~~hearing officer~~ commensurate with the significance of the modification requested.

Section 144. Paragraphs (a) and (c) of subsection (1) of section 403.517, Florida Statutes, are amended to read:

403.517. Supplemental applications for sites certified for ultimate site capacity

(1)(a) The department shall adopt rules governing the processing of supplemental applications for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. The rules adopted pursuant to this section shall include provisions for:

1. Prompt appointment of a designated administrative law judge ~~hearing officer~~.

2. The contents of the supplemental application.

3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge ~~hearing officer~~.

4. Public notice of the filing of the supplemental applications.

5. Time limits for prompt processing of supplemental applications.

6. Final disposition by the board within 215 days of the filing of a complete supplemental application.

(c) Any time limitation in this section or in rules adopted pursuant to this section may be altered by the designated administrative law judge ~~hearing officer~~ upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 and this act in considering and processing such supplemental applications.

Section 145. Section 403.525, Florida Statutes, is amended to read:

403.525. Appointment of administrative law judge ~~hearing officer~~

Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate an administrative law judge ~~a hearing officer~~ to conduct the hearings required by this act. The division director shall designate an administrative law judge ~~a hearing officer~~ to conduct the hearings required by this act within 7 days after receipt of the request from the department. Whenever practicable, the division director shall assign an administrative law judge ~~a hearing officer~~ who has had prior experience or training in this type of certification proceeding. Upon being advised that an administrative law judge ~~a hearing officer~~ has been designated, the department shall immediately file a copy of the application and all supporting documents with the administrative law judge ~~hearing officer~~, who shall docket the application.

Section 146. Subsection (2) of section 403.5251, Florida Statutes, is amended to read:

403.5251. Distribution of application; schedules

(2) Within 7 days after completeness has been determined, the department shall prepare a schedule of dates for submission of statements of issues, determination of sufficiency, and submittal of final reports from affected and other agencies and other significant dates to be followed during the certification process, including dates for filing notices of appearances to be a party pursuant to s. 403.527(4). This schedule shall be provided by the department to the applicant, the administrative law judge hearing officer, and the agencies identified pursuant to subsection (1).

Section 147. Subsection (2) of section 403.5252, Florida Statutes, is amended to read:

403.5252. Determination of completeness

Within 15 days after receipt of an application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness, not the sufficiency, of the application.

(2) If the applicant contests the determination by the department that an application is incomplete, the administrative law judge ~~hearing officer~~ shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 30 days after the filing of the statement by the department. The administrative law judge ~~hearing officer~~ shall render a decision within 10 days after the hearing.

(a) If the administrative law judge ~~hearing officer~~ determines that the application was not complete as filed, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(b) If the administrative law judge ~~hearing officer~~ determines that the application was complete at the time it was filed, the time schedules referencing a complete application under this act shall commence upon such determination.

Section 148. Subsections (1) and (2) of section 403.5253, Florida Statutes, are amended to read:

403.5253. Determination of sufficiency

Within 45 days after the distribution of the complete application or amendment, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the sufficiency of the application or amendment. The department's statement shall be based upon consultation with the affected agencies, which shall submit to the department recommendations on the sufficiency of the application within 30 days after distribution of the complete application.

(1) If the department declares the application or amendment insufficient, the applicant may withdraw the application or amendment. If the applicant declines to withdraw the application or amendment, the applicant may, at its option:

(a) Within 15 days after the department filed its statement of insufficiency, file additional information necessary to make the application or amendment sufficient. If the applicant makes its application or amendment sufficient within this time period, the time schedules under this act shall not be tolled by the department's statement of insufficiency;

(b) Advise the department and the administrative law judge ~~hearing officer~~ that the information necessary to make the application or amendment sufficient cannot be supplied within 15 days after the notice of the insufficiency. The time schedules under this act shall be tolled from the date of the statement of insufficiency until the application or amendment is determined sufficient; or

(c) Contest the notice of insufficiency by filing a request for hearing with the administrative law judge ~~hearing officer~~ within 15 days after the filing of the statement of insufficiency. If a hearing is requested by the applicant, all time schedules under this act shall be tolled as of the date of the department's statement of insufficiency, pending the administrative law judge's ~~hearing officer's~~ decision concerning the dispute. A hearing shall be held no later than 30 days after the filing of the statement by the department, and a decision shall be rendered within 10 days after the hearing, unless otherwise agreed by the department and the applicant.

(2)(a) If the administrative law judge ~~hearing officer~~ determines, contrary to the department, that an application or amendment is sufficient, all time schedules under this act shall resume as of the date of the administrative law judge's ~~hearing officer's~~ determination.

(b) If the administrative law judge ~~hearing officer~~ agrees that the application is insufficient, all time schedules under this act shall remain tolled until the applicant files additional information and the application or amendment is determined sufficient by the department or the administrative law judge ~~hearing officer~~.

Section 149. Subsection (3) of section 403.526, Florida Statutes, is amended to read:

403.526. Preliminary statements of issues, reports, and studies

(3) The department shall prepare a written analysis which contains a compilation of agency reports and summaries of the material contained therein which shall be filed with the administrative law judge ~~hearing officer~~ and served on all parties no later than 135 days after the complete application has been distributed to the affected agencies, and which shall include:

(a) The studies and reports required by this section and s. 403.537.

(b) Comments received from any other agency or person.

(c) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

Section 150. Subsections (2), (3), (4), (5), (6), and (7) of section 403.527, Florida Statutes, are amended to read:

403.527. Notice, proceedings, parties, participants

(2) No later than 185 days after receipt of a complete application by the department, the administrative law judge ~~hearing officer~~ shall conduct a certification hearing pursuant to ss. ~~s.~~ 120.569 and 120.57 at a central location in proximity to the proposed transmission line or corridor. One public hearing where members of the public who are not parties to the certification hearing may testify shall be held within the boundaries of each county, at the option of any local government. The local government shall notify the administrative law judge ~~hearing officer~~ and all parties not later than 50 days after the receipt of a complete application as to whether the local government wishes to have such a public hearing. The local government shall be responsible for determining the location of the public hearing. Within 5 days of such notification, the administrative law judge ~~hearing officer~~ shall determine the date of such public hearing, which shall be held before or during the certification hearing. In the event two or more local governments within one county request such a public hearing, the hearing shall be consolidated so that only one such public hearing is held in any county. The location of a consolidated hearing shall be determined by the administrative law judge ~~hearing officer~~. If a local government does not request a public hearing within 50 days after the receipt of a complete application, persons residing within the jurisdiction of such local government may testify at the public hearing portion of the certification hearing.

(3)(a) At the conclusion of the certification hearing, the administrative law judge ~~hearing officer~~ shall, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 60 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

(b) In the event the administrative law judge ~~hearing officer~~ fails to issue a recommended order within 60 days after the filing of the hearing transcript, the administrative law judge ~~hearing officer~~ shall submit a report to the board with a copy to all parties within 60 days after the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended order will be issued.

(4)(a) Parties to the proceeding shall be:

1. The applicant.

2. The department.

3. The commission.
4. The Department of Community Affairs.

5. The Game and Fresh Water Fish Commission.

6. Each water management district in the jurisdiction of which the proposed transmission line or corridor is to be located.

7. The local government.

8. The regional planning council.

(b) Any party listed in paragraph (a), other than the department or the applicant, may waive its right to participate in these proceedings. If any listed party fails to file a notice of its intent to be a party on or before the 30th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party unless its participation would not prejudice the rights of any party to the proceeding.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon the filing with the administrative law judge ~~hearing officer~~ of a notice of intent to be a party by an agency or corporation or association described in subparagraphs 1. and 2. or a petition for intervention by a person described in subparagraph 3. no later than 30 days prior to the date set for the certification hearing, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation of natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed transmission line or corridor is to be located.

3. Any person whose substantial interests are affected and being determined by the proceeding.

(d) Any agency whose properties or works may be affected shall be made a party upon the request of the agency or any party to this proceeding.

(5) When appropriate, any person may be given an opportunity to present oral or written communications to the administrative law judge ~~hearing officer~~. If the administrative law judge ~~hearing officer~~ proposes to consider such communications, all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(6) The administrative law judge ~~hearing officer~~ shall have all powers and duties granted to administrative law judges ~~hearing officers~~ by chapter 120 and by the laws and rules of the

department, including the authority to resolve disputes over the completeness or sufficiency of an application for certification.

(7) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge ~~hearing officer~~ to ensure the orderly presentation of witnesses and evidence, shall be:

(a) The applicant.

(b) The department.

(c) State agencies.

(d) Regional agencies, including regional planning councils and water management districts.

(e) Local governments.

(f) Other parties.

Section 151. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 403.5271, Florida Statutes, are amended to read:

403.5271. Alternate corridors

(1) No later than 50 days prior to the originally scheduled certification hearing, any party may propose alternate transmission line corridor routes for consideration pursuant to the provisions of this act.

(a) A notice of any such proposed alternate corridor shall be filed with the administrative law judge ~~hearing officer~~, all parties, and any local governments in whose jurisdiction the alternate corridor is proposed. Such filing shall include the most recent United States Geological Survey 1:24,000 quadrangle maps specifically delineating the corridor boundaries, a description of the proposed corridor, and a statement of the reasons the proposed alternate corridor should be certified.

(b) Within 7 days after receipt of such notice, the applicant and the department shall file with the administrative law judge ~~hearing officer~~ and all parties a notice of acceptance or rejection of a proposed alternate corridor for consideration. If the alternate corridor is rejected either by the applicant or the department, the certification hearing and the public hearings shall be held as scheduled. If both the applicant and the department accept a proposed alternate corridor for consideration, the certification hearing and the public hearings shall be rescheduled, if necessary. If rescheduled, the certification hearing shall be held no more than 90 days after the previously scheduled certification hearing, unless additional time is needed due to the alternate corridor crossing a local government jurisdiction not previously affected, in which case the remainder of the schedule listed below shall be appropriately

adjusted by the administrative law judge ~~hearing officer~~ to allow that local government to prepare a report pursuant to s. 403.526(2)(a)5.

(2) If the original certification hearing date is rescheduled, the rescheduling shall not provide the opportunity for parties to file additional alternate corridors to the applicant's proposed corridor or any accepted alternate corridor. However, an amendment to the application which changes the alignment of the applicant's proposed corridor shall require rescheduling of the certification hearing, if necessary, so as to allow time for a party to file alternate corridors to the realigned proposed corridor for which the application has been amended. Any such alternate corridor proposal shall have the same starting and ending points as the realigned portion of the corridor proposed by the applicant's amendment, provided that the administrative law judge ~~hearing officer~~ for good cause shown may authorize another starting or ending point in the area of the applicant's amended corridor.

Section 152. Subsection (1) of section 403.5275, Florida Statutes, is amended to read:

403.5275. Amendment to the application

(1) Any amendment made to the application shall be sent by the applicant to the administrative law judge ~~hearing officer~~ and to all parties to the proceeding.

Section 153. Section 403.528, Florida Statutes, is amended to read:

403.528. Alteration of time limits

Any time limitation in this act may be altered by the administrative law judge ~~hearing officer~~ upon stipulation between the department and the applicant unless objected to by any party within 5 days after notice or for good cause shown by any party.

Section 154. Subsections (1) and (2) of section 403.529, Florida Statutes, are amended to read:

403.529. Final disposition of application

(1) Within 30 days after receipt of the administrative law judge's ~~hearing officer's~~ recommended order, the board shall act upon the application by written order, approving in whole, approving with such
conditions as the board deems appropriate, or denying the certification and stating the reasons for issuance or denial.

(2) The issues that may be raised in any hearing before the board shall be limited to matters raised in the certification proceeding before the administrative law judge ~~hearing officer~~ or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

Section 155. Subsection (4) of section 403.5315, Florida Statutes, is amended to read:

403.5315. Modification of certification

A certification may be modified after issuance in any one of the following ways:

(4) Petitions filed pursuant to subsection (3) shall be disposed of in the same manner as an application but with time periods established by the administrative law judge ~~hearing officer~~ commensurate with the significance of the modification requested.

Section 156. Paragraph (g) of subsection (6) of section 403.7197, Florida Statutes, is amended to read:

403.7197. Advance disposal fee program

(6)

(g) The Legislature finds that the failure to promptly implement the provisions of this section would present an immediate threat to the welfare of this state because revenues needed for recycling and litter control and prevention programs would not be collected. Therefore, the executive director of the Department of Revenue and the secretary of the department are authorized to adopt emergency rules pursuant to s. 120.54(4)~~(9)~~ for purposes of implementing this section. Any provision of law to the contrary notwithstanding, such emergency rules shall remain effective for 6 months from the date of adoption.

Section 157. Subsections (2) and (10) of section 403.722, Florida Statutes, are amended to read:

403.722. Permits; hazardous waste disposal, storage, and treatment facilities

(2) Any owner or operator of a hazardous waste facility in operation on the effective date of the department rule listing and identifying hazardous wastes shall file an application for a temporary operation permit within 6 months after the effective date of such rule. The department, upon receipt of a properly completed application, shall identify any department rules which are being violated by the facility and shall establish a compliance schedule. However, if the department determines that an imminent hazard exists, the department may take any necessary action pursuant to s. 403.726 to abate the hazard. The department shall issue a temporary operation permit to such facility within the time constraints of s. 120.60~~(2)~~ upon submission of a properly completed application which is in conformance with this subsection. Temporary operation permits for such facilities shall be issued for up to 3 years only. Upon termination of the temporary operation permit and upon proper application by the facility owner or operator, the department shall issue an operation permit for such existing facilities if the applicant has corrected all of the deficiencies identified in the temporary operation permit and is in compliance with all other rules adopted pursuant to this act.

(10) Notwithstanding ss. 120.60(1)~~(2)~~ and 403.815:

(a) The time specified by law for permit review shall be tolled by the request of the department for publication of notice of proposed agency action to issue a permit for a hazardous waste treatment, storage, or disposal facility and shall resume 45 days after receipt by the department of proof of publication. If, within 45 days after publication of the notice of the proposed agency action, the department receives written notice of opposition to the intention of the agency to issue such permit and receives a request for a hearing, the department shall provide for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57, if requested by a substantially affected party, or an informal public meeting, if requested by any other person. The failure to request a hearing within 45 days after publication of the notice of the proposed agency action constitutes a waiver of the right to a hearing under ss. ~~s.~~ 120.569 and 120.57. The permit review time period shall continue to be tolled until the completion of such hearing or meeting and shall resume within 15 days after conclusion of a public hearing held on the application or within 45 days after the recommended order is submitted to the agency and the parties, whichever is later.

(b) Within 60 days after receipt of an application for a hazardous waste facility permit, the department shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the department is permitted by law to require. The failure to correct an error or omission or to supply additional information shall not be grounds for denial of the permit unless the department timely notified the applicant within the 60-day period, except that this paragraph does not prevent the department from denying an application if the department does not possess sufficient information to ensure that the facility is in compliance with applicable statutes and rules.

(c) The department shall approve or deny each hazardous waste facility permit within 135 days after receipt of the original application or after receipt of the requested additional information or correction of errors or omissions. However, the failure of the department to approve or deny within the 135-day time period does not result in the automatic approval or denial of the permit and does not prevent the inclusion of specific permit conditions which are necessary to ensure compliance with applicable statutes and rules. If the department fails to approve or deny the permit within the 135-day period, the applicant may petition for a writ of mandamus to compel the department to act consistently with applicable regulatory requirements.

Section 158. Section 403.73, Florida Statutes, is amended to read:

403.73. Trade secrets; confidentiality

Records, reports, or information obtained from any person under this part, unless otherwise provided by law, shall be available to the public, except upon a showing satisfactory to the department by the person from whom the records, reports, or information is obtained that such records, reports, or information, or a particular part thereof, contains trade secrets as defined in s. 812.081(1)(c). Such trade secrets shall be confidential and are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The person submitting such trade secret information to the department must request that it be kept confidential and must inform the department of the basis for the claim of trade secret. The

department shall, subject to notice and opportunity for hearing, determine whether the information, or portions thereof, claimed to be a trade secret is or is not a trade secret. Such trade secrets may be disclosed, however, to authorized representatives of the department or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this part. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this part, including an administrative law judge, a hearing officer, or a judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 159. Section 403.784, Florida Statutes, is amended to read:

403.784. Applicability and certification

The provisions of chapter 120 shall apply to this act, except as alternative proceedings are expressly provided herein. The provisions of ss. 403.78- 403.7893 apply to the siting of multipurpose hazardous waste facilities. Disputes relating to the designation of the site and the selection of the contractor by the department shall be resolved by the administrative law judge ~~hearing officer~~ and the board as part of the certification proceedings.

Section 160. Section 403.785, Florida Statutes, is amended to read:

403.785. Appointment of administrative law judge ~~hearing officer~~

Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate an administrative law judge ~~a hearing officer~~ to conduct the hearings required by ss. 403.78-403.7893. The division director shall designate an administrative law judge ~~a hearing officer~~ within 7 days after receipt of the request from the department. The designated administrative law judge ~~hearing officer~~ shall give priority to this proceeding, and his workload shall be adjusted by the division to facilitate the prompt conclusion of this matter. Upon being advised that an administrative law judge ~~a hearing officer~~ has been appointed, the department shall immediately file a copy of the application and all supporting documents with the administrative law judge ~~hearing officer~~, who shall docket the application. All other time limits provided in ss. 403.78-403.7893 shall run from the date of the filing of the application with the Division of Administrative Hearings.

Section 161. Subsection (5) of section 403.786, Florida Statutes, is amended to read:

403.786. Report and studies

(5) The department shall prepare a report as to the findings required by subsection (4) and the department's recommendation as to the disposition of the application and any proposed conditions of certification which the department believes should be imposed and shall submit the report to the administrative law judge ~~hearing officer~~ within 135 days after the filing of

the application with the Division of Administrative Hearings. This report shall address relevant issues raised by and comments received from any agency listed in subsection (1) contained in the required report.

Section 162. Subsections (2), (3), (4), (5), and (6) of section 403.787, Florida Statutes, are amended to read:

403.787. Notice, proceedings, parties, participants

(2) No later than 180 days after receipt of an application by the department, the administrative law judge ~~hearing officer~~ shall conduct a certification hearing pursuant to ss. ~~s.~~ 120.569 and 120.57(1), except as otherwise provided herein, at a central location in proximity to the proposed project. The certification hearing shall be completed within 60 days of commencement of the hearing, unless a longer time is necessary to afford the parties due process of law.

(3) At the conclusion of the certification hearing, the administrative law judge ~~hearing officer~~ shall, after consideration of all evidence of record, and with due regard to the criteria and standards set forth in this act, issue a recommended order disposing of the application no later than 50 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

(4)(a) Parties to the proceeding shall be:

1. The applicant.

2. The department.

3. The Department of Community Affairs.

4. The Game and Fresh Water Fish Commission.

5. Each water management district in the jurisdiction of which the proposed project is to be located.

6. Any affected local government.

(b) If any person, including the parties listed in this section, fails to file a notice of its intent to be a party on or before the 30th day prior to the certification hearing, such person shall be deemed to have waived its right to be a party unless its participation is necessary to satisfy statutory requirements or to afford due process of law.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon the filing with the administrative law judge ~~hearing officer~~ of a notice of intent to be a party, the following shall be parties to the proceeding:

1. Any state agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation of natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial

groups; or to promote orderly development of the area in which the proposed project is to be located.

3. Any person whose substantial interests are affected and being determined by the proceeding.

(d) Any agency whose properties or works may be affected shall be made a party upon the request of the agency or any party to this proceeding.

