The Florida Senate

PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Operations Committee

BILL:	CS/SB 1970
INTRODUCER:	Committee on Governmental Operations
SUBJECT:	Exemptions from the Administrative Procedure Act
DATE:	March 8, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	**Fav/CS**
2.			GA	
3.				
4.				
5.				
6.				

I. Summary:

This bill implements committee-recommended statutory changes proposed as a result of the multi-committee review of exemptions from the Administrative Procedure Act. The Interim Project of the Governmental Operations Committee resulted in Report Number 2007-128.

The bill amends some exemptions from the default processes of the Administrative Procedure Act of ch. 120, F.S., repeals some obsolete exemptions, and corrects some cross-references.

This bill amends sections 24.109, 120.56, 120.569, 120.57, 120.65, 120.80, 120.81, 163.3177, 186.508, 370.26, 373.421, 380.06, 388.4111, 393.0661, 393.125, 403.788, 403.9415, 408.039, 409.285, 440.021, 456.073, 458.345, 459.021, 497.153, 538.11, 548.07, 627.0612, 1002.33, 1002.335, and 1002.34 of the Florida Statutes.

The bill repeals section 548.073 of the Florida Statutes.

The bill takes effect July 1, 2007.

II. Present Situation:

Emergency Rules of the Department of the Lottery- Section 24.109(1), F.S., provides that the Department of the Lottery, when adopting emergency rules, need not make the findings required by s. 120.54(4)(a), F.S. Section 24.109(1), F.S., provides that "the Legislature further finds that the unique nature of state lottery operations requires, from time to time¸ that the department respond as quickly as is practicable to changes in the marketplace." Section 120.54(4)(a), F.S., requires an agency to state in writing the "specific facts and reasons for finding an immediate

danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances." The emergency rules adopted pursuant to s. 24.109(1), F.S., are also exempt from the provision in s. 120.54(4)(c), F.S., that provides that the emergency rules shall not be effective for longer than 90 days and are not renewable. If a proposed rule that addresses the subject of the emergency rule is challenged then the emergency rule is effective during the pendency of the rule challenge. Emergency rules for the department under s. 24.109(1), F.S., remain effective until replaced by other emergency rules or by rules adopted under the non-emergency procedures of chapter 120, F.S. This exemption applies to all rules of the department, including rules specific to lottery games and rules that are not game specific.

Rules of Evidence in Administrative Hearings - The "Williams Rule" is a rule of evidence codified in s. 90.404(2)(a), F.S. It provides that similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.[1] The enumerated list of issues of which evidence of other crimes, wrongs, or acts may be relevant to prove a material fact is a non-inclusive list and is not statutorily limited to the instances specifically enumerated therein. This clarification is in accordance with existing case law.[2]

Even if evidence of other crimes is relevant and not barred by the "Williams Rule" (i.e., s. 90.404(2)(a), F.S.) it still may be excluded under s. 90.403, F.S., if its probative value is substantially outweighed by undue prejudice.[3] Section 90.403, F.S., provides that relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.

Section 120.569(2)(g), F.S., provides that in administrative hearings, irrelevant, immaterial, or unduly repetitious evidence must be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in court.

Section 120.57(1)(d), F.S., is a hybrid of the "Williams Rule." Section 120.57(1)(d), F.S., provides that, notwithstanding s. 120.569(2)(g), F.S., in any administrative proceeding, similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a

[1]The *Williams Rule* was announced by the Florida Supreme Court in the case of *Williams v. State*, 110 So.2d 654 (Fla. 1959). In *Williams*, the court upheld the admission of the similar fact evidence and expressed the rule both in terms of when such evidence is admissible and when it is not.
[2] See *Saffor v. State*, 660 So.2d 668, 674 (Fla. 1995).
[3] See *Williams v. State*, 621 So.2d 413, 415 (Fla. 1993).

written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

In an administrative hearing, the “Williams Rule” provision allows admission of similar fact evidence to prove a material fact at issue, such as motive, opportunity, preparation, etc. For example, licensed health care professionals who are alleged to have committed sexual misconduct may schedule a patient’s appointment for a time when other personnel are not likely to be in the office if the professional intends to take inappropriate action, e.g., very early or very late in the day. The “Williams Rule” allows the admission of such evidence.

