



FEMC & FBPE Board Training Manual Part III

Florida Statutes 119, 120, 455,
468.601-468.633, 471 &
553.70-553.898

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agency, including public records that are online or stored in an electronic recordkeeping system used by the agency.

(d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4).

(3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07.

History.—s. 1, ch. 5942, 1909; RGS 424; CGL 490; s. 1, ch. 73-98; s. 2, ch. 75-225; s. 2, ch. 83-286; s. 4, ch. 86-163; ss. 1, 5, ch. 95-296; s. 2, ch. 2004-335; s. 1, ch. 2005-251.

119.011 Definitions.—As used in this chapter, the term:

(1) “Actual cost of duplication” means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.

(2) “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) “Criminal intelligence information” and “criminal investigative information” shall not include:

1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h).
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.

5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:

a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

b. Impair the ability of a state attorney to locate or prosecute a codefendant.

6. Informations and indictments except as provided in s. 905.26.

(d) The word “active” shall have the following meaning:

1. Criminal intelligence information shall be considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) “Criminal justice agency” means:

(a) Any law enforcement agency, court, or prosecutor;

(b) Any other agency charged by law with criminal law enforcement duties;

(c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or

(d) The Department of Corrections.

(5) “Custodian of public records” means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

(6) “Data processing software” means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(7) “Duplicated copies” means new copies produced by duplicating, as defined in s. 283.30.

(8) “Exemption” means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution.

(9) “Information technology resources” means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.

(10) “Paratransit” has the same meaning as provided in s. 427.011.

(11) "Proprietary software" means data processing software that is protected by copyright or trade secret laws.

(12) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(13) "Redact" means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

(14) "Sensitive," for purposes of defining agency-produced software that is sensitive, means only those portions of data processing software, including the specifications and documentation, which are used to:

- (a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1);
- (b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
- (c) Control and direct access authorizations and security measures for automated systems.

History.—s. 1, ch. 67-125; s. 2, ch. 73-98; s. 3, ch. 75-225; ss. 1, 2, ch. 79-187; s. 8, ch. 85-53; s. 1, ch. 88-188; s. 5, ch. 93-404; s. 5, ch. 93-405; s. 5, ch. 95-207; s. 6, ch. 95-296; s. 10, ch. 95-398; s. 40, ch. 96-406; s. 2, ch. 97-90; s. 3, ch. 2004-335; s. 43, ch. 2005-251; s. 1, ch. 2008-57.

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

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(1) Public records shall be maintained and preserved as follows:

- (a) All public records should be kept in the buildings in which they are ordinarily used.
- (b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.

(c)1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read.

2. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of the concerned state agency, department, board, or commission; the board of county commissioners of such county; or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.

3. Any public official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book. The copy shall then have the force and effect of the original.

(2)(a) The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.

(b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.

(c) Each public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division in accordance with s. 257.36.

(d) The division may ascertain the condition of public records and shall give advice and assistance to public officials to solve problems related to the preservation, creation, filing, and public accessibility of public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall, subject to the availability of necessary space, staff, and other facilities for such purposes, make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

(3) Agency 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.

(4)(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State, all public records kept or received by him or her in the transaction of official business.

(b) Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records.

History.—s. 2, ch. 67-125; s. 3, ch. 83-286; s. 753, ch. 95-147; s. 5, ch. 2004-335.

119.035 Officers-elect.—

(1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.

(2) Public records of an officer-elect shall be maintained in accordance with the policies and procedures of the public office to which the officer has been elected.

(3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.

(4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.

(5) As used in this section, the term “officer-elect” means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

History.—s. 1, ch. 2012-25.

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.

(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).

(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8¹/₂ inches;

2. No more than an additional 5 cents for each two-sided copy; and

3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

(c) An agency may charge up to \$1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.

2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are

being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) An exemption from this section does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided.

(8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

History.—s. 7, ch. 67-125; s. 4, ch. 75-225; s. 2, ch. 77-60; s. 2, ch. 77-75; s. 2, ch. 77-94; s. 2, ch. 77-156; s. 2, ch. 78-81; ss. 2, 4, 6, ch. 79-187; s. 2, ch. 80-273; s. 1, ch. 81-245; s. 1, ch. 82-95; s. 36, ch. 82-243; s. 6, ch. 83-215; s. 2, ch. 83-269; s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-18; s. 1, ch. 85-45; s. 1, ch. 85-73; s. 1, ch. 85-86; s. 7, ch. 85-152; s. 1, ch. 85-177; s. 4, ch. 85-301; s. 2, ch. 86-11; s. 1, ch. 86-21; s. 1, ch. 86-109; s. 2, ch. 87-399; s. 2, ch. 88-188; s. 1, ch. 88-384; s. 1, ch. 89-29; s. 7, ch. 89-55; s. 1, ch. 89-80; s. 1, ch. 89-275; s. 2, ch. 89-283; s. 2, ch. 89-350; s. 1, ch. 89-531; s. 1, ch. 90-43; s. 63, ch. 90-136; s. 2, ch. 90-196; s. 4, ch. 90-211; s. 24, ch. 90-306; ss. 22, 26, ch. 90-344; s. 116, ch. 90-360; s. 78, ch. 91-45; s. 11, ch. 91-57; s. 1, ch. 91-71; s. 1, ch. 91-96; s. 1, ch. 91-130; s. 1, ch. 91-149; s. 1, ch. 91-219; s. 1, ch. 91-288; ss. 43, 45, ch. 92-58; s. 90, ch. 92-152; s. 59, ch. 92-289; s. 217, ch. 92-303; s. 1, ch. 93-87; s. 2, ch. 93-232; s. 3, ch. 93-404; s. 4, ch. 93-405; s. 4, ch. 94-73; s. 1, ch. 94-128; s. 3, ch. 94-130; s. 67, ch. 94-164; s. 1, ch. 94-176; s. 1419, ch. 95-147; ss. 1, 3, ch. 95-170; s. 4, ch. 95-207; s. 1, ch. 95-320; ss. 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, ch. 95-398; s. 1, ch. 95-399; s. 121, ch. 95-418; s. 3, ch. 96-178; s. 1, ch. 96-230; s. 5, ch. 96-268; s. 4, ch. 96-290; s. 41, ch. 96-406; s. 18, ch. 96-410; s. 1, ch. 97-185; s. 1, ch. 98-9; s. 7, ch. 98-137; s. 1, ch. 98-255; s. 1, ch. 98-259; s. 128, ch. 98-403; s. 2, ch. 99-201; s. 27, ch. 2000-164; s. 54, ch. 2000-349; s. 1, ch. 2001-87; s. 1, ch. 2001-108; s. 1, ch. 2001-249; s. 29, ch. 2001-261; s. 33, ch. 2001-266; s. 1, ch. 2001-364; s. 1, ch. 2002-67; ss. 1, 3, ch. 2002-257; s. 2, ch. 2002-391; s. 11, ch. 2003-1; s. 1, ch. 2003-100; ss. 1, 2, ch. 2003-110; s. 1, ch. 2003-137; ss. 1, 2, ch. 2003-157; ss. 1, 2, ch. 2004-9; ss. 1, 2, ch. 2004-32; ss. 1, 2, ch. 2004-62; ss. 1, 3, ch. 2004-95; s. 7, ch. 2004-335; ss. 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, ch. 2005-251; s. 74, ch. 2005-277; s. 1, ch. 2007-39; ss. 2, 4, ch. 2007-251.

119.0701 Contracts; public records.—

(1) For purposes of this section, the term:

(a) “Contractor” means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

(b) “Public agency” means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

(2) In addition to other contract requirements provided by law, each public agency contract for services must include a provision that requires the contractor to comply with public records laws, specifically to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

(3) If a contractor does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

History.—s. 1, ch. 2013-154.

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A person who has taken such an examination has the right to review his or her own completed examination.

(b)1. For purposes of this paragraph, “competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

3. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d)1. A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney’s express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of

the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

2. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(e) Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from s. 119.07(1).

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive shall not prohibit an agency head from sharing or exchanging such software with another public agency.

(2) AGENCY INVESTIGATIONS.—

(a) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

(c)1. Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.a. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in s. 252.34, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing the substance of a confession of a person arrested is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(f) Any information revealing the identity of a confidential informant or a confidential source is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(g)1. All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

a. This exemption does not affect any function or activity of the Florida Commission on Human Relations.

b. Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. If an alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by chapter 827.

b. Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered.

The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(j)1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from s. 119.07(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section.

2.a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145, which reveals that minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145 may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(k)1. A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

- a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges;
- or
- b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.
2. Subparagraph 1. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) SECURITY.—

(a)1. As used in this paragraph, the term “security system plan” includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
 - b. Threat assessments conducted by any agency or any private entity;
 - c. Threat response plans;
 - d. Emergency evacuation plans;
 - e. Sheltering arrangements; or
 - f. Manuals for security personnel, emergency equipment, or security training.
2. A security system plan or portion thereof for:
- a. Any property owned by or leased to the state or any of its political subdivisions; or
 - b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

3. Information made confidential and exempt by this paragraph may be disclosed by the custodian of public records to:

- a. The property owner or leaseholder; or
- b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

(b)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

- a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
 - b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or
 - c. Upon a showing of good cause before a court of competent jurisdiction.
4. The entities or persons receiving such information shall maintain the exempt status of the information.

(c)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which records are held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to any such records held by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to the owner or owners of the structure in question or the owner's legal representative; or upon a showing of good cause before a court of competent jurisdiction.

4. This paragraph does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

5. As used in this paragraph, the term:

a. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

(I) For single-performance facilities:

(A) Provides single-performance facilities; or

(B) Provides more than 10,000 permanent seats for spectators.

(II) For serial-performance facilities:

(A) Provides parking spaces for more than 1,000 motor vehicles; or

(B) Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

(I) Provides onsite parking for more than 250 motor vehicles;

(II) Encompasses 500,000 square feet or more of gross floor area; or

(III) Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

d. “Retail and service development” means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

- (I) Encompasses more than 400,000 square feet of gross floor area; or
- (II) Provides parking spaces for more than 2,500 motor vehicles.

e. “Office development” means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

f. “Hotel or motel development” means any hotel or motel development that accommodates 350 or more units.

(4) AGENCY PERSONNEL INFORMATION.—

(a)1. The social security numbers of all current and former agency employees which are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The social security numbers of current and former agency employees may be disclosed by the employing agency:

a. If disclosure of the social security number is expressly required by federal or state law or a court order.

b. To another agency or governmental entity if disclosure of the social security number is necessary for the receiving agency or entity to perform its duties and responsibilities.

c. If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number.

(b)1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person’s legal representative provides written permission or pursuant to court order.

2.a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this exemption, “dependent child” has the same meaning as in s. 409.2554.

b. This exemption is remedial in nature and applies to such personal identifying information held by an agency before, on, or after the effective date of this exemption.

(c) Any information revealing undercover personnel of any criminal justice agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d)1. For purposes of this paragraph, the term “telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of

the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).

d.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(II) The names of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made

reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j.(I) The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(II) The names of the spouses and children of the specified agency personnel identified in sub-sub-paragraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses,

telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

(5) OTHER PERSONAL INFORMATION.—

(a)1.a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2.a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. An agency shall identify in writing the specific federal or state law governing the collection, use, or release of social security numbers for each purpose for which the agency collects the social security number, including any authorized exceptions that apply to such collection, use, or release. Each agency shall ensure that the collection, use, or release of social security numbers complies with the specific applicable federal or state law.

c. Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall provide that individual with a copy of the written statement required in subparagraph 2. The written statement also shall state whether collection of the individual's social security number is authorized or mandatory under federal or state law.

4. Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

5. Social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

6. Social security numbers held by an agency may be disclosed if any of the following apply:

a. The disclosure of the social security number is expressly required by federal or state law or a court order.

b. The disclosure of the social security number is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.

c. The individual expressly consents in writing to the disclosure of his or her social security number.

d. The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224.

e. The disclosure of the social security number is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph.

f. The disclosure of the social security number is for the purpose of the administration of health benefits for an agency employee or his or her dependents.

g. The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.

h. The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.

7.a. For purposes of this subsection, the term:

(I) "Commercial activity" means the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., or verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information. It does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(II) "Commercial entity" means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

b. An agency may not deny a commercial entity engaged in the performance of a commercial activity access to social security numbers, provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers. The written request must:

(I) Be verified as provided in s. 92.525;

(II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;

(III) Contain the commercial entity's name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity, including the identification of any specific federal or state law that permits such use.

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8.a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding \$500 per violation.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

(b) Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to bank account numbers and debit, charge, and credit card numbers held by an agency before, on, or after the effective date of this exemption.

(c)1. For purposes of this paragraph, the term:

a. "Child" means any person younger than 18 years of age.

b. “Government-sponsored recreation program” means a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs.

2. Information that would identify or locate a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. This exemption applies to records held before, on, or after the effective date of this exemption.

(d) All records supplied by a telecommunications company, as defined by s. 364.02, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(f) Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

(g) Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term “biometric identification information” means:

1. Any record of friction ridge detail;
2. Fingerprints;
3. Palm prints; and
4. Footprints.

(h)1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

a. With the express written consent of the applicant or recipient or the legally authorized representative of such applicant or recipient;

b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and responsibilities.

(i)1. For purposes of this paragraph, “identification and location information” means the:

a. Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate;

b. Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and

c. Name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24 (a), Art. I of the State Constitution if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information:

a. A written request to exempt such information from public disclosure; and

b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

(j)1. Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after the effective date of this exemption.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 4, ch. 75-225; ss. 2, 3, 4, 6, ch. 79-187; s. 1, ch. 82-95; s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-18; s. 1, ch. 85-45; s. 1, ch. 85-86; s. 4, ch. 85-301; s. 2, ch. 86-11; s. 1, ch. 86-21; s. 1, ch. 86-109; s. 2, ch. 88-188; s. 1, ch. 88-384; s. 1, ch. 89-80; s. 63, ch. 90-136; s. 4, ch. 90-211; s. 78, ch. 91-45; s. 1, ch. 91-96; s. 1, ch. 91-149; s. 90, ch. 92-152; s. 1, ch. 93-87; s. 2, ch. 93-232; s. 3, ch. 93-404; s. 4, ch. 93-405; s. 1, ch. 94-128; s. 3, ch. 94-130; s. 1, ch. 94-176; s. 1419, ch. 95-147; ss. 1, 3, ch. 95-170; s. 4, ch. 95-207; s. 1, ch. 95-320; ss. 3, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 20, 25, 29, 31, 32, 33, 34, ch. 95-398; s. 3, ch. 96-178; s. 41, ch. 96-406; s. 18, ch. 96-410; s. 1, ch. 98-9; s. 7, ch. 98-137; s. 1, ch. 98-259; s. 2, ch. 99-201; s. 27, ch. 2000-164; s. 1, ch. 2001-249; s. 29, ch. 2001-261; s. 1, ch. 2001-361; s. 1, ch. 2001-364; s. 1, ch. 2002-67; s. 1, ch. 2002-256; s. 1, ch. 2002-257; ss. 2, 3, ch. 2002-391; s. 11, ch. 2003-1; s. 1, ch. 2003-16; s. 1, ch. 2003-100; s. 1, ch. 2003-137; ss. 1, 2, ch. 2003-157; ss. 1, 2, ch. 2004-9; ss. 1, 2, ch. 2004-32; ss. 1, 3, ch. 2004-95; s. 7, ch. 2004-335; s. 4, ch. 2005-213; s. 41, ch. 2005-236; ss. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, ch. 2005-251; s. 14, ch. 2006-1; s. 1, ch. 2006-158; s. 1, ch. 2006-180; s. 1, ch. 2006-181; s. 1, ch. 2006-211; s. 1, ch. 2006-212; s. 13, ch. 2006-224; s. 1, ch. 2006-284; s. 1, ch. 2006-285; s. 1, ch. 2007-93; s. 1, ch. 2007-95; s. 1, ch. 2007-250; s. 1, ch. 2007-251; s. 1, ch. 2008-41; s. 2, ch. 2008-57; s. 1, ch. 2008-145; ss. 1, 3, ch. 2008-234; s. 1, ch. 2009-104; ss. 1, 2, ch. 2009-150; s. 1, ch. 2009-169; ss. 1, 2, ch. 2009-235; s. 1, ch. 2009-237; s. 1, ch. 2010-71; s. 1, ch. 2010-171; s. 1, ch. 2011-83; s. 1, ch. 2011-85; s. 1, ch. 2011-140; s. 48, ch. 2011-142; s. 1, ch. 2011-201; s. 1, ch. 2011-202; s. 1, ch. 2012-149; s. 1, ch. 2012-214; s. 1, ch. 2012-216; s. 1, ch. 2013-69; s. 119, ch. 2013-183; s. 1, ch. 2013-220; s. 1, ch. 2013-243; s. 1, ch. 2013-248; s. 1, ch. 2014-72; s. 1, ch. 2014-94; s. 1, ch. 2014-105; s. 1, ch. 2014-172.

Note.—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading "Public Records."

B. Portions former ss. 119.07(6), 119.072, and 119.0721; subparagraph (2)(g)1. former s. 119.0711(1).

119.0711 Executive branch agency exemptions from inspection or copying of public records.

—When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain, all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. The agency

shall not finally accept the offer for a period of 30 days in order to allow public review of the transaction. The agency may give conditional acceptance to any option or offer subject only to final acceptance by the agency after the 30-day review period. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption shall expire at the conclusion of the condemnation litigation of the subject property. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the same extent as appraisals, other reports relating to value, offers, and counteroffers. For the purpose of this subsection, the term “option contract” means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. This subsection has no application to other exemptions from s. 119.07(1) which are contained in other provisions of law and shall not be construed to be an express or implied repeal thereof.

History.—s. 1, ch. 85-18; s. 1, ch. 86-21; s. 1, ch. 89-29; ss. 19, 25, ch. 95-398; s. 7, ch. 2004-335; ss. 30, 31, ch. 2005-251; s. 1, ch. 2008-145.

Note.—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading “Public Records.”

B. Former s. 119.07(6)(n), (q).

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(1) DEPARTMENT OF HEALTH.—All personal identifying information contained in records relating to an individual’s personal health or eligibility for health-related services held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this subsection. Information made confidential and exempt by this subsection shall be disclosed:

(a) With the express written consent of the individual or the individual’s legally authorized representative.

(b) In a medical emergency, but only to the extent necessary to protect the health or life of the individual.

(c) By court order upon a showing of good cause.

(d) To a health research entity, if the entity seeks the records or data pursuant to a research protocol approved by the department, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4). The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(a) For purposes of this subsection, the term “motor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles.

(b) Personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

(c)1. Emergency contact information contained in a motor vehicle record is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

(3) OFFICE OF FINANCIAL REGULATION.—

(a) The following information held by the Office of Financial Regulation before, on, or after July 1, 2011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.

2. Any information that is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency. The office may obtain and use the information in accordance with the conditions imposed by the joint or multiagency agreement. This exemption does not apply to information obtained or developed by the office that would otherwise be available for public inspection if the office had conducted an independent examination or investigation under Florida law.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 97-185; s. 1, ch. 2001-108; ss. 1, 2, ch. 2004-62; s. 7, ch. 2004-335; ss. 32, 33, ch. 2005-251; s. 1, ch. 2006-199; s. 1, ch. 2007-94; ss. 1, 2, ch. 2009-153; s. 1, ch. 2011-88; s. 7, ch. 2013-18.

Note.—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading "Public Records."

B. Former s. 119.07(6)(aa), (cc).

119.0713 Local government agency exemptions from inspection or copying of public records.—

(1) All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision does not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency that is authorized to access such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties. This subsection does not modify or repeal any special or local act.

(2)(a) The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. As used in this subsection, the term "unit of local government" means a

county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law. An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

(b) Paragraph (a) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) Any data, record, or document used directly or solely by a municipally owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption commences when a municipal utility identifies in writing a specific bid to which it intends to respond. This exemption no longer applies after the contract for sale, distribution, or use of the service, commodity, or tangible personal property is executed, a decision is made not to execute such contract, or the project is no longer under active consideration. The exemption in this subsection includes the bid documents actually furnished in response to the request for bids. However, the exemption for the bid documents submitted no longer applies after the bids are opened by the customer or prospective customer.

(4)(a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

1. Trade secrets.
2. Internal auditing controls and reports of internal auditors.
3. Security measures, systems, or procedures.
4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.
5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(b) Proprietary confidential business information held by an electric utility that is subject to chapter 119 in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 86-21; s. 24, ch. 95-398; s. 1, ch. 95-399; s. 1, ch. 96-230; s. 1, ch. 2001-87; ss. 1, 2, ch. 2003-110; s. 7, ch. 2004-335; ss. 34, 35, 36, ch. 2005-251; ss. 3, 5, ch. 2008-57; s. 1, ch. 2011-87; s. 1, ch. 2013-143.

Note.—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading “Public Records.”

B. Former s. 119.07(6)(p), (y), (z), (hh).

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(a) A public record that was prepared by an agency attorney or prepared at the attorney’s express direction as provided in s. 119.071(1)(d).

(b) Data processing software as provided in s. 119.071(1)(f).

(c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).

(d) Any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).

(e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).

(f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).

(g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).

(h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h).

(i) Social security numbers as provided in s. 119.071(5)(a).

(j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).

(2) COURT RECORDS.—

(a) Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder’s attorney or legal guardian.

(b) A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

(c) A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

(d) The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.

(e)1. On January 1, 2012, and thereafter, the clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.

(3) OFFICIAL RECORDS.—A person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

(a) If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

1. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (d), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to official records.

(b) The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

1. A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.

2. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

3. A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

(c) A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.

2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or

delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(d) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction is deemed to be the best effort in performing the redaction and is deemed in compliance with the requirements of this subsection.

(e) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

History.—s. 2, ch. 79-187; s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-86; s. 1, ch. 86-109; s. 2, ch. 88-188; s. 26, ch. 90-344; s. 36, ch. 95-398; s. 7, ch. 2004-335; s. 2, ch. 2005-251; s. 2, ch. 2007-251; s. 5, ch. 2008-234; s. 2, ch. 2009-237; s. 23, ch. 2010-162; s. 4, ch. 2011-83; s. 7, ch. 2013-109.

Note.—Subsection (1) former s. 119.07(6).

119.084 Copyright of data processing software created by governmental agencies; sale price and licensing fee.—

(1) As used in this section, “agency” has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(2) An agency is authorized to acquire and hold a copyright for data processing software created by the agency and to enforce its rights pertaining to such copyright, provided that the agency complies with the requirements of this subsection.

(a) An agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of such data processing software that may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).

(b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency’s appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.

(c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

History.—s. 1, ch. 2001-251; s. 9, ch. 2004-335; s. 1, ch. 2006-286.

119.092 Registration by federal employer’s registration number.—Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer’s identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer’s identification number or the state agency’s own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal

employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

History.—s. 1, ch. 77-148.

119.10 Violation of chapter; penalties.—

(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 10, ch. 67-125; s. 74, ch. 71-136; s. 5, ch. 85-301; s. 2, ch. 2001-271; s. 11, ch. 2004-335.

119.105 Protection of victims of crimes or accidents.—Police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. A person who comes into possession of exempt or confidential information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.

History.—s. 1, ch. 90-280; s. 2, ch. 2003-411; s. 12, ch. 2004-335.

119.11 Accelerated hearing; immediate compliance.—

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.

(4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under s. 119.07(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in s. 119.07(1) and other provisions of law.

History.—s. 5, ch. 75-225; s. 2, ch. 83-214; s. 6, ch. 84-298.

119.12 Attorney's fees.—If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

History.—s. 5, ch. 75-225; s. 7, ch. 84-298; s. 13, ch. 2004-335.

119.15 Legislative review of exemptions from public meeting and public records requirements.—

(1) This section may be cited as the “Open Government Sunset Review Act.”

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011. This act does not apply to an exemption that:

- (a) Is required by federal law; or
- (b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;
2. Exempt from s. 119.07(1) or s. 286.011; and
3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)(a) By June 1 in the year before the repeal of an exemption under this section, the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

(b) An exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the office fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(6)(a) As part of the review process, the Legislature shall consider the following:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

(b) An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(7) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

History.—s. 2, ch. 95-217; s. 25, ch. 98-136; s. 37, ch. 2005-251; s. 15, ch. 2006-1; s. 5, ch. 2012-51.

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120.50 Exception to application of chapter.—This chapter shall not apply to:

- (1) The Legislature.
- (2) The courts.

History.—s. 1, ch. 74-310; s. 3, ch. 77-468; s. 1, ch. 78-162.

120.51 Short title.—This chapter may be known and cited as the “Administrative Procedure Act.”

History.—s. 1, ch. 74-310.

120.515 Declaration of policy.—This chapter provides uniform procedures for the exercise of specified authority. This chapter does not limit or impinge upon the assignment of executive power under Article IV of the State Constitution or the legal authority of an appointing authority to direct and supervise those appointees serving at the pleasure of the appointing authority. For purposes of this chapter, adherence to the direction and supervision of an appointing authority does not constitute delegation or transfer of statutory authority assigned to the appointee.

History.—s. 7, ch. 2012-116.

120.52 Definitions.—As used in this act:

(1) “Agency” means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of chapter 361; a metropolitan planning organization created pursuant to s. 339.175; a separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority or commission under chapter 343 or chapter 349; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

(2) “Agency action” means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(7).

(3) “Agency head” means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action. An agency head appointed by and serving at the pleasure of an appointing authority remains subject to the direction and supervision of the appointing authority, but actions taken by the agency head as authorized by statute are official acts.

(4) “Committee” means the Administrative Procedures Committee.

(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.

(6) “Educational unit” means a local school district, a community college district, the Florida School for the Deaf and the Blind, or a state university when the university is acting pursuant to statutory authority derived from the Legislature.

(7) “Final order” means a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

(8) “Invalid exercise of delegated legislative authority” means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency’s class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an

agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(9) “Law implemented” means the language of the enabling statute being carried out or interpreted by an agency through rulemaking.

(10) “License” means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(11) “Licensing” means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(12) “Official reporter” means the publication in which an agency publishes final orders, the index to final orders, and the list of final orders which are listed rather than published.

(13) “Party” means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term “party” does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.713 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

(14) “Person” means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(15) “Recommended order” means the official recommendation of an administrative law judge assigned by the division or of any other duly authorized presiding officer, other than an agency head or member of an agency head, for the final disposition of a proceeding under ss. 120.569 and 120.57.

(16) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute

or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.
2. Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.
3. Contractual provisions reached as a result of collective bargaining.
4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

(17) "Rulemaking authority" means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term "rule."

(18) "Small city" means any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

(19) "Small county" means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

(20) "Unadopted rule" means an agency statement that meets the definition of the term "rule," but that has not been adopted pursuant to the requirements of s. 120.54.

(21) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54 (5).

(22) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

History.—s. 1, ch. 74-310; s. 1, ch. 75-191; s. 1, ch. 76-131; s. 1, ch. 77-174; s. 12, ch. 77-290; s. 2, ch. 77-453; s. 1, ch. 78-28; s. 1, ch. 78-425; s. 1, ch. 79-20; s. 55, ch. 79-40; s. 1, ch. 79-299; s. 2, ch. 81-119; s. 1, ch. 81-180; s. 7, ch. 82-180; s. 1, ch. 83-78; s. 2, ch. 83-273; s. 10, ch. 84-170; s. 15, ch. 85-80; s. 1, ch. 85-168; s. 2, ch. 87-385; s. 1, ch. 88-367; s. 1, ch. 89-147; s. 1, ch. 91-46; s. 9, ch. 92-166; s. 50, ch. 92-279; s. 55, ch. 92-326; s. 3, ch. 96-159; s. 1, ch. 97-176; s. 2, ch. 97-286; s. 1, ch. 98-402; s. 64, ch. 99-245; s. 2, ch. 99-379; s. 895, ch. 2002-387; s. 1, ch. 2003-94; s. 138, ch. 2003-261; s. 7, ch. 2003-286; s. 3, ch. 2007-196; s. 13, ch. 2007-217; s. 2, ch. 2008-104; s. 1, ch. 2009-85; s. 1, ch. 2009-187; s. 10, ch. 2010-5; s. 2, ch. 2010-205; s. 7, ch. 2011-208; s. 8, ch. 2012-116; s. 14, ch. 2013-173.

120.525 Meetings, hearings, and workshops.—

(1) Except in the case of emergency meetings, each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Register and on the agency's website not less than 7 days before the event. The notice shall include a statement of the general subject matter to be considered.

(2) An agenda shall be prepared by the agency in time to ensure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic

form excluding confidential and exempt information, shall be published on the agency's website. The agenda shall contain the items to be considered in order of presentation. After the agenda has been made available, a change shall be made only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time.

(3) If an agency finds that an immediate danger to the public health, safety, or welfare requires immediate action, the agency may hold an emergency public meeting and give notice of such meeting by any procedure that is fair under the circumstances and necessary to protect the public interest, if:

(a) The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

(b) The agency takes only that action necessary to protect the public interest under the emergency procedure.

(c) The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

History.—s. 4, ch. 96-159; s. 3, ch. 2009-187; s. 3, ch. 2013-14.

120.53 Maintenance of orders; indexing; listing; organizational information.—

(1)(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.

c. The agency orders that must be indexed, unless excluded under paragraph (c) or paragraph (d), include:

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

(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.

(III) Each declaratory statement issued by an agency.

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

3. A list of all final orders rendered pursuant to s. 120.57(4) 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.

(b) An agency final order that must be 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 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 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.

(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.

History.—s. 1, ch. 74-310; s. 2, ch. 75-191; s. 2, ch. 76-131; s. 2, ch. 79-299; s. 1, ch. 81-296; s. 2, ch. 81-309; s. 8, ch. 83-92; s. 34, ch. 83-217; s. 3, ch. 83-273; s. 1, ch. 84-203; s. 77, ch. 85-180; s. 2, ch. 87-100; s. 2, ch. 88-384; s. 44, ch. 90-136; s. 35, ch. 90-302; s. 2, ch. 91-30; s. 79, ch. 91-45; s. 1, ch. 91-191; s. 1, ch. 92-166; s. 143, ch. 92-279; s. 55, ch. 92-326; s. 757, ch. 95-147; s. 5, ch. 96-159; s. 2, ch. 96-423; s. 2, ch. 97-176; s. 3, ch. 2008-104.

120.533 Coordination of indexing by Department of State.—The Department of State shall:

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

(2) Provide, by rule, guidelines for the indexing of agency 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 for indexing, and making available, agency orders by subject matter. The Department of State may 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) Determine which final orders must be indexed for each agency.

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

History.—s. 9, ch. 91-30; s. 1, ch. 91-191; s. 7, ch. 96-159.

120.536 Rulemaking authority; repeal; challenge.—

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and

functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(2) Unless otherwise expressly provided by law:

(a) The repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule. Whenever notice of the nullification of a rule under this subsection is received from the committee or otherwise, the Department of State shall remove the rule from the Florida Administrative Code as of the effective date of the law effecting the nullification and update the historical notes for the code to show the rule repealed by operation of law.

(b) The repeal of one or more provisions of law implemented by a rule that on its face implements the provision or provisions repealed and one or more other provisions of law nullifies the rule or applicable portion of the rule to the extent that it implements the repealed law. The agency having authority to repeal or amend the rule shall, within 180 days after the effective date of the repealing law, publish a notice of rule development identifying all portions of rules affected by the repealing law, and if no notice is timely published the operation of each rule implementing a repealed provision of law shall be suspended until such notice is published.

(c) The repeal of one or more provisions of law that, other than as provided in paragraph (a) or paragraph (b), causes a rule or portion of a rule to be of uncertain enforceability requires the Department of State to treat the rule as provided by s. 120.555. A rule shall be considered to be of uncertain enforceability under this paragraph if the division notifies the Department of State that a rule or a portion of the rule has been invalidated in a division proceeding based upon a repeal of law, or the committee gives written notification to the Department of State and the agency having power to amend or repeal the rule that a law has been repealed creating doubt about whether the rule is still in full force and effect.

(3) The Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

(4) Nothing in this section shall be construed to change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.

History.—s. 9, ch. 96-159; s. 3, ch. 99-379; s. 15, ch. 2000-151; s. 15, ch. 2005-2; s. 4, ch. 2008-104; s. 1, ch. 2012-31.

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking.

2. Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:

a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or

b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within 180 days after the effective date of the act, unless the act provides otherwise.

(c) No statutory provision shall be delayed in its implementation pending an agency's adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules.

(d) In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(e) No agency has inherent rulemaking authority, nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules.

(f) An agency may adopt rules authorized by law and necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be effective until the statute upon which they are based is effective. An agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute.

(g) Each rule adopted shall contain only one subject.

(h) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of these materials and given a reasonable opportunity to examine them and offer written comments or written rebuttal.

(i)1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Register, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Register, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency shall not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Register.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(j) A rule published in the Florida Administrative Code must be indexed by the Department of State within 90 days after the rule is filed. The Department of State shall by rule establish procedures for indexing rules.

(k) An agency head may delegate the authority to initiate rule development under subsection (2); however, rulemaking responsibilities of an agency head under subparagraph (3)(a)1., subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be delegated or transferred.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and
2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. An agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a rule development workshop shall be by publication in the Florida Administrative Register not less than 14 days prior to the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to the provisions of this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. Nothing in this subparagraph is intended to affect the rights of an affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2); a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or

other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register not less than 28 days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define “small business” to include businesses employing more than 200 persons, may define “small county” to include those with populations of more than 75,000, and may define “small city” to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule’s compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency's proposal and to respond to questions or comments regarding the rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public

hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to

the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term “public hearing” includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the department; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a) 1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term “administrative determination” does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Register and provided to the committee along with any material incorporated by reference in the rules. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include rules pertaining to perishable agricultural commodities or rules pertaining to the interpretation and implementation of the requirements of chapters 97-102 and chapter 105 of the Election Code.

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or
2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(5) UNIFORM RULES.—

(a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirements of this chapter. On filing with the department, the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

2. An agency may seek exceptions to the uniform rules of procedure by filing a petition with the Administration Commission. The Administration Commission shall approve exceptions to the extent necessary to implement other statutes, to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exceptions shall be published in the Florida Administrative Register.

3. Agency rules that provide exceptions to the uniform rules shall not be filed with the department unless the Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules shall publish a separate chapter in the Florida Administrative Code that delineates clearly the provisions of the agency's rules that provide exceptions to the uniform rules and specifies each alternative chosen from among those authorized by the uniform rules. Each chapter shall be organized in the same manner as the 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 Register 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.

(6) ADOPTION OF FEDERAL STANDARDS.—Notwithstanding any contrary provision of this section, in the pursuance of state implementation, operation, or enforcement of federal programs, an agency is empowered to adopt rules substantively identical to regulations adopted pursuant to federal law, in accordance with the following procedures:

(a) The agency shall publish notice of intent to adopt a rule pursuant to this subsection in the Florida Administrative Register at least 21 days prior to filing the rule with the Department of State. The agency shall provide a copy of the notice of intent to adopt a rule to the committee at least 21 days prior to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the agency shall consider any written comments received within 14 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with the Department of State. Substantive changes from the rules as noticed shall require republishing of notice as required in this subsection.

(b) Any rule adopted pursuant to this subsection shall become effective upon the date designated by the agency in the notice of intent to adopt a rule; however, no such rule shall become effective earlier than the effective date of the substantively identical federal regulation.

(c) Any substantially affected person may, within 14 days after the date of publication of the notice of intent to adopt a rule, file an objection to rulemaking with the agency. The objection shall specify the portions of the proposed rule to which the person objects and the specific reasons for the objection. The agency shall not proceed pursuant to this subsection to adopt those portions of the proposed rule specified in an objection, unless the agency deems the objection to be frivolous, but may proceed pursuant to subsection (3). An objection to a proposed rule, which rule in no material respect differs from the requirements of the federal regulation upon which it is based, is deemed to be frivolous.

(d) Whenever any federal regulation adopted as an agency rule pursuant to this subsection is declared invalid or is withdrawn, revoked, repealed, remanded, or suspended, the agency shall, within

60 days thereafter, publish a notice of repeal of the substantively identical agency rule in the Florida Administrative Register. Such repeal is effective upon publication of the notice. Whenever any federal regulation adopted as an agency rule pursuant to this subsection is substantially amended, the agency may adopt the amended regulation as a rule. If the amended regulation is not adopted as a rule within 180 days after the effective date of the amended regulation, the original rule is deemed repealed and the agency shall publish a notice of repeal of the original agency rule in the next available Florida Administrative Register.

(e) Whenever all or part of any rule proposed for adoption by the agency is substantively identical to a regulation adopted pursuant to federal law, such rule shall be written in a manner so that the rule specifically references the regulation whenever possible.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(b) If the petition filed under this subsection is directed to an unadopted rule, the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Register that the agency will hold a public hearing on the petition within 30 days after publication of the notice. The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter.

(c) Within 30 days following the public hearing provided for by paragraph (b), if the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action, and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(8) RULEMAKING RECORD.—In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

- (a) All notices given for the proposed rule.
- (b) Any statement of estimated regulatory costs for the rule.
- (c) A written summary of hearings on the proposed rule.
- (d) The written comments and responses to written comments as required by this section and s. 120.541.

- (e) All notices and findings made under subsection (4).
- (f) All materials filed by the agency with the committee under subsection (3).
- (g) All materials filed with the Department of State under subsection (3).

- (h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(6).

History.—s. 1, ch. 74-310; s. 3, ch. 75-191; s. 3, ch. 76-131; ss. 1, 2, ch. 76-276; s. 1, ch. 77-174; s. 13, ch. 77-290; s. 3, ch. 77-453; s. 2, ch. 78-28; s. 2, ch. 78-425; s. 7, ch. 79-3; s. 3, ch. 79-299; s. 69, ch. 79-400; s. 5, ch. 80-391; s. 1, ch. 81-309; s. 2, ch. 83-351; s. 1, ch. 84-173; s. 2, ch. 84-203; s. 7, ch. 85-104; s. 1, ch. 86-30; s. 3, ch. 87-385; s. 36, ch. 90-302; ss. 2, 4, 7, ch. 92-166; s. 63, ch. 93-187; s. 758, ch. 95-147; s. 6, ch. 95-295; s. 10, ch. 96-159; s. 6, ch. 96-320; s. 9, ch. 96-370; s. 3, ch. 97-176; s. 3, ch. 98-200; s. 4, ch. 99-379; s. 9, ch. 2001-75; s. 2, ch. 2003-94; s. 50, ch. 2005-278; s. 3, ch. 2006-82; ss. 5, 6, ch. 2008-104; s. 7, ch. 2008-149; s. 4, ch. 2009-187; ss. 1, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 49, ch. 2011-142; s. 8, ch. 2011-208; s. 1, ch. 2011-225; s. 2, ch. 2012-27; s. 1, ch. 2012-63; s. 4, ch. 2013-14; s. 13, ch. 2013-15.

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule.

(d) At least 21 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.

(e) Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and
2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.b.; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

¹(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

History.—s. 11, ch. 96-159; s. 4, ch. 97-176; ss. 2, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 1, ch. 2011-222; s. 2, ch. 2011-225; s. 92, ch. 2013-183.

¹**Note.**—As amended by s. 92, ch. 2013-183, which amended subsection (4) as amended by s. 1, ch. 2011-222. Section 2, ch. 2011-225, also amended subsection (4), and the language of that version conflicted with the version by s. 1, ch. 2011-222. As amended by s. 2, ch. 2011-225, subsection (4) reads:

(4) This section does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).

120.542 Variances and waivers.—

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. This section does not authorize agencies to grant variances or waivers to statutes or to rules required by the Federal Government for the agency's implementation or retention of any federally approved or delegated program, except as allowed by the program or when the variance or waiver is also approved by the appropriate agency of the Federal Government. This section is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

(3) The Governor and Cabinet, sitting as the Administration Commission, shall adopt uniform rules of procedure pursuant to the requirements of s. 120.54(5) establishing procedures for granting or denying petitions for variances and waivers. The uniform rules shall include procedures for the granting, denying, or revoking of emergency and temporary variances and waivers. Such provisions may provide for expedited timeframes, waiver of or limited public notice, and limitations on comments on the petition in the case of such temporary or emergency variances and waivers.

(4) Agencies shall advise persons of the remedies available through this section and shall provide copies of this section, the uniform rules on variances and waivers, and, if requested, the underlying statute, to persons who inquire about the possibility of relief from rule requirements.

(5) A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:

- (a) The rule from which a variance or waiver is requested.
- (b) The type of action requested.

- (c) The specific facts that would justify a waiver or variance for the petitioner.
- (d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.
- (6) Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which variance or waiver is sought, and an explanation of how a copy of the petition can be obtained. The uniform rules shall provide a means for interested persons to provide comments on the petition.
- (7) Except for requests for emergency variances or waivers, within 30 days after receipt of a petition for a variance or waiver, an agency shall review the petition and request submittal of all additional information that the agency is permitted by this section to require. Within 30 days after receipt of such additional information, the agency shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by or directly related to the additional information. If the petitioner asserts that any request for additional information is not authorized by law or by rule of the affected agency, the agency shall proceed, at the petitioner's written request, to process the petition.
- (8) An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. A petition not granted or denied within 90 days after receipt of a completed petition is deemed approved. A copy of the order granting or denying the petition shall be filed with the committee and shall contain a statement of the relevant facts and reasons supporting the agency's action. The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which the waiver or variance is sought, a reference to the place and date of publication of the notice of the petition, the date of the order denying or approving the variance or waiver, the general basis for the agency decision, and an explanation of how a copy of the order can be obtained. The agency's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to a variance or waiver shall be limited to the agency action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter.
- (9) Each agency shall maintain a record of the type and disposition of each petition, including temporary or emergency variances and waivers, filed pursuant to this section.

