

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00893A-10

20107074

1 A bill to be entitled
2 An act relating to electronic filing in the Division
3 of Administrative Hearings; amending ss. 440.192 and
4 440.25, F.S.; providing procedures for filing
5 petitions for benefits and other documents in workers'
6 compensation benefits proceedings; amending ss. 440.29
7 and 440.45, F.S.; authorizing the Office of the Judges
8 of Compensation Claims to adopt rules to implement
9 electronic procedures; amending s. 120.54, F.S.;
10 requiring a petitioner requesting an administrative
11 hearing to include the petitioner's e-mail address;
12 creating s. 120.585, F.S.; requiring an attorney to
13 use electronic means when filing a document with the
14 Division of Administrative Hearings; encouraging a
15 party not represented by an attorney to file documents
16 whenever possible by electronic means through the
17 division's website; amending ss. 57.111, 120.56,
18 120.569, 120.57, 552.40, 553.73, and 961.03, F.S.;
19 providing for electronic procedures in administrative
20 proceedings, including proceedings involving the
21 Florida Building Code and compensation for wrongful
22 incarceration; conforming provisions to changes made
23 by the act; providing an effective date.

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

26
27 Section 1. Subsections (1) and (8) of section 440.192,
28 Florida Statutes, are amended to read:

29 440.192 Procedure for resolving benefit disputes.—

585-00893A-10

20107074

30 (1) Any employee may, for any benefit that is ripe, due,
31 and owing, file ~~by certified mail, or by electronic means~~
32 ~~approved by the Deputy Chief Judge,~~ with the Office of the
33 Judges of Compensation Claims a petition for benefits which
34 meets the requirements of this section and the definition of
35 specificity in s. 440.02. An employee represented by an attorney
36 shall file by electronic means approved by the Deputy Chief
37 Judge. An employee not represented by an attorney may file by
38 certified mail or by electronic means approved by the Deputy
39 Chief Judge. The department shall inform employees of the
40 location of the Office of the Judges of Compensation Claims and
41 the office's website address for purposes of filing a petition
42 for benefits. The employee shall also serve copies of the
43 petition for benefits by certified mail, or by electronic means
44 approved by the Deputy Chief Judge, upon the employer and the
45 employer's carrier. The Deputy Chief Judge shall refer the
46 petitions to the judges of compensation claims.

47 (8) Within 14 days after receipt of a petition for benefits
48 by certified mail or by approved electronic means, the carrier
49 must either pay the requested benefits without prejudice to its
50 right to deny within 120 days from receipt of the petition or
51 file a response to petition with the Office of the Judges of
52 Compensation Claims. The response shall be filed by electronic
53 means approved by the Deputy Chief Judge. The carrier must list
54 all benefits requested but not paid and explain its
55 justification for nonpayment in the response to petition. A
56 carrier that does not deny compensability in accordance with s.
57 440.20(4) is deemed to have accepted the employee's injuries as
58 compensable, unless it can establish material facts relevant to

585-00893A-10

20107074

59 the issue of compensability that could not have been discovered
60 through reasonable investigation within the 120-day period. The
61 carrier shall provide copies of the response to the filing
62 party, employer, and claimant by certified mail or by electronic
63 means approved by the Deputy Chief Judge.

64 Section 2. Subsection (1) and paragraphs (a), (c), and (e)
65 of subsection (4) of section 440.25, Florida Statutes, are
66 amended to read:

67 440.25 Procedures for mediation and hearings.—

68 (1) Forty days after a petition for benefits is filed under
69 s. 440.192, the judge of compensation claims shall notify the
70 interested parties by order that a mediation conference
71 concerning such petition has been scheduled unless the parties
72 have notified the judge of compensation claims that a private
73 mediation has been held or is scheduled to be held. A mediation,
74 whether private or public, shall be held within 130 days after
75 the filing of the petition. Such order must give the date the
76 mediation conference is to be held. Such order may be served
77 personally upon the interested parties or may be sent to the
78 interested parties by mail or by electronic means approved by
79 the Deputy Chief Judge. If multiple petitions are pending, or if
80 additional petitions are filed after the scheduling of a
81 mediation, the judge of compensation claims shall consolidate
82 all petitions into one mediation. The claimant or the adjuster
83 of the employer or carrier may, at the mediator's discretion,
84 attend the mediation conference by telephone or, if agreed to by
85 the parties, other electronic means. A continuance may be
86 granted upon the agreement of the parties or if the requesting
87 party demonstrates to the judge of compensation claims that the