(5) At an appropriate time during the hearing, any person who is not a party may be given an opportunity to present oral or written communications to the administrative law judge ~~hearing officer~~. All parties shall be given an opportunity to cross-examine, challenge, or rebut such communications.

(6) The administrative law judge ~~hearing officer~~ shall have all powers and duties granted to administrative law judges ~~hearing officers~~ by chapter 120 and by the laws and rules of the department.

Section 163. Subsection (1) of section 403.7872, Florida Statutes, is amended to read:

403.7872. Amendment to the application

(1) Any amendment made to the application shall be sent by the applicant to the administrative law judge ~~hearing officer~~ and to all parties to the proceeding.

Section 164. Section 403.7873, Florida Statutes, is amended to read:

403.7873. Alteration of time limits

Any time limitation in ss. 403.78-403.7893 may be altered by the administrative law judge ~~hearing officer~~ upon stipulation between the department and the applicant unless objected to by any party within 5 days after notice or for good cause shown by any party.

Section 165. Subsection (1) of section 403.788, Florida Statutes, is amended to read:

403.788. Final disposition of application

(1) For the purposes of issuing a final order, the board shall serve as the agency head. Within 45 days after receipt of the administrative law judge's ~~hearing officer's~~ recommended order, the board shall issue a final order as provided by s. 120.57(1)(j)~~(b)10.~~, approving the

application in whole, approving the application with such modifications or conditions as the board deems appropriate, or denying the issuance of a certification and stating the reasons for issuance or denial.

Section 166. Subsection (2) of section 403.7895, Florida Statutes, is amended to read:

403.7895. Requirements for the permitting and certification of commercial hazardous waste incinerators

(2) APPLICABILITY.--Notwithstanding the provisions of ss. 120.60 (1)~~(2)~~, 403.722(10), and 403.78-403.7893, the requirements of this section shall apply to all applications for a commercial hazardous waste incinerator received by the department for which a permit or certification was not issued prior to May 12, 1993. For the purposes of this section, "commercial hazardous waste incinerator" means a hazardous waste incinerator which accepts waste generated offsite.

Section 167. Subsection (1) of section 403.804, Florida Statutes, is amended to read:

403.804. Environmental Regulation Commission; powers and duties

(1) Except as provided in subsection (2) and s. 120.54(4)~~-(9)~~, the commission, pursuant to s. 403.805(1), shall exercise the standard-setting authority of the department under this chapter; part II of chapter 376; and ss. 373.309(1)(e), 373.414(4) and (10), 373.4145(1)(a), 373.421(1), and 373.4592(4)(d)4. and (e). The commission, in exercising its authority, shall consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment. The commission shall not establish department policies, priorities, plans, or directives. The commission may adopt procedural rules governing the conduct of
its meetings and hearings.

Section 168. Subsection (3) of section 403.814, Florida Statutes, is amended to read:

403.814. General permits; delegation

(3) The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a general permit. If published, such public notice of application shall be published within 14 days after the applicant notifies the department; and, within 21 days after publication of notice, any person whose substantial interests are affected may request a hearing in accordance with ss. ~~s.~~ 120.569 and 120.57. The failure to request a hearing within 21 days after publication of notice constitutes a waiver of any right to a hearing under ss. ~~s.~~ 120.569 and 120.57. If notice is published, no person shall begin work pursuant to a general permit until after the time for requesting a hearing has passed or until after a hearing is held and a decision is rendered.

Section 169. Section 403.815, Florida Statutes, is amended to read:

403.815. Public notice; waiver of hearings

The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a permit submitted under this chapter or chapter 253. The notice of application shall be published within 14 days after the application is filed with the department. Notwithstanding any provision of s. 120.60, the department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of proposed agency action on any permit application submitted under this chapter or chapter 253. The department shall require the applicant for a permit to construct or expand a solid waste facility to publish such notice. The notice of proposed agency action shall be published at least 14 days prior to final agency action. The 90-day time period specified in s. 120.60~~(2)~~ shall be tolled by the request of the department for publication of notice of proposed agency action and shall resume 14 days after receipt by the department of proof of publication. However, if a petition is filed for a proceeding pursuant to ss. ~~s.~~ 120.569 and 120.57, the time periods and tolling provisions of s. 120.60 shall apply. The cost of publication of notice under this section shall be paid by the applicant. The secretary may, by rule, specify the format and size of such notice. Within 14 days after publication of notice of proposed agency action, any person whose substantial interests are affected may request a hearing in accordance with ss. ~~s.~~ 120.569 and 120.57. The failure to request a hearing within 14 days after publication of notice of proposed agency action constitutes a waiver of any right to a hearing on the application under ss. ~~s.~~ 120.569 and 120.57.

Section 170. Subsection (1) of section 403.855, Florida Statutes, is amended to read:

403.855. Imminent hazards

In coordination with the Department of Health and Rehabilitative Services, the department, upon receipt of information that a contaminant which is present in, or is likely to enter, public or private water supplies may present an imminent and substantial danger to the public health, may take such actions as it may deem necessary in order to protect the public health. Department actions shall include, but are not limited to:

(1) Adopting emergency rules pursuant to s. 120.54(4)~~(9)~~.

Section 171. Section 403.9406, Florida Statutes, is amended to read:

403.9406. Appointment of an administrative law judge ~~a hearing officer~~

Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate an administrative law judge ~~a hearing officer~~ to conduct the hearings required by ss. 403.9401-403.9425. The division director shall designate an administrative law judge ~~a hearing officer~~ to conduct the hearings required by ss. 403.9401-403.9425 within 7 days after receipt of the request from

the department. Whenever practicable, the division director shall assign an administrative law judge ~~a hearing officer~~ who has had prior experience or training in the certification of linear facilities. Upon being advised that an administrative law judge ~~a hearing officer~~ has been designated, the department shall immediately file a copy of the application and all supporting documents with the administrative law judge ~~hearing officer~~ who shall docket the application.

Section 172. Subsection (2) of section 403.9407, Florida Statutes, is amended to read:

403.9407. Distribution of application; schedules

(2) Within 7 days after completeness has been determined, the department shall prepare a schedule of dates for submission of statements of issues, determination of sufficiency, and submittal of final reports from affected and other agencies and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.9411(4). This schedule shall be provided by the department to the applicant, the administrative law judge ~~hearing officer~~, and the agencies identified pursuant to subsection (1).

Section 173. Subsection (2) of section 403.9408, Florida Statutes, is amended to read:

403.9408. Determination of completeness

Within 15 days after receipt of an application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness, not the sufficiency, of the application.

(2) If the applicant contests the determination by the department that an application is incomplete, the administrative law judge ~~hearing officer~~ shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 30 days after the filing of the statement by the department. The administrative law judge ~~hearing officer~~ shall render a decision within 10 days after the hearing.

(a) If the administrative law judge ~~hearing officer~~ determines that the application was not complete as filed, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under ss. 403.9401-403.9425 shall not commence until the application is determined complete.

(b) If the administrative law judge ~~hearing officer~~ determines that the application was complete at the time it was filed, the time schedules referencing a complete application under ss. 403.9401-403.9425 shall commence upon such determination.

Section 174. Subsections (1) and (2) of section 403.9409, Florida Statutes, are amended to read:

403.9409. Determination of sufficiency

Within 45 days after the distribution of the complete application or amendment, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the sufficiency of the application or amendment. The department's statement shall be based upon consultation with the affected agencies, which shall submit to the department recommendations on the sufficiency of the application within 30 days after distribution of the complete application.

(1) If the department declares the application or amendment insufficient, the applicant may:

(a) Withdraw the application or amendment;

(b) File additional information necessary to make the application or amendment sufficient; or

(c) Contest the notice of insufficiency by filing a request for hearing with the administrative law judge ~~hearing officer~~ within 15 days after the filing of the statement of insufficiency. If a hearing is requested by the applicant, all time schedules under ss. 403.9401-403.9425 shall be tolled as of the date of the department's statement of insufficiency, pending the administrative law judge's ~~hearing officer's~~ decision concerning the dispute. A hearing shall be held no later than 30 days after the filing of the statement by the department, and a decision shall be rendered within 10 days after the hearing, unless otherwise agreed by the department and the applicant.

(2)(a) If the administrative law judge ~~hearing officer~~ determines, contrary to the department, that an application or amendment is sufficient, all time schedules under ss. 403.9401-403.9425 shall resume as of the date of the administrative law judge's ~~hearing officer's~~ determination.

(b) If the administrative law judge ~~hearing officer~~ agrees that the application is insufficient, all time schedules under ss. 403.9401- 403.9425 shall remain tolled until the applicant files additional information and the application or amendment is determined sufficient by the department or the administrative law judge ~~hearing officer~~.

Section 175. Subsection (3) of section 403.941, Florida Statutes, is amended to read:

403.941. Preliminary statements of issues, reports, and studies

(3) The department shall prepare a written analysis which contains a compilation of agency reports and summaries of the material contained therein which shall be filed with the administrative law judge ~~hearing officer~~ and served on all parties no later than 115 days after the application has been determined sufficient, and which shall include:

(a) The studies and reports required by this section and s. 403.9422.

(b) Comments received from any other agency or person.

(c) The recommendation of the department as to the disposition of the application; of variances, exemptions, exceptions, or other relief identified by any party; and of any proposed conditions of certification which the department believes should be imposed.

Section 176. Subsections (2), (3), (4), (5), and (6) of section 403.9411, Florida Statutes, are amended to read:

403.9411. Notice; proceedings; parties and participants

(2) No later than 215 days after receipt of a complete application by the department, the administrative law judge ~~hearing officer~~ shall conduct a certification hearing pursuant to ss. ~~s~~. 120.569 and 120.57 at a central location in proximity to the proposed natural gas transmission pipeline or corridor. One public hearing where members of the public who are not parties to the certification hearing may testify shall be held within the boundaries of each county, at the option of any local government. The local government shall notify the administrative law judge ~~hearing officer~~ and all parties not later than 50 days after the receipt of a complete application as to whether the local government wishes to have such a public hearing. The local government shall be responsible for determining the location of the public hearing. Within 5 days after such notification, the administrative law judge ~~hearing officer~~ shall determine the date of such public hearing, which shall be held before or during the certification hearing. In the event two or more local governments within one county request such a public hearing, the hearing shall be consolidated so that only one such public hearing is held in any county. The location of a consolidated hearing shall be determined by the administrative law judge ~~hearing officer~~. If a local government does not request a public hearing within 50 days after the receipt of a complete application, persons residing within the jurisdiction of such local government may testify at the public hearing portion of the certification hearing.

(3)(a) At the conclusion of the certification hearing, the administrative law judge ~~hearing officer~~ shall, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 60 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings. The recommended order shall include findings of fact and conclusions of law to enable the board to effect the balance in s. 403.9415(4).

(b) Any exceptions to a recommended order shall be filed with the clerk of the department, within 15 days after the date the order is rendered.

(4)(a) Parties to the proceeding shall be:

1. The applicant.

2. The department.

3. The commission.

4. The Department of Community Affairs.

5. The Game and Fresh Water Fish Commission.

6. Each water management district in the jurisdiction of which the proposed natural gas transmission pipeline or corridor is to be located.

7. The local government.

8. The regional planning council.

9. The Department of Transportation.

10. The Department of State, Division of Historical Resources.

(b) Any party listed in paragraph (a), other than the department or the applicant, may waive its right to participate in these proceedings. If any listed party fails to file a notice of its intent to be a party on or before the 30th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon the filing with the administrative law judge ~~hearing officer~~ of a notice of intent to be a party by an agency, corporation, or association described in subparagraph 1. or subparagraph 2., or a petition for intervention by a person described in subparagraph 3., no later than 30 days prior to the date set for the certification hearing, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation of natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed natural gas transmission pipeline or corridor is to be located.

3. Any person whose substantial interests are affected and being determined by the proceeding.

4. Any agency whose properties or works might be affected shall be made a party upon the request of the agency or any party to this proceeding.

(5) At an appropriate time in the hearing, members of the public who are not parties shall be given an opportunity to present unsworn oral or written communications to the

administrative law judge ~~hearing officer~~. The administrative law judge ~~hearing officer~~ shall give parties an opportunity to challenge or rebut such communications.

(6) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge ~~hearing officer~~ to ensure the orderly presentation of witnesses and evidence, shall be:

(a) The applicant.

(b) The department.

(c) State agencies.

(d) Regional agencies, including regional planning councils and water management districts.

(e) Local governments.

(f) Other parties.

Section 177. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 403.9412, Florida Statutes, are amended to read:

403.9412. Alternate corridors

(1) No later than 50 days prior to the originally scheduled certification hearing, any party may propose alternate natural gas transmission pipeline corridor routes for consideration pursuant to ss. 403.9401-403.9425.

(a) A notice of any such proposed alternate corridor shall be filed with the administrative law judge ~~hearing officer~~, all parties, and any local governments in whose jurisdiction the alternate corridor is proposed. Such filing shall include the most recent United States Geological Survey 1:24,000 quadrangle maps specifically delineating the corridor boundaries, a description of the proposed corridor, and a statement of the reasons the proposed alternate corridor should be certified.

(b) Within 7 days after receipt of such notice, the applicant and the department shall file with the administrative law judge ~~hearing officer~~ and all parties a notice of acceptance or rejection of a proposed alternate corridor for consideration. If the alternate corridor is rejected either by the applicant or the department, the certification hearing and the public hearings shall be held as scheduled. If both the applicant and the department accept a proposed alternate corridor for consideration, the certification hearing and the public hearings shall be rescheduled, if necessary. If rescheduled, the certification hearing shall be held no later than 135 days after the previously scheduled certification hearing, unless additional time is needed due to the alternate corridor crossing a local government jurisdiction not previously affected, in which case the remainder of the schedule listed in this section shall be

appropriately adjusted by the administrative law judge ~~hearing officer~~ to allow that local government to prepare a report pursuant to s. 403.941(2)(a)5.

(2) If the original certification hearing date is rescheduled, the rescheduling shall not provide the opportunity for parties to file additional alternate corridors to the applicant's proposed corridor or any accepted alternate corridor. However, an amendment to the application which changes the alignment of the applicant's proposed corridor shall require rescheduling of the certification hearing, if necessary, so as to allow time for a party to file alternate corridors to the realigned proposed corridor for which the application has been amended. Any such alternate corridor proposal shall have the same starting and ending points as the realigned portion of the corridor proposed by the applicant's amendment, provided that the administrative law judge ~~hearing officer~~ for good cause shown may authorize another starting or ending point in the area of the applicant's amended corridor.

Section 178. Subsection (1) of section 403.9413, Florida Statutes, is amended to read:

403.9413. Amendment to the application

(1) Any amendment made to the application shall be sent by the applicant to the administrative law judge ~~hearing officer~~ and to all parties to the proceeding.

Section 179. Section 403.9414, Florida Statutes, is amended to read:

403.9414. Alteration of time limits

Any time limitation in ss. 403.9401-403.9425 may be altered by the administrative law judge ~~hearing officer~~ upon stipulation between the department and the applicant unless objected to by any party within 5 days after notice or for good cause shown.

Section 180. Subsections (1), (2), and (4) of section 403.9415, Florida Statutes, are amended to read:

403.9415. Final disposition of application

(1) Within 60 days after receipt of the administrative law judge's ~~hearing officer's~~ recommended order, the board shall act upon the application by written order, approving in whole, approving with such conditions as the board deems appropriate, or denying the certification and stating the reasons for issuance or denial.

(2) The issues that may be raised in any hearing before the board shall be limited to matters raised in the certification proceeding before the administrative law judge ~~hearing officer~~ or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(4) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board shall consider whether, and the extent to

which, the location of the natural gas transmission pipeline corridor and the construction and maintenance of the natural gas transmission pipeline will effect a reasonable balance between the need for the natural gas transmission pipeline as a means of providing natural gas energy and the impact upon the public and the environment resulting from the location of the natural gas transmission pipeline corridor and the construction, operation, and maintenance of the natural gas transmission pipeline. In effecting this balance, the board shall consider, based on all relevant, competent and substantial evidence in the record, subject to s. 120.57(1) (j)~~(b)10.~~, whether and the extent to which the project will:

(a) Ensure natural gas delivery reliability and integrity;

(b) Meet the natural gas energy needs of the state in an orderly and timely fashion;

(c) Comply with the nonprocedural requirements of agencies;

(d) Adversely affect historical sites and the natural environment;

(e) Adversely affect the health, safety, and welfare of the residents of the affected local government jurisdictions;

(f) Be consistent with applicable local government comprehensive plans and land development regulations; and

(g) Avoid densely populated areas to the maximum extent feasible. If densely populated areas cannot be avoided, locate, to the maximum extent feasible, within existing utility corridors or rights-of-way.

Section 181. Subsection (2) of section 403.9418, Florida Statutes, is amended to read:

403.9418. Modification of certification

(2) Petitions filed pursuant to paragraph (1)(b) shall be disposed of in the same manner as an application but within the times established by the administrative law judge ~~hearing officer~~ commensurate with the significance of the modification requested.

Section 182. Subsection (11) of section 403.952, Florida Statutes, is amended to read:

403.952. Definitions

As used in this act:

(11) "Designated administrative law judge ~~hearing officer~~" means the administrative law judge ~~hearing officer~~ assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct any hearings required by this act.

Section 183. Subsection (1) of section 403.960, Florida Statutes, is amended to read:

403.960. Assignment of administrative law judge ~~hearing officer~~

(1) Within 7 days after an application has been declared sufficient or an applicant has requested that its application be processed on the basis of information already submitted, the Department of Commerce shall request the director of the Division of Administrative Hearings to assign an administrative law judge ~~a hearing officer~~ for all proceedings necessary under this act with respect to the application. A copy of the certification application shall accompany the request. The Division of Administrative Hearings shall assign an administrative law judge ~~a hearing officer~~ within 7 days after receiving the request from the Department of Commerce. In assigning an administrative law judge ~~a hearing officer~~, the director shall, whenever practicable, assign an administrative law judge ~~a hearing officer~~ with prior experience in site certification proceedings under this chapter.

Section 184. Subsection (1) of section 403.961, Florida Statutes, is amended to read:

403.961. Statements of issues and reports; written analyses

(1) Within 10 days of the date on which the administrative law judge ~~hearing officer~~ issues a notification to affected agencies that the application is pending before the Division of Administrative Hearings, each affected agency shall file with the administrative law judge ~~hearing officer~~ a preliminary statement of issues raised by the application. Copies shall be furnished to the applicant, the Department of Commerce, the Department of Environmental Protection, the affected local governments, and all other affected agencies. No failure to raise any issue in this statement shall be deemed to preclude an agency from raising the issue in its final report.

Section 185. Subsection (3) of section 403.9615, Florida Statutes, is amended to read:

403.9615. Plan amendment required

In the event that an amendment to one or more local government comprehensive plans would be needed to make a project consistent with applicable local government comprehensive plans, the following process shall apply:

(3) If the Department of Community Affairs determines that the local government comprehensive plan amendment is not in compliance, the Department of Community Affairs shall promptly initiate efforts to enter into a compliance agreement with the local government. In the event a compliance agreement is not entered into within 100 days of receipt of the determination of sufficiency, or an applicant has requested that its application be processed on the basis of information already submitted, the Department of Community Affairs shall request a certification hearing pursuant to s. 403.962 and the issues in dispute shall be consolidated into the certification hearing and be addressed in the recommended order issued by the administrative law judge ~~hearing officer~~.

