

## SUMMARY

### OF CHANGES IN CHAPTER 120

#### 1985 LEGISLATIVE SESSION

Six laws were enacted during the 1985 Legislative Session making changes to Chapter 120, Florida Statutes: 85-80 (Revisers), 85-82, 85-104, 85-168, 85-180 and 85-342, Laws of Florida.

#### I. Chapter 85-80, Laws of Florida

This Reviser's Bill amends paragraph (b) of subsection (1) of section 120.52, Florida Statutes.

Reviser's note.--Amended to conform reference to "ch. 160" to the editorial renumbering of former s.160.01, which section specifically provided for the creation of regional planning councils, as s.186.504 in the preparation of the Florida Statutes (1984 Supplement).

The following summary of changes was prepared by the staff of the Senate Commerce Committee in the Joint Legislative Management Summary of General Legislation, 1985.

#### II. Chapter 85-82, Laws of Florida

This Chapter relates to financial institutions. This somewhat comprehensive act addresses various statutory provisions relating to depository financial institutions with amendments to Chapter 655, F.S. (Financial Institutions Generally); Chapter 657, F.S. (Credit Unions); Chapter 658, F.S. (Banks and Trust Companies); Chapter 660, F.S. (Trust Business); Chapter 663, F.S. (International Banking Corporations); Chapter 664, F.S. (Industrial Savings Banks); and Chapter 665, F.S. (Savings Associations). [The majority of the changes effected by provisions of the act were requested by the Department of Banking and Finance and are designed to assist the Department and the institutions in various technical areas of regulation and operational procedures.]

The act addresses licensing requirements under the Administrative Procedure Act (Chapter 120, F.S.) relating to foreign nationals. Subsection 120.60(5), F.S., is amended to extend the time period for approving or denying applications involving foreign nationals from six months to one year. A public hearing is required and the failure of the applicant to attend a hearing is grounds for denial of the application.

The act amends Subsection 655.043(2), F.S., to eliminate various provisions which require the Department to determine whether a corporate name proposed by a financial institution is so similar to the name of another institution as to cause public confusion. The proposed name would have to be registered with the Division of Corporations, Department of State.

In response to the passage of the “Regional Reciprocal Banking Act of 1984” (Chapter 84-42), the exchange of banking information with other states is clarified and requires the continual confidentiality of confidential information. The act amends the definition of “financial institution” in Paragraph 655.50(2)(b), F.S., to include Edge Act or Agreement Corporations among those institutions by whom reports of transactions involving currency are to be filed with the Department of Banking and Finance.

The act amends Subsection 657.008(2), F.S., to authorize “national reciprocal branching” of Florida credit unions with credit unions located in another state. Basically, these provisions allow foreign, out-of-state credit unions to establish branches in Florida if that state allows Florida credit unions to establish branches within its borders. The primary criteria for locating in Florida is maintaining insurance of deposits. It amends Section 657.026, F.S., to provide that members of the supervisory committee be appointed by the board of directors or be elected by the credit union members. The act amends provisions of the Banking Code and the savings association chapter to require applicants for new institutions to file standardized forms of their articles of incorporation. It substantially rewrites Section 658.48, F.S., relating to bank loans. However, the only substantive change is an increase in the amount of an unsecured loan, which may be made to a person who is not an officer or director of the bank, from 10 percent of the capital accounts to 15 percent of the capital accounts.

Chapter 663, F.S., relating to international banking corporations, is amended to provide that those corporations which do not meet the current capitalization requirements may still have an application for license approved if:

- (1) the international banking corporation has been in the business of banking for at least 10 years;
- (2) it is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country; and
- (3) it receives a certificate issued by the banking or supervisory authority of such country stating that the banking organization is duly organized and existing in good standing.

The act amends Subsection 664.07(1), F.S., to authorize an industrial savings bank to establish a branch office, without having to merge, in any one county within the state in addition to the county in which its main office is located.

The act extends the non-bank moratorium passed during the December 1984 Special Session, Chapter 84-544, Laws of Florida, from July 1, 1985, to July 1, 1987.