The exemption to s. 120.569(2)(g), F.S., which is at issue, was adopted in ch. 94-161, Laws of Florida, and was enacted along with a “rape-shield” type exemption that now appears in s. 120.81(4), F.S. When both rules of evidence were initially adopted, they were placed in s. 120.58, F.S. (1994). As a part of the 1996 revisions to ch. 120, F.S., the “rape shield” provision was separated out and placed in s. 120.81, F.S., the exemptions section of ch. 120, F.S.

Judges of Compensation Claims - Judges of compensation claims (JCCs) are housed within the Office of the Judges of Compensation Claims (OJCC), which is located within the Division of Administrative Hearings (DOAH). The JCCs hear cases involving injuries to employees, in which the parties are the employee (or survivor) and the employee's employer and/or the employer's insurance carrier or servicing agent. No state agency is involved, and there is no preliminary agency action giving rise to the dispute. The litigation is between private parties and does not involve public policy implications as do most cases arising under ch. 120. The JCCs enter final orders, and judicial review is directly to the First District Court of Appeal.

A case is initiated by the filing of a petition for benefits. As the case progresses, additional petitions are filed in that same case seeking, for example, additional medical testing and treatment. As the case further progresses to final resolution, only some of the petitions in that case may remain pending for adjudication, while some of the petitions including the original one may have been amicably resolved by the parties.

Sections 440.25 and 440.45(1), F.S., provide statutory deadlines for the adjudication of workers’ compensation claims and authority for the director of the Division of Administrative Hearings to adopt rules for adjudications, respectively. Workers' compensation cases, because they are excluded from ch. 120 adjudication procedures, do not utilize the Uniform Rules of Procedure utilized by all state agencies; rather, they are processed in accordance with uniform rules of procedure promulgated pursuant to ch. 120 and found in chapter 60Q-6, Florida Administrative Code. In other words, the actual workers' compensation adjudications are exempt from ch. 120 but, in other respects, the OJCC itself is within the executive branch and is subject to ch. 120 requirements other than for adjudication of disputes.

Section 120.80(1)(b), F.S., provides that a JCC in adjudicating claims under chapter 440, F.S., is not an agency or part of an agency for purposes of chapter 120, F.S. This provision, although in existence since the APA was enacted, became the focus of a dispute within the last four years concerning whether the judicial branch (Supreme Court) or the executive branch (DOAH) had the authority to promulgate rules of procedure for workers' compensation adjudications. The

Supreme Court ultimately ruled that DOAH possessed the rulemaking authority and responsibility, but the language of the subsection contributed to the confusion.

Office of Appeal Hearings - Section 120.80(7), F.S., provides that notwithstanding s. 120.57(1)(a), F.S., hearings conducted within the Department of Children and Family Services (DCF) in the execution of those social and economic programs administered by the former Division of Family Services of the former Department of Health and Rehabilitative Services prior to the reorganization effected by chapter 75-48, Laws of Florida, need not be conducted by an administrative law judge assigned by the division.

The Office of Appeal Hearings, located in the Office of Inspector General within DCF, has for many years provided federal "fair hearings" for applicants and recipients of federally-funded benefits programs. "Fair hearings" are required by the specific underlying federal programs and follow procedures set forth in federal regulations. Generally speaking, an individual is entitled to a fair hearing when a state agency denies benefits to a program applicant, or when the state agency reduces or terminates benefits to an existing recipient. The Office of Appeal Hearings has, in chapter 65-2, F.A.C., promulgated rules that mirror the fair hearing requirements in the various federal program regulations.

The Office of Appeal Hearings in DCF has been conducting fair hearings for programs administered by DCF, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, and the Department of Revenue.

The recent case of *J. M. v. Agency for Persons with Disabilities*, 2006 WL 2251885 (Fla. 1st DCA, Aug. 8, 2006) held that s. 120.80(7), F.S., did not apply to persons challenging the denial, reduction, or termination of benefits from APD under the HCBS Medicaid waiver. The court's rationale was that s. 393.0651(8), F.S., provided a right to a hearing under s. 120.57, F.S., and was more specific and later-enacted than s. 120.80(7), F.S. The result of the *J. M.* decision will be that HCBS med-waiver hearings will now be DOAH hearings.

Telecommunications Act Appellate Decisions - Section 120.80(13)(e), F.S., requires that Appellate decisions that implement the Telecommunications Act of 1996, Public Law No. 104-104, must be consistent with the provisions of that act.