History.—s. 12, ch. 96-159; s. 5, ch. 97-176; s. 37, ch. 2010-102; s. 5, ch. 2013-14.

120.545 Committee review of agency rules.—

- (1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the purpose of determining whether:
 - (a) The rule is an invalid exercise of delegated legislative authority.
 - (b) The statutory authority for the rule has been repealed.
 - (c) The rule reiterates or paraphrases statutory material.
 - (d) The rule is in proper form.

(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s. 120.54(4).

(2) The committee may request from an agency such information as is reasonably necessary for examination of a rule as required by subsection (1). The committee shall consult with legislative standing committees having jurisdiction over the subject areas. If the committee objects to a rule, the committee shall, within 5 days after the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity. The committee shall notify the Speaker of the House of Representatives and the President of the Senate of any objection to an agency rule concurrent with certification of that fact to the agency. Such notice shall include a copy of the rule and the statement detailing the committee's objections to the rule.

(3) Within 30 days after receipt of the objection, if the agency is headed by an individual, or within 45 days after receipt of the objection, if the agency is headed by a collegial body, the agency shall:

(a) If the rule is not yet in effect:

1. File notice pursuant to s. 120.54(3)(d) of only such modifications as are necessary to address the committee's objection;

2. File notice pursuant to s. 120.54(3)(d) of withdrawal of the rule; or

3. Notify the committee in writing that it refuses to modify or withdraw the rule.

(b) If the rule is in effect:

1. File notice pursuant to s. 120.54(3)(a), without prior notice of rule development, to amend the rule to address the committee's objection;

2. File notice pursuant to s. 120.54(3)(a) to repeal the rule; or

3. Notify the committee in writing that the agency refuses to amend or repeal the rule.

(c) If the objection is to the statement of estimated regulatory costs:

1. Prepare a corrected statement of estimated regulatory costs, give notice of the availability of the corrected statement in the first available issue of the Florida Administrative Register, and file a copy of the corrected statement with the committee; or

2. Notify the committee that it refuses to prepare a corrected statement of estimated regulatory costs.

(4) Failure of the agency to respond to a committee objection to a rule that is not yet in effect within the time prescribed in subsection (3) constitutes withdrawal of the rule in its entirety. In this

event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Register. Upon publication of the notice, the rule shall be stricken from the files of the Department of State and the files of the agency.

(5) Failure of the agency to respond to a committee objection to a rule that is in effect within the time prescribed in subsection (3) constitutes a refusal to amend or repeal the rule.

(6) Failure of the agency to respond to a committee objection to a statement of estimated regulatory costs within the time prescribed in subsection (3) constitutes a refusal to prepare a corrected statement of estimated regulatory costs.

(7) If the committee objects to a rule and the agency refuses to modify, amend, withdraw, or repeal the rule, the committee shall file with the Department of State a notice of the objection, detailing with particularity the committee's objection to the rule. The Department of State shall publish this notice in the Florida Administrative Register. If the rule is published in the Florida Administrative Code, a reference to the committee's objection and to the issue of the Florida Administrative Register in which the full text thereof appears shall be recorded in a history note.

(8)(a) If the committee objects to a rule, or portion of a rule, and the agency fails to initiate administrative action to modify, amend, withdraw, or repeal the rule consistent with the objection within 60 days after the objection, or thereafter fails to proceed in good faith to complete such action, the committee may submit to the President of the Senate and the Speaker of the House of Representatives a recommendation that legislation be introduced to address the committee's objection.

(b)1. If the committee votes to recommend the introduction of legislation to address the committee's objection, the committee shall, within 5 days after this determination, certify that fact to the agency whose rule or proposed rule has been examined. The committee may request that the agency temporarily suspend the rule or suspend the adoption of the proposed rule, pending consideration of proposed legislation during the next regular session of the Legislature.

2. Within 30 days after receipt of the certification, if the agency is headed by an individual, or within 45 days after receipt of the certification, if the agency is headed by a collegial body, the agency shall:

- a. Temporarily suspend the rule or suspend the adoption of the proposed rule; or
- b. Notify the committee in writing that the agency refuses to temporarily suspend the rule or suspend the adoption of the proposed rule.

3. If the agency elects to temporarily suspend the rule or suspend the adoption of the proposed rule, the agency shall give notice of the suspension in the Florida Administrative Register. The rule or the rule adoption process shall be suspended upon publication of the notice. An agency may not base any agency action on a suspended rule or suspended proposed rule, or portion of such rule, prior to expiration of the suspension. A suspended rule or suspended proposed rule, or portion of such rule, continues to be subject to administrative determination and judicial review as provided by law.

4. Failure of an agency to respond to committee certification within the time prescribed by subparagraph 2. constitutes a refusal to suspend the rule or to suspend the adoption of the proposed rule.

(c) The committee shall prepare proposed legislation to address the committee's objection in accordance with the rules of the Senate and the House of Representatives for prefilming and introduction in the next regular session of the Legislature. The proposed legislation shall be presented to the

President of the Senate and the Speaker of the House of Representatives with the committee recommendation.

(d) If proposed legislation addressing the committee's objection fails to become law, any temporary agency suspension shall expire.

History.—s. 4, ch. 76-131; s. 1, ch. 77-174; s. 6, ch. 80-391; s. 3, ch. 81-309; s. 4, ch. 87-385; s. 8, ch. 92-166; s. 20, ch. 95-280; s. 14, ch. 96-159; s. 16, ch. 2000-151; s. 18, ch. 2008-4; s. 7, ch. 2008-104; s. 6, ch. 2013-14.

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the “Florida Administrative Code.” The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of “rule” provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(3)(a), showing the text of all rules proposed for consideration.
2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.
3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.
4. Notice of petitions for declaratory statements or administrative determinations.
5. A summary of each objection to any rule filed by the Administrative Procedures Committee.
6. Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register Internet website must allow users to:

- (a) Search for notices by type, publication date, rule number, word, subject, and agency.
- (b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(6) Access to the Florida Administrative Register Internet website and its contents, including the e-mail notification service, shall be free for the public.

(7)(a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed \$300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

History.—s. 1, ch. 74-310; s. 1, ch. 75-107; s. 4, ch. 75-191; s. 5, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 77-453; s. 3, ch. 78-425; s. 4, ch. 79-299; s. 7, ch. 80-391; s. 4, ch. 81-309; s. 1, ch. 82-19; s. 1, ch. 82-47; s. 3, ch. 83-351; s. 3, ch. 84-203; s. 17, ch. 87-224; s. 1, ch. 87-322; s. 20, ch. 91-45; s. 15, ch. 96-159; s. 896, ch. 2002-387; s. 5, ch. 2004-235; s. 14, ch. 2004-335; s. 4, ch. 2006-82; ss. 8, 9, ch. 2008-104; ss. 11, 12, ch. 2010-5; s. 2, ch. 2012-63.

120.555 Summary removal of published rules no longer in force and effect.—When, as part of the continuous revision system authorized in s. 120.55(1)(a)1. or as otherwise provided by law, the Department of State is in doubt whether a rule published in the official version of the Florida Administrative Code is still in full force and effect, the procedure in this section shall be employed.

(1) The Department of State shall submit to the head of the agency with authority to repeal or amend the rule, if any, or if no such agency can be identified, to the Governor, a written request for a statement as to whether the rule is still in full force and effect. A copy of the request shall be promptly delivered to the committee and to the Attorney General. The Department of State shall publish a notice of the request together with a copy of the request in the Florida Administrative Register next available after delivery of the request to the head of the agency or the Governor.

(2) No later than 90 days after the date the notice required in subsection (1) is published, the agency or the Governor, notified pursuant to subsection (1), shall file a written response with the Department of State stating whether the rule is in full force and effect and under the jurisdiction of an agency with full authority to amend or repeal the rule. Failure to respond timely under this subsection constitutes an acknowledgment by the agency or the Governor that the rule is no longer in effect and is subject to summary repeal under this section.

(3) The Department of State shall publish a notice of the agency's or Governor's timely response or the acknowledgment determined under subsection (2) in the Florida Administrative Register next available after receipt of the response or the expiration of the response period, whichever occurs first.

(4) If the response states that the rule is no longer in effect, or if no response is filed timely with the Department of State, the notice required in subsection (3) shall also give notice of the following:

(a) Based on the agency's or Governor's written response or the acknowledgment determined under subsection (2), the rule will be repealed summarily pursuant to this section and removed from the Florida Administrative Code.

(b) Any objection to the summary repeal under this section must be filed as a petition challenging a proposed rule under s. 120.56 and must be filed no later than 21 days after the date the notice is published in the Florida Administrative Register.

(c) For purposes only of challenging a summary repeal under this section, the agency with current authority to repeal the rule under s. 120.54 shall be named as the respondent in the petition and shall be the proper party in interest. In such circumstances, the Department of State shall not be named as a party in a petition filed under paragraph (b) and this paragraph.

(d) If no agency currently has authority to repeal the rule under s. 120.54, the Department of State shall be named as the respondent in a petition filed under paragraph (b) and this paragraph. The Attorney General shall represent the Department of State in all proceedings under this paragraph.

(5) Upon the expiration of the 21-day period to file an objection to a notice of summary repeal published pursuant to subsection (4), if no timely objection is filed, or, if a timely objection is filed, on the date a decision finding the rule is no longer in effect becomes final, the Department of State shall update the Florida Administrative Code to remove the rule and shall provide historical notes identifying

the manner in which the rule ceased to have effect, including the summary repeal pursuant to this section.

History.—s. 2, ch. 2012-31; s. 7, ch. 2013-14.

120.56 Challenges to rules.—

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

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition seeking an administrative determination must state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it, or that the person challenging a proposed rule would be substantially affected by it.

(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.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of

delegated legislative authority as to the objections raised. A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the rule and is not limited to challenging the change to the proposed rule.

(b) The administrative law judge may declare the proposed rule wholly or partly invalid. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid shall not be adopted. After a petition for administrative determination has been filed, the agency may proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Register.

(c) When any substantially affected person seeks determination of the invalidity of a proposed rule pursuant to this section, the proposed rule is not presumed to be valid or invalid.

(3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule. The petitioner has a burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised.

(b) The administrative law judge may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Register in the first available issue after the rule has become void.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state with particularity facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(c) The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(d) If an administrative law judge enters a final order that all or part of an agency statement violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action.

(e) If proposed rules addressing the challenged statement are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance on the statement and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(f) All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

(5) **CHALLENGING EMERGENCY RULES; SPECIAL PROVISIONS.**—Challenges to the validity of an emergency rule shall be subject to the following time schedules in lieu of those established by paragraphs (1)(c) and (d). Within 7 days after receiving the petition, the division director shall, if the petition complies with paragraph (1)(b), assign an administrative law judge, who shall conduct a hearing within 14 days, unless the petition is withdrawn. The administrative law judge shall render a decision within 14 days after the hearing.

History.—s. 1, ch. 74-310; s. 5, ch. 75-191; s. 6, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 78-425; s. 759, ch. 95-147; s. 16, ch. 96-159; s. 6, ch. 97-176; s. 5, ch. 99-379; s. 3, ch. 2003-94; s. 5, ch. 2006-82; ss. 10, 11, ch. 2008-104; ss. 3, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 10, ch. 2011-208; s. 3, ch. 2011-225; s. 8, ch. 2013-14.

120.565 Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Register and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Register. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191; s. 7, ch. 76-131; s. 5, ch. 78-425; s. 5, ch. 79-299; s. 760, ch. 95-147; s. 17, ch. 96-159; s. 9, ch. 2013-14.

120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), then, unless waived by all parties, the proceeding under s. 120.57(2) shall be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s.

120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(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.

(b) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. The notice shall include:

1. A statement of the time, place, and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).

(e) All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(f) The presiding officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt. However, no presiding officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative

duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(g) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

(h) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(i) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

(j) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(k)1. Any person subject to a subpoena may, before compliance and on timely petition, request the presiding officer having jurisdiction of the dispute to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material.

2. A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this chapter by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subparagraph 1. The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

3. Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(l) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;
2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge; or
3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

(m) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, must be accompanied by a concise and explicit statement of the underlying facts of record which support the findings.

(n) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoined from the date rendered.

(o) On the request of any party, the administrative law judge shall enter an initial scheduling order to facilitate the just, speedy, and inexpensive determination of the proceeding. The initial scheduling order shall establish a discovery period, including a deadline by which all discovery shall be completed, and the date by which the parties shall identify expert witnesses and their opinions. The initial scheduling order also may require the parties to meet and file a joint report by a date certain.

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding is for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration may be made by entering into evidence the application and relevant material submitted to the agency in support of the application, and the agency's staff report or notice of intent to approve the permit, license, or conceptual approval. Subsequent to the presentation of the applicant's prima facie case and any direct evidence submitted by the agency, the petitioner initiating the action challenging the issuance of the license, permit, or conceptual approval has the burden of ultimate persuasion and has the burden of going forward to prove the case in opposition to the license, permit, or conceptual approval through the presentation of competent and substantial evidence. The permit applicant and agency may on rebuttal present any evidence relevant to demonstrating that the application meets the conditions for issuance. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

History.—s. 18, ch. 96-159; s. 7, ch. 97-176; s. 4, ch. 98-200; s. 4, ch. 2003-94; s. 6, ch. 2006-82; s. 14, ch. 2008-104; s. 11, ch. 2011-208; s. 10, ch. 2011-225.

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(a) Except as provided in ss. 120.80 and 120.81, an administrative law judge assigned by the division shall conduct all hearings under this subsection, except for hearings before agency heads or a member thereof. If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary.

(b) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut the material.

(c) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(d) Notwithstanding s. 120.569(2)(g), similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when

the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule. The administrative law judge shall determine whether an agency statement constitutes an unadopted rule. This subparagraph does not preclude application of adopted rules and applicable provisions of law to the facts.

2. Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules, subject to de novo review by the administrative law judge. The agency action shall not be presumed valid or invalid. The agency must demonstrate that the unadopted rule:

- a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority derived from the State Constitution, is within that authority;
- b. Does not enlarge, modify, or contravene the specific provisions of law implemented;
- c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;
- d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;
- e. Is not being applied to the substantially affected party without due notice; and
- f. Does not impose excessive regulatory costs on the regulated person, county, or city.

3. The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs (k) and (l), except that the administrative law judge's determination regarding an unadopted rule under subparagraph 1. or subparagraph 2. shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review.

(f) The record in a case governed by this subsection shall consist only of:

1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence admitted.
3. Those matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Proposed findings and exceptions.
6. Any decision, opinion, order, or report by the presiding officer.
7. All staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records.

8. All matters placed on the record after an ex parte communication.

9. The official transcript.

(g) The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

(h) Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(i) When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. An order relinquishing jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists. If the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed fact that could have been raised before the administrative law judge. An order entered by an administrative law judge relinquishing jurisdiction to the agency based upon a determination that no genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a recommended disposition or penalty.

(j) Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based

did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(m) If a recommended order is submitted to an agency, the agency shall provide a copy of its final order and any exceptions to the division within 15 days after the order is filed with the agency clerk.

(n) Notwithstanding any law to the contrary, when statutes or rules impose conflicting time requirements for the scheduling of expedited hearings or issuance of recommended or final orders, the director of the division shall have the authority to set the proceedings for the orderly operation of this chapter.

(2) **ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.**—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

(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:

(a) The agency shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: “Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes.”

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a

notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.

(c) Upon receipt of the formal written protest that has been timely filed, the agency shall stop the solicitation or contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(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).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the director of the division shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days of the entry of a recommended order. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) In a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. In a protest to an invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

(g) For purposes of this subsection, the definitions in s. 287.012 apply.

(4) **INFORMAL DISPOSITION.**—Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(5) **APPLICABILITY.**—This section does not apply to agency investigations preliminary to agency action.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-453; ss. 6, 11, ch. 78-95; s. 6, ch. 78-425; s. 8, ch. 79-7; s. 7, ch. 80-95; s. 4, ch. 80-289; s. 57, ch. 81-259; s. 2, ch. 83-78; s. 9, ch. 83-216; s. 2, ch. 84-173; s. 4, ch. 84-203; ss. 1, 2, ch. 86-108; s. 44, ch. 87-6; ss. 1, 2, ch. 87-54; s. 5, ch. 87-385; s. 1, ch. 90-283; s. 4, ch. 91-30; s. 1, ch. 91-191; s. 22, ch. 92-315; s. 7, ch. 94-218; s. 1420, ch. 95-147; s. 1, ch. 95-328; s. 19, ch. 96-159; s. 1, ch. 96-423; s. 8, ch. 97-176; s. 5, ch. 98-200; s. 3, ch. 98-279; s. 47, ch. 99-2; s. 6, ch. 99-379; s. 2, ch. 2002-207; s. 5, ch. 2003-94; s. 7, ch. 2006-82; s. 12, ch. 2008-104; s. 12, ch. 2011-208.

120.573 Mediation of disputes.—Each announcement of an agency action that affects substantial interests shall advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and all parties to the administrative action agree to mediation, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under ss. 120.569 and 120.57, the time limitations imposed by ss. 120.569 and 120.57 shall be tolled to allow the agency and parties to mediate the administrative dispute. The mediation shall be concluded within 60 days of such agreement unless otherwise agreed by the parties. The mediation agreement shall include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the agency shall enter a final order incorporating the agreement of the parties. If mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.57 are resumed.

History.—s. 20, ch. 96-159; s. 9, ch. 97-176.

120.574 Summary hearing.—

(1)(a) Within 5 business days following the division's receipt of a petition or request for hearing, the division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and provides general information regarding practice and procedure before the division. The initial order shall also contain a statement advising the addressees that a summary hearing is available upon the agreement of all parties under subsection (2) and briefly describing the expedited time sequences, limited discovery, and final order provisions of the summary procedure.

(b) Within 15 days after service of the initial order, any party may file with the division a motion for summary hearing in accordance with subsection (2). If all original parties agree, in writing, to the summary proceeding, the proceeding shall be conducted within 30 days of the agreement, in accordance with the provisions of subsection (2).

(c) Intervenors in the proceeding shall be governed by the decision of the original parties regarding whether the case will proceed in accordance with the summary hearing process and shall not have standing to challenge that decision.

(d) If a motion for summary hearing is not filed within 15 days after service of the division's initial order, the matter shall proceed in accordance with ss. 120.569 and 120.57.

(2) In any case to which this subsection is applicable, the following procedures apply:

(a) Motions shall be limited to the following:

1. A motion in opposition to the petition.

2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (b). Upon a showing of necessity, additional discovery may be permitted in the

discretion of the administrative law judge, but only if it can be completed not later than 5 days prior to the final hearing.

3. A motion for continuance of the final hearing date.

4. A motion requesting a prehearing conference, or the administrative law judge may require a prehearing conference, for the purpose of identifying: the legal and factual issues to be considered at the final hearing; the names and addresses of witnesses who may be called to testify at the final hearing; documentary evidence that will be offered at the final hearing; the range of penalties that may be imposed upon final hearing; and any other matter that the administrative law judge determines would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.

5. During or after any preliminary hearing or conference, any party or the administrative law judge may suggest that the case is no longer appropriate for summary disposition. Following any argument requested by the parties, the administrative law judge may enter an order referring the case back to the formal adjudicatory process described in s. 120.57(1), in which event the parties shall proceed accordingly.

(b) Not later than 5 days prior to the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.

(c) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.

(d) The record in a case governed by this subsection shall consist only of:

1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence received.
3. A statement of matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Matters placed on the record after an ex parte communication.
6. The written decision of the administrative law judge presiding at the final hearing.
7. The official transcript of the final hearing.

(e) The agency shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.

(f) The decision of the administrative law judge shall be rendered within 30 days after the conclusion of the final hearing or the filing of the transcript thereof, whichever is later. The administrative law judge's decision, which shall be final agency action subject to judicial review under s. 120.68, shall include the following:

1. Findings of fact based exclusively on the evidence of record and matters officially recognized.
2. Conclusions of law.
3. Imposition of a fine or penalty, if applicable.
4. Any other information required by law or rule to be contained in a final order.

History.—s. 21, ch. 96-159; s. 10, ch. 97-176; s. 11, ch. 2000-158; s. 10, ch. 2000-336.

120.595 Attorney's fees.—

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).—

(a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and a reasonable attorney's fee to the prevailing party only where the nonprevailing adverse party has been

determined by the administrative law judge to have participated in the proceeding for an improper purpose.

(c) In proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose.

(d) In any proceeding in which the administrative law judge determines that a party participated in the proceeding for an improper purpose, the recommended order shall so designate and shall determine the award of costs and attorney's fees.

(e) For the purpose of this subsection:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. "Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed \$50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were

taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed \$50,000.

(4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney's fees accrued by the petitioner prior to the date the notice was published, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7). An award of attorney's fees as provided by this paragraph may not exceed \$50,000.

(c) Notwithstanding the provisions of chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency shall not be entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney's fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(e) or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney's fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney's fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney’s fees and costs in administrative proceedings. Nothing in this section shall affect the availability of attorney’s fees and costs as provided in those sections.

History.—s. 25, ch. 96-159; s. 11, ch. 97-176; s. 48, ch. 99-2; s. 6, ch. 2003-94; s. 13, ch. 2008-104.

120.60 Licensing.—

(1) Upon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. The agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for an extension of time for submitting the additional information. If the applicant believes the agency’s request for additional information is not authorized by law or rule, the agency, at the applicant’s request, shall proceed to process the application. An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. An application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license. Subject to the satisfactory completion of an examination if required as a prerequisite to licensure, any license that is considered approved shall be issued and may include such reasonable conditions as are authorized by law. Any applicant for licensure seeking to claim licensure by default under this subsection shall notify the agency clerk of the licensing agency, in writing, of the intent to rely upon the default license provision of this subsection, and may not take any action based upon the default license until after receipt of such notice by the agency clerk.

(2) If an applicant seeks a license for an activity that is exempt from licensure, the agency shall notify the applicant and return any tendered application fee within 30 days after receipt of the original application.

(3) Each applicant shall be given written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party’s attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, indicate the procedure that must be followed, and state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

(4) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application for renewal has been finally acted upon by the agency or, in case the application is denied or the terms of

the license are limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(5) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, plain notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the agency. If no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county.

(6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:

(a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;

(b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and

(c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

(7) No agency shall include as a condition of approval of any license any provision that is based upon a statement, policy, or guideline of another agency unless the statement, policy, or guideline is within the jurisdiction of the other agency. The other agency shall identify for the licensing agency the specific legal authority for each such statement, policy, or guideline. The licensing agency must provide the licensee with an opportunity to challenge the condition as invalid. If the licensing agency bases a condition of approval or denial of the license upon the statement, policy, or guideline of the other agency, any party to an administrative proceeding that arises from the approval with conditions or denial of the license may require the other agency to join as a party in determining the validity of the condition.

History.—s. 1, ch. 74-310; s. 10, ch. 76-131; s. 1, ch. 77-174; ss. 6, 9, ch. 77-453; s. 57, ch. 78-95; s. 8, ch. 78-425; s. 1, ch. 79-142; s. 6, ch. 79-299; s. 2, ch. 81-180; s. 6, ch. 84-203; s. 2, ch. 84-265; s. 1, ch. 85-82; s. 14, ch. 90-51; s. 762, ch. 95-147; s. 26, ch. 96-159; s. 326, ch. 96-410; s. 12, ch. 97-176; s. 7, ch. 2003-94; ss. 4, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 10, ch. 2012-212.

120.62 Agency investigations.—

(1) Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript or recording of his or her oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

History.—s. 1, ch. 74-310; s. 763, ch. 95-147; s. 28, ch. 96-159.

120.63 Exemption from act.—

(1) Upon application of any agency, the Administration Commission may exempt any process or proceeding governed by this act from one or more requirements of this act:

(a) When the agency head has certified that the requirement would conflict with any provision of federal law or rules with which the agency must comply;

(b) In order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(c) When the commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in s. 120.525. Upon the conclusion of the hearing, the commission, through the Executive Office of the Governor, shall issue an order specifically granting or denying the exemption and specifying any processes or proceedings exempted and the extent of the exemption; transmit to the committee and to the Department of State a copy of the petition, a certified copy of the order granting or denying the petition, and a copy of any alternative procedures prescribed; and give notice of the petition and the commission's response in the Florida Administrative Register.

(b) An exemption and any alternative procedure prescribed shall terminate 90 days following adjournment sine die of the then-current or next regular legislative session after issuance of the exemption order, or upon the effective date of any subsequent legislation incorporating the exemption or any partial exemption related thereto, whichever is earlier. The exemption granted by the commission shall be renewable upon the same or similar facts not more than once. Such renewal shall terminate as would an original exemption.

History.—s. 1, ch. 74-310; s. 11, ch. 76-131; s. 1, ch. 77-53; s. 8, ch. 77-453; s. 87, ch. 79-190; s. 7, ch. 79-299; s. 70, ch. 79-400; s. 58, ch. 81-259; s. 29, ch. 96-159; s. 10, ch. 2013-14.

120.65 Administrative law judges.—

(1) The Division of Administrative Hearings within the Department of Management Services shall be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The director, who shall also serve as the chief administrative law judge, and any deputy chief administrative law judge must possess the same minimum qualifications as the administrative law judges employed by the division. The Deputy Chief Judge of Compensation Claims must possess the minimum qualifications established in s. 440.45(2) and shall report to the director. The division shall be a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The director has the right to appeal actions by the Executive Office of the Governor that affect amendments to the division's approved operating budget or any personnel actions pursuant to chapter 216 to the Administration Commission, which shall decide such issue by majority vote. The appropriations committees may advise the Administration Commission on the issue. If the President of

the Senate and the Speaker of the House of Representatives object in writing to the effects of the appeal, the appeal may be affirmed by the affirmative vote of two-thirds of the commission members present.

(3) Each state agency as defined in chapter 216 and each political subdivision shall make its facilities available, at a time convenient to the provider, for use by the division in conducting proceedings pursuant to this chapter.

(4) The division shall employ administrative law judges to conduct hearings required by this chapter or other law. Any person employed by the division as an administrative law judge must have been a member of The Florida Bar in good standing for the preceding 5 years.

(5) If the division cannot furnish a division administrative law judge promptly in response to an agency request, the director shall designate in writing a qualified full-time employee of an agency other than the requesting agency to conduct the hearing. The director shall have the discretion to designate such a hearing officer who is located in that part of the state where the parties and witnesses reside.

(6) The division is authorized to provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(7) Rules promulgated by the division may authorize any reasonable sanctions except contempt for violation of the rules of the division or failure to comply with a reasonable order issued by an administrative law judge, which is not under judicial review.

(8) Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(a) A summary of the extent and effect of agencies' utilization of administrative law judges, court reporters, and other personnel in proceedings under this chapter.

(b) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto.

(c) Recommendations as to those types of cases or disputes which should be conducted under the summary hearing process described in s. 120.574.

(d) A report regarding each agency's compliance with the filing requirement in s. 120.57(1)(m).

(9) The division shall be reimbursed for administrative law judge services and travel expenses by the following entities: water management districts, regional planning councils, school districts, community colleges, the Division of Florida Colleges, state universities, the Board of Governors of the State University System, the State Board of Education, the Florida School for the Deaf and the Blind, and the Commission for Independent Education. These entities shall contract with the division to establish a contract rate for services and provisions for reimbursement of administrative law judge travel expenses and video conferencing expenses attributable to hearings conducted on behalf of these entities. The contract rate must be based on a total-cost-recovery methodology.

History.—s. 1, ch. 74-310; s. 9, ch. 75-191; s. 14, ch. 76-131; s. 9, ch. 78-425; s. 46, ch. 79-190; s. 1, ch. 86-297; s. 46, ch. 87-6; s. 25, ch. 87-101; s. 54, ch. 88-1; s. 30, ch. 88-277; s. 51, ch. 92-279; s. 23, ch. 92-315; s. 55, ch. 92-326; s. 764, ch. 95-147; s. 31, ch. 96-159; s. 13, ch. 97-176; s. 38, ch. 2000-371; s. 4, ch. 2001-91; s. 1, ch. 2004-247; s. 8, ch. 2006-82; s. 14, ch. 2007-217; s. 8, ch. 2009-228; s. 8, ch. 2013-18.

120.651 Designation of two administrative law judges to preside over actions involving department or boards.—The Division of Administrative Hearings shall designate at least two administrative law judges who shall specifically preside over actions involving the Department of Health or boards within the Department of Health. Each designated administrative law judge must be a member

of The Florida Bar in good standing and must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law from The Florida Bar.

History.—s. 32, ch. 2003-416.

120.655 Withholding funds to pay for administrative law judge services to school boards.—If a district school board fails to make a timely payment for the services provided by an administrative law judge of the Division of Administrative Hearings as provided annually in the General Appropriations Act, the Commissioner of Education shall withhold, from any general revenue funds the district is eligible to receive, an amount sufficient to pay for the administrative law judge's services. The commissioner shall transfer the amount withheld to the Division of Administrative Hearings in payment of such services.

History.—s. 1, ch. 92-121; s. 32, ch. 96-159.

120.66 Ex parte communications.—

(1) In any proceeding under ss. 120.569 and 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the presiding officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding, the party's authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed agency action.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A presiding officer, including an agency head or designee, who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The presiding officer may, if necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the entity that appointed the presiding officer shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any presiding officer, including an agency head or designee, who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed \$500 or be subjected to other disciplinary action.

History.—s. 1, ch. 74-310; s. 10, ch. 75-191; s. 12, ch. 76-131; s. 1, ch. 77-174; s. 10, ch. 78-425; s. 765, ch. 95-147; s. 33, ch. 96-159; s. 14, ch. 97-176.

120.665 Disqualification of agency personnel.—

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in

the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

History.—s. 1, ch. 74-310; s. 12, ch. 78-425; s. 2, ch. 83-329; s. 767, ch. 95-147; s. 34, ch. 96-159; s. 18, ch. 2013-36.

Note.—Former s. 120.71.

120.68 Judicial review.—

(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56, the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(b) When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

(3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency also may grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. In any event the court shall specify the conditions, if any, upon which the stay or supersedeas is granted.

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with paragraph (7)(a).

(5) The record for judicial review shall be compiled in accordance with the Florida Rules of Appellate Procedure.

(6)(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law; order agency exercise of discretion when required by law; set aside agency action; remand the case for further agency proceedings; or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties; and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(7) The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that:

(a) There has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts;

(b) The agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. 120.569 and 120.57; however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact;

(c) The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure;

(d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action; or

(e) The agency's exercise of discretion was:

1. Outside the range of discretion delegated to the agency by law;

2. Inconsistent with agency rule;

3. Inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or

4. Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(8) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

(9) No petition challenging an agency rule as an invalid exercise of delegated legislative authority shall be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56 or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

(10) If an administrative law judge's final order depends on any fact found by the administrative law judge, the court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside the final order of the administrative law judge or remand the case to the administrative law judge, if it finds that the final order depends on any finding of fact that is not supported by competent substantial evidence in the record of the proceeding.

History.—s. 1, ch. 74-310; s. 13, ch. 76-131; s. 38, ch. 77-104; s. 1, ch. 77-174; s. 11, ch. 78-425; s. 4, ch. 84-173; s. 7, ch. 87-385; s. 36, ch. 90-302; s. 6, ch. 91-30; s. 1, ch. 91-191; s. 10, ch. 92-166; s. 35, ch. 96-159; s. 15, ch. 97-176; s. 8, ch. 2003-94.

120.69 Enforcement of agency action.—

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state. However, no such action may be commenced:

1. Prior to 60 days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the Attorney General, and any alleged violator of the agency action.

2. If an agency has filed, and is diligently prosecuting, a petition for enforcement.

(c) A petition for enforcement filed by a nongovernmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief; temporary or permanent equitable relief; any fine, forfeiture, penalty, or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed \$1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action, on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:

(a) If enforcement depends on any facts other than those appearing in the record, the court may ascertain such facts under procedures set forth in s. 120.68(7)(a).

(b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.

(c) Should any party willfully fail to comply with an order of the court, the court shall punish that party in accordance with the law applicable to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's action presents an imminent and substantial threat to the public health, safety, or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

History.—s. 1, ch. 74-310; s. 766, ch. 95-147; s. 36, ch. 96-159.

120.695 Notice of noncompliance.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided

in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.

(c) The agency's review and designation must be completed by December 1, 1995; each agency under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of its rules have been designated as rules the violation of which would be a minor violation.

(d) The Governor or the Governor and Cabinet, as appropriate pursuant to paragraph (c), may evaluate the review and designation effects of each agency and may apply a different designation than that applied by the agency.

(e) This section does not apply to the regulation of law enforcement personnel or teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

History.—s. 1, ch. 95-402.

120.72 Legislative intent; references to chapter 120 or portions thereof.—Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 120 or to any section or sections or portion of a section of chapter 120 includes, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

History.—s. 3, ch. 74-310; s. 1, ch. 76-207; s. 1, ch. 77-174; s. 57, ch. 78-95; s. 13, ch. 78-425; s. 38, ch. 96-159.

120.73 Circuit court proceedings; declaratory judgments.—Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86.

History.—s. 11, ch. 75-191; s. 14, ch. 78-425.

120.74 Agency review, revision, and report.—

(1) Each agency shall review and revise its rules as often as necessary to ensure that its rules are correct and comply with statutory requirements. Additionally, each agency shall perform a formal review of its rules every 2 years. In the review, each agency must:

- (a) Identify and correct deficiencies in its rules;
- (b) Clarify and simplify its rules;
- (c) Delete obsolete or unnecessary rules;
- (d) Delete rules that are redundant of statutes;
- (e) Seek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector;
- (f) Contact agencies that have concurrent or overlapping jurisdiction to determine whether their rules can be coordinated to promote efficiency, reduce paperwork, or decrease costs to government and the private sector; and
- (g) Determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

(2) By October 1 of every other year, the head of each agency shall file a report with the President of the Senate, the Speaker of the House of Representatives, and the committee, with a copy to each appropriate standing committee of the Legislature, which certifies that the agency has complied with the requirements of this section. The report must specify any changes made to its rules as a result of the review and, when appropriate, recommend statutory changes that will promote efficiency, reduce paperwork, or decrease costs to government and the private sector. The report must specifically address the economic impact of the rules on small business. The report must identify the types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574.

(3) No later than July 1 of each year, each agency shall file with the President of the Senate, the Speaker of the House of Representatives, and the committee a regulatory plan identifying and describing each rule the agency proposes to adopt for the 12-month period beginning on the July 1 reporting date and ending on the subsequent June 30, excluding emergency rules.

(4) Reporting under subsections (1) and (2) shall be suspended for the year 2013, but required reporting under those subsections shall resume in 2015 and biennially thereafter.

(5) An educational unit as defined in s. 120.52(6) is exempt from this section.

History.—s. 46, ch. 96-399; s. 16, ch. 97-176; s. 9, ch. 2006-82; s. 15, ch. 2008-104; s. 8, ch. 2008-149; s. 4, ch. 2011-225; s. 20, ch. 2014-17; s. 2, ch. 2014-39.

120.745 Legislative review of agency rules in effect on or before November 16, 2010.—

(1) DEFINITIONS.—The following definitions apply exclusively to this section:

(a) “Agency” has the same meaning and application as provided in s. 120.52(1), but for the purposes of this section excludes each officer and governmental entity in the state with jurisdiction in one county or less than one county.

(b) “Compliance economic review” means a good faith economic analysis that includes and presents the following information pertaining to a particular rule:

1. A justification for the rule summarizing the benefits of the rule; and
2. A statement of estimated regulatory costs as described in s. 120.541(2); however:
 - a. The applicable period for the economic analysis shall be 5 years beginning on July 1, 2011;
 - b. For the analysis required in s. 120.541(2)(a)3., the estimated regulatory costs over the 5-year period shall be used instead of the likely increase in regulatory costs after implementation; and

c. An explanation of the methodology used to conduct the analysis must be provided. A technical methodology need not be used to develop the statement of estimated regulatory costs, if the agency uses routine regulatory communications or its Internet website to reasonably survey regulated entities, political subdivisions, and local governments and makes good faith estimates of regulatory costs in conformity with recommendations from the Office of Fiscal Accountability and Regulatory Reform (“OFARR”), or from one or more legislative offices if requested by the agency and such request is approved by the President of the Senate and the Speaker of the House of Representatives.

(c) “Data collection rules” means those rules requiring the submission of data to the agency from external sources, including, but not limited to, local governments, service providers, clients, licensees, regulated entities, other constituents, and market participants.

(d) “Revenue rules” means those rules fixing amounts or providing for the collection of money.

(e) “Rule” has the same general meaning and application as provided in s. 120.52(16), but for purposes of this section may include only those rules for which publication in the Florida Administrative Code is required pursuant to s. 120.55(1). As used in this section, the term “rule” means each entire statement and all subparts published under a complete title, chapter, and decimal rule number in the Florida Administrative Code in compliance with Florida Administrative Code Rule 1B-30.001.

(2) ENHANCED BIENNIAL REVIEW.—By December 1, 2011, each agency shall complete an enhanced biennial review of the agency’s existing rules, which shall include, but is not limited to:

(a) Conduct of the review and submission of the report required by s. 120.74 and an explanation of how the agency has accomplished the requirements of s. 120.74(1). This paragraph extends the October 1 deadline provided in s. 120.74(2) for the year 2011.

(b) Review of each rule to determine whether the rule has been reviewed by OFARR pursuant to the Governor’s Executive Order 2011-01.

(c) Review of each rule to determine whether the rule is a revenue rule, to identify the statute or statutes authorizing the collection of any revenue, to identify the fund or account into which revenue collections are deposited, and, for each revenue rule, to determine whether the rule authorizes, imposes, or implements:

1. Registration, license, or inspection fees.
2. Transportation service tolls for road, bridge, rail, air, waterway, or port access.
3. Fees for a specific service or purpose not included in subparagraph 1. or subparagraph 2.
4. Fines, penalties, costs, or attorney fees.
5. Any tax.
6. Any other amounts collected that are not covered under subparagraphs 1.-5.

(d) Review of each rule to determine whether the rule is a data collection rule, providing the following information for each rule determined to be a data collection rule:

1. The statute or statutes authorizing the collection of such data.
2. The purposes for which the agency uses the data and any purpose for which the data is used by others.
3. The policies supporting the reporting and retention of the data.
4. Whether and to what extent the data is exempt from public inspection under chapter 119.

(e) Identification of each entire rule the agency plans to repeal and, if so, the estimated timetable for repeal.

(f) Identification of each entire rule or subpart of a rule the agency plans to amend to substantially reduce the economic impact and the estimated timetable for amendment.

(g) Identification of each rule for which the agency will be required to prepare a compliance economic review, to include each entire rule that:

1. The agency does not plan to repeal on or before December 31, 2012;
2. Was effective on or before November 16, 2010; and
3. Probably will have any of the economic impacts described in s. 120.541(2)(a), for 5 years beginning on July 1, 2011, excluding in such estimation any part or subpart identified for amendment under paragraph (f).

(h) Listing of all rules identified for compliance economic review in paragraph (g), divided into two approximately equal groups, identified as "Group 1" and "Group 2." Such division shall be made at the agency's discretion.

(i) Written certification of the agency head to the committee verifying the completion of the report for all rules of the agency, including each separate part or subsection. The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

(3) PUBLICATION OF REPORT.—No later than December 1, 2011, each agency shall publish, in the manner provided in subsection (7), a report of the entire enhanced biennial review pursuant to subsection (2), including the results of the review; a complete list of all rules the agency has placed in Group 1 or Group 2; the name, physical address, fax number, and e-mail address for the person the agency has designated to receive all inquiries, public comments, and objections pertaining to the report; and the certification of the agency head pursuant to paragraph (2)(i). The report of results shall summarize certain information required in subsection (2) in a table consisting of the following columns:

- (a) Column 1: Agency name.
- (b) Column 2: F.A.C. rule number, with subcolumns including:
 1. Column 2a: F.A.C. title and any subtitle or chapter designation; and
 2. Column 2b: F.A.C. number, excluding title and subtitle or chapter designation.
- (c) Column 3: OFARR reviewed rule under Executive Order 2011-01. Entries should be "Y" or "N."
- (d) Column 4: Revenue rule/fund or account with subcolumns including:
 1. Column 4a: Licensure fees.
 2. Column 4b: Transportation tolls.
 3. Column 4c: Other fees.
 4. Column 4d: Fines.
 5. Column 4e: Tax.
 6. Column 4f: Other revenue.

Entries should be "N" or the identification of the fund or account where receipts are deposited and provide notes indicating the statutory authority for revenue collection.

(e) Column 5: Data collection rule. Entries should be "Y" or "N." If "Y," provide notes supplying the information required in paragraph (2)(d).

(f) Column 6: Repeal. Entries should be "Y" or "N" for the entire rule. If "Y," provide notes estimating the timetable for repeal.

(g) Column 7: Amend. Entries should be "Y" or "N," based on the response required in paragraph (2)(f), and provide notes identifying each specific subpart that will be amended and estimating the timetable for amendment.

(h) Column 8: Effective on or before 11/16/2010. Entries should be "Y" or "N."

(i) Column 9: Section 120.541(2)(a) impacts. Entries should be “NA” if Column 8 is “N” or, if Column 6 is “Y,” “NP” for not probable, based on the response required in subparagraph (2)(g)3., or “1” or “2,” reflecting the group number assigned by the division required in paragraph (2)(h).