Section 186. Section 403.962, Florida Statutes, is amended to read:

403.962. Certification hearing; cancellation; parties

(1) The assigned administrative law judge ~~hearing officer~~ shall conduct a certification hearing in the county of the proposed site no later than 150 days after the application for project certification is deemed to be sufficient or an applicant has requested that its application be processed on the basis of information already submitted. All proceedings are governed by chapter 120 except as modified by this act. The hearing shall only be conducted in the event that a hearing is requested by the applicant, an affected agency, a person having a substantial interest which is affected by the proposed certification, a qualified organization, or an affected person who files a petition pursuant to s. 403.9615(4). In determining whether a hearing shall be conducted, the following procedures shall apply:

(a) At any time following the assignment of the administrative law judge ~~hearing officer~~, but no later than 10 days after the date on which the agency receives the compiled report, any affected agency listed below which opposes certification of the proposed project may request a hearing by filing with the administrative law judge ~~hearing officer~~ and serving on all parties a request for hearing. The request for hearing shall separately state with reasonable particularity the factual and legal bases for the agency's opposition to the certification or dispute with any recommendations or proposed conditions of certification contained in the compiled report.

(b) The following agencies shall be entitled to request the conduct of a certification hearing under this section:

1. The Department of Environmental Protection.

2. The Game and Fresh Water Fish Commission.

3. The Department of Community Affairs.

4. The Department of Transportation.

5. Any water management district having jurisdiction over a site or installation associated with the proposed project.

6. Any local government having jurisdiction over a site or installation associated with the proposed project.

(c) No later than 20 days after the date on which the applicant receives the compiled report of the Department of Commerce, if the applicant believes itself aggrieved by the report or any proposed conditions of certification, it may request the conduct of a hearing by filing with the administrative law judge ~~hearing officer~~ and serving on all parties a request for hearing. The request for hearing shall separately state with reasonable particularity the factual and legal bases for the applicant's dispute with any recommendation or proposed condition of certification contained in the compiled report. Failure of an applicant to request

a hearing within the allotted time shall constitute a waiver of the applicant's right to request a hearing concerning the proposed certification decision or any term or condition of certification contained in the compiled report of the department.

(d) No later than 20 days after notice of the issuance of the compiled report is published in accordance with s. 403.961(8), any person having a substantial interest which would be affected by the proposed certification decision, or any qualified organizations, may request the conduct of a hearing by filing with the administrative law judge ~~hearing officer~~ and serving on all parties a request for hearing. The request for hearing shall separately state with reasonable particularity the factual and legal bases for the person's or qualified organization's challenge to any recommendation or proposed condition of certification contained in the compiled report. In order for a petition for a hearing to be granted under this paragraph, the factual and legal bases for the challenge must be cognizable within the context of the applicable agency nonprocedural standards, including applicable comprehensive plans and land use regulations of the affected local governments. Failure of any person to request a hearing within the allotted time shall constitute a waiver of the person's or qualified organization's right to request a hearing concerning the proposed certification decision or any term or condition of certification contained in the compiled report of the department.

(e) If a hearing is timely requested in accordance with the procedures of this section, the assigned administrative law judge ~~hearing officer~~ shall issue a notice of hearing for the hearing no later than 40 days prior to the scheduled date for the hearing. The applicant, and all the agencies identified in subparagraphs (b)1.-6. shall be mandatory parties to the certification hearing. The following may become parties to the proceeding by filing with the administrative law judge ~~hearing officer~~ and serving on all parties a notice of intent to become a party at least 20 days prior to the date of the certification hearing:

1. Any agency not listed in paragraph (b).

2. Any qualified organizations.

(f) If a hearing is timely requested under this section, the administrative law judge ~~hearing officer~~ shall make provision for the receipt of oral and written testimony from members of the public at a public hearing held in conjunction with the certification hearing. Such testimony shall be subject to cross-examination. A record of the public hearing shall be part of the record in the certification hearing.

(2) For the purposes of this part, qualified organizations shall include only nonprofit corporations or associations, classified under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code, that were formed prior to the publication of the notice required by s. 403.957(3), with organizational purposes that promote conservation of natural resources or protection of the environment, public health, and biological values; or to promote consumer interests, economic development, comprehensive planning, or orderly development of the area in which the proposed project is to be located.

(3) If a certification hearing is conducted, the administrative law judge ~~hearing officer~~ shall, after consideration of all evidence received during the certification hearing, submit to the siting board a recommended order no later than 30 days after the filing of the transcript of the certification hearings with the Division of Administrative Hearings. Failure to submit a recommended order within this time shall be reported to the siting board. The recommended order shall be presented for final disposition of the application by the siting board at its next regularly scheduled agenda.

(4) If no hearing is timely requested under the procedures set forth in subsection (1), the administrative law judge ~~hearing officer~~ shall enter an order relinquishing jurisdiction of the application to the department for preparation of a final order approving certification.

403.964. Alteration of time limits

Any time limitation in this act may be altered by the designated administrative law judge ~~hearing officer~~ upon stipulation among the Department of Commerce, the department, the affected local governments, and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party.

Section 188. Subsection (3) of section 403.971, Florida Statutes, is amended to read:

403.971. Modification of certification

(3) Petitions filed pursuant to paragraph (1)(b) shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge ~~hearing officer~~ commensurate with the significance of the modification requested.

Section 189. Paragraphs (b) and (c) of subsection (3) of section 406.075, Florida Statutes, are amended to read:

406.075. Grounds for discipline; disciplinary proceedings

(3)

(b) If the probable cause panel finds that probable cause exists, it shall direct the commission to file a formal complaint against the subject of the investigation. The commission shall file a formal complaint pursuant to the provisions of chapter 120. The probable cause panel may also direct the commission to suspend a district medical examiner from office immediately, under the provisions of s. 120.60(6)~~(8)~~, if a danger to public health, safety, or welfare so requires.

(c) A formal hearing before an administrative law judge ~~a hearing officer~~ from the Division of Administrative Hearings of the Department of Management Services shall be held pursuant to chapter 120 unless all parties agree in writing that there is no disputed issue of material fact. The administrative law judge ~~hearing officer~~ shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal

hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

Section 190. Subsection (5) of section 408.039, Florida Statutes, is amended to read:

408.039. Review process

The review process for certificates of need shall be as follows:

(5) ADMINISTRATIVE HEARINGS.—

(a) Within 21 days after publication of notice of the State Agency Action Report and Notice of Intent, any person authorized under paragraph (b) to participate in a hearing may file a request for an administrative hearing; failure to file a request for hearing within 21 days of publication of notice shall constitute a waiver of any right to a hearing and a waiver of the right to contest the final decision of the department. A copy of the request for hearing shall be served on the applicant.

(b) Hearings shall be held in Tallahassee unless the administrative law judge ~~hearing officer~~ determines that changing the location will facilitate the proceedings. In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the department in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in such administrative hearing upon a showing that an established program will be substantially affected by the issuance of a certificate of need to a competing proposed facility or program within the same district, provided that existing health care providers, other than the applicant, have no standing or right to initiate or intervene in an administrative hearing involving a health care project which is subject to certificate-of-need review solely on the basis of s. 408.036(1)(c). The department shall assign proceedings requiring hearings to the Division of Administrative Hearings of the Department of Management Services within 10 days after the time has run to request a hearing. Except upon unanimous consent of the parties or upon the granting by the administrative law judge ~~hearing officer~~ of a motion of continuance, hearings shall commence within 60 days after the administrative law judge ~~hearing officer~~ has been assigned. All non-state-agency parties shall bear their own expense of preparing a transcript. In any application for a certificate of need which is referred to the Division of Administrative Hearings for hearing, the administrative law judge ~~hearing officer~~ shall complete and submit to the parties a recommended order as provided in ss. ~~s.~~ 120.569 and 120.57~~(1)(b)~~. The recommended order shall be issued within 30 days after the receipt of the proposed recommended orders or the deadline for submission of such proposed recommended orders, whichever is earlier. The division shall adopt procedures for administrative hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony.

(c) The department shall issue its final order within 45 days after receipt of the recommended order.

(d) If the department fails to take action within the time specified in paragraph (4)(a) or paragraph (5)(c), or as otherwise agreed to by the applicant and the department, the applicant may take appropriate legal action to compel the department to act. When making a determination on an application for a certificate of need, the department is specifically exempt from the time limitations provided in s. 120.60(1)~~(2)~~.

Section 191. Paragraph (b) of subsection (9) of section 408.072, Florida Statutes, is amended to read:

408.072. Review of hospital budgets

(9)

(b) If a hearing is requested, it shall be conducted by the board or, at the election of the board, by an administrative law judge ~~a hearing officer~~ of the Division of Administrative Hearings of the Department of Management Services, pursuant to the provisions of ss. ~~s.~~ 120.569 and 120.57. Hearings shall be held within 30 days of filing the request unless waived by the board and the hospital. All hearings shall be held in Tallahassee unless the board determines otherwise.

Section 192. Paragraph (c) of subsection (2) of section 408.40, Florida Statutes, is amended to read:

408.40. Budget review proceedings; duty of Public Counsel

(2) The Public Counsel shall:

(c) In any proceeding in which he has participated as a party, seek review of any determination, finding, or order of the agency, or of any administrative law judge, or any hearing officer or hearing examiner designated by the agency, in the name of the state or its citizens.

Section 193. Subsection (14) of section 409.2673, Florida Statutes, is amended to read:

409.2673. Shared county and state health care program for low-income persons; trust fund

(14) Any dispute among a county, the Health Care Cost Containment Board, the department, or a participating hospital shall be resolved by order as provided in chapter 120. Hearings held under this subsection shall be conducted in the same manner as provided in ss. ~~s.~~ 120.569 and 120.57, except that the administrative law judge's or hearing officer's order constitutes final agency action. Cases filed under chapter 120 may combine all relevant disputes between parties.

Section 194. Subsections (2) and (3) of section 409.335, Florida Statutes, are amended to read:

409.335. Recovery of payments made due to mistake or fraud

(2) When the department has made a probable cause determination and alleged that an overpayment to a Medicaid provider has occurred, the department, after notice to the provider, may:

(a) Withhold, and continue to withhold during the pendency of an administrative hearing pursuant to chapter 120, any medical assistance reimbursement payments until such time as the overpayment is recovered, unless within 30 days after receiving notice thereof the provider:

1. Makes repayment in full; or

2. Establishes a repayment plan that is satisfactory to the department.

(b) Withhold, and continue to withhold during the pendency of an administrative hearing pursuant to chapter 120, medical assistance reimbursement payments if the terms of a repayment plan are not adhered to by the provider.

Should a provider request an administrative hearing pursuant to chapter 120, such hearing shall be conducted within 90 days following receipt by the provider of the final audit report, absent exceptionally good cause shown as determined by the administrative law judge or hearing officer. Upon issuance of a final order, the balance outstanding of the amount determined to constitute the overpayment shall become due. Any withholding of payments by the department pursuant to this section shall be limited so that the monthly medical assistance payment shall not be reduced by more than 10 percent.

(3) In all final agency actions and orders issued by administrative law judges or hearing officers that relate to recovery of medical assistance overpayments made due to a mistake of the provider or fraud, the department shall make a motion to impose an interest penalty at 10 percent per year from the date of final agency action or order by an administrative law judge or a hearing officer until the overpayment is recovered by the department. When the administrative law judge's or hearing officer's decision is that an overpayment was not made in an amount as great as identified by the department, any collections made by the department pursuant to subsection (2) shall be reimbursed within 60 days to the provider by the department with interest at 10 percent per year.

Section 195. Subsection (17) of section 409.913, Florida Statutes, is amended to read:

409.913. Oversight of the integrity of the Medicaid program

The department shall operate a program to oversee the activities of Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible.

(17) The department may withhold Medicaid payments to a provider, up to the amount of the alleged overpayment, pending completion of an investigation under this section if it has reasonable cause to believe that the provider has committed one or more violations in relation to such payments. With the exception of providers terminated under the provisions of s. 120.569(2)(l) ~~120.59(3)~~, in which case all payments shall be immediately terminated, the department may withhold payments under this provision, the monthly Medicaid payment may not be reduced by more than 10 percent, and the payments withheld must be paid to the provider within 60 days with interest at the rate of 10 percent a year upon determining that no such violation has occurred. If the amount of the alleged overpayment is in excess of $75,000, the department may reduce the Medicaid payments up to $25,000 per month.

Section 196. Paragraph (d) of subsection (1) of section 413.341, Florida Statutes, is amended to read:

413.341. Applicant and client records; confidential and privileged

(1) All oral and written records, information, letters, and reports received, made, or maintained by the division relative to any client or applicant are privileged, confidential, and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Any person who discloses or releases such records, information, or communications in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such records may not be released except that:

(d) Records may be released upon the order of an administrative law judge, a hearing officer, a judge of compensation claims, an agency head exercising quasi-judicial authority, or a judge of a court of competent jurisdiction following a finding in an in camera proceeding that the records are relevant to the inquiry before the court and should be released. The in camera proceeding and all records relating thereto are confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 197. Paragraph (e) of subsection (2) of section 415.1075, Florida Statutes, is amended to read:

415.1075. Administrative remedies; request for amendment or expunction; appeals; excusable neglect or fraud; requests for exemption

(2) APPEALS.—

(e) At a hearing conducted under chapter 120, the department must prove by a preponderance of the evidence that the alleged perpetrator committed abuse, neglect, or exploitation of a disabled adult or an elderly person. In hearings conducted under this section, the administrative law judge ~~hearing officer~~ may not require a standard of proof that goes beyond a preponderance of the evidence. The department's investigative report is to be considered competent evidence at the hearing.

1. If the department's classification of the report as proposed confirmed is upheld, the report becomes a confirmed report.

2. If the department's classification of the report as proposed confirmed is not upheld, the report must be reclassified as unfounded or must be closed without classification.

3. The change in classification must be reported to the alleged perpetrator and entered into the central abuse registry and tracking system.

4. If the department upholds the proposed confirmed report as confirmed, the department must give notice of the decision to the perpetrator and to the perpetrator's legal counsel.

a. The notice must inform the perpetrator that the decision of the department to classify the report as confirmed constitutes final agency action within the meaning of chapter 120 and that the perpetrator may seek judicial review of this decision under s. 120.68.

b. The notice must inform the perpetrator that the perpetrator may be disqualified from working with children, the developmentally disabled, disabled adults, and elderly persons.

c. The notice must inform the perpetrator that further departmental proceedings in the matter are not allowed.

d. The notice must be sent by certified mail, return receipt requested.

Section 198. Paragraph (b) of subsection (8) of section 440.102, Florida Statutes, is amended to read:

440.102. Drug-free workplace program requirements

The following provisions apply to a drug-free workplace program implemented pursuant to rules adopted by the division:

(8) CONFIDENTIALITY.—

(b) Employers, laboratories, medical review officers, employee assistance programs, drug rehabilitation programs, and their agents may not release any information concerning drug test results obtained pursuant to this section without a written consent form signed voluntarily by the person tested, unless such release is compelled by an administrative law judge, a hearing officer, or a court of competent jurisdiction pursuant to an appeal taken under this section or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:

1. The name of the person who is authorized to obtain the information.

2. The purpose of the disclosure.

3. The precise information to be disclosed.

4. The duration of the consent.

5. The signature of the person authorizing release of the information.

Section 199. Paragraph (d) of subsection (11) of section 440.13, Florida Statutes, is amended to read:

440.13. Medical services and supplies; penalty for violations; limitations

(11) AUDITS BY DIVISION; JURISDICTION.—

(d) The following division actions do not constitute agency action subject to review under ss. ~~s.~~ 120.569 and 120.57 and do not constitute actions subject to ~~s. 120.54 or~~ s. 120.56: referral by the entity responsible for utilization review; a decision by the division to refer a matter to a peer review committee; establishment by a health care provider or entity of procedures by which a peer review committee reviews the rendering of health care services; and the review proceedings, report, and recommendation of the peer review committee.

Section 200. Paragraph (b) of subsection (4) of section 443.151, Florida Statutes, is amended to read:

443.151. Procedure concerning claims

(4) APPEALS.—

(b) Filing and hearing.—

1. The claimant or any other party entitled to notice of a determination as herein provided may file an appeal from such determination with an appeals referee within 20 days after the date of mailing of the notice to his last known address or, if such notice is not mailed, within 20 days after the date of delivery of such notice.

2. Notwithstanding the provisions of s. 120.569(2)(b) ~~120.57(1)(b)2.~~, unless the appeal is withdrawn with his permission or is removed to the commission, the appeals referee, after mailing all parties and attorneys of record a notice of hearing at least 10 days prior to the date of hearing, shall affirm, modify, or reverse such determination; however, whenever an appeal involves a question as to whether services were performed by claimant in employment or for an employer, the referee shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the division, both of which shall thenceforth be parties to the proceeding.

3. The parties shall be promptly notified of such referee's decision; and such decisions shall be final unless, within 20 days after the date of mailing of notice thereof to the party's last known address or, in the absence of such mailing, within 20 days after the delivery of such notice, further review is initiated pursuant to paragraph (c).

Section 201. Subsection (11) of section 447.205, Florida Statutes, is amended to read:

447.205. Public Employees Relations Commission

(11) Any hearing held under this chapter shall be conducted according to the provisions of ss. ~~s.~~ 120.569 and 120.57 by the commission, a member of the commission, or a hearing officer designated by the commission who is an employee of the commission and a member of The Florida Bar.

Section 202. Subsections (6) and (7) of section 447.207, Florida Statutes, are amended to read:

447.207. Commission; powers and duties

(6) Pursuant to its established procedures, the commission shall resolve questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit, determine or approve units appropriate for purposes of collective bargaining, expeditiously process charges of unfair labor practices and violations of s. 447.505 by public employees, and resolve such other questions and controversies as it may be authorized herein to undertake. The petitioner, charging party, respondent, and any intervenors shall be the adversary parties before the commission in any adjudicatory proceeding conducted pursuant to this part. Any commission statement of general applicability that implements, interprets, or prescribes law or policy, made in the course of adjudicating a case pursuant to s. 447.307 or s. 447.503 shall not constitute a rule within the meaning of s. 120.52~~(16)~~.

(7) The commission shall provide by rule a procedure for the filing and prompt disposition of petitions for a declaratory statement as to the applicability of any statutory provision or any rule or order of the commission. Such rule or rules shall provide for, but not be limited to, an expeditious disposition of petitions posing questions relating to potential unfair labor practices. Commission disposition of a petition shall be final agency action and shall not constitute a rule as defined in s. 120.52~~(16)~~.

Section 203. Paragraph (d) of subsection (5) of section 447.503, Florida Statutes, is amended to read:

447.503. Charges of unfair labor practices

It is the intent of the Legislature that the commission act as expeditiously as possible to settle disputes regarding alleged unfair labor practices. To this end, violations of the provisions of s. 447.501 shall be remedied by the commission in accordance with the following procedures and in accordance with chapter 120; however, to the extent that chapter

120 is inconsistent with the provisions of this section, the procedures contained in this section shall govern:

(5) Whenever the proceeding involves a disputed issue of material fact and an evidentiary hearing is to be conducted:

(d) If the hearing was held before the commission or a member of the commission, the commission may elect to issue a final order which is in compliance with ss. 120.569 and 120.57 ~~120.58(1)(e) and 120.59~~.