Department of Health Exemptions from s. 120.57(1)(a), F.S. - Section 120.80(15), F.S., contains two categories of exemptions for the Department of Health from s. 120.57(1)(a), F.S., relating to procedures applicable to hearings involving disputed issues of material fact. The first category of exemption prohibits the Secretary of Health, the Secretary of Health Care Administration, or a board or member of a health profession board from conducting formal hearings relating to the regulation of professions. Section 120.57(1)(a), F.S., allows agency heads, including collegial bodies, such as boards of the various health professions, to conduct formal hearings that involve disputed issues of material fact regarding agency decisions that affect a person's substantial interests, such as disciplinary or other regulatory proceedings. With regard to disciplinary proceedings for health professions, however, s. 456.073(5), F.S., states: "A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact." Thus, the exemption in s. 120.80(15), F.S., clarifies that the specific provisions of s. 456.073(5), F.S.,

control over the general provisions of s. 120.57(1)(a), F.S., with regard to disciplinary proceedings for health professions that require formal hearings when there are disputed issues of material fact.

The second category of exemption contained in s. 120.80(15), F.S., authorizes the Department of Health to conduct hearings for specified programs without using an administrative law judge as required by s. 120.57(1)(a), F.S. Hearings conducted within the Department of Health in execution of the Special Supplemental Nutrition Program for Women, Infants, and Children; the Child Care Food Program; the Children's Medical Services Program; the Brain and Spinal Cord Injury Program; and the exemption from disqualification reviews for certified nurse assistants program need not be conducted by an administrative law judge. The Department of Health may contract with the Department of Children and Family Services for a hearing officer in these matters.

Prisoner and Parolee Challenges to Department of Corrections and Parole Commission Rulemaking - The 1992 Legislature removed prisoners from the class of persons authorized to make rule challenges. This change was sought by the Department of Corrections due to the prolific, burdensome and frivolous nature of many of the past challenges. The s. 120.81(3), F.S., exemption effectively prevented prisoners from seeking rule relief through administrative law judges and district courts of appeal to challenge a Department of Corrections' rule. The exemption also denied parolees the ability to challenge agency action or judicial review when proceedings related to revocation of parole. While these legal avenues were closed off after 1992, remedies are still available to prisoners seeking to invalidate a rule through a petition for declaratory judgment filed in Leon County Circuit Court.

This exemption builds on a long standing precedent of removing civil rights from convicted criminals. It is also clear that without the exemption the agencies would be inundated with rule challenges that frequently are without legal merit. However, prisoners and parolees are substantially and uniquely impacted by the Department of Corrections' rulemaking and actions of the Parole Commission. Without authority to challenge the rules, the parties most critically impacted by the rules are barred from participation.

Implementing Rules for the 1985 Growth Management Act - Section 163.3177(9), F.S., exempts the original adoption of Rule 9J-5, F.A.C., from rule challenges under s. 120.56(2), F.S., and drawout proceedings under s. 120.54(3)(c)2, F.S. Instead, the rule was subject to legislative approval with or without modifications. This legislative approval is found in s. 163.3177(10)(k), F.S. According to the Department of Community Affairs, the cited provisions applied only to the original enactment of Rule 9J-5, F.A.C., which was accomplished almost twenty years ago.

Regional Policy Plans - Section 186.508(1), F.S., part of the Florida State Comprehensive Planning Act of 1972, exempts the rules adopting strategic regional policy plans from rule challenges and drawout proceedings, and makes them effective immediately upon filing with the Department of State instead of twenty days thereafter, as is the case under the default provisions of ch. 120, F.S.

This provision was added to the 1972 Act as part of the Legislature's enactment of the 1985 Growth Management Act. The same purpose is served by this provision as is by the identical one that appears in s. 163.3177(9), F.S.; that is, to ensure that local governments are able to prepare and adopt comprehensive plans with knowledge of the rules that would apply. To allow rule challenges and drawout proceedings would have likely delayed the effective date of the regional plans, and may have resulted in their being altered while local governments were preparing their original plans.

Permit Process for Certain Aquaculture Activities - Section 370.26(2), F.S., provides that the process used for developing a consolidated aquaculture permit or the criteria used for issuing temporary permits for aquaculture activities shall not be subject to s. 120.52, F.S. The exemption allowed the Department of Environmental Protection to consolidate a series of internal requirements into one general permit.