### I I I. Chapter 85-104, Laws of Florida

This Chapter creates the “Florida Small and Minority Business Assistance Act of 1985.” Its purpose is to assist small and minority businesses in their relationships with the state and in obtaining state contracts.

The measure addresses small business concerns by:

- (1) establishing the Small and Minority Business Advisory Council within the Department of Commerce to identify issues and concerns of these businesses, and representing them in their relations with state agencies;
- (2) establishing a statewide contracts register by requiring all state agencies to send information regarding contracts open for bid to the Small Business Development Centers throughout the state, which then distribute the information to their participants;
- (3) requiring the state to monitor payments by agencies to contractors to ensure timely payment, and establishing a penalty payment of one-half of one percent which must be made if payment is late;
- (4) requiring agencies to consider the impact of agency rules on small business and to modify those rules that will have an adverse impact in certain situations (amendment to Section 120.54, F.S.); and
- (5) enlarging the scope of the Division of Economic Development within the Department of Commerce to assist small and minority businesses.

The act also creates a comprehensive system addressing utilization and assistance to minority businesses by:

- (1) creating the Florida Black Business Investment Board, within the Department of Commerce, which has all corporate powers necessary to assist black business enterprises with obtaining bonding and loans and to stimulate private sector investment in black businesses (The Board will not invest or loan directly to black businesses, but will instead assist existing financial institutions in making such investments and loans.);
- (2) encouraging agencies to spend 15 percent of their expenditures for commodities and services with certified minority businesses;
- (3) permitting agencies to reserve certain contracts for bidding only among certified minority businesses, and authorizing rejection of such bids if they are higher than projected;

- (4) requiring the Department of General Services to certify minority business enterprises and make available to all state agencies a list of such businesses;
- (5) requiring state agencies to adopt minority business utilization plans;
- (6) providing penalties for misrepresentation as a minority business enterprise; and
- (7) creating the Minority Business Enterprise Assistance Office within the Department of General Services to assist minority businesses and promulgate rules relating to agency utilization of minority businesses.

The effective date of this act is October 1, 1985.

#### ADMINISTRATIVE PROCEDURES COMMITTEE STAFF COMMENTS:

Section 7 of Chapter 85-104, Laws of Florida, "Florida Small and Minority Business Assistance Act of 1985," amends Section 120.54, Florida Statutes, and requires that agencies consider the impact of their rules on small business. If an agency determines that its proposed rule will impact small business, the 1985 amendments specify the ways in which an agency may reduce that impact and, in addition, requires that the agency give written notice of such rule to the Small and Minority Business Advocate (Department of Commerce), the Minority Business Enterprise Assistance Office (Department of General Services), and the Division of Economic Development (Department of Commerce).

These three entities are to be provided an opportunity to present evidence and offer alternatives regarding the impact of the rule on small business. If feasible and consistent with the purpose of the proposed rule, the agency must adopt the offered alternatives.

It appears that the Act changes the role of the JAPC only to the extent that each agency adopting, amending, or repealing any rule shall provide the Committee with the following additional information:

1. An analysis of the impact on small business as part of the Economic Impact Statement (s.120.54(2)(b)5., F.S.);
2. If applicable, a detailed written statement explaining the reasons for failure to adopt alternatives as may be offered regarding the impact of the rule on small business (s.120.54(3)(b)3., F.S.); and
3. A written statement of the impact on small business (s.120.54(11) (a), F.S.).

The following summary of changes was prepared by the staff of the Senate Governmental Operations Committee in the Joint Legislative Management Summary of General Legislation, 1985.

#### I V. Chapter 85-168, Laws of Florida

##### Administrative Procedure Act

One department of state government was granted exemption from the Administrative Procedure Act. Chapter 85-168 amends the state military code, providing an exemption from Chapter 120, F.S., for the Department of Military Affairs. The act amends Sections 250.35 and 250.37, F.S., revising state law relating to courts-martial procedures to comply with federal law and providing for state payment of court reporter fees, service of process fees, and witness fees for courts-martial proceedings.