Section 204. Subsection (2) of section 447.603, Florida Statutes, is amended to read:

447.603. Local option

(2) The public employer shall apply to the commission for review and approval as to whether the local provisions or procedures, or both, are substantially equivalent to the provisions and procedures set forth in this part. No ordinance, resolution, charter amendment, rule, or regulation incorporating such provisions and procedures shall take effect until approved by the commission. Upon approval of the local option and the rules relating thereto, the local commission shall perform the duties set forth under its local option, and the commission may transfer any pending cases, and shall transfer any cases or other matters filed after the approval of the local option that are within the local commission's jurisdiction, to the local commission for disposition. All public employee agreements now in existence shall remain in effect until their expiration. However, if a local commission is not properly constituted, fails to act or respond to a filing of an employee organization or public employer or public employee within a reasonable and timely period, or acts in a manner clearly inconsistent with the precedent of the commission, the employee organization or public employer or public employee may file a petition with the commission setting forth such circumstances. The commission or one of its designated agents shall investigate the petition to determine its sufficiency, and, if it has reasonable cause to believe the petition is sufficient, the commission shall provide for an appropriate hearing upon due notice. Such a hearing ~~shall be exempted from s. 120.57(1)(a) and~~ shall be conducted by the commission or its designated agent pursuant to s. 447.503(5). Upon a finding by the commission that the local commission is not properly constituted, has not acted or responded to a filing of the employee organization or public employer or public employee within a reasonable and timely period, or has acted in a manner clearly inconsistent with the precedent of the commission, the commission shall assume jurisdiction of the case, and the decision and findings of the commission in such case shall be binding upon the local commission, the public employer, and the employee organization or public employee. The provisions of this subsection pertaining to the assumption of jurisdiction by the state commission shall have no application to final orders of a local commission which are reviewable by a district court of appeal pursuant to chapter 120.

Section 205. Paragraph (b) of subsection (10) of section 450.33, Florida Statutes, is amended to read:

450.33. Duties of farm labor contractor

Every farm labor contractor must:

(10) Comply with all applicable statutes, rules, and regulations of the United States and of the State of Florida for the protection or benefit of labor, including, but not limited to, those providing for wages, hours, fair labor standards, social security, workers' compensation, unemployment compensation, child labor, and transportation. The division shall not suspend or revoke a certificate of registration pursuant to this subsection unless:

(b) An administrative hearing pursuant to ss. ~~s.~~ 120.569 and 120.57 is held on the suspension or revocation and the administrative law judge ~~hearing officer~~ finds that a violation of one of the laws, rules, or regulations has occurred and, if invoked, the appellate process is exhausted; or

Section 206. Subsection (7) of section 455.203, Florida Statutes, is amended to read:

455.203. Department; Agency for Health Care Administration; powers and duties

The department and the Agency for Health Care Administration, for the boards under their respective jurisdictions, shall:

(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by ~~either~~ the department, ~~or~~ the Agency for Health Care Administration, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

Section 207. Subsections (1) and (2) of section 455.211, Florida Statutes, are amended to read:

455.211. Board rules; final agency action; challenges

(1) The secretary of the department shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. ~~ss. 120.54 and~~ 120.56. The Director of Health Care Administration shall have standing to challenge any rule or proposed rule of any board under its jurisdiction, pursuant to s. ~~ss. 120.54 and~~ 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge ~~hearing officer~~, upon such a challenge by the secretary or the Director of Health Care Administration, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary, the Director of Health Care Administration, or the board shall be a substantially interested party for purposes of s. 120.54(7)~~(5)~~. The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

Section 208. Subsection (4) of section 455.213, Florida Statutes, is amended to read:

455.213. General licensing provisions

(4) When any administrative law judge ~~hearing officer~~ conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the department, the administrative law judge ~~hearing officer~~ shall submit his recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for a license may appeal the final order of the board in accordance with the provisions of chapter 120.

Section 209. Subsection (3) of section 455.2141, Florida Statutes, is amended to read:

455.2141. Agency for Health Care Administration; general licensing provisions

(3) When any administrative law judge ~~hearing officer~~ conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the Agency for Health Care Administration, the administrative law judge ~~hearing officer~~ shall submit his recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for licensure may appeal the final order of the board in accordance with the provisions of chapter 120.

Section 210. Section 455.223, Florida Statutes, is amended to read:

455.223. Power to administer oaths, take depositions, and issue subpoenas

For the purpose of any investigation or proceeding conducted by the department or the Agency for Health Care Administration, the department or the agency shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department or the Agency for Health Care Administration shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569 ~~120.58~~.

Section 211. Subsections (4), (5), and (8) of section 455.225, Florida Statutes, are amended to read:

455.225. Disciplinary proceedings

Disciplinary proceedings for each board shall be within the jurisdiction of the department or the Agency for Health Care Administration, as appropriate.

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department or the Agency for Health Care Administration, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department or the agency. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chairman. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his privilege of confidentiality. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The probable cause panel may make a reasonable request, and upon such request the department or the agency shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department or the agency. The probable cause panel or the department or the agency, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department or the agency. The secretary may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department or the agency may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. In lieu of a finding of probable cause, the probable cause panel, or the department or the agency when there is no board, may issue a letter of guidance to the subject. If the probable cause panel finds that probable cause exists, it shall direct the department or the agency to file a formal complaint against the licensee. The department or the agency shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department or the agency shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department or the agency may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such

cases, the department or the agency shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department or the agency shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department or the agency within 1 year after the filing of a complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Health Care Trust Fund or the Professional Regulation Trust Fund, as appropriate. All proceedings of the probable cause panel are exempt from s. 120.525 ~~120.53(1)(d)~~.

(5) A formal hearing before an administrative law judge ~~a hearing officer~~ from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative law judge ~~hearing officer~~ shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60 (6)~~(8)~~ shall be conducted by the Secretary of Business and Professional Regulation or his designee or the Director of Health Care Administration or his designee, as appropriate, who shall issue the final summary order.

Section 212. Subsections (4) and (6) of section 455.2273, Florida Statutes, are amended to read:

455.2273. Disciplinary guidelines

(4) The department or the Agency for Health Care Administration, as appropriate, must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. ~~ss. 120.54 and~~ 120.56.

(6) The administrative law judge ~~hearing officer~~, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

Section 213. Subsection (1) of section 455.228, Florida Statutes, is amended to read:

455.228. Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected

(1) When the department or the Agency for Health Care Administration has probable cause to believe that any person not licensed by the department or the agency, or the appropriate regulatory board within the department or the agency, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the

department or the agency, or any rule adopted pursuant thereto, the department or the agency may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department or the agency may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a ~~s. 120.57~~ hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department or the agency may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order. In addition to the foregoing remedies, the department or the agency may impose an administrative penalty not to exceed $5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department or the agency is required to seek enforcement of the agency order for a penalty pursuant to s. 120.569 ~~120.58~~, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

Section 214. Subsection (2) of section 455.229, Florida Statutes, is amended to read:

455.229. Public inspection of information required from applicants; exceptions; examination hearing

(2) The department or the Agency for Health Care Administration shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department or the agency shall provide challenged examination questions and answers to the administrative law judge ~~hearing officer~~. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge ~~hearing officer~~. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 215. Subsection (4) of section 458.311, Florida Statutes, is amended to read:

458.311. Licensure by examination; requirements; fees

(4) The department and the board shall assure that applicants for licensure meet the criteria in subsection (1) through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(1)~~(2)~~ and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or his designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(1)~~(2)~~.

Section 216. Subsection (3) of section 458.313, Florida Statutes, is amended to read:

458.313. Licensure by endorsement; requirements; fees

(3) The department and the board shall assure that applicants for licensure by endorsement meet applicable criteria in this chapter through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(1)~~(2)~~ and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or his designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(1)~~(2)~~.

Section 217. Paragraph (a) of subsection (4) of section 458.320, Florida Statutes, is amended to read:

458.320. Financial responsibility

(4)(a) Each insurer, self-insurer, risk retention group, or Joint Underwriting Association shall promptly notify the department of cancellation or nonrenewal of insurance required by this section. Unless the physician demonstrates that he is otherwise in compliance with the requirements of this section, the

department shall suspend the license of the physician pursuant to ss. ~~s.~~ 120.569 and 120.57 and notify all health care facilities licensed under chapter 395 of such action. Any suspension under this subsection shall remain in effect until the physician demonstrates compliance with the requirements of this section, except that a license suspended under paragraph (5)(g) shall not be reinstated until the physician demonstrates compliance with the requirements of that provision.

Section 218. Subsection (10) of section 458.331, Florida Statutes, is amended to read:

458.331. Grounds for disciplinary action; action by the board and department

(10) A recommended order by an administrative law judge ~~a hearing officer~~, or a final order of the board finding a violation under this section shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or "failure to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances" or any combination thereof, and any publication by the board shall so specify.

Section 219. Subsection (4) of section 459.0055, Florida Statutes, is amended to read:

459.0055. General licensure requirements

(4) The department and the board shall assure that applicants for licensure meet applicable criteria in this chapter through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(1)~~(2)~~ and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or his designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify

the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(1)~~(2)~~.

Section 220. Paragraph (a) of subsection (4) of section 459.0085, Florida Statutes, is amended to read:

459.0085. Financial responsibility

(4)(a) Each insurer, self-insurer, risk retention group, or joint underwriting association shall promptly notify the department of cancellation or nonrenewal of insurance required by this section. Unless the osteopathic physician demonstrates that he is otherwise in compliance with the requirements of this section, the department shall suspend the license of the osteopathic physician pursuant to ss. ~~s.~~ 120.569 and 120.57 and notify all health care facilities licensed under chapter 395, part IV of chapter 394, or part I of chapter 641 of such action. Any suspension under this subsection shall remain in effect until the osteopathic physician demonstrates compliance with the requirements of this section except that a license suspended under paragraph (5)(g) shall not be reinstated until the osteopathic physician demonstrates compliance with the requirements of that provision.

Section 221. Paragraph (x) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015. Grounds for disciplinary action by the board

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(x) Gross or repeated malpractice or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of $10,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the osteopathic physician. As used in this paragraph, "gross malpractice" or "the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances" shall not be construed so as to require more than one instance, event, or act. Nothing in this paragraph shall be construed to require that an osteopathic physician be incompetent to practice osteopathic medicine in order to be disciplined pursuant to this paragraph. A recommended order by an administrative law judge ~~a hearing officer~~ or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or "failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized as being acceptable

under similar conditions and circumstances," or any combination thereof, and any publication by the board shall so specify.

Section 222. Paragraph (r) of subsection (1) of section 460.413, Florida Statutes, is amended to read:

460.413. Grounds for disciplinary action; action by the board

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(r) Gross or repeated malpractice or the failure to practice chiropractic at a level of care, skill, and treatment which is recognized by a reasonably prudent chiropractic physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the standards for malpractice in s. 766.102 in interpreting this provision. A recommended order by an administrative law judge ~~a hearing officer~~, or a final order of the board finding a violation under this section shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or "failure to practice chiropractic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances" or any combination thereof, and any publication by the board shall so specify.

Section 223. Paragraph (c) of subsection (2) of section 463.0055, Florida Statutes, is amended to read:

463.0055. Administration and prescription of topical ocular pharmaceutical agents; committee

(2)

(c) The secretary of the department shall have standing to challenge any rule or proposed rule of the board pursuant to s. ~~ss. 120.54 and~~ 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge ~~hearing officer~~, upon such a challenge by the secretary, may declare all or part of a rule or proposed rule invalid if it:

1. Does not protect the public from any significant and discernible harm or damages;

2. Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

3. Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

Section 224. Subsection (4) of section 475.612, Florida Statutes, is amended to read:

475.612. Certification or licensure required

(4) This section shall not prevent any state court or administrative law judge ~~hearing officer~~ from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, or registered; nor shall it prevent any appraiser from testifying, with respect to the results of an appraisal.

Section 225. Subsection (8) of section 482.161, Florida Statutes, is amended to read:

482.161. Disciplinary grounds and actions; reinstatement

(8) An administrative law judge ~~A hearing officer~~ may, in lieu of or in addition to imposition of a fine, recommend probation or public or private reprimand. A public reprimand must be made in a newspaper of general circulation in the county of the licensee.

Section 226. Subsection (4) of section 489.129, Florida Statutes, is amended to read:

489.129. Disciplinary proceedings

(4) In recommending penalties in any proposed recommended final order, the department shall follow the penalty guidelines established by the board by rule. The department shall advise the administrative law judge ~~hearing officer~~ of the appropriate penalty, including mitigating and aggravating circumstances, and the specific rule citation.

Section 227. Subsection (3) of section 489.533, Florida Statutes, is amended to read:

489.533. Disciplinary proceedings

(3) In recommending penalties in any proposed recommended final order, the department shall follow the penalty guidelines established by the board by rule. The department shall advise the administrative law judge ~~hearing officer~~ of the appropriate penalty, including mitigating and aggravating circumstances, and the specific rule citation.

Section 228. Paragraph (d) of subsection (1) of section 490.009, Florida Statutes, is amended to read:

490.009. Discipline

(1) When the department or, in the case of psychologists, the board finds that an applicant or licensee whom it regulates under this chapter has committed any of the acts set forth in subsection (2), it may issue an order imposing one or more of the following penalties:

(d) Immediate suspension of a license pursuant to s. 120.60(6) ~~(8)~~.

Section 229. Paragraph (d) of subsection (1) of section 491.009, Florida Statutes, is amended to read:

491.009. Discipline

(1) When the department or the board finds that an applicant, licensee, or certificateholder whom it regulates under this chapter has committed any of the acts set forth in subsection (2), it may issue an order imposing one or more of the following penalties:

(d) Immediate suspension of a license or certificate pursuant to s. 120.60(6)~~(8)~~.

Section 230. Paragraph (a) of subsection (1) of section 493.6108, Florida Statutes, is amended to read:

493.6108. Investigation of applicants by Department of State

(1) Except as otherwise provided, prior to the issuance of a license under this chapter, the department shall make an investigation of the applicant for a license. The investigation shall include:

(a)1. An examination of fingerprint records and police records. When a criminal history analysis of any applicant under this chapter is performed by means of fingerprint card identification, the time limitations prescribed by s. 120.60(1)~~(2)~~ shall be tolled during the time the applicant's fingerprint card is under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

2. If a legible set of fingerprints, as determined by the Department of Law Enforcement or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of State may determine the applicant's eligibility based upon a criminal history record check under the applicant's name conducted by the Department of Law Enforcement and the Federal Bureau of Investigation. A set of fingerprints taken by a law enforcement agency and a written statement signed by the fingerprint technician or a licensed physician stating that there is a physical condition that precludes obtaining a legible set of fingerprints or that the fingerprints taken are the best that can be obtained is sufficient to meet this requirement.

Section 231. Subsection (7) of section 497.105, Florida Statutes, is amended to read:

497.105. Department of Banking and Finance; powers and duties

The Department of Banking and Finance shall:

(7) Require all proceedings of the board or panels thereof within the department and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing, registration, certification, or discipline to be

electronically recorded in a manner sufficient to ensure the accurate transcription of all matters so recorded.

Section 232. Section 497.115, Florida Statutes, is amended to read:

497.115. Board rules; final agency action; challenges

(1) The Comptroller shall have standing to challenge any rule or proposed rule of the board pursuant to s. ~~ss. 120.54 and~~ 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge ~~hearing officer~~, upon such a challenge by the Comptroller, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the Comptroller or the board shall be a substantially interested party for purposes of s. 120.54(7)~~(5)~~. The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

Section 233. Subsections (2), (3), and (4) of section 497.129, Florida Statutes, are amended to read:

497.129. Cease and desist order; civil penalty; enforcement

(2) Failure to respond to a complaint within the time allowed in ss. ~~s.~~ 120.569 and 120.57 shall constitute a default and shall be grounds for the issuance of a final order to cease and desist.

(3) The department or the board may issue an emergency cease and desist order pursuant to s. 120.569 ~~120.59~~.

(4) For the purpose of enforcing a cease and desist order, the board or the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of such order. In addition to the foregoing remedies, the board or the department may impose an administrative penalty not to exceed $5,000 per violation, pursuant to the provisions of chapter 120. If the board or the department is required to seek enforcement of the agency order for a penalty pursuant to s.

120.569 ~~120.58~~, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

Section 234. Subsections (4), (5), and (8) of section 497.131, Florida Statutes, are amended to read:

497.131. Disciplinary proceedings

(4) The determination as to whether probable cause exists shall be made by majority vote of the probable cause panel of the board. The board shall provide, by rule, that the determination of probable cause shall be made by a panel of its members or by the department. The board may provide, by rule, for multiple probable cause panels composed of at least two members. The board may provide, by rule, that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All probable cause proceedings conducted pursuant to the provisions of this section are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The Comptroller may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to the provisions of chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. A probable cause panel or the board may retain independent

legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Regulatory Trust Fund. All proceedings of the probable cause panel shall be exempt from the provisions of s. 120.525 ~~120.53(1)(d)~~.

(5) A formal hearing before an administrative law judge ~~a hearing officer~~ from the Division of Administrative Hearings of the Department of Management Services shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative law judge ~~hearing officer~~ shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of a license, of a licensee pursuant to s. 120.60 (6)~~(8)~~ shall be conducted by the Comptroller or his designee, who shall issue the final summary order.

Section 235. Subsections (4) and (6) of section 497.133, Florida Statutes, are amended to read:

497.133. Disciplinary guidelines

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth in this section to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. ~~ss. 120.54 and~~ 120.56.

(6) The administrative law judge ~~hearing officer~~, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

Section 236. Section 497.217, Florida Statutes, is amended to read:

497.217. Department rules; challenges

The department shall not adopt any rule or approve any cemetery bylaw which unreasonably restricts competition or the availability of services in the state or in a significant part of the state or which unnecessarily increases the cost of services without a corresponding or equivalent public benefit. Any person substantially affected by a rule of the department has standing to challenge the rule under ~~s. 120.54 or~~ s. 120.56. Upon such a challenge, the administrative law judge ~~hearing officer~~ may declare all or part of a rule invalid if the rule:

(1) Does not protect the public from any significant and discernible harm or damages;

(2) Unreasonably restricts competition or the availability of services in the state or in a significant part of the state; or

(3) Unnecessarily increases the cost of services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this section in the event that the rule or proposed rule is challenged.

Section 237. Section 497.221, Florida Statutes, is amended to read:

497.221. Cease and desist orders

(1) The department may issue and serve upon a cemetery company a complaint whenever the department has reason to believe that the cemetery company is violating or has violated any law, department rule, department order, or written agreement entered into with the department.

(2) The complaint shall contain a statement of facts and notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

(3) If no hearing is requested within the time allowed by ss. ~~s.~~ 120.569 and 120.57, or if a hearing is held and the department finds that any of the allegations in the complaint are true, the department may enter an order directing the cemetery company to cease and desist from engaging in the conduct complained of and to take corrective action.

(4) The failure of a cemetery company to respond to the complaint within the time allowed in ss. ~~s.~~ 120.569 and 120.57 shall constitute a default and shall be grounds for the issuance of a cease and desist order.

(5) A cease and desist order issued pursuant to the provisions of subsection (3) or subsection (4) is effective when reduced to writing and served upon the cemetery company. A consent order is effective as agreed between the parties thereto.

(6) The department may issue an emergency cease and desist order pursuant to s. 120.569 ~~120.59~~.

Section 238. Subsection (2) of section 497.447, Florida Statutes, is amended to read:

497.447. Prohibited practices; hearings, witnesses, appearances, production of books, and service of process

(2) The board, ~~or~~ a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569 ~~120.58~~; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed $1,000 per violation.

Section 239. Subsection (3) of section 498.029, Florida Statutes, is amended to read:

498.029. Notice of filing and registration

(3) If the division disapproves the application, it shall enter an order disapproving the registration which shall include the findings of fact upon which the order is based and shall state with particularity the grounds for disapproval. If no hearing has been held, the division shall inform the applicant of his right to a hearing under ss. ~~s.~~ 120.569 and 120.57.