Formal Determinations of Surface Waters and Wetlands - Sections 373.421(5) and (6), F.S., provide that formal determinations under s. 373.421(5), F.S., and validated informal nonbinding determinations under s. 373.421(6), F.S., are final agency action subject to ss.120.569 and 120.57, F.S. The purpose is to provide a point–of–entry for substantially affected persons to request an administrative hearing on such formal determinations or validated informal nonbinding determinations. The use of the term final agency action may be inconsistent in that agency action does not become final until after a timely requested administrative hearing or until the time to request such hearing has expired.

Rules Relating to Developments-of-Regional Impact - Section 380.06(23), F.S., authorizes the state land planning agency to adopt rules relating to developments-of-regional impact (DRI). Section 380.06(23)(d), F.S., specifically authorizes the agency to adopt as rules uniform criteria for assessing and collecting fees charged by regional planning agencies for the review of DRIs and Florida Quality Developments. One portion of this section exempts the adoption of these rules from rule challenges under s. 120.56(2), F.S., and drawout proceedings under s. 120.54(3)(c)2, F.S. These rules have been adopted and are in effect.

AHCA Emergency Rules - Section 393.0661(3), F.S., provides here that pending the adoption of rate methodologies pursuant to nonemergency rulemaking under s. 120.54, F.S., the Agency for Health Care Administration (AHCA), may adopt emergency rules for services or rate reductions in order to remain within appropriation. This ostensibly provides for emergency rules without having to make the findings required by s. 120.54(4)(a), F.S., and without having to comply with the time limits imposed by s. 120.54(4)(c), F.S., in order to comply with the availability of money or any directions or limitations provided in the General Appropriations Act. Rules adopted through this emergency process remain in effect until replaced by rules adopted through the normal procedures or by another emergency rule.

Review of Decisions of Agency for Persons with Disabilities - Section 393.125(1)(c), F.S., provides that a request for hearing shall be made to the agency, in writing, within 30 days' receipt of the notice of a right to hearing.

Review of Disputed Certificate-of-Need Decisions - Section 408.039(6), F.S., establishes a standard for judicial review of disputed certificate-of-need decisions by the Agency for Health

Care Administration (AHCA). This statute appears to exempt AHCA from the normal appellate standard of review for administrative final orders in s. 120.68, F.S.

The apparent exemption has been neutralized by case law that held that the standard of review in s. 408.039(6), F.S., is not really a different standard of review than that found in s. 120.68(7), F.S. See *Big Bend Hospice v. Agency for Health Care Administration*, 904 So.2d 610 (Fla. 1st DCA 2005). The court concluded "that section 408.039(6)(b) is simply a restatement of the standard of review set forth in section 120.68(7) generally."

Administrative Decisions of DCF - Section 409.285(1), F.S., provides that the hearing authority, the Department of Children and Families (DCF), is responsible for a final administrative decision in the name of the department, and that with regard to the department, the decision is final and binding, thus precluding appeal of that decision by the DCF. This provision currently is interpreted to apply as well to the APD, whose Medicaid hearings are presently administered by DCF hearing officers, so that the APD does not have a right of appeal as provided by the judicial review provisions at s. 120.68(1), F.S., "[a] party who is adversely affected by final agency action is entitled to judicial review."

Workers' Compensation Adjudications - Section 440.021, F.S., provides that workers' compensation adjudications, communications of the results of investigations by the Department of Financial Services (DFS) pursuant to s. 440.185(4), F.S., and penalty and interest disputes are exempt from ch. 120, F.S. Communications of the results of investigations by DFS pursuant to s. 440.185(4), F.S., which is an obsolete cross-reference, are exempt from ch. 120. DFS is authorized to assess penalties on employers and carriers pursuant to an action under ch. 440, F.S. DFS is authorized to impose penalties and affected parties may appeal such actions through a JCC, pursuant to s. 440.25(2)-(5), F.S., which is also obsolete language.

The ch. 120 exemption relating to specific investigatory authority under s. 440.185(4), F.S., is obsolete since this provision in s. 440.185, F.S., was repealed by the Legislature in 1994. Likewise, the dispute process relating to protesting a penalty or interest dispute assessed by DFS is outdated since the JCCs no longer adjudicate such disputes. Other ch. 120 provisions in ch. 440, F.S., govern interest and penalty protest by affected parties.

