

Section 120.53

CHAPTER 74-310

Section 120.53 is created to read:

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

(1) In addition to other requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures including copies of all forms and instructions used by the agency; and

(c) Adopt rules of procedure appropriate for the presentation of arguments concerning issues of law or policy, and for the presentation of evidence on any pertinent fact that may be in dispute.

(d) Adopt rules for the scheduling of meetings, hearings, and workshops including the establishment of agendas therefor, one of which shall be that an agenda shall be prepared at least seven days before the event by the agency, and made available for distribution on request of any interested persons. The agenda shall contain the items to be considered in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time.

(2) Each agency shall make available for public inspection and copying at no more than cost all rules formulated, adopted, or used by the agency in the discharge of its functions; all agency order; and a current subject issued or adopted after the effective date of this act. All rules adopted pursuant to this act shall be indexed within ninety days. The secretary of state shall by rule establish uniform indexing procedures.

(3) No agency rule or order is valid for any purpose until has been made available for public inspection as herein required unless the person or party against whom enforcement is sought has actual knowledge of it.

CHAPTER 75-191

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

(1) In addition to other requirements imposed by law, each agency shall:

(d) Adopt rules for the scheduling of meetings, hearings, and workshops including the establishment of ~~agenda~~ ~~agendas~~ therefor, one of which shall be that an agenda shall be prepared by the agency at least 7 days before the event and made available for distribution on request of any interested persons. The agenda shall contain the items to be considered, in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time. The agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to such meeting.

CHAPTER 76-131

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

(1) In addition to other requirements imposed by law, each agency shall:

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, including a list copies of all forms and instructions used by the agency in its dealings with the public. The list of forms and instructions shall include the title of each form or instruction, and a statement of the manner in which the form or instruction may be obtained without cost.

(d) Adopt rules for the scheduling of meetings, hearings, and workshops, ~~including the establishment of agenda therefor~~, one of which shall be that an agenda shall be prepared by the agency in time to insure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy and made available for distribution on request of any interested persons. The agenda shall contain the items to be considered, in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time. The agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to such meeting. In addition, each agency shall give notice of meetings, hearings and workshop in the same manner as that prescribed for rulemaking in s. 120.54(1) except that the notice requirement shall not apply to emergency meetings. The notice shall include a statement of the general subject matter to be considered and shall be given not less than 7 days before the event.

All rules adopted pursuant to this act shall be indexed within 90 days. The Department of State shall by rule establish uniform indexing procedures.

CHAPTER 79-299

Section 2. Subsection (4) is added to section 120.53, Florida Statutes, to read:

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

(2) Each agency shall make available for public inspection and copying, at no more than cost:

(a) All rules formulated, adopted, or used by the agency in the discharge of its functions.

(b) All agency orders.

(c) A current subject-matter index, identifying for the public any rule or order issued or adopted after January 1, 1975.

All rules adopted pursuant to this act shall be indexed within 90 days. The Department of State shall by rule establish uniform indexing procedures.

(4) Each agency may comply with subsection (2)(b) and (c) by designating by rule an official reporter which publishes and indexes by subject matter all the agency's orders rendered after a proceeding which affects substantial interests has been held.

CHAPTER 81-296

Section 1. Subsection (5) is added to section 120.53, Florida Statutes, 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 part II of chapter 23, 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a

protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.”

(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.

(c) Upon receipt of a notice of protest which has been timely filed, the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(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 14 days or receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 14 days 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 14 days of receipt of the formal written protest and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

CHAPTER 81-309

Section 2. Paragraph (b) of subsection (1) of section 120.53, Florida Statutes, is amended to read:

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

(1) In addition to other requirements imposed by law, each agency shall:

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, including a list of all forms and instructions used by the agency in its dealings with the public. The list of forms and instructions shall include the title of each form or instruction and a statement of the manner in which the form or instruction may be obtained without cost. Each agency shall file with the Department of State a copy of each form used by the agency in its dealings with the public. The department shall immediately send a copy of the

form to the committee. A form may become effective no earlier than 20 days after it is filed with the department.