Section 240. Section 499.0053, Florida Statutes, is amended to read:

499.0053. Power to administer oaths, take depositions, and issue and serve subpoenas

For the purpose of any investigation or proceeding conducted by the department under ss. 499.001-499.081, the department may administer oaths, take depositions, issue and serve subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, or other evidence. The department shall exercise this power on its own initiative. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569 ~~120.58~~.

Section 241. Subsection (3) of section 501.608, Florida Statutes, is amended to read:

501.608. License or affidavit of exemption; occupational license

(3) Failure to display a license or a copy of the affidavit of exemption is sufficient grounds for the department to issue an immediate cease and desist order, which shall act as an immediate final order under s. 120.569(2)(l) ~~120.59(3)~~. The order may shall remain in effect until the commercial telephone seller or a person claiming to be exempt shows the authorities that he is licensed or exempt. The department may order the business to cease operations and shall order the phones to be shut off. Failure of a salesperson to display a license may result in the salesperson being summarily ordered by the department to leave the office until he can produce a license for the department.

Section 242. Section 502.222, Florida Statutes, is amended to read:

502.222. Information relating to trade secrets confidential

The records of the department regarding matters encompassed by this chapter are public records, subject to the provisions of chapter 119, except that any information which would reveal a trade secret, as defined in s. 812.081, of a dairy industry business is confidential and exempt from the provisions of s. 119.07(1). If the department determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final ~~an~~ order as defined in s. 120.52. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 243. Paragraph (b) of subsection (6) of section 517.161, Florida Statutes, is amended to read:

517.161. Revocation, denial, or suspension of registration of dealer, investment adviser, associated person, or branch office

(6) Registration under s. 517.12 may be denied or any registration granted may be suspended or restricted if an applicant or registrant is charged, in a pending enforcement action or pending criminal prosecution, with any conduct that would authorize denial or revocation under subsection (1).

(b) Any order of suspension or restriction under this subsection shall:

1. Take effect only after a hearing, unless no hearing is requested by the registrant or unless the suspension or restriction is made in accordance with s. 120.60(6)~~(8)~~.

2. Contain a finding that evidence of a prima facie case supports the charge made in the enforcement action or criminal prosecution.

3. Operate for no longer than 10 days beyond receipt of notice by the department of termination with respect to the registrant of the enforcement action or criminal prosecution.

Section 244. Subsection (2) of section 517.221, Florida Statutes, is amended to read:

517.221. Cease and desist orders

(2) Whenever the department finds that conduct described in subsection (1) presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named therein and remains effective for 90 days. If the department begins nonemergency cease and desist proceedings under subsection (1), the emergency cease and desist order remains effective until conclusion of the proceedings under ss. ~~s.~~ 120.569 and 120.57.

Section 245. Subsections (1) and (3) of section 519.101, Florida Statutes, are amended to read:

519.101. Florida equity exchange feasibility study; structure, operation, and regulation

(1) There may be created one or more Florida equity exchanges, with one or more offices each, upon a determination by the Comptroller that each such exchange has a reasonable promise of successful operation, will promote economic development, will produce net economic benefits in the state, and will not expose the public to undue risk of financial loss. This determination shall be based on the results of a feasibility study concerning the possible structure, operation, and regulation of each such exchange, to be carried out under the supervision of the Comptroller. The Secretary of Commerce shall provide the Comptroller any needed advice on economic development aspects of the feasibility study. Said feasibility

study shall evaluate to what extent securities laws may limit the transferability of investments in which any exchange would deal; to what extent companies financed through securities in which the exchange would deal would prefer a stable group of investors; to what extent the particular investment objectives of potential participants in any exchange might be inconsistent with an exchange operation; and the possibility that the frequency of investment opportunities of the type in which an exchange would deal would be too low to economically operate any exchange. The determination of the Comptroller shall constitute a final order ~~an "order"~~ as defined in s. 120.52~~(11)~~ and shall be subject to the provisions of chapter 120. Nothing in this section, however, shall be construed to require the expenditure of state funds for the purpose of conducting any such feasibility study. For the purposes of this section, the term "exchange" shall apply to any such Florida equity exchange proposed or created under this section.

(3) Within 30 days following such determination, a committee shall be appointed to write the constitution and bylaws of the exchange. The Comptroller may provide technical assistance to the committee on the development of the constitution and bylaws of the exchange. The committee shall consist of 15 members, 11 members to be appointed by the Governor, 2 members to be appointed by the Speaker of the House of Representatives, and 2 members to be appointed by the President of the Senate. The chairman shall be elected by a majority of the committee. The committee shall transmit such proposed constitution, bylaws, and other recommendations for the approval of the Comptroller no later than 90 days following the first meeting of the committee. In reviewing the constitution and the bylaws of the exchange, as well as any other recommendations made to the Comptroller by the committee, the Comptroller shall consider whether such constitution, bylaws, and recommendations are reasonably consistent with the public interest and the efficient functioning of the exchange. The Comptroller shall approve the constitution and bylaws of the exchange if he finds that they specifically describe the types of business that the exchange will conduct, that such business activities are not inconsistent with state or federal law, that the form of business organization of the exchange complies with statutory requirements, and that the interest of owners or members of the exchange would be adequately protected. The submission of the proposed constitution and bylaws to the Comptroller shall be deemed an application for a license and shall be subject to the provisions of s. 120.80(9) ~~120.60(4)~~.

Section 246. Subsection (3) of section 520.994, Florida Statutes, is amended to read:

520.994. Powers of department

(3) In addition to any other powers conferred upon it to enforce or administer this chapter, the department may issue and serve upon a person a cease and desist order whenever the department finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order adopted pursuant to this chapter, or any written agreement entered into with the department. Any such order shall contain a notice of the rights provided by ss. ~~s.~~ 120.569 and 120.57.

Section 247. Section 538.11, Florida Statutes, is amended to read:

538.11. Powers and duties of department; rules

The same duties and privileges imposed by part I of chapter 212 upon dealers of tangible personal property respecting the keeping of books and records and accounts and compliance with rules of the department shall apply to and be binding upon all persons who are subject to the provisions of this chapter. The department shall administer, collect, and enforce the registration authorized under this chapter pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of part I of chapter 212 regarding the keeping of records and books shall apply. The department, under the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The department is empowered to adopt such rules, and shall prescribe and publish such forms, as may be necessary to effectuate the purposes of this chapter. The Legislature hereby finds that the failure to promptly implement the provisions of this chapter would present an immediate threat to the welfare of the state. Therefore, the executive director of the department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4)~~(9)~~, for purposes of implementing this chapter. Notwithstanding any other provision of law, such emergency rules shall remain effective for 6 months from the date of adoption. Other rules of the department related to and in furtherance of the orderly implementation of the chapter shall not be subject to a rule challenge under s. 120.56(2) ~~120.54(4)~~ or a drawout proceeding under s. 120.54(3)(c)2.~~(17)~~ but, once adopted, shall be subject to an invalidity challenge under s. 120.56(3). Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54 (3)(e)6.~~(13)~~.

Section 248. Subsection (5) of section 550.0251, Florida Statutes, is amended to read:

550.0251. The powers and duties of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation

The division shall administer this chapter and regulate the pari-mutuel industry under this chapter and the rules adopted pursuant thereto, and:

(5) The division may adopt rules establishing procedures for testing occupational licenseholders officiating at or participating in any race or game at any pari-mutuel facility under the jurisdiction of the division for a controlled substance or alcohol and may prescribe procedural matters not in conflict with s. 120.80(4)(a) ~~120.633~~.

Section 249. Subsection (4) of section 550.24055, Florida Statutes, is amended to read:

550.24055. Use of controlled substances or alcohol prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited

(4) The provisions of s. 120.80(4)(a) ~~120.633~~ apply to all actions taken by the stewards, judges, or board of judges pursuant to this section without regard to the limitation contained therein.

Section 250. Subsection (5) of section 559.730, Florida Statutes, is amended to read:

559.730. Administrative remedies

(5) The department may impose an administrative fine up to $1,000 against the offending registrant as a sanction for repeated violations of the provisions of s. 559.72 when violations do not rise to the level of misconduct governed by subsection (1). Final department action to impose an administrative fine shall be subject to review in accordance with ss. ~~s.~~ 120.569 and 120.57.

Section 251. Subsection (4) of section 559.929, Florida Statutes, is amended to read:

559.929. Security requirements

(4) Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the department within 120 days after an alleged injury has occurred or is discovered to have occurred. The proceedings shall be held in accordance with ss. ~~s.~~ 120.569 and 120.57.

Section 252. Subsections (2), (3), (4), and (6) of section 560.112, Florida Statutes, are amended to read:

560.112. Procedures for disciplinary actions

(2) The complaint must contain the statement of facts and notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

(3) If no hearing is requested within the time allowed by ss. ~~s.~~ 120.569 and 120.57, or if a hearing is held and the department finds that any of the charges are true, the department may enter an order directing the money transmitter, the money transmitter-affiliated party, or the person named therein to cease and desist from engaging in the conduct complained of and to take reasonable corrective action. The department may also issue an order suspending or barring any money transmitter-affiliated party from continuing to be employed by or associated with any money transmitter or authorized vendor during the period such order is in effect.

(4) If any person named in such order fails to respond to the complaint within the time allotted in ss. ~~s.~~ 120.569 and 120.57, such failure constitutes a default and justifies the entry of a cease and desist order or removal order.

(6) Whenever the department finds that conduct described in s. 560.114 is likely to cause substantial dissipation of assets or earnings of the money transmitter or, insolvency or

substantial prejudice to the customers of the money transmitter or authorized vendor, it may issue an emergency removal order or an emergency cease and desist order requiring any person to disassociate itself from participating in the affairs of the money transmitter or authorized vendor or to immediately cease and desist from engaging in the conduct complained of and to take corrective action. The emergency order is effective immediately upon service of the order upon the person and remains effective for 90 days. Such person may object to the issuance of the emergency order pursuant to the provisions of chapter 120. Such objection must be in writing and must include a request for a formal hearing, which is to be promptly instituted and acted upon. If the department begins nonemergency proceedings under subsection (1), the emergency order remains effective until the conclusion of the proceedings under ss. ~~s.~~ 120.569 and 120.57.

Section 253. Paragraph (a) of subsection (1) of section 560.121, Florida Statutes, is amended to read:

560.121. Records; limited restrictions upon public access

(1)(a) Orders of courts or of administrative law judges ~~hearing officers~~ for the production of confidential records or information shall provide for inspection in camera by the court or the administrative law judge ~~hearing officer~~ and, after the court or administrative law judge ~~hearing officer~~ has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, said documents shall be subject to further orders by the court or the administrative law judge ~~hearing officer~~ to protect the confidentiality thereof. Any order directing the release of information shall be immediately reviewable, and a petition by the department for review of such order shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.

Section 254. Paragraph (b) of subsection (2) of section 560.129, Florida Statutes, is amended to read:

560.129. Confidentiality

(2) RESTRICTED ACCESS TO CERTAIN HEARINGS, PROCEEDINGS, AND RELATED DOCUMENTS.--

(b) Orders of courts or of administrative law judges ~~hearing officers~~ for the production of confidential records or information shall provide for inspection in camera by the court or the administrative law judge ~~hearing officer~~ and, after the court or administrative law judge ~~hearing officer~~ has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, the documents shall be subject to further orders by the court or the administrative law judge ~~hearing officer~~ to protect the confidentiality thereof. Any order directing the release of information shall be immediately reviewable, and a petition by the department for review of such order shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of

such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.

Section 255. Subsection (4) of section 561.15, Florida Statutes, is amended to read:

561.15. Licenses; qualifications required

(4) If a corporation is unable to qualify for or continue to hold an alcoholic beverage license because the corporation has been convicted of a felony and the felony conviction is unrelated to any offense against the beverage laws of this state, any other state, or the United States, such conviction will not constitute an absolute bar to the issuance, renewal, or transfer of an alcoholic beverage license to the corporation, or to the continued holding of an alcoholic beverage license by the corporation, if the corporation can demonstrate to the satisfaction of the division, in a public hearing under ss. ~~s.~~ 120.569 and 120.57, that the corporation has terminated its relationship with any director, officer, employee, or controlling shareholder whose actions directly contributed to the conviction of the corporation. If a corporation is unable to qualify for or continue to hold an alcoholic beverage license because an officer of the corporation has been convicted of an offense enumerated in subsection (2), such conviction will not constitute an absolute bar to the issuance, renewal, or transfer of a license to the corporation, or to the continued holding of an alcoholic beverage license by the corporation, if the corporation can demonstrate to the satisfaction of the division that the corporation has terminated its relationship with the officer so convicted. If any corporation has received a full pardon or restoration of civil rights pursuant to state law with respect to any conviction of a violation of law, the conviction does not constitute an absolute bar to the issuance, renewal, or transfer of a license or grounds for revocation or suspension of a license. The division shall annually report to the offices of the President of the Senate and the Speaker of the House of Representatives all agency actions taken pursuant to the provisions of this subsection.

Section 256. Subsection (4) of section 561.19, Florida Statutes, is amended to read:

561.19. License issuance upon approval of division

(4) The issuance of licenses pursuant to subsection (2) or subsection (3) shall not be governed by the provisions of s. 120.60. The issuance of any such license shall occur no later than 180 days after a drawing is held pursuant to notice published in the Florida Administrative Weekly or, in the event no drawing is held, within 180 days of the final date for filing applications. Any applicant who is not included in the pool for drawing to determine priority shall file, within 30 days of the date of mailing of notice to such applicant, a challenge to such action pursuant to ss. ~~s.~~ 120.569 and 120.57, or the right to file any action as to such matter shall be forever lost. Any applicant whose name is included in the pool for drawing to determine priority but who is not issued a license shall be entitled to request a hearing on the denial pursuant to ss. ~~s.~~ 120.569 and 120.57 only on the grounds that the selection process was not conducted in accordance with law or that the licensee selected does not possess the qualifications required by law.

Section 257. Subsection (8) of section 601.154, Florida Statutes, is amended to read:

601.154. Citrus Stabilization Act of Florida

(8) Every marketing order and amendment thereto issued by the Department of Citrus, under the provisions of this section, shall be published one time, within 10 days after the same is adopted, in at least one daily newspaper of general circulation in each of two cities within the citrus-producing area of the state, to be selected by the Department of Citrus. All such orders shall become effective 5 days after the orders are found by the Department of Citrus to be so assented to, unless the Department of Citrus orders a later date. In case written protest by any affected person shall be made to any such order within 15 days after the Department of Citrus has found it so assented to, a hearing shall be conducted at a place and time determined by the Department of Citrus or its authorized agent or representative; all interested persons shall have an opportunity to be heard. Due notice of the time and place of such hearing by the Department of Citrus or its designated agent, representative, or administrative law judge ~~hearing officer~~ shall be given to the persons making such protest. In all cases such written protests shall be filed with the Department of Citrus; however, the filing thereof shall not stay the effective date of such order. The Department of Citrus may, on application of the protestant and for good cause shown, stay the effective date of the order for such time as the Department of Citrus may direct. Any action of the Department of Citrus refusing to modify the order protested or refusing to stay the effective date of such order shall be subject to review by any court of competent jurisdiction.

Section 258. Paragraph (e) of subsection (2) of section 602.025, Florida Statutes, is amended to read:

602.025. Legislative findings and intent

(2) It is the intent of the Legislature, through the adoption of this act, to:

(e) Compensate during fiscal year 1990-1991 those claimants whose judicial remedies are barred by the statute of limitations as of June 20, 1989, for the amount computed by the Office of Citrus Canker Claims using the procedure in s. 602.065. Such payments shall not include interest, and such claimants shall not be entitled to proceed before an administrative law judge ~~a hearing officer~~. This paragraph shall not be construed to constitute a waiver of the limitation on actions as set forth in chapter 95.

Section 259. Paragraph (c) of subsection (2) and paragraph (b) of subsection (5) of section 602.055, Florida Statutes, are amended to read:

602.055. Office of Citrus Canker Claims established; duties

(2) No money shall be paid to a claimant by the Office of Citrus Canker Claims unless and until:

(c) A final order has been entered by the administrative law judge ~~hearing officer~~ in an administrative hearing as described in s. 602.065 and/or s. 602.075 and the time for appeal has expired or all appellate proceedings have been concluded.

(5) The Office of Citrus Canker Claims shall design an application and other forms to administer this act, which application and forms shall not be subject to chapter 120. The application and other forms shall be designed to:

(b) Provide a place where the claimant may indicate that he disputes values established by s. 602.035 or the number and category of citrus nursery plants in the records of the Department of Agriculture and Consumer Services and requests a hearing before an administrative law judge ~~a hearing officer~~ from the Division of Administrative Hearings. The form shall clearly indicate that where a claimant proceeds before an administrative law judge ~~a hearing officer~~ the state is entitled to present evidence that in the claimant's particular case the values established in s. 602.035 exceed the fair market value of the claimant's losses.

Section 260. Paragraph (c) of subsection (5) and subsections (7), (8), (10), (13), and (14) of section 602.065, Florida Statutes, are amended to read:

602.065. Citrus canker claims; procedures

(5) Upon receipt of the application from the claimant, the Office of Citrus Canker Claims shall compare the information provided by the claimant with the records of the Department of Agriculture and Consumer Services. If the claimant's information is in accordance with the department's records, the Office of Citrus Canker Claims shall calculate the amount due to the claimant. Such calculations shall be done as follows:

(c) The sum of all compensation payments previously made by the state and federal governments shall be deducted from the sum of the base level of compensation and interest, if applicable, to arrive at the net level of compensation due to the claimant. Once the claimant has satisfied all conditions for payment, the administrative law judge ~~hearing officer~~ has issued a final order, or an order becomes final after an appeal, the time limits and penalties prescribed by s. 215.422 shall apply to any net compensation due a claimant.

(7)(a) A claimant who contests the net compensation computed pursuant to this section or the number and category of citrus nursery plants destroyed shall be entitled to proceed before an administrative law judge ~~a hearing officer~~.

(b) In the event that a claimant contests the net compensation computed pursuant to this section or the number and category of citrus plants destroyed and does not request a hearing, the Office of Citrus Canker Claims, in consultation with the Department of Legal Affairs, shall be entitled to proceed before an administrative law judge ~~a hearing officer~~, at any point in the process, when such proceeding is deemed to be in the best interest of the state.

(8) The director of the Division of Administrative Hearings shall appoint an administrative law judge ~~a hearing officer~~ to conduct each citrus canker claim proceeding, including those for attorney's fees and costs.

(10) In a proceeding under this act, the administrative law judge's ~~hearing officer's~~ final order shall determine:

(a) The value of the claimant's citrus nursery plants at the time of destruction.

(b) The number and category of the claimant's citrus nursery plants.

(c) Whether the destruction was required by either the state or Federal Government, or both.

(d) The amount of any money previously paid, and the dates such moneys were paid, for destroyed citrus nursery plants to the claimant by the state or Federal Government, or both, pursuant to the Citrus Canker Eradication Program.

(e) The amount of attorney's fees and costs, if any, pursuant to this section or s. 602.075, as appropriate.

(f) Any other matters necessary to the resolution of the claim as contemplated by this act.

(13) Attorney's fees for claims presented before the administrative law judge ~~hearing officer~~ shall be based upon a reasonable rate for the time necessarily expended for the claim and the hearing. It is presumed that this amount shall not exceed 10 percent of the amount recovered in excess of the net compensation calculated pursuant to subsection (5), but this may be rebutted. Reimbursement shall be made for such costs deemed necessary and proper.