Probable Cause Panels - Section 120.525, F.S., requires each agency to give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Weekly not less than 7 days before the event. The notice must include a statement of the general subject matter to be considered. The exemption to s. 120.525, F.S., contained in s. 456.073(4), F.S., authorizes the Department of Health and health care profession boards to waive publication of any notice of the proceedings of a probable cause panel of the department or boards in the Florida Administrative Weekly.

The waiver of publication of notice for such proceedings is consistent with the confidentiality that the Legislature has conferred upon the disciplinary process of health care professions regulated by the Department of Health and boards. Section 456.073, F.S., specifies that all proceedings of a probable cause panel of the department or a board are exempt from the requirements of the Public Meetings Law until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of

confidentiality.[4] Any case that is dismissed prior to a finding of probable cause is confidential and exempt from the Public Records Law.[5] A disciplinary complaint and all information obtained pursuant to an investigation by the Department of Health are confidential and exempt from the Public Records Law until 10 days after probable cause has been found or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first.[6] When probable cause has been found and the complaint and related information is public, any subsequent probable cause panel proceeding convened to reconsider the original finding of probable cause is open to the public and a notice is placed in the Florida Administrative Weekly.

The exemption to s. 120.525, F.S., is also consistent with s. 120.57, F.S., which specifies additional procedures for disputes between agencies and persons under the Administrative Procedure Act. Subsection 120.57(5), F.S., provides that the section does not apply to agency investigations preliminary to agency action. An agency's actions are preliminary and it is still investigating an allegation of professional misconduct until it finds that probable cause exists.

Disciplinary Proceedings of Board of Medicine and Board of Osteopathic Medicine - Section 458.345, F.S., specifies requirements for the registration of resident physicians, interns, and fellows in fellowship training with the Board of Medicine. Resident physicians, interns, and fellows are explicitly subject to the provisions in s. 458.331, F.S., relating to grounds for which such practitioners may be disciplined by the Board of Medicine. Section 458.345(5), F.S., provides an exemption to the definitions in chapter 120, F.S., that are codified in s. 120.52, F.S. Section 458.345(5), F.S., provides that notwithstanding any provision of s. 458.345, F.S., or s. 120.52, F.S., to the contrary, any person who is registered as a resident physician, intern, or fellow is subject to s. 458.331, F.S.

Section 459.021, F.S., specifies requirements for the registration of resident physicians, interns, and fellows in fellowship training with the Board of Osteopathic Medicine. Resident physicians, interns, and fellows are explicitly subject to the provisions in s. 459.015, F.S., relating to grounds for which such practitioners may be disciplined by the Board of Osteopathic Medicine. Section 459.021(8), F.S., provides an exemption to the definitions in chapter 120, F.S., that are codified in s. 120.52, F.S. Section 459.021(8), F.S., provides that notwithstanding any provision of s. 459.021, F.S., or s. 120.52, F.S., to the contrary, any person who is registered as a resident physician, intern, or fellow is subject to s. 459.015, F.S.

Section 120.52, F.S., specifies definitions for purposes of the Administrative Procedure Act. It defines "license" to mean a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act. "Licensing" is defined by s. 120.52, F.S., to mean the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

[4] Section 456.073(4), F.S.
[5] Section 456.073(2), F.S.
[6] Section 456.073(10), F.S.

The exemptions to s. 120.52, F.S., in sections 458.345 and 459.021(8), F.S., were enacted in 1997, when resident physicians, interns, and fellows were first explicitly made subject to provisions relating to grounds for which such practitioners may be disciplined by the Board of Medicine or Board of Osteopathic Medicine. The exemptions to s. 120.52, F.S., were enacted, in part, to address any legal arguments that could be made by any resident physicians who were already registered and who were unaware that as registrants they could be disciplined by the Board of Medicine or Board of Osteopathic Medicine. Today, the need for the exemptions from s. 120.52, F.S., is unclear and appears to directly contradict the definition of "license" as used in s. 120.52, F.S. Elimination of the exemptions from s. 120.52, F.S., would be consistent with and complement the authority of the Board of Medicine or Board of Osteopathic Medicine to regulate resident physicians who are registered under chapters 458 or 459, F.S.