585-00893A-10

20107074

88 reason for requesting the continuance arises from circumstances
89 beyond the party's control. Any order granting a continuance
90 must set forth the date of the rescheduled mediation conference.
91 A mediation conference may not be used solely for the purpose of
92 mediating attorney's fees.

93 (4) (a) If the parties fail to agree to written submission
94 of pretrial stipulations, the judge of compensation claims shall
95 conduct a live pretrial hearing. The judge of compensation
96 claims shall give the interested parties at least 14 days'
97 advance notice of the pretrial hearing by mail or by electronic
98 means approved by the Deputy Chief Judge.

99 (c) The judge of compensation claims shall give the
100 interested parties at least 14 days' advance notice of the final
101 hearing, served upon the interested parties by mail or by
102 electronic means approved by the Deputy Chief Judge.

103 (e) The order making an award or rejecting the claim,
104 referred to in this chapter as a "compensation order," shall set
105 forth the findings of ultimate facts and the mandate; and the
106 order need not include any other reason or justification for
107 such mandate. The compensation order shall be filed in the
108 Office of the Judges of Compensation Claims at Tallahassee. A
109 copy of such compensation order shall be sent by mail or by
110 electronic means approved by the Deputy Chief Judge to the
111 ~~parties and~~ attorneys of record and any parties not represented
112 by an attorney at the last known address of each, with the date
113 of mailing noted thereon.

114 Section 3. Subsection (3) of section 440.29, Florida
115 Statutes, is amended to read:

116 440.29 Procedure before the judge of compensation claims.-

585-00893A-10

20107074

117 (3) The practice and procedure before the judges of
118 compensation claims shall be governed by rules adopted by the
119 Office of the Judges of Compensation Claims ~~Supreme Court~~,
120 except to the extent that such rules conflict with the
121 provisions of this chapter.

122 Section 4. Subsection (4) of section 440.45, Florida
123 Statutes, is amended to read:

124 440.45 Office of the Judges of Compensation Claims.—

125 (4) The Office of the Judges of Compensation Claims shall
126 adopt rules to effectuate ~~effect~~ the purposes of this section.
127 Such rules shall include procedural rules applicable to workers'
128 compensation claim resolution, including rules requiring
129 electronic filing and service where deemed appropriate by the
130 Deputy Chief Judge, and uniform criteria for measuring the
131 performance of the office, including, but not limited to, the
132 number of cases assigned and resolved ~~disposed~~, the age of
133 pending and resolved ~~disposed~~ cases, timeliness of decisions
134 ~~decisionmaking~~, extraordinary fee awards, and other data
135 necessary for the judicial nominating commission to review the
136 performance of judges as required in paragraph (2) (c). ~~The~~
137 ~~workers' compensation rules of procedure approved by the Supreme~~
138 ~~Court apply until the rules adopted by the Office of the Judges~~
139 ~~of Compensation Claims pursuant to this section become~~
140 ~~effective.~~

141 Section 5. Paragraph (b) of subsection (5) of section
142 120.54, Florida Statutes, is amended to read:

143 120.54 Rulemaking.—

144 (5) UNIFORM RULES.—

145 (b) The uniform rules of procedure adopted by the

585-00893A-10

20107074

146 commission pursuant to this subsection shall include, but are
147 not limited to:

148 1. Uniform rules for the scheduling of public meetings,
149 hearings, and workshops.

