

By Senator Soto

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1 A bill to be entitled
2 An act relating to administrative procedures; amending
3 s. 120.53, F.S.; revising requirements governing the
4 maintenance, indexing, and listing of agency final
5 orders; requiring an agency to upload specified agency
6 final orders to the electronic database of the
7 Division of Administrative Hearings; prescribing
8 database requirements; specifying types of agency
9 final orders that must be uploaded to the database;
10 requiring an agency to maintain a list of agency final
11 orders not required to be uploaded; reducing the
12 length of time within which an agency or the division
13 must upload or list an agency final order; providing
14 that the agency must maintain a subject-matter index
15 for final orders rendered before a certain date and
16 identify the location of the index on its website;
17 removing the requirement that the Department of State
18 adopt certain rules governing indexing; deleting
19 requirements governing an agency's indexing and
20 listing of final orders; amending ss. 119.021,
21 120.533, and 213.22, F.S.; conforming provisions and
22 cross-references to changes made by the act; providing
23 an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 120.53, Florida Statutes, is amended to
28 read:

29 120.53 Maintenance of agency final orders; ~~indexing;~~

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30 ~~listing; organizational information.-~~

31 (1) Notwithstanding s. 119.021(3), each agency shall upload
32 copies of agency final orders rendered on or after July 1, 2015,
33 which meet the criteria specified in subsection (2) to a
34 centralized

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

36 ~~1. All agency final orders.~~

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

40 ~~b. In lieu of the requirement for making available for~~
41 ~~public inspection and copying a hierarchical subject matter~~
42 ~~index of its orders, an agency may maintain and make available~~
43 ~~for public use an electronic database of agency final its orders~~
44 ~~maintained by the division. The database must allow that allows~~
45 ~~users to research and retrieve the full texts of agency final~~
46 ~~orders by:~~

47 ~~(a) The name of the agency that issued the final order;~~

48 ~~(b) The date the final order was issued;~~

49 ~~(c) The type of final order;~~

50 ~~(d) The subject of the final order; and~~

51 ~~(e) Terms present in the text of the final order ~~devising~~~~
52 ~~an ad hoc indexing system employing any logical search terms in~~
53 ~~common usage which are composed by the user and which are~~
54 ~~contained in the orders of the agency or by descriptive~~
55 ~~information about the order which may not be specifically~~
56 ~~contained in the order.~~

57 ~~(2)e. The Agency final orders that must be uploaded to the~~
58 ~~division's electronic database indexed, unless excluded under~~

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59 ~~paragraph (c) or paragraph (d),~~ include:

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

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

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

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

69 (3) ~~3.~~ Each agency shall maintain a list of all agency final
70 orders rendered pursuant to s. 120.57(4) which are not required
71 to be uploaded to the division's electronic database which have
72 been excluded from the indexing requirement of this section,
73 with the approval of the Department of State, because they do
74 not contain statements of agency policy or statements of
75 precedential value. The list must include the name of the
76 parties to the proceeding and the number assigned to the final
77 order.

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

79 (4) ~~(b)~~ An agency final order that must be uploaded to the
80 division's electronic database or maintained on an agency's list
81 pursuant to subsection (3) must be uploaded to the database or
82 included on the agency's list, respectively, indexed or listed
83 pursuant to paragraph (a) must be indexed or listed within 90
84 120 days after the final order is rendered. In proceedings in
85 which the division has final order authority, the division shall
86 upload all final orders that meet the criteria specified in
87 subsection (2) to the electronic database within 90 days of

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88 rendering the final order. Each final order that must be
89 uploaded to the electronic database or maintained on an agency's
90 list indexed or listed pursuant to paragraph (a) must have
91 attached a copy of the complete text of any materials
92 incorporated by reference; however, if the quantity of the
93 materials incorporated makes attachment of the complete text of
94 the materials impractical, the final order may contain a
95 statement of the location of such materials and the manner in
96 which the public may inspect or obtain copies of the materials
97 incorporated by reference.