CHAPTER 83-92

Section 8. Subsection (5) of section 120.53, Florida Statutes, is amended 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 ~~part II of chapter 24~~ ~~23~~, 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(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.

(c) Upon receipt of a notice of protest which has been timely filed, the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(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 14 days of receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 14 days 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 14 days of receipt of the formal written protest and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

CHAPTER 83-217

Section 34. Paragraph (a) of subsection (5) of section 120.53, Florida Statutes, is amended 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 part II of chapter 23, 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given ~~sent~~ by United States mail or by hand delivery.

2. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

Note.--Amended to improve clarity by conforming terminology to that of subparagraph 2.

CHAPTER 83-273

Section 3. Subsection (6) is added to section 120.53, Florida Statutes to read:

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

(6) Each state agency, as defined in s. 216.011, shall adopt rules providing a procedure for conducting meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such meetings, hearings, and workshops, by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a meeting, hearing, or workshop is to be conducted by means of communication media technology, or if attendance may be provided by such means, the notice shall so state. The notice for meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this subsection shall be construed to diminish the public's right to inspect public records under chapter 119. Limiting points of access to meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the public's right of access and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such meetings hearings, and workshops.

CHAPTER 84-203

Section 1. Paragraph (b) of subsection (1) of section 120.53, Florida Statutes, is amended to read:

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

(1) In addition to other requirements imposed by law, each agency shall:

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, ~~including a list of all forms and instructions used by the agency in its dealings with the public. The list of forms and instructions shall include the title of each form or instruction and a statement of the manner in which the form or instruction may be obtained without cost. Each agency shall file with the Department of State a copy of each form used by the agency in its dealings with the public. The department shall immediately send a copy of the form to the committee. A form may become effective no earlier than 20 days after it is filed with the department.~~

CHAPTER 85-180

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 receipt of the formal written protest and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

(e) Upon the 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.

CHAPTER 87-100

Section 2. Subsection (5) of section 120.53, Florida Statutes, is amended 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(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.

(c) Upon receipt of the formal written ~~a notice of protest~~ which has been timely filed, the agency shall stop the bid solicitation protest or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health safety, or welfare.

(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 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 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 days, excluding Saturday, Sunday, and legal holidays, of receipt of the formal written protest and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

(e) Upon the 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 and render a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the hearing officer, whichever is later. 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.

CHAPTER 88-384

Section 2. Paragraph (a) of subsection (5) of section 120.53, Florida Statutes, is amended 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the Division of Purchasing of the Department of General Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Division of Purchasing, notice of a decision or intended decision shall be given by posting such notice in the office of the Division of Purchasing.

~~3.~~ For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

CHAPTER 90-136

Section 44. Paragraph (a) of subsection (5) of section 120.53, Florida Statutes, is amended 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the Division of Purchasing of the Department of General Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Division of Purchasing, notice of a decision or intended decision shall be given by posting such notice in the office of the Division of Purchasing.

3. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail or other express delivery service, return receipt requested.

The notice required by this paragraph shall contain the following statement: Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.

CHAPTER 90-302

Section 35. Subsection (5) of section 120.53, Florida Statutes, is amended 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the Division of Purchasing of the Department of General Services

concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Division of Purchasing, notice of a decision or intended decision shall be given by posting such notice in the office of the Division of Purchasing.

3. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(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. With respect to a protest of the specifications contained in an invitation to bid or in a request for proposals, the notice of protest shall be filed in writing within 72 hours after the receipt of notice of the project plans and specifications or intended project plans and specifications in an invitation to bid or request for proposals, and the formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based.

(c) Upon receipt of the formal written protest which has been timely filed the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(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 days excluding Saturdays, Sundays, 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 days, excluding Saturdays, Sundays, 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 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest, if there is a disputed issue 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 and render a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the hearing officer, whichever is later. 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 36. For the purpose of incorporating the amendment to section 120.53, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

24.109 Administrative procedure

(2) The provisions of s. 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. 120.53(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.