Funeral, Cemetery, and Consumer Services - Section 497.153(9), F.S., provides that certain determinations made by the Department of Financial Services (DFS) with regard to funeral and cemetery services are not subject to ch. 120, F.S. Specifically, s. 497.153(9)(a), F.S., exempts a determination by DFS to exercise its authority under this chapter to investigate, financially examine, or inspect any person or entity; or a determination by the department concerning how to conduct such investigation, financial examination, or inspection; or a determination by the department concerning the content of any report of investigation, financial examination, or inspection. Section 497.153(9)(d), F.S., provides that determinations by DFS not to offer any settlement to a licensee concerning any disciplinary matter does not entitle any person to proceedings under ch. 120, F.S.

Secondhand Dealers and Secondary Metals Recyclers - Section 538.11, F.S., authorizes the Department of Revenue to adopt emergency rules to implement ch. 538, F.S. Such rules remain effective for 6 months. Other rules which implement this chapter are not subject to s. 120.56(2), F.S., challenge or s. 120.54(3)(c)2., F.S., drawout, but, once adopted, are subject to s. 120.56, F.S., challenge. Such rules are effective upon filing notwithstanding s. 120.54(3)(e)6., F.S. This exemption provided the department with emergency rule authority when registration requirements for these businesses were assigned to the department, to allow for orderly implementation of the law.

Pugilistic Exhibitions - Section 548.07, F.S., provides that, notwithstanding the provisions of ch. 120, F.S., any member of the Florida State Boxing Commission may suspend any license or permit of any person charged with violating the provisions of ch. 548, F.S., if such action is necessary to protect the public and the best interests of the sport of boxing. The commission member may do that on his or her own motion or upon a verified written complaint. The suspension is effective until final determination by the commission at a hearing held within 10 days after the suspension.

Section 548.073, F.S., allows any member of the Florida State Boxing Commission to conduct a hearing under ch. 548, F.S. A majority of the members of the commission must examine the record and approve the decision before the case is adjudicated.

Decisions Concerning Charter Schools- Section 1002.33, F.S., authorizes district school boards and state universities to sponsor charter schools. A charter school applicant is required to submit application to the district school board with appropriate jurisdiction. The district school

board then approves or denies an application by majority vote. In the event of a denial or a failure to act on an application, a charter school applicant is authorized to appeal the district school board's decision to the State Board of Education (SBE) within a certain timeframe. Upon review, the SBE is required to issue a written decision to the district school board that indicates approval or denial of the application. The exemption in s. 1002.33(6)(c), F.S., provides that the SBE decision is not subject to any provisions of ch. 120, F.S.

The 2006 Legislature established the Florida Schools of Excellence Commission (FSE), and identified as its purpose the operation in an alternate capacity as an independent state level charter school authorizer.[7] With the addition of the FSE, the district school board and the FSE will share concurrent authority to authorize charter schools and FSE charter schools within that particular district. District school boards are, however, authorized to apply to the State Board of Education (SBE) for an exclusive grant of authority to approve charter school applications. Following a public, noticed hearing, the SBE is required to grant or deny exclusive authority to the district school board. The 1002.335(5)(f), F.S., exemption provides that this SBE decision is not subject to ch. 120 provisions, and constitutes a final action subject only to judicial review by the district court of appeal.

Municipalities, state universities, community colleges, and regional educational consortia are authorized to apply to the FSE for status as cosponsors of charter schools.
Section 1002.335(6)(d), F.S., provides that the FSE's decision to deny an application or revoke approval of a cosponsor is not subject to ch. 120, F.S., and may be appealed to the SBE.

Decisions Concerning Charter Technical Career Centers - Section 1002.34, F.S., authorize a district school board, community college board of trustees, or a consortium of one or more of each to agree to sponsor a center to be located in the board's jurisdictional area. For those applications that are denied, the applicant is authorized to appeal the board's decision to the SBE. The SBE is required to remand the application to the sponsor with a written recommendation of approval or denial. The exemption in s. 1002.34(6)(b), F.S., provides that the SBE's decision is not subject to ch. 120, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 24.109(1), F.S., by limiting an exemption that allows emergency rules adopted by Department of the Lottery to remain in effect until replaced by other emergency rules or other adopted rules. The change means only emergency rules relating to the operation of lottery games may remain in effect until replaced; other emergency rules adopted by the Department of the Lottery will be effective for 90 days, pursuant to s. 120.54(4)(c), F.S.