(4) PUBLIC COMMENT ON ENHANCED BIENNIAL REVIEW AND REPORT; OBJECTIONS.—Public input on reports required in subsection (3) may be provided by stating an objection to the information required in paragraphs (2)(b), (c), (d), and (g) and identifying the entire rule or any subpart to which the objection relates, and shall be submitted in writing or electronically to the person designated in the report.

(a) An objection under this subsection to a report that an entire rule or any subpart probably will not have, for 5 years beginning on July 1, 2011, any of the economic impacts described in s. 120.541(2)(a), must include allegations of fact upon which the objection is based, stating the precise information upon which a contrary evaluation of probable impact may be made. Allegations of fact related to other objections may be included.

(b) Objections may be submitted by any interested person no later than June 1, 2012.

(c) The agency shall determine whether to sustain an objection based upon the information provided with the objection and whether any further review of information available to the agency is necessary to correct its report.

(d) No later than 20 days after the date an objection is submitted, the agency shall publish its determination of the objection in the manner provided in subsection (7).

(e) The agency’s determination with respect to an objection is final but not a final agency action subject to further proceedings, hearing, or judicial review.

(f) If the agency sustains an objection, it shall amend its report within 10 days after the determination. The amended report shall indicate that a change has been made, the date of the last change, and identify the amended portions. The agency shall publish notice of the amendment in the manner provided in subsection (7).

(g) On or before July 1, 2012, the agency shall deliver a written certification of the agency head or designee to the committee verifying the completion of determinations of all objections under this subsection and of any report amendments required under paragraph (f). The certification shall be published as an addendum to the report required in subsection (3). Notice of the certification shall be published in the manner provided in subsection (7).

(5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED REPORT.—Each agency shall perform a compliance economic review and report for all rules, including separate reviews of subparts, listed under Group 1 “Group 1 rules” or Group 2 “Group 2 rules” pursuant to subparagraph (2)(g)3. Group 1 rules shall be reviewed and reported on in 2012, and Group 2 rules shall be reviewed and reported on in 2013.

(a) No later than May 1, each agency shall:

1. Complete a compliance economic review for each entire rule or subpart in the appropriate group.
2. File the written certification of the agency head with the committee verifying the completion of each compliance economic review required for the respective year. The certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the required compliance economic reviews is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

3. Publish a copy of the compliance economic review, directions on how and when interested parties may submit lower cost regulatory alternatives to the agency, and the date the notice is published in the manner provided in subsection (7).

4. Publish notice of the publications required in subparagraphs 2. and 3. in the manner provided in subsection (7).

5. Submit each compliance economic review to the rules ombudsman in the Executive Office of the Governor for the rules ombudsman's review.

(b) Any agency rule, including subparts, reviewed pursuant to Executive Order 2011-01 are exempt from the compliance economic review if the review found that the rule:

1. Does not unnecessarily restrict entry into a profession or occupation;
2. Does not adversely affect the availability of professional or occupational services to the public;
3. Does not unreasonably affect job creation or job retention;
4. Does not place unreasonable restrictions on individuals attempting to find employment;
5. Does not impose burdensome costs on businesses; or
6. Is justifiable when the overall cost-effectiveness and economic impact of the regulation, including indirect costs to consumers, is considered.

(c) No later than August 1, the rules ombudsman in the Executive Office of the Governor may submit lower cost regulatory alternatives to any rule to the agency that adopted the rule. No later than June 15, other interested parties may submit lower cost regulatory alternatives to any rule.

(d) No later than December 1, each agency shall publish a final report of the agency's review under this subsection in the manner provided in subsection (7). For each rule the report shall include:

1. The text of the rule.
2. The compliance economic review for the rule.
3. All lower regulatory cost alternatives received by the agency.
4. The agency's written explanation for rejecting submitted lower regulatory cost alternatives.
5. The agency's justification to repeal or amend the rule or to retain the rule without amendment.
6. The written certification of the agency head to the committee verifying the completion of the reviews and reporting required under this subsection for that year. The certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

(e) Notice of publication of the final report and certification shall be published in the manner provided in subsection (7).

(f) By December 1, each agency shall begin proceedings under s. 120.54(3) to amend or repeal those rules so designated in the report under this subsection. Proceedings to repeal rules are exempt from the requirements for the preparation, consideration, or use of a statement of estimated regulatory costs under s. 120.54 and the provisions of s. 120.541.

(6) LEGISLATIVE CONSIDERATION.—With respect to a rule identified for retention without amendment in the report required in subsection (5), the Legislature may consider specific legislation nullifying the rule or altering the statutory authority for the rule.

(7) MANNER OF PUBLICATION OF NOTICES, DETERMINATIONS, AND REPORTS.—Agencies shall publish notices, determinations, and reports required under this section exclusively in the following manner:

(a) The agency shall publish each notice, determination, and complete report on its Internet website. If the agency does not have an Internet website, the information shall be published on the committee's Internet website using [www.japc.state.fl.us/\[agency name\]/](http://www.japc.state.fl.us/[agency name]/) in place of the address of the agency's Internet website. The following URL formats shall be used:

1. Reports required under subsection (3), including any reports amended as a result of a determination under subsection (4):

[Address of agency's Internet website]/2011_Rule_review/

[Florida Administrative Code (F.A.C.) title and subtitle (if applicable) designation for the rules included].

(Example: http://www.dos.state.fl.us/2011_Rule_review/1S).

2. The lists of Group 1 rules and Group 2 rules, required under subsection (3):

[Address of agency's Internet website]/2011_Rule_review/
Economic_Review/Schedule.

(Example: [http://www.dos.state.fl.us/2011_Rule_review/
Economic_Review/Schedule](http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/Schedule)).

3. Determinations under subsection (4):

[Address of agency's Internet website]/2011_Rule_review/
Objection_Determination/[F.A.C. Rule number].

(Example: [http://www.dos.state.fl.us/2011_Rule_review/
Objection_Determination/1S-1.001](http://www.dos.state.fl.us/2011_Rule_review/Objection_Determination/1S-1.001)).

4. Completed compliance economic reviews reported under subsection (5):

[Address of agency's Internet website]/2011_Rule_review/
Economic_Review/[F.A.C. Rule number].

(Example: [http://www.dos.state.fl.us/2011_Rule_review/
Economic_Review/1S-1.001](http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/1S-1.001)).

5. Final reports under paragraph (5)(d), with the appropriate year:

[Address of agency's Internet website]/2011_Rule_review/
Economic_Review/[YYYY_Final_Report].

(Example: [http://www.dos.state.fl.us/2011_Rule_review/
Economic_Review/2012_Final_Report](http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/2012_Final_Report)).

(b)1. Each notice shall be published using the following URL format:

[Address of agency's Internet website]/
2011_Rule_review/Notices.

(Example: http://www.dos.state.fl.us/2011_Rule_review/Notices).

2. Once each week a copy of all notices published in the previous week on the Internet under this paragraph shall be delivered to the Department of State, for publication in the next available issue of the Florida Administrative Register, and a copy shall be delivered by electronic mail to the committee.

3. Each notice shall identify the publication for which notice is being given and include:

a. The name of the agency.

b. The name, physical address, fax number, and e-mail address for the person designated to receive all inquiries, public comments, and objections pertaining to the publication identified in the notice.

c. The particular Internet address through which the publication may be accessed.

d. The date the notice and publication is first published on the agency's Internet website.

(c) Publication pursuant to this section is deemed to be complete as of the date the notice, determination, or report is posted on the agency's Internet website.

(8) FAILURE TO FILE CERTIFICATION OF COMPLETION.—If an agency fails to timely file any written certification required in paragraph (2)(i), paragraph (4)(g), subparagraph (5)(a)2., or subparagraph (5)(d)6., the entire rulemaking authority delegated to the agency by the Legislature under any statute or

law shall be suspended automatically as of the due date of the required certification and shall remain suspended until the date that the agency files the required certification with the committee.

(a) During the period of any suspension under this subsection, the agency has no authority to engage in rulemaking under s. 120.54.

(b) A suspension under this subsection does not authorize an agency to promulgate any statement defined as a rule under s. 120.52(16).

(c) A suspension under this subsection shall toll the time requirements under s. 120.54 for any rulemaking proceeding the agency initiated before the date of suspension, which time requirements shall resume on the date the agency files the written certification with the committee and publishes notice of the required certification in the manner provided in subsection (7).

(d) Failure to timely file a written certification required under paragraph (2)(i) tolls the time for public response, which period shall not begin until the date the agency files the written certification with the committee and publishes notice of the required certification in the manner provided in subsection (7). The period for public response shall be extended by the number of days equivalent to the period of suspension under this subsection.

(e) Failure to timely file a written certification required under subparagraph (5)(a)2. shall toll the deadline for submission of lower cost regulatory alternatives for any rule or subpart for which a compliance economic review has not been timely published. The period of tolling shall be the number of days after May 1 until the date of the certification as published.

(9) EXEMPTION FROM ENHANCED BIENNIAL REVIEW AND COMPLIANCE ECONOMIC REVIEW.—

(a) An agency is exempt from subsections (1)-(8) if it has cooperated or cooperates with OFARR in a review of the agency's rules in a manner consistent with Executive Order 2011-01, or any alternative review directed by OFARR; if the agency or OFARR identifies each data collection rule and each revenue rule; and if the information developed thereby becomes publicly available on the Internet by December 1, 2011. Each such agency is exempt from the biennial review required in s. 120.74(2) for the year 2011.

(b) For each rule reviewed under this subsection, OFARR may identify whether the rule imposes a significant regulatory cost or economic impact and shall schedule and obtain or direct a reasonable economic estimate of such cost and impact for each rule so identified. A report on each such estimate shall be published on the Internet by December 31, 2013. On or before October 1, 2013, the agency head shall certify in writing to the committee that the agency has completed each economic estimate required under this paragraph, and thereupon the agency is exempt from the biennial review required in s. 120.74(2) for the year 2013.

(c) The exemption under this paragraph does not apply unless the agency head certifies in writing to the committee, on or before October 1, 2011, that the agency has chosen such exemption and has cooperated with OFARR in undertaking the review required in paragraph (a).

(10) REPEAL.—This section is repealed July 1, 2014.

History.—s. 5, ch. 2011-225; s. 10, ch. 2012-5; s. 3, ch. 2012-27; s. 11, ch. 2013-14; s. 14, ch. 2013-15.

120.7455 Legislative survey of regulatory impacts.—

(1) From July 1, 2011, until July 1, 2014, the Legislature may establish and maintain an Internet-based public survey of regulatory impact soliciting information from the public regarding the kind and degree of regulation affecting private activities in the state. The input may include, but need not be limited to:

(a) The registered business name or other name of each reporting person.

(b) The number and identity of agencies licensing, inspecting, registering, permitting, or otherwise regulating lawful activities of the reporting person.

(c) The types, numbers, and nature of licenses, permits, and registrations required for various lawful activities of the reporting person.

(d) The identity of local, state, and federal agencies, and other entities acting under color of law which regulate the lawful activities of the reporting person or otherwise exercise power to enforce laws applicable to such activities.

(e) The identification and nature of each ordinance, law, or administrative rule or regulation deemed unreasonably burdensome by the reporting person.

(2) The President of the Senate and the Speaker of the House of Representatives may certify in writing to the chair of the committee and to the Attorney General the establishment and identity of any Internet-based public survey established under this section.

(3) Any person reporting or otherwise providing information solicited by the Legislature in conformity with this section is immune from any enforcement action or prosecution that:

(a) Is instituted on account of, or in reliance upon, the fact of reporting or nonreporting of information in response to the Legislature's solicitation of information pursuant to this section; or

(b) Uses information provided in response to the Legislature's solicitation of information pursuant to this section.

(4) Any alleged violator against whom an enforcement action is brought may object to any proposed penalty in excess of the minimum provided by law or rule on the basis that the action is in retaliation for the violator providing or withholding any information in response to the Legislature's solicitation of information pursuant to this section. If the presiding judge determines that the enforcement action was motivated in whole or in part by retaliation, any penalty imposed is limited to the minimum penalties provided by law for each separate violation adjudicated.

History.—s. 6, ch. 2011-225.

120.80 Exceptions and special requirements; agencies.—

(1) DIVISION OF ADMINISTRATIVE HEARINGS.—

(a) *Division as a party.*—Notwithstanding s. 120.57(1)(a), a hearing in which the division is a party may not be conducted by an administrative law judge assigned by the division. An attorney assigned by the Administration Commission shall be the hearing officer.

(b) *Workers' compensation.*—Notwithstanding s. 120.52(1), a judge of compensation claims, in adjudicating matters under chapter 440, is not an agency or part of an agency for purposes of this chapter.

(2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.—

(a) Marketing orders under chapter 527, chapter 573, or chapter 601 are not rules.

(b) Notwithstanding s. 120.57(1)(a), hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601 need not be conducted by an administrative law judge assigned by the division.

(3) OFFICE OF FINANCIAL REGULATION.—

¹(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order.

Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., every application for license for a new bank, new trust company, new credit union, or new savings and loan association shall be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. Any application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, or a new credit union by the appropriate insurer.

4. In the case of every application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of every application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of any such foreign national to appear personally at the hearing shall be grounds for denial of the application. Notwithstanding the provisions of s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

(b) In any application for a license or merger pursuant to title XXXVIII which is referred by the agency to the division for hearing, the administrative law judge shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

(4) DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.—

(a) *Business regulation.*—The Division of Pari-mutuel Wagering is exempt from the hearing and notice requirements of ss. 120.569 and 120.57(1)(a), but only for stewards, judges, and boards of judges when the hearing is to be held for the purpose of the imposition of fines or suspensions as provided by rules of the Division of Pari-mutuel Wagering, but not for revocations, and only upon violations of subparagraphs 1.-6. The Division of Pari-mutuel Wagering shall adopt rules establishing alternative procedures, including a hearing upon reasonable notice, for the following violations:

1. Horse riding, harness riding, greyhound interference, and jai alai game actions in violation of chapter 550.

2. Application and usage of drugs and medication to horses, greyhounds, and jai alai players in violation of chapter 550.

3. Maintaining or possessing any device which could be used for the injection or other infusion of a prohibited drug to horses, greyhounds, and jai alai players in violation of chapter 550.

4. Suspensions under reciprocity agreements between the Division of Pari-mutuel Wagering and regulatory agencies of other states.

5. Assault or other crimes of violence on premises licensed for pari-mutuel wagering.
6. Prearranging the outcome of any race or game.

(b) *Professional regulation.*—Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the Secretary of Business and Professional Regulation or a board or member of a board within the Department of Business and Professional Regulation for matters relating to the regulation of professions, as defined by chapter 455.

(5) FLORIDA LAND AND WATER ADJUDICATORY COMMISSION.—Notwithstanding the provisions of s. 120.57(1)(a), when the Florida Land and Water Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days after receipt of the notice of appeal if the commission elects to request the assignment of an administrative law judge.

(6) DEPARTMENT OF LAW ENFORCEMENT.—Law enforcement policies and procedures of the Department of Law Enforcement which relate to the following are not rules as defined by this chapter:

(a) The collection, management, and dissemination of active criminal intelligence information and active criminal investigative information; management of criminal investigations; and management of undercover investigations and the selection, assignment, and fictitious identity of undercover personnel.

(b) The recruitment, management, identity, and remuneration of confidential informants or sources.

(c) Surveillance techniques, the selection of surveillance personnel, and electronic surveillance, including court-ordered and consensual interceptions of communication conducted pursuant to chapter 934.

(d) The safety and release of hostages.

(e) The provision of security and protection to public figures.

(f) The protection of witnesses.

(7) DEPARTMENT OF CHILDREN AND FAMILIES.—Notwithstanding s. 120.57(1)(a), hearings conducted within the Department of Children and Families in the execution of those social and economic programs administered by the former Division of Family Services of the former Department of Health and Rehabilitative Services prior to the reorganization effected by chapter 75-48, Laws of Florida, need not be conducted by an administrative law judge assigned by the division.

(8) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(a) *Driver licenses.*—

1. Notwithstanding s. 120.57(1)(a), hearings regarding driver licensing pursuant to chapter 322 need not be conducted by an administrative law judge assigned by the division.

2. Notwithstanding s. 120.60(5), cancellation, suspension, or revocation of a driver license shall be by personal delivery to the licensee or by first-class mail as provided in s. 322.251.

(b) *Wrecker operators.*—Notwithstanding s. 120.57(1)(a), hearings held by the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles to deny, suspend, or remove a wrecker operator from participating in the wrecker rotation system established by s. 321.051 need not be conducted by an administrative law judge assigned by the division. These hearings shall be held by a hearing officer appointed by the director of the Division of the Florida Highway Patrol.

(9) OFFICE OF INSURANCE REGULATION.—Notwithstanding s. 120.60(1), every application for a certificate of authority as required by s. 624.401 shall be approved or denied within 180 days after receipt of the original application. Any application for a certificate of authority which is not approved or denied within the 180-day period, or within 30 days after conclusion of a public hearing held on the application, shall be deemed approved, subject to the satisfactory completion of conditions required by statute as a prerequisite to licensure.

(10) DEPARTMENT OF ECONOMIC OPPORTUNITY.—

(a) Notwithstanding s. 120.54, the rulemaking provisions of this chapter do not apply to reemployment assistance appeals referees.

(b) Notwithstanding s. 120.54(5), the uniform rules of procedure do not apply to appeal proceedings conducted under chapter 443 by the Reemployment Assistance Appeals Commission, special deputies, or reemployment assistance appeals referees.

(c) Notwithstanding s. 120.57(1)(a), hearings under chapter 443 may not be conducted by an administrative law judge assigned by the division, but instead shall be conducted by the Reemployment Assistance Appeals Commission in reemployment assistance appeals, reemployment assistance appeals referees, and the Department of Economic Opportunity or its special deputies under s. 443.141.

(11) NATIONAL GUARD.—Notwithstanding s. 120.52(16), the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

(12) PUBLIC EMPLOYEES RELATIONS COMMISSION.—

(a) Notwithstanding s. 120.57(1)(a), hearings within the jurisdiction of the Public Employees Relations Commission need not be conducted by an administrative law judge assigned by the division.

(b) Section 120.60 does not apply to certification of employee organizations pursuant to s. 447.307.

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(a) Agency statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to chapter 366, relating to public utilities, are exempt from the provisions of s. 120.54(1)(a).

(b) Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

(c) The Florida Public Service Commission is exempt from the time limitations in s. 120.60(1) when issuing a license.

(d) Notwithstanding the provisions of this chapter, in implementing the Telecommunications Act of 1996, Pub. L. No. 104-104, the Public Service Commission is authorized to employ procedures consistent with that act.

(e) Notwithstanding the provisions of this chapter, s. 350.128, or s. 364.381, appellate jurisdiction for Public Service Commission decisions that implement the Telecommunications Act of 1996, Pub. L. No. 104-104, shall be consistent with the provisions of that act.

(f) Notwithstanding any provision of this chapter, all public utilities and companies regulated by the Public Service Commission shall be entitled to proceed under the interim rate provisions of chapter 364 or the procedures for interim rates contained in chapter 74-195, Laws of Florida, or as otherwise provided by law.

(14) DEPARTMENT OF REVENUE.—

(a) *Assessments.*—An assessment of tax, penalty, or interest by the Department of Revenue is not a final order as defined by this chapter. Assessments by the Department of Revenue shall be deemed final as provided in the statutes and rules governing the assessment and collection of taxes.

(b) *Taxpayer contest proceedings.*—

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the “petitioner” and the Department of Revenue shall be designated the “respondent,” except that for actions contesting an assessment or denial of refund under chapter 207, the Department of Highway Safety and Motor Vehicles shall be designated the “respondent,” and

for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation shall be designated the “respondent.”

2. In any such administrative proceeding, the applicable department’s burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

3.a. Prior to filing a petition under this chapter, the taxpayer shall pay to the applicable department the amount of taxes, penalties, and accrued interest assessed by that department which are not being contested by the taxpayer. Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

b. The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation.

4. Except as provided in s. 220.719, further collection and enforcement of the contested amount of an assessment for nonpayment or underpayment of any tax, interest, or penalty shall be stayed beginning on the date a petition is filed. Upon entry of a final order, an agency may resume collection and enforcement action.

5. The prevailing party, in a proceeding under ss. 120.569 and 120.57 authorized by s. 72.011(1), may recover all legal costs incurred in such proceeding, including reasonable attorney’s fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response.

6. Upon review pursuant to s. 120.68 of final agency action concerning an assessment of tax, penalty, or interest with respect to a tax imposed under chapter 212, or the denial of a refund of any tax imposed under chapter 212, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, the court may award reasonable attorney’s fees and reasonable costs of the appeal to the prevailing appellant.

(c) *Proceedings to establish paternity or paternity and child support; orders to appear for genetic testing; proceedings for administrative support orders.*—In proceedings to establish paternity or paternity and child support pursuant to s. 409.256 and proceedings for the establishment of administrative support orders pursuant to s. 409.2563, final orders in cases referred by the Department of Revenue to the Division of Administrative Hearings shall be entered by the division’s administrative law judge and transmitted to the Department of Revenue for filing and rendering. The Department of Revenue has the right to seek judicial review under s. 120.68 of a final order entered by an administrative law judge. The Department of Revenue or the person ordered to appear for genetic testing may seek immediate judicial review under s. 120.68 of an order issued by an administrative law judge pursuant to s. 409.256(5)(b). Final orders that adjudicate paternity or paternity and child support pursuant to s. 409.256 and administrative support orders rendered pursuant to s. 409.2563 may be enforced pursuant to s. 120.69 or, alternatively, by any method prescribed by law for the enforcement of judicial support orders, except contempt. Hearings held by the Division of Administrative Hearings pursuant to ss. 409.256, 409.2563, and 409.25635 shall be held in the judicial circuit where the person receiving services under Title IV-D resides or, if the person receiving services under Title IV-D does not reside in this state, in the judicial circuit where the respondent resides. If the department and the respondent agree, the hearing may be held in another location. If ordered by the administrative law judge, the hearing may be conducted telephonically or by videoconference.

(15) DEPARTMENT OF HEALTH.—Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the State Surgeon General, the Secretary of Health Care Administration, or a board or

member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to the regulation of professions, as defined by chapter 456. Notwithstanding s. 120.57 (1)(a), hearings conducted within the Department of Health in execution of the Special Supplemental Nutrition Program for Women, Infants, and Children; Child Care Food Program; Children's Medical Services Program; the Brain and Spinal Cord Injury Program; and the exemption from disqualification reviews for certified nurse assistants program need not be conducted by an administrative law judge assigned by the division. The Department of Health may contract with the Department of Children and Families for a hearing officer in these matters.

(16) FLORIDA BUILDING COMMISSION.—

(a) Notwithstanding the provisions of s. 120.542, the Florida Building Commission may not accept a petition for waiver or variance and may not grant any waiver or variance from the requirements of the Florida Building Code.

(b) The Florida Building Commission shall adopt within the Florida Building Code criteria and procedures for alternative means of compliance with the code or local amendments thereto, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the Florida Building Code. Appeals from the denial of the use of alternative means shall be heard by the local board, if one exists, and may be appealed to the Florida Building Commission.

(c) Notwithstanding ss. 120.565, 120.569, and 120.57, the Florida Building Commission and hearing officer panels appointed by the commission in accordance with s. 553.775(3)(c)1. may conduct proceedings to review decisions of local building code officials in accordance with s. 553.775(3)(c).

(d) Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Building Code expressly authorized by s. 553.73.

(17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Fire Prevention Code expressly authorized by s. 633.202.

(18) DEPARTMENT OF TRANSPORTATION.—Sections 120.54(3)(b) and 120.541 do not apply to the adjustment of tolls pursuant to s. 338.165(3).

History.—s. 41, ch. 96-159; s. 13, ch. 98-166; s. 10, ch. 99-8; s. 4, ch. 99-397; s. 1, ch. 2000-141; s. 17, ch. 2000-151; s. 2, ch. 2000-160; s. 11, ch. 2000-304; s. 4, ch. 2000-305; ss. 2, 11, ch. 2000-312; s. 4, ch. 2000-355; s. 3, ch. 2000-367; s. 18, ch. 2001-158; s. 2, ch. 2001-279; s. 8, ch. 2002-173; s. 1, ch. 2002-239; s. 3, ch. 2003-36; s. 139, ch. 2003-261; s. 1, ch. 2004-52; s. 7, ch. 2004-334; ss. 12, 13, ch. 2005-39; s. 1, ch. 2005-96; s. 13, ch. 2005-147; s. 1, ch. 2005-209; s. 5, ch. 2006-45; s. 9, ch. 2008-6; s. 16, ch. 2008-104; s. 5, ch. 2009-187; s. 1, ch. 2011-64; s. 50, ch. 2011-142; s. 8, ch. 2011-225; s. 43, ch. 2012-30; s. 12, ch. 2013-14; s. 120, ch. 2013-183; s. 32, ch. 2014-19; s. 37, ch. 2014-97.

¹**Note.**—Section 37, ch. 2014-97, amended paragraph (3)(a), effective October 1, 2015, to read:

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., an application for license for a new bank, new trust company, new credit union, new savings and loan association, or new licensed family trust company must be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. An application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application,

whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, a new credit union, or a new licensed family trust company by the appropriate insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at the hearing shall be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(a) Notwithstanding s. 120.536(1) and the flush left provisions of s. 120.52(8), district school boards may adopt rules to implement their general powers under s. 1001.41.

(b) The preparation or modification of curricula by an educational unit is not a rule as defined by this chapter.

¹(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in a newspaper of general circulation in the affected area;
2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and
3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

(e) Educational units, other than the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 or s. 120.55(1)(a) 4.

(f) Notwithstanding s. 120.57(1)(a), hearings which involve student disciplinary suspensions or expulsions may be conducted by educational units.

(g) Sections 120.569 and 120.57 do not apply to any proceeding in which the substantial interests of a student are determined by a state university or a community college.

(h) Notwithstanding ss. 120.569 and 120.57, in a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice of hearing requirement may be waived by the agency head or the hearing officer without the consent of parties.

(i) For purposes of s. 120.68, a district school board whose decision is reviewed under the provisions of s. 1012.33 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action.

(j) Notwithstanding s. 120.525(2), the agenda for a special meeting of a district school board under authority of s. 1001.372(1) shall be prepared upon the calling of the meeting, but not less than 48 hours prior to the meeting.

(k) Students are not persons subject to regulation for the purposes of petitioning for a variance or waiver to rules of educational units under s. 120.542.

(l) Sections 120.54(3)(b) and 120.541 do not apply to the adoption of rules pursuant to s. 1012.22, s. 1012.27, s. 1012.335, s. 1012.34, or s. 1012.795.

(2) LOCAL UNITS OF GOVERNMENT.—

(a) Local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee of the documents required to be filed by s. 120.54.

(b) Notwithstanding any other provision of this chapter, units of government with jurisdiction in only one county or part thereof need not publish required notices in the Florida Administrative Register, but shall publish these notices in the manner required by their enabling acts for notice of rulemaking or notice of meeting. Notices relating to rules are not required to include the full text of the rule or rule amendment.

(3) PRISONERS AND PAROLEES.—

(a) Notwithstanding s. 120.52(13), prisoners, as defined by s. 944.02, shall not be considered parties in any proceedings other than those under s. 120.54(3)(c) or (7), and may not seek judicial review under s. 120.68 of any other agency action. Prisoners are not eligible to seek an administrative determination of an agency statement under s. 120.56(4). Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

(b) Notwithstanding s. 120.54(3)(c), prisoners, as defined by s. 944.02, may be limited by the Department of Corrections to an opportunity to present evidence and argument on issues under consideration by submission of written statements concerning intended action on any department rule.

(c) Notwithstanding ss. 120.569 and 120.57, in a preliminary hearing for revocation of parole, no less than 7 days' notice of hearing shall be given.

(4) REGULATION OF PROFESSIONS.—Notwithstanding s. 120.569(2)(g), in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

(a) The testimony of the victim of the sexual misconduct need not be corroborated.

(b) Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

1. It is first established to the administrative law judge in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct; or

2. If consent by the victim of the sexual misconduct is at issue and it is first established to the administrative law judge in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(c) Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is inadmissible.

(5) HUNTING AND FISHING REGULATION.—Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Fish and Wildlife Conservation Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting by electronic media.

(6) RISK IMPACT STATEMENT.—The Department of Environmental Protection shall prepare a risk impact statement for any rule that is proposed for approval by the Environmental Regulation

Commission and that establishes or changes standards or criteria based on impacts to or effects upon human health. The Department of Agriculture and Consumer Services shall prepare a risk impact statement for any rule that is proposed for adoption that establishes standards or criteria based on impacts to or effects upon human health.

(a) This subsection does not apply to rules adopted pursuant to federally delegated or mandated programs where such rules are identical or substantially identical to the federal regulations or laws being adopted or implemented by the Department of Environmental Protection or Department of Agriculture and Consumer Services, as applicable. However, the Department of Environmental Protection and the Department of Agriculture and Consumer Services shall identify any risk analysis information available to them from the Federal Government that has formed the basis of such a rule.

(b) This subsection does not apply to emergency rules adopted pursuant to this chapter.

(c) The Department of Environmental Protection and the Department of Agriculture and Consumer Services shall prepare and publish notice of the availability of a clear and concise risk impact statement for all applicable rules. The risk impact statement must explain the risk to the public health addressed by the rule and shall identify and summarize the source of the scientific information used in evaluating that risk.

(d) Nothing in this subsection shall be construed to create a new cause of action or basis for challenging a rule nor diminish any existing cause of action or basis for challenging a rule.

History.—s. 42, ch. 96-159; s. 17, ch. 97-176; s. 49, ch. 99-2; s. 65, ch. 99-245; s. 7, ch. 99-379; s. 28, ch. 99-398; s. 4, ch. 2000-214; s. 897, ch. 2002-387; s. 17, ch. 2008-104; s. 4, ch. 2010-78; s. 9, ch. 2011-225; s. 13, ch. 2013-14; s. 37, ch. 2013-35; s. 21, ch. 2014-17; s. 3, ch. 2014-39; s. 24, ch. 2014-184.

¹**Note.**—Section 24, ch. 2014-184, as amended by s. 21, ch. 2014-17, and by s. 3, ch. 2014-39, amended paragraph (1)(c), effective July 1, 2015, to read:

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

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REGULATION OF PROFESSIONS
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CHAPTER 455
BUSINESS AND PROFESSIONAL REGULATION: GENERAL PROVISIONS

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455.01 Definitions.—As used in this chapter, the term:

- (1) “Board” means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.
- (2) “Consumer member” means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.

- (3) “Department” means the Department of Business and Professional Regulation.
- (4) “License” means any permit, registration, certificate, or license issued by the department.
- (5) “Licensee” means any person issued a permit, registration, certificate, or license by the department.

(6) “Profession” means any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

History.—s. 1, ch. 21885, 1943; s. 1, ch. 28215, 1953; s. 12, ch. 63-195; s. 2, ch. 65-170; s. 27, ch. 67-248; s. 3, ch. 67-409; s. 1, ch. 67-596; s. 121, ch. 71-355; s. 122, ch. 73-333; s. 5, ch. 79-36; s. 123, ch. 79-164; s. 2, ch. 84-70; s. 9, ch. 91-220; s. 4, ch. 92-149; s. 5, ch. 93-220; s. 1, ch. 96-291; s. 3, ch. 97-261; s. 109, ch. 2000-153; s. 23, ch. 2000-160.

Note.—Former s. 485.01.

455.017 Applicability of this chapter.— This chapter applies only to the regulation of professions by the department.

History.—s. 60, ch. 94-218; s. 4, ch. 2010-106.

455.02 Licensure of members of the Armed Forces in good standing and their spouses with administrative boards.—

(1) Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any administrative board of the state and was entitled to practice or engage in his or her profession or vocation in the state shall be kept in good standing by such administrative board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the Armed Forces of the United States on active duty and for a period of 6 months after discharge from active duty as a member of the Armed Forces of the United States, if he or she is not engaged in his or her licensed profession or vocation in the private sector for profit.

(2) The boards listed in s. 20.165 shall adopt rules that exempt the spouse of a member of the Armed Forces of the United States from licensure renewal provisions, but only in cases of his or her absence from the state because of his or her spouse’s duties with the Armed Forces.

(3)(a) The department may issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States if the spouse applies to the department in the format prescribed by the department. An application must include proof that:

1. The applicant is married to a member of the Armed Forces of the United States who is on active duty.

2. The applicant holds a valid license for the profession issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction.

3. The applicant’s spouse is assigned to a duty station in this state and that the applicant is also assigned to a duty station in this state pursuant to the member’s official active duty military orders.

- 4.a. A complete set of the applicant’s fingerprints ¹is submitted to the Department of Law Enforcement for a statewide criminal history check.

- b. The Department of Law Enforcement shall forward the fingerprints ²submitted pursuant to subparagraph a. to the Federal Bureau of Investigation for a national criminal history check. The department shall, and the board may, review the results of the criminal history checks according to the level 2 screening standards in s. 435.04 and determine whether the applicant meets the licensure requirements. The costs of fingerprint processing shall be borne by the applicant. If the applicant’s fingerprints are submitted through an authorized agency or vendor, the agency or vendor shall collect the required processing fees and remit the fees to the Department of Law Enforcement.

(b) An application must be accompanied by an application fee prescribed by the department that is sufficient to cover the cost of issuance of the temporary license.

(c) A temporary license expires 6 months after the date of issuance and is not renewable.

History.—s. 2, ch. 21885, 1943; s. 5, ch. 79-36; s. 95, ch. 83-329; s. 1, ch. 84-15; s. 71, ch. 85-81; s. 6, ch. 93-220; s. 186, ch. 97-103; s. 5, ch. 2010-106; s. 4, ch. 2010-182.

¹**Note.**—The word “is” was substituted by the editors for the word “are,” which was enacted by s. 5, ch. 2010-106. Section 4, ch. 2010-182, enacted the words “has been” instead of the word “are.”

²**Note.**—As enacted by s. 4, ch. 2010-182. Subsection (3) was also added by s. 5, ch. 2010-106, and that version did not use the phrase “submitted pursuant to sub-subparagraph a.”

Note.—Former s. 485.02.

455.10 Restriction on requirement of citizenship.—No person shall be disqualified from practicing an occupation or profession regulated by the state solely because he or she is not a United States citizen.

History.—ss. 1, 2, 3, ch. 72-125; s. 1, ch. 74-37; s. 1, ch. 77-174; s. 5, ch. 79-36; s. 187, ch. 97-103.

Note.—Former s. 455.012.

455.11 Qualification of immigrants for examination to practice a licensed profession or occupation.—

(1) It is the declared purpose of this section to encourage the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all Florida citizens may receive better services.

(2) Any person who has successfully completed, or is currently enrolled in, an approved course of study created pursuant to chapters 74-105 and 75-177, Laws of Florida, shall be deemed qualified for examination and reexaminations for a professional or occupational license which shall be administered in the English language unless 15 or more such applicants request that said reexamination be administered in their native language. In the event that such reexamination is administered in a foreign language, the full cost to the board of preparing and administering same shall be borne by said applicants.

(3) Each board within the department shall adopt and implement programs designed to qualify for examination all persons who were resident nationals of the Republic of Cuba and who, on July 1, 1977, were residents of this state.

History.—ss. 1, 3, ch. 77-255; s. 5, ch. 79-36; s. 194, ch. 79-400; s. 5, ch. 92-149; s. 61, ch. 94-218.

Note.—Former s. 455.016.

455.116 Regulation trust funds.—The following trust funds shall be placed in the department:

- (1) Administrative Trust Fund.
- (2) Alcoholic Beverage and Tobacco Trust Fund.
- (3) Cigarette Tax Collection Trust Fund.
- (4) Hotel and Restaurant Trust Fund.
- (5) Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.
- (6) Pari-mutuel Wagering Trust Fund.
- (7) Professional Regulation Trust Fund.

History.—s. 8, ch. 93-220; s. 44, ch. 96-418; s. 22, ch. 2008-240; s. 1, ch. 2011-30; s. 2, ch. 2012-143.

455.1165 Federal Grants Trust Fund.—

(1) The Federal Grants Trust Fund is created within the Department of Business and Professional Regulation.

(2) The trust fund is established for use as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources. Moneys to be credited to the trust fund shall consist of grants and funding from the Federal Government, interest earnings, and cash advances from other trust funds. Funds shall be expended only pursuant to legislative appropriation or an approved amendment to the department's operating budget pursuant to the provisions of chapter 216.

History.—s. 1, ch. 2011-60; s. 2, ch. 2014-44.

455.117 Sale of services and information by department.—The department may provide, directly or by contract, services and information to other levels of government and private entities.

History.—s. 9, ch. 93-220.

455.201 Professions and occupations regulated by department; legislative intent; requirements.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further legislative intent that the use of the term “profession” with respect to those activities licensed and regulated by the department shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4)(a) Neither the department nor any board may create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. Neither the department nor any board may take any action that tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(b) Neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention in the state or that places unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment.

(c) The Legislature shall evaluate proposals to increase regulation of already regulated professions or occupations to determine their effect on job creation or retention and employment opportunities.

(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation. The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.

History.—s. 1, ch. 76-28; s. 5, ch. 79-36; s. 122, ch. 79-164; s. 3, ch. 82-1; s. 79, ch. 83-218; s. 36, ch. 92-33; s. 6, ch. 92-149; s. 20, ch. 93-129; s. 62, ch. 94-218; s. 134, ch. 99-251.

Note.—Former s. 455.001.

455.203 Department; powers and duties.—The department, for the boards under its jurisdiction, shall:

(1) Adopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.

(2) Appoint the executive director of each board, subject to the approval of the board.

(3) Submit an annual budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department.

(5) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(6) Establish by rule procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.

(9) Work cooperatively with the Department of Revenue to implement an automated method for periodically disclosing information relating to current licensees to the Department of Revenue. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court or the Department of Revenue pursuant to s. 409.2598, suspend or deny the license of any licensee found not to be in compliance with a support order, subpoena, order to show cause, or written agreement entered into by the licensee with the Department of Revenue. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court or the Department of Revenue that the licensee has complied with the terms of the support order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

(10) Have authority to:

(a) Close and terminate deficient license application files 2 years after the board or the department notifies the applicant of the deficiency; and

(b) Approve applications for professional licenses that meet all statutory and rule requirements for licensure.

History.—s. 5, ch. 79-36; s. 27, ch. 81-302; s. 7, ch. 83-329; s. 15, ch. 86-285; s. 15, ch. 89-162; s. 1, ch. 90-228; s. 37, ch. 92-33; s. 7, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 93-208; s. 10, ch. 93-262; ss. 63, 64, ch. 94-218; s. 206, ch. 96-410; s. 4, ch. 97-261; s. 117, ch. 98-200; s. 24, ch. 2000-160; s. 51, ch. 2001-158; s. 38, ch. 2005-39; s. 21, ch. 2008-240.

455.2035 Rulemaking authority for professions not under a board.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the regulatory requirements of any profession within the department's jurisdiction which does not have a statutorily authorized regulatory board.

History.—s. 136, ch. 99-251.

455.204 Long-range policy planning; plans, reports, and recommendations.—To facilitate efficient and cost-effective regulation, the department and the board, where appropriate, shall develop and implement a long-range policy planning and monitoring process to include recommendations specific to each profession. Such process shall include estimates of revenues, expenditures, cash balances, and performance statistics for each profession. The period covered shall not be less than 5 years. The department, with input from the boards, shall develop the long-range plan and must obtain the approval of the secretary. The department shall monitor compliance with the approved long-range plan and, with input from the boards, shall annually update the plans for approval by the secretary. The department shall provide concise management reports to the boards quarterly. As part of the review process, the department shall evaluate:

- (1) Whether the department, including the boards and the various functions performed by the department, is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation.
- (2) How and why the various professions are regulated.
- (3) Whether there is a need to continue regulation, and to what degree.
- (4) Whether or not consumer protection is adequate, and how it can be improved.
- (5) Whether there is consistency between the various practice acts.
- (6) Whether unlicensed activity is adequately enforced.

Such plans should include conclusions and recommendations on these and other issues as appropriate. Such plans shall be provided to the Governor and the Legislature by November 1 of each year.

History.—s. 8, ch. 92-149.

455.205 Contacting boards through department.—Each board under the jurisdiction of the department may be contacted through the headquarters of the department in the City of Tallahassee or at any regional office of the department.

History.—s. 30, ch. 69-106; s. 2, ch. 77-115; s. 5, ch. 79-36; s. 38, ch. 92-33; s. 23, ch. 93-129; ss. 65, 66, ch. 94-218; s. 5, ch. 97-261.

Note.—Former s. 455.004.

455.207 Boards; organization; meetings; compensation and travel expenses.—

- (1) Each board within the department shall comply with the provisions of this section.
- (2) The board shall annually elect from among its number a chairperson and vice chairperson.
- (3) The board shall meet at least once annually and may meet as often as is necessary. The chairperson or a quorum of the board shall have the authority to call other meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this chapter or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.
- (4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated \$50 for each day in attendance at an official meeting of the

board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase “other business involving the board,” but the phrase may not routinely be defined to include telephone conference calls. A board member also shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the secretary.

(5) When two or more boards have differences between them, the boards may elect to, or the secretary may request that the boards, establish a special committee to settle those differences. The special committee shall consist of three members designated by each board, who may be members of the designating board or other experts designated by the board, and of one additional person designated and agreed to by the members of the special committee. In the event the special committee cannot agree on the additional designee, upon request of the special committee, the secretary may select the designee. The committee shall recommend rules necessary to resolve the differences. If a rule adopted pursuant to this provision is challenged, the participating boards shall share the costs associated with defending the rule or rules. The department shall provide legal representation for any special committee established pursuant to this section.