287.042 Powers, duties, and functions

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

(2)(a) To plan and coordinate purchases in volume and to negotiate and execute purchasing agreements and contracts under which the division shall require state agencies to purchase commodities and under which a county, municipality, or other local public agency may purchase commodities. Purchases by any county, municipality, or other local public agency under the provisions in the state purchasing contracts shall be exempt from the competitive bid requirements otherwise applying to their purchases.

(b) As an alternative to any provision in s. 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 rewarded 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. 120.53(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 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. 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. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him. If the person protesting the award prevails, he shall recover from the agency all costs and charges which shall be included in the final order of judgment, excluding attorney's fees.

325.208. Protests of contract awards and requests for proposals

(1) The provisions of s. 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.

CHAPTER 91-30

Section 2. Subsections (2) and (4) of section 120.53, Florida Statutes, 1990 Supplement, are amended to read:

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

(2)(a) Each agency shall make available for public inspection and copying, at no more than cost:

~~1.(a)~~ All rules formulated, adopted, or used by the agency in the discharge of its functions.

~~2.(b)~~ All agency orders.

~~3.(c)~~ A current subject-matter index, identifying for the public any rule or order as specified in this subparagraph issued or adopted after January 1, 1975. The agency orders that must be indexed, unless excluded under paragraph (c) or paragraph (d), include:

a. Each final agency order resulting from a proceeding under s.120.57(1) or (2);

b. Each final agency order rendered pursuant to s.120.57(3) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of presidential value;

c. Each declaratory statement issued by an agency; and

d. Each final order resulting from a proceeding under s.120.54(4) or s.120.56.

4. A list of all final orders rendered pursuant to s.120.57(3) which have been excluded from the indexing requirement of this section, with the approval of the Department of State, because they do not contain statements of agency policy or statements of presidential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.

5. All orders listed pursuant to subparagraph 4.

(b) A rule ~~All rules~~ adopted pursuant to this act ~~must shall~~ be indexed within 90 days after the rule is filed. An agency order that must be indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the order is renumbered. The Department of State shall by rule establish ~~uniform indexing~~ procedures for indexing rules and orders, and procedures of agencies for indexing orders must be approved by the department.

(c) Each agency must receive approval in writing from the Department of State for:

1. The specific types and categories of agency orders that may be excluded from the indexing and public inspection requirements, as determined by the department pursuant to paragraph (d);

2. The method for maintaining indexes, lists, and orders that must be indexed or listed and made available to the public;

3. The method by which the public may inspect or obtain copies of indexes, lists, and orders;

4. A numbering system to be used in identifying agency orders that must be indexed or listed pursuant to paragraph (a); and

5. Proposed rules for implementing the requirements of this section for indexing and making orders available for public inspection

(d) In determining which orders may be excluded from the indexing and public inspection requirements, the Department of State may consider all factors specified by an agency, including presidential value, legal significance, and purpose. Only agency orders that are of limited or no

presidential value, that are of limited or no legal significance, or that are ministerial in nature may be excluded.

(e) Each agency shall specify by rule the specific types or categories of agency orders that are excluded from the indexing and public inspection requirements.

(f) Each agency shall specify by rule the location or locations where agency indexes and lists, and orders that are required to be indexed or listed, are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and orders.

(g) Each agency shall specify by rule all systems in use by the agency to search and locate agency orders that are required to be indexed or listed, including, but not limited to, any automated system. An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided in s.119.07. The agency shall specify by rule how assistance and information pertaining to orders may be obtained.

(h) Each agency shall specify by rule the numbering system used to identify agency orders.

(4)(a) An agency may comply with subparagraphs (2)(a)2, paragraphs (2)(b) and 3.(e) by designating by rule an official reporter to publish which publishes and index indexes by subject matter each agency order that must be indexed and made available to the public rendered after a proceeding which affects substantial interests has been held. An agency is in compliance with subparagraph (2)(a)4. if it publishes in its designated reporter a list of each agency order that must be listed and preserves each listed order and makes it available for public inspection and copying.

(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative orders for that agency.

(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the Department of State may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.