The following summary of changes was prepared by the staff of the House Transportation Committee in the Joint Legislative Management Summary of General Legislation, 1985.

#### V. Chapter 85-180, Laws of Florida

This Chapter creates the “Transportation Reform, Accountability and Cooperation Act of 1985” (TRAC). [It implements various methods to reduce expenditures and enhance revenues to enable the Department of Transportation (DOT) to accomplish the original program objectives adopted by the 1983 Legislature.]

##### DOT MANAGEMENT AND ORGANIZATION

The act revises Section 20.23, F.S., to provide legislative intent that DOT be a decentralized agency and for the assignment of responsibility and accountability for the decision-making process. New Subsection 20.23(5), F.S., makes the central office responsible for the establishment and modification of the Department’s policies, procedures, guidelines and standards and the district offices responsible for the implementation of the Department’s transportation programs. The DOT district funding formula for new construction is revised to ensure there is no penalty for local governments taking the initiative to solve transportation problems.

New Subsection 20.23(6), F.S., allows the Department of Administration to exempt positions within the DOT from Career Service that are comparable to positions within Senior Management Service.

Monthly management reports to the secretary from districts and other upper level management is required by new Subsection 20.23(7), F.S.

Paragraph 334.19(1)(a), F.S., is amended to require that the Department’s comptroller be licensed to practice public accounting in Florida or hold an advanced degree in an appropriate related discipline. The comptroller is to be responsible for the supervision and direction of the Department’s budget and certification of the accuracy of the data used to prepare all comparative cost studies.

Revision of Subsection 337.16(1), F.S., allows DOT to revoke or suspend the certificate of qualification of a contractor for late completion of work, and amended Subsection 337.18(3), F.S., allows DOT to reward contractors that finish early. The maximum penalty or reward is raised from \$2,000 per day to \$10,000 per day and the maximum effective period for a penalty or reward is reduced to 60 days from 100 days. The handling of bid protests is expedited so that a hearing will be held within 15 days.

#### ENCOURAGEMENT OF LOCAL GOVERNMENT INITIATIVE

New Section 335.20, F.S., creates the “Local Government Cooperative Assistance Program” (LCAP) which will provide matching funds to local governments on a basis of 20 percent state funding and 80 percent local funding for projects either on the State Highway System or which substantially reduce congestion on the State Highway System. Highest priority for projects to be funded is assigned to those which were in the 1983 Five-Year Construction Plan of DOT or which are located in counties levying six cents of local option fuel taxes.

New Section 338.251, F.S., creates the Toll Facilities Revolving Trust Fund to encourage the construction of toll facilities such as expressways and bridges by advancing funds for design, right-of-way acquisition, studies and construction of these projects. Repayment must be made within seven years with interest. A maximum of \$500,000 can be advanced by DOT to any one recipient without formal approval by the Legislature.

Revised Subsection 336.025(1), F.S., extends the local option motor fuel tax from 10 to 30 years and allows counties to enact up to six cents in motor fuel taxes (the previous limit was four cents). Only the third through sixth cent can be pledged for the issuance of bonds.

New Section 338.165, F.S., allows the continued collection of tolls on toll facilities after bonds are retired, provided that these revenues are used for local transportation projects. Tolls from facilities on the State Highway System must be used for improvements to state highways in the county in which they are collected; tolls from county roads may be used on any state or county road in the county or counties in which the revenue producing facility is located.

New Part VI of Chapter 163, F.S., authorizes the establishment of Metropolitan Transportation Authorities (MTAs) in one or more Metropolitan Planning Organization (MPO) counties which are eligible for attributable urban federal funds and which have adopted four cents of local option gas taxes. MTAs are authorized to levy up to an additional four cents per gallon fuel tax and up to one-mill ad valorem tax by referendum. An MTA will have jurisdiction over certain urban minor arterial roads on the county road system but not on the State Highway System, other roads subject to an agreement between the MTA and other units of government, and bus systems. Existing expressway authorities may be merged with an MTA three years after formation upon approval by referendum.

