

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; deleting obsolete provisions regarding filing,
21 indexing, and publishing final orders; amending s.
22 120.533, F.S.; requiring the Department of State to
23 provide standards and guidelines for the certification
24 and electronic transmittal and the secure transmittal
25 and maintenance of agency final orders; authorizing
26 the department to adopt rules; authorizing the

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

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Subsection (3) of section 119.021, Florida
 36 Statutes, is amended to read:

37 119.021 Custodial requirements; maintenance, preservation,
 38 and retention of public records.—

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

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

51 120.53 Maintenance of agency final orders; ~~indexing;~~
 52 ~~listing; organizational information.—~~

53 (1) In addition to maintaining records contained in s.
 54 119.021(3), each agency shall also electronically transmit a
 55 certified text-searchable copy of each agency final order listed
 56 in subsection (2) rendered on or after July 1, 2015, to a
 57 centralized electronic database of agency final orders
 58 maintained by the division. The database must allow users to
 59 research and retrieve the full texts of agency final orders by:

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

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

66 ~~1. All agency final orders.~~

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

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

79 ~~specifically contained in the order.~~

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

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

85 (b)-(II) Each final ~~agency~~ order rendered pursuant to s.
86 120.57(4) which contains a statement of agency policy that may
87 be the basis of future agency decisions or that may otherwise
88 contain a statement of precedential value.

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

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

92 (3)3. Each agency shall maintain a list of all final
93 orders rendered pursuant to s. 120.57(4) that are not required
94 to be electronically transmitted to the centralized electronic
95 database which have been excluded from the indexing requirement
96 ~~of this section, with the approval of the Department of State,~~
97 because they do not contain statements of agency policy or
98 statements of precedential value. The list must include the name
99 of the parties to the proceeding and the number assigned to the
100 final order.

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

102 (4)-(b) Each An agency final order, whether rendered by the
103 agency or the division, that must be electronically transmitted
104 to the centralized electronic database or maintained on a list

105 pursuant to subsection (3) must be electronically transmitted to
106 the database or added to the list within 90 days after the final
107 ~~indexed or listed pursuant to paragraph (a) must be indexed or~~
108 ~~listed within 120 days after the order is rendered.~~ Each final
109 order that must be electronically transmitted to the database or
110 added to the list ~~indexed or listed pursuant to paragraph (a)~~
111 must have attached a copy of the complete text of any materials
112 incorporated by reference; however, if the quantity of the
113 materials incorporated makes attachment of the complete text of
114 the materials impractical, the final order may contain a
115 statement of the location of such materials and the manner in
116 which the public may inspect or obtain copies of the materials
117 incorporated by reference. ~~The Department of State shall~~
118 ~~establish by rule procedures for indexing final orders, and~~
119 ~~procedures of agencies for indexing orders must be approved by~~
120 ~~the department.~~

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

131 for each agency.

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

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

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

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

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

146 ~~5. Proposed rules for implementing the requirements of~~
147 ~~this section for indexing and making final orders available for~~
148 ~~public inspection.~~

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

156 ~~(e) Each agency shall specify the specific types or~~

157 ~~categories of agency final orders that are excluded from the~~
158 ~~indexing and public inspection requirements.~~

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

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

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

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

183 ~~listed order and makes it available for public inspection and~~
184 ~~copying.~~

185 ~~(b) An agency may publish its official reporter or may~~
186 ~~contract with a publishing firm to publish its official~~
187 ~~reporter; however, if an agency contracts with a publishing firm~~
188 ~~to publish its reporter, the agency is responsible for the~~
189 ~~quality, timeliness, and usefulness of the reporter. The~~
190 ~~Department of State may publish an official reporter for an~~
191 ~~agency or may contract with a publishing firm to publish the~~
192 ~~reporter for the agency; however, if the department contracts~~
193 ~~for publication of the reporter, the department is responsible~~
194 ~~for the quality, timeliness, and usefulness of the reporter. A~~
195 ~~reporter that is designated by an agency as its official~~
196 ~~reporter and approved by the Department of State constitutes the~~
197 ~~official compilation of the administrative final orders for that~~
198 ~~agency.~~

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

206 ~~(d) An agency that designates an official reporter need~~
207 ~~not publish the full text of an agency final order that is~~
208 ~~rendered pursuant to s. 120.57(4) and that must be indexed~~

209 ~~pursuant to paragraph (1) (a), if the final order is preserved by~~
 210 ~~the agency and made available for public inspection and copying~~
 211 ~~and the official reporter indexes the final order and includes a~~
 212 ~~synopsis of the order. A synopsis must include the names of the~~
 213 ~~parties to the order; any rule, statute, or constitutional~~
 214 ~~provision pertinent to the order; a summary of the facts, if~~
 215 ~~included in the order, which are pertinent to the final~~
 216 ~~disposition; and a summary of the final disposition.~~

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

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

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

228 120.533 Coordination of the transmittal, indexing, and
 229 listing of agency final orders by Department of State.—The
 230 Department of State shall:

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

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

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

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

258 (5)~~(4)~~ For each agency, determine which final orders must
259 be indexed or transmitted ~~for each agency.~~

260 (6)~~(5)~~ Require each agency to report to the department

261 concerning which types or categories of agency orders establish
 262 precedent for each agency.

263 (7) Adopt rules as necessary to administer its
 264 responsibilities under this section, which shall be binding on
 265 all agencies including the division acting in the capacity of
 266 official compiler of administrative final orders under s.
 267 120.53, notwithstanding s. 120.65. The Department of State may
 268 provide for an alternative official compiler to manage and
 269 operate the division's database and related services if the
 270 Administration Commission determines that the performance of the
 271 division as official compiler is unsatisfactory.

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

274 213.22 Technical assistance advisements.—

275 (1) The department may issue informal technical assistance
 276 advisements to persons, upon written request, as to the position
 277 of the department on the tax consequences of a stated
 278 transaction or event, under existing statutes, rules, or
 279 policies. After the issuance of an assessment, a technical
 280 assistance advisement may not be issued to a taxpayer who
 281 requests an advisement relating to the tax or liability for tax
 282 in respect to which the assessment has been made, except that a
 283 technical assistance advisement may be issued to a taxpayer who
 284 requests an advisement relating to the exemptions in s.
 285 212.08(1) or (2) at any time. Technical assistance advisements
 286 shall have no precedential value except to the taxpayer who

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287 requests the advisement and then only for the specific
288 transaction addressed in the technical assistance advisement,
289 unless specifically stated otherwise in the advisement. Any
290 modification of an advisement shall be prospective only. A
291 technical assistance advisement is not an order issued pursuant
292 to s. 120.565 or s. 120.569 or a rule or policy of general
293 applicability under s. 120.54. The provisions of s. 120.53 ~~s.~~
294 ~~120.53(1)~~ are not applicable to technical assistance
295 advisements.

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