(d) An agency that designates an official reporter need not publish the full text of a final agency order that is rendered pursuant to s.120.57(3) and that must be indexed pursuant to

paragraph (2)(a), if the order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.

Section 9. Indexing and availability of agency orders.—

(1) Beginning July 1, 1992, the Department of State shall:

(a) Administer the coordination of the indexing, management, preservation, and availability of agency orders that must be indexed or listed pursuant to section 120.53(2), Florida Statutes.

(b) Provide, by rule, guidelines for the indexing of agency orders. More than one system for indexing may be approved by the Department of State, including systems or methods in use, or proposed for use, by an agency. More than one system may be approved for use by a single agency as best serves the needs of that agency and the public.

(c) Provide, by rule, for storage and retrieval systems to be maintained by agencies for indexing, and making available, agency orders by subject matter. The Department of State may approve more than one system, including systems in use, or proposed for use, by an agency. Storage and retrieval systems that may be used by an agency include, without limitation, a designated reporter or reporters, a microfilming system, and an automated system or any other system considered appropriate by the Department of State.

(d) Determine which final orders must be indexed for each agency, including all final orders that are not excluded from indexing requirements by the Department of State pursuant to paragraphs 120.53(2)(c) and (d), Florida Statutes.

(e) Require each agency, before adopting proposed rules, to report to the department concerning which types or categories of agency orders establish precedent for each agency. Each final order that establishes precedent for an agency and that has not been approved by the department for exclusion pursuant to paragraphs 120.53(2)(c) and (d), Florida Statutes, must be indexed.

(f) Require each agency to provide by rule:

1. Procedures for indexing all final orders that are required to be indexed by section 120.53(2), Florida Statutes;

2. A procedure for sequentially numbering agency orders; and

3. Procedures for permanently preserving agency orders required to be indexed and for making such orders available to the public. Means of preservation and public availability may include, but are not limited to, publication of agency orders in an official reporter.

(g) Develop, monitor, and ensure compliance with procedures and standards established for the indexing, management, preservation, and availability of agency orders.

(h) Coordinate and provide for a training program designed to serve the technical and managerial needs of agencies in indexing, managing, preserving, and making agency orders available to the public.

(i) Provide technical and managerial assistance relating to agency orders upon request by an agency.

(j) Adopt rules to administer its duties under this act.

(2) The Department of State may procure assistance and information necessary to administer its duties under this act from any officer or agency of the state. Such officers and agencies shall give the department all relevant information and reasonable assistance on any matters concerning the indexing and public inspection of agency orders.

CHAPTER 91-45

Section 79. Subsection (5) of section 120.53, Florida Statutes (1990 Supplement), is amended 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~~ 282.303, 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:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the Division of Purchasing of the Department of General Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Division of Purchasing, notice of a decision or intended decision shall be given by posting such notice in the office of the Division of Purchasing.

3. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail or other express delivery service, return receipt requested.

The notice required by this paragraph shall contain the following statement: “Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.”

(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. With respect to a protest of the specifications contained in an invitation to bid or in a request for proposals, the notice of protest shall be filed in writing within 72 hours after the receipt of notice of the project plans and specifications or intended project plans and specifications in an invitation to bid or request for proposals, and the formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based.

(c) Upon receipt of the formal written protest which has been timely filed the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(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 days, excluding Saturdays, Sundays, 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 days, excluding Saturdays, Sundays, 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 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under 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 and render a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the hearing officer, whichever is later. 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.

Reviser's note.—Amended to conform to s. 31, ch. 87-137, Laws of Florida, which repealed ss. 282.301 and 282.302.

CHAPTER 91-191

Section 1. Sections 10, 11, and 12 of House Bill 1879, enacted in the 1991 regular session, are amended to read:

Section 10. On or before ~~March~~ January 1, 1992, each agency shall submit to the Department of State for approval a plan for publishing or otherwise making agency orders available to the public, for sequentially numbering agency orders, for coordinating and establishing procedures for the compilation of subject-matter indexes and lists of agency orders, and for publishing such indexes and lists or providing alternative means of making such indexes and lists available to the public.

