

CHAPTER 2011-208

Committee Substitute for Committee Substitute for Senate Bill No. 170

An act relating to electronic filing and receipt of court and other legal documents; creating ss. 27.341 and 27.5112, F.S.; requiring each state attorney and public defender to electronically file court documents with the clerk of the court and receive court documents from the clerk of the court; defining the term “court documents”; providing legislative expectations that the state attorneys and public defenders consult with specified entities; requiring the Florida Prosecuting Attorneys Association and the Florida Public Defender Association report to the President of the Senate and the Speaker of the House of Representatives by a specified date on the progress made to use the Florida Courts E-Portal system or the clerks’ offices portals to electronically file and receive court documents; amending ss. 440.192 and 440.25, F.S.; providing for electronic procedures for filing documents and resolving benefit disputes in workers’ compensation proceedings; requiring a response to a petition for workers’ compensation benefits to be filed by approved electronic means; amending ss. 440.29 and 440.45, F.S.; requiring that the practice and procedure before the judges of compensation claims be governed by the Office of the Judges of Compensation Claims instead of the Supreme Court; authorizing the Office of the Judges of Compensation Claims to adopt rules to implement electronic procedures; amending s. 120.52, F.S.; requiring use of electronic procedures by those represented by an attorney; amending s. 120.54, F.S.; requiring a petitioner requesting an administrative hearing to include the petitioner’s e-mail address; amending ss. 57.111, 120.56, 120.569, 120.57, 552.40, 553.73, and 961.03, F.S.; providing for electronic procedures in administrative proceedings; providing an effective date.

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

Section 1. Section 27.341, Florida Statutes, is created to read:

27.341 Electronic filing and receipt of court documents.—

(1)(a) Each office of the state attorney shall electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. It is the expectation of the Legislature that the electronic filing and receipt of court documents will reduce costs for the office of the state attorney, the clerk of the court, and the judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management.

(b) As used in this section, the term “court documents” includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

(2) It is further the expectation of the Legislature that each office of the state attorney consult with the office of the public defender for the same circuit served by the office of the state attorney, the clerks of court for the circuit, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

(3) The Florida Prosecuting Attorneys Association shall file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office of the state attorney has made to use the Florida Courts E-Portal or, if the case type is not approved for the Florida Courts E-Portal, separate clerks' offices portals for purposes of electronic filing and documenting receipt of court documents. For any office of the state attorney that has not fully implemented an electronic filing and receipt system by March 1, 2012, the report must also include a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

Section 2. Section 27.5112, Florida Statutes, is created to read:

27.5112 Electronic filing and receipt of court documents.—

(1)(a) Each office of the public defender shall electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. It is the expectation of the Legislature that the electronic filing and receipt of court documents will reduce costs for the office of the public defender, the clerk of the court, and the judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management.

(b) As used in this section, the term "court documents" includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

(2) It is further the expectation of the Legislature that, in developing the capability and implementing the process, each office of the public defender consult with the office of the state attorney for the same circuit served by the office of the public defender, the clerks of court for the circuit, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

(3) The Florida Public Defender Association shall file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office of the public defender has made to use the Florida Courts E-Portal or, if the case type is not approved for the Florida Courts E-Portal, separate clerks' offices portals for purposes of electronic filing and documenting receipt of court documents. For any office of the public defender that has not fully implemented an electronic

filing and receipt system by March 1, 2012, the report must also include a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

Section 3. Subsections (1) and (8) of section 440.192, Florida Statutes, are amended to read:

440.192 Procedure for resolving benefit disputes.—

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

(8) Within 14 days after receipt of a petition for benefits by certified mail or by approved electronic means, the carrier must either pay the requested benefits without prejudice to its right to deny within 120 days from receipt of the petition or file a response to petition with the Office of the Judges of Compensation Claims. The response shall be filed by electronic means approved by the Deputy Chief Judge. The carrier must list all benefits requested but not paid and explain its justification for nonpayment in the response to petition. A carrier that does not deny compensability in accordance with s. 440.20(4) is deemed to have accepted the employee's injuries as compensable, unless it can establish material facts relevant to the issue of compensability that could not have been discovered through reasonable investigation within the 120-day period. The carrier shall provide copies of the response to the filing party, employer, and claimant by certified mail or by electronic means approved by the Deputy Chief Judge.