#### RIGHT-OF-WAY

Right-of-way acquisition procedures are streamlined and amended Paragraph 73.092(1)(f), F.S., requires the condemnee’s attorney to submit a statement of the time, services

rendered and expenses to the court and to the condemnor before the state can reimburse these costs.

New Subsection 73.071(5), F.S., prohibits any increase or decrease in the value of property acquired through eminent domain which is due solely to knowledge of the forthcoming project's location. [This is known as the "Scope of the Project" rule.]

New Paragraph 28.24(13)(c), F.S., limits the fee charged by clerks of the county court to \$100 per filing in eminent domain proceedings, and revised Subsection 74.051(3), F.S., requires that 90 percent of all interest earned on eminent domain deposits by clerks of the court be returned to the condemnor.

### REVENUE ENHANCEMENT MEASURES

Revised Paragraph 212.62(3)(b), F.S., establishes a floor of 5.7 cents per gallon on motor fuel and special fuel sales. [This provision has the effect of preventing the motor fuel tax from falling below the level in effect at the time of enactment.]

New Subsection 316.545(4), F.S., provides a penalty for noncompliance with Chapter 207, F.S. (fuel use taxes), by large trucks and establishes a procedure to levy penalties for failing to register a commercial vehicle. The penalty for improperly registered trucks provided in revised Paragraph 316.545(2)(b), F.S., is to be assessed at a rate of five cents for each pound over 35,000 pounds or its declared weight.

Amended Section 324.26, F.S., requires commercial motor vehicles as defined in Subsection 207.002(2), F.S., to have proof of insurance beginning January 1, 1986. Administration of the International Registration Plan (IRP) which allows commercial vehicles to pay license fees on an apportioned basis of fleet miles operated in various states, is transferred to the Department of Highway Safety and Motor Vehicles from the Department of Revenue pursuant to revised Subsection 320.03(7), F.S.

New Subsection 320.07(4), F.S., imposes delinquent fees for the late registration of all vehicles. The fee schedule is graduated from a minimum of \$5 to a maximum of \$250 for license fees over \$600. The provisions take effect October 1, 1985.

The act abolishes the Advanced Construction Interstate (ACI) Revolving Trust Fund in a revision of Subsection 339.08(4), F.S. The \$25 million per year of license fees heretofore deposited in the ACI Revolving Trust Fund are to be deposited in the State Transportation Trust Fund under amended Subsection 320.20(2), F.S. Priority use of these funds is completion of the Interstate System in Florida, but excess funds are allowed to be used for general transportation purposes.

Revised Section 338.232, F.S., directs DOT to begin the expeditious defeasance of the bonded indebtedness of the Florida Turnpike. The Division of Bond Finance of the Department of General Services is authorized to issue revenue bonds to finance the cost of turnpike improvement projects in new

Subsection 338.227(3), F.S., such as construction of feeder roads, interchanges, widenings and toll plazas. Proceeds of the bond sales are to be expended in each DOT district according to factors such as the district's vehicle miles traveled, toll collections and miles of turnpike. Projects are to be consistent with the Florida Transportation Plan and the DOT Five-Year Work Plan.

## MISCELLANEOUS PROVISIONS

The measure corrects minor technical difficulties with existing transportation statutes.

The act establishes the Gray Market Study Committee to examine the issue of titling and registering imported automobiles that have been modified for use in the United States. The 12-member Committee is to be composed of four members appointed by the President of the Senate, four members appointed by the Speaker of the House of Representatives and the remainder appointed by the Governor. The Committee is to make a report to the Legislature by March 1, 1986.

Amended Section 316.515(5), F.S., requires the Department to issue permits for various types of overlength vehicles.

Revised Subsection 338.01(5), F.S., allows transportation and expressway authorities to locate service plazas on the right-of-way of limited access facilities.

Note: The changes in the Administrative Procedure Act are as follows:

Section 77. Paragraphs (b) and (d) of subsection (5) of section 120.53, Florida Statutes, 1984 Supplement, are amended and paragraphs (e) and (f) are added to said subsection to read:

120.53 Adoption of rules of procedure and public inspection.--

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

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



written protest shall state with particularity the facts and law upon which the protest is based.