History.—s. 5, ch. 79-36; s. 28, ch. 81-302; s. 8, ch. 83-329; s. 72, ch. 85-81; s. 4, ch. 88-392; s. 39, ch. 92-33; s. 9, ch. 92-149; s. 23, ch. 93-129; s. 3, ch. 94-119; s. 6, ch. 97-261; s. 25, ch. 2000-160.

455.208 Publication of information.—The department and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter, about information that the department or the board determines is of interest to the industry. Unless otherwise prohibited by law, the department and the boards shall publish a summary of final orders resulting in fines, suspensions, or revocations, and any other information the department or the board determines is of interest to the public.

History.—s. 5, ch. 88-392; s. 40, ch. 92-33; s. 10, ch. 92-149; s. 23, ch. 93-129; s. 67, ch. 94-218; s. 7, ch. 97-261.

455.209 Accountability and liability of board members.—

(1) Each board member shall be accountable to the Governor for the proper performance of duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department or a board concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform the member’s official duties, or commission of a felony.

(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member’s official capacity, and the department shall defend any such member in any action against any board or member of a board arising from any such act or omission. In addition, the department may defend the member’s company or business in any action against the company or business if the department determines that the actions from which the suit arises are actions taken by the member in the member’s official capacity and were not beyond the member’s statutory authority. In providing such defense, the department may employ or utilize the legal services of the Department of Legal Affairs or outside counsel retained pursuant to s. 287.059. Fees and costs of providing legal services provided under this subsection shall be paid from the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219.

History.—s. 5, ch. 79-36; ss. 13, 15, 25, 30, 34, 57, 62, ch. 80-406; s. 6, ch. 88-392; s. 2, ch. 90-228; s. 41, ch. 92-33; s. 11, ch. 92-149; s. 23, ch. 93-129; s. 68, ch. 94-218; s. 188, ch. 97-103; s. 8, ch. 97-261; s. 1, ch. 98-166; s. 151, ch. 99-251.

455.211 Board rules; final agency action; challenges.—

(1) The secretary of the department shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the secretary, may declare all or part of a rule or proposed rule invalid if it:

- (a) Does not protect the public from any significant and discernible harm or damages;
- (b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or
- (c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 455.207(5).

(4) Any proposed board rule that has not been modified to remove proposed committee objections of the Administrative Procedures Committee must receive approval from the department prior to filing the rule with the Department of State for final adoption. The department may repeal any rule enacted by the board which has taken effect without having met proposed committee objections of the Administrative Procedures Committee.

History.—s. 5, ch. 79-36; s. 42, ch. 92-33; s. 12, ch. 92-149; s. 23, ch. 93-129; s. 69, ch. 94-218; s. 207, ch. 96-410; s. 9, ch. 97-261; s. 5, ch. 2000-356.

455.212 Education; substituting demonstration of competency for clock-hour requirements.

—Any board, or the department when there is no board, that requires student completion of a specific number of clock hours of classroom instruction for initial licensure purposes shall establish the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule which are related to instructional programs for licensure purposes. Student demonstration of the established minimum competencies shall be certified by the educational institution. The provisions of this section shall not apply to boards for which federal licensure standards are more restrictive or stringent than the standards prescribed in statute.

History.—s. 63, ch. 92-136; s. 30, ch. 92-321.

455.2121 Education; accreditation.—Notwithstanding any other provision of law, educational programs and institutions which are required by statute to be accredited, but which were accredited by an agency that has since ceased to perform an accrediting function, shall be recognized until such programs and institutions are accredited by a qualified successor to the original accrediting agency, an accrediting agency recognized by the United States Department of Education, or an accrediting agency recognized by the board, or the department when there is no board.

History.—s. 4, ch. 94-119.

455.2122 Education.—A board, or the department where there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy prelicensure or postlicensure

education requirements provided for in part VIII of chapter 468 or part I of chapter 475. A board, or the department when there is no board, may not require centralized examinations for completion of prelicensure or postlicensure education requirements for those professions licensed under part VIII of chapter 468 or part I of chapter 475.

History.—s. 6, ch. 2010-106; s. 4, ch. 2010-176.

455.2123 Continuing education.—A board, or the department when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements. A board, or the department when there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements provided for in part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475 and may not require centralized examinations for completion of continuing education requirements for the professions licensed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475.

History.—s. 137, ch. 99-251; s. 7, ch. 2010-106; s. 5, ch. 2010-176.

455.2124 Proration of or not requiring continuing education.—A board, or the department when there is no board, may:

- (1) Prorate continuing education for new licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or
- (2) Require no continuing education until the first full renewal cycle of the licensee.

These options shall also apply when continuing education is first required or the number of hours required is increased by law or the board, or the department when there is no board.

History.—s. 138, ch. 99-251.

455.2125 Consultation with postsecondary education boards prior to adoption of changes to training requirements.—Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education, the Board of Governors of the State University System, and the State Board of Education prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

History.—s. 23, ch. 95-243; s. 34, ch. 98-421; s. 71, ch. 2004-5; s. 13, ch. 2004-41; s. 53, ch. 2007-217.

455.213 General licensing provisions.—

- (1) Any person desiring to be licensed shall apply to the department in writing. The application for licensure shall be submitted on a form prescribed by the department and must include the applicant's social security number. Notwithstanding any other provision of law, the department is the sole authority for determining the contents of any documents to be submitted for initial licensure and licensure renewal. Such documents may contain information including, as appropriate: demographics, education, work history, personal background, criminal history, finances, business information, complaints, inspections, investigations, discipline, bonding, photographs, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint

requirements, continuing education requirements, and ongoing education monitoring. The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department. In cases where a person applies or schedules directly with a national examination organization or examination vendor to take an examination required for licensure, any organization- or vendor-related fees associated with the examination may be paid directly to the organization or vendor. An application is received for purposes of s. 120.60 upon the department's receipt of the application submitted in the format prescribed by the department; the application fee set by the board or, if there is no board, set by the department; and any other fee required by law or rule to be remitted with the application.

(2) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the department. Upon receipt of the appropriate license fee, except as provided in subsection (3), the department shall issue a license to any person certified by the appropriate board, or its designee, or the department when there is no board, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination. Upon a determination by the department that it erroneously issued a license, or upon the revocation of a license by the applicable board, or by the department when there is no board, the licensee must surrender his or her license to the department.

(3) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.

(4) When any administrative law judge conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the department, the administrative law judge shall submit his or her recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for a license may appeal the final order of the board in accordance with the provisions of chapter 120.

(5) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.

(6) Any board that currently requires continuing education for renewal of a license shall adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board, or the department when there is no board, must require that any pro bono services be approved in advance in order to receive credit for continuing education under this section. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The rules may provide for approval by the board, or the department when there is no board, that a part of the

continuing education hours can be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board, or the department when there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements adopted by the boards or the department when there is no board.

(7) Notwithstanding anything to the contrary, any elected official who is licensed pursuant to any practice act within the purview of this chapter may hold employment for compensation with any public agency concurrent with such public service. Such dual service shall be disclosed according to any disclosure required by applicable law.

(8) In any instance in which a licensee or applicant to the department is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(9) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement and use by the Department of Business and Professional Regulation, and as otherwise provided by law.

(10) For any profession requiring fingerprints as part of the registration, certification, or licensure process or for any profession requiring a criminal history record check to determine good moral character, the fingerprints of the applicant must accompany all applications for registration, certification, or licensure. The fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for processing to determine whether the applicant has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation to determine whether the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department to determine whether the applicant is statutorily qualified for registration, certification, or licensure.

(11) Any submission required to be in writing may otherwise be required by the department to be made by electronic means. The department is authorized to contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for registration, certification, or the licensure process or where criminal history record checks are required.

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if he or she applies to the department for a license, in a format prescribed by the department, within 60 months after the veteran is discharged from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

History.—s. 5, ch. 79-36; s. 29, ch. 81-302; s. 9, ch. 83-329; s. 7, ch. 84-203; s. 30, ch. 85-175; s. 3, ch. 86-287; s. 1, ch. 89-162; s. 67, ch. 89-374; s. 1, ch. 91-137; s. 10, ch. 91-220; s. 43, ch. 92-33; ss. 13, 76, ch. 92-149; s. 23, ch. 93-129; ss. 1, 4, ch. 96-309; s. 208, ch. 96-410; s. 1078, ch. 97-103; s. 63, ch. 97-170; s. 1, ch. 97-228; s. 10, ch. 97-261; s. 53, ch. 97-278; s. 2, ch. 98-166; s. 37, ch. 98-397; s. 139, ch. 99-251; s. 26, ch. 2000-160; s. 1, ch. 2001-269; s. 9, ch. 2001-278; s. 1, ch. 2007-86; s. 1, ch. 2009-195; s. 8, ch. 2010-106; s. 2, ch. 2012-61; s. 3, ch. 2012-72; s. 40, ch. 2013-116; s. 26, ch. 2014-1.

455.214 Limited licenses.—

(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve the indigent, underserved, or critical need populations of this state should be encouraged. To that end, the board, or the department when there is no board, may adopt rules to permit practice by retired professionals as limited licensees under this section.

(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the board, or the department when there is no board, an application and fee, not to exceed \$300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of his or her profession, the application and all licensure fees shall be waived.

(3) The board, or the department when there is no board, may deny limited licensure to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline pursuant to the provisions of this chapter or the applicable practice act.

(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which meet the requirements of s. 501(c)(3) of the Internal Revenue Code, and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The board, or the department when there is no board, may adopt rules to define underserved and critical need areas and to ensure implementation of this section.

(5) A board, or the department when there is no board, may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

(6) Each applicant granted a limited license is subject to all the provisions of this chapter and the respective practice act under which the limited license is issued which are not in conflict with this section.

(7) This section does not apply to chapter 458 or chapter 459.

History.—s. 14, ch. 92-149; s. 189, ch. 97-103; s. 11, ch. 97-261; s. 27, ch. 2000-160.

455.217 Examinations.—This section shall be read in conjunction with the appropriate practice act associated with each regulated profession under this chapter.

(1) The Division of Professions of the Department of Business and Professional Regulation shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations. The division shall seek the advice of the appropriate board in providing such services.

(a) The department, acting in conjunction with the Division of Service Operations, the Division of Professions, and the Division of Real Estate, as appropriate, shall ensure that examinations adequately and reliably measure an applicant's ability to practice the profession regulated by the department. After an examination developed or approved by the department has been administered, the board or department may reject any question which does not reliably measure the general areas of competency specified in the rules of the board or department, when there is no board. The department shall use

qualified outside testing vendors for the development, preparation, and evaluation of examinations, when such services are economically and viably available and approved by the department.

(b) For each examination developed by the department or contracted vendor, to the extent not otherwise specified by statute, the board or the department when there is no board, shall by rule specify the general areas of competency to be covered by the examination, the relative weight to be assigned in grading each area tested, the score necessary to achieve a passing grade, and the fees, where applicable, to cover the actual cost for any purchase, development, and administration of the required examination. However, statutory fee caps in each practice act shall apply. This subsection does not apply to national examinations approved and administered pursuant to paragraph (d).

(c) If a practical examination is deemed to be necessary, rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. When a mandatory standardization exercise for a practical examination is required by law, the board may conduct such exercise. Therefore, board members may serve as examiners at a practical examination with the consent of the board.

(d) A board, or the department when there is no board, may approve by rule the use of any national examination which the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules. Providers of examinations, which may be either profit or nonprofit entities, seeking certification by the department shall pay the actual costs incurred by the department in making a determination regarding the certification. The department shall use any national examination which is available, certified by the department, and approved by the board. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade tape and information to be returned to the board or department or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination. The department may delegate to the board the duty to provide and administer the examination. Any national examination approved by a board, or the department when there is no board, prior to October 1, 1997, is deemed certified under this paragraph. Any licensing or certification examination that is not developed or administered by the department in-house or provided as a national examination shall be competitively bid.

(e) The department shall adopt rules regarding the security and monitoring of examinations. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 455.228 to seek fines and injunctive relief against an examinee who violates the provisions of s. 455.2175 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules.

(f) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state's licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department's examination and development program for professions regulated by this chapter. All fees paid by the user for professions not regulated by this chapter shall be applied to offset the fees for the development and administration

of that profession's examination. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for which he or she failed to achieve a passing grade, if he or she successfully passes that portion within a reasonable time of his or her passing the other portion.

(2) For each examination developed by the department or a contracted vendor, the board or the department when there is no board, shall make rules providing for reexamination of any applicants who fail an examination developed by the department or a contracted vendor. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for which he or she failed to achieve a passing grade, if the applicant successfully passes that portion within a reasonable time, as determined by rule of the board, or department when there is no board, of his or her passing the other portion.

(3) Except for national examinations approved and administered pursuant to paragraph (1)(d), the department shall provide procedures for applicants who have taken and failed an examination developed by the department or a contracted vendor to review their most recently administered examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. An applicant may waive in writing the confidentiality of his or her examination grades.

(4) For each examination developed or administered by the department or a contracted vendor, an accurate record of each applicant's examination questions, answers, papers, grades, and grading key shall be kept for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257. This subsection does not apply to national examinations approved and administered pursuant to paragraph (1)(d).

(5) Meetings and records of meetings of any member of the department or of any board or commission within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07 (1) and 286.011. However, this exemption shall not affect the right of any person to review an examination as provided in subsection (3).

(6) For examinations developed by the department or a contracted vendor, each board, or the department when there is no board, may provide licensure examinations in an applicant's native language. Applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, administration, grading, and evaluation of any examination in a language other than English or Spanish. Requests for translated examinations, except for those in Spanish, must be on file in the board office, or with the department when there is no board, at least 6 months prior to the scheduled examination. When determining whether it is in the public interest to allow the examination to be translated into a language other than English or Spanish, the board, or the department when there is no board, shall consider the percentage of the population who speak the applicant's native language.

(7) In addition to meeting other requirements for licensure by examination or by endorsement, an applicant may be required by a board, or by the department, if there is no board, to pass an examination pertaining to state laws and rules applicable to the practice of the profession regulated by that board or by the department. This subsection does not apply to persons regulated under chapter 473.

History.—s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 286, ch. 81-259; s. 30, ch. 81-302; s. 4, ch. 82-1; s. 39, ch. 82-179; s. 80, ch. 83-218; s. 10, ch. 83-329; s. 1, ch. 88-49; s. 2, ch. 89-162; s. 2, ch. 91-137; s. 1, ch. 91-140; s. 11, ch. 91-220; s. 15, ch. 92-149; s. 5, ch. 94-119; s. 70, ch. 94-218; s. 303, ch. 96-406; s. 1080, ch. 97-103; s. 2, ch. 97-

228; s. 12, ch. 97-261; s. 18, ch. 99-7; s. 28, ch. 2000-160; s. 6, ch. 2000-356; s. 23, ch. 2008-240; s. 1, ch. 2009-54; s. 1, ch. 2009-69; s. 63, ch. 2009-195; s. 9, ch. 2010-106.

Note.—Former s. 455.007(2).

455.2171 Use of professional testing services.—Notwithstanding any other provision of law to the contrary, the department may use a professional testing service to prepare, administer, grade, and evaluate any computerized examination, when that service is available and approved by the board, or the department when there is no board.

History.—s. 6, ch. 94-119.

455.2175 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department, whether such examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An examinee whose examination materials are confiscated is not permitted to take another examination until the criminal investigation reveals that the examinee did not violate this section.

History.—s. 3, ch. 90-228; s. 3, ch. 91-137; s. 47, ch. 92-33; s. 23, ch. 93-129; s. 71, ch. 94-218; s. 13, ch. 97-261; s. 10, ch. 2010-106.

455.2177 Monitoring of compliance with continuing education requirements.—

(1) The department shall establish a system to monitor licensee compliance with applicable continuing education requirements and to determine each licensee's continuing education status. As used in this section, the term "monitor" means the act of determining, for each licensee, whether the licensee was in full compliance with applicable continuing education requirements as of the time of the licensee's license renewal.

(2) The department may refuse renewal of a licensee's license until the licensee has satisfied all applicable continuing education requirements. This subsection does not preclude the department or boards from imposing additional penalties pursuant to the applicable practice act or rules adopted pursuant thereto.

(3) The department may waive the continuing education monitoring requirements of this section for any profession that demonstrates to the department that the monitoring system places an undue burden on the profession. The department shall waive the continuing education monitoring requirements of this section for any profession that has a program in place which measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95 percent of its licensees are in compliance.

(4) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

History.—s. 157, ch. 99-251; s. 17, ch. 2001-278; s. 43, ch. 2002-207; s. 2, ch. 2004-292; s. 82, ch. 2005-2.

455.2178 Continuing education providers.—

(1) Each continuing education provider shall provide to the department such information regarding the continuing education status of licensees as the department determines is necessary to carry out its duties under s. 455.2177, in an electronic format determined by the department. After a licensee's completion of a course, the information must be submitted to the department electronically no later than 30 calendar days thereafter. However, the continuing education provider shall electronically report to the department completion of a licensee's course within 10 business days beginning on the 30th day before the renewal deadline or prior to the renewal date, whichever occurs sooner. The foregoing applies only if the profession has not been granted a waiver from the monitoring requirements under s.

455.2177. Upon the request of a licensee, the provider must also furnish to the department information regarding courses completed by the licensee.

(2) Each continuing education provider shall retain all records relating to a licensee's completion of continuing education courses for at least 4 years after completion of a course.

(3) A continuing education provider may not be approved, and the approval may not be renewed, unless the provider agrees in writing to provide such cooperation under this section and s. 455.2177 as the department deems necessary or appropriate.

(4) The department may fine, suspend, or revoke approval of any continuing education provider that fails to comply with its duties under this section. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted pursuant to s. 455.225.

(5) For the purpose of determining which persons or entities must meet the reporting, recordkeeping, and access provisions of this section, the board of any profession subject to this section, or the department if there is no board, shall, by rule, adopt a definition of the term "continuing education provider" applicable to the profession's continuing education requirements. The intent of the rule shall be to ensure that all records and information necessary to carry out the requirements of this section and s. 455.2177 are maintained and transmitted accordingly and to minimize disputes as to what person or entity is responsible for maintaining and reporting such records and information.

(6) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

History.—s. 158, ch. 99-251; s. 3, ch. 2004-292; s. 2, ch. 2007-86.

455.2179 Continuing education provider and course approval; cease and desist orders.—

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, shall approve the providers and courses for the continuing education. Notwithstanding this subsection or any other provision of law, the department may approve continuing education providers or courses even if there is a board. If the department determines that an application for a continuing education provider or course requires expert review or should be denied, the department shall forward the application to the appropriate board for review and approval or denial. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect pursuant to the applicable practice act or the rules adopted under the applicable practice act. Notwithstanding this subsection or any other provision of law, only the department may determine the contents of any documents submitted for approval of a continuing education provider or course.

(2) The board, or the department if there is no board, shall issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval of the provider previously granted by the board, or the department if there is no board, if the board, or the department if there is no board, determines that the person or entity failed to provide appropriate continuing education services that conform to approved course material. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted under s. 455.225.

(3) Each board authorized to approve continuing education providers, or the department if there is no board, may establish, by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of providership of such courses. The Florida Real Estate Commission, authorized under the provisions of chapter 475 to approve prelicensure, precertification, and postlicensure education

providers, may establish, by rule, an application fee not to exceed \$250 for anyone seeking approval to offer prelicensure, precertification, or postlicensure education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of such courses. Such postlicensure education courses are subject to the reporting, monitoring, and compliance provisions of this section and ss. 455.2177 and 455.2178.

(4) The department and each affected board may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

History.—s. 159, ch. 99-251; s. 7, ch. 2000-356; s. 4, ch. 2004-292; s. 4, ch. 2012-72.

455.218 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, the department shall by rule provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:

(a) Immigrated to the United States after leaving the person's home country because of political reasons, provided such country is located in the Western Hemisphere and lacks diplomatic relations with the United States;

(b) Applies to the department and submits a fee;

(c) Was a Florida resident immediately preceding the person's application;

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university; however, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years;

(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department shall develop rules for the approval of such programs for its boards.

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department, for its boards, shall provide a written practical examination that tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department on such fundamentals.

(3) The fees charged for the examinations offered under subsection (2) shall be established by the department, for its boards, by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.

(4) The department shall examine any applicant who meets the requirements of subsections (1) and (2). Upon passing the examination and the issuance of the license, a licensee is subject to the administrative requirements of this chapter and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this chapter and the respective practice act under which the license was issued.

(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.

(6) The department, for its boards, shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action which would constitute a violation of this chapter or the professional practice acts administered by the department and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

History.—s. 1, ch. 86-90; s. 7, ch. 88-205; s. 7, ch. 88-392; s. 48, ch. 92-33; s. 16, ch. 92-149; s. 23, ch. 93-129; s. 312, ch. 94-119; s. 72, ch. 94-218; s. 14, ch. 97-261; s. 3, ch. 98-166; s. 29, ch. 2000-160.

455.2185 Exemption for certain out-of-state or foreign professionals; limited practice permitted.—

(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure under this chapter and the applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.

(b) Engages in the active practice of that profession outside the state.

(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed veterinary facility without the approval of that facility.

History.—s. 1, ch. 94-96; s. 15, ch. 97-261; s. 30, ch. 2000-160.

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule

for the advancement of sufficient funds to any profession or the Florida State Boxing Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

(2) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active and each voluntary inactive licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of such professions as required in this section. No more than one such assessment may be made in any 4-year period without specific legislative authorization.

(3) All moneys collected by the department from fees or fines or from costs awarded to the department by a court shall be paid into the Professional Regulation Trust Fund, which fund is created in the department. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to professions regulated by the department and any board within the department. The department shall maintain separate accounts in the Professional Regulation Trust Fund for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses shall include, but not be limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The department shall not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession. The department shall maintain adequate records to support its allocation of department expenses. The department shall provide any board with reasonable access to these records upon request. Each board shall be provided an annual report of revenue and direct and allocated expenses related to the operation of that profession. These reports and the department's adopted long-range plan shall be used by the board to determine the amount of license fees. A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared pursuant to s. 455.2285.

(4) A condensed management report of budgets, finances, performance statistics, and recommendations shall be provided to each board at least once a quarter. The department shall identify and include in such presentations any changes, or projected changes, made to the board's budget since the last presentation.

(5) If a duplicate license is required or requested by the licensee, the board or, if there is no board, the department may charge a fee as determined by rule not to exceed \$25 before issuance of the duplicate license.

(6) The department or the appropriate board shall charge a fee not to exceed \$25 for the certification of a public record. The fee shall be determined by rule of the department. The department or the appropriate board shall assess a fee for duplication of a public record as provided in s. 119.07(4).

History.—s. 5, ch. 79-36; s. 287, ch. 81-259; s. 2, ch. 84-271; s. 82, ch. 90-132; s. 4, ch. 90-228; s. 4, ch. 91-137; s. 17, ch. 92-149; s. 73, ch. 94-218; s. 8, ch. 2000-356; s. 44, ch. 2004-335.

455.221 Legal and investigative services.—

(1) The department shall provide board counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel pursuant to s. 287.059, or by providing department staff counsel. The primary responsibility of board counsel shall be to represent the interests of the citizens of the state. A board shall provide for the periodic review and evaluation of the services provided by its board counsel. Fees and costs of such counsel shall be paid from the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.

(2) The Department of Business and Professional Regulation may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or used by the department shall prosecute a matter and provide legal services to the board with respect to the same matter.

(3) Any person retained by the department under contract to review materials, make site visits, or provide expert testimony regarding any complaint or application filed with the department relating to a profession under the jurisdiction of the department shall be considered an agent of the department in determining the state insurance coverage and sovereign immunity protection applicability of ss. 284.31 and 768.28.

History.—s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 288, ch. 81-259; s. 31, ch. 81-302; s. 51, ch. 92-33; s. 23, ch. 93-129; s. 7, ch. 94-119; ss. 74, 75, ch. 94-218; s. 16, ch. 97-261; s. 152, ch. 99-251.

Note.—Former s. 455.007(3), (4).

455.2228 Barbers and cosmetologists; instruction on HIV and AIDS.—

(1) The board, or the department where there is no board, shall require each person licensed or certified under chapter 476 or chapter 477 to complete a continuing educational course approved by the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.

(2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed said course, on a form provided by the board or by the department if there is no board. At the time of the subsequent biennial renewal when coursework is to be completed, if the licensee has not submitted confirmation which has been received and recorded by the board, or department if there is no board, the department shall not renew the license.

(3) The board, or the department where there is no board, shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).

(4) As of December 31, 1992, the board, or the department where there is no board, shall require, as a condition of granting a license under any of the chapters or parts thereof specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(5) The board, or the department where there is no board, shall have the authority to adopt rules to carry out the provisions of this section.

(6) Any professional holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course, or one department-approved

course where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

History.—s. 11, ch. 89-350; ss. 73, 74, ch. 91-297; s. 16, ch. 95-388; s. 18, ch. 97-261; s. 147, ch. 2010-102.

455.223 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the department, the department shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569.

History.—s. 5, ch. 79-36; s. 32, ch. 81-302; s. 4, ch. 86-90; s. 5, ch. 91-137; s. 52, ch. 92-33; s. 23, ch. 93-129; s. 77, ch. 94-218; s. 210, ch. 96-410; s. 19, ch. 97-261.

455.2235 Mediation.—

(1) Notwithstanding the provisions of s. 455.225, the board, or the department when there is no board, shall adopt rules to designate which violations of the applicable professional practice act are appropriate for mediation. The board, or the department when there is no board, may designate as mediation offenses those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee.

(2) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days of the mediator's notification to the department. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 455.225.

(3) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 455.225. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 455.225.

(4) No licensee shall go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision shall not be considered a final agency action for purposes of chapter 120.

(5) If any board fails to adopt rules designating which violations are appropriate for resolution by mediation by January 1, 1995, the department shall have exclusive authority to, and shall, adopt rules to designate the violations which are appropriate for mediation. Any board created on or after January 1, 1995, shall have 6 months to adopt rules designating which violations are appropriate for mediation, after which time the department shall have exclusive authority to adopt rules pursuant to this section. A board shall have continuing authority to amend its rules adopted pursuant to this section.

History.—s. 19, ch. 92-149; s. 8, ch. 94-119.

455.224 Authority to issue citations.—

(1) Notwithstanding s. 455.225, the board or the department shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department when there is no board, shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare.

(3) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board or department rule, as part of the penalty levied pursuant to the citation.

(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(5) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(6) Within its jurisdiction, the department has exclusive authority to, and shall adopt rules to, designate those violations for which the licensee is subject to the issuance of a citation and designate the penalties for those violations if any board fails to incorporate this section into rules by January 1, 1992. A board created on or after January 1, 1992, has 6 months in which to enact rules designating violations and penalties appropriate for citation offenses. Failure to enact such rules gives the department exclusive authority to adopt rules as required for implementing this section. A board has continuous authority to amend its rules adopted pursuant to this section.

History.—s. 6, ch. 91-137; s. 53, ch. 92-33; s. 20, ch. 92-149; s. 23, ch. 93-129; s. 313, ch. 94-119; s. 78, ch. 94-218; s. 20, ch. 97-261; s. 161, ch. 99-251.

455.225 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(1)(a) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has

reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of a board.

(b) When an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the secretary, or the secretary's designee, and the chair of the respective board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3)(a) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. A violation is a minor violation if it does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Each board, or the department if there is no board, shall establish by rule those violations which are minor violations under this provision. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(b) The department may issue a notice of noncompliance for an initial offense of a minor violation, notwithstanding a board's failure to designate a particular minor violation by rule as provided in paragraph (a).

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by

board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The secretary may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department when there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department, for disciplinary cases under its jurisdiction, must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Professional Regulation Trust Fund. All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative law judge shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the Secretary of Business and Professional Regulation or his or her designee, who shall issue the final summary order.

(9) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act. Upon completion of the investigation and pursuant to a written request by the subject, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

History.—s. 1, ch. 74-57; s. 5, ch. 79-36; s. 289, ch. 81-259; s. 33, ch. 81-302; s. 12, ch. 83-329; s. 8, ch. 84-203; s. 3, ch. 85-311; s. 5, ch. 86-90; s. 8, ch. 88-1; s. 5, ch. 88-277; s. 1, ch. 88-279; s. 3, ch. 89-162; s. 1, ch. 90-44; s. 5, ch. 90-228; s. 7, ch. 91-137; s. 2, ch. 91-140; s. 54, ch. 92-33; s. 21, ch. 92-149; s. 132, ch. 92-279; s. 55, ch. 92-326; s. 23, ch. 93-129; s. 314, ch. 94-119; s. 79, ch. 94-218; s. 305, ch. 96-406; s. 211, ch. 96-410; s. 1082, ch. 97-103; s. 2, ch. 97-209; s. 3, ch. 97-228; s. 142, ch. 97-237; s. 21, ch. 97-261; s. 4, ch. 97-264; s. 18, ch. 97-273; s. 4, ch. 98-166; s. 31, ch. 2000-160.

Note.—Former s. 455.013.

455.2255 Classification of disciplinary actions.—

(1) A licensee may petition the department to review a disciplinary incident to determine whether the specific violation meets the standard of a minor violation as set forth in s. 455.225(3). If the circumstances of the violation meet that standard and 2 years have passed since the issuance of a final order imposing discipline, the department shall reclassify that violation as inactive if the licensee has not been disciplined for any subsequent minor violation of the same nature. After the department has reclassified the violation as inactive, it is no longer considered to be part of the licensee's disciplinary record, and the licensee may lawfully deny or fail to acknowledge the incident as a disciplinary action.

(2) The department may establish a schedule classifying violations according to the severity of the violation. After the expiration of set periods of time, the department may provide for such disciplinary records to become inactive, according to their classification. After the disciplinary record has become inactive, the department may clear the violation from the disciplinary record and the subject person or business may lawfully deny or fail to acknowledge such disciplinary actions.

(3) Notwithstanding s. 455.017, this section applies to the disciplinary records of all persons or businesses licensed by the department.

History.—s. 143, ch. 99-251; s. 71, ch. 2013-18.

455.227 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

(b) Intentionally violating any rule adopted by the board or the department, as appropriate.

(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

(d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted pursuant to s. 501.122(2) governing the registration of such devices.

(e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.

(f) Having a license or the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(i) Failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.

(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.

(k) Failing to perform any statutory or legal obligation placed upon a licensee.

(l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.

(m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

(n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.

(o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

(p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them.

(q) Violating any provision of this chapter, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

(r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.

(s) Failing to comply with the educational course requirements for domestic violence.

(t) Failing to report in writing to the board or, if there is no board, to the department within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction. A licensee must report a conviction, finding of guilt, plea, or adjudication entered before the effective date of this paragraph within 30 days after the effective date of this paragraph.

(u) Termination from a treatment program for impaired practitioners as described in s. 456.076 for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program.

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(3)(a) In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time.

(b) In any case where the board or the department imposes a fine or assessment and the fine or assessment is not paid within a reasonable time, such reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing such fines or costs, the department or the Department of Legal Affairs may contract for the collection of, or bring a civil action to recover, the fine or assessment.

(c) The department shall not issue or renew a license to any person against whom or business against which the board has assessed a fine, interest, or costs associated with investigation and prosecution until the person or business has paid in full such fine, interest, or costs associated with investigation and prosecution or until the person or business complies with or satisfies all terms and conditions of the final order.

(4) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this chapter, or any provision of law with respect to professions regulated by the department, or any board therein, or the rules adopted pursuant thereto.

(5) In the event the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish, by rule, requirements for reapplication by applicants whose licenses have been permanently revoked. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

History.—s. 5, ch. 79-36; s. 13, ch. 83-329; s. 5, ch. 88-380; s. 8, ch. 91-137; s. 55, ch. 92-33; s. 22, ch. 92-149; s. 23, ch. 93-129; s. 9, ch. 94-119; s. 80, ch. 94-218; s. 5, ch. 95-187; s. 22, ch. 97-261; s. 144, ch. 99-251; s. 32, ch. 2000-160; s. 2, ch. 2009-195; s. 12, ch. 2010-106.

455.2273 Disciplinary guidelines.—

(1) Each board, or the department when there is no board, shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department when there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department when there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

(5) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

(6) Notwithstanding s. 455.017, this section applies to disciplinary guidelines adopted by all boards or divisions within the department.

History.—s. 2, ch. 86-90; s. 56, ch. 92-33; s. 23, ch. 92-149; s. 23, ch. 93-129; s. 81, ch. 94-218; s. 212, ch. 96-410; s. 23, ch. 97-261; s. 33, ch. 2000-160; s. 24, ch. 2008-240.

455.2274 Criminal proceedings against licensees; appearances by department representatives.

—A representative of the department may voluntarily appear in a criminal proceeding brought against a person licensed by the department to practice a profession regulated by the state. The department's representative is authorized to furnish pertinent information, make recommendations regarding specific conditions of probation, and provide other assistance to the court necessary to promote justice or protect the public. The court may order a representative of the department to appear in a criminal proceeding if the crime charged is substantially related to the qualifications, functions, or duties of a licensee regulated by the department.

History.—s. 3, ch. 2009-195; s. 115, ch. 2014-17.

455.2275 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in the performance of his or her official duties, or the act of attempting to obtain or obtaining a license from either the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 31, ch. 85-175; s. 12, ch. 89-124; s. 9, ch. 91-137; s. 57, ch. 92-33; s. 24, ch. 92-149; s. 23, ch. 93-129; s. 82, ch. 94-218; s. 190, ch. 97-103; s. 24, ch. 97-261.

455.2277 Prosecution of criminal violations.—The department or the appropriate board shall report any criminal violation of any statute relating to the practice of a profession regulated by the department or appropriate board to the proper prosecuting authority for prompt prosecution.

History.—s. 25, ch. 92-149.

455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—

(1) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such notice. In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3)(a) Notwithstanding the provisions of s. 455.225, the department shall adopt rules to permit the issuance of citations for unlicensed practice of a profession. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the

citation shall become a final order of the department. The penalty shall be a fine of not less than \$500 or more than \$5,000 or other conditions as established by rule.

(b) Each day that the unlicensed practice continues after issuance of a citation constitutes a separate violation.

(c) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to department rule as part of the penalty levied pursuant to the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(4) All fines, fees, and costs collected through the procedures set forth in this section shall be allocated to the professions in the manner provided for in s. 455.2281 for the allocation of the fees assessed and collected to combat unlicensed practice of a profession.

(5) The provisions of this section apply only to the provisions of s. 455.217 and the professional practice acts administered by the department.

History.—s. 3, ch. 84-271; s. 6, ch. 90-228; s. 58, ch. 92-33; s. 26, ch. 92-149; s. 23, ch. 93-129; s. 11, ch. 94-119; ss. 83, 84, ch. 94-218; s. 213, ch. 96-410; s. 25, ch. 97-261; s. 34, ch. 2000-160; s. 13, ch. 2010-106.

455.2281 Unlicensed activities; fees; disposition.—In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities is a state priority. All enforcement costs should be covered by professions regulated by the department. Therefore, the department shall impose, upon initial licensure and each renewal thereof, a special fee of \$5 per licensee. Such fee shall be in addition to all other fees collected from each licensee and shall fund efforts to combat unlicensed activity. Any profession regulated by the department which offers services that are not subject to regulation when provided by an unlicensed person may use funds in its unlicensed activity account to inform the public of such situation. The board with concurrence of the department, or the department when there is no board, may earmark \$5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. A board or profession regulated by the department may authorize the transfer of funds from the operating fund account to the unlicensed activity account of that profession if the operating fund account is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and shall not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds; however, the department may, without board advice, allocate funds to cover the costs of continuing education compliance monitoring under s. 455.2177. The department shall directly credit, by profession, revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement and from continuing education compliance monitoring as separate categories in the quarterly management report provided for in s. 455.219. The department shall not charge the account of any profession for the costs incurred on behalf of any other profession. For an unlicensed activity account, a balance which remains at the end of a renewal cycle may, with concurrence of the applicable board and the department, be transferred to the operating fund account of that profession.

History.—s. 27, ch. 92-149; s. 12, ch. 94-119; s. 160, ch. 99-251; s. 2, ch. 2001-269; s. 5, ch. 2004-292.

455.2285 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—The department is directed to prepare and submit a report to the President of the Senate and Speaker of the House of Representatives by November 1 of each year. In addition to

finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

- (1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.
- (2) The number of complaints received and investigated.
- (3) The number of findings of probable cause made.
- (4) The number of findings of no probable cause made.
- (5) The number of administrative complaints filed.
- (6) The disposition of all administrative complaints.
- (7) A description of disciplinary actions taken.
- (8) A description of any effort by the department, for any disciplinary cases under its jurisdiction, to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.
- (9) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 455.2273.
- (10) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

History.—s. 4, ch. 84-271; s. 3, ch. 86-90; s. 7, ch. 90-228; s. 59, ch. 92-33; s. 28, ch. 92-149; s. 23, ch. 93-129; ss. 85, 86, ch. 94-218; s. 143, ch. 97-237; s. 26, ch. 97-261; s. 5, ch. 97-264; s. 19, ch. 97-273; s. 5, ch. 98-166.

455.2286 Automated information system.—By November 1, 2001, the department shall implement an automated information system for all certificateholders and registrants under part XII of chapter 468, chapter 471, chapter 481, or chapter 489. The system shall provide instant notification to local building departments and other interested parties regarding the status of the certification or registration. The provision of such information shall consist, at a minimum, of an indication of whether the certification or registration is active, of any current failure to meet the terms of any final action by a licensing authority, of any ongoing disciplinary cases that are subject to public disclosure, whether there are any outstanding fines, and of the reporting of any material violations pursuant to s. 553.781. The system shall also retain information developed by the department and local governments on individuals found to be practicing or contracting without holding the applicable license, certification, or registration required by law. The system may be Internet-based.

History.—s. 6, ch. 98-287; s. 31, ch. 2000-141.

455.229 Public inspection of information required from applicants; exceptions; examination hearing.—

(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department.

(2) The department shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not

subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department shall provide challenged examination questions and answers to the administrative law judge. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge.

(3) Unless an applicant notifies the department at least 5 days prior to an examination hearing of the applicant's inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department for the examination hearing.

History.—s. 5, ch. 79-36; s. 1, ch. 88-392; s. 8, ch. 90-228; s. 10, ch. 91-137; s. 3, ch. 91-140; s. 60, ch. 92-33; s. 29, ch. 92-149; s. 23, ch. 93-129; s. 13, ch. 94-119; s. 87, ch. 94-218; ss. 306, 307, ch. 96-406; s. 214, ch. 96-410; s. 27, ch. 97-261.

455.232 Disclosure of confidential information.—

(1) No officer, employee, or person under contract with the department, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 455.227, and, if applicable, shall be removed from office, employment, or the contractual relationship.

History.—s. 2, ch. 85-311; s. 5, ch. 91-140; s. 83, ch. 91-224; s. 61, ch. 92-33; s. 30, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 94-119; s. 88, ch. 94-218; s. 28, ch. 97-261.

455.24 Advertisement by a veterinarian of free or discounted services; required statement.

—In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a person licensed under chapter 474, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care provider defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

History.—s. 1, ch. 84-161; s. 1, ch. 85-7; s. 6, ch. 86-90; s. 13, ch. 89-124; s. 31, ch. 92-149; s. 29, ch. 97-261.

455.242 Veterinarians; disposition of records of deceased practitioners or practitioners relocating or terminating practice.—Each board created under the provisions of chapter 474 shall provide by rule for the disposition, under that chapter, of the records that are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available and which records pertain to the practitioner's patients. The rules shall provide that the records be retained for at least 2 years after the practitioner's death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

History.—s. 1, ch. 79-302; s. 11, ch. 88-1; s. 11, ch. 88-392; s. 15, ch. 89-124; s. 16, ch. 91-137; s. 34, ch. 92-149; s. 30, ch. 97-261.

455.243 Authority to inspect.—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any establishment at which the services of a licensee authorized to prescribe controlled substances specified in chapter 893 are offered, for the purpose of determining if any of the provisions of this chapter or any practice act of a profession or any rule adopted thereunder is being violated; or for the purpose of securing such other evidence as may be needed for prosecution.

History.—s. 2, ch. 82-22; s. 63, ch. 92-33; s. 35, ch. 92-149; s. 23, ch. 93-129; s. 92, ch. 94-218; s. 31, ch. 97-261; s. 35, ch. 2000-160.

455.245 Veterinarians; immediate suspension of license.—The department shall issue an emergency order suspending the license of any person licensed under chapter 474 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

History.—s. 1, ch. 86-91; s. 12, ch. 88-1; s. 16, ch. 89-124; s. 64, ch. 92-33; s. 36, ch. 92-149; s. 23, ch. 93-129; s. 93, ch. 94-218; s. 192, ch. 97-103; s. 32, ch. 97-261.

455.271 Inactive and delinquent status.—

(1) A licensee may practice a profession only if the licensee has an active status license. A licensee who practices a profession without an active status license is in violation of this section and s. 455.227, and the board, or the department when there is no board, may impose discipline on the licensee.

(2) Each board, or the department when there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive status.

(3) Each board, or the department when there is no board, shall, by rule, impose a fee for an inactive status license which is no greater than the fee for an active status license.

(4) An inactive status licensee may change to active status at any time, provided the licensee meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fees as set by the board, or the department when there is no board, and meets all continuing education requirements as specified in this section.