Sections 2 and 3 of the bill moves the substance of the following two provisions to s. 120.569(2)(g), F.S.:

- Section 120.57(1)(d), F.S., which deems as admissible in administrative proceedings similar fact evidence offered to prove a material fact at issue.
- Section 120.81(4), F.S., which contains the "rape shield" provision relating to disciplinary proceedings against licensed professionals.

[7] Section 1002.335(3)(a), F.S.

The effect of moving the sections to s. 120.569(2)(g), F.S., is to consolidate rules of evidence applicable to administrative hearings.

Section 4 amends s. 120.80(1)(b), F.S., to clarify that judges of compensation claims are exempt from the notice and hearing requirements of ch. 120, F.S., when adjudicating compensation claims, but are subject to the rulemaking procedures of the chapter.

The bill amends s. 120.80(7), F.S., to provide that hearings relating to benefits under a public assistance program defined in s. 409.285, F.S., need not be conducted by an administrative law judge (ALJ) of the Division of Administrative Hearings, and can be conducted by the Office of Appeal Hearings within the Department of Children and Family Services (DCF), if DCF either administers the program or has an agreement with the agency that does administer the program.

The bill repeals the provision in s. 120.80(13)(e), F.S., requiring that appellate decisions that implement the Telecommunications Act of 1996, Public Law No. 104-104, must be consistent with the provisions of that act. The jurisdiction for such cases is determined by state and federal law, so the exemption from ch. 120, F.S., is unnecessary.

The bill amends s. 120.80(15), F.S., by repealing the provision allowing the Department of Health (DOH), instead of an ALJ, to conduct disqualification reviews of certified nursing assistants. The Board of Nursing now performs this function. The bill also repeals a provision that grants DOH discretionary authority to contract with DCF for hearing officers in certain matters. The authority is obsolete and unused.

Section 5 amends s. 120.81(3), F.S., by providing that the Parole Commission may limit prisoner input about Parole Commission rules to written statements.

This section of the bill also moves the substance of s. 120.81(4), F.S., to s. 120.569(2)(g)3., F.S.

Sections 6, 7, 8, 9, 10 and 11 change references within sections 120.56(4), 120.65(10)(d), 388.411(2)(c), 403.788(1), 403.9415(4), and 627.0612, F.S., necessitated by the movement of s. 120.57(1)(d), F.S., to s. 120.569(2)(g), F.S., occasioned by Section 2 of this bill. There are no substantive changes in these sections.

Section 12 repeals obsolete provisions in sections 163.3177(9) and (10), F.S., relating to the implementing rules for the 1985 Growth Management Act (Rule 9J-5, F.A.C.). The provisions are obsolete because the rule has already been enacted, and ch. 120, F.S., provides for amendments and challenges to rules.

Section 13 amends s. 186.508(1), F.S., to clarify that the original adoption of regional policy plans are not subject to ch. 120, F.S., rule challenge. Amendments to such plans are still subject to ch. 120, F.S., challenge.

Section 14 amends s. 370.26, F.S., by deleting an obsolete provision requiring the Department of Environmental Protection to develop a process for consolidating certain aquaculture permits.

Section 15 amends s. 373.421, F.S., to clarify that a formal determination, or validated informal nonbinding determination, is final agency action unless a timely and sufficient petition for an administrative hearing is filed under ss. 120.569 and 120.57, F.S.

Section 16 repeals an obsolete provision in s. 380.06(23)(d), F.S., that provides that the promulgation of rules relating to uniform criteria for assessing and collecting fees charged by regional planning agencies for the review of developments-of-regional impact and Florida Quality Developments are exempt from ch. 120, F.S., rule challenges.

Section 17 repeals a provision in s. 393.0661(3), F.S., providing that the Agency for Health Care Administration (AHCA), pending the adoption of rate methodologies pursuant to nonemergency rulemaking under s. 120.54, F.S., may adopt emergency rules for services or rate reductions in order to remain within appropriation.

Section 18 amends s. 393.125, F.S., by replacing a provision relating to ch. 120 rights for review of decisions by the Agency for Persons with Disabilities (APD), with a provision giving DOAH jurisdiction to conduct fair hearings related to issues before APD. The provision also grants authority to APD to adopt rules for administrative hearings relevant to actions concerning client services, and provides that witnesses appearing on behalf of a party may be permitted to appear by phone or video.

