

CHAPTER 2015-155

Committee Substitute for House Bill No. 985

An act relating to the maintenance of agency final orders; amending s. 119.021, F.S.; conforming a provision to changes made by the act; amending s. 120.53, F.S.; requiring agencies to electronically transmit certain agency final orders to a centralized electronic database maintained by the Division of Administrative Hearings; providing the methods by which such final orders can be searched; requiring each agency to maintain a list of final orders that are not required to be electronically transmitted to the database; providing a timeframe for electronically transmitting or listing the final orders; authorizing agencies to maintain subject matter indexes of final orders issued before a specified date or to electronically transmit such orders to the database; providing that the centralized electronic database is the official compilation of administrative final orders issued on or after a specified date for each agency; deleting obsolete provisions regarding filing, indexing, and publishing final orders; amending s. 120.533, F.S.; requiring the Department of State to provide standards and guidelines for the certification and electronic transmittal and the secure transmittal and maintenance of agency final orders; authorizing the department to adopt rules; authorizing the department to provide for an alternative official compiler of agency final orders under certain circumstances; conforming provisions to changes made by the act; amending s. 213.22, F.S.; conforming a cross-reference; providing an effective date.

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

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

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

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

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

120.53 Maintenance of agency final orders; ~~indexing; listing; organiza-~~tional information.—

(1) In addition to maintaining records contained in s. 119.021(3), each agency shall also electronically transmit a certified text-searchable copy of each agency final order listed in subsection (2) rendered on or after July 1, 2015, to a centralized electronic database of agency final orders maintained by the division. The database must allow users to research and retrieve the full texts of agency final orders by:

- (a) The name of the agency that issued the final order.
- (b) The date the final order was issued.
- (c) The type of final order.
- (d) The subject of the final order.
- (e) Terms contained in the text of the final order.

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

~~1. All agency final orders.~~

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

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

~~(2)e. The agency final orders that must be electronically transmitted to the centralized electronic database indexed, unless excluded under paragraph (c) or paragraph (d), include:~~

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

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

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

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

(3)3. Each agency shall maintain a list of all final orders rendered pursuant to s. 120.57(4) that are not required to be electronically transmitted to the centralized electronic database which have been excluded from the

indexing requirement of this section, with the approval of the Department of State, because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.

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

~~(4)(b) Each An agency final order, whether rendered by the agency or the division, that must be electronically transmitted to the centralized electronic database or maintained on a list pursuant to subsection (3) must be electronically transmitted to the database or added to the list within 90 days after the final indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the order is rendered. Each final order that must be electronically transmitted to the database or added to the list indexed or listed pursuant to paragraph (a) must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the final order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference. The Department of State shall establish by rule procedures for indexing final orders, and procedures of agencies for indexing orders must be approved by the department.~~

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

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

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

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

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

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

5.— Proposed rules for implementing the requirements of this section for indexing and making final orders available for public inspection.

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

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

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

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

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

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

~~(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative final orders for that agency.~~

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

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

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

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

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

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

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

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

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

(4) Provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to the division, as required under s. 120.53, and, to protect the integrity and authenticity of information publicly accessible through the electronic database, coordinate and provide standards and guidelines to ensure the security of copies of agency final orders transmitted and maintained in the electronic database by the division under s. 120.53(1).

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

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

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

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

213.22 Technical assistance advisements.—

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

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

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.