(5) A licensee shall apply with a complete application, as defined by rule of the board, or the department when there is no board, to renew an active or inactive status license before the license expires. Failure of a licensee to renew before the license expires shall cause the license to become delinquent in the license cycle following expiration.

(6)(a) A delinquent status licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or the department.

(b) Notwithstanding the provisions of the professional practice acts administered by the department, the department may, at its discretion, reinstate the license of an individual whose license has become void if the department determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the department for reinstatement and pay an applicable fee in an amount determined by rule. The department shall require that such individual meet all continuing

education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

This subsection does not apply to individuals subject to regulation under chapter 473.

(7) Each board, or the department when there is no board, shall, by rule, impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, on a delinquent status licensee when such licensee applies for active or inactive status.

(8) Each board, or the department when there is no board, shall, by rule, impose an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.

(9) Each board, or the department when there is no board, may, by rule, impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

(10) The board, or the department if there is no board, may not require an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renewal cycle of continuing education to reactivate a license.

(11) The status or a change in status of a licensee shall not alter in any way the board's, or the department's when there is no board, right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent.

(12) This section does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to chapter 310 or chapter 475.

History.—s. 14, ch. 94-119; s. 1, ch. 2005-249; s. 2, ch. 2009-54; s. 3, ch. 2012-61; s. 5, ch. 2012-72; s. 8, ch. 2012-208.

455.273 Renewal and cancellation notices.—At least 90 days before the end of a licensure cycle, the department shall:

(1) Forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record or e-mail address provided to the department.

(2) Forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record or e-mail address provided to the department.

History.—s. 15, ch. 94-119; s. 6, ch. 2012-72.

455.275 Address of record.—

(1) Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address, e-mail address, and place of practice, as defined by rule of the board or the department when there is no board. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board or the department when there is no board.

(2) Notwithstanding any other provision of law, service by regular mail or e-mail to a licensee's last known mailing address or e-mail address of record with the department constitutes adequate and

sufficient notice to the licensee for any official communication to the licensee by the board or the department except when other service is required pursuant to s. 455.225.

(3)(a) Notwithstanding any provision of law, when an administrative complaint is served on a licensee of the department, the department shall provide service by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail.

(b) If service, as provided in paragraph (a), does not provide the department with proof of service, the department shall call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and shall send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

History.—s. 16, ch. 94-119; s. 14, ch. 2010-106; s. 7, ch. 2012-72; s. 15, ch. 2012-212.

455.32 Management Privatization Act.—

(1) This section shall be known by the popular name the "Management Privatization Act."

(2) The purpose of this section is to create a model for contracting with nonprofit corporations to provide services for the regulation of Florida's professionals which will ensure a consistent, effective application of regulatory provisions and appropriate budgetary oversight to achieve the most efficient use of public funds. Nonprofit corporations may be established pursuant to this section to provide administrative, examination, licensing, investigative, and prosecutorial services to any board created within the department pursuant to chapter 20 in accordance with the provisions of this chapter and the applicable practice act. No additional entities may be created to provide these services.

(3) As used in this section, the term:

(a) "Board" means any board, commission, or council created within the department pursuant to chapter 20.

(b) "Corporation" means any nonprofit corporation with which the department contracts pursuant to subsection (14).

(c) "Department" means the Department of Business and Professional Regulation.

(d) "Contract manager" means an employee of the department who serves as a liaison between the department, the board, and the corporation and is responsible for ensuring that the police powers of the state are not exercised by the corporation, while also serving as the contract monitor.

(e) "Business case" means a needs assessment, financial feasibility study, and corporate financial model as specified in paragraph (4).

(f) "Performance standards and measurable outcomes" shall include, but not be limited to, timeliness and qualitative criteria for the activities specified in paragraph (6)(o).

(g) "Secretary" means the Secretary of Business and Professional Regulation.

(4) Based upon the request of any board, the department is authorized to establish and contract with a nonprofit corporation to provide administrative, examination, licensing, investigative, and prosecutorial services to that board, in accordance with the provisions of this chapter and the applicable practice act and as specified in a contract between the department and the corporation. The privatization request must contain a business case that includes a needs assessment and financial feasibility study performed by the board or an entity commissioned by a majority vote of the board. The needs assessment must contain specific performance standards and measurable outcomes and an evaluation of the department's current and projected performance in regard to those standards. The feasibility study must include the financial status of the board for the current fiscal year and the next 2 fiscal years. A financial model for the corporation must also be developed which includes projected

costs and expenses for the first 2 years of operation and specific performance standards and measurable outcomes. The business case for privatization shall be submitted by the board to the department for inclusion in its legislative budget request to the Executive Office of the Governor and the Legislature pursuant to s. 216.023. The board shall proceed with the privatization only if such privatization is specifically authorized by general law.

(5) Any such corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112, except that the board of directors and the employees of the corporation are subject to the provisions of s. 112.061 and part III of chapter 112. The provisions of s. 768.28 apply to each such corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state but which is not an agency within the meaning of s. 20.03(11).

(6) Each corporation created to perform the functions provided in this section shall:

(a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.

(b) Provide administrative, examination, licensing, investigative, and prosecutorial services to the board, which services may include unlicensed activity investigations and prosecutions, in accordance with the provisions of this chapter, the applicable practice act, and the contract required by this section.

(c) Receive, hold, and administer property and make only prudent expenditures directly related to the responsibilities of the applicable board and in accordance with the contract required by this section.

(d) Be approved by the department to operate for the benefit of the board and in the best interest of the state and specifically authorized by the Legislature.

(e) Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.

(f) Be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund pursuant to s. 455.219.

(g) Have a five-member board of directors, three of whom are to be appointed by the applicable board and must be licensees regulated by that board and two of whom are to be appointed by the secretary and are laypersons not regulated by that board. Initially, one member shall be appointed for 2 years, two members shall be appointed for 3 years, and two members shall be appointed for 4 years. One layperson shall be appointed to a 3-year term and one layperson shall be appointed to a 4-year term. Thereafter, all appointments shall be for 4-year terms. No new member shall serve more than two consecutive terms. Failure to attend three consecutive meetings shall be deemed a resignation from the board of directors, and the vacancy shall be filled by a new appointment. No professional board member may also serve on the board of directors for the corporation.

(h) Select its officers in accordance with its bylaws. The members of the board of directors may be removed by the Governor, for the same reasons that a board member may be removed pursuant to s. 455.209.

(i) Select the president of the corporation, who shall manage the operations of the corporation, subject to the approval of the board.

(j) Use a portion of the interest derived from the corporation account to offset the costs associated with the use of credit cards for payment of fees by applicants or licensees.

(k) Operate under a written contract with the department.

(l) Provide for an annual financial audit of its financial accounts and records by an independent certified public accountant. The annual audit report shall include a management letter in accordance with s. 11.45 and a detailed supplemental schedule of expenditures for each expenditure category. The

annual audit report must be submitted to the board, the department, and the Auditor General for review.

(m) Provide for all employees and nonemployees charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond in such an amount and according to such terms as shall be determined in the contract.

(n) Keep financial and statistical information as necessary to completely disclose the financial condition and operation of the corporation and as requested by the Office of Program Policy Analysis and Government Accountability, the Auditor General, and the department.

(o) Submit to the secretary, the board, and the Legislature, on or before October 1 of each year, a report describing all of the activities of the corporation for the previous fiscal year which includes, but is not limited to, information concerning the programs and funds that have been transferred to the corporation. The report must include:

1. The number of license renewals.
2. The number of license applications received.
3. The number of license applications approved and denied and the number of licenses issued.
4. The average time required to issue a license.
5. The number of examinations administered and the number of applicants who passed or failed the examination.
6. The number of complaints received.
7. The number of complaints determined to be legally sufficient.
8. The number of complaints dismissed.
9. The number of complaints determined to have probable cause.
10. The number of administrative complaints issued and the status of the complaints.
11. The number and nature of disciplinary actions taken by the board.
12. All revenues received and all expenses incurred by the corporation during the preceding fiscal year in its performance of the duties under the contract.
13. Any audit performed under paragraph (l), including financial reports and performance audits.
14. The status of the compliance of the corporation with all performance-based program measures adopted by the board.

(p) Meet or exceed the requirements of the business case developed by the board and approved by the Executive Office of the Governor.

(7) The department shall annually certify that the corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. If the department determines the corporation is not compliant with the terms of the contract, including performance standards and measurable outcomes, the contract may be terminated as provided in paragraph (14)(e).

(8) Nothing in this section shall limit the ability of the corporation to enter into contracts and perform all other acts incidental to those contracts which are necessary for the administration of its affairs and for the attainment of its purposes.

(9) The corporation may acquire by lease, and maintain, use, and operate, any real or personal property necessary to perform the duties provided by the contract and this section.

(10) The corporation may exercise the authority assigned to the department or board under this section or the practice act of the relevant profession, pursuant to the contract, including but not limited to initiating disciplinary investigations for unlicensed practice of the relevant profession. The corporation may make a determination of legal sufficiency to begin the investigative process as provided

in s. 455.225. However, the department or the board may not delegate to the corporation, by contract or otherwise, the authority for determining probable cause to pursue disciplinary action against a licensee, taking final action on license actions or on disciplinary cases, or adopting administrative rules under chapter 120.

(11) The department shall retain the independent authority to open, investigate, or prosecute any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the department shall retain sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60 or may delegate concurrent authority for this purpose to the relevant professional board.

(12) The corporation is the sole source and depository for the records of the board, including all historical information and records. The corporation shall maintain those records in accordance with the guidelines of the Department of State and shall not destroy any records prior to the limits imposed by the Department of State.

(13) The board shall provide by rule for the procedures the corporation must follow to ensure that all licensure examinations are secure while under the responsibility of the corporation and that there is an appropriate level of monitoring during the licensure examinations.

(14) The contract between the department and the corporation must be in compliance with this section and other applicable laws. The department shall retain responsibility for any duties it currently exercises relating to its police powers and any other current duty that is not provided to the corporation by contract or this section. The contract shall provide, at a minimum, that:

(a) The corporation provide administrative, examination, licensing, investigative, and prosecutorial services in accordance with the provisions of this section and the practice act of the relevant profession. The prosecutorial functions of the corporation shall include the authority to pursue investigations leading to unlicensed practice complaints, with the approval of and at the direction of the relevant professional board. With approval of the department and the board, the corporation may subcontract for specialized services for the investigation and prosecution of unlicensed activity pursuant to this chapter. The corporation shall be required to report all criminal matters, including unlicensed activity that constitutes a crime, to the state attorney for criminal prosecution pursuant to s. 455.2277.

(b) The articles of incorporation and bylaws of the corporation be approved by the department.

(c) The corporation submit an annual budget for approval by the department. If the department's appropriations request differs from the budget submitted by the corporation, the relevant professional board shall be permitted to authorize the inclusion in the appropriations request of a comment or statement of disagreement with the department's request.

(d) The corporation utilize the department's licensing and computerized database system.

(e) The corporation be annually certified by the department as complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. As part of the annual certification, the department shall make quarterly assessments regarding contract compliance by the corporation. The contract must also provide for methods and mechanisms for resolving any situation in which the assessment and certification process determines noncompliance, to include termination.

(f) The department employ a contract manager to actively monitor the activities of the corporation to ensure compliance with the contract, the provisions of this chapter, and the applicable practice act.

(g) The corporation be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund.

(h) If the corporation is no longer approved to operate for the board or the board ceases to exist, all moneys, records, data, and property held in trust by the corporation for the benefit of the board revert

to the department, or the state if the department ceases to exist. All records and data in a computerized database must be returned to the department in a form that is compatible with the computerized database of the department.

(i) The corporation secure and maintain, during the term of the contract and for all acts performed during the term of the contract, all liability insurance coverages in an amount to be approved by the department to defend, indemnify, and hold harmless the corporation and its officers and employees, the department and its employees, the board, and the state against all claims arising from state and federal laws. Such insurance coverage must be with insurers qualified and doing business in the state. The corporation must provide proof of insurance to the department. The department and its employees, the board, and the state are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of the corporation. Violation of this paragraph shall be grounds for terminating the contract.

(j) The board, in lieu of the department, shall retain board counsel pursuant to the requirements of s. 455.221. The corporation, out of its allocated budget, shall pay all costs of representation by the board counsel, including salary and benefits, travel, and any other compensation traditionally paid by the department to other board counsel.

(k) The corporation, out of its allocated budget, pay to the department all costs incurred by the corporation or the board for the Division of Administrative Hearings of the Department of Management Services and any other cost for utilization of these state services.

(l) The corporation, out of its allocated budget, pay to the department all direct and indirect costs associated with the monitoring of the contract, including salary and benefits, travel, and other related costs traditionally paid to state employees.

(m) The corporation comply with the performance standards and measurable outcomes developed by the board and the department. The performance standards and measurable outcomes must be specified within the contract.

(15) Corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, public records exemptions set forth in ss. 455.217, 455.225, and 455.229 for records held by the department shall apply to records held by the corporation. In addition, all meetings of the board of directors are open to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution. The department and the board shall have access to all records of the corporation as necessary to exercise their authority to approve and supervise the contract. The Auditor General and the Office of Program Policy Analysis and Government Accountability shall have access to all records of the corporation as necessary to conduct financial and operational audits or examinations.

(16) If any provision of this section is held to be unconstitutional or is held to violate the state or federal antitrust laws, the following shall occur:

(a) The corporation shall cease and desist from exercising any powers and duties enumerated in this section.

(b) The department shall resume the performance of such activities. The department shall regain and receive, hold, invest, and administer property and make expenditures for the benefit of the board.

(c) The Executive Office of the Governor, notwithstanding chapter 216, may reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the board.

History.—s. 9, ch. 2000-356; s. 120, ch. 2001-266; s. 1, ch. 2004-292; s. 83, ch. 2005-2; s. 1, ch. 2008-134.



History.—ss. 16, 17, ch. 91-93; s. 4, ch. 91-429; s. 47, ch. 94-119.

468.535 Investigations; audits; review.—

(1) The department may make investigations, audits, or reviews within or outside this state as it deems necessary:

(a) To determine whether a person or company has violated or is in danger of violating any provision of this part, chapter 455, or any rule or order thereunder; or

(b) To aid in the enforcement of this part or chapter 455.

(2) All material compiled by the department in any investigation, audit, review of a proposed change of ownership of an employee leasing company, or other review under this part is subject to ss. 455.225

(2) and 455.229(1).

History.—s. 48, ch. 94-119; s. 98, ch. 98-166; s. 156, ch. 2000-160.

**PART XII
BUILDING CODE ADMINISTRATORS
AND INSPECTORS**

468.601 Purpose.

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468.631 Building Code Administrators and Inspectors Fund.

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468.601 Purpose.—The Legislature finds that, where building code administration and inspection personnel fail to adequately, competently, and professionally administer state or local building codes, physical and economic injury to the citizens of the state may result and, therefore, deems it necessary in the interest of public health and safety to regulate the practice of building code administration and inspection in this state.

History.—s. 24, ch. 93-166.

468.602 Exemptions.—This part does not apply to:

(1) Persons who possess a valid certificate, issued pursuant to s. 633.216, for conducting firesafety inspections, when conducting firesafety inspections.

(2) Persons currently licensed or certified to practice as an architect pursuant to chapter 481, an engineer pursuant to chapter 471, or a contractor pursuant to chapter 489, when performing any services authorized by such license or certificate.

(3) Persons acting as special inspectors for code enforcement jurisdictions while conducting special inspections not required as minimum inspections by the Florida Building Code.

History.—s. 24, ch. 93-166; s. 49, ch. 94-119; s. 7, ch. 98-287; s. 117, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 141, ch. 2013-183.

468.603 Definitions.—As used in this part:

(1) “Building code administrator” or “building official” means any of those employees of municipal or county governments with building construction regulation responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance. This term is synonymous with “building official” as used in the administrative chapter of the Standard Building Code and the South Florida Building Code. One person employed by each municipal or county government as a building code administrator or building official and who is so certified under this part may be authorized to perform any plan review or inspection for which certification is required by this part.

(2) “Building code inspector” means any of those employees of local governments or state agencies with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance.

(3) “Board” means the Florida Building Code Administrators and Inspectors Board.

(4) “Department” means the Department of Business and Professional Regulation.

(5) “Certificate” means a certificate of qualification issued by the department as provided in this part.

(6) “Categories of building code inspectors” include the following:

(a) “Building inspector” means a person who is qualified to inspect and determine that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws.

(b) “Coastal construction inspector” means a person who is qualified to inspect and determine that buildings and structures are constructed to resist near-hurricane and hurricane velocity winds in accordance with the provisions of the governing building code.

(c) “Commercial electrical inspector” means a person who is qualified to inspect and determine the electrical safety of commercial buildings and structures by inspecting for compliance with the provisions of the National Electrical Code.

(d) “Residential electrical inspector” means a person who is qualified to inspect and determine the electrical safety of one and two family dwellings and accessory structures by inspecting for compliance with the applicable provisions of the governing electrical code.

(e) “Mechanical inspector” means a person who is qualified to inspect and determine that the mechanical installations and systems for buildings and structures are in compliance with the provisions of the governing mechanical code.

(f) “Plumbing inspector” means a person who is qualified to inspect and determine that the plumbing installations and systems for buildings and structures are in compliance with the provisions of the governing plumbing code.

(g) “One and two family dwelling inspector” means a person who is qualified to inspect and determine that one and two family dwellings and accessory structures are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes.

(h) “Electrical inspector” means a person who is qualified to inspect and determine the electrical safety of commercial and residential buildings and accessory structures by inspecting for compliance with the provisions of the National Electrical Code.

(7) “Plans examiner” means a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes. Categories of plans examiners include:

- (a) Building plans examiner.
- (b) Plumbing plans examiner.
- (c) Mechanical plans examiner.
- (d) Electrical plans examiner.

(8) “Building code enforcement official” or “enforcement official” means a licensed building code administrator, building code inspector, or plans examiner.

History.—s. 24, ch. 93-166; s. 50, ch. 94-119; s. 149, ch. 94-218; s. 1, ch. 98-419; s. 12, ch. 2000-372.

468.604 Responsibilities of building code administrators, plans examiners, and inspectors.—

(1) It is the responsibility of the building code administrator or building official to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems within the boundaries of their governmental jurisdiction, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code. The building code administrator or building official shall faithfully perform these responsibilities without interference from any person. These responsibilities include:

(a) The review of construction plans to ensure compliance with all applicable sections of the code. The construction plans must be reviewed before the issuance of any building, system installation, or other construction permit. The review of construction plans must be done by the building code administrator or building official or by a person having the appropriate plans examiner license issued under this chapter.

(b) The inspection of each phase of construction where a building or other construction permit has been issued. The building code administrator or building official, or a person having the appropriate building code inspector license issued under this chapter, shall inspect the construction or installation to ensure that the work is performed in accordance with applicable sections of the code.

(2) It is the responsibility of the building code inspector to conduct inspections of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code. Each building code inspector must be licensed in the appropriate category as defined in s. 468.603. The building code inspector’s responsibilities must be performed under the direction of the building code administrator or building official without interference from any unlicensed person.

(3) It is the responsibility of the plans examiner to conduct review of construction plans submitted in the permit application to assure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code. The review of construction plans must be done by the building code administrator or building official or by a person licensed in the appropriate plans examiner category as defined in s. 468.603. The plans examiner's responsibilities must be performed under the supervision and authority of the building code administrator or building official without interference from any unlicensed person.

(4) The Legislature finds that the electronic filing of construction plans will increase governmental efficiency, reduce costs, and increase timeliness of processing permits. If the building code administrator or building official provides for electronic filing, then construction plans, drawings, specifications, reports, final documents, or documents prepared or issued by a licensee may be dated and electronically signed and sealed by the licensee in accordance with ss. 668.001-668.006, and may be transmitted electronically to the building code administrator or building official for approval.

History.—s. 2, ch. 98-419; s. 32, ch. 2000-141; s. 13, ch. 2000-372; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 4, ch. 2012-13; s. 1, ch. 2012-58.

468.605 Florida Building Code Administrators and Inspectors Board.—

(1) There is created within the Department of Business and Professional Regulation the Florida Building Code Administrators and Inspectors Board. Members shall be appointed by the Governor, subject to confirmation by the Senate. Members shall be appointed for 4-year terms. No member shall serve more than two consecutive 4-year terms, nor serve for more than 11 years on the board. To ensure continuity of board policies, the Governor shall initially appoint one member for a 1-year term, two members for 2-year terms, two members for 3-year terms, and two members for 4-year terms.

(2) The board shall consist of nine members, as follows:

(a) One member who is an architect licensed pursuant to chapter 481, an engineer licensed pursuant to chapter 471, or a contractor licensed pursuant to chapter 489.

(b) Two members serving as building code administrators.

(c) Two members serving as building code inspectors.

(d) One member serving as a plans examiner.

(e) One member who is a representative of a city or a charter county.

(f) Two consumer members who are not, and have never been, members of a profession regulated under this part, chapter 481, chapter 471, or chapter 489. One of the consumer members must be a person with a disability or a representative of an organization which represents persons with disabilities.

None of the board members described in paragraph (a) or paragraph (f) may be an employee of a municipal, county, or state governmental agency.

History.—s. 24, ch. 93-166; s. 51, ch. 94-119; s. 150, ch. 94-218; s. 3, ch. 98-419; s. 128, ch. 2000-153; s. 14, ch. 2000-372.

468.606 Authority of the board.—The board is authorized to:

(1) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(2) Certify individuals as being qualified under the provisions of this part to be building code administrators, plans examiners, and building code inspectors.

History.—s. 24, ch. 93-166; s. 138, ch. 98-200.

468.607 Certification of building code administration and inspection personnel.—The board shall issue a certificate to any individual whom the board determines to be qualified, within such class and level as provided in this part and with such limitations as the board may place upon it. No person

may be employed by a state agency or local governmental authority to perform the duties of a building code administrator, plans examiner, or building code inspector after October 1, 1993, without possessing the proper valid certificate issued in accordance with the provisions of this part. Any person who acts as an inspector and plans examiner under s. 1013.37 while conducting activities authorized by certification under that section is certified to continue to conduct inspections for a local enforcement agency until the person's UBCI certification expires, after which time such person must possess the proper valid certificate issued in accordance with this part.

History.—s. 24, ch. 93-166; s. 33, ch. 2000-141; s. 15, ch. 2000-372; s. 1015, ch. 2002-387.

468.609 Administration of this part; standards for certification; additional categories of certification.—

(1) Except as provided in this part, any person who desires to be certified shall apply to the board, in writing upon forms approved and furnished by the board, to take the certification examination.

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate as issued by the board, or a fire safety inspector license issued pursuant to chapter 633, has a minimum of 5 years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs; or

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program of not less than 300 hours which is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program.

(3) A person may take the examination for certification as a building code administrator pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of such experience in supervisory positions; or

2. Demonstrates a combination of postsecondary education in the field of construction or related field, no more than 5 years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least 5 years of such total being experience in supervisory positions.

(4) No person may engage in the duties of a building code administrator, plans examiner, or building code inspector pursuant to this part after October 1, 1993, unless such person possesses one of the following types of certificates, currently valid, issued by the board attesting to the person's qualifications to hold such position:

- (a) A standard certificate.
- (b) A limited certificate.
- (c) A provisional certificate.

(5)(a) To obtain a standard certificate, an individual must pass an examination approved by the board which demonstrates that the applicant has fundamental knowledge of the state laws and codes relating to the construction of buildings for which the applicant has building code administration, plans examination, or building code inspection responsibilities. It is the intent of the Legislature that the examination approved for certification pursuant to this part be substantially equivalent to the examinations administered by the International Code Council.

(b) A standard certificate shall be issued to each applicant who successfully completes the examination, which certificate authorizes the individual named thereon to practice throughout the state as a building code administrator, plans examiner, or building code inspector within such class and level as is specified by the board.

(c) The board may accept proof that the applicant has passed an examination which is substantially equivalent to the board-approved examination set forth in this section.

(6)(a) A building code administrator, plans examiner, or building code inspector holding office on July 1, 1993, shall not be required to possess a standard certificate as a condition of tenure or continued employment, but shall be required to obtain a limited certificate as described in this subsection.

(b) By October 1, 1993, individuals who were employed on July 1, 1993, as building code administrators, plans examiners, or building code inspectors, who are not eligible for a standard certificate, but who wish to continue in such employment, shall submit to the board the appropriate application and certification fees and shall receive a limited certificate qualifying them to engage in building code administration, plans examination, or building code inspection in the class, at the performance level, and within the governmental jurisdiction in which such person is employed.

(c) The limited certificate shall be valid only as an authorization for the building code administrator, plans examiner, or building code inspector to continue in the position held, and to continue performing all functions assigned to that position, on July 1, 1993.

(d) A building code administrator, plans examiner, or building code inspector holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance of a standard certificate or provisional certificate appropriate for such new position.

(e) By March 1, 2003, or 1 year after the Florida Building Code is implemented, whichever is later, individuals who were employed by an educational board, the Department of Education, or the State University System as building code administrators, plans examiners, or inspectors, who do not wish to apply for a standard certificate but who wish to continue in such employment, shall submit to the board

the appropriate application and certification fees and shall receive a limited certificate qualifying such individuals to engage in building code administration, plans examination, or inspection in the class, at the performance level, and within the governmental jurisdiction in which such person is employed.

(7)(a) The board may provide for the issuance of provisional certificates valid for 1 year, as specified by board rule, to any newly employed or promoted building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for a period longer than 3 years.

(b) No building code administrator, plans examiner, or building code inspector may have a provisional certificate extended beyond the specified period by renewal or otherwise.

(c) The board may provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters as the board may deem necessary to protect the public safety and health.

(d) A newly employed or hired person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(8) Any individual applying to the board may be issued a certificate valid for multiple building code inspection classes, as deemed appropriate by the board.

(9) Certification and training classes may be developed in coordination with degree career education centers, community colleges, the State University System, or other entities offering certification and training classes.

(10) The board may by rule create categories of certification in addition to those defined in s. 468.603(6) and (7). Such certification categories shall not be mandatory and shall not act to diminish the scope of any certificate created by statute.

History.—s. 24, ch. 93-166; s. 52, ch. 94-119; s. 8, ch. 98-287; s. 4, ch. 98-419; s. 7, ch. 99-254; s. 34, ch. 2000-141; s. 16, ch. 2000-372; s. 14, ch. 2001-372; s. 3, ch. 2007-187; s. 1, ch. 2007-227; s. 10, ch. 2009-195; s. 5, ch. 2012-13; s. 142, ch. 2013-183.

468.613 Certification by endorsement.—The board shall examine other certification or training programs, as applicable, upon submission to the board for its consideration of an application for certification by endorsement. The board shall waive its examination, qualification, education, or training requirements, to the extent that such examination, qualification, education, or training requirements of the applicant are determined by the board to be comparable with those established by the board.

History.—s. 24, ch. 93-166.

468.617 Joint building code inspection department; other arrangements.—

(1) Nothing in this part shall prohibit any local jurisdiction, school board, community college board, state university, or state agency from entering into and carrying out contracts with any other local jurisdiction or educational board under which the parties agree to create and support a joint building

code inspection department for conforming to the provisions of this part. In lieu of a joint building code inspection department, any local jurisdiction may designate a building code inspector from another local jurisdiction to serve as a building code inspector for the purposes of this part.

(2) Nothing in this part shall prohibit local governments, school boards, community college boards, state universities, or state agencies from contracting with persons certified pursuant to this part to perform building code inspections or plan reviews. An individual or entity may not inspect or examine plans on projects in which the individual or entity designed or permitted the projects.

(3) Nothing in this part shall prohibit any county or municipal government, school board, community college board, state university, or state agency from entering into any contract with any person or entity for the provision of building code inspection services regulated under this part, and notwithstanding any other statutory provision, such county or municipal governments may enter into contracts.

(4) Nothing in this part prohibits any building code inspector, plans examiner, or building code administrator holding a limited certificate who is employed by a jurisdiction within a small county as defined in s. 339.2818 from providing building code inspection, plans review, or building code administration services to another jurisdiction within a small county.

History.—s. 24, ch. 93-166; s. 3, ch. 96-298; s. 73, ch. 96-388; s. 5, ch. 98-419; s. 35, ch. 2000-141; s. 17, ch. 2000-372; s. 2, ch. 2007-227.

468.619 Building code enforcement officials' bill of rights.—

(1) It is the finding of the Legislature that building code enforcement officials are employed by local jurisdictions to exercise police powers of the state in the course of their duties and are in that way similar to law enforcement personnel, correctional officers, and firefighters. It is the further finding of the Legislature that building code enforcement officials are thereby sufficiently distinguishable from other professionals regulated by the department so that their circumstances merit additional specific protections in the course of disciplinary investigations and proceedings against their licenses.

(2) All enforcement officials licensed under this part shall have the rights and privileges specified in this section. Such rights are not exclusive to other rights, and an enforcement official does not forfeit any rights otherwise held under federal, state, or local law. In any instance of a conflict between a provision of this section and a provision of chapter 455, the provision of this section shall supersede the provision of chapter 455.

(3) Whenever an enforcement official is subjected to an investigative interview for possible disciplinary action by the department, such interview shall be conducted pursuant to the requirements of this subsection.

(a) The interview shall take place at a reasonable hour. If the interview is taken in person, it shall take place not more than 30 miles from where the licensee works, or at any other mutually agreeable location or time.

(b) An enforcement official may not be subjected to an interview without first receiving written notice of sufficient details of the complaint in order to be reasonably apprised of the nature of the investigation and of the substance of the allegations made. The enforcement official shall be informed prior to the interview whether the complaint originated from the department or from a consumer.

(c) At his or her request, an enforcement official under investigation shall have the right to be represented by counsel or by any other representative of his or her choice, who shall be present at such time as the enforcement official wishes during the interview.

(d) During the interview, the enforcement official may not be subjected to offensive language. No promise may be made or reward offered to the enforcement official as an inducement to answer any question.

(e) If requested by the enforcement official, the interview of an enforcement official, including notation of all recess periods, must be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements. Upon the request of the enforcement official, a copy of any such recording of the interview must be made available to the enforcement official no later than 72 hours following the interview, excluding holidays and weekends. The expense of the recording and transcript shall be borne by the enforcement official.

(f) If the testimony is transcribed, the transcript must be furnished to the enforcement official for examination, and shall be read to or by the enforcement official, unless waived by all parties involved. Any changes in form or substance that the enforcement official wants to make shall be listed in writing, with a statement of the reasons for making the changes. The changes shall be attached to the transcript. Any transcript of an interview with an enforcement official which is to be used in any proceeding against the enforcement official shall be sworn or affirmed to and acknowledged by the enforcement official.

(4) The investigation of a complaint against an enforcement official is subject to the time restrictions set forth in this subsection, and failure to comply with any time restriction set forth in this subsection shall result in dismissal of the complaint against the enforcement official. An investigation of a complaint against an enforcement official that was dismissed for failure to comply with a time restriction set forth in this subsection may not be reopened. However, in any instance of an additional complaint being initiated, information or investigation related to the dismissed complaint may be used.

(a) The department must inform the enforcement official of any legally sufficient complaint received, including the substance of the allegation, within 10 days after receipt of the complaint by the department.

(b) The enforcement official shall be given 30 days to respond to any legally sufficient complaint.

(c) No longer than 180 days from the date of the receipt of the complaint, the department shall submit the investigation, whether complete or not, to the probable cause panel for review. In the event the investigation is not complete, the probable cause panel shall review and instruct the department to complete the investigation within a time certain and, in no event, greater than 90 days or dismiss the complaint with prejudice.

(5) The enforcement official shall be considered an agent of the governmental entity employing him or her and as such shall be defended by that entity in any action brought by the department or the board, provided the enforcement official is working within the scope of his or her employment.

(6) An enforcement official shall not be subject to disciplinary action in regard to his or her certification for exercising his or her rights under this section.

(7) If any action taken against the enforcement official by the department or the board is found to be without merit by a court of competent jurisdiction, or if judgment in such an action is awarded to the enforcement official, the department or the board, or the assignee of the department or board, shall reimburse the enforcement official or his or her employer, as appropriate, for reasonable legal costs and reasonable attorney's fees incurred. The amount awarded shall not exceed the limit provided in s. 120.595.

(8) An enforcement official may bring civil suit against any person, group of persons, or organization or corporation, or the head of such organization or corporation, for damages, either pecuniary or otherwise, suffered pursuant to the performance of the enforcement official's duties or for abridgement

of the enforcement official's civil rights arising out of the enforcement official's performance of official duties.

(9) Notwithstanding any other provision in law, while under investigation the enforcement official shall not be denied any and all the rights and privileges of a licensee in good standing.

(10) This bill of rights applies to disciplinary investigations and proceedings against licenses issued under this part and disciplinary investigations and proceedings relating to the official duties of an enforcement official. This bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official holds or disciplinary investigations and proceedings unrelated to the enforcement official's official duties.

History.—s. 18, ch. 2000-372; s. 3, ch. 2007-227.

468.621 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violating or failing to comply with any provision of this part, or a valid rule or lawful order of the board or department pursuant thereto.

(b) Obtaining certification through fraud, deceit, or perjury.

(c) Knowingly assisting any person practicing contrary to the provisions of:

1. This part; or

2. The building code adopted by the enforcement authority of that person.

(d) Having been convicted of a felony against this state or the United States, or of a felony in another state that would have been a felony had it been committed in this state.

(e) Having been convicted of a crime in any jurisdiction which directly relates to the practice of building code administration or inspection.

(f) Making or filing a report or record that the certificateholder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

(g) Failing to properly enforce applicable building codes or permit requirements within this state which the certificateholder knows are applicable or committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property.

(h) Issuing a building permit to a contractor, or any person representing himself or herself as a contractor, without obtaining the contractor's certificate or registration number, where such a certificate or registration is required.

(i) Failing to lawfully execute the duties and responsibilities specified in this part and ss. 553.73, 553.781, 553.79, and 553.791.

(j) Performing building code inspection services under s. 553.791 without satisfying the insurance requirements of that section.

(k) Obstructing an investigation or providing or inducing another to provide forged documents, false forensic evidence, or false testimony to a local or state board or member thereof or to a licensing investigator.

(l) Accepting labor, services, or materials at no charge or at a noncompetitive rate from any person who performs work that is under the enforcement authority of the enforcement official and who is not an immediate family member of the enforcement official. The term "immediate family member"

includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of the person or the person's spouse or any person who resides in the primary residence of the enforcement official.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

- (a) Denial of an application for certification.
- (b) Permanent revocation.
- (c) Suspension of a certificate.
- (d) Imposition of an administrative fine not to exceed \$5,000 for each separate offense. Such fine must be rationally related to the gravity of the violation.

(e) Issuance of a reprimand.

(f) Placement of the certificateholder on probation for a period of time and subject to such conditions as the board may impose, including alteration of performance level.

(g) Satisfactory completion of continuing education.

(h) Issuance of a citation.

(3) Where a certificate is suspended, placed on probation, or has conditions imposed, the board shall reinstate the certificate of a disciplined building code administrator, plans examiner, or building code inspector upon proof the disciplined individual has complied with all terms and conditions set forth in the final order.

(4) No person may be allowed to apply for certification under this part for a minimum of 5 years after the date of revocation of any certificate issued pursuant to this part. The board may by rule establish additional criteria for certification following revocation.

History.—s. 24, ch. 93-166; s. 9, ch. 98-287; s. 8, ch. 99-254; s. 9, ch. 99-386; s. 118, ch. 2000-141; s. 19, ch. 2000-372; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 3, ch. 2005-147; s. 2, ch. 2005-216; s. 4, ch. 2007-227.

468.627 Application; examination; renewal; fees.—

(1) The board shall establish by rule fees to be paid for application, examination, reexamination, certification and certification renewal, inactive status application, and reactivation of inactive certificates. The board may establish by rule a late renewal penalty. The board shall establish fees which are adequate, when combined with revenue generated by the provisions of s. 468.631, to ensure the continued operation of this part. Fees shall be based on department estimates of the revenue required to implement this part.

(2) The initial application fee may not exceed \$25 for building code administrators, plans examiners, or building code inspectors.

(3) The initial examination fee may not exceed \$150 for building code administrators, plans examiners, or building code inspectors.

(4) Employees of local government agencies having responsibility for building code inspection, building construction regulation, and enforcement of building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes shall pay no application fees or examination fees.

(5) The certificateholder shall provide proof, in a form established by board rule, that the certificateholder has completed at least 14 classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate, including the specialized or advanced coursework approved by the Florida Building Commission, as part of the building code training program established pursuant to s. 553.841, appropriate to the licensing category sought. A minimum of 3 of the required 14 classroom hours must be on state law, rules, and ethics relating to professional standards of practice, duties, and responsibilities of the certificateholder. The board shall

by rule establish criteria for approval of continuing education courses and providers, and may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

History.—s. 24, ch. 93-166; s. 10, ch. 98-287; s. 6, ch. 98-419; s. 20, ch. 2000-372; s. 5, ch. 2007-227; s. 11, ch. 2009-195.

468.629 Prohibitions; penalties.—

- (1) No person may:
 - (a) Falsely hold himself or herself out as a certificateholder.
 - (b) Falsely impersonate a certificateholder.
 - (c) Present as his or her own the certificate of another.
 - (d) Give false or forged evidence to the board or the department, or a member, an employee, or an officer thereof, for the purpose of obtaining a certificate.
 - (e) Use or attempt to use a certificate which has been suspended or revoked.
 - (f) Threaten, coerce, trick, persuade, or otherwise influence, or attempt to threaten, coerce, trick, persuade, or otherwise influence, any certificateholder to violate any provision of this part.
 - (g) Offer any compensation to a certificateholder in order to induce a violation of this part, a local building code or ordinance, or another law of this state.
- (2) Any person who violates any provision of this part commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates any provision of this part after a previous conviction for such violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 24, ch. 93-166.

468.631 Building Code Administrators and Inspectors Fund.—

- (1) This part shall be funded through a surcharge, to be assessed pursuant to s. 125.56(4) or s. 166.201 at the rate of 1.5 percent of all permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be \$2. The unit of government responsible for collecting permit fees pursuant to s. 125.56 or s. 166.201 shall collect such surcharge and shall remit the funds to the department on a quarterly calendar basis beginning not later than December 31, 2010, for the preceding quarter, and continuing each third month thereafter; and such unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. There is created within the Professional Regulation Trust Fund a separate account to be known as the Building Code Administrators and Inspectors Fund, which shall deposit and disburse funds as necessary for the implementation of this part. The proceeds from this surcharge shall be allocated equally to fund the Florida Homeowners' Construction Recovery Fund established by s. 489.140 and the functions of the Building Code Administrators and Inspectors Board. The department may transfer excess cash to the Florida Homeowners' Construction Recovery Fund that it determines is not required to fund the board from the board's account within the Professional Regulation Trust Fund. However, the department may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act, and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, to be used for the payment of claims from the Florida Homeowners' Construction Recovery Fund.
- (2) The unit of government responsible for collecting permit fees under this section shall report to the department quarterly the number of permits issued for under-roof floor space during the quarter,

the total square footage for the number of permits issued for under-roof floor space during the quarter, and the calculation of the amount of funds being remitted to the department. The report shall be attested to by the officer in charge of collecting permit fees.

History.—s. 24, ch. 93-166; s. 21, ch. 2000-372; s. 11, ch. 2004-84; s. 6, ch. 2010-176; s. 2, ch. 2013-187.

468.632 Prosecution of criminal violations.—The department shall report any criminal violation of this part to the proper prosecuting authority for prompt prosecution.

History.—s. 24, ch. 93-166.

468.633 Authority of local government.—

(1) Nothing in this part may be construed to restrict the authority of local governments to require as a condition of employment that building code administrators, plans examiners, and building code inspectors possess qualifications beyond the requirements for certification contained in this part.

(2) The discipline of any person pursuant to s. 468.621 shall, as a matter of law, constitute just or substantial cause for discharge from employment.

(3) The certification or discipline of a local government's employees pursuant to this part shall not be construed as a waiver of sovereign immunity by the local government.

History.—s. 24, ch. 93-166; s. 22, ch. 2000-372.

PART XIII ATHLETIC TRAINERS

468.70 Legislative intent.

468.701 Definitions.

468.703 Board of Athletic Training.

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468.707 Licensure by examination; requirements.

468.709 Fees.

468.711 Renewal of license; continuing education.

468.713 Responsibilities of athletic trainers.

468.715 Sexual misconduct.

468.717 Violations and penalties.

468.719 Disciplinary actions.

468.723 Exemptions.

468.70 Legislative intent.—It is the intent of the Legislature that athletes be assisted by persons adequately trained to recognize, prevent, and treat physical injuries sustained during athletic activities. Therefore, it is the further intent of the Legislature to protect the public by licensing and fully regulating athletic trainers.

History.—s. 320, ch. 94-119; s. 1, ch. 95-388; s. 2, ch. 2000-332.

468.701 Definitions.—As used in this part, the term:

(1) "Athlete" means a person who participates in an athletic activity.

(2) "Athletic activity" means the participation in an activity, conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation requiring any of the physical attributes of strength, agility, flexibility, range of motion, speed, and stamina.

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REGULATION OF PROFESSIONS AND OCCUPATIONS ENGINEERING

CHAPTER 471
ENGINEERING

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471.001 Purpose.—The Legislature deems it necessary in the interest of public health and safety to regulate the practice of engineering in this state.

History.—ss. 1, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 5, ch. 2000-332.

471.003 Qualifications for practice; exemptions.—

(1) No person other than a duly licensed engineer shall practice engineering or use the name or title of “licensed engineer,” “professional engineer,” or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer in this state.