(14) Orders entered by administrative law judges ~~hearing officers~~ under this act may be appealed pursuant to s. 120.68. The First District Court of Appeal shall have sole and exclusive jurisdiction over all interlocutory and final orders in proceedings under this act.

Section 261. Subsections (3) and (4) of section 602.075, Florida Statutes, are amended to read:

602.075. Attorney's fees

(3) The determination of an amount due for attorney's fees and costs shall be made by final order of an administrative law judge ~~a hearing officer~~ from the Division of Administrative Hearings.

(4) In determining the amount due for attorney's fees and costs, the administrative law judge ~~hearing officer~~ shall consider the following factors:

(a) The attorney's time and labor reasonably required to adequately represent the client. The attorney shall submit to the Office of Citrus Canker Claims complete time records of all citrus canker lawsuits handled by that attorney, including a detailed statement of services performed, time spent performing such services, and costs incurred at least 30 days prior to the hearing.

(b) The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature.

(c) The experience, reputation, diligence, and ability of the attorney performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such service.

(d) Whether the attorney's efforts were duplicative of work done by that attorney for another client who had a citrus canker lawsuit or claim pursuant to this section.

(e) Whether the attorney's efforts were duplicative of work done by other attorneys in earlier citrus canker lawsuits or claims pursuant to this act.

Section 262. Section 602.085, Florida Statutes, is amended to read:

602.085. Venue for administrative proceedings

All administrative proceedings shall be held in the county in which the citrus nursery plants were destroyed, unless otherwise ordered by the administrative law judge ~~hearing officer~~ for good cause.

Section 263. Subsection (6) of section 604.21, Florida Statutes, is amended to read:

604.21. Complaint; investigation; hearing

(6) Any party whose material interest is affected by a proceeding pursuant to this section shall be granted a hearing upon request. Such hearing shall be conducted pursuant to chapter 120. The order of the department, when issued pursuant to the recommended order of an administrative law judge ~~a hearing officer~~, shall be final upon issuance.

Section 264. Subsection (2) of section 607.1423, Florida Statutes, is amended to read:

607.1423. Appeal from denial of reinstatement

(2) After exhaustion of administrative remedies, the corporation may appeal the denial of reinstatement to the appropriate court as provided in s. 120.68~~(1) and (2)~~ within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Department of State's certificate of dissolution, the corporation's application for reinstatement, and the department's notice of denial.

Section 265. Subsection (2) of section 608.4483, Florida Statutes, is amended to read:

608.4483. Appeal from denial or reinstatement

(2) After exhaustion of administrative remedies, the limited liability company may appeal the denial of reinstatement to the appropriate court as provided in s. 120.68~~(1) and (2)~~ within 30 days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Department of State's certificate of dissolution, the limited liability company's application for reinstatement, and the department's notice of denial.

Section 266. Subsection (2) of section 617.1423, Florida Statutes, is amended to read:

617.1423. Appeal from denial of reinstatement

(2) After exhaustion of administrative remedies, the corporation may appeal the denial of reinstatement to the appropriate court as provided in s. 120.68~~(1) and (2)~~ within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Department of State's certificate of dissolution, the corporation's application for reinstatement, and the department's notice of denial.

Section 267. Paragraphs (b), (c), (d), and (f) of subsection (3) and
paragraphs (b), (c), (d), and (f) of subsection (4) of section 624.310, Florida Statutes, are amended to read:

624.310. Enforcement; cease and desist orders; removal of certain persons; fines

(3) CEASE AND DESIST ORDERS.—

(b) The complaint shall contain a statement of facts and notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

(c) If no hearing is requested within the time allowed by ss. ~~s.~~ 120.569 and 120.57, or if a hearing is held and the department finds that any of the charges are proven, the department may enter an order directing the licensee or the affiliated party named in the complaint to cease and desist from engaging in the conduct complained of and take corrective action to remedy the effects of past improper conduct and assure future compliance.

(d) If the licensee or affiliated party named in the order fails to respond to the complaint within the time allotted by ss. ~~s.~~ 120.569 and 120.57, the failure constitutes a default and justifies the entry of a cease and desist order.

(f) Whenever the department finds that conduct described in paragraph (a) is likely to cause insolvency, substantial dissipation or misvaluation of assets or earnings of the licensee,

substantial inability to pay claims on a timely basis, or substantial prejudice to prospective or existing insureds, policyholders, subscribers, or the public, it may issue an emergency cease and desist order requiring the licensee or any affiliated party to immediately cease and desist from engaging in the conduct complained of and to take corrective and remedial action. The emergency order is effective immediately upon service of a copy of the order upon the licensee or affiliated party named therein and remains effective for 90 days. If the department begins nonemergency cease and desist proceedings under this subsection, the emergency order remains effective until the conclusion of the proceedings under ss. ~~s.~~ 120.569 and 120.57. Any emergency order entered under this subsection is exempt from s. 119.07(1) and is confidential until it is made permanent unless the department finds that the confidentiality will result in substantial risk of financial loss to the public. All emergency cease and desist orders that are not made permanent are available for public inspection 1 year from the date the emergency cease and desist order expires; however, portions of an emergency cease and desist order remain confidential and exempt from the provisions of s. 119.07(1) if disclosure would:

1. Jeopardize the integrity of another active investigation;

2. Impair the safety and financial soundness of the licensee or affiliated party;

3. Reveal personal financial information;

4. Reveal the identity of a confidential source;

5. Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

6. Reveal investigative techniques or procedures.

The exemption from s. 119.07(1) provided in this subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(4) REMOVAL OF AFFILIATED PARTIES BY THE DEPARTMENT.—

(b) The complaint shall contain a statement of facts and notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

(c) If no hearing is requested within the time allotted by ss. ~~s.~~ 120.569 and 120.57, or if a hearing is held and the department finds that any of the charges in the complaint are proven true and that:

1. The licensee has suffered or will likely suffer loss or other damage;

2. The interests of the policyholders, creditors, or public are, or could be, seriously prejudiced by reason of the violation or act or breach of fiduciary duty;

3. The affiliated party has received financial gain by reason of the violation, act, or breach of fiduciary duty; or

4. The violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the affiliated party or the conduct jeopardizes or could reasonably be anticipated to jeopardize the financial soundness of the licensee,

The department may enter an order removing the affiliated party or restricting or prohibiting participation by the person in the affairs of that particular licensee or of any other licensee.

(d) If the affiliated party fails to respond to the complaint within the time allotted by ss. ~~s.~~ 120.569 and 120.57, the failure constitutes a default and justifies the entry of an order of removal, suspension, or restriction.

(f)1. The chief executive officer, or the person holding the equivalent office, of a licensee shall promptly notify the department if he has actual knowledge that any affiliated party is charged with a felony in a state or federal court.

2. Whenever any affiliated party is charged with a felony in a state or federal court or with the equivalent of a felony in the courts of any foreign country with which the United States maintains diplomatic relations, and the charge alleges violation of any law involving fraud, theft, or moral turpitude, the department may enter an emergency order suspending the affiliated party or restricting or prohibiting participation by the affiliated party in the affairs of the particular licensee or of any other licensee upon service of the order upon the licensee and the affiliated party charged. The order shall contain notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57, where the affiliated party may request a postsuspension hearing to show that continued service to or participation in the affairs of the licensee does not pose a threat to the interests of the licensee's policyholders or creditors and does not threaten to impair public confidence in the licensee. In accordance with applicable departmental rules, the department shall notify the affiliated party whether the order suspending or prohibiting the person from participation in the affairs of a licensee will be rescinded or otherwise modified. The emergency order remains in effect, unless otherwise modified by the department, until the criminal charge is disposed of. The acquittal of the person charged, or the final, unappealed dismissal of all charges against the person, dissolves the emergency order, but does not prohibit the department from instituting proceedings under paragraph (a). If the person charged is convicted or pleads guilty or nolo contendere, whether or not an adjudication of guilt is entered by the court, the emergency order shall become final.

Section 268. Section 624.84, Florida Statutes, is amended to read:

624.84. Review and stay of action

During the period of supervision, the insurer may contest an action taken or proposed to be taken by the supervisor, specifying the manner wherein the action complained of would

not result in improving the condition of the insurer, and the request shall stay the action specified pending reconsideration of the action by the department. If upon reconsideration the action of the department is upheld, the stay shall be lifted. Denial of the insurer's request upon reconsideration entitles the insurer to request a ~~s. 120.57~~ proceeding under ss. 120.569 and 120.57.

Section 269. Subsection (1) of section 626.631, Florida Statutes, is amended to read:

626.631. Procedure for refusal, suspension, or revocation of license

(1) If any licensee is convicted by a court of a violation of this code or a felony, the licenses and appointments of such person shall be immediately revoked by the department. The licensee may subsequently request a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57, and the department shall expedite any such requested hearing. The sole issue at such hearing shall be whether the revocation should be rescinded because such person was not in fact convicted of a violation of this code or a felony.

Section 270. Subsection (2) of section 626.9571, Florida Statutes, is amended to read:

626.9571. Defined practices; hearings, witnesses, appearances, production of books and service of process

(2) The department, ~~or~~ a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569 ~~120.58~~; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed $1,000 per violation.

Section 271. Section 626.9581, Florida Statutes, is amended to read:

626.9581. Cease and desist and penalty orders

After the hearing provided in s. 626.9571, the department shall enter a final order in accordance with s. 120.569 ~~120.59~~. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of insurance, the department shall also issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of insurance. Further, if the act or practice is a violation of s. 626.9541 or s. 626.9551, the department may, at its discretion, order any one or more of the following:

(1) Suspension or revocation of the person's certificate of authority, license, or eligibility for any certificate of authority or license, if he knew, or reasonably should have known, he was in violation of this act.

(2) Such other relief as may be provided in the insurance code.

Section 272. Section 627.0612, Florida Statutes, is amended to read:

627.0612. Administrative proceedings in rating determinations

In any proceeding to determine whether rates, rating plans, or other matters governed by this part comply with the law, the appellate court shall set aside a final order of the department if the department has violated s. 120.57(1)(i)~~(b)9~~. by substituting its findings of fact for findings of an administrative law judge ~~a hearing officer~~ which were supported by competent substantial evidence.

Section 273. Paragraph (a) of subsection (2) of section 627.7013, Florida Statutes, is amended to read:

627.7013. Orderly markets for personal lines residential property insurance

(2) MORATORIUM PHASEOUT.—

(a) Effective upon the expiration of the moratorium on cancellation or nonrenewal of personal lines residential property insurance policies under chapter 93-401, Laws of Florida, the following restrictions shall apply to the cancellation or nonrenewal of personal lines residential property insurance policies that were in force on November 14, 1993, and were subject to the moratorium:

1. In any 12-month period, an insurer may not cancel or nonrenew more than 5 percent of its homeowner's policies, 5 percent of its mobile home owner's policies, or 5 percent of its personal lines residential policies of all types and classes in the state for the purpose of reducing the insurer's exposure to hurricane claims and may not, with respect to any county, cancel or nonrenew more than 10 percent of its homeowner's policies, 10 percent of its mobile home owner's policies, or 10 percent of its personal lines residential policies of all types and classes in the county for the purpose of reducing the insurer's exposure to hurricane claims. This subparagraph does not prohibit any cancellations or nonrenewals of such policies for any other lawful reason unrelated to the risk of loss from hurricane exposure.

2.a. If, for any 12-month period, an insurer proposes to cancel or nonrenew personal lines residential policies to an extent not authorized by subparagraph 1. for the purpose of reducing exposure to hurricane claims, the insurer must file a phaseout plan with the department at least 90 days prior to the effective date of the plan. In the plan, the insurer must demonstrate to the department that the insurer is protecting market stability and the interests of its policyholders. The plan may not be implemented unless it is approved by the department. In developing the plan, the insurer must consider policyholder longevity, the use of voluntary incentives to accomplish the reduction, and geographic distribution. The insurer must demonstrate that under the plan the insurer will not cancel or nonrenew more policies in the 12-month period than the largest number of like policies the insurer canceled or nonrenewed for any reason in any 12-month period between August 24, 1989, and August 24, 1992.

b. If the insurer considers the number of cancellations and nonrenewals under sub-subparagraph a. to be insufficient, the insurer may apply for approval of additional

cancellations or nonrenewals on the basis of an unreasonable risk of insolvency. In evaluating a request under this sub-subparagraph, the department shall consider, and shall require the insurer to provide information relevant to: the insurer's size, market concentration, and general financial condition; the portion of the insurer's business in this state represented by personal lines residential property insurance; the reasonableness of assumptions with respect to size, frequency, severity, and path of hurricanes; the reinsurance available to the insurer and potential recoveries from the Florida Hurricane Catastrophe Fund; and the extent to which the insurer's assets have been voluntarily transferred by dividend or otherwise from the insurer to its stockholders, parent companies, or affiliated companies since May 19, 1993. In the implementation of exposure reductions under this sub-subparagraph, the department and the insurer shall consider such factors as policyholder longevity, the use of voluntary incentives to accomplish the exposure reduction, and geographic distribution.

c. A policy shall not be counted as having been canceled or nonrenewed for purposes of this subsection if any of the following apply:

(I) The policy was canceled or nonrenewed for an underwriting reason unrelated to the risk of loss from hurricane exposure, nonpayment of premium, or any other lawful reason that is unrelated to the risk of loss from hurricane exposure. The department shall consider the reason specified in the notice of cancellation or nonrenewal to be the reason for the cancellation or nonrenewal, unless the department finds by a preponderance of the evidence that the stated reason was not the insurer's actual reason for the cancellation or nonrenewal.

(II) The cancellation or nonrenewal was initiated by the insured.

(III) The insurer has offered the policyholder replacement or alternative coverage at approved rates, which coverage meets the requirements of the secondary mortgage market.

d. In addition to any other cancellations or nonrenewals subject to the limitations in this subsection, a policy shall be considered as having been canceled or nonrenewed for purposes of this subsection if:

(I) After July 1, 1995, the insurer implements a rate increase under the use and file provisions of s. 627.062(2)(a)2., which rate increase exceeds 150 percent of the increase ultimately approved by the department, and, while the rate filing was pending, the policyholder voluntarily canceled or nonrenewed the policy and obtained replacement coverage from another insurer, including the Residential Property and Casualty Joint Underwriting Association; or

(II) After July 1, 1995, the insurer reduces the commission to an agent by more than 25 percent, and the agent thereafter places the risk with another insurer, including the Residential Property and Casualty Joint Underwriting Association.

e. The department must approve or disapprove an application for a waiver within 90 days after the department receives the application for waiver.

3. In addition to the cancellations or nonrenewals authorized under this section, an insurer may cancel or nonrenew policies to the extent authorized by an exemption from the moratorium on cancellations or nonrenewals of personal lines property insurance policies under chapter 93-401, Laws of Florida, granted prior to November 5, 1993, by order of the department, by final order in an administrative proceeding, or by order in a judicial proceeding, or ordered on or after November 5, 1993, by final order in an administrative proceeding or ordered on or after November 5, 1993, in a judicial proceeding relative to the moratorium on cancellations or nonrenewals of personal lines property insurance policies under chapter 93-401, if the administrative or judicial action was pending on November 5, 1993.

4. Notwithstanding any provisions of this section to the contrary, this section does not apply to any insurer that, prior to August 24, 1992, filed notice of its intent to discontinue its writings in this state under s. 624.430, and for which a finding has been made by the department, the Division of Administrative Hearings of the Department of Management Services, or a court that such notice satisfied all requirements of s. 624.430. Nothing in this section shall be construed to authorize an insurer to withdraw from any line of property insurance business for the purpose of reducing exposure to risk of hurricane loss if such withdrawal commenced at any time that the moratorium under chapter 93-401 or the moratorium phaseout under this section is in effect.

In respect to any proceedings for review of the denial, in whole or in part, of an insurer's application for exemption from chapter 93-401, Laws of Florida, under ss. ~~s.~~ 120.569 and 120.57 or judicial review thereof, nothing in the preceding paragraphs of this section, or any part thereof, shall be considered as clarifying the intent of the Legislature as to the meaning of the provisions of chapter 93-401 providing for the exemption of insurers from the provisions of that law; nor shall anything in the preceding paragraphs of this section, or any part thereof, be considered as having application to the question of the correctness or incorrectness of the department's denial of an exemption application, in whole or in part, under the provisions of that law.

Section 274. Paragraph (a) of subsection (5) of section 628.461, Florida Statutes, is amended to read:

628.461. Acquisition of controlling stock

(5)(a) The acquisition of voting securities shall be deemed approved unless the department disapproves the proposed acquisition within 90 days after the statement required by subsection (1) has been filed. The department may on its own initiate, or if requested to do so in writing by a substantially affected party shall conduct, a proceeding to consider the appropriateness of the proposed filing. The 90-day time period shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the department within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the department, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to

conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining departmental approval. The department shall, however, at any time that it finds an immediate danger to the public health, safety, and welfare of the domestic policyholders exists, immediately order, pursuant to s. 120.569(2)(l) ~~120.59(3)~~, the proposed acquisition temporarily disapproved and any further steps to conclude the acquisition ceased.

Section 275. Paragraph (a) of subsection (6) of section 628.4615, Florida Statutes, is amended to read:

628.4615. Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation

(6)(a) The acquisition application shall be reviewed in accordance with chapter 120. The department may on its own initiate, or, if requested to do so in writing by a substantially affected person, shall conduct, a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the department within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the department, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining departmental approval. The department shall, however, at any time it finds an immediate danger to the public health, safety, and welfare of the insureds exists, immediately order, pursuant to s. 120.569(2)(l) ~~120.59(3)~~, the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

Section 276. Paragraph (a) of subsection (2) of section 633.161, Florida Statutes, is amended to read:

633.161. Cease and desist orders; orders to correct hazardous conditions; orders to vacate; violation; penalties

(2)(a) If, during the conduct of a firesafety inspection authorized by ss. 633.081 and 633.085, it is determined that a violation described in this section exists which poses an immediate danger to the public health, safety, or welfare, the State Fire Marshal may issue an order to vacate the building in question, which order shall be immediately effective and shall be an immediate final order under s. 120.569(2)(l) ~~120.59(3).~~ With respect to a facility under the jurisdiction of a district school board or community college board of trustees, the order to vacate shall be issued jointly by the district superintendent or college president and the State Fire Marshal.

Section 277. Subsection (4) of section 634.031, Florida Statutes, is amended to read:

634.031. License required

(4) The department may, pursuant to s. 120.569 ~~120.59~~, in its discretion and without advance notice or hearing issue an immediate final order to cease and desist to any person or entity which violates this section. The Legislature finds that a violation of this section constitutes an imminent and immediate threat to the public health, safety, and welfare of the residents of this state.

Section 278. Subsection (6) of section 634.045, Florida Statutes, is amended to read:

634.045. Guarantee agreements

In order to include receivables from affiliated companies as assets under s. 634.041, the motor vehicle service agreement company shall provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies, provided that the written guarantee is made by a guaranteeing organization which:

(6) Nothing in this section shall be construed to prevent the use of such filings in judicial or administrative proceedings when ordered to be produced by appropriate subpoena or by order of the court or an administrative law judge ~~a hearing officer.~~

Section 279. Subsection (2) of section 634.338, Florida Statutes, is amended to read:

634.338. Prohibited practices; hearings, witnesses, appearances, production of books, and service of process

(2) The department, ~~or~~ a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569 ~~120.58~~; however, the penalty for failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed $1,000 per violation.