150 2. Uniform rules for use by each state agency that provide
151 procedures for conducting public meetings, hearings, and
152 workshops, and for taking evidence, testimony, and argument at
153 such public meetings, hearings, and workshops, in person and by
154 means of communications media technology. The rules shall
155 provide that all evidence, testimony, and argument presented
156 shall be afforded equal consideration, regardless of the method
157 of communication. If a public meeting, hearing, or workshop is
158 to be conducted by means of communications media technology, or
159 if attendance may be provided by such means, the notice shall so
160 state. The notice for public meetings, hearings, and workshops
161 utilizing communications media technology shall state how
162 persons interested in attending may do so and shall name
163 locations, if any, where communications media technology
164 facilities will be available. Nothing in this paragraph shall be
165 construed to diminish the right to inspect public records under
166 chapter 119. Limiting points of access to public meetings,
167 hearings, and workshops subject to the provisions of s. 286.011
168 to places not normally open to the public shall be presumed to
169 violate the right of access of the public, and any official
170 action taken under such circumstances is void and of no effect.
171 Other laws relating to public meetings, hearings, and workshops,
172 including penal and remedial provisions, shall apply to public
173 meetings, hearings, and workshops conducted by means of
174 communications media technology, and shall be liberally

585-00893A-10

20107074

175 construed in their application to such public meetings,
176 hearings, and workshops. As used in this subparagraph,
177 "communications media technology" means the electronic
178 transmission of printed matter, audio, full-motion video,
179 freeze-frame video, compressed video, and digital video by any
180 method available.

181 3. Uniform rules of procedure for the filing of notice of
182 protests and formal written protests. The Administration
183 Commission may prescribe the form and substantive provisions of
184 a required bond.

185 4. Uniform rules of procedure for the filing of petitions
186 for administrative hearings pursuant to s. 120.569 or s. 120.57.
187 Such rules shall require the petition to include:

188 a. The identification of the petitioner, including the
189 petitioner's e-mail address, if any, for the transmittal of
190 subsequent documents by electronic means.

191 b. A statement of when and how the petitioner received
192 notice of the agency's action or proposed action.

193 c. An explanation of how the petitioner's substantial
194 interests are or will be affected by the action or proposed
195 action.

196 d. A statement of all material facts disputed by the
197 petitioner or a statement that there are no disputed facts.

198 e. A statement of the ultimate facts alleged, including a
199 statement of the specific facts the petitioner contends warrant
200 reversal or modification of the agency's proposed action.

201 f. A statement of the specific rules or statutes that the
202 petitioner contends require reversal or modification of the
203 agency's proposed action, including an explanation of how the

585-00893A-10

20107074

204 alleged facts relate to the specific rules or statutes.

205 g. A statement of the relief sought by the petitioner,
206 stating precisely the action petitioner wishes the agency to
207 take with respect to the proposed action.

208 5. Uniform rules for the filing of request for
209 administrative hearing by a respondent in agency enforcement and
210 disciplinary actions. Such rules shall require a request to
211 include:

212 a. The name, address, e-mail address, and telephone number
213 of the party making the request and the name, address, e-mail
214 address, and telephone number of the party's counsel or
215 qualified representative upon whom service of pleadings and
216 other papers shall be made;

217 b. A statement that the respondent is requesting an
218 administrative hearing and disputes the material facts alleged
219 by the petitioner, in which case the respondent shall identify
220 those material facts that are in dispute, or that the respondent
221 is requesting an administrative hearing and does not dispute the
222 material facts alleged by the petitioner; and

223 c. A reference by file number to the administrative
224 complaint that the party has received from the agency and the
225 date on which the agency pleading was received.

226
227 The agency may provide an election-of-rights form for the
228 respondent's use in requesting a hearing, so long as any form
229 provided by the agency calls for the information in sub-
230 subparagraphs a. through c. and does not impose any additional
231 requirements on a respondent in order to request a hearing,
232 unless such requirements are specifically authorized by law.

585-00893A-10

20107074

233 6. Uniform rules of procedure for the filing and prompt
234 disposition of petitions for declaratory statements. The rules
235 shall also describe the contents of the notices that must be
236 published in the Florida Administrative Weekly under s. 120.565,
237 including any applicable time limit for the filing of petitions
238 to intervene or petitions for administrative hearing by persons
239 whose substantial interests may be affected.