(2) The following persons are not required to be licensed under the provisions of this chapter as a licensed engineer:

(a) Any person practicing engineering for the improvement of, or otherwise affecting, property legally owned by her or him, unless such practice involves a public utility or the public health, safety, or welfare or the safety or health of employees. This paragraph shall not be construed as authorizing the practice of engineering through an agent or employee who is not duly licensed under the provisions of this chapter.

(b)1. A person acting as a public officer employed by any state, county, municipal, or other governmental unit of this state when working on any project the total estimated cost of which is \$10,000 or less.

2. Persons who are employees of any state, county, municipal, or other governmental unit of this state and who are the subordinates of a person in responsible charge licensed under this chapter, to the extent that the supervision meets standards adopted by rule of the board.

(c) Regular full-time employees of a corporation not engaged in the practice of engineering as such, whose practice of engineering for such corporation is limited to the design or fabrication of manufactured products and servicing of such products.

(d) Regular full-time employees of a public utility or other entity subject to regulation by the Florida Public Service Commission, Federal Energy Regulatory Commission, or Federal Communications Commission.

(e) Employees of a firm, corporation, or partnership who are the subordinates of a person in responsible charge, licensed under this chapter.

(f) Any person as contractor in the execution of work designed by a professional engineer or in the supervision of the construction of work as a foreman or superintendent.

(g) A licensed surveyor and mapper who takes, or contracts for, professional engineering services incidental to her or his practice of surveying and mapping and who delegates such engineering services to a licensed professional engineer qualified within her or his firm or contracts for such professional engineering services to be performed by others who are licensed professional engineers under the provisions of this chapter.

(h) Any electrical, plumbing, air-conditioning, or mechanical contractor whose practice includes the design and fabrication of electrical, plumbing, air-conditioning, or mechanical systems, respectively, which she or he installs by virtue of a license issued under chapter 489, under part I of chapter 553, or under any special act or ordinance when working on any construction project which:

1. Requires an electrical or plumbing or air-conditioning and refrigeration system with a value of \$125,000 or less; and

2.a. Requires an aggregate service capacity of 600 amperes (240 volts) or less on a residential electrical system or 800 amperes (240 volts) or less on a commercial or industrial electrical system;

b. Requires a plumbing system with fewer than 250 fixture units; or

c. Requires a heating, ventilation, and air-conditioning system not to exceed a 15-ton-per-system capacity, or if the project is designed to accommodate 100 or fewer persons.

(i) Any general contractor, certified or registered pursuant to the provisions of chapter 489, when negotiating or performing services under a design-build contract as long as the engineering services offered or rendered in connection with the contract are offered and rendered by an engineer licensed in accordance with this chapter.

(j) Any defense, space, or aerospace company, whether a sole proprietorship, firm, limited liability company, partnership, joint venture, joint stock association, corporation, or other business entity,

subsidiary, or affiliate, or any employee, contract worker, subcontractor, or independent contractor of the defense, space, or aerospace company who provides engineering for aircraft, space launch vehicles, launch services, satellites, satellite services, or other defense, space, or aerospace-related product or services, or components thereof.

(3) Notwithstanding the provisions of this chapter or of any other law, no licensed engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervision or control of the engineer, is precluded from performing architectural services which are purely incidental to her or his engineering practice, nor is any licensed architect, or employee or subordinate under the responsible supervision or control of the architect, precluded from performing engineering services which are purely incidental to her or his architectural practice. However, no engineer shall practice architecture or use the designation “architect” or any term derived therefrom, and no architect shall practice engineering or use the designation “engineer” or any term derived therefrom.

History.—ss. 10, 42, ch. 79-243; ss. 3, 10, ch. 81-302; ss. 2, 3, ch. 81-318; s. 5, ch. 82-179; s. 3, ch. 83-160; ss. 46, 119, ch. 83-329; s. 1, ch. 85-134; s. 57, ch. 87-225; s. 2, ch. 87-341; s. 2, ch. 87-349; ss. 1, 14, 15, ch. 89-30; s. 1, ch. 89-115; s. 67, ch. 89-162; s. 4, ch. 91-429; ss. 80, 118, ch. 94-119; s. 330, ch. 97-103; s. 65, ch. 98-287; s. 31, ch. 2000-356; s. 16, ch. 2002-299; s. 1, ch. 2003-425; s. 4, ch. 2004-332; s. 64, ch. 2009-195.

471.0035 Instructors in postsecondary educational institutions; exemption from licensure requirement.—For the sole purpose of teaching the principles and methods of engineering design, notwithstanding the provisions of s. 471.005(7), a person employed by a public postsecondary educational institution, or by an independent postsecondary educational institution licensed or exempt from licensure pursuant to the provisions of chapter 1005, is not required to be licensed under the provisions of this chapter as a professional engineer.

History.—s. 11, ch. 99-252; s. 32, ch. 2000-356; s. 4, ch. 2000-372; s. 17, ch. 2002-299; s. 1017, ch. 2002-387.

471.005 Definitions.—As used in this chapter, the term:

- (1) “Board” means the Board of Professional Engineers.
- (2) “Board of directors” means the board of directors of the Florida Engineers Management Corporation.
- (3) “Certificate of authorization” means a license to practice engineering issued by the management corporation to a corporation or partnership.
- (4) “Department” means the Department of Business and Professional Regulation.
- (5) “Engineer” includes the terms “professional engineer” and “licensed engineer” and means a person who is licensed to engage in the practice of engineering under this chapter.
- (6) “Engineer intern” means a person who has graduated from an engineering curriculum approved by the board and has passed the fundamentals of engineering examination as provided by rules adopted by the board.
- (7) “Engineering” includes the term “professional engineering” and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or

consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services. A person who practices any branch of engineering; who, by verbal claim, sign, advertisement, letterhead, or card, or in any other way, represents himself or herself to be an engineer or, through the use of some other title, implies that he or she is an engineer or that he or she is licensed under this chapter; or who holds himself or herself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering shall be construed to practice or offer to practice engineering within the meaning and intent of this chapter.

(8) "License" means the licensing of engineers or certification of businesses to practice engineering in this state.

(9) "Management corporation" means the Florida Engineers Management Corporation.

(10) "Retired professional engineer" or "professional engineer, retired" means a person who has been duly licensed as a professional engineer by the board and who chooses to relinquish or not to renew his or her license and applies to and is approved by the board to be granted the title "Professional Engineer, Retired."

(11) "Secretary" means the Secretary of Business and Professional Regulation.

(12) "Space or aerospace company" means any business entity concerned with the design, manufacture, or support of aircraft, rockets, missiles, spacecraft, satellites, space vehicles, space stations, space facilities, or components thereof, and equipment, systems, facilities, simulators, programs, products, services, and activities related thereto.

(13) "Defense company" means any business entity that holds a valid Department of Defense contract or any business entity that is a subcontractor under a valid Department of Defense contract. The term includes any business entity that holds valid contracts or subcontracts for products or services for military use under prime contracts with the United States Department of Defense, the United States Department of State, or the United States Coast Guard.

History.—ss. 2, 42, ch. 79-243; ss. 4, 10, ch. 81-302; ss. 2, 3, ch. 81-318; s. 4, ch. 83-160; s. 4, ch. 84-365; ss. 2, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 151, ch. 94-218; s. 331, ch. 97-103; s. 33, ch. 2000-356; s. 3, ch. 2000-372; s. 18, ch. 2002-299; s. 2, ch. 2003-425.

471.007 Board of Professional Engineers.—

(1) There is created in the department the Board of Professional Engineers. The board shall consist of 11 members, 9 of whom shall be licensed engineers and 2 of whom shall be laypersons who are not and have never been engineers or members of any closely related profession or occupation. A member of the board who is a licensed engineer must be selected and appointed based on his or her qualifications to provide expertise and experience to the board at all times in civil engineering, structural engineering, electrical or electronic engineering, mechanical engineering, or engineering education.

(2) Following expiration of the terms of members appointed to initiate staggered terms as set forth in subsection (3), members of the board shall be appointed by the Governor for terms of 4 years each. A professional or technical engineering society may submit a list of qualified nominees to be considered by the Governor for appointment.

(3) When the terms of members serving as of July 1, 2014, expire, the terms of their immediate successors shall be staggered so that three members are appointed for 2 years, four members are appointed for 3 years, and four members are appointed for 4 years, as determined by the Governor.

Each member shall hold office until the expiration of his or her appointed term or until a successor has been appointed.

History.—ss. 3, 42, ch. 79-243; ss. 5, 9, 10, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 3, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 152, ch. 94-218; s. 19, ch. 2002-299; s. 1, ch. 2004-332; s. 1, ch. 2014-125.

471.008 Rulemaking authority.—The board has authority to adopt rules pursuant to ss. 120.536 (1) and 120.54 to implement provisions of this chapter or chapter 455 conferring duties upon it.

History.—s. 1, ch. 87-341; s. 1, ch. 87-349; s. 1, ch. 88-303; ss. 4, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 109, ch. 98-166; s. 142, ch. 98-200; s. 170, ch. 2000-160.

471.009 Board headquarters.—The location of the Board of Professional Engineers shall be in Leon County.

History.—ss. 3, 42, ch. 79-243; ss. 6, 10, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 5, 14, 15, ch. 89-30; s. 4, ch. 91-429.

471.011 Fees.—

(1) The board by rule may establish fees to be paid for applications, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, and recordmaking and recordkeeping. The board may also establish by rule a delinquency fee. The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this chapter and the provisions of law with respect to the regulation of engineers.

(2) The initial application and examination fee shall not exceed \$125 plus the actual per applicant cost to the management corporation to purchase the examination from the National Council of Examiners for Engineering and Surveying or a similar national organization. The examination fee shall be in an amount which covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee shall be nonrefundable.

(3) The initial license fee shall not exceed \$125.

(4) The fee for a certificate of authorization shall not exceed \$125.

(5) The biennial renewal fee shall not exceed \$125.

(6) The fee for a temporary registration or certificate to practice engineering shall not exceed \$25 for an individual or \$50 for a business firm.

(7) The fee for licensure by endorsement shall not exceed \$150.

(8) The fee for application for inactive status or for reactivation of an inactive license shall not exceed \$150.

History.—ss. 4, 42, ch. 79-243; ss. 2, 3, ch. 81-318; s. 20, ch. 88-205; ss. 6, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 212, ch. 94-119; s. 1, ch. 97-312; s. 34, ch. 2000-356; s. 5, ch. 2000-372.

471.013 Examinations; prerequisites.—

(1)(a) A person shall be entitled to take an examination for the purpose of determining whether she or he is qualified to practice in this state as an engineer if the person is of good moral character and:

1. Is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering;

2. Is a graduate of an approved engineering technology curriculum of 4 years or more in a school, college, or university within the State University System, having been enrolled or having graduated prior to July 1, 1979, and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or

3. Has, in lieu of such education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering. However, this subparagraph does not apply unless such person notifies the department before July 1, 1984, that she or he was engaged in such work on July 1, 1981.

The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in engineering in such schools and colleges. The rules shall be based on the educational requirements for engineering as defined in s. 471.005. The board may adopt rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

(b) A person shall be entitled to take the fundamentals examination for the purpose of determining whether she or he is qualified to practice in this state as an engineer intern if she or he is in the final year of, or is a graduate of, an approved engineering curriculum in a school, college, or university approved by the board.

(c) A person shall not be entitled to take the principles and practice examination until that person has successfully completed the fundamentals examination.

(d) The board shall deem that an applicant who seeks licensure by examination has passed the fundamentals examination when such applicant has received a doctorate degree in engineering from an institution that has an undergraduate engineering program that is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc., and has taught engineering full time for at least 3 years, at the baccalaureate level or higher, after receiving that degree.

(e) Every applicant who is qualified to take the fundamentals examination or the principles and practice examination shall be allowed to take either examination three times, notwithstanding the number of times either examination has been previously failed. If an applicant fails either examination three times, the board shall require the applicant to complete additional college-level education courses or a board-approved relevant examination review course as a condition of future eligibility to take that examination. If the applicant is delayed in taking the examination due to reserve or active duty service in the United States Armed Forces or National Guard, the applicant is allowed an additional two attempts to take the examination before the board may require additional college-level education or review courses.

(2)(a) The board may refuse to certify an applicant for failure to satisfy the requirement of good moral character only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensed engineer; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(b) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

History.—ss. 5, 42, ch. 79-243; s. 340, ch. 81-259; ss. 7, 10, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 141, ch. 92-149; s. 332, ch. 97-103; s. 20, ch. 2002-299; s. 1, ch. 2003-293; s. 2, ch. 2004-332; s. 2, ch. 2014-125.

471.015 Licensure.—

(1) The management corporation shall issue a license to any applicant who the board certifies is qualified to practice engineering and who has passed the fundamentals examination and the principles and practice examination.

(2) The board shall certify for licensure any applicant who satisfies the requirements of s. 471.013. The board may refuse to certify any applicant who has violated any of the provisions of s. 471.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the fundamentals examination and the principles and practice examination as set forth in s. 471.013, has passed a United States national, regional, state, or territorial licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination required by s. 471.013, and has satisfied the experience requirements set forth in s. 471.013; or

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

(4) The management corporation shall not issue a license by endorsement to any applicant who is under investigation in another state for any act that would constitute a violation of this chapter or of chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

(5)(a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 15 years and has had 20 years of continuous professional-level engineering experience.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 25 years and has had 30 years of continuous professional-level engineering experience.

(6) The board may require a personal appearance by any applicant for licensure under this chapter. Any applicant of whom a personal appearance is required must be given adequate notice of the time and place of the appearance and provided with a statement of the purpose of and reasons requiring the appearance.

(7) The board shall, by rule, establish qualifications for certification of licensees as special inspectors of threshold buildings, as defined in ss. 553.71 and 553.79, and shall compile a list of persons who are certified. A special inspector is not required to meet standards for certification other than those established by the board, and the fee owner of a threshold building may not be prohibited from selecting any person certified by the board to be a special inspector. The board shall develop minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector under s. 553.79.

History.—ss. 6, 42, ch. 79-243; ss. 2, 3, ch. 81-318; s. 2, ch. 85-134; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; ss. 82, 216, ch. 94-119; s. 32, ch. 95-392; s. 110, ch. 98-166; s. 37, ch. 2000-141; s. 171, ch. 2000-160; s. 35, ch. 2000-356; s. 6, ch. 2000-372; s. 21, ch. 2002-299; s. 2, ch. 2003-293; s. 3, ch. 2014-125.

471.017 Renewal of license.—

(1) The management corporation shall renew a license upon receipt of the renewal application and fee.

(2) The board shall adopt rules establishing a procedure for the biennial renewal of licenses.

¹(3) The board shall require a demonstration of continuing professional competency of engineers as a condition of license renewal or relicensure. Every licensee must complete 4 professional development hours, for each year of the license renewal period. For each renewal period for such continuing education, 4 hours shall relate to this chapter and the rules adopted under this chapter and the remaining 4 hours shall relate to the licensee's area of practice. The board shall adopt rules that are consistent with the guidelines of the National Council of Examiners for Engineering and Surveying for multijurisdictional licensees for the purpose of avoiding proprietary continuing professional competency requirements and shall allow nonclassroom hours to be credited. The board may, by rule, exempt from continuing professional competency requirements retired professional engineers who no longer sign and seal engineering documents and licensees in unique circumstances that severely limit opportunities to obtain the required professional development hours.

History.—ss. 7, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 213, ch. 94-119; s. 11, ch. 98-287; s. 36, ch. 2000-356; s. 7, ch. 2000-372; s. 4, ch. 2014-125.

¹**Note.**—Section 4, ch. 2014-125, amended subsection (3), effective March 1, 2015, to read:

(3)(a) The board shall require a demonstration of continuing professional competency of engineers as a condition of license renewal or relicensure. Every licensee must complete 9 continuing education hours for each year of the license renewal period, totaling 18 continuing education hours for the license renewal period. For each renewal period for such continuing education:

1. One hour must relate to this chapter and the rules adopted under this chapter.
2. One hour must relate to professional ethics.
3. Four hours must relate to the licensee's area of practice.
4. The remaining hours may relate to any topic pertinent to the practice of engineering.

Continuing education hours may be earned by presenting or attending seminars, in-house or nonclassroom courses, workshops, or professional or technical presentations made at meetings, webinars, conventions, or conferences, including those presented by vendors with specific knowledge related to the licensee's area of practice. Up to 4 hours may be earned by serving as an officer or actively participating on a committee of a board-recognized professional or technical engineering society. The 2 required continuing education hours relating to this chapter, the rules adopted pursuant to this chapter, and ethics may be earned by serving as a member of the Legislature or as an elected state or local official. The hours required pursuant to s. 471.0195 may apply to any requirements of this section except for those required under subparagraph 1.

(b) The board shall adopt rules that are substantially consistent with the most recent published version of the Continuing Professional Competency Guidelines of the National Council of Examiners for Engineering and Surveying, and shall allow nonclassroom hours to be credited. The board may, by rule, exempt from continuing professional competency requirements retired professional engineers who no longer sign and seal engineering documents and licensees in unique circumstances that severely limit opportunities to obtain the required continuing education hours.

471.019 Reactivation.—The board shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license for a licensed engineer may not exceed 12 classroom hours for each year the license was inactive.

History.—ss. 8, 42, ch. 79-243; s. 341, ch. 81-259; ss. 2, 3, ch. 81-318; s. 104, ch. 83-329; ss. 7, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 214, ch. 94-119; s. 12, ch. 98-287; s. 37, ch. 2000-356; s. 22, ch. 2002-299.

471.0195 Florida Building Code training for engineers.—All licensees actively participating in the design of engineering works or systems in connection with buildings, structures, or facilities and systems covered by the Florida Building Code shall take continuing education courses and submit proof to the board, at such times and in such manner as established by the board by rule, that the licensee has completed any specialized or advanced courses on any portion of the Florida Building Code applicable to the licensee's area of practice. The board shall record reported continuing education courses on a system easily accessed by code enforcement jurisdictions for evaluation when determining license status for purposes of processing design documents. Local jurisdictions shall be responsible for

notifying the board when design documents are submitted for building construction permits by persons who are not in compliance with this section. The board shall take appropriate action as provided by its rules when such noncompliance is determined to exist.

History.—s. 38, ch. 2000-356; s. 23, ch. 2002-299; s. 12, ch. 2009-195.

471.021 Engineers and firms of other states; temporary certificates to practice in Florida.—

(1) Upon approval of the board and payment of the fee set in s. 471.011, the management corporation shall issue a temporary license for work on one specified project in this state for a period not to exceed 1 year to an engineer holding a certificate to practice in another state, provided Florida licensees are similarly permitted to engage in work in such state and provided that the engineer be qualified for licensure by endorsement.

(2) Upon approval by the board and payment of the fee set in s. 471.011, the management corporation shall issue a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary license in accordance with subsection (1).

(3) The application for a temporary license shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of engineering for which the temporary license was issued.

History.—ss. 9, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 142, ch. 92-149; s. 8, ch. 2000-372; s. 24, ch. 2002-299.

471.023 Certification of business organizations.—

(1) The practice of, or the offer to practice, engineering by licensees or offering engineering services to the public through a business organization, including a partnership, corporation, business trust, or other legal entity or by a business organization, including a corporation, partnership, business trust, or other legal entity offering such services to the public through licensees under this chapter as agents, employees, officers, or partners is permitted only if the business organization possesses a certification issued by the management corporation pursuant to qualification by the board, subject to the provisions of this chapter. One or more of the principal officers of the business organization or one or more partners of the partnership and all personnel of the business organization who act in its behalf as engineers in this state shall be licensed as provided by this chapter. All final drawings, specifications, plans, reports, or documents involving practices licensed under this chapter which are prepared or approved for the use of the business organization or for public record within the state shall be dated and shall bear the signature and seal of the licensee who prepared or approved them. Nothing in this section shall be construed to mean that a license to practice engineering shall be held by a business organization. Nothing herein prohibits business organizations from joining together to offer engineering services to the public, if each business organization otherwise meets the requirements of this section. No business organization shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, nor shall any individual practicing engineering be relieved of responsibility for professional services performed by reason of his or her employment or relationship with a business organization.

(2) For the purposes of this section, a certificate of authorization shall be required for any business organization or other person practicing under a fictitious name, offering engineering services to the

public. However, when an individual is practicing engineering in his or her own given name, he or she shall not be required to be licensed under this section.

(3) Except as provided in s. 558.0035, the fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts committed by him or her. Partnerships and all partners shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control, while rendering professional services on behalf of the business organization. The personal liability of a shareholder or owner of a business organization, in his or her capacity as shareholder or owner, shall be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The business organization shall be liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.

(4) Each certification of authorization shall be renewed every 2 years. Each business organization certified under this section must notify the board within 1 month after any change in the information contained in the application upon which the certification is based.

(5) Disciplinary action against a business organization shall be administered in the same manner and on the same grounds as disciplinary action against a licensed engineer.

History.—ss. 11, 42, ch. 79-243; s. 1, ch. 80-223; ss. 2, 3, ch. 81-318; ss. 8, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 143, ch. 92-149; s. 333, ch. 97-103; s. 39, ch. 2000-356; s. 9, ch. 2000-372; s. 25, ch. 2002-299; s. 3, ch. 2003-293; s. 3, ch. 2013-28.

471.025 Seals.—

(1) The board shall prescribe, by rule, one or more forms of seal to be used by licensees. Each licensee shall obtain at least one seal in the form approved by rule of the board and may, in addition, register his or her seal electronically in accordance with ss. 668.001-668.006. All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and being filed for public record and all final documents provided to the owner or the owner's representative shall be signed by the licensee, dated, and sealed with said seal. Such signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. Drawings, specifications, plans, reports, final documents, or documents prepared or issued by a licensee may be transmitted electronically and may be signed by the licensee, dated, and sealed electronically with said seal in accordance with ss. 668.001-668.006.

(2) It is unlawful for any person to seal or digitally sign any document with a seal or digital signature after his or her license has expired or been revoked or suspended, unless such license has been reinstated or reissued. When an engineer's license has been revoked or suspended by the board, the licensee shall, within a period of 30 days after the revocation or suspension has become effective, surrender his or her seal to the executive director of the board and confirm to the executive director the cancellation of the licensee's digital signature in accordance with ss. 668.001-668.006. In the event the engineer's license has been suspended for a period of time, his or her seal shall be returned to him or her upon expiration of the suspension period.

(3) No licensee shall affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty therein.

History.—ss. 12, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 144, ch. 92-149; s. 334, ch. 97-103; s. 4, ch. 97-241; s. 40, ch. 2000-356; s. 32, ch. 2000-372; s. 2, ch. 2001-63; s. 26, ch. 2002-299.

471.027 Engineers authorized to enter lands of third parties under certain conditions.

–Engineers are hereby granted permission and authority to go on, over, and upon the lands of others when necessary to make engineering surveys and, in so doing, to carry with them their agents and employees necessary for that purpose. Entry under the right hereby granted shall not constitute trespass, and engineers and their duly authorized agents or employees so entering shall not be liable to arrest or a civil action by reason of such entry; however, nothing in this section shall be construed as giving authority to said licensees, agents, or employees to destroy, injure, damage, or move anything on lands of another without the written permission of the landowner.

History.—ss. 17, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 27, ch. 2002-299.

471.031 Prohibitions; penalties.—

(1) A person may not:

(a) Practice engineering unless the person is licensed or exempt from licensure under this chapter.

(b)1. Except as provided in subparagraph 2. or subparagraph 3., use the name or title “professional engineer” or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer when the person is not licensed under this chapter, including, but not limited to, the following titles: “agricultural engineer,” “air-conditioning engineer,” “architectural engineer,” “building engineer,” “chemical engineer,” “civil engineer,” “control systems engineer,” “electrical engineer,” “environmental engineer,” “fire protection engineer,” “industrial engineer,” “manufacturing engineer,” “mechanical engineer,” “metallurgical engineer,” “mining engineer,” “minerals engineer,” “marine engineer,” “nuclear engineer,” “petroleum engineer,” “plumbing engineer,” “structural engineer,” “transportation engineer,” “software engineer,” “computer hardware engineer,” or “systems engineer.”

2. Any person who is exempt from licensure under s. 471.003(2)(j) may use the title or personnel classification of “engineer” in the scope of his or her work under that exemption if the title does not include or connote the term “professional engineer,” “registered engineer,” “licensed engineer,” “registered professional engineer,” or “licensed professional engineer.”

3. Any person who is exempt from licensure under s. 471.003(2)(c) or (e) may use the title or personnel classification of “engineer” in the scope of his or her work under that exemption if the title does not include or connote the term “professional engineer,” “registered engineer,” “licensed engineer,” “registered professional engineer,” or “licensed professional engineer” and if that person is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board.

(c) Present as his or her own the license of another.

(d) Give false or forged evidence to the board or a member thereof.

(e) Use or attempt to use a license that has been suspended, revoked, or placed on inactive or delinquent status.

(f) Employ nonexempt unlicensed persons to practice engineering.

(g) Conceal information relative to violations of this chapter.

(2) Any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 14, 42, ch. 79-243; ss. 2, 3, ch. 81-318; s. 47, ch. 83-329; ss. 9, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 215, ch. 94-119; s. 335, ch. 97-103; s. 41, ch. 2000-356; s. 28, ch. 2002-299; s. 3, ch. 2003-425; s. 3, ch. 2004-332.

471.033 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violating any provision of s. 455.227(1), s. 471.025, or s. 471.031, or any other provision of this chapter or rule of the board or department.

(b) Attempting to procure a license to practice engineering by bribery or fraudulent misrepresentations.

(c) Having a license to practice engineering revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country, for any act that would constitute a violation of this chapter or chapter 455.

(d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of engineering or the ability to practice engineering.

(e) Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those that are signed in the capacity of a licensed engineer.

(f) Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering.

(h) Violating chapter 455.

(i) Practicing on a revoked, suspended, inactive, or delinquent license.

(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any final drawings, specifications, plans, reports, or documents that were not prepared by him or her or under his or her responsible supervision, direction, or control.

(k) Violating any order of the board or department previously entered in a disciplinary hearing.

(l) Performing building code inspection services under s. 553.791, without satisfying the insurance requirements of that section.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.

(f) Restriction of the authorized scope of practice by the licensee.

(g) Restitution.

(4) The management corporation shall reissue the license of a disciplined engineer or business upon certification by the board that the disciplined person has complied with all of the terms and conditions set forth in the final order.

History.—ss. 15, 42, ch. 79-243; ss. 8, 10, ch. 81-302; ss. 2, 3, ch. 81-318; s. 3, ch. 85-134; ss. 10, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 145, ch. 92-149; s. 217, ch. 94-119; s. 336, ch. 97-103; s. 5, ch. 97-241; s. 111, ch. 98-166; s. 13, ch. 98-287; s. 119, ch. 2000-141; s. 172, ch. 2000-160; s. 10, ch. 2000-372; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 29, ch. 2002-299; s. 4, ch. 2003-293; s. 4, ch. 2005-147; s. 53, ch. 2009-195; s. 45, ch. 2010-106.

471.037 Effect of chapter locally.—

(1) Nothing contained in this chapter shall be construed to repeal, amend, limit, or otherwise affect any local building code or zoning law or ordinance, now or hereafter enacted, which is more restrictive with respect to the services of licensed engineers than the provisions of this chapter.

(2) In counties or municipalities that issue building permits, such permits may not be issued in any case in which it is apparent from the application for the building permit that the provisions of this chapter have been violated. However, this subsection does not authorize the withholding of building permits in cases involving the exceptions and exemptions set out in s. 471.003.

History.—ss. 13, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 12, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 81, ch. 94-119; s. 42, ch. 2000-356; s. 30, ch. 2002-299.

471.038 Florida Engineers Management Corporation.—

(1) This section may be cited as the “Florida Engineers Management Corporation Act.”

(2) The purpose of this section is to create a public-private partnership by providing that a single nonprofit corporation be established to provide administrative, investigative, and prosecutorial services to the board and that no additional nonprofit corporation be created for these purposes.

(3) The Florida Engineers Management Corporation is created to provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455 and this chapter. The management corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112, except that the board of directors and the staff are subject to the provisions of s. 112.061. The provisions of s. 768.28 apply to the management corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11). The management corporation shall:

(a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.

(b) Provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455, this chapter, and the contract required by this section.

(c) Receive, hold, and administer property and make only prudent expenditures directly related to the responsibilities of the board, and in accordance with the contract required by this section.

(d) Be approved by the board, and the department, to operate for the benefit of the board and in the best interest of the state.

(e) Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.

(f) Have a seven-member board of directors, five of whom are to be appointed by the board and must be registrants regulated by the board and two of whom are to be appointed by the secretary and must be laypersons not regulated by the board. All appointments shall be for 4-year terms. No member shall serve more than two consecutive terms. Failure to attend three consecutive meetings shall be deemed a resignation from the board, and the vacancy shall be filled by a new appointment.

(g) Select its officers in accordance with its bylaws. The members of the board of directors who were appointed by the board may be removed by the board.

(h) Select the president of the management corporation, who shall also serve as executive director to the board, subject to approval of the board.

(i) Use a portion of the interest derived from the management corporation account to offset the costs associated with the use of credit cards for payment of fees by applicants or licensees.

(j) Operate under a written contract with the department which is approved by the board. The contract must provide for, but is not limited to:

1. Submission by the management corporation of an annual budget that complies with board rules for approval by the board and the department.

2. Annual certification by the board and the department that the management corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. This certification must be reported in the board's minutes. The contract must also provide for methods and mechanisms to resolve any situation in which the certification process determines noncompliance.

3. Funding of the management corporation through appropriations allocated to the regulation of professional engineers from the Professional Regulation Trust Fund.

4. The reversion to the board, or the state if the board ceases to exist, of moneys, records, data, and property held in trust by the management corporation for the benefit of the board, if the management corporation is no longer approved to operate for the board or the board ceases to exist. All records and data in a computerized database shall be returned to the department in a form that is compatible with the computerized database of the department.

5. The securing and maintaining by the management corporation, during the term of the contract and for all acts performed during the term of the contract, of all liability insurance coverages in an amount to be approved by the board to defend, indemnify, and hold harmless the management corporation and its officers and employees, the department and its employees, and the state against all claims arising from state and federal laws. Such insurance coverage must be with insurers qualified and doing business in the state. The management corporation must provide proof of insurance to the department. The department and its employees and the state are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of the management corporation. Violation of this subparagraph shall be grounds for terminating the contract.

6. Payment by the management corporation, out of its allocated budget, to the department of all costs of representation by the board counsel, including salary and benefits, travel, and any other compensation traditionally paid by the department to other board counsel.

7. Payment by the management corporation, out of its allocated budget, to the department of all costs incurred by the management corporation or the board for the Division of Administrative Hearings of the Department of Management Services and any other cost for utilization of these state services.

8. Payment by the management corporation, out of its allocated budget, to the department of reasonable costs associated with the contract monitor.

(k) Provide for an annual financial audit of its financial accounts and records by an independent certified public accountant. The annual audit report shall include a management letter in accordance with s. 11.45 and a detailed supplemental schedule of expenditures for each expenditure category. The annual audit report must be submitted to the board, the department, and the Auditor General for review.

(l) Provide for persons not employed by the corporation who are charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond in such an amount and according to such terms as shall be determined in the contract.

(m) Submit to the secretary, the board, and the Legislature, on or before October 1 of each year, a report on the status of the corporation which includes, but is not limited to, information concerning the programs and funds that have been transferred to the corporation. The report must include: the number of license applications received; the number approved and denied and the number of licenses issued; the number of examinations administered and the number of applicants who passed or failed the examination; the number of complaints received; the number determined to be legally sufficient; the

number dismissed; the number determined to have probable cause; the number of administrative complaints issued and the status of the complaints; and the number and nature of disciplinary actions taken by the board.

(n) Develop and submit to the department, performance standards and measurable outcomes for the board to adopt by rule in order to facilitate efficient and cost-effective regulation.

(4) The management corporation may not exercise any authority specifically assigned to the board under chapter 455 or this chapter, including determining probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules under chapter 120.

(5) Notwithstanding ss. 455.228 and 455.2281, the duties and authority of the department to receive complaints and to investigate and deter the unlicensed practice of engineering are delegated to the board. The board may use funds of the Board of Professional Engineers in the unlicensed activity account established under s. 455.2281 to perform the duties relating to unlicensed activity.

(6) The department shall retain the independent authority to open or investigate any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the department may request that the management corporation prosecute such cases and shall retain sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60.

(7) Management corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, public records exemptions set forth in ss. 455.217 and 455.229 for records created or maintained by the department shall apply to records created or maintained by the management corporation. In addition, all meetings of the board of directors are open to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution. The exemptions set forth in s. 455.225, relating to complaints and information obtained pursuant to an investigation by the department, shall apply to such records created or obtained by the management corporation only until an investigation ceases to be active. For the purposes of this subsection, an investigation is considered active so long as the management corporation or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation ceases to be active when the case is dismissed prior to a finding of probable cause and the board has not exercised its option to pursue the case or 10 days after the board makes a determination regarding probable cause. All information, records, and transcriptions regarding a complaint that has been determined to be legally sufficient to state a claim within the jurisdiction of the board become available to the public when the investigation ceases to be active, except information that is otherwise confidential or exempt from s. 119.07(1). However, in response to an inquiry about the licensure status of an individual, the management corporation shall disclose the existence of an active investigation if the nature of the violation under investigation involves the potential for substantial physical or financial harm to the public. The board shall designate by rule those violations that involve the potential for substantial physical or financial harm. The department and the board shall have access to all records of the management corporation, as necessary to exercise their authority to approve and supervise the contract.

(8) The management corporation is the sole source and depository for the records of the board, including all historical information and records. The management corporation shall maintain those records in accordance with the guidelines of the Department of State and shall not destroy any records prior to the limits imposed by the Department of State.

(9) The board shall provide by rule for the procedures the management corporation must follow to ensure that all licensure examinations are secure while under the responsibility of the management corporation and that there is an appropriate level of monitoring during the licensure examinations.

History.—ss. 2, 5, ch. 97-312; s. 112, ch. 98-166; s. 173, ch. 2000-160; ss. 1, 2, ch. 2000-372; s. 121, ch. 2001-266; s. 5, ch. 2003-293.

471.0385 Court action; effect.—If any provision of s. 471.038 is held to be unconstitutional or is held to violate the state or federal antitrust laws, the following shall occur:

(1) The corporation shall cease and desist from exercising any powers and duties enumerated in the act.

(2) The Department of Business and Professional Regulation shall resume the performance of such activities. The department shall regain and receive, hold, invest, and administer property and make expenditures for the benefit of the board.

(3) The Executive Office of the Governor, notwithstanding chapter 216, is authorized to reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the regulation of professional engineers.

History.—s. 3, ch. 97-312.

471.045 Professional engineers performing building code inspector duties.—Notwithstanding any other provision of law, a person who is currently licensed under this chapter to practice as a professional engineer may provide building code inspection services described in s. 468.603(6) and (7) to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. When performing these building code inspection services, the professional engineer is subject to the disciplinary guidelines of this chapter and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a professional engineer's performing building code inspection services shall be conducted by the Board of Professional Engineers rather than the Florida Building Code Administrators and Inspectors Board. A professional engineer may not perform plans review as an employee of a local government upon any job that the professional engineer or the professional engineer's company designed.

History.—s. 7, ch. 98-419; s. 10, ch. 99-254; s. 28, ch. 2000-372.

(2) A contractor performing trench excavation shall:

(a) As a minimum, comply with the excavation safety standards which are applicable to a project.

(b) Adhere to any special shoring requirements, if any, of the state or other political subdivisions which may be applicable to such a project.

(c) If any geotechnical information is available from the owner, the contractor, or otherwise, the contractor performing trench excavation shall consider this information in the contractor's design of the trench safety system which it will employ on the project. This paragraph shall not require the owner to obtain geotechnical information.

History.—s. 4, ch. 90-96.

553.64 Certain requirements for contract bids.—The separate item identifying the cost of compliance with trench safety standards shall be based on the linear feet of trench to be excavated. The separate item for special shoring requirements, if any, shall be based on the square feet of shoring used. Every separate item shall indicate the specific method of compliance as well as the cost of that method.

History.—s. 5, ch. 90-96.

PART IV FLORIDA BUILDING CODE

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553.70 Short title.—This part shall be known and may be cited as the “Florida Building Codes Act.”
History.—s. 1, ch. 74-167; s. 1, ch. 77-365.

553.71 Definitions.—As used in this part, the term:

- (1) “Commission” means the Florida Building Commission created by this part.
- (2) “Department” means the Department of Business and Professional Regulation.
- (3) “Housing code” means any code or rule intending postconstruction regulation of structures which would include, but not be limited to: standards of maintenance, condition of facilities, condition of systems and components, living conditions, occupancy, use, and room sizes.
- (4) “Load management control device” means any device installed by any electric utility or its contractors which temporarily interrupts electric service to major appliances, motors, or other electrical systems contained within the buildings or on the premises of consumers for the purpose of reducing the utility’s system demand as needed in order to prevent curtailment of electric service in whole or in part to consumers and thereby maintain the quality of service to consumers, provided the device is in compliance with a program approved by the Florida Public Service Commission.
- (5) “Local enforcement agency” means an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.
- (6) “Local technical amendment” means an action by a local governing authority that results in a technical change to the Florida Building Code and its local enforcement.
- (7) “Prototype building” means a building constructed in accordance with architectural or engineering plans intended for replication on various sites and which will be updated to comply with the Florida Building Code and applicable laws relating to firesafety, health and sanitation, casualty safety, and requirements for persons with disabilities which are in effect at the time a construction contract is to be awarded.
- (8) “Secretary” means the Secretary of Business and Professional Regulation.
- (9) “Special inspector” means a licensed architect or registered engineer who is certified under chapter 471 or chapter 481 to conduct inspections of threshold buildings.
- (10) “State enforcement agency” means the agency of state government with authority to make inspections of buildings and to enforce the codes, as required by this part, which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.
- (11) “Temporary” includes, but is not limited to, buildings identified by, but not designated as permanent structures on, an approved development order.
- (12) “Threshold building” means any building which is greater than three stories or 50 feet in height,

or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.

History.—s. 2, ch. 74-167; s. 1, ch. 75-111; s. 1, ch. 77-365; s. 4, ch. 78-323; ss. 3, 4, ch. 81-7; s. 77, ch. 81-167; ss. 1, 4, ch. 82-46; s. 80, ch. 83-55; s. 8, ch. 83-160; s. 2, ch. 83-265; s. 1, ch. 84-24; s. 1, ch. 84-365; ss. 5, 6, ch. 91-172; s. 5, ch. 91-429; s. 3, ch. 93-249; s. 37, ch. 98-287; ss. 69, 70, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 3, ch. 2006-65; s. 58, ch. 2007-217; s. 9, ch. 2008-191; s. 413, ch. 2011-142; s. 13, ch. 2013-193.

553.72 Intent.—

(1) The purpose and intent of this act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, to be called the Florida Building Code, which consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state and to the enforcement of such requirements and which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer. The Florida Building Code shall be organized to provide consistency and simplicity of use. The Florida Building Code shall be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. The Florida Building Code shall provide for flexibility to be exercised in a manner that meets minimum requirements, is affordable, does not inhibit competition, and promotes innovation and new technology. The Florida Building Code shall establish minimum standards primarily for public health and lifesafety, and secondarily for protection of property as appropriate.

(2) It is the intent of the Legislature that local governments shall have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public health, safety, and welfare pursuant to chapters 125 and 166.

(3) It is the intent of the Legislature that the Florida Building Code be adopted, modified, updated, interpreted, and maintained by the Florida Building Commission in accordance with ss. 120.536(1) and 120.54 and enforced by authorized state and local government enforcement agencies.

(4) It is the intent of the Legislature that the Florida Fire Prevention Code and the Life Safety Code of this state be adopted, modified, updated, interpreted, and maintained by the Department of Financial Services in accordance with ss. 120.536(1) and 120.54 and included by reference as sections in the Florida Building Code.

(5) It is the intent of the Legislature that there be no conflicting requirements between the Florida Fire Prevention Code and the Life Safety Code of the state and other provisions of the Florida Building Code or conflicts in their enforcement and interpretation. Potential conflicts shall be resolved through coordination and cooperation of the State Fire Marshal and the Florida Building Commission as provided by this part and chapter 633.

(6) It is the intent of the Legislature that the nationally recognized private sector third-party testing and evaluation system shall provide product evaluation for the product-approval system and that effective government oversight be established to ensure accountability to the state.

History.—s. 3, ch. 74-167; s. 38, ch. 98-287; ss. 71, 72, ch. 2000-141; ss. 34, 35, ch. 2001-186; ss. 3, 4, ch. 2001-372; s. 662, ch. 2003-261.

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for

building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be \$2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be \$925,000 each fiscal year. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

History.—s. 1, ch. 88-285; s. 4, ch. 91-429; s. 28, ch. 92-173; s. 19, ch. 93-120; s. 33, ch. 93-166; s. 2, ch. 94-284; s. 1, ch. 95-339; s. 2, ch. 98-145; s. 32, ch. 2008-153; s. 31, ch. 2010-176; s. 414, ch. 2011-142; s. 13, ch. 2012-13; s. 17, ch. 2014-154.

Note.—Former s. 404.056(3).