Section 11. This act applies to actions instituted on or after ~~March~~ January 1, 1992.

Section 12. This act shall take effect ~~March~~ January 1, 1992, except that this section and section 10 shall take effect upon this act becoming a law.

CHAPTER 92-166

Section 1. Paragraph (a) of subsection (2) of section 120.53, Florida Statutes, as amended by section 2 of chapter 91-30, Laws of Florida, as amended, is amended to read:

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

(2)(a) Each agency shall make available for public inspection and copying, at no more than cost:

1. All rules formulated, adopted, or used by the agency in the discharge of its functions.
2. All agency orders.
3. A current subject-matter index, identifying for the public any rule or order as specified in the subparagraph. In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of its orders, an agency may maintain, and make available for public use, an electronic data base of its orders that allows users to research and retrieve the full texts of agency orders by devising an ad hoc indexing system employing any logical search terms in common usage which are composed by the user and which are contained in the orders of the agency. The agency orders that must be indexed, unless excluded under paragraph (c) or paragraph (d), include:

- a. Each final agency order resulting from a proceeding under s.120.57(1) or (2);
 - b. Each final agency order rendered pursuant to s.120.57(3) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of presidential value;
 - c. Each declaratory statement issued by an agency; and
 - d. Each final order resulting from a proceeding under s.120.535, s.102.54(4), or s.120.56.
4. A list of all final orders rendered pursuant to s.120.57(3) which have been excluded from the indexing requirement of this section, with the approval of the Department of State, because they do not contain statements of agency policy or statements of presidential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.
5. All orders listed pursuant to subparagraph 4.

NOTE:

Section 3. The Legislature finds that the official reports used by the Public Employees Relations Commission on May 28, 1991, are in compliance with the requirements for indexing and availability of orders in section 120.53(2)(a), Florida Statutes, as amended by section 2 of chapter 91-30, Laws of Florida.

CHAPTER 92-279

Section 143. Paragraph (a) of subsection (5) of section 120.53, Florida Statutes, is amended 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. 282.303-282.313, chapter 255, chapter 287, or chapters 334-349 shall adopt rules specifying procedures for the resolution of protest arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the Division of Purchasing of the Department of Management

General Services concerning a request by an agency of approval of an exceptional purchase under part I of chapter 287 and the rules of the Division of Purchasing, notice of a decision or intended decision shall be given by posting such notice in the office of the Division of Purchasing.

3. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail or other express delivery service, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

CHAPTER 92-326

Section 55. Section 339 of chapter 279, Laws of Florida, is amended to read:

Section 339. Except as otherwise expressly provided in this act, this act shall take effect July 1, 1992 ~~January 1, 1993~~, except that this section and sections 322, 323, 324, and 325 of this act shall take effect upon this act becoming a law.

CHAPTER 95-147

Section 756. Paragraph (b) subsection (5) of section 120.53, Florida Statutes, is amended 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. 282.303-282.313, 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 or she filed the notice of protest. With respect to a protest of the specifications contained in an invitation to bid or in a request for proposals, the notice of protest shall be filed in writing within 72 hours after the receipt of notice of the project plans and specifications or intended project plans and specifications in an invitation to bid or request for proposals, and the formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based.

CHAPTER 96-159

Section 5. Section 120.53, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 120.53, F.S., or present text.)

120.53 Maintenance of orders; indexing; listing; organizational information

(1)(a) Each agency shall maintain:

1. All agency final orders.

2.a. A current hierarchical subject-matter index, identifying for the public any rule or order as specified in this subparagraph.

b. In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of its orders, an agency may maintain and make available for public use an electronic database of its orders that allows users to research and retrieve the full texts of agency orders by devising an ad hoc indexing system employing any logical search terms in common usage which are composed by the user and which are contained in the orders of the agency or by descriptive information about the order which may not be specifically contained in the order.

c. The agency orders that must be indexed, unless excluded under paragraph (c) or paragraph (d), include:

(I) Each final agency order resulting from a proceeding under s. 120.57 or s. 120.573.