Section 280. Section 634.339, Florida Statutes, is amended to read:

634.339. Cease and desist and penalty orders

After the hearing provided for in s. 634.338, the department shall enter a final order in accordance with s. 120.569 ~~120.59~~. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of home warranty business, the department also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of home warranty business. Further, the department may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for ny license, if he knew, or reasonably should have known, that he was in violation of this part.

(2) If it is determined that the person charged has provided or offered to provide home warranties without proper licensure, the imposition of an administrative penalty not to exceed $1,000 for each home warranty contract offered or effectuated.

Section 281. Subsection (3) of section 634.403, Florida Statutes, is amended to read:

634.403. License required

(3) The department may, pursuant to s. 120.569 ~~120.59~~, in its discretion and without advance notice and hearing, issue an immediate final order to cease and desist to any person or entity which violates this section. The Legislature finds that a violation of this section constitutes an imminent and immediate threat to the public health, safety, and welfare of the residents of this state.

Section 282. Subsection (6) of section 634.4065, Florida Statutes, is amended to read:

634.4065. Guarantee agreements

In order to include receivables from affiliated companies as assets under s. 634.401(10), the service warranty association may provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies, provided that the written guarantee is made by a guaranteeing organization which:

(6) Nothing in this section shall be construed to prevent the use of such filings in judicial or administrative proceedings when ordered to be produced by appropriate subpoena or by order of the court, an administrative law judge, or a hearing officer.

Section 283. Subsection (2) of section 634.438, Florida Statutes, is amended to read:

634.438. Prohibited practices; hearings, witnesses, appearances, production of books, and service of process

(2) The department, ~~or~~ a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569 ~~120.58~~; however, the penalty for failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed $1,000 per violation.

Section 284. Section 634.439, Florida Statutes, is amended to read:

634.439. Cease and desist and penalty orders

After the hearing provided for in s. 634.438, the department shall enter a final order in accordance with s. 120.569 ~~120.59~~. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of service warranty business, the department also shall issue an order requiring the violator to cease and desist

from engaging in such method of competition, act, or practice or the unlawful transaction of service warranty business. Further, the department may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for any license, if he knew, or reasonably should have known, he was in violation of this part.

(2) If it is determined that the person charged has provided or offered to provide service warranties without proper licensure, the imposition of an administrative penalty not to exceed $1,000 for each service warranty contract offered or effectuated.

Section 285. Subsection (2) of section 641.3907, Florida Statutes, is amended to read:

641.3907. Defined unfair practices; hearings, witnesses, appearances, production of books, and service of process

(2) The department, ~~or~~ a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569 ~~120.58~~; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed $1,000 per violation.

Section 286. Section 641.3909, Florida Statutes, is amended to read:

641.3909. Cease and desist and penalty orders

After the hearing provided in s. 641.3907, the department shall enter a final order in accordance with s. 120.569 ~~120.59.~~ If it is determined that the person, entity, or health maintenance organization charged has engaged in an unfair or deceptive act or practice or the unlawful operation of a health maintenance organization without a subsisting certificate of authority, the department shall also issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or unlawful operation of a health maintenance organization. Further, if the act or practice constitutes a violation of s. 641.3901 or s. 641.3903, the department may, at its discretion, order any one or more of the following:

(1) Suspension or revocation of the health maintenance organization's certificate of authority if it knew, or reasonably should have known, it was in violation of this part.

(2) If it is determined that the person or entity charged has engaged in the business of operating a health maintenance organization without a certificate of authority, an administrative penalty not to exceed $1,000 for each health maintenance contract offered or effectuated.

Section 287. Subsection (2) of section 641.445, Florida Statutes, is amended to read:

641.445. Defined practices; hearings, witnesses, appearances, production of books, and service of process

(2) The department, ~~or~~ a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569 ~~120.58~~; however, the penalty for the failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed $1,000 per violation.

Section 288. Section 641.446, Florida Statutes, is amended to read:

641.446. Cease and desist and penalty orders

After the hearing provided in s. 641.445, the department shall enter a final order in accordance with s. 120.569 ~~120.59~~. If it is determined that the person, entity, or prepaid health clinic charged has engaged in an unfair or deceptive act or practice or the unlawful operation of a prepaid health clinic, the department also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or unlawful operation of a prepaid health clinic. Furthermore, the department may, at its discretion, order any one or more of the following:

(1) The suspension or revocation of the certificate of authority of the prepaid health clinic if it knew, or reasonably should have known, that it was in violation of this part.

(2) If it is determined that the person or entity charged has engaged in the business of operating a prepaid health clinic without a certificate of authority, an administrative penalty not to exceed $1,000 for each prepaid health clinic contract offered or effectuated.

Section 289. Subsection (2) of section 648.46, Florida Statutes, is amended to read:

648.46. Procedure for disciplinary action against licensees

(2) Any proceeding for the purpose of summary suspension of a license pursuant to s. 120.60(6)~~(8)~~ shall be conducted by the department, which shall issue the final summary order.

Section 290. Subsections (2), (3), (4), and (6) of section 655.033, Florida Statutes, are amended to read:

655.033. Cease and desist orders

(2) The complaint must contain the statement of facts and notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

(3) If no hearing is requested within the time allowed by ss. ~~s.~~ 120.569 and 120.57, or if a hearing is held and the department finds that any of the charges are true, the department may enter an order directing the state financial institution, subsidiary, service corporation,

financial institution-affiliated party, or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action.

(4) If the state financial institution, subsidiary, service corporation, financial institution-affiliated party, or the individual named in such order fails to respond to the complaint within the time allotted in ss. ~~s.~~ 120.569 and 120.57, such failure constitutes a default and justifies the entry of a cease and desist order.

(6) Whenever the department finds that conduct described in subsection (1) is likely to cause insolvency, substantial dissipation of assets or earnings of the state financial institution, subsidiary, or service corporation or substantial prejudice to the depositors, members, or shareholders, it may issue an emergency cease and desist order requiring the state financial institution, subsidiary, service corporation, or financial institution-affiliated party to immediately cease and desist from engaging in the conduct complained of and to take corrective action. The emergency order is effective immediately upon service of a copy of the order upon the state financial institution, subsidiary, service corporation, or financial institution-affiliated party and remains effective for 90 days. If the department begins nonemergency cease and desist proceedings under subsection (1), the emergency order remains effective until the conclusion of the proceedings under ss. ~~s.~~ 120.569 and 120.57. Any emergency order entered under this subsection is confidential and exempt from s. 119.07(1) until the emergency order is made permanent, unless the department finds that such confidentiality will result in substantial risk of financial loss to the public. This exemption from s. 119.07(1) is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 291. Subsections (2), (3), and (4) and paragraph (b) of subsection (6) of section 655.037, Florida Statutes, are amended to read:

655.037. Removal of a financial institution-affiliated party by the department

(2) The complaint must contain the statement of facts and notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

(3) If no hearing is requested within the time allowed by ss. ~~s.~~ 120.569 and 120.57, or if a hearing is held and the department finds that any of the charges in the complaint are true and that the state financial institution has suffered or will likely suffer loss or other damage or that the interests of the depositors, members, or shareholders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the financial institution-affiliated party has received financial gain by reason of such violation, practice, or breach of fiduciary duty, and that such violation, practice, or breach of fiduciary duty is one involving personal dishonesty on the part of such financial institution- affiliated party or a continuing disregard for the safety or soundness of the state financial institution, subsidiary, or service corporation, the department may enter an order removing the financial institution-affiliated party or restricting or prohibiting participation by such financial institution-affiliated party in the affairs of that particular state financial institution, subsidiary, or service corporation or any other state financial institution, subsidiary, or service corporation.

(4) If the financial institution-affiliated party fails to respond to the complaint within the time allowed in ss. ~~s.~~ 120.569 and 120.57, such failure constitutes a default and justifies the entry of an order of removal.

(6)

(b) Whenever any financial institution-affiliated party is charged with a felony in a state or federal court, or in the courts of any foreign country with which the United States maintains diplomatic relations, and such charge alleges violation of any law involving fraud, currency transaction reporting, money laundering, theft, or moral turpitude and the charge under such foreign law is equivalent to a felony charge under state or federal law, the department may enter an emergency order suspending such financial institution-affiliated party or restricting or prohibiting participation by such financial institution-affiliated party in the affairs of that particular state financial institution, subsidiary, or service corporation or any other financial institution, subsidiary, or service corporation, upon service of the order upon the state financial institution, subsidiary, or service corporation and the financial institution-affiliated party so charged. The order shall contain notice of opportunity for a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57, where the financial institution- affiliated party may request a postsuspension hearing to show that continued service to or participation in the affairs of the state financial institution, subsidiary, or service corporation does not pose a threat to the interests of the state financial institution's depositors, members, or stockholders, or threaten to impair public confidence in the state financial institution. In accordance with applicable departmental rules, the department shall notify the financial institution-affiliated party whether the order suspending or prohibiting the financial institution-affiliated party from participation in the affairs of a state financial institution, subsidiary, or service corporation will be rescinded or otherwise modified. The emergency order will remain in effect, unless otherwise modified by the department, until the criminal charge is disposed of. The acquittal of the financial institution- affiliated party charged, or the final, unappealed dismissal of all charges against such person, will dissolve the emergency order, but will not prohibit the department from instituting proceedings under subsection (1). If the financial institution-affiliated party charged is convicted or pleads guilty or nolo contendere, whether or not an adjudication of guilt is entered by the court, the emergency order becomes final.

Section 292. Paragraph (a) of subsection (4) of section 655.057, Florida Statutes, is amended to read:

655.057. Records; limited restrictions upon public access

(4)(a) Orders of courts or of administrative law judges ~~hearing officers~~ for the production of confidential records or information shall provide for inspection in camera by the court or the administrative law judge ~~hearing officer~~ and, after the court or administrative law judge ~~hearing officer~~ has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, said documents shall be subject to further orders by the court or the administrative law judge ~~hearing officer~~ to protect the confidentiality thereof. Any order directing the release of information shall be immediately

reviewable, and a petition by the department for review of such order shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.

The exemptions contained in this section are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 293. Section 663.13, Florida Statutes, is amended to read:

663.13. Rules; exemption from statement of estimated regulatory costs ~~economic impact statement~~ requirements

In addition to any other rulemaking authority it has under the financial institutions codes, the department is authorized to promulgate reasonable rules which it deems advisable for the administration of international banking corporations under this part, in the interest of protecting depositors, creditors, borrowers, or the public interest and in the interest of maintaining a sound banking system in this state. Because of the difficulty in obtaining economic data with regard to such banks, no ~~economic impact~~ statement of estimated regulatory costs shall be required in connection with these rules.

Section 294. Section 663.319, Florida Statutes, is amended to read:

663.319. Rules; exemption from statement of estimated regulatory costs ~~economic impact statement~~ requirements

In addition to any other rulemaking authority it has under the financial institutions codes, the department is authorized to promulgate rules for the administration of regional development banks. Because of the difficulty in obtaining economic data with regard to such banks, no ~~economic impact~~ statement of estimated regulatory costs shall be required in connection with these rules.

Section 295. Subsection (1) of section 717.124, Florida Statutes, is amended to read:

717.124. Filing of claim with department

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant. The department shall determine each claim within 90 days after it is filed. Such determination shall contain a notice of rights provided by ss. ~~s.~~ 120.569 and 120.57.

Section 296. Subsection (2) of section 717.125, Florida Statutes, is amended to read:

717.125. Claim of another state to recover property; procedure

(2) The claim of another state to recover escheated or abandoned property under this section must be presented in a form prescribed by the department, and the department shall determine the claim within 90 days after it is presented. Such determination shall contain a notice of rights provided by ss. ~~s.~~ 120.569 and 120.57.

Section 297. Section 717.126, Florida Statutes, is amended to read:

717.126. Administrative hearing; burden of proof

Any person aggrieved by a decision of the department may petition for a hearing as provided in ss. ~~s.~~ 120.569 and 120.57. In any proceeding for determination of a claim to property paid or delivered to the department under this chapter, the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence.

Section 298. Subsection (2) of section 717.132, Florida Statutes, is amended to read:

717.132. Enforcement; cease and desist orders; administrative fines

(2) In addition to any other powers conferred upon it to enforce and administer the provisions of this chapter, the department may issue and serve upon a person a cease and desist order whenever the department finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department. Any such order shall contain a notice of rights provided by ss. ~~s.~~ 120.569 and 120.57.

Section 299. Paragraph (n) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501. Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties:

(n) When a complaint is made, the division shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90

days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 300. Paragraph (m) of subsection (1) of section 719.501, Florida Statutes, is amended to read:

719.501. Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

(m) When a complaint is made to the division, the division shall conduct its inquiry with reasonable dispatch and with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 301. Subsections (4) and (5) of section 721.071, Florida Statutes, are amended to read:

721.071. Trade secrets

(4) In the event of any administrative or circuit court proceeding relating to any third party attempt to compel disclosure of filed material or to challenge the confidentiality thereof, the developer or other person who filed the material shall be granted leave to appear

as amicus curiae before the administrative law judge ~~hearing officer~~ or the court. The prevailing party in any such attempt to compel disclosure shall be entitled to recover his reasonable attorney's fees and costs from the losing party.

(5) In the event that an administrative law judge ~~a hearing officer~~ or court determines that the filed material is not trade secret information, this subsequent disclosure by the division of the filed material pursuant to s. 119.07(1) shall not be construed as a commission of an offense against intellectual property within the meaning of s. 815.04, nor shall the prior refusal of the division to disclose the filed material subject the division to penalty or attorney's fees under chapter 119.

Section 302. Subsection (2), paragraph (b) of subsection (4), and subsections (6) and (7) of section 760.11, Florida Statutes, are amended to read:

760.11. Administrative and civil remedies; construction

(2) In the event that any other agency of the state or of any other unit of government of the state has jurisdiction of the subject matter of any complaint filed with the commission and has legal authority to investigate the complaint, the commission may refer such complaint to such agency for an investigation. Referral of such a complaint by the commission shall not constitute agency action within the meaning of s. 120.52~~(2)~~. In the event of any referral under this subsection, the commission shall accord substantial weight to any findings and conclusions of any such agency. The referral of a complaint by the commission to a local agency does not divest the commission's jurisdiction over the complaint.

(4) In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

(b) Request an administrative hearing under ss. ~~s.~~ 120.569 and 120.57.

The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person pursuant to this act.

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. ~~s.~~ 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge ~~a hearing officer~~ pursuant to s. 120.569(2)(a) ~~120.57(1)(b)3~~. If the commission elects to hear the case, it may be heard by a commissioner. If the commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge ~~hearing officer~~, after the hearing, finds that a violation of the

Florida Civil Rights Act of 1992 has occurred, the administrative law judge ~~hearing officer~~ shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. ~~s.~~120.569 and 120.57. The 90- day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

(7) If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. ~~s.~~ 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge ~~a hearing officer~~ and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. If the administrative law judge ~~hearing officer~~ finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. ~~s.~~ 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the final order issued by the commission determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the aggrieved person may bring, within 1 year of the date of the final order, a civil action under subsection (5) as if there has been a reasonable cause determination or accept the affirmative relief offered by the commission, but not both.

Section 303. Paragraph (b) of subsection (3) of section 760.35, Florida Statutes, is amended to read:

760.35. Civil actions and relief; administrative procedures

(3)

(b) Administrative hearings shall be conducted pursuant to ss. ~~s.~~ 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge ~~hearing officer~~ finds that a discriminatory housing practice has occurred or is about to

occur, he shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

Section 304. Subsections (2), (4), (6), and (10) and paragraph (g) of subsection (7) of section 766.207, Florida Statutes, are amended to read:

766.207. Voluntary binding arbitration of medical negligence claims

(2) Upon the completion of presuit investigation with preliminary reasonable grounds for a medical negligence claim intact, the parties may elect to have damages determined by an arbitration panel. Such election may be initiated by either party by serving a request for voluntary binding arbitration of damages within 90 days after service of the claimant's notice of intent to initiate litigation upon the defendant. The evidentiary standards for voluntary binding arbitration of medical negligence claims shall be as provided in ss. 120.569(2)(e) and 120.57(1)(c) ~~s. 120.58(1)(a)~~.

(4) The arbitration panel shall be composed of three arbitrators, one selected by the claimant, one selected by the defendant, and one an administrative law judge ~~hearing officer~~ furnished by the Division of Administrative Hearings who shall serve as the chief arbitrator. In the event of multiple plaintiffs or multiple defendants, the arbitrator selected by the side with multiple parties shall be the choice of those parties. If the multiple parties cannot reach agreement as to their arbitrator, each of the multiple parties shall submit a nominee, and the director of the Division of Administrative Hearings shall appoint the arbitrator from among such nominees.

(6) The rate of compensation for medical negligence claims arbitrators other than the administrative law judge ~~hearing officer~~ shall be set by the chief judge of the appropriate circuit court by schedule providing for compensation of not less than $250 per day nor more than $750 per day or as agreed by the parties. In setting the schedule, the chief judge shall consider the prevailing rates charged for the delivery of professional services in the community.

(7) Arbitration pursuant to this section shall preclude recourse to any other remedy by the claimant against any participating defendant, and shall be undertaken with the understanding that:

(g) The defendant shall pay all the costs of the arbitration proceeding and the fees of all the arbitrators other than the administrative law judge ~~hearing officer~~.

The provisions of this subsection shall not preclude settlement at any time by mutual agreement of the parties.

(10) Rules promulgated by the Division of Administrative Hearings pursuant to this section, s. 120.54 ~~120.53~~, or s. 120.65 may authorize any reasonable sanctions except contempt for violation of the rules of the division or failure to comply with a reasonable order issued by an administrative law judge ~~a hearing officer~~, which is not under judicial review.

Section 305. Subsections (2) and (3) of section 766.208, Florida Statutes, are amended to read:

766.208. Arbitration to allocate responsibility among multiple defendants

(2) Within 20 days after the determination of damages by the arbitration panel in the first arbitration proceeding, those defendants who have agreed to voluntary binding arbitration shall submit any dispute among them regarding the apportionment of financial responsibility to a separate binding arbitration proceeding. Such proceeding shall be with a panel of three arbitrators, which panel shall consist of the administrative law judge ~~hearing officer~~ who presided in the first arbitration proceeding, who shall serve as the chief arbitrator, and two medical practitioners appointed by the defendants, except that if a hospital licensed pursuant to chapter 395 is involved in the arbitration proceeding, one arbitrator appointed by the defendants shall be a certified hospital risk manager. In the event the defendants cannot agree on their selection of arbitrators within 20 days after the determination of damages by the arbitration panel in the first arbitration proceeding, a list of not more than five nominees shall be submitted by each defendant to the director of the Division of Administrative Hearings, who shall select the other arbitrators but shall not select more than one from the list of nominees of any defendant.

(3) The administrative law judge ~~hearing officer~~ appointed to serve as the chief arbitrator shall convene the arbitrators for the purpose of determining allocation of responsibility among multiple defendants within 65 days after the determination of damages by the arbitration panel in the first arbitration proceeding.

Section 306. Subsections (1) and (3) of section 766.21, Florida Statutes, are amended to read:

766.21. Misarbitration

(1) At any time during the course of voluntary binding arbitration of a medical negligence claim pursuant to s. 766.207, the administrative law judge ~~hearing officer~~ serving as chief arbitrator on the arbitration panel, if he determines that agreement cannot be reached, shall be authorized to dissolve the arbitration panel and request the director of the Division of Administrative Hearings to appoint two new arbitrators from lists of three to five names timely provided by each party to the arbitration. Not more than one arbitrator shall be appointed from the list provided by any party, unless only one list is timely filed.