553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. 120.536(1) and 120.54. The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. 633.206 and 633.208 shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide

an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. 515.25, 515.27, and 515.29 by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. 515.23. Technical provisions to be contained within the Florida Building Code are restricted to requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards needed to develop the base code in Florida to form the foundation for the Florida Building Code. The Florida Building Commission may approve technical amendments to the code, subject to subsections (8) and (9), after the amendments have been subject to the following conditions:

(a) The proposed amendment has been published on the commission’s website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a Technical Advisory Committee;

(b) In order for a Technical Advisory Committee to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the Technical Advisory Committee meeting and at least half of the regular members must be present in order to conduct a meeting;

(c) After Technical Advisory Committee consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the commission’s website for at least 45 days before any consideration by the commission; and

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within sections of the Florida Building Code provisions which address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code pursuant to s. 553.80 shall comply

with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations of this paragraph. Local amendments shall be more stringent than the minimum standards described herein and shall be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this paragraph for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(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.

(c) Any amendment adopted by a local enforcing agency pursuant to this subsection shall not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved pursuant to s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the

amendment requires a design flood elevation above the base flood elevation. Any amendment adopted pursuant to this subsection shall be transmitted to the commission within 30 days after being adopted.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission, by rule adopted pursuant to ss. 120.536(1) and 120.54, shall update the Florida Building Code every 3 years. When updating the Florida Building Code, the commission shall select the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are adopted by the International Code Council, and the National Electrical Code, which is adopted by the National Fire Protection Association, to form the foundation codes of the updated Florida Building Code, if the version has been adopted by the applicable model code entity. The commission shall select the most current version of the International Energy Conservation Code (IECC) as a foundation code; however, the IECC shall be modified by the commission to maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may modify any portion of the foundation codes only as needed to accommodate the specific needs of this state. Standards or criteria referenced by the codes shall be incorporated by reference. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments to the foundation codes which are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.

(d) The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to modify the foundation codes to accommodate the specific needs of the state. A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the foundation codes, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those

construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(g) Amendments or modifications to the foundation code pursuant to this subsection shall remain effective only until the effective date of a new edition of the Florida Building Code every third year. Amendments or modifications related to state agency regulations which are adopted and integrated into an edition of the Florida Building Code shall be carried forward into the next edition of the code, subject to modification as provided in this part. Amendments or modifications related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties which are adopted to an edition of the Florida Building Code do not expire and shall be carried forward into the next edition of the code, subject to review or modification as provided in this part. If amendments that expire pursuant to this paragraph are resubmitted through the Florida Building Commission code adoption process, the amendments must specifically address whether:

1. The provisions contained in the proposed amendment are addressed in the applicable international code.
2. The amendment demonstrates by evidence or data that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state.
3. The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the Florida Building Code amendment process.

If the proposed amendment has been addressed in the international code in a substantially equivalent manner, the Florida Building Commission may not include the proposed amendment in the foundation code.

(8) Notwithstanding the provisions of subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code pursuant only to the rule adoption procedures contained in chapter 120. Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments. The commission may approve amendments that are needed to address:

- (a) Conflicts within the updated code;
- (b) Conflicts between the updated code and the Florida Fire Prevention Code adopted pursuant to chapter 633;
- (c) Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- (d) Equivalency of standards;
- (e) Changes to or inconsistencies with federal or state law; or
- (f) Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the foundation codes to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television

production, or any sound-recording equipment used in such production, on or off the premises.

(h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.

(i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

(j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.

(k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:

1. Is not rented or leased or used as a principal residence;
2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
3. Is not connected to an offsite electric power or water supply.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(b) Any decision made by the local fire official and the local building official may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an

alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board, or if none exists, the decisions of the local building official and the local fire official, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to the provisions of paragraph (1)(d).

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.

(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. 633.104 and 633.228. Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. 161.54, specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code

except when the equipment is being replaced or moved during reroofing and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

(a) Four hundred cubic feet per minute or less; or

(b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

History.—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154.

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are appointed by the Governor subject to confirmation by the Senate. The commission is composed of 27 members, consisting of the following:

(a) One architect registered to practice in this state and actively engaged in the profession. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, and the Mechanical Contractors Association of Florida are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor certified to do business in this state and actively engaged in the profession. The Florida Association of Electrical Contractors and the National Electrical Contractors Association, Florida Chapter, are encouraged to recommend a list of candidates for consideration.

(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(f) One general contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors

Council, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(g) One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(h) One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors' National Association are encouraged to recommend a list of candidates for consideration.

(i) One residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(j) Three members who are municipal or district codes enforcement officials, one of whom is also a fire official. The Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(k) One member who represents the Department of Financial Services.

(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.

(m) One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.

(q) One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Product Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(r) One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(s) One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

(t) One member who is a representative of public education.

(u) One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building

Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

(w) One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

(x) One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy. The Commissioner of Agriculture is encouraged to recommend a list of candidates for consideration.

(y) One member who shall be the chair.

(2) All appointments shall be for terms of 4 years. Each person who is a member of the Board of Building Codes and Standards on the effective date of this act shall serve the remainder of their term as a member of the Florida Building Commission. Any member who shall, during his or her term, cease to meet the qualifications for original appointment, through ceasing to be a practicing member of the profession indicated or otherwise, shall thereby forfeit membership on the commission.

(3) Members of the commission shall serve without compensation, but shall be entitled to reimbursement for per diem and travel expenses as provided by s. 112.061.

(4) Each appointed member is accountable to the Governor for the proper performance of the duties of the office. The Governor shall cause to be investigated any complaint or unfavorable report received concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any appointed member for malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to, or being found guilty of, a felony.

(5) Notwithstanding s. 112.313 or any other provision of law, a member of any of the commission's technical advisory committees or a member of any other advisory committee or workgroup of the commission, does not have an impermissible conflict of interest when representing clients before the commission or one of its committees or workgroups. However, the member, in his or her capacity as member of the committee or workgroup, may not take part in any discussion on or take action on any matter in which he or she has a direct financial interest.

History.—s. 5, ch. 74-167; s. 2, ch. 77-365; s. 4, ch. 78-323; ss. 1, 2, ch. 80-231; ss. 1, 3, 4, ch. 81-7; ss. 1, 4, ch. 82-46; s. 2, ch. 83-265; ss. 3, 5, 6, ch. 91-172; s. 5, ch. 91-429; s. 803, ch. 97-103; s. 41, ch. 98-287; s. 76, ch. 2000-141; s. 63, ch. 2000-154; s. 15, ch. 2002-293; ss. 664, 665, ch. 2003-261; s. 11, ch. 2008-191; s. 33, ch. 2010-176; s. 415, ch. 2011-142; s. 31, ch. 2011-222; s. 15, ch. 2013-193; s. 19, ch. 2014-154.

553.75 Organization of commission; rules and regulations; meetings; staff; fiscal affairs; public comment.—

(1) The commission shall meet on call of the secretary. The commission shall annually elect from its appointive members such officers as it may choose.

(2) The commission shall meet at the call of its chair, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules. The members shall be notified in writing of the time and place of a regular or special meeting at least 7 days in advance of the meeting. A majority of members of the commission shall constitute a quorum.

(3) The department shall be responsible for the provision of administrative and staff support services relating to the functions of the commission. With respect to matters within the jurisdiction of the commission, the department shall be responsible for the implementation and faithful discharge of all decisions of the commission made pursuant to its authority under the provisions of this part. The

department is specifically authorized to use communications media technology in conducting meetings of the commission or any meetings held in conjunction with meetings of the commission.

(4) Meetings of the commission shall be conducted so as to encourage participation by interested persons in attendance. At a minimum, the commission shall provide one opportunity for interested members of the public in attendance at a meeting to comment on each proposed action of the commission before a final vote is taken on any motion.

History.—s. 6, ch. 74-167; s. 4, ch. 78-323; ss. 2, 3, 4, ch. 81-7; ss. 1, 4, ch. 82-46; s. 2, ch. 83-265; ss. 5, 6, ch. 91-172; s. 5, ch. 91-429; s. 804, ch. 97-103; s. 42, ch. 98-287; s. 12, ch. 2008-191.

553.76 General powers of the commission.—The commission is authorized to:

(1) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(2) Issue memoranda of procedure for its internal management and control. The commission may adopt rules related to its consensus-based decisionmaking process, including, but not limited to, super majority voting requirements for commission actions relating to the adoption of the Florida Building Code or amendments to the code.

(3) Enter into contracts and do such things as may be necessary and incidental to the discharge of its responsibilities under this part.

(4) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the Florida Building Code and the provisions of this chapter.

(5) Adopt and promote, in consultation with state and local governments, other boards, advisory councils, and commissions, such recommendations as are deemed appropriate to determine and ensure consistent, effective, and efficient enforcement and compliance with the Florida Building Code, including, but not limited to, voluntary professional standards for the operation of building departments and for personnel development. Recommendations shall include, but not be limited to, provisions for coordination among and between local offices with review responsibilities and their coordination with state or regional offices with special expertise.

History.—s. 7, ch. 74-167; s. 4, ch. 78-323; ss. 3, 4, ch. 81-7; ss. 1, 4, ch. 82-46; s. 2, ch. 83-265; ss. 5, 6, ch. 91-172; s. 5, ch. 91-429; s. 184, ch. 98-200; ss. 43, 44, ch. 98-287; s. 131, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 34, ch. 2010-176.

553.77 Specific powers of the commission.—

(1) The commission shall:

(a) Adopt and update the Florida Building Code or amendments thereto, pursuant to ss. 120.536(1) and 120.54.

(b) Make a continual study of the operation of the Florida Building Code and other laws relating to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities, including manufactured buildings, and code enforcement, to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions. Upon updating the Florida Building Code every 3 years, the commission shall review existing provisions of law and make recommendations to the Legislature for the next regular session of the Legislature regarding provisions of law that should be revised or repealed to ensure consistency with the Florida Building Code at the point the update goes into effect. State agencies and local jurisdictions shall provide such information as requested by the commission for evaluation of and recommendations for improving the effectiveness of the system of building code laws for reporting to the Legislature annually. Failure to comply with this or other requirements of this act must be reported to the Legislature for further action. Any proposed legislation providing for the revision or repeal of existing laws and rules

relating to technical requirements applicable to building structures or facilities should expressly state that such legislation is not intended to imply any repeal or sunset of existing general or special laws governing any special district that are not specifically identified in the legislation.

(c) Upon written application by any substantially affected person or a local enforcement agency, issue declaratory statements pursuant to s. 120.565 relating to new technologies, techniques, and materials which have been tested where necessary and found to meet the objectives of the Florida Building Code. This paragraph does not apply to the types of products, materials, devices, or methods of construction required to be approved under paragraph (f).

(d) Make recommendations to, and provide assistance upon the request of, the Florida Commission on Human Relations regarding rules relating to accessibility for persons with disabilities.

(e) Participate with the Florida Fire Code Advisory Council created under s. 633.204, to provide assistance and recommendations relating to firesafety code interpretations. The administrative staff of the commission shall attend meetings of the Florida Fire Code Advisory Council and coordinate efforts to provide consistency between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code.

(f) Determine the types of products which may be approved by the commission for statewide use and shall provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use. The commission may prescribe by rule a schedule of reasonable fees to provide for evaluation and approval of products, materials, devices, and methods of construction. Evaluation and approval shall be by action of the commission or delegated pursuant to s. 553.842. This paragraph does not apply to products approved by the State Fire Marshal.

(g) Appoint experts, consultants, technical advisers, and advisory committees for assistance and recommendations relating to the major areas addressed in the Florida Building Code.

(h) Establish and maintain a mutual aid program, organized through the department, to provide an efficient supply of various levels of code enforcement personnel, design professionals, commercial property owners, and construction industry individuals, to assist in the rebuilding effort in an area which has been hit with disaster. The program shall include provisions for:

1. Minimum postdisaster structural, electrical, and plumbing inspections and procedures.
2. Emergency permitting and inspection procedures.
3. Establishing contact with emergency management personnel and other state and federal agencies.

(i) Maintain a list of interested parties for noticing rulemaking workshops and hearings, disseminating information on code adoption, revisions, amendments, and all other such actions which are the responsibility of the commission.

(j) Coordinate with the state and local governments, industry, and other affected stakeholders in the examination of legislative provisions and make recommendations to fulfill the responsibility to develop a consistent, single code.

(k) Provide technical assistance to local building departments in order to implement policies, procedures, and practices which would produce the most cost-effective property insurance ratings.

(l) Develop recommendations for local governments to use when pursuing partial or full privatization of building department functions. The recommendations shall include, but not be limited to, provisions relating to equivalency of service, conflict of interest, requirements for competency, liability, insurance, and long-term accountability.

(m) Develop recommendations that increase residential and commercial recycling and composting and strongly encourage the use of recyclable materials and the recycling of construction and demolition

debris.

(2) For educational and public information purposes, the commission shall develop and publish an informational and explanatory document which contains descriptions of the roles and responsibilities of the licensed design professional, residential designer, contractor, and local building and fire code officials. The State Fire Marshal shall be responsible for developing and specifying roles and responsibilities for fire code officials. Such document may also contain descriptions of roles and responsibilities of other participants involved in the building codes system.

(3) The commission may provide by rule for plans review and approval of prototype buildings owned by public and private entities to be replicated throughout the state. The rule must allow for review and approval of plans and changes to approved plans for prototype buildings to be performed by a public or private entity with oversight by the commission. The department may charge reasonable fees to cover the administrative costs of the program. Such approved plans or prototype buildings shall be exempt from further review required by s. 553.79(2), except changes to the prototype design, site plans, and other site-related items. Changes to an approved plan may be approved by the local building department or by the public or private entity that approved the plan. As provided in s. 553.73, prototype buildings are exempt from any locally adopted amendment to any part of the Florida Building Code. Construction or erection of such prototype buildings is subject to local permitting and inspections pursuant to this part.

(4) The commission may produce and distribute a commentary document to accompany the Florida Building Code. The commentary must be limited in effect to providing technical assistance and must not have the effect of binding interpretations of the code document itself.

(5) The commission may implement its recommendations delivered pursuant to s. 48(2), chapter 2007-73, Laws of Florida, by amending the Florida Energy Efficiency Code for Building Construction as provided in s. 553.901.

(6) A member of the Florida Building Commission may abstain from voting in any matter before the commission which would inure to the commissioner's special private gain or loss, which the commissioner knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, or which he or she knows would inure to the special private gain or loss of a relative or business associate of the commissioner. A commissioner shall abstain from voting under the foregoing circumstances if the matter is before the commission under ss. 120.569, 120.60, and 120.80. The commissioner shall, before the vote is taken, publicly state to the assembly the nature of the commissioner's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her other interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health pursuant to s. 514.0115(5), including any conditions attached to the granting of the variance.

History.—s. 8, ch. 74-167; s. 4, ch. 75-85; s. 4, ch. 75-111; s. 3, ch. 77-365; s. 4, ch. 78-323; ss. 5, 8, ch. 79-152; ss. 3, 4, ch. 81-7; ss. 1, 4, ch. 82-46; s. 9, ch. 83-160; s. 2, ch. 83-265; s. 2, ch. 84-365; s. 1, ch. 86-135; s. 1, ch. 88-81; s. 9, ch. 89-139; s. 11, ch. 89-321; ss. 4, 5, 6, ch. 91-172; s. 5, ch. 91-429; s. 311, ch. 92-279; s. 55, ch. 92-326; s. 28, ch. 93-166; s. 51, ch. 95-196; ss. 45, 46, ch. 98-287; ss. 77, 78, 79, ch. 2000-141; ss. 26, 34, 35, ch. 2001-186; ss. 2, 3, 4, ch. 2001-372; s. 16, ch. 2002-293; s. 8, ch. 2005-147; s. 13, ch. 2008-191; s. 13, ch. 2010-143; s. 43, ch. 2011-4; s. 149, ch. 2013-183; s. 20, ch. 2014-154.

553.775 Interpretations.—

(1) It is the intent of the Legislature that the Florida Building Code and the Florida Accessibility Code for Building Construction be interpreted by building officials, local enforcement agencies, and the

commission in a manner that protects the public safety, health, and welfare at the most reasonable cost to the consumer by ensuring uniform interpretations throughout the state and by providing processes for resolving disputes regarding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction which are just and expeditious.

(2) Local enforcement agencies, local building officials, state agencies, and the commission shall interpret provisions of the Florida Building Code and the Florida Accessibility Code for Building Construction in a manner that is consistent with declaratory statements and interpretations entered by the commission, except that conflicts between the Florida Fire Prevention Code and the Florida Building Code shall be resolved in accordance with s. 553.73(11)(c) and (d).

(3) The following procedures may be invoked regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction:

(a) Upon written application by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue declaratory statements pursuant to s. 120.565 relating to the enforcement or administration by local governments of the Florida Building Code or the Florida Accessibility Code for Building Construction.

(b) When requested in writing by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to this part and ss. 515.25, 515.27, 515.29, and 515.37. Actions of the commission are subject to judicial review under s. 120.68.

(c) The commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days.

1. The commission shall coordinate with the Building Officials Association of Florida, Inc., to designate panels composed of five members to hear requests to review decisions of local building officials. The members must be licensed as building code administrators under part XII of chapter 468 and must have experience interpreting and enforcing provisions of the Florida Building Code and the Florida Accessibility Code for Building Construction.

2. Requests to review a decision of a local building official interpreting provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction may be initiated by any substantially affected person, including an owner or builder subject to a decision of a local building official or an association of owners or builders having members who are subject to a decision of a local building official. In order to initiate review, the substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name and address of the county or municipality in which provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction are being interpreted.

b. The name and address of the local building official who has made the interpretation being appealed.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the local interpretation of the Florida Building Code or the Florida Accessibility Code for Building Construction.

d. A statement of the provisions of the Florida Building Code or the Florida Accessibility Code for

Building Construction which are being interpreted by the local building official.

e. A statement of the interpretation given to provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction by the local building official and the manner in which the interpretation was rendered.

f. A statement of the interpretation that the petitioner contends should be given to the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction and a statement supporting the petitioner's interpretation.

g. Space for the local building official to respond in writing. The space shall, at a minimum, require the local building official to respond by providing a statement admitting or denying the statements contained in the petition and a statement of the interpretation of the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which the local jurisdiction or the local building official contends is correct, including the basis for the interpretation.

3. The petitioner shall submit the petition to the local building official, who shall place the date of receipt on the petition. The local building official shall respond to the petition in accordance with the form and shall return the petition along with his or her response to the petitioner within 5 days after receipt, exclusive of Saturdays, Sundays, and legal holidays. The petitioner may file the petition with the commission at any time after the local building official provides a response. If no response is provided by the local building official, the petitioner may file the petition with the commission 10 days after submission of the petition to the local building official and shall note that the local building official did not respond.

4. Upon receipt of a petition that meets the requirements of subparagraph 2., the commission shall immediately provide copies of the petition to a panel, and the commission shall publish the petition, including any response submitted by the local building official, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. The panel shall conduct proceedings as necessary to resolve the issues; shall give due regard to the petitions, the response, and to comments posed on the Building Code Information System; and shall issue an interpretation regarding the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction within 21 days after the filing of the petition. The panel shall render a determination based upon the Florida Building Code or the Florida Accessibility Code for Building Construction or, if the code is ambiguous, the intent of the code. The panel's interpretation shall be provided to the commission, which shall publish the interpretation on the Building Code Information System and in the Florida Administrative Register. The interpretation shall be considered an interpretation entered by the commission, and shall be binding upon the parties and upon all jurisdictions subject to the Florida Building Code or the Florida Accessibility Code for Building Construction, unless it is superseded by a declaratory statement issued by the Florida Building Commission or by a final order entered after an appeal proceeding conducted in accordance with subparagraph 7.

6. It is the intent of the Legislature that review proceedings be completed within 21 days after the date that a petition seeking review is filed with the commission, and the time periods set forth in this paragraph may be waived only upon consent of all parties.

7. Any substantially affected person may appeal an interpretation rendered by a hearing officer panel by filing a petition with the commission. Such appeals shall be initiated in accordance with chapter 120 and the uniform rules of procedure and must be filed within 30 days after publication of the interpretation on the Building Code Information System or in the Florida Administrative Register. Hearings shall be conducted pursuant to chapter 120 and the uniform rules of procedure. Decisions of the

commission are subject to judicial review pursuant to s. 120.68. The final order of the commission is binding upon the parties and upon all jurisdictions subject to the Florida Building Code or the Florida Accessibility Code for Building Construction.

8. The burden of proof in any proceeding initiated in accordance with subparagraph 7. is on the party who initiated the appeal.

9. In any review proceeding initiated in accordance with this paragraph, including any proceeding initiated in accordance with subparagraph 7., the fact that an owner or builder has proceeded with construction may not be grounds for determining an issue to be moot if the issue is one that is likely to arise in the future.

This paragraph provides the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction and appeals from review proceedings.

(d) Upon written application by any substantially affected person, contractor, or designer, or a group representing a substantially affected person, contractor, or designer, the commission shall issue or cause to be issued a formal interpretation of the Florida Building Code or the Florida Accessibility Code for Building Construction as prescribed by paragraph (c).

(e) Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this subsection and may not be appealed to the commission if the local governing body finds that there is an immediate danger to the health and safety of the public.

(f) Upon written application by any substantially affected person, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to an agency's interpretation and enforcement of the specific provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which the agency is authorized to enforce. This subsection does not provide any powers, other than advisory, to the commission with respect to any decision of the State Fire Marshal made pursuant to chapter 633.

(g) The commission may designate a commission member who has demonstrated expertise in interpreting building plans to attend each meeting of the advisory council created in s. 553.512. The commission member may vary from meeting to meeting, shall serve on the council in a nonvoting capacity, and shall receive per diem and expenses as provided in s. 553.74(3).

(h) The commission shall by rule establish an informal process of rendering nonbinding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction. The commission is specifically authorized to refer interpretive issues to organizations that represent those engaged in the construction industry. The commission shall immediately implement the process before completing formal rulemaking. It is the intent of the Legislature that the commission create a process to refer questions to a small, rotating group of individuals licensed under part XII of chapter 468, to which a party may pose questions regarding the interpretation of code provisions. It is the intent of the Legislature that the process provide for the expeditious resolution of the issues presented and publication of the resulting interpretation on the Building Code Information System. Such interpretations shall be advisory only and nonbinding on the parties and the commission.

(4) In order to administer this section, the commission may adopt by rule and impose a fee for filing requests for declaratory statements and binding and nonbinding interpretations to recoup the cost of the proceedings which may not exceed \$125 for each request for a nonbinding interpretation and \$250 for each request for a binding review or interpretation. For proceedings conducted by or in coordination with a third party, the rule may provide that payment be made directly to the third party, who shall remit to

the department that portion of the fee necessary to cover the costs of the department.

History.—s. 9, ch. 2005-147; s. 5, ch. 2006-65; s. 8, ch. 2007-1; s. 5, ch. 2007-187; s. 14, ch. 2008-191; s. 35, ch. 2010-176; s. 49, ch. 2013-14; s. 21, ch. 2014-154.

553.781 Licensee accountability.—

(1) The Legislature finds that accountability for work performed by design professionals and contractors is the key to strong and consistent compliance with the Florida Building Code and, therefore, protection of the public health, safety, and welfare. The purpose of this section is to provide such accountability.

(2)(a) Upon a determination by a local jurisdiction that a licensee, certificateholder, or registrant licensed under chapter 455, chapter 471, chapter 481, or chapter 489 has committed a material violation of the Florida Building Code and failed to correct the violation within a reasonable time, such local jurisdiction shall impose a fine of no less than \$500 and no more than \$5,000 per material violation.

(b) If the licensee, certificateholder, or registrant disputes the violation within 30 days following notification by the local jurisdiction, the fine is abated and the local jurisdiction shall report the dispute to the Department of Business and Professional Regulation or the appropriate professional licensing board for disciplinary investigation and final disposition. If an administrative complaint is filed by the department or the professional licensing board against the certificateholder or registrant, the commission may intervene in such proceeding. Any fine imposed by the department or the professional licensing board, pursuant to matters reported by the local jurisdiction to the department or the professional licensing board, shall be divided equally between the board and the local jurisdiction which reported the violation.

(3) The Department of Business and Professional Regulation, as an integral part of the automated information system provided under s. 455.2286, shall establish, and local jurisdictions and state licensing boards shall participate in, a system of reporting violations and disciplinary actions taken against all licensees, certificateholders, and registrants under this section that have been disciplined for a violation of the Florida Building Code. Such information shall be available electronically. Any fines collected by a local jurisdiction pursuant to subsection (2) shall be used initially to help set up the parts of the reporting system for which such local jurisdiction is responsible. Any remaining moneys shall be used solely for enforcing the Florida Building Code, licensing activities relating to the Florida Building Code, or education and training on the Florida Building Code.

(4) Local jurisdictions shall maintain records, readily accessible by the public, regarding material violations and shall report such violations to the Department of Business and Professional Regulation by means of the reporting system provided in s. 455.2286.

For purposes of this section, a material code violation is a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems. Except when the fine is abated as provided in subsection (2), failure to pay the fine within 30 days shall result in a suspension of the licensee's, certificateholder's, or registrant's ability to obtain permits within this state until such time as the fine is paid. Such suspension shall be reflected on the automated information system under s. 455.2286.

History.—s. 47, ch. 98-287; ss. 80, 81, ch. 2000-141; ss. 34, 35, ch. 2001-186; ss. 3, 4, ch. 2001-372.

553.79 Permits; applications; issuance; inspections.—

(1) After the effective date of the Florida Building Code adopted as herein provided, it shall be

unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within this state without first obtaining a permit therefor from the appropriate enforcing agency or from such persons as may, by appropriate resolution or regulation of the authorized state or local enforcing agency, be delegated authority to issue such permits, upon the payment of such reasonable fees adopted by the enforcing agency. The enforcing agency is empowered to revoke any such permit upon a determination by the agency that the construction, erection, alteration, modification, repair, or demolition of the building for which the permit was issued is in violation of, or not in conformity with, the provisions of the Florida Building Code. Whenever a permit required under this section is denied or revoked because the plan, or the construction, erection, alteration, modification, repair, or demolition of a building, is found by the local enforcing agency to be not in compliance with the Florida Building Code, the local enforcing agency shall identify the specific plan or project features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit applicant. Installation, replacement, removal, or metering of any load management control device is exempt from and shall not be subject to the permit process and fees otherwise required by this section.

(2) Except as provided in subsection (6), an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant. In addition, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(3) Except as provided in this chapter, the Florida Building Code, after the effective date of adoption pursuant to the provisions of this part, shall supersede all other building construction codes or ordinances in the state, whether at the local or state level and whether adopted by administrative regulation or by legislative enactment. However, this subsection does not apply to the construction of manufactured

homes as defined by federal law. Nothing contained in this subsection shall be construed as nullifying or divesting appropriate state or local agencies of authority to make inspections or to enforce the codes within their respective areas of jurisdiction.

(4) The Florida Building Code, after the effective date of adoption pursuant to the provisions of this part, may be modified by local governments to require more stringent standards than those specified in the Florida Building Code, provided the conditions of s. 553.73(4) are met.

(5)(a) The enforcing agency shall require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to and approved by the enforcing agency before the issuance of a building permit for the construction of a threshold building. The purpose of the structural inspection plan is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record. The contractor's contractual or statutory obligations are not relieved by any action of the special inspector. The special inspector shall determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency. A fee simple title owner of a building, which does not meet the minimum size, height, occupancy, occupancy classification, or number-of-stories criteria which would result in classification as a threshold building under s. 553.71(12), may designate such building as a threshold building, subject to more than the minimum number of inspections required by the Florida Building Code.

(b) The fee owner of a threshold building shall select and pay all costs of employing a special inspector, but the special inspector shall be responsible to the enforcement agency. The inspector shall be a person certified, licensed, or registered under chapter 471 as an engineer or under chapter 481 as an architect.

(c) The architect or engineer of record may act as the special inspector provided she or he is on the Board of Professional Engineers' or the Board of Architecture and Interior Design's list of persons qualified to be special inspectors. School boards may utilize employees as special inspectors provided such employees are on one of the professional licensing board's list of persons qualified to be special inspectors.

(d) The licensed architect or registered engineer serving as the special inspector shall be permitted to send her or his duly authorized representative to the job site to perform the necessary inspections provided all required written reports are prepared by and bear the seal of the special inspector and are submitted to the enforcement agency.

(6) A permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Florida Building Commission within the Florida Building Code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only, and such standards shall take effect concurrent with the first effective date of the Florida Building Code.

(7) Each enforcement agency shall require that, on every threshold building:

(a) The special inspector, upon completion of the building and prior to the issuance of a certificate of occupancy, file a signed and sealed statement with the enforcement agency in substantially the following form: To the best of my knowledge and belief, the construction of all structural load-bearing components

described in the threshold inspection plan complies with the permitted documents, and the specialty shoring design professional engineer has ascertained that the shoring and reshoring conforms with the shoring and reshoring plans submitted to the enforcement agency.

(b) Any proposal to install an alternate structural product or system to which building codes apply be submitted to the enforcement agency for review for compliance with the codes and made part of the enforcement agency's recorded set of permit documents.

(c) All shoring and reshoring procedures, plans, and details be submitted to the enforcement agency for recordkeeping. Each shoring and reshoring installation shall be supervised, inspected, and certified to be in compliance with the shoring documents by the contractor.

(d) All plans for the building which are required to be signed and sealed by the architect or engineer of record contain a statement that, to the best of the architect's or engineer's knowledge, the plans and specifications comply with the applicable minimum building codes and the applicable firesafety standards as determined by the local authority in accordance with this chapter and chapter 633.

(8) No enforcing agency may issue a building permit for construction of any threshold building except to a licensed general contractor, as defined in s. 489.105(3)(a), or to a licensed building contractor, as defined in s. 489.105(3)(b), within the scope of her or his license. The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management, and control of the construction activities on the project for which the building permit was issued.

(9) Any state agency whose enabling legislation authorizes it to enforce provisions of the Florida Building Code may enter into an agreement with any other unit of government to delegate its responsibility to enforce those provisions and may expend public funds for permit and inspection fees, which fees may be no greater than the fees charged others. Inspection services that are not required to be performed by a state agency under a federal delegation of responsibility or by a state agency under the Florida Building Code must be performed under the alternative plans review and inspection process created in s. 553.791 or by a local governmental entity having authority to enforce the Florida Building Code.

(10) An enforcing authority may not issue a building permit for any building construction, erection, alteration, modification, repair, or addition unless the permit either includes on its face or there is attached to the permit the following statement: "NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies, or federal agencies."

(11) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct its review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

(12) Nothing in this section shall be construed to alter or supplement the provisions of part I of this chapter relating to manufactured buildings.

(13) One-family and two-family detached residential dwelling units are not subject to plan review by the local fire official as described in this section or inspection by the local fire official as described in s. 633.216, unless expressly made subject to the plan review or inspection by local ordinance.

(14) A building permit for a single-family residential dwelling must be issued within 30 working days of application therefor unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(15) Certifications by contractors authorized under the provisions of s. 489.115(4)(b) shall be considered equivalent to sealed plans and specifications by a person licensed under chapter 471 or chapter 481 by local enforcement agencies for plans review for permitting purposes relating to compliance with the wind resistance provisions of the code or alternate methodologies approved by the commission for one and two family dwellings. Local enforcement agencies may rely upon such certification by contractors that the plans and specifications submitted conform to the requirements of the code for wind resistance. Upon good cause shown, local government code enforcement agencies may accept or reject plans sealed by persons licensed under chapter 471, chapter 481, or chapter 489. A truss-placement plan is not required to be signed and sealed by an engineer or architect unless prepared by an engineer or architect or specifically required by the Florida Building Code.

(16)(a) The Florida Building Commission shall establish, within the Florida Building Code adopted by rule, standards for permitting residential buildings or structures moved into or within a county or municipality when such structures do not or cannot comply with the code. However, such buildings or structures shall not be required to be brought into compliance with the building code in force at the time the building or structure is moved, provided:

1. The building or structure is structurally sound and in occupiable condition for its intended use;
2. The occupancy use classification for the building or structure is not changed as a result of the move;
3. The building is not substantially remodeled;
4. Current fire code requirements for ingress and egress are met;
5. Electrical, gas, and plumbing systems meet the codes in force at the time of construction and are operational and safe for reconnection; and
6. Foundation plans are sealed by a professional engineer or architect licensed to practice in this state, if required by the building code for all residential buildings or structures of the same occupancy class;

(b) The building official shall apply the same standard to a moved residential building or structure as that applied to the remodeling of any comparable residential building or structure to determine whether the moved structure is substantially remodeled. The cost of moving the building and the cost of the foundation on which the moved building or structure is placed shall not be included in the cost of remodeling for purposes of determining whether a moved building or structure has been substantially remodeled.

(17) Notwithstanding any other provision of law, state agencies responsible for the construction, erection, alteration, modification, repair, or demolition of public buildings, or the regulation of public and private buildings, structures, and facilities, shall be subject to enforcement of the Florida Building Code by local jurisdictions. This subsection applies in addition to the jurisdiction and authority of the Department of Financial Services to inspect state-owned buildings. This subsection does not apply to the jurisdiction and authority of the Department of Agriculture and Consumer Services to inspect amusement rides or the Department of Financial Services to inspect state-owned buildings and boilers.

(18)(a) A local enforcing agency, and any local building code administrator, inspector, or other official or entity, may not require as a condition of issuance of a one- or two-family residential building

permit the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.

(b) This subsection does not apply to a building permit sought for:

1. A substantial improvement as defined in s. 161.54 or as defined in the Florida Building Code.
2. A change of occupancy as defined in the Florida Building Code.
3. A conversion from residential to nonresidential or mixed use pursuant to s. 553.507(3) or as defined in the Florida Building Code.
4. A historic building as defined in the Florida Building Code.

(c) This subsection does not prohibit a local enforcing agency, or any local building code administrator, inspector, or other official or entity, from:

1. Citing any violation inadvertently observed in plain view during the ordinary course of an inspection conducted in accordance with the prohibition in paragraph (a).
2. Inspecting a physically nonadjacent portion of a building, structure, or real property that is directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought in accordance with the prohibition in paragraph (a).
3. Inspecting any portion of a building, structure, or real property for which the owner or other person having control of the building, structure, or real property has voluntarily consented to the inspection of that portion of the building, structure, or real property in accordance with the prohibition in paragraph (a).
4. Inspecting any portion of a building, structure, or real property pursuant to an inspection warrant issued in accordance with ss. 933.20-933.30.

(d) This subsection is repealed upon receipt by the Secretary of State of the written certification by the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code which substantially incorporates this subsection, including the prohibition in paragraph (a), as part of the code and such amendment has taken effect.

(19) For the purpose of inspection and record retention, site plans or building permits may be maintained in the original form or in the form of an electronic copy at the worksite. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

History.—s. 10, ch. 74-167; s. 4, ch. 77-365; s. 10, ch. 83-160; s. 1, ch. 83-352; s. 2, ch. 84-24; s. 3, ch. 84-365; s. 2, ch. 85-97; s. 2, ch. 86-135; s. 2, ch. 87-287; s. 5, ch. 87-349; s. 2, ch. 88-142; s. 1, ch. 88-378; s. 1, ch. 91-7; s. 4, ch. 93-249; ss. 57, 260, ch. 94-119; s. 7, ch. 94-284; s. 461, ch. 94-356; s. 72, ch. 95-144; s. 2, ch. 95-379; s. 14, ch. 96-298; s. 73, ch. 96-388; s. 1175, ch. 97-103; ss. 48, 49, ch. 98-287; ss. 82, 83, 84, 135, ch. 2000-141; ss. 27, 34, 35, 37, ch. 2001-186; ss. 2, 3, 4, 6, ch. 2001-372; s. 666, ch. 2003-261; s. 10, ch. 2005-147; s. 36, ch. 2010-176; s. 1, ch. 2011-82; s. 73, ch. 2012-5; s. 15, ch. 2012-13; s. 150, ch. 2013-183; s. 16, ch. 2013-193; s. 126, ch. 2014-17; s. 22, ch. 2014-154.

553.791 Alternative plans review and inspection.—

(1) As used in this section, the term:

(a) “Applicable codes” means the Florida Building Code and any local technical amendments to the Florida Building Code but does not include the applicable minimum fire prevention and firesafety codes adopted pursuant to chapter 633.

(b) “Audit” means the process to confirm that the building code inspection services have been performed by the private provider, including ensuring that the required affidavit for the plan review has been properly completed and affixed to the permit documents and that the minimum mandatory

inspections required under the building code have been performed and properly recorded. The term does not mean that the local building official is required to replicate the plan review or inspection being performed by the private provider.

(c) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure for which permitting by a local enforcement agency is required.

(d) "Building code inspection services" means those services described in s. 468.603(6) and (7) involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(e) "Duly authorized representative" means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(f) "Immediate threat to public safety and welfare" means a building code violation that, if allowed to persist, constitutes an immediate hazard that could result in death, serious bodily injury, or significant property damage. This paragraph does not limit the authority of the local building official to issue a Notice of Corrective Action at any time during the construction of a building project or any portion of such project if the official determines that a condition of the building or portion thereof may constitute a hazard when the building is put into use following completion as long as the condition cited is shown to be in violation of the building code or approved plans.

(g) "Local building official" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

(h) "Permit application" means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.
2. The affidavit from the private provider required under subsection (6).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(i) "Private provider" means a person licensed as an engineer under chapter 471 or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468.

(j) "Request for certificate of occupancy or certificate of completion" means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.
2. A certificate of compliance from the private provider required under subsection (11).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(k) "Stop-work order" means the issuance of any written statement, written directive, or written

order which states the reason for the order and the conditions under which the cited work will be permitted to resume.

(2) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.

(3) A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under chapter 468, chapter 471, or chapter 481. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official at the time of permit application, or no less than 7 business days prior to the first scheduled inspection by the local building official or building code enforcement agency for a private provider performing required inspections of construction under this section, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that

is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change, update the notice to reflect such changes. A change of a duly authorized representative named in the permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change. In addition, the fee owner or the fee owner's contractor shall post at the project site, prior to the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.

(5) After construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the fee owner or the fee owner's contractor may elect to use a private provider to provide inspection services by notifying the local building official of the owner's or contractor's intention to do so no less than 7 business days prior to the next scheduled inspection using the notice provided for in paragraphs (4)(a)-(c).

(6) A private provider performing plans review under this section shall review construction plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits on a form adopted by the commission certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

(7)(a) No more than 30 business days after receipt of a permit application and the affidavit from the private provider required pursuant to subsection (6), the local building official shall issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit application shall be deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30-day period, the 30-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (13) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled 30-day period plus 5 business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be issued by the local building official on the next business day.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (13) or to submit additional revisions to correct the deficiencies. For all revisions

submitted after the first revision, the local building official has an additional 5 business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(8) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. The private provider shall be permitted to send a duly authorized representative to the building site to perform the required inspections, provided all required reports are prepared by and bear the signature of the private provider or the private provider's duly authorized representative. The duly authorized representative must be an employee of the private provider entitled to receive reemployment assistance benefits under chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(9) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted at the job site by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

(10) Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. The form must be signed by the provider or the provider's duly authorized representative. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, shall post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is posted at the project site and all such inspection records are submitted with the certificate of compliance. Records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(11) Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form and shall be signed and sealed by a private provider as established in subsection (1):

To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved

plans and the applicable codes.

(12) No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (13) or to submit a corrected request for a certificate of occupancy or certificate of completion.

(13) If the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof as provided by law, if the official determines that the noncompliance poses an immediate threat to public safety and welfare, subject to the following:

(a) The local building official shall be available to meet with the private provider within 2 business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion.

(b) If the local building official and private provider are unable to resolve the dispute, the matter shall be referred to the local enforcement agency's board of appeals, if one exists, which shall consider the matter at its next scheduled meeting or sooner. Any decisions by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter.

(c) Notwithstanding any provision of this section, any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists. Any decision by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter, which shall consider the matter at the commission's next scheduled meeting.

(14) For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the facsimile number listed for that person or entity in the permit application or revised permit application, or, if no facsimile number is stated, when actually received by that person or entity.

(15)(a) A local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1)(i) and the insurance requirements of subsection (16).

(c) This section does not limit the authority of the local building official to issue a stop-work order for a building project or any portion of the project, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(16) A private provider may perform building code inspection services on a building project under this

section only if the private provider maintains insurance for professional liability covering all services performed as a private provider. Such insurance shall have minimum policy limits of \$1 million per occurrence and \$2 million in the aggregate for any project with a construction cost of \$5 million or less and \$2 million per occurrence and \$4 million in the aggregate for any project with a construction cost of over \$5 million. Nothing in this section limits the ability of a fee owner to require additional insurance or higher policy limits. For these purposes, the term "construction cost" means the total cost of building construction as stated in the building permit application. If the private provider chooses to secure claims-made coverage to fulfill this requirement, the private provider must also maintain coverage for a minimum of 5 years subsequent to the performance of building code inspection services. The insurance required under this subsection shall be written only by insurers authorized to do business in this state with a minimum A.M. Best's rating of A. Before providing building code inspection services within a local building official's jurisdiction, a private provider must provide to the local building official a certificate of insurance evidencing that the coverages required under this subsection are in force.

(17) When performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under chapter 468, chapter 471, or chapter 481. All private providers shall be subject to the disciplinary guidelines of s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services shall be conducted by the applicable professional board.

(18) Each local building code enforcement agency may audit the performance of building code inspection services by private providers operating within the local jurisdiction. Work on a building or structure may proceed after inspection and approval by a private provider if the provider has given notice of the inspection pursuant to subsection (9) and, subsequent to such inspection and approval, the work shall not be delayed for completion of an inspection audit by the local building code enforcement agency.