240 7. Provision of a method by which each agency head shall
241 provide a description of the agency's organization and general
242 course of its operations. The rules shall require that the
243 statement concerning the agency's organization and operations be
244 published on the agency's website.

245 8. Uniform rules establishing procedures for granting or
246 denying petitions for variances and waivers pursuant to s.
247 120.542.

248 Section 6. Section 120.585, Florida Statutes, is created to
249 read:

250 120.585 Electronic filing.—Any document filed with the
251 division by a party represented by an attorney must be filed by
252 electronic means through the division's website. Any document
253 filed with the division by a party who is not represented by an
254 attorney shall, whenever possible, be filed by electronic means
255 through the division's website.

256 Section 7. Paragraph (b) of subsection (4) of section
257 57.111, Florida Statutes, is amended to read:

258 57.111 Civil actions and administrative proceedings
259 initiated by state agencies; attorneys' fees and costs.—

260 (4)

261 (b)1. To apply for an award under this section, the

585-00893A-10

20107074

262 attorney for the prevailing small business party must submit an
263 itemized affidavit to the court which first conducted the
264 adversarial proceeding in the underlying action, or by
265 electronic means through the division's website to the Division
266 of Administrative Hearings, which shall assign an administrative
267 law judge, in the case of a proceeding pursuant to chapter 120,
268 which affidavit shall reveal the nature and extent of the
269 services rendered by the attorney as well as the costs incurred
270 in preparations, motions, hearings, and appeals in the
271 proceeding.

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

275 Section 8. Paragraphs (c) and (d) of subsection (1) of
276 section 120.56, Florida Statutes, are amended to read:

277 120.56 Challenges to rules.—

278 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A
279 RULE OR A PROPOSED RULE.—

280 (c) The petition shall be filed by electronic means with
281 the division, which shall, immediately upon filing, forward by
282 electronic means copies to the agency whose rule is challenged,
283 the Department of State, and the committee. Within 10 days after
284 receiving the petition, the division director shall, if the
285 petition complies with the requirements of paragraph (b), assign
286 an administrative law judge who shall conduct a hearing within
287 30 days thereafter, unless the petition is withdrawn or a
288 continuance is granted by agreement of the parties or for good
289 cause shown. Evidence of good cause includes, but is not limited
290 to, written notice of an agency's decision to modify or withdraw

585-00893A-10

20107074

291 the proposed rule or a written notice from the chair of the
292 committee stating that the committee will consider an objection
293 to the rule at its next scheduled meeting. The failure of an
294 agency to follow the applicable rulemaking procedures or
295 requirements set forth in this chapter shall be presumed to be
296 material; however, the agency may rebut this presumption by
297 showing that the substantial interests of the petitioner and the
298 fairness of the proceedings have not been impaired.

299 (d) Within 30 days after the hearing, the administrative
300 law judge shall render a decision and state the reasons therefor
301 in writing. The division shall forthwith transmit by electronic
302 means copies of the administrative law judge's decision to the
303 agency, the Department of State, and the committee.

304 Section 9. Paragraph (a) of subsection (2) of section
305 120.569, Florida Statutes, is amended to read:

306 120.569 Decisions which affect substantial interests.—

307 (2) (a) Except for any proceeding conducted as prescribed in
308 s. 120.56, a petition or request for a hearing under this
309 section shall be filed with the agency. If the agency requests
310 an administrative law judge from the division, it shall so
311 notify the division by electronic means through the division's
312 website within 15 days after receipt of the petition or request.
313 A request for a hearing shall be granted or denied within 15
314 days after receipt. On the request of any agency, the division
315 shall assign an administrative law judge with due regard to the
316 expertise required for the particular matter. The referring
317 agency shall take no further action with respect to a proceeding
318 under s. 120.57(1), except as a party litigant, as long as the
319 division has jurisdiction over the proceeding under s.

585-00893A-10

20107074

320 120.57(1). Any party may request the disqualification of the
321 administrative law judge by filing an affidavit with the
322 division prior to the taking of evidence at a hearing, stating
323 the grounds with particularity.