(3) At any time after the allocation arbitration hearing under s. 766.208 has concluded, the administrative law judge ~~hearing officer~~ serving as chief arbitrator on the arbitration

panel is authorized to dissolve the arbitration panel and declare the proceedings concluded if he determines that agreement cannot be reached.

Section 307. Subsection (4) of section 766.302, Florida Statutes, is amended to read:

766.302. Definitions

As used in ss. 766.301-766.316, the term:

(4) "Administrative law judge ~~Hearing officer~~" means an administrative law judge ~~a hearing officer~~ appointed by the division.

Section 308. Section 766.304, Florida Statutes, is amended to read:

766.304. Administrative law judge ~~Hearing officer~~ to determine claims

The administrative law judge ~~hearing officer~~ shall hear and determine all claims filed pursuant to ss. 766.301-766.316 and shall exercise the full power and authority granted to him in chapter 120, as necessary, to carry out the purposes of such sections. The division may adopt rules to promote the efficient administration of, and to minimize the cost associated with, the prosecution of claims.

Section 309. Subsection (6) of section 766.305, Florida Statutes, is amended to read:

766.305. Filing of claims and responses; medical disciplinary review

(6) Any claim which the association determines to be compensable may be accepted for compensation, provided that the acceptance is approved by the administrative law judge ~~hearing officer~~ to whom the claim for compensation is assigned.

Section 310. Section 766.307, Florida Statutes, is amended to read:

766.307. Hearing; parties; discovery

(1) The administrative law judge ~~hearing officer~~ shall set the date for a hearing no sooner than 60 days and no later than 120 days after the filing by a claimant of a petition in compliance with s. 766.305. The administrative law judge ~~hearing officer~~ shall immediately notify the parties of the time and place of such hearing, which shall be held in the county where the injury occurred unless otherwise agreed to by the parties and authorized by the division.

(2) The parties to the hearing shall include the claimant and the association.

(3) Any party to a proceeding under ss. 766.301-766.316 may, upon application to the administrative law judge ~~hearing officer~~ setting forth the materiality of the evidence to be given, serve interrogatories or cause the depositions of witnesses residing within or without

the state to be taken, the costs thereof to be taxed as expenses incurred in connection with the filing of a claim. Such depositions shall be taken after giving notice and in the manner prescribed for the taking of depositions in actions at law, except that they shall be directed to the administrative law judge ~~hearing officer~~ before whom the proceedings may be pending.

Section 311. Subsection (1) of section 766.308, Florida Statutes, is amended to read:

766.308. Medical advisory panel review and recommendations; procedure

(1) Each claim filed with the division under ss. 766.301-766.316 shall be reviewed by a medical advisory panel of three qualified physicians appointed by the Insurance Commissioner, of whom one shall be a pediatric neurologist or a neurosurgeon, one shall be an obstetrician, and one shall be a neonatologist or a pediatrician. The panel shall file its report, with its recommendation as to whether the injury for which the claim is filed is a birth-related neurological injury, with the division at least 10 days prior to the date set for the hearing. At the request of the division, at least one member of the panel shall be available to testify at the hearing. The administrative law judge ~~hearing officer~~ shall consider, but not be bound by, the recommendation of the panel.

Section 312. Section 766.309, Florida Statutes, is amended to read:

766.309. Determination of claims; presumption; findings of administrative law judge ~~hearing officer~~ binding on participants

(1) The administrative law judge ~~hearing officer~~ shall make the following determinations based upon all available evidence:

(a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the administrative law judge ~~hearing officer~~, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.302(2).

(b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital.

(c) How much compensation, if any, is awardable pursuant to s. 766.31.

(2) If the administrative law judge ~~hearing officer~~ determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at the birth, he shall enter an order and shall cause a copy of such order to be sent immediately to the parties by registered or certified mail.

(3) By becoming a participating physician, a physician shall be bound for all purposes by the finding of the administrative law judge ~~hearing officer~~ or any appeal therefrom with respect to whether such injury is a birth-related neurological injury.

Section 313. Subsection (1) of section 766.31, Florida Statutes, is amended to read:

766.31. Administrative law judge ~~Hearing officer~~ awards for birth-related neurological injuries; notice of award

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the administrative law judge ~~hearing officer~~ shall make an award providing compensation for the following items relative to such injury:

(a) Actual expenses for medically necessary and reasonable medical and hospital, habilitative and training, residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel. However, such expenses shall not include:

1. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

2. Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity.

3. Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

4. Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

Expenses included under this paragraph shall be limited to reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

(b) Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award shall not exceed $100,000. However, at the discretion of the administrative law judge ~~hearing officer~~, such award may be made in a lump sum.

(c) Reasonable expenses incurred in connection with the filing of a claim under ss. 766.301-766.316, including reasonable attorney's fees, which shall be subject to the approval

and award of the administrative law judge ~~hearing officer~~. In determining an award for attorney's fees, the administrative law judge ~~hearing officer~~ shall consider the following factors:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

2. The fee customarily charged in the locality for similar legal services.

3. The time limitations imposed by the claimant or the circumstances.

4. The nature and length of the professional relationship with the claimant.

5. The experience, reputation, and ability of the lawyer or lawyers performing services.

6. The contingency or certainty of a fee.

Section 314. Section 766.311, Florida Statutes, is amended to read:

766.311. Conclusiveness of determination or award; appeal

(1) A determination of the administrative law judge ~~hearing officer~~ as to qualification of the claim for purposes of compensability under s. 766.309 or an award by the administrative law judge ~~hearing officer~~ pursuant to s. 766.31 shall be conclusive and binding as to all questions of fact. Review of an order of an administrative law judge ~~a hearing officer~~ shall be by appeal to the District Court of Appeal. Appeals shall be filed in accordance with rules of procedure prescribed by the Supreme Court for review of such orders.

(2) In case of an appeal from an award of the administrative law judge ~~hearing officer,~~ the appeal shall operate as a suspension of the award, and the association shall not be required to make payment of the award involved in the appeal until the questions at issue therein shall have been fully determined.

Section 315. Section 766.312, Florida Statutes, is amended to read:

766.312. Enforcement of awards

(1) The administrative law judge ~~hearing officer~~ shall have full authority to enforce his awards and to protect himself from any deception or lack of cooperation in reaching his determination as to any award. Such authority shall include the power to petition the circuit court for an order of contempt.

(2) A party may, if the circumstances so warrant, petition the circuit court for enforcement of a final award by the administrative law judge ~~hearing officer~~.

Section 316. Subsection (1) of section 837.011, Florida Statutes, is amended to read:

837.011. Definitions

In this chapter, unless a different meaning plainly is required:

(1) "Official proceeding" means a proceeding heard, or which may be or is required to be heard, before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, master in chancery, administrative law judge, hearing officer, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

Section 317. Subsection (4) of section 838.014, Florida Statutes, is amended to read:

838.014. Definitions

For the purposes of this chapter, unless a different meaning plainly is required:

(4) "Public servant" means any public officer, agent, or employee of government, whether elected or appointed, including, but not limited to, any executive, legislative, or judicial officer; any person who holds an office or position in a political party or political party committee, whether elected or appointed; and any person participating as a special master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, administrative law judge, hearing officer, or hearing examiner, or person acting on behalf of any of these, in performing a governmental function; but the term does not include witnesses. Such term shall include a candidate for election or appointment to any such office, including any individual who seeks or intends to occupy any such office. It shall include any person appointed to any of the foregoing offices or employments before and after he qualifies.

Section 318. Paragraph (b) of subsection (7) of section 893.035, Florida Statutes, is amended to read:

893.035. Control of new substances; findings of fact; delegation of authority to Attorney General to control substances by rule

(7)

(b) The Attorney General may use emergency rulemaking provisions under s. 120.54(4)~~(9)~~ in scheduling substances under this subsection. Notwithstanding the provisions of s. 120.54(4) ~~(9)~~(c), any rule adopted under this subsection shall not expire except as provided in subsection (9).

Section 319. Paragraph (d) of subsection (8) of section 943.1395, Florida Statutes, is amended to read:

943.1395. Certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation

(8)

(d) An administrative law judge ~~A hearing officer~~ assigned to conduct a hearing under ss. ~~s~~. 120.569 and 120.57(1) regarding allegations that an officer is not in compliance with, or has failed to maintain compliance with, s. 943.13(4) or (7) must, in his recommended order:

1. Adhere to the disciplinary guidelines and penalties set forth in subsections (6) and (7) and the rules adopted by the commission for the type of offense committed.

2. Specify, in writing, any aggravating or mitigating circumstance that he considered in determining the recommended penalty.

Any deviation from the disciplinary guidelines or prescribed penalty must be based upon circumstances or factors that reasonably justify the aggravation or mitigation of the penalty. Any deviation from the disciplinary guidelines or prescribed penalty must be explained, in writing, by the administrative law judge ~~hearing officer~~.

Section 320. Subsection (9) of section 944.095, Florida Statutes, is amended to read:

944.095. Siting of additional correctional facilities; procedure

(9) Actions taken by the department or the Governor and Cabinet pursuant to this section shall not be subject to the provisions of ss. 120.56, 120.569, and 120.57. The decision by the Governor and Cabinet shall be subject to judicial review pursuant to s. 120.68 in the District Court of Appeal, First District.

Section 321. Section 945.45, Florida Statutes, is amended to read:

945.45. Procedure for continued placement of inmates

(1) If continued placement of an inmate is necessary, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the inmate, request an order authorizing continued placement. This request shall be accompanied by a statement from the inmate's physician justifying the request and a brief summary of the inmate's treatment during the time he has been placed. In addition, the administrator shall submit an individualized plan for the inmate for whom he is requesting continued placement. Notification of this request for retention shall be mailed to the inmate and his representative along with a completed petition, requesting only a signature and a waiver-of-hearing form. The waiver-of- hearing form shall require express and informed consent and shall state that the inmate is entitled to a hearing under the law; that he is entitled to be represented by an attorney at the hearing and that, if he cannot afford an attorney, one will be appointed; and that, if it is shown at the hearing that the inmate does not meet the criteria for continued placement, he will be transferred to another facility of the department. If the inmate or his representative does not sign the petition, or if the inmate does not sign a waiver within 15

days, the administrative law judge ~~hearing officer~~ shall notice a hearing with regard to the inmate involved in accordance with ss. ~~s.~~ 120.569 and 120.57(1).

(2) If, at a hearing pursuant to ss. 945.40-945.49, the administrative law judge ~~hearing examiner~~ finds that the inmate no longer meets the criteria for treatment, he shall order that the inmate be transferred to another facility of the department.

(3) If the inmate waives the hearing or if the administrative law judge ~~hearing examiner~~ finds that the inmate is in need of continued treatment, the administrative law judge ~~hearing officer~~ shall enter an order authorizing such continued treatment for a period not to exceed 1 year. The same procedure shall be repeated prior to the expiration of each additional 1-year period that the inmate is retained in the mental health treatment facility.

(4) Hearings on requests for orders authorizing continued placement filed in accordance with this section shall be conducted in accordance with the provisions of ss. ~~s.~~ 120.569 and 120.57(1), except that any order entered by the administrative law judge ~~hearing officer~~ shall be final and subject to judicial review in accordance with s. 120.68.

Section 322. Subsection (5) of section 945.49, Florida Statutes, is amended to read:

945.49. Operation and administration

(5) ADMINISTRATIVE LAW JUDGES ~~HEARING OFFICERS~~.--One or more administrative law judges ~~hearing officers~~ shall be assigned by the Division of Administrative Hearings to conduct hearings for continued placement.

Section 323. Subsection (2) of section 946.515, Florida Statutes, is amended to read:

946.515. Use of goods and services produced in correctional work programs

(2) No similar product or service of comparable price and quality found necessary for use by any state agency may be purchased from any source other than the corporation if the corporation certifies that the product is manufactured by, or the service is provided by, inmates and the product or service meets the comparable performance specifications and comparable price and quality requirements as specified under s. 287.042(1)(f) or as determined by an individual agency as provided in this section. The purchasing authority of any such state agency may make reasonable determinations of need, price, and quality with reference to products or services available from the corporation. In the event of a dispute between the corporation and any purchasing authority based upon price or quality under this section or s. 287.042(1)(f), either party may request a hearing with the Division of Purchasing and if not resolved, either party may request a proceeding pursuant to ss. ~~s.~~ 120.569 and 120.57, which shall be referred to the Division of Administrative Hearings within 60 days after such request, to resolve any dispute under this section. No party is entitled to any appeal pursuant to s. 120.68.

Section 324. Subsection (5) of section 947.02, Florida Statutes, is amended to read:

947.02. Parole Commission; members, appointment

(5) The provisions of s. 120.525 ~~120.53~~ and chapters 119 and 286 apply to all activities and proceedings of a parole qualifications committee.

Section 325. Subsection (3) of section 960.09, Florida Statutes, is amended to read:

960.09. Determination of claims

(3) If the department or the Crime Victims' Services Office denies or controverts the claim, the right to reimbursement under this chapter shall be barred unless an application for a hearing thereon is filed with the department or the Crime Victims' Services Office at its office in Tallahassee within 60 days after notice to the claimant of such denial or controversion. When such application for a hearing is filed in a timely manner, the claim shall be referred to a hearing officer designated by the Attorney General for determination by a hearing held pursuant to ss. ~~s.~~ 120.569 and 120.57.

Section 326. Subsection (1) of section 120.60, Florida Statutes, as amended by Ch. 96-159, Laws of Florida, is amended to read:

120.60. Licensing

(1) Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency shall not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period shall be tolled by the initiation of a proceeding under ss. 120.569 and 120.57. An application for a license must be approved or denied within the 90 day or shorter time period, within 15 days after the conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever is later ~~and shall resume 10 days after the recommended order is submitted to the agency and the parties, 10 days after an informal hearing pursuant to s. 120.57(2), or 45 days after either event if the agency head is a collegial body~~. The agency must approve any application for a license or for an examination required for licensure if the agency has not approved or denied the application within the time periods prescribed by this subsection.

Section 327. Once a county qualifies for authorization to create a jury district under s. 40.015(1), and once a county qualifies for small county technical assistance pursuant to s. 163.05(3), and once a county qualifies to be required to include optional elements in their

comprehensive plans pursuant to s. 163.3177(6)(i), and once a county qualifies to enter into a written agreement with the state land planning agency pursuant to s. 163.3191(12)(a), and once a county qualifies under s. 212.055(2)(d)1. to use local government infrastructure surtax proceeds or any interest accrued thereto for long-term maintenance costs associated with landfill closure, and once a county qualifies under s. 212.055(2)(j) to use local government infrastructure surtax proceeds and interest for operation and maintenance of parks and recreation programs and facilities established with proceeds of the surtax, and once a county qualifies for reduction or waiver of permit processing fees pursuant to s. 218.075, and once a county qualifies for emergency distribution pursuant to s. 218.65, and once a county qualifies for funds from the Emergency Management, Preparedness, and Assistance Trust Fund pursuant to s. 252.373(3)(a), and once a county qualifies for priority State Touring Program grants under s. 265.2861(1)(c), and once a county qualifies under s. 403.706(4)(d) to provide its residents with the opportunity to recycle, and once a county qualifies for receipt of annual solid waste and recycling grants pursuant to s. 403.7095(7)(a), the county shall retain such qualification until it exceeds a population of 75,000.

Section 328. Effective July 1, 1996, section 218.65, Florida Statutes, is amended to read:

218.65. Emergency distribution

(1) Each county government which meets the provisions of subsection (2) or subsection (7) and which participates in the local government half-cent sales tax shall receive a ~~an emergency~~ distribution from the Local Government Half-cent Sales Tax Clearing Trust Fund in addition to its regular monthly distribution as provided in this part.

(2) The Legislature hereby finds and declares that a fiscal emergency exists in any county which meets the criteria specified in paragraph (a), if applicable, and the criterion specified in paragraph (b):

(a) If the county has a population of 50,000 or above:

1. In any year from 1977 to 1981, inclusive, the value of net new construction and additions placed on the tax roll for that year was less than 2 percent of the taxable value for school purposes on the roll for that year, exclusive of such net value; or

2. The percentage increase in county taxable value from 1979 to 1980, 1980 to 1981, or 1981 to 1982 was less than 3 percent.

(b) The moneys distributed to the county government pursuant to s. 218.62 for the prior fiscal year were less than the current per capita limitation, based on the population of that county.

(3) Qualification under this section shall be determined annually at the start of the fiscal year. Emergency and supplemental moneys shall be distributed monthly with other moneys provided pursuant to this part.

(4) For the fiscal year beginning in 1988, the per capita limitation shall be $24.60. Thereafter, commencing with the fiscal year which begins in 1989, this limitation shall be adjusted annually for inflation. The annual adjustment to the per capita limitation for each fiscal period shall be the percentage change in the state and local government price deflator for purchases of goods and services, all items, 1983 equals 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Commerce, Bureau of Economic Analysis, as certified by the Florida Consensus Estimating Conference.

(5) At the beginning of each fiscal year, the Department of Revenue shall calculate a base allocation for each eligible county equal to the difference between the current per capita limitation times the county's population, minus prior year ordinary distributions to the county pursuant to ss. 212.20(6)(g)3., 218.61, and 218.62. If moneys deposited into ~~appropriated to~~ the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20(6)(g)4., excluding moneys appropriated for supplemental distributions pursuant to subsection (7), for the current year are less than or equal to the sum of the base allocations, each eligible county shall receive a share of the appropriated amount proportional to its base allocation. If the deposited amount ~~appropriation~~ exceeds the sum of the base allocations, each county shall receive its base allocation, and the excess appropriated amount shall be distributed equally on a per capita basis among the eligible counties. ~~All distributions under this section shall be made in 12 equal monthly amounts~~.

(6) There is hereby annually appropriated from the Local Government Half-cent Sales Tax Clearing Trust Fund the distribution provided in s. 212.20(6)(g)4. to be used for emergency and supplemental distributions pursuant to this section.

(7)(a) Any county eligible for an emergency distribution pursuant to this section the inmate population of which in any year is greater than 7 percent of the total population of the county is eligible for a supplemental distribution for that year from funds expressly appropriated therefor. At the beginning of each fiscal year, the Department of Revenue shall calculate a supplemental allocation for each eligible county equal to the current per capita limitation pursuant to subsection (4) times the inmate population of the county. If moneys appropriated for distribution pursuant to this section for the current year are less than the sum of supplemental allocations, each eligible county shall receive a share of the appropriated amount proportional to its supplemental allocation. Otherwise, each shall receive an amount equal to its supplemental allocation. ~~Any balance of moneys appropriated for such purposes remaining at the end of the fiscal year shall revert to the state General Revenue Fund.~~

(b) For the purposes of this subsection, the term:

1. "Inmate population" means the latest official state estimate of the number of inmates and patients residing in institutions operated by the Federal Government, the Department of Corrections, or the Department of Health and Rehabilitative Services.

2. "Total population" includes inmate population and noninmate population.

Section 329. Except as provided herein this act shall take effect on the same date that Committee Substitute for Senate Bills 2290 and 2288 or similar legislation revising chapter 120, Florida Statutes, takes effect, if such legislation is adopted in the same legislative session or an extension thereof. [FN1]

Became a law without the Governor's approval June 5, 1996.

Filed in Office Secretary of State June 4, 1996.

[FN1] Laws 1996, c. 96-159 (C.S.S.B. Nos. 2290 and 2288) has an effective date of October 1, 1996.