(II) Each final agency order rendered pursuant to s. 120.57(4) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.

(III) Each declaratory statement issued by an agency.

(IV) Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

3. A list of all final orders rendered pursuant to s. 120.57(4) which have been excluded from the indexing requirement of this section, with the approval of the Department of State, because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.

4. All final orders listed pursuant to subparagraph 3.

(b) An agency final order that must be indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the order is rendered. Each final order that must be

indexed or listed pursuant to paragraph (a) must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference. The Department of State shall establish by rule procedures for indexing final orders, and procedures of agencies for indexing orders must be approved by the department.

(c) Each agency must receive approval in writing from the Department of State for:

1. The specific types and categories of agency final orders that may be excluded from the indexing and public inspection requirements, as determined by the department pursuant to paragraph (d).

2. The method for maintaining indexes, lists, and final orders that must be indexed or listed and made available to the public.

3. The method by which the public may inspect or obtain copies of indexes, lists, and final orders.

4. A sequential numbering system which numbers all final orders required to be indexed or listed pursuant to paragraph (a), in the order rendered.

5. Proposed rules for implementing the requirements of this section for indexing and making final orders available for public inspection.

(d) In determining which final orders may be excluded from the indexing and public inspection requirements, the Department of State may consider all factors specified by an agency, including precedential value, legal significance, and purpose. Only agency final orders that are of limited or no precedential value, that are of limited or no legal significance, or that are ministerial in nature may be excluded.

(e) Each agency shall specify the specific types or categories of agency final orders that are excluded from the indexing and public inspection requirements.

(f) Each agency shall specify the location or locations where agency indexes, lists, and final orders that are required to be indexed or listed are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and final orders.

(g) Each agency shall specify all systems in use by the agency to search and locate agency final orders that are required to be indexed or listed, including, but not limited to, any automated system. An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided by s. 119.07. The agency shall specify how assistance and information pertaining to final orders may be obtained.

(h) Each agency shall specify the numbering system used to identify agency final orders.

(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.

(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative final orders for that agency.

(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.

(d) An agency that designates an official reporter need not publish the full text of an agency final order that is rendered pursuant to s. 120.57(4) and that must be indexed pursuant to paragraph (1)(a), if the final order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the final order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.

(3) Agency orders that must be indexed or listed are documents of continuing legal value and must be permanently preserved and made available to the public. Each agency to which this chapter applies shall provide, under the direction of the Department of State, for the preservation of orders as required by this chapter and for maintaining an index to those orders.

(4) Each agency must provide any person who makes a request with a written description of its organization and the general course of its operations.

CHAPTER 96-423

Section 2. Paragraph (e) of subsection (5) of section 120.53, Florida Statutes, is amended 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. 282.303-282.313, 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:

(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 and render a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript or hearing videotape by the hearing officer, whichever is later. The provisions of this paragraph may be waived upon stipulation by all parties.

CHAPTER 97-176

Committee Substitute for Senate Bill No. 1066

Section 2. Section 120.53, Florida Statutes, 1996 Supplement, as amended by section 5 of chapter 96-159, Laws of Florida, and section 2 of chapter 96-423, Laws of Florida, is reenacted to read:

120.53 Maintenance of orders; indexing; listing; organizational information.--

(1)(a) Each agency shall maintain:

1. All agency final orders.

2.a. A current hierarchical subject-matter index, identifying for the public any rule or order as specified in this subparagraph.

b. In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of its orders, an agency may maintain and make available for public use an electronic database of its orders that allows users to research and retrieve the full texts of agency orders by devising an ad hoc indexing system employing any logical search terms in common usage which are composed by the user and which are contained in the orders of the agency or by descriptive information about the order which may not be specifically contained in the order.

c. The agency orders that must be indexed, unless excluded under paragraph (c) or paragraph (d), include:

(I) Each final agency order resulting from a proceeding under s. 120.57 or s. 120.573.

(II) Each final agency order rendered pursuant to s. 120.57(4) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a

statement of precedential value.

(III) Each declaratory statement issued by an agency.