324 Section 10. Paragraph (d) of subsection (3) of section
325 120.57, Florida Statutes, is amended to read:

326 120.57 Additional procedures for particular cases.—

327 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
328 CONTRACT SOLICITATION OR AWARD.—Agencies subject to this chapter
329 shall use the uniform rules of procedure, which provide
330 procedures for the resolution of protests arising from the
331 contract solicitation or award process. Such rules shall at
332 least provide that:

333 (d)1. The agency shall provide an opportunity to resolve
334 the protest by mutual agreement between the parties within 7
335 days, excluding Saturdays, Sundays, and state holidays, after
336 receipt of a formal written protest.

337 2. If the subject of a protest is not resolved by mutual
338 agreement within 7 days, excluding Saturdays, Sundays, and state
339 holidays, after receipt of the formal written protest, and if
340 there is no disputed issue of material fact, an informal
341 proceeding shall be conducted pursuant to subsection (2) and
342 applicable agency rules before a person whose qualifications
343 have been prescribed by rules of the agency.

344 3. If the subject of a protest is not resolved by mutual
345 agreement within 7 days, excluding Saturdays, Sundays, and state
346 holidays, after receipt of the formal written protest, and if
347 there is a disputed issue of material fact, the agency shall
348 refer the protest to the division by electronic means through

585-00893A-10

20107074

349 the division's website for proceedings under subsection (1).

350 Section 11. Subsection (1) of section 552.40, Florida
351 Statutes, is amended to read:

352 552.40 Administrative remedy for alleged damage due to the
353 use of explosives in connection with construction materials
354 mining activities.—

355 (1) A person may initiate an administrative proceeding to
356 recover damages resulting from the use of explosives in
357 connection with construction materials mining activities by
358 filing a petition with the Division of Administrative Hearings
359 by electronic means through the division's website on a form
360 provided by it and accompanied by a filing fee of \$100 within
361 180 days after the occurrence of the alleged damage. If the
362 petitioner submits an affidavit stating that the petitioner's
363 annual income is less than 150 percent of the applicable federal
364 poverty guideline published in the Federal Register by the
365 United States Department of Health and Human Services, the \$100
366 filing fee must be waived.

367 Section 12. Paragraph (b) of subsection (4) of section
368 553.73, Florida Statutes, is amended to read:

369 553.73 Florida Building Code.—

370 (4)

371 (b) Local governments may, subject to the limitations of
372 this section, adopt amendments to the technical provisions of
373 the Florida Building Code which apply solely within the
374 jurisdiction of such government and which provide for more
375 stringent requirements than those specified in the Florida
376 Building Code, not more than once every 6 months. A local
377 government may adopt technical amendments that address local

585-00893A-10

20107074

378 needs if:

379 1. The local governing body determines, following a public
380 hearing which has been advertised in a newspaper of general
381 circulation at least 10 days before the hearing, that there is a
382 need to strengthen the requirements of the Florida Building
383 Code. The determination must be based upon a review of local
384 conditions by the local governing body, which review
385 demonstrates by evidence or data that the geographical
386 jurisdiction governed by the local governing body exhibits a
387 local need to strengthen the Florida Building Code beyond the
388 needs or regional variation addressed by the Florida Building
389 Code, that the local need is addressed by the proposed local
390 amendment, and that the amendment is no more stringent than
391 necessary to address the local need.

392 2. Such additional requirements are not discriminatory
393 against materials, products, or construction techniques of
394 demonstrated capabilities.

395 3. Such additional requirements may not introduce a new
396 subject not addressed in the Florida Building Code.

397 4. The enforcing agency shall make readily available, in a
398 usable format, all amendments adopted pursuant to this section.

399 5. Any amendment to the Florida Building Code shall be
400 transmitted within 30 days by the adopting local government to
401 the commission. The commission shall maintain copies of all such
402 amendments in a format that is usable and obtainable by the
403 public. Local technical amendments shall not become effective
404 until 30 days after the amendment has been received and
405 published by the commission.

