

By the Committee on Governmental Oversight and Accountability;
and Senator Soto

585-02413-15

20151284c1

1 A bill to be entitled
2 An act relating to the maintenance of agency final
3 orders; amending s. 119.021, F.S.; conforming a
4 provision to changes made by the act; amending s.
5 120.53, F.S.; requiring agencies to electronically
6 transmit certain agency final orders to a centralized
7 electronic database maintained by the Division of
8 Administrative Hearings; providing the methods by
9 which such final orders can be searched; requiring
10 each agency to maintain a list of final orders that
11 are not required to be electronically transmitted to
12 the database; providing a timeframe for electronically
13 transmitting or listing the final orders; authorizing
14 agencies to maintain subject matter indexes of final
15 orders issued before a specified date or to
16 electronically transmit such orders to the database;
17 providing that the centralized electronic database is
18 the official compilation of administrative final
19 orders issued on or after a specified date for each
20 agency; requiring an agency to redact information
21 exempt from public records requirements before
22 electronically transmitting final orders to the
23 database; deleting obsolete provisions regarding
24 filing, indexing, and publishing final orders;
25 amending s. 120.533, F.S.; requiring the Department of
26 State to provide standards and guidelines for the
27 certification and electronic transmittal and the
28 secure transmittal and maintenance of agency final
29 orders; authorizing the department to adopt rules;

585-02413-15

20151284c1

30 authorizing the department to provide for an
31 alternative official compiler of agency final orders
32 under certain circumstances; conforming provisions to
33 changes made by the act; amending s. 213.22, F.S.;
34 conforming a cross-reference; providing an effective
35 date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Subsection (3) of section 119.021, Florida
40 Statutes, is amended to read:

41 119.021 Custodial requirements; maintenance, preservation,
42 and retention of public records.—

43 (3) Agency final orders rendered before July 1, 2015, which
44 were indexed or listed pursuant to s. 120.53, and agency final
45 orders rendered on or after July 1, 2015, which must be listed
46 or copies of which must be transmitted to the Division of
47 Administrative Hearings ~~orders that comprise final agency action~~
48 ~~and that must be indexed or listed~~ pursuant to s. 120.53, have
49 continuing legal significance; therefore, notwithstanding any
50 other provision of this chapter or any provision of chapter 257,
51 each agency shall permanently maintain records of such orders
52 pursuant to the applicable rules of the Department of State.

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

55 120.53 Maintenance of agency final orders; ~~indexing;~~
56 ~~listing; organizational information.~~—

57 (1) In addition to maintaining records contained in s.
58 119.021(3), each agency shall also electronically transmit a

585-02413-15

20151284c1

59 certified text-searchable copy of each agency final order listed
60 in subsection (2) rendered on or after July 1, 2015, to a
61 centralized electronic database of agency final orders
62 maintained by the division. The database must allow users to
63 research and retrieve the full texts of agency final orders by:

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

65 (b) The date the final order was issued.

66 (c) The type of final order.

67 (d) The subject of the final order.

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

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

70 ~~1. All agency final orders.~~

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

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

84 (2)e. The agency final orders that must be electronically
85 transmitted to the centralized electronic database indexed,

86 ~~unless excluded under paragraph (c) or paragraph (d), include:~~

87 (a)-(I) Each final agency order resulting from a proceeding

585-02413-15

20151284c1

88 under s. 120.57 or s. 120.573.

89 ~~(b)-(II)~~ Each final agency order rendered pursuant to s.
90 120.57(4) which contains a statement of agency policy that may
91 be the basis of future agency decisions or that may otherwise
92 contain a statement of precedential value.

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

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

96 ~~(3)3.~~ Each agency shall maintain a list of all final orders
97 rendered pursuant to s. 120.57(4) that are not required to be
98 electronically transmitted to the centralized electronic
99 database which have been excluded from the indexing requirement
100 of this section, with the approval of the Department of State,
101 because they do not contain statements of agency policy or
102 statements of precedential value. The list must include the name
103 of the parties to the proceeding and the number assigned to the
104 final order.

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

106 ~~(4)(b)~~ Each An agency final order, whether rendered by the
107 agency or the division, that must be electronically transmitted
108 to the centralized electronic database or maintained on a list
109 pursuant to subsection (3) must be electronically transmitted to
110 the database or added to the list within 90 days after the final
111 indexed or listed pursuant to paragraph (a) must be indexed or
112 listed within 120 days after the order is rendered. Each final
113 order that must be electronically transmitted to the database or
114 added to the list indexed or listed pursuant to paragraph (a)
115 must have attached a copy of the complete text of any materials
116 incorporated by reference; however, if the quantity of the

585-02413-15

20151284c1

117 materials incorporated makes attachment of the complete text of
118 the materials impractical, the final order may contain a
119 statement of the location of such materials and the manner in
120 which the public may inspect or obtain copies of the materials
121 incorporated by reference. ~~The Department of State shall~~
122 ~~establish by rule procedures for indexing final orders, and~~
123 ~~procedures of agencies for indexing orders must be approved by~~
124 ~~the department.~~

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

136 (6) Before electronically transmitting agency final orders
137 to the centralized electronic database, each agency shall redact
138 all information in a final order which is exempt or confidential
139 and exempt from public records requirements.