(IV) Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

3. A list of all final orders rendered pursuant to s. 120.57(4) which have been excluded from the indexing requirement of this section, with the approval of the Department of State, because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.

4. All final orders listed pursuant to subparagraph 3.

(b) An agency final order that must be indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the order is rendered. Each final order that must be indexed or listed pursuant to paragraph (a) must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference. The Department of State shall establish by rule procedures for indexing final orders, and procedures of agencies for indexing orders must be approved by the department.

(c) Each agency must receive approval in writing from the Department of State for:

1. The specific types and categories of agency final orders that may be excluded from the indexing and public inspection requirements, as determined by the department pursuant to paragraph (d).

2. The method for maintaining indexes, lists, and final orders that must be indexed or listed and made available to the public.

3. The method by which the public may inspect or obtain copies of indexes, lists, and final orders.

4. A sequential numbering system which numbers all final orders required to be indexed or listed pursuant to paragraph (a), in the order rendered.

5. Proposed rules for implementing the requirements of this section for indexing and making final orders available for public inspection.

(d) In determining which final orders may be excluded from the indexing and public inspection requirements, the Department of State may consider all factors specified by an agency, including precedential value, legal significance, and purpose. Only agency final orders that are of limited or no precedential value, that are of limited or no legal significance, or that are ministerial

in nature may be excluded.

(e) Each agency shall specify the specific types or categories of agency final orders that are excluded from the indexing and public inspection requirements.

(f) Each agency shall specify the location or locations where agency indexes, lists, and final orders that are required to be indexed or listed are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and final orders.

(g) Each agency shall specify all systems in use by the agency to search and locate agency final orders that are required to be indexed or listed, including, but not limited to, any automated system. An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided by s. 119.07. The agency shall specify how assistance and information pertaining to final orders may be obtained.

(h) Each agency shall specify the numbering system used to identify agency final orders.

(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.

(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative final orders for that agency.

(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.

(d) An agency that designates an official reporter need not publish the full text of an agency final order that is rendered pursuant to s. 120.57(4) and that must be indexed pursuant to paragraph (1)(a), if the final order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the final order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.

(3) Agency orders that must be indexed or listed are documents of continuing legal value and must be permanently preserved and made available to the public. Each agency to which this chapter applies shall provide, under the direction of the Department of State, for the preservation of orders as required by this chapter and for maintaining an index to those orders.

(4) Each agency must provide any person who makes a request with a written description of its organization and the general course of its operations.

CHAPTER 2008-104

Committee Substitute for Committee Substitute for Senate Bill No. 704

Section 3. Paragraph (a) of subsection (2) of section 120.53, Florida Statutes, is amended to read:

120.53 Maintenance of orders; indexing; listing; organizational information.—

(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public, or by electronically transmitting to the division a copy of such orders for posting on the division's website. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.

CHAPTER 2015-155

Committee Substitute for House Bill No. 985

Section 2. Section 120.53, Florida Statutes, is amended to read:

120.53 Maintenance of agency final orders; ~~indexing; listing; organizational information.~~—

(1) In addition to maintaining records contained in s. 119.021(3), each agency shall also electronically transmit a certified text-searchable copy of each agency final order listed in subsection (2) rendered on or after July 1, 2015, to a centralized electronic database of agency final orders maintained by the division. The database must allow users to research and retrieve the full texts of agency final orders by:

(a) The name of the agency that issued the final order.

(b) The date the final order was issued.

(c) The type of final order.

(d) The subject of the final order.

(e) Terms contained in the text of the final order.