98 (5) This section does not waive an agency's responsibility
99 for maintaining a subject matter index for final orders rendered
100 before July 1, 2015, and identifying where such subject matter
101 index is kept on the agency's website. An agency may upload to
102 the division's electronic database all final orders rendered
103 before July 1, 2015, which were required to be placed in a
104 subject-matter index ~~The Department of State shall establish by~~
105 ~~rule procedures for indexing final orders, and procedures of~~
106 ~~agencies for indexing orders must be approved by the department.~~

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

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

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

116 ~~3. The method by which the public may inspect or obtain~~

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117 ~~copies of indexes, lists, and final orders.~~

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

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

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

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

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

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

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146 ~~specify how assistance and information pertaining to final~~
147 ~~orders may be obtained.~~

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

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

159 ~~(b) An agency may publish its official reporter or may~~
160 ~~contract with a publishing firm to publish its official~~
161 ~~reporter; however, if an agency contracts with a publishing firm~~
162 ~~to publish its reporter, the agency is responsible for the~~
163 ~~quality, timeliness, and usefulness of the reporter. The~~
164 ~~Department of State may publish an official reporter for an~~
165 ~~agency or may contract with a publishing firm to publish the~~
166 ~~reporter for the agency; however, if the department contracts~~
167 ~~for publication of the reporter, the department is responsible~~
168 ~~for the quality, timeliness, and usefulness of the reporter. A~~
169 ~~reporter that is designated by an agency as its official~~
170 ~~reporter and approved by the Department of State constitutes the~~
171 ~~official compilation of the administrative final orders for that~~
172 ~~agency.~~

173 ~~(c) A reporter that is published by the Department of State~~
174 ~~may be made available by annual subscription, and each agency~~

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175 ~~that designates an official reporter published by the department~~
176 ~~may be charged a space rate payable to the department. The~~
177 ~~subscription rate and the space rate must be equitably~~
178 ~~apportioned to cover the costs of publishing the reporter.~~

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

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

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

199 Section 2. Subsection (3) of section 119.021, Florida
200 Statutes, is amended to read:

201 119.021 Custodial requirements; maintenance, preservation,
202 and retention of public records.—

203 (3) Agency orders that comprise final agency action and

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204 that must be electronically uploaded ~~indexed~~ or listed pursuant
205 to s. 120.53 have continuing legal significance; therefore,
206 notwithstanding any other provision of this chapter or any
207 provision of chapter 257, each agency shall permanently maintain
208 records of such orders pursuant to the applicable rules of the
209 Department of State.

210 Section 3. Section 120.533, Florida Statutes, is amended to
211 read:

212 120.533 Coordination of maintenance ~~indexing~~ by Department
213 of State.—The Department of State shall:

214 (1) Administer the coordination of the maintenance
215 ~~indexing, management, preservation, and availability~~ of agency
216 orders that are required to be maintained ~~must be indexed or~~
217 ~~listed~~ pursuant to s. 120.53 ~~s. 120.53(1)~~.

218 (2) Provide, by rule, guidelines for the maintenance
219 ~~indexing~~ of agency orders. ~~More than one system for indexing may~~
220 ~~be approved by~~ The Department of State may approve more than one
221 system for maintenance, including systems or methods in use, or
222 proposed for use, by an agency. More than one system may be
223 approved for use by a single agency as best serves the needs of
224 that agency and the public.

225 (3) Provide, by rule, for storage and retrieval systems to
226 be maintained by agencies for maintenance and availability of
227 ~~indexing, and making available~~, agency orders by subject matter.
228 The Department of State may approve more than one system,
229 including systems in use, or proposed for use, by an agency.
230 Storage and retrieval systems that may be used by an agency
231 include, without limitation, a designated reporter or reporters,
232 a microfilming system, an automated system, or any other system

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233 considered appropriate by the Department of State.

234 (4) Determine which final orders must be maintained ~~indexed~~
235 for each agency.

236 (5) Require each agency to report to the department
237 concerning which types or categories of agency orders establish
238 precedent for each agency.

239 Section 4. Subsection (1) of section 213.22, Florida
240 Statutes, is amended to read:

241 213.22 Technical assistance advisements.—

242 (1) The department may issue informal technical assistance
243 advisements to persons, upon written request, as to the position
244 of the department on the tax consequences of a stated
245 transaction or event, under existing statutes, rules, or
246 policies. After the issuance of an assessment, a technical
247 assistance advisement may not be issued to a taxpayer who
248 requests an advisement relating to the tax or liability for tax
249 in respect to which the assessment has been made, except that a
250 technical assistance advisement may be issued to a taxpayer who
251 requests an advisement relating to the exemptions in s.
252 212.08(1) or (2) at any time. Technical assistance advisements
253 shall have no precedential value except to the taxpayer who
254 requests the advisement and then only for the specific
255 transaction addressed in the technical assistance advisement,
256 unless specifically stated otherwise in the advisement. Any
257 modification of an advisement shall be prospective only. A
258 technical assistance advisement is not an order issued pursuant
259 to s. 120.565 or s. 120.569 or a rule or policy of general
260 applicability under s. 120.54. Section 120.53 does not apply ~~The~~
261 ~~provisions of s. 120.53(1) are not applicable~~ to technical

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262 assistance advisements.

263 Section 5. This act shall take effect July 1, 2015.