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

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

585-02413-15

20151284c1

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

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

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

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

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

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

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

172 ~~(g) Each agency shall specify all systems in use by the~~
173 ~~agency to search and locate agency final orders that are~~
174 ~~required to be indexed or listed, including, but not limited to,~~

585-02413-15

20151284c1

175 ~~any automated system. An agency shall make the search~~
176 ~~capabilities employed by the agency available to the public~~
177 ~~subject to reasonable terms and conditions, including a~~
178 ~~reasonable charge, as provided by s. 119.07. The agency shall~~
179 ~~specify how assistance and information pertaining to final~~
180 ~~orders may be obtained.~~

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

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

192 ~~(b) An agency may publish its official reporter or may~~
193 ~~contract with a publishing firm to publish its official~~
194 ~~reporter; however, if an agency contracts with a publishing firm~~
195 ~~to publish its reporter, the agency is responsible for the~~
196 ~~quality, timeliness, and usefulness of the reporter. The~~
197 ~~Department of State may publish an official reporter for an~~
198 ~~agency or may contract with a publishing firm to publish the~~
199 ~~reporter for the agency; however, if the department contracts~~
200 ~~for publication of the reporter, the department is responsible~~
201 ~~for the quality, timeliness, and usefulness of the reporter. A~~
202 ~~reporter that is designated by an agency as its official~~
203 ~~reporter and approved by the Department of State constitutes the~~

585-02413-15

20151284c1

204 ~~official compilation of the administrative final orders for that~~
205 ~~agency.~~

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

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

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

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

232 Section 3. Section 120.533, Florida Statutes, is amended to

585-02413-15

20151284c1

233 read:

234 120.533 Coordination of the transmittal, indexing, and
235 listing of agency final orders by Department of State.—The
236 Department of State shall:

237 (1) Coordinate ~~Administer the coordination of the~~
238 transmittal, indexing, management, preservation, and
239 availability of agency final orders that must be transmitted,
240 indexed, or listed pursuant to s. 120.53 ~~s. 120.53(1)~~.

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

247 (3) ~~Provide, by rule,~~ for storage and retrieval systems to
248 be maintained by agencies pursuant to s. 120.53(5) for indexing,
249 and making available, agency final orders by subject matter. The
250 Department of State may authorize ~~approve~~ more than one system,
251 including systems in use, ~~or proposed for use,~~ by an agency.
252 Storage and retrieval systems that may be used by an agency
253 include, without limitation, a designated reporter or reporters,
254 a microfilming system, an automated system, or any other system
255 considered appropriate by the Department of State.

256 (4) Provide standards and guidelines for the certification
257 and electronic transmittal of copies of agency final orders to
258 the division as required under s. 120.53, and, to protect the
259 integrity and authenticity of information publicly accessible
260 through the electronic database, coordinate and provide
261 standards and guidelines to ensure the security of copies of

585-02413-15

20151284c1

262 agency final orders transmitted and maintained in the electronic
263 database by the division under s. 120.53(1).

264 (5)(4) For each agency, determine which final orders must
265 be indexed or transmitted ~~for each agency.~~

266 (6)(5) Require each agency to report to the department
267 concerning which types or categories of agency orders establish
268 precedent for each agency.

269 (7) Adopt rules as necessary to administer its
270 responsibilities under this section, which shall be binding on
271 all agencies, including the division acting in the capacity of
272 official compiler of administrative final orders under s.
273 120.53, notwithstanding s. 120.65. The Department of State may
274 provide for an alternative official compiler to manage and
275 operate the division's database and related services if the
276 Administration Commission determines that the performance of the
277 division as official compiler is unsatisfactory.

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

280 213.22 Technical assistance advisements.—

281 (1) The department may issue informal technical assistance
282 advisements to persons, upon written request, as to the position
283 of the department on the tax consequences of a stated
284 transaction or event, under existing statutes, rules, or
285 policies. After the issuance of an assessment, a technical
286 assistance advisement may not be issued to a taxpayer who
287 requests an advisement relating to the tax or liability for tax
288 in respect to which the assessment has been made, except that a
289 technical assistance advisement may be issued to a taxpayer who
290 requests an advisement relating to the exemptions in s.

585-02413-15

20151284c1

291 212.08(1) or (2) at any time. Technical assistance advisements
292 shall have no precedential value except to the taxpayer who
293 requests the advisement and then only for the specific
294 transaction addressed in the technical assistance advisement,
295 unless specifically stated otherwise in the advisement. Any
296 modification of an advisement shall be prospective only. A
297 technical assistance advisement is not an order issued pursuant
298 to s. 120.565 or s. 120.569 or a rule or policy of general
299 applicability under s. 120.54. The provisions of s. 120.53 ~~s.~~
300 ~~120.53(1)~~ are not applicable to technical assistance
301 advisements.

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