(d) The agency, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 14 days, excluding Saturday, Sunday, and legal holidays, of receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 7 14 days, excluding Saturday, Sunday, and legal holidays, of receipt of the formal written protest and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to s.120.57(2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

2. If the subject of a protest is not resolved by mutual agreement within 7 14 days, excluding Saturday, Sunday, and legal holidays, of material fact, the agency shall refer the protest to the division for proceedings under s.120.57(1).

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

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

Section 78. There is hereby appropriated from the General Revenue Fund to the Division of Administrative Hearings of the Department of Administration an amount sufficient to carry out the purposes of Section 77 of this act.

The following summary of changes was prepared by the staff of House Bill Drafting in the Joint Legislative Management Summary of General Legislation, 1985.

## VI. Chapter 85-342, Laws of Florida

### General Tax Administration

Various aspects of the administration of tax laws by the Department of Revenue are included in Chapter 85-342. The act revises provisions which authorize taxpayers to file an action in circuit court or a petition under Chapter 120, F.S., to contest certain tax assessments. It amends Section 72.011, F.S., and creates Subsection 120.575(3), F.S., to replace the requirement for good faith payment of taxes admitted to be owing with a requirement for payment of uncontested taxes. With respect to petitions under Chapter 120, F.S., it deletes a requirement for filing a bond for the contested amount. With respect to actions in circuit court, it allows the executive director of the Department to waive the bond requirement. It also repeals Section 72.021, F.S., which provides a penalty for gross underpayment of taxes admitted in good faith to be owing.

Section 72.041, F.S., is created to authorize actions in Florida courts to enforce sales, use, and corporate income taxes of another state that grants similar rights to Florida.

Subsections 95.091(4), 212.14(6), and 213.21(1), F.S., are amended to provide that statutes of limitations on actions to collect taxes, issuance of final assessments, and assessment of sales taxes are tolled during taxpayer protest proceedings under Section 213.21, F.S. Paragraph 213.21(2)(a), F.S., is also amended to allow the Executive Director to approve compromises resulting in a tax reduction of \$100,000 or less, rather than less than \$25,000.

With respect to estate taxes, the act amends Subsection 198.13(1) and Section 198.15, F.S., to conform the dates for filing the Florida return and paying the Florida estate tax to the dates for filing the initial federal estate tax return and paying the tax pursuant thereto.

Regarding tax administration generally, Section 213.23, F.S., is created to authorize consent agreements with taxpayers to extend the time during which an assessment may be issued or return claim filed. A new Section 213.24, F.S., provides that when a taxpayer makes payment within 30 days of notice, interest shall not be imposed for the period after the date of notice. Section 213.25, F.S., is created to authorize the Department to reduce a taxpayer's refund or credit to cover amounts due for the same or other taxes. Under the provisions of new Section 213.27, F.S., the Department may contract with debt collection agencies or attorneys for the collection of delinquent taxes. A bond not in excess of \$100,000 is required of such debt collection agencies. Breach of confidentiality by such agencies is a first degree misdemeanor. New Section 213.29, F.S., provides that any person who willfully fails to collect or truthfully account for and pay, or willfully attempts to evade or defeat any documentary stamp tax, motor or special fuel tax, or sales tax is subject to a penalty of 100 percent of the tax evaded. This is in addition to other penalties provided by law but is to be reduced to the extent the tax is paid.

In the corporate tax area, Section 220.53, F.S., is amended to make the provisions of Section 213.06, F.S. (relating to departmental rulemaking authority), and Section 213.21, F.S. (relating to informal conferences to resolve taxpayer disputes), applicable to the corporate income tax, except for those portions relating to compromise of estimated tax penalties and

certain adjustments. Also, Subsection 214.09(4), F.S., which allows extension of the time period for issuance of notice of deficiency, and Subsection 214.16(2), F.S., which allows extension of the time period for filing a claim for refund, are repealed.