~~(a) Each agency shall maintain:~~

~~1. All agency final orders.~~

~~2.a. A current hierarchical subject matter index, identifying for the public any rule or order as specified in this subparagraph.~~

~~b. In lieu of the requirement for making available for public inspection and copying a hierarchical subject matter index of its orders, an agency may maintain and make available for public use an electronic database of its orders that allows users to research and retrieve the full texts of agency orders by devising an ad hoc indexing system employing any logical search terms in common usage which are composed by the user and which are contained in the orders of the agency or by descriptive information about the order which may not be specifically contained in the order.~~

~~(2)e. The agency final orders that must be electronically transmitted to the centralized electronic database indexed, unless excluded under paragraph (c) or paragraph (d), include:~~

~~(a)(I) Each final agency order resulting from a proceeding under s. 120.57 or s. 120.573.~~

~~(b)(II) Each final agency order rendered pursuant to s. 120.57(4) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.~~

~~(c)(III) Each declaratory statement issued by an agency.~~

~~(d)(IV) Each final order resulting from a proceeding under s. 120.56 or s. 120.574.~~

~~(3)3. Each agency shall maintain a list of all final orders rendered pursuant to s. 120.57(4) that are not required to be electronically transmitted to the centralized electronic database which have been excluded from the indexing requirement of this section, with the approval of the Department of State, because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.~~

~~4. All final orders listed pursuant to subparagraph 3.~~

~~(4)(b) Each An agency final order, whether rendered by the agency or the division, that must be electronically transmitted to the centralized electronic database or maintained on a list~~

~~pursuant to subsection (3) must be electronically transmitted to the database or added to the list within 90 days after the final indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the order is rendered. Each final order that must be electronically transmitted to the database or added to the list indexed or listed pursuant to paragraph (a) must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the final order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference. The Department of State shall establish by rule procedures for indexing final orders, and procedures of agencies for indexing orders must be approved by the department.~~

(5) Nothing in this section relieves an agency from its responsibility for maintaining a subject matter index of final orders rendered before July 1, 2015, and identifying the location of the subject matter index on the agency's website. In addition, an agency may electronically transmit to the centralized electronic database certified copies of all of the final orders that were rendered before July 1, 2015, which were required to be in the subject matter index. The centralized electronic database constitutes the official compilation of administrative final orders rendered on or after July 1, 2015, for each agency.

~~(c) Each agency must receive approval in writing from the Department of State for:~~

~~1. The specific types and categories of agency final orders that may be excluded from the indexing and public inspection requirements, as determined by the department pursuant to paragraph (d).~~

~~2. The method for maintaining indexes, lists, and final orders that must be indexed or listed and made available to the public.~~

~~3. The method by which the public may inspect or obtain copies of indexes, lists, and final orders.~~

~~4. A sequential numbering system which numbers all final orders required to be indexed or listed pursuant to paragraph (a), in the order rendered.~~

~~5. Proposed rules for implementing the requirements of this section for indexing and making final orders available for public inspection.~~

~~(d) In determining which final orders may be excluded from the indexing and public inspection requirements, the Department of State may consider all factors specified by an agency, including precedential value, legal significance, and purpose. Only agency final orders that are of limited or no precedential value, that are of limited or no legal significance, or that are ministerial in nature may be excluded.~~

~~(e) Each agency shall specify the specific types or categories of agency final orders that are excluded from the indexing and public inspection requirements.~~

~~(f) Each agency shall specify the location or locations where agency indexes, lists, and final orders that are required to be indexed or listed are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and final orders.~~

~~(g) Each agency shall specify all systems in use by the agency to search and locate agency final orders that are required to be indexed or listed, including, but not limited to, any automated system. An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided by s. 119.07. The agency shall specify how assistance and information pertaining to final orders may be obtained.~~

~~(h) Each agency shall specify the numbering system used to identify agency final orders.~~

~~(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. By designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public, or by electronically transmitting to the division a copy of such orders for posting on the division's website. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.~~

~~(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative final orders for that agency. available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.~~

~~(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.~~

~~(d) An agency that designates an official reporter need not publish the full text of an agency final order that is rendered pursuant to s. 120.57(4) and that must be indexed pursuant to paragraph (1)(a), if the final order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the final order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.~~

~~(3) Agency orders that must be indexed or listed are documents of continuing legal value and must be permanently preserved and made available to the public. Each agency to which this chapter applies shall provide, under the direction of the Department of State, for the preservation of orders as required by this chapter and for maintaining an index to those orders.~~

~~(4) Each agency must provide any person who makes a request with a written description of its organization and the general course of its operations.~~