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

440.25 Procedures for mediation and hearings.—

(1) Forty days after a petition for benefits is filed under s. 440.192, the judge of compensation claims shall notify the interested parties by order that a mediation conference concerning such petition has been scheduled unless the parties have notified the judge of compensation claims that a private mediation has been held or is scheduled to be held. A mediation, whether

private or public, shall be held within 130 days after the filing of the petition. Such order must give the date the mediation conference is to be held. Such order may be served personally upon the interested parties or may be sent to the interested parties by mail or by electronic means approved by the Deputy Chief Judge. If multiple petitions are pending, or if additional petitions are filed after the scheduling of a mediation, the judge of compensation claims shall consolidate all petitions into one mediation. The claimant or the adjuster of the employer or carrier may, at the mediator's discretion, attend the mediation conference by telephone or, if agreed to by the parties, other electronic means. A continuance may be granted upon the agreement of the parties or if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party's control. Any order granting a continuance must set forth the date of the rescheduled mediation conference. A mediation conference may not be used solely for the purpose of mediating attorney's fees.

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

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

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

Section 5. Subsection (3) of section 440.29, Florida Statutes, is amended to read:

440.29 Procedure before the judge of compensation claims.—

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

Section 6. Subsection (4) of section 440.45, Florida Statutes, is amended to read:

440.45 Office of the Judges of Compensation Claims.—

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

Section 7. Subsection (5) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(5) “Division” means the Division of Administrative Hearings. Any document filed with the division by a party represented by an attorney shall be filed by electronic means through the division’s website. Any document filed with the division by a party not represented by an attorney shall, whenever possible, be filed by electronic means through the division’s website.

Section 8. Paragraph (b) of subsection (5) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(5) UNIFORM RULES.—

(b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but are not limited to:

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

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media

technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

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

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

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

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

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

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

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

f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.

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

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

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

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

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

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

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

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

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

Section 9. Paragraph (b) of subsection (4) of section 57.111, Florida Statutes, is amended to read:

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

(4)

(b)1. To apply for an award under this section, the attorney for the prevailing small business party must submit an itemized affidavit to the court which first conducted the adversarial proceeding in the underlying

action, or by electronic means through the division's website to the Division of Administrative Hearings which shall assign an administrative law judge, in the case of a proceeding pursuant to chapter 120, which affidavit shall reveal the nature and extent of the services rendered by the attorney as well as the costs incurred in preparations, motions, hearings, and appeals in the proceeding.

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

Section 10. Paragraphs (c) and (d) of subsection (1) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

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

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with the requirements of paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

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

Section 11. Paragraph (a) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.—

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division by electronic means through the division's website within 15 days after receipt of the petition or request. A request for a

hearing shall be granted or denied within 15 days after receipt. On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1). Any party may request the disqualification of the administrative law judge by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

Section 12. Paragraph (d) of subsection (3) of section 120.57, Florida Statutes, is amended to read:

120.57 Additional procedures for particular cases.—

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

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

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

3. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division by electronic means through the division's website for proceedings under subsection (1).

Section 13. Subsection (1) of section 552.40, Florida Statutes, is amended to read:

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

(1) A person may initiate an administrative proceeding to recover damages resulting from the use of explosives in connection with construction materials mining activities by filing a petition with the Division of Administrative Hearings by electronic means through the division's website on a form provided by it and accompanied by a filing fee of \$100 within 180 days after the occurrence of the alleged damage. If the petitioner submits an affidavit stating that the petitioner's annual income is less than 150 percent

of the applicable federal poverty guideline published in the Federal Register by the United States Department of Health and Human Services, the \$100 filing fee must be waived.

Section 14. Paragraph (b) of subsection (4) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(4)

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

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

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

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

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

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

6. Any amendment to the Florida Building Code adopted by a local government pursuant to this paragraph shall be effective only until the adoption by the commission of the new edition of the Florida Building Code every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such

amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment pursuant to the provisions of this paragraph.

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

8. If the compliance review board determines such amendment is not in compliance with this paragraph, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines such amendment to be in compliance with this paragraph, any substantially affected party may appeal such determination to the commission. Any such appeal shall be filed with the commission within 14 days of the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days, and shall enter a recommended order within 30 days of the conclusion of such hearing. The commission shall enter a final order within 30 days thereafter. The provisions of chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this paragraph in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review pursuant to s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

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

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

Section 15. Paragraph (b) of subsection (4) of section 961.03, Florida Statutes, is amended to read:

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

(4)

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

Section 16. This act shall take effect July 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.