406 6. Any amendment to the Florida Building Code adopted by a

585-00893A-10

20107074

407 local government pursuant to this paragraph shall be effective
408 only until the adoption by the commission of the new edition of
409 the Florida Building Code every third year. At such time, the
410 commission shall review such amendment for consistency with the
411 criteria in paragraph (8) (a) and adopt such amendment as part of
412 the Florida Building Code or rescind the amendment. The
413 commission shall immediately notify the respective local
414 government of the rescission of any amendment. After receiving
415 such notice, the respective local government may readopt the
416 rescinded amendment pursuant to the provisions of this
417 paragraph.

418 7. Each county and municipality desiring to make local
419 technical amendments to the Florida Building Code shall by
420 interlocal agreement establish a countywide compliance review
421 board to review any amendment to the Florida Building Code,
422 adopted by a local government within the county pursuant to this
423 paragraph, that is challenged by any substantially affected
424 party for purposes of determining the amendment's compliance
425 with this paragraph. If challenged, the local technical
426 amendments shall not become effective until time for filing an
427 appeal pursuant to subparagraph 8. has expired or, if there is
428 an appeal, until the commission issues its final order
429 determining the adopted amendment is in compliance with this
430 subsection.

431 8. If the compliance review board determines such amendment
432 is not in compliance with this paragraph, the compliance review
433 board shall notify such local government of the noncompliance
434 and that the amendment is invalid and unenforceable until the
435 local government corrects the amendment to bring it into

585-00893A-10

20107074

436 compliance. The local government may appeal the decision of the
437 compliance review board to the commission. If the compliance
438 review board determines such amendment to be in compliance with
439 this paragraph, any substantially affected party may appeal such
440 determination to the commission. Any such appeal shall be filed
441 with the commission within 14 days of the board's written
442 determination. The commission shall promptly refer the appeal to
443 the Division of Administrative Hearings by electronic means
444 through the division's website for the assignment of an
445 administrative law judge. The administrative law judge shall
446 conduct the required hearing within 30 days, and shall enter a
447 recommended order within 30 days of the conclusion of such
448 hearing. The commission shall enter a final order within 30 days
449 thereafter. The provisions of chapter 120 and the uniform rules
450 of procedure shall apply to such proceedings. The local
451 government adopting the amendment that is subject to challenge
452 has the burden of proving that the amendment complies with this
453 paragraph in proceedings before the compliance review board and
454 the commission, as applicable. Actions of the commission are
455 subject to judicial review pursuant to s. 120.68. The compliance
456 review board shall determine whether its decisions apply to a
457 respective local jurisdiction or apply countywide.

458 9. An amendment adopted under this paragraph shall include
459 a fiscal impact statement which documents the costs and benefits
460 of the proposed amendment. Criteria for the fiscal impact
461 statement shall include the impact to local government relative
462 to enforcement, the impact to property and building owners, as
463 well as to industry, relative to the cost of compliance. The
464 fiscal impact statement may not be used as a basis for

585-00893A-10

20107074

465 challenging the amendment for compliance.

466 10. In addition to subparagraphs 7. and 9., the commission
467 may review any amendments adopted pursuant to this subsection
468 and make nonbinding recommendations related to compliance of
469 such amendments with this subsection.

470 Section 13. Paragraph (b) of subsection (4) of section
471 961.03, Florida Statutes, is amended to read:

472 961.03 Determination of status as a wrongfully incarcerated
473 person; determination of eligibility for compensation.—

474 (4)

475 (b) If the prosecuting authority responds as set forth in
476 paragraph (2)(b), and the court determines that the petitioner
477 is eligible under the provisions of s. 961.04, but the
478 prosecuting authority contests the nature, significance or
479 effect of the evidence of actual innocence, or the facts related
480 to the petitioner's alleged wrongful incarceration, the court
481 shall set forth its findings and transfer the petition by
482 electronic means through the division's website to the division
483 for findings of fact and a recommended determination of whether
484 the petitioner has established that he or she is a wrongfully
485 incarcerated person who is eligible for compensation under this
486 act.

487 Section 14. This act shall take effect July 1, 2010.