(19) The local government, the local building official, and their building code enforcement personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.

History.—s. 17, ch. 2002-293; s. 106, ch. 2005-2; s. 11, ch. 2005-147; s. 1, ch. 2005-216; s. 6, ch. 2006-65; s. 6, ch. 2007-187; s. 141, ch. 2008-4; s. 77, ch. 2012-30.

553.792 Building permit application to local government.—

(1) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force major or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days

following receipt of a completed application.

(2) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

History.—s. 35, ch. 2005-147; s. 63, ch. 2006-1.

553.793 Streamlined low-voltage alarm system installation permitting.—

(1) As used in this section, the term:

(a) “Contractor” means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489.

(b) “Low-voltage alarm system project” means a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, operating at low voltage, as defined in the National Electrical Code Standard 70, Current Edition, and ancillary components or equipment attached to such a system, including, but not limited to, home-automation equipment, thermostats, and video cameras.

(2) Notwithstanding any provision of law, this section applies to low-voltage alarm system projects for which a permit is required by a local enforcement agency.

(3) This section does not apply to the installation or replacement of a fire alarm if a plan review is required.

(4) A local enforcement agency shall make uniform basic permit labels available for purchase by a contractor to be used for the installation or replacement of a new or existing alarm system at a cost of not more than \$55 per label per project per unit. However, a local enforcement agency charging more than \$55, but less than \$175, for such a permit as of January 1, 2013, may continue to charge the same amount for a uniform basic permit label until January 1, 2015. A local enforcement agency charging more than \$175 for such a permit as of January 1, 2013, may charge a maximum of \$175 for a uniform basic permit label until January 1, 2015.

(a) A local enforcement agency may not require a contractor, as a condition of purchasing a label, to submit information other than identification information of the licensee and proof of registration or certification as a contractor.

(b) A label is valid for 1 year after the date of purchase and may only be used within the jurisdiction of the local enforcement agency that issued the label. A contractor may purchase labels in bulk for one or more unspecified current or future projects.

(5) A contractor shall post an unused uniform basic permit label in a conspicuous place on the premises of the low-voltage alarm system project site before commencing work on the project.

(6) A contractor is not required to notify the local enforcement agency before commencing work on a low-voltage alarm system project. However, a contractor must submit a Uniform Notice of a Low-Voltage Alarm System Project as provided under subsection (7) to the local enforcement agency within 14 days after completing the project. A local enforcement agency may take disciplinary action against a contractor who fails to timely submit a Uniform Notice of a Low-Voltage Alarm System Project.

(7) The Uniform Notice of a Low-Voltage Alarm System Project may be submitted electronically or by facsimile if all submissions are signed by the owner, tenant, contractor, or authorized representative of such persons. The Uniform Notice of a Low-Voltage Alarm System Project must contain the following information:

**UNIFORM NOTICE OF A LOW-VOLTAGE
ALARM SYSTEM PROJECT**

Owner's or Customer's Name
 Owner's or Customer's Address
 City
 State Zip
 Phone Number
 E-mail Address
 Contractor's Name
 Contractor's Address
 City
 State Zip
 Phone Number
 Contractor's License Number
 Date Project Completed
 Scope of Work

Notice is hereby given that a low-voltage alarm system project has been completed at the address specified above. I certify that all of the foregoing information is true and accurate.

(Signature of Owner, Tenant, Contractor, or Authorized Representative)

(8) A low-voltage alarm system project may be inspected by the local enforcement agency to ensure compliance with applicable codes and standards. If a low-voltage alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

(9) A municipality, county, district, or other entity of local government may not adopt or maintain in effect an ordinance or rule regarding a low-voltage alarm system project that is inconsistent with this section.

(10) A uniform basic permit label shall not be required for the subsequent maintenance, inspection, or service of an alarm system that was permitted in accordance with this section.

History.—s. 2, ch. 2013-203.

553.80 Enforcement.—

(1) Except as provided in paragraphs (a)-(g), each local government and each legally constituted enforcement district with statutory authority shall regulate building construction and, where authorized in the state agency's enabling legislation, each state agency shall enforce the Florida Building Code required by this part on all public or private buildings, structures, and facilities, unless such responsibility has been delegated to another unit of government pursuant to s. 553.79(9).

(a) Construction regulations relating to correctional facilities under the jurisdiction of the Department of Corrections and the Department of Juvenile Justice are to be enforced exclusively by those departments.

(b) Construction regulations relating to elevator equipment under the jurisdiction of the Bureau of

Elevators of the Department of Business and Professional Regulation shall be enforced exclusively by that department.

(c) In addition to the requirements of s. 553.79 and this section, facilities subject to the provisions of chapter 395 and parts II and VIII of chapter 400 shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of chapter 395 and parts II and VIII of chapter 400 and the certification requirements of the Federal Government. Facilities subject to the provisions of part IV of chapter 400 may have facility plans reviewed and shall have construction surveyed by the state agency authorized to do so under the requirements of part IV of chapter 400 and the certification requirements of the Federal Government.

(d) Building plans approved under s. 553.77(3) and state-approved manufactured buildings, including buildings manufactured and assembled offsite and not intended for habitation, such as lawn storage buildings and storage sheds, are exempt from local code enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. Erection, assembly, and construction at the site are subject to local permitting and inspections. Lawn storage buildings and storage sheds bearing the insignia of approval of the department are not subject to s. 553.842. Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.

(e) Construction regulations governing public schools, state universities, and Florida College System institutions shall be enforced as provided in subsection (6).

(f) The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the Department of Transportation shall be enforced exclusively by the turnpike enterprise.

(g) Construction regulations relating to secure mental health treatment facilities under the jurisdiction of the Department of Children and Families shall be enforced exclusively by the department in conjunction with the Agency for Health Care Administration's review authority under paragraph (c).

The governing bodies of local governments may provide a schedule of fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for the enforcement of the provisions of this part. Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. The authority of state enforcing agencies to set fees for enforcement shall be derived from authority existing on July 1, 1998. However, nothing contained in this subsection shall operate to limit such agencies from adjusting their fee schedule in conformance with existing authority.

(2)(a) Any two or more counties or municipalities, or any combination thereof, may, in accordance with the provisions of chapter 163, governing interlocal agreements, form an enforcement district for the purpose of enforcing and administering the provisions of the Florida Building Code. Each district so formed shall be registered with the department on forms to be provided for that purpose. Nothing in this subsection shall be construed to supersede provisions of county charters which preempt municipal authorities respective to building codes.

(b) With respect to evaluation of design professionals' documents, if a local government finds it necessary, in order to enforce compliance with the Florida Building Code and issue a permit, to reject design documents required by the code three or more times for failure to correct a code violation specifically and continuously noted in each rejection, including, but not limited to, egress, fire protection, structural stability, energy, accessibility, lighting, ventilation, electrical, mechanical, plumbing, and gas systems, or other requirements identified by rule of the Florida Building Commission adopted pursuant to chapter 120, the local government shall impose, each time after the third such

review the plans are rejected for that code violation, a fee of four times the amount of the proportion of the permit fee attributed to plans review.

(c) With respect to inspections, if a local government finds it necessary, in order to enforce compliance with the Florida Building Code, to conduct any inspection after an initial inspection and one subsequent reinspection of any project or activity for the same code violation specifically and continuously noted in each rejection, including, but not limited to, egress, fire protection, structural stability, energy, accessibility, lighting, ventilation, electrical, mechanical, plumbing, and gas systems, or other requirements identified by rule of the Florida Building Commission adopted pursuant to chapter 120, the local government shall impose a fee of four times the amount of the fee imposed for the initial inspection or first reinspection, whichever is greater, for each such subsequent reinspection.

(3)(a) Each enforcement district shall be governed by a board, the composition of which shall be determined by the affected localities.

(b)1. At its own option, each enforcement district or local enforcement agency may adopt rules granting to the owner of a single-family residence one or more exemptions from the Florida Building Code relating to:

a. Addition, alteration, or repairs performed by the property owner upon his or her own property, provided any addition or alteration shall not exceed 1,000 square feet or the square footage of the primary structure, whichever is less.

b. Addition, alteration, or repairs by a nonowner within a specific cost limitation set by rule, provided the total cost shall not exceed \$5,000 within any 12-month period.

c. Building and inspection fees.

2. However, the exemptions under subparagraph 1. do not apply to single-family residences that are located in mapped flood hazard areas, as defined in the code, unless the enforcement district or local enforcement agency has determined that the work, which is otherwise exempt, does not constitute a substantial improvement, including the repair of substantial damage, of such single-family residences.

3. Each code exemption, as defined in sub-subparagraphs 1.a., b., and c., shall be certified to the local board 10 days prior to implementation and shall only be effective in the territorial jurisdiction of the enforcement district or local enforcement agency implementing it.

(4) When an enforcement district has been formed as provided herein, upon its registration with the department, it shall have the same authority and responsibility with respect to building codes as provided by this part for local governing bodies.

(5) State and regional agencies with special expertise in building code standards and licensing of contractors and design professionals shall provide support to local governments upon request.

(6) Notwithstanding any other law, state universities, Florida College System institutions, and public school districts shall be subject to enforcement of the Florida Building Code under this part.

(a)1. State universities, Florida College System institutions, or public school districts shall conduct plan review and construction inspections to enforce building code compliance for their building projects that are subject to the Florida Building Code. These entities must use personnel or contract providers appropriately certified under part XII of chapter 468 to perform the plan reviews and inspections required by the code. Under these arrangements, the entities are not subject to local government permitting requirements, plans review, and inspection fees. State universities, Florida College System institutions, and public school districts are liable and responsible for all of their buildings, structures, and facilities. This paragraph does not limit the authority of the county, municipality, or code enforcement district to ensure that buildings, structures, and facilities owned by these entities comply with the Florida Building

Code or to limit the authority and responsibility of the fire official to conduct firesafety inspections under chapter 633.

2. In order to enforce building code compliance independent of a county or municipality, a state university, Florida College System institution, or public school district may create a board of adjustment and appeal to which a substantially affected party may appeal an interpretation of the Florida Building Code which relates to a specific project. The decisions of this board, or, in its absence, the decision of the building code administrator, may be reviewed under s. 553.775.

(b) If a state university, Florida College System institution, or public school district elects to use a local government's code enforcement offices:

1. Fees charged by counties and municipalities for enforcement of the Florida Building Code on buildings, structures, and facilities of state universities, state colleges, and public school districts may not be more than the actual labor and administrative costs incurred for plans review and inspections to ensure compliance with the code.

2. Counties and municipalities shall expedite building construction permitting, building plans review, and inspections of projects of state universities, Florida College System institutions, and public schools that are subject to the Florida Building Code according to guidelines established by the Florida Building Commission.

3. A party substantially affected by an interpretation of the Florida Building Code by the local government's code enforcement offices may appeal the interpretation to the local government's board of adjustment and appeal or to the commission under s. 553.775 if no local board exists. The decision of a local board is reviewable in accordance with s. 553.775.

(c) The Florida Building Commission and code enforcement jurisdictions shall consider balancing code criteria and enforcement to unique functions, where they occur, of research institutions by application of performance criteria in lieu of prescriptive criteria.

(d) School boards, Florida College System institution boards, and state universities may use annual facility maintenance permits to facilitate routine maintenance, emergency repairs, building refurbishment, and minor renovations of systems or equipment. The amount expended for maintenance projects may not exceed \$200,000 per project. A facility maintenance permit is valid for 1 year. A detailed log of alterations and inspections must be maintained and annually submitted to the building official. The building official retains the right to make inspections at the facility site as he or she considers necessary. Code compliance must be provided upon notification by the building official. If a pattern of code violations is found, the building official may withhold the issuance of future annual facility maintenance permits.

This part may not be construed to authorize counties, municipalities, or code enforcement districts to conduct any permitting, plans review, or inspections not covered by the Florida Building Code. Any actions by counties or municipalities not in compliance with this part may be appealed to the Florida Building Commission. The commission, upon a determination that actions not in compliance with this part have delayed permitting or construction, may suspend the authority of a county, municipality, or code enforcement district to enforce the Florida Building Code on the buildings, structures, or facilities of a state university, Florida College System institution, or public school district and provide for code enforcement at the expense of the state university, Florida College System institution, or public school district.

(7) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any

finer or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

(a) As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

(b) The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

1. Planning and zoning or other general government activities.
2. Inspections of public buildings for a reduced fee or no fee.
3. Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.
4. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code as defined in paragraph (a).

(c) A local government shall use recognized management, accounting, and oversight practices to ensure that fees, fines, and investment earnings generated under this subsection are maintained and allocated or used solely for the purposes described in paragraph (a).

(8) The Department of Agriculture and Consumer Services is not subject to local government permitting requirements, plan review, or inspection fees for agricultural structures, such as equipment storage sheds and pole barns that are not used by the public.

History.—s. 11, ch. 74-167; s. 3, ch. 75-111; s. 5, ch. 77-365; s. 3, ch. 85-97; s. 805, ch. 97-103; ss. 50, 51, ch. 98-287; ss. 85, 86, ch. 2000-141; ss. 34, 35, ch. 2001-186; ss. 3, 4, ch. 2001-372; s. 87, ch. 2002-1; s. 27, ch. 2002-20; s. 12, ch. 2005-147; s. 64, ch. 2006-1; s. 15, ch. 2008-191; s. 37, ch. 2010-176; s. 127, ch. 2014-17; s. 276, ch. 2014-19; s. 23, ch. 2014-154.

553.83 Injunctive relief.—Any local government, legally constituted enforcement district, or state agency authorized to enforce sections of the Florida Building Code under s. 553.80 may seek injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy, erection, alteration, or installation of any building covered by this part, upon an affidavit of the local government, code enforcement district, or state agency specifying the manner in which the building does not conform to the requirements of the Florida Building Code, or local amendments to the Florida Building Code. Noncompliance with the building code promulgated under this part shall be considered prima facie evidence of irreparable damage in any cause of action brought under authority of this part.

History.—s. 14, ch. 74-167; s. 5, ch. 77-365; s. 87, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

553.835 Implied warranties.—

- (1) The Legislature finds that the courts have reached different conclusions concerning the scope and

extent of the common law doctrine or theory of implied warranty of fitness and merchantability or habitability for improvements immediately supporting the structure of a new home, which creates uncertainty in the state's fragile real estate and construction industry.

(2) It is the intent of the Legislature to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home.

(3) As used in this section, the term "offsite improvement" means:

(a) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, excluding such improvements that are shared by and part of the overall structure of two or more separately owned homes that are adjoined or attached whereby such improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures; and

(b) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is located on or under the lot but that does not immediately and directly support the fitness and merchantability or habitability of the home itself.

(4) There is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements. However, this section does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including, but not limited to, ss. 718.203 and 719.203.

History.—s. 1, ch. 2012-161.

553.84 Statutory civil action.—Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation; however, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the person or party knew or should have known that the violation existed.

History.—s. 15, ch. 74-167; s. 88, ch. 2000-141; ss. 28, 34, ch. 2001-186; s. 3, ch. 2001-372.

553.841 Building code compliance and mitigation program.—

(1) The Legislature finds that knowledge and understanding by persons licensed or employed in the design and construction industries of the importance and need for complying with the Florida Building Code and related laws is vital to the public health, safety, and welfare of this state, especially for protecting consumers and mitigating damage caused by hurricanes to residents and visitors to the state. The Legislature further finds that the Florida Building Code can be effective only if all participants in the design and construction industries maintain a thorough knowledge of the code, code compliance and enforcement, duties related to consumers, and changes that improve construction standards, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. Consequently, the Legislature finds that there is a need for a program to provide ongoing education and outreach activities concerning compliance with the Florida Building Code, the

Florida Fire Prevention Code, construction plan and permitting requirements, construction liens, and hurricane mitigation.

(2) The Department of Business and Professional Regulation shall administer a program, designated as the Florida Building Code Compliance and Mitigation Program, to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code and related provisions as specified in subsection (1) and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for design and construction compliance and mitigation of storm-related damage. The program shall also operate a clearinghouse through which design, construction, and building code enforcement licensees, suppliers, and consumers in this state may find others in order to exchange information relating to mitigation and facilitate repairs in the aftermath of a natural disaster.

(3) All services and materials under the Florida Building Code Compliance and Mitigation Program must be provided by a private, nonprofit corporation under contract with the department. The term of the contract shall be for 4 years, with the option of one 4-year renewal at the end of the contract term. The initial contract must be in effect no later than November 1, 2007. The private, nonprofit corporation must be an organization whose membership includes trade and professional organizations whose members consist primarily of persons and entities that are required to comply with the Florida Building Code and that are licensed under part XII of chapter 468, chapter 471, chapter 481, or chapter 489. When selecting the private, nonprofit corporation for the program, the department must give primary consideration to the corporation's demonstrated experience and the ability to:

- (a) Develop and deliver building code-related education, training, and outreach;
- (b) Directly access the majority of persons licensed in the occupations of design, construction, and building code enforcement individually and through established statewide trade and professional association networks;
- (c) Serve as a clearinghouse to deliver education and outreach throughout the state. The clearinghouse must serve as a focal point at which persons licensed to design, construct, and enforce building codes and suppliers and consumers can find each other in order to exchange information relating to mitigation and facilitate repairs in the aftermath of a natural disaster;
- (d) Accept input from the Florida Building Commission, licensing regulatory boards, local building departments, and the design and construction industries in order to improve its education and outreach programs; and
- (e) Promote design and construction techniques and materials for mitigating hurricane damage at a Florida-based trade conference that includes participants from the broadest possible range of design and construction trades and professions, including from those private and public sector entities having jurisdiction over building codes and design and construction licensure.

(4) In administering the Florida Building Code Compliance and Mitigation Program, the department shall maintain, update, develop, or cause to be developed advanced modules designed for use by each profession.

(5) Each biennium, upon receipt of funds by the Department of Business and Professional Regulation from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board provided under ss. 489.109(3) and 489.509(3), the department shall determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.

(6) If the projects provided through the Florida Building Code Compliance and Mitigation Program in any state fiscal year do not require the use of all available funds, the unused funds shall be carried

forward and allocated for use during the following fiscal year.

(7) The Florida Building Commission shall provide by rule for the accreditation of courses related to the Florida Building Code by accreditors approved by the commission. The commission shall establish qualifications of accreditors and criteria for the accreditation of courses by rule. The commission may revoke the accreditation of a course by an accreditor if the accreditation is demonstrated to violate this part or the rules of the commission.

(8) This section does not prohibit or limit the subject areas or development of continuing education or training on the Florida Building Code by any qualified entity.

History.—s. 52, ch. 98-287; s. 89, ch. 2000-141; s. 59, ch. 2004-357; s. 14, ch. 2005-147; s. 7, ch. 2007-187; s. 38, ch. 2010-176; s. 416, ch. 2011-142; s. 24, ch. 2014-154.

553.842 Product evaluation and approval.—

(1) The commission shall adopt rules under ss. 120.536(1) and 120.54 to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the Florida Building Code. The commission may enter into contracts to provide for administration of the product evaluation and approval system. The commission's rules and any applicable contract may provide that the payment of fees related to approvals be made directly to the administrator. Any fee paid by a product manufacturer shall be used only for funding the product evaluation and approval system. The product evaluation and approval system shall provide:

- (a) Appropriate promotion of innovation and new technologies.
- (b) Processing submittals of products from manufacturers in a timely manner.
- (c) Independent, third-party qualified and accredited testing and laboratory facilities, product evaluation entities, quality assurance agencies, certification agencies, and validation entities.
- (d) An easily accessible product acceptance list to entities subject to the Florida Building Code.
- (e) Development of stringent but reasonable testing criteria based upon existing consensus standards, when available, for products.
- (f) Long-term approvals, where feasible. State and local approvals will be valid until the requirements of the code on which the approval is based change, the product changes in a manner affecting its performance as required by the code, or the approval is revoked. However, the commission may authorize by rule editorial revisions to approvals and charge a fee as provided in this section.
- (g) Criteria for revocation of a product approval.
- (h) Cost-effectiveness.

(2) The product evaluation and approval system shall rely on national and international consensus standards, whenever adopted by the Florida Building Code, for demonstrating compliance with code standards. Other standards which meet or exceed established state requirements shall also be considered.

(3) Products or methods or systems of construction that require approval under s. 553.77, that have standardized testing or comparative or rational analysis methods established by the code, and that are certified by an approved product evaluation entity, testing laboratory, or certification agency as complying with the standards specified by the code shall be approved for statewide use. Products required to be approved for statewide use shall be approved by one of the methods established in subsection (5) without further evaluation.

(4) Products or methods or systems of construction requiring approval under s. 553.77 must be approved by one of the methods established in subsection (5) before their use in construction in this state. Products may be approved by the commission for statewide use. Notwithstanding a local

government's authority to amend the Florida Building Code as provided in this act, statewide approval shall preclude local jurisdictions from requiring further testing, evaluation, or submission of other evidence as a condition of using the product so long as the product is being used consistent with the conditions of its approval.

(5) Statewide approval of products, methods, or systems of construction may be achieved by one of the following methods. One of these methods must be used by the commission to approve the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, impact protective systems, and structural components as established by the commission by rule. A product may not be advertised, sold, offered, provided, distributed, or marketed as hurricane, windstorm, or impact protection from wind-borne debris from a hurricane or windstorm unless it is approved pursuant to this section or s. 553.8425. Any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without such approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 brought by the enforcing authority as defined in s. 501.203.

(a) Products for which the code establishes standardized testing or comparative or rational analysis methods shall be approved by submittal and validation of one of the following reports or listings indicating that the product or method or system of construction was in compliance with the Florida Building Code and that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code:

1. A certification mark or listing of an approved certification agency, which may be used only for products for which the code designates standardized testing;
2. A test report from an approved testing laboratory;
3. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity; or
4. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state.

A product evaluation report or a certification mark or listing of an approved certification agency which demonstrates that the product or method or system of construction complies with the Florida Building Code for the purpose intended is equivalent to a test report and test procedure referenced in the Florida Building Code. An application for state approval of a product under subparagraph 1. or subparagraph 3. must be approved by the department after the commission staff or a designee verifies that the application and related documentation are complete. This verification must be completed within 10 business days after receipt of the application. Upon approval by the department, the product shall be immediately added to the list of state-approved products maintained under subsection (13). Approvals by the department shall be reviewed and ratified by the commission's program oversight committee except for a showing of good cause that a review by the full commission is necessary. The commission shall adopt rules providing means to cure deficiencies identified within submittals for products approved under this paragraph.

(b) Products, methods, or systems of construction for which there are no specific standardized testing or comparative or rational analysis methods established in the code may be approved by submittal and validation of one of the following:

1. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity indicating that the product or method

or system of construction was in compliance with the intent of the Florida Building Code and that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code; or

2. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state, who certifies that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code.

(6) The commission shall ensure that product manufacturers that obtain statewide product approval operate quality assurance programs for all approved products. The commission shall adopt by rule criteria for operation of the quality assurance programs.

(7) For state approvals, validation shall be performed by validation entities approved by the commission. The commission shall adopt by rule criteria for approval of validation entities, which shall be third-party entities independent of the product's manufacturer and which shall certify to the commission the product's compliance with the code. The commission may adopt by rule a schedule of penalties to be imposed against approved validation entities that validate product applications in violation of this section or rules adopted under this section.

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved pursuant to this paragraph. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, and the Miami-Dade County Building Code Compliance Office Product Control. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

(b) Testing laboratories accredited by national organizations, such as A2LA and the National Voluntary Laboratory Accreditation Program, laboratories accredited by evaluation entities approved under paragraph (a), and laboratories that comply with other guidelines for testing laboratories selected by the commission and adopted by rule.

(c) Quality assurance entities approved by evaluation entities approved under paragraph (a) and by certification agencies approved under paragraph (d) and other quality assurance entities that comply with guidelines selected by the commission and adopted by rule.

(d) Certification agencies accredited by nationally recognized accreditors and other certification agencies that comply with guidelines selected by the commission and adopted by rule.

(e) Validation entities that comply with accreditation standards established by the commission by rule.

(9) A building official may deny the local application of a product or method or system of construction which has received statewide approval, based upon a written report signed by the official that concludes the product application is inconsistent with the statewide approval and that states the reasons the application is inconsistent. Such denial is subject to the provisions of s. 553.77 governing appeal of the building official's interpretation of the code.

(10) Products, other than manufactured buildings, which are custom fabricated or assembled shall not require separate approval under this section provided the component parts have been approved for the fabricated or assembled product's use and the components meet the standards and requirements of the

Florida Building Code which applies to the product's intended use.

(11) A building official may appeal the required approval for local use of a product or method or system of construction to the commission. The commission shall conduct a hearing under chapter 120 and the uniform rules of procedure and shall handle such appeals in an expedited manner.

(12) The decisions of local building officials shall be appealable to the local board of appeals, if such board exists, and then to the commission, which shall conduct a hearing under chapter 120 and the uniform rules of procedure. Decisions of the commission regarding statewide product approvals and appeals of local product approval shall be subject to judicial review pursuant to s. 120.68.

(13) The commission shall maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities and make such lists available in the most cost-effective manner. The commission shall establish reasonable timeframes associated with the product approval process and availability of the lists.

(14) The commission shall by rule establish criteria for revocation of product approvals as well as revocation of approvals of product evaluation entities, testing laboratories, quality assurance entities, certification agencies, and validation entities. Revocation is governed by s. 120.60 and the uniform rules of procedure.

(15) The commission may adopt a rule listing the prescriptive, material standards and alternative means by which products subject to those standards may demonstrate compliance with the code.

(16) The commission may adopt a rule that identifies standards that are equivalent to or more stringent than those specifically adopted by the code, thereby allowing the use in this state of the products that comply with the equivalent standard.

History.—s. 54, ch. 98-287; s. 90, ch. 2000-141; s. 30, ch. 2001-186; s. 18, ch. 2002-293; s. 16, ch. 2005-147; s. 65, ch. 2006-1; s. 8, ch. 2007-187; s. 16, ch. 2008-191; s. 39, ch. 2010-176; s. 32, ch. 2011-222; s. 17, ch. 2013-193.

553.8425 Local product approval.—

(1) For local product approval, products or systems of construction shall demonstrate compliance with the structural windload requirements of the Florida Building Code through one of the following methods:

(a) A certification mark, listing, or label from a commission-approved certification agency indicating that the product complies with the code;

(b) A test report from a commission-approved testing laboratory indicating that the product tested complies with the code;

(c) A product-evaluation report based upon testing, comparative or rational analysis, or a combination thereof, from a commission-approved product evaluation entity which indicates that the product evaluated complies with the code;

(d) A product-evaluation report or certification based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a Florida professional engineer or Florida registered architect, which indicates that the product complies with the code;

(e) A statewide product approval issued by the Florida Building Commission; or

(f) Designation of compliance with a prescriptive, material standard adopted by the commission by rule under s. 553.842(15).

(2) For product-evaluation reports that indicate compliance with the code based upon a test report from an approved testing laboratory and rational or comparative analysis by a Florida registered architect or Florida professional engineer, the testing laboratory or the evaluating architect or engineer must certify independence from the product manufacturer.

(3) Local building officials may accept modifications to approved products or their installations if

sufficient evidence is submitted to the local building official to demonstrate compliance with the code or the intent of the code, including such evidence as certifications from a Florida registered architect or Florida professional engineer.

(4) Products demonstrating compliance shall be manufactured under a quality assurance program audited by an approved quality assurance entity.

(5) Products bearing a certification mark, label, or listing by an approved certification agency require no further documentation to establish compliance with the code.

(6) Upon review of the compliance documentation, and a finding that the product complies with the code, the authority having jurisdiction or a local building official shall deem the product approved for use in accordance with its approval and limitation of use.

(7) Approval shall be valid until such time as the product changes and decreases in performance; the standards of the code change, requiring increased performance; or the approval is otherwise suspended or revoked. Changes to the code do not void the approval of products previously installed in existing buildings if such products met building code requirements at the time the product was installed.

History.—s. 19, ch. 2005-147; s. 66, ch. 2006-1.

553.844 Windstorm loss mitigation; requirements for roofs and opening protection.—

(1) The Legislature finds that:

(a) The effects of recent hurricanes on the state have demonstrated the effectiveness of the Florida Building Code in reducing property damage to buildings constructed in accordance with its requirements, and have also exposed a vulnerability of some construction undertaken prior to implementation of the Florida Building Code.

(b) Hurricanes represent a continuing threat to the health, safety, and welfare of the residents of this state due to the direct destructive effects of hurricanes as well as their effects on windstorm insurance rates.

(c) The mitigation of property damage constitutes a valid and recognized objective of the Florida Building Code.

(d) Cost-effective techniques for integrating proven methods of the Florida Building Code into buildings built prior to its implementation benefit all residents of the state as a whole.

(2) The Florida Building Commission shall:

(a) Analyze the extent to which a proposed Florida Building Code provision will mitigate property damage to buildings and their contents in evaluating that proposal. If the nature of the proposed Florida Building Code provision relates only to mitigation of property damage and not to a lifesafety concern, the proposal shall be reviewed based on its measurable benefits in relation to the costs imposed.

(b) Develop and adopt within the Florida Building Code a means to incorporate recognized mitigation techniques for site-built, single-family residential structures constructed before the implementation of the Florida Building Code, including, but not limited to:

1. Prescriptive techniques for the installation of gable-end bracing;
2. Secondary water barriers for roofs and standards relating to secondary water barriers. The criteria may include, but need not be limited to, roof shape, slope, and composition of all elements of the roof system. The criteria may not be limited to one method or material for a secondary water barrier;
3. Prescriptive techniques for improvement of roof-to-wall connections. The Legislature recognizes that the cost of retrofitting existing buildings to meet the code requirements for new construction in this regard may exceed the practical benefit to be attained. The Legislature intends for the commission to provide for the integration of alternate, lower-cost means that may be employed to retrofit existing

buildings that are not otherwise required to comply with the requirements of the Florida Building Code for new construction so that the cost of such improvements does not exceed approximately 15 percent of the cost of reroofing. Roof-to-wall connections shall not be required unless evaluation and installation of connections at gable ends or all corners can be completed for 15 percent of the cost of roof replacement. For houses that have both hip and gable roof ends, the priority shall be to retrofit the gable end roof-to-wall connections unless the width of the hip is more than 1.5 times greater than the width of the gable end. Priority shall be given to connecting the corners of roofs to walls below the locations at which the spans of the roofing members are greatest;

4. Strengthening or correcting roof-decking attachments and fasteners during reroofing; and
5. Adding or strengthening opening protections.

(3) The Legislature finds that the integration of these specifically identified mitigation measures is critical to addressing the serious problem facing the state from damage caused by windstorms and that delay in the adoption and implementation constitutes a threat to the health, safety, and welfare of the state. Accordingly, the Florida Building Commission shall develop and adopt these measures by October 1, 2007, by rule separate from the Florida Building Code, which take immediate effect and shall incorporate such requirements into the next edition of the Florida Building Code. Such rules shall require or otherwise clarify that for site-built, single-family residential structures:

(a) A roof replacement must incorporate the techniques specified in subparagraphs (2)(b)2. and 4.

(b) For a building that is located in the wind-borne debris region as defined in s. 1609.2 of the International Building Code (2006) and that has an insured value of \$300,000 or more or, if the building is uninsured or for which documentation of insured value is not presented, has a just valuation for the structure for purposes of ad valorem taxation of \$300,000 or more, a roof replacement must incorporate the techniques specified in subparagraph (2)(b)3.

(c) Any activity requiring a building permit that is applied for on or after July 1, 2008, and for which the estimated cost is \$50,000 or more, must include provision of opening protections as required within the Florida Building Code for new construction for a building that is located in the wind-borne debris region as defined in s. 1609.2 of the International Building Code (2006) and that has an insured value of \$750,000 or more, or, if the building is uninsured or for which documentation of insured value is not presented, has a just valuation for the structure for purposes of ad valorem taxation of \$750,000 or more.

(4) Notwithstanding the provisions of this section, exposed mechanical equipment or appliances fastened to a roof or installed on the ground in compliance with the code using rated stands, platforms, curbs, slabs, or other means are deemed to comply with the wind resistance requirements of the 2007 Florida Building Code, as amended. Further support or enclosure of such mechanical equipment or appliances is not required by a state or local official having authority to enforce the Florida Building Code. This subsection expires on the effective date of the 2013 Florida Building Code.

History.—s. 5, ch. 2007-126; s. 17, ch. 2008-191; s. 40, ch. 2010-176; s. 16, ch. 2012-13.

553.85 Liquefied petroleum gases.—The provisions of the Florida Building Code for the design, construction, location, installation, services, and operation of equipment for storing, handling, transporting, and utilization of liquefied petroleum gases shall not be in conflict with chapter 527.

History.—s. 16, ch. 74-167; s. 91, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

553.86 Public restrooms; ratio of facilities for men and women; application; incorporation into the Florida Building Code.—The Florida Building Commission shall incorporate into the Florida Building Code, to be adopted by rule pursuant to s. 553.73(1), a ratio of public restroom facilities for men and

women which must be provided in all buildings that are newly constructed after September 30, 1992, and that have restrooms open to the public. This section does not apply to establishments licensed under chapter 509 if the establishment does not provide meeting or banquet rooms which accommodate more than 150 persons and the establishment has at least the same number of water closets for women as the combined total of water closets and urinals for men.

History.—s. 1, ch. 92-68; s. 1, ch. 93-45; s. 68, ch. 98-287; ss. 52, 108, ch. 2000-141; s. 58, ch. 2000-154; ss. 34, 39, ch. 2001-186; ss. 3, 8, ch. 2001-372.

Note.—Former s. 553.141.

553.88 Adoption of electrical and alarm standards.—For the purpose of establishing minimum electrical and alarm standards in this state, the current edition of the following standards are adopted:

- (1) “National Electrical Code,” NFPA No. 70.
- (2) Underwriters’ Laboratories, Inc., “Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps,” UL 57 and UL 153.
- (3) Underwriters’ Laboratories, Inc., “Standard for Electric Signs,” UL 48.
- (4) The provisions of the following which prescribe minimum electrical and alarm standards:
 - (a) NFPA No. 56A, “Inhalation Anesthetics.”
 - (b) NFPA No. 56B, “Respiratory Therapy.”
 - (c) NFPA No. 56C, “Laboratories in Health-related Institutions.”
 - (d) NFPA No. 56D, “Hyperbaric Facilities.”
 - (e) NFPA No. 56F, “Nonflammable Medical Gas Systems.”
 - (f) NFPA No. 72, “National Fire Alarm Code.”
 - (g) NFPA No. 76A, “Essential Electrical Systems for Health Care Facilities.”
- (5) The rules and regulations of the Department of Health, entitled “Nursing Homes and Related Facilities Licensure.”
- (6) The minimum standards for grounding of portable electric equipment, chapter 8C-27 as recommended by the Division of Workers’ Compensation, Department of Financial Services.

The Florida Building Commission shall update and maintain such electrical standards consistent with the procedures established in s. 553.73 and may recommend the National Electrical Installation Standards.

History.—s. 5, ch. 70-332; s. 1, ch. 72-292; s. 1, ch. 73-283; s. 1, ch. 75-55; s. 452, ch. 77-147; s. 1, ch. 77-174; s. 1, ch. 78-62; s. 46, ch. 79-7; s. 79, ch. 79-40; s. 1, ch. 82-15; s. 1, ch. 84-66; s. 1, ch. 84-273; s. 20, ch. 88-149; s. 1, ch. 89-74; s. 32, ch. 90-228; s. 9, ch. 91-119; ss. 35, 68, ch. 98-287; s. 49, ch. 98-419; ss. 92, 108, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 667, ch. 2003-261.

Note.—Former s. 553.19.

553.883 Smoke alarms in one-family and two-family dwellings and townhomes.—One-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Florida Building Code, may use smoke alarms powered by 10-year nonremovable, nonreplaceable batteries in lieu of retrofitting such dwelling with smoke alarms powered by the dwelling’s electrical system. Effective January 1, 2015, a battery-powered smoke alarm that is newly installed or replaces an existing battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least 10 years. The battery requirements of this section do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system.

History.—s. 25, ch. 2014-154.

553.885 Carbon monoxide alarm required.—

(1) Every separate building or addition to an existing building, other than a hospital, an inpatient hospice facility, or a nursing home facility licensed by the Agency for Health Care Administration, constructed on or after July 1, 2008, and having a fossil-fuel-burning heater or appliance, a fireplace, an attached garage, or other feature, fixture, or element that emits carbon monoxide as a byproduct of combustion shall have an approved operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes in the new building or addition, or at such other locations as required by the Florida Building Code. The requirements of this subsection may be satisfied with the installation of a hard-wired or battery-powered carbon monoxide alarm or a hard-wired or battery-powered combination carbon monoxide and smoke alarm. For a new hospital, an inpatient hospice facility, a nursing home facility licensed by the Agency for Health Care Administration, or a new state correctional institution, an approved operational carbon monoxide detector shall be installed inside or directly outside of each room or area within the hospital or facility where a fossil-fuel-burning heater, engine, or appliance is located. This detector shall be connected to the fire alarm system of the hospital or facility as a supervisory signal. This subsection does not apply to existing buildings that are undergoing alterations or repairs unless the alteration is an addition as defined in subsection (3).

(2) The Florida Building Commission shall adopt rules to administer this section and shall incorporate such requirements into its next revision of the Florida Building Code.

(3) As used in this section, the term:

(a) “Carbon monoxide alarm” means a device that is meant for the purpose of detecting carbon monoxide, that produces a distinct audible alarm, and that meets the requirements of and is approved by the Florida Building Commission.

(b) “Fossil fuel” means coal, kerosene, oil, fuel gases, or other petroleum or hydrocarbon product that emits carbon monoxide as a by-product of combustion.

(c) “Addition” means an extension or increase in floor area, number of stories, or height of a building or structure.

*History.—*s. 2, ch. 2007-181; s. 18, ch. 2008-191; s. 65, ch. 2009-21; s. 41, ch. 2010-176.

553.886 Energy efficiency technologies.—The provisions of the Florida Building Code must facilitate and promote the use of cost-effective energy conservation, energy-demand management, and renewable energy technologies in buildings.

*History.—*s. 19, ch. 2008-191.

553.895 Firesafety.—

(1) Any transient public lodging establishment, as defined in chapter 509 and used primarily for transient occupancy as defined in s. 83.43(10), or any timeshare unit of a timeshare plan as defined in chapters 718 and 721, which is of three stories or more and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the guest area to exterior means of egress and on buildings over 75 feet in height that have direct access from the guest area to exterior means of egress and for which the construction contract has been let after September 30, 1983, shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 (1985), “Standards for the Installation of Sprinkler Systems.” Each guest room and each timeshare unit shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of NFPA 74 (1984) “Standards for the Installation, Maintenance and Use of Household Fire Warning

Equipment,” powered from the building electrical service, notwithstanding the number of stories in the structure, if the contract for construction is let after September 30, 1983. Single-station smoke detectors shall not be required when guest rooms or timeshare units contain smoke detectors connected to a central alarm system which also alarms locally.

(2) Except for single-family and two-family dwellings, any building which is of three stories or more and for which the construction contract is let after January 1, 1994, regardless of occupancy classification and including any building which is subject to s. 509.215, shall be equipped with an automatic sprinkler system installed in compliance with the provisions of chapter 633 and the rules and codes adopted pursuant thereto. A stand-alone parking garage constructed with noncombustible materials, the design of which is such that all levels of the garage are uniformly open to the atmosphere on all sides with percentages of openings as prescribed in the applicable building code, and which parking garage is separated from other structures by at least 20 feet, is exempt from the requirements of this subsection. Telecommunications spaces located within telecommunications buildings, if the spaces are equipped to meet an equivalent fire prevention standard approved by both the Florida Building Commission and the State Fire Marshal, are exempt from the requirements of this subsection. In a building less than 75 feet in height which is protected throughout with an approved and maintained fire sprinkler system, a manual wet standpipe, as defined in the National Fire Protection Association Standard 14, Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems, shall be allowed.

History.—s. 2, ch. 83-194; s. 103, ch. 85-81; s. 8, ch. 86-174; s. 1, ch. 93-276; s. 3, ch. 95-379; s. 31, ch. 2001-186.

553.896 Mitigation grant program guideline.—

(1) The Legislature finds that facilities owned by the government and those designated to protect the public should be the first to adopt the best practices, active risk management, and improved security planning. These facilities should be protected to a higher level.

(2) Beginning with grant funds approved after July 1, 2005, the construction of new or retrofitted window or door coverings that is funded by a hazard-mitigation grant program or shelter-retrofit program must conform to design drawings that are signed, sealed, and inspected by a structural engineer who is registered in this state. Before the Division of Emergency Management forwards payment to a recipient of the grant, an inspection report and attestation or a copy of the signed and sealed plans shall be provided to the department.

(3) If the construction is funded by a hazard mitigation grant or shelter retrofit program, the Division of Emergency Management shall advise the county, municipality, or other entity applying for the grant that the cost or price of the project is not the sole criterion for selecting a vendor.

(4) A project funded under mitigation or retrofit grants is subject to inspection by the local building officials in the county in which the project is performed.

History.—s. 20, ch. 2005-147; s. 417, ch. 2011-142.

553.898 Preemption; certain special acts concerning general purpose local government repealed.—Chapter 2000-141, Laws of Florida, does not imply any repeal or sunset of existing general or special laws governing any special district that are not specifically identified by chapter 2000-141. However, chapter 2000-141 is intended as a comprehensive revision of the regulation by counties and municipalities of the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings. Therefore, any sections or provisions of any special act governing those activities by any general purpose local government are hereby repealed.

History.—s. 136, ch. 2000-141.