Section 19 amends s. 408.039(6), F.S., to delete a provision appearing to exempt AHCA from the normal appellate standard of review for administrative final orders in s. 120.68, F.S. Repeal of the provision will clarify that the standard of review in s. 408.039(6), F.S., is not really a different standard of review than that found in s. 120.68(7), F.S.

Section 20 amends s. 409.285, F.S., by changing terminology, and providing a definition of "public assistance" to include specified assistance and programs authorized in statute for DCF to provide benefits to individuals.

Section 21 amends s. 440.021, F.S., to repeal outdated provisions relating to investigations and penalty and interest protests in workers' compensation adjudications. The investigative authority was repealed by the Legislature in 1994, and judges of compensation claims no longer adjudicate disputes about penalties or interest.

Section 22 amends s. 456.073(4), F.S., to provide that the authorization to waive publication of any notice of the proceedings of a probable cause panel of DOH or health care profession boards does not apply to the proceedings of a probable cause panel that is convened to reconsider the original finding of probable cause. Such reconvenings will therefore require public notice.

Sections 23 and 24 amend sections 458.345(5) and 459.021(8), F.S., respectively, by eliminating an exemption from s. 120.52, F.S. The exemption is no longer necessary, as existing statutory language makes clear which practitioners are subject to disciplinary proceedings by the Board of Medicine and Board of Osteopathic Medicine.

Section 25 amends s. 497.153(9), F.S., by repealing a paragraph that exempts from ch. 120, F.S., determinations by DFS to exercise its authority to investigate; or its determination concerning

how to conduct such investigations; or its determination concerning the content of any report of investigation, financial examination, or inspection. The bill also repeals a provision that determinations by DFS not to offer any settlement to a licensee concerning any disciplinary matter does not entitle any person to proceedings under ch. 120, F.S. The repeal of these exemptions does not create ch. 120, F.S., rights; the exemptions are not necessary because the listed actions probably do not constitute agency action that would give rise to ch. 120, F.S, rights.

Section 26 amends s. 538.11, F.S., by repealing an obsolete provision exempting from ch. 120, F.S., those emergency rules that implement Department of Revenue policies regarding secondhand dealers and secondary metals recyclers.

Section 27 amends s. 548.07, F.S., by clarifying that the Florida State Boxing Commission may suspend any license or permit of any person charged with violating the provisions of ch. 548, F.S., if such action is necessary to protect the health, safety and welfare of the public. The change removes “best interests of the sport” as a basis for making such an emergency suspension.

Section 28 repeals s. 548.073, F.S., which allows any member of the Florida State Boxing Commission to conduct a hearing under ch. 548, F.S. The repeal of this section makes hearings relating to this section consistent with other boards within the Department of Business and Professional Regulation or other commissions subject to ch. 120, F.S.

Section 29 amends s. 1002.33(6)(c), F.S., to require the State Board of Education (SBE) to include written findings of fact when issuing a written decision to a school board on an applicant’s appeal of the school board’s denial of an application for a Charter School.

Section 30 amends s. 1002.335(5)(f), F.S., to require the SBE to include written findings of fact when issuing a decision on whether a district school board will be granted authority to authorize charter schools.

The bill also amends s. 1002.335(6)(d), F.S., to require the Florida Schools of Excellence Commission to include written findings of fact when issuing a decision on whether to deny an application or revoke approval of a cosponsor of a charter school.

Section 31 amends s. 1002.34(6)(b), F.S., to require the SBE to include written findings of fact when issuing a decision related to applications to sponsor a charter technical career center.

Section 32 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The change occasioned in s. 393.125, F.S., means the Division of Administrative Hearings (DOAH) will be conducting hearings previously conducted by the Department of Children and Family Services (DCF). The Agency for Persons with Disabilities (APD) will see its share of the costs of DOAH hearing hours go up significantly, but the exact amount of that increase is difficult to determine. The costs to APD and DOAH will depend on how many hearings are actually conducted, and whether APD is able to obtain Medicaid dollars for the administrative costs of the fair hearings. DOAH bases its reimbursement request to agencies on the hearing hours of the previous fiscal year, so the full impact to APD will occur in Fiscal Year 2008-2009. DCF may see reduced administrative costs resulting from no longer conducting the APD hearings.

New requirements that the State Board of Education include written findings of fact when issuing certain decisions relating to charter schools may result in additional administrative costs. Those costs are indeterminate, and should be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.