

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 2124

INTRODUCER: Senator Ring

SUBJECT: Electronic Filing in the Division of Administrative Hearings

DATE: March 4, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	Wilson	GO	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	CF	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires parties represented by attorneys in hearings held under the Division of Administrative Hearings' (DOAH) Adjudication of Disputes Program and in the Worker's Compensation Appeals Program to file all documents electronically. Parties not represented by an attorney are encouraged, but not required, to file documents electronically.

This bill substantially amends the following sections of the Florida Statutes: 440.192, 440.25, 440.29, 440.45, 120.54, 57.111, 120.56, 120.569, 120.57, 552.40, 553.73, and 961.03. This bill creates section 120.585 of the Florida Statutes.

II. Present Situation:

Electronic Filing in Florida

In 2009, the Florida Legislature created s. 28.22205, F.S., requiring each clerk of court to implement an electronic filing process.¹ The federal court system has adopted a Public Access to Court Electronic Records ("PACER") electronic filing system in almost all of its courts. The Division of Administrative Hearings (DOAH) currently permits, but does not require, electronic filing; DOAH also utilizes electronic service of documents in some cases.

¹ Senate Bill 1718; s. 16 Ch. 2009-61, L.O.F.

Electronic Filing and Service at DOAH

DOAH is made up of the Office of Administrative Law Judges (ALJs) and the Office of the Judges of Compensation Claims (JCCs). ALJs hear administrative disputes under s. 120.56 and s. 120.57, F.S. JCCs mediate workers compensation disputes pursuant to s. 440.192, F.S.

Both the OJCC and the ALJs currently allow electronic filing and traditional paper and fax filing. The number of electronically filed documents has grown steadily since the implementation of electronic filing. The ALJs received 18,230 electronically filed documents, and the JCCs received 430,548 electronically filed documents in Fiscal Year 2008-09, the largest number to date.² All documents received by DOAH are stored in an electronic database; any paper documents received by DOAH are scanned by employees and uploaded to the database.³

Internal policy at the Adjudication of Disputes Program dictates that only parties who have specifically signed up for the electronic filing program will be served documents electronically.⁴ As a result, a relatively low number of documents (approximately 26 percent) are e-served by the ALJs. Conversely, approximately 99 percent of documents are e-served by the OJCC because this program electronically serves to any party who has provided an e-mail address to the judge's staff.⁵

Under s. 120.53(1)(a)2.b, F.S., Agencies must maintain and make available for the public, an index of all final orders and agency rules. As an alternative, the statute allows agencies to electronically transmit those documents to DOAH for indexing on its electronic database. The Departments of Agriculture and Consumer Services, and Environmental Protection currently use DOAH to comply with the mandates of s. 120.53(1)(a)2.b, F.S.

Adoption of Rules of Practice and Procedure

In 1974, the Florida Legislature created s. 440.29(3), F.S., which explicitly granted governance of the practice and procedure of the OJCC's predecessor to the Supreme Court of Florida. In 2002, the Florida Legislature amended s. 440.45(1)(a), F.S., to grant the OJCC power to determine its own rules of practice and procedure. The Supreme Court subsequently relinquished its jurisdiction over the OJCC in 2004.⁶ While the Supreme Court of Florida has not been involved in the rules of the OJCC since that time, s. 440.29(3), F.S., has not been amended to reflect this change.⁷

III. Effect of Proposed Changes:

Agencies will be required to utilize electronic filing at DOAH, as will any other party represented by an attorney. Parties who are not represented by an attorney will be permitted to

² Division of Administrative Hearings, *Thirty-Sixth Annual Report*, p. 7 (Feb 1, 2010).

³ E-mail from DOAH to Committee on Feb. 12, 2010; Information on file with committee.

⁴ E-mail from DOAH to Committee on Feb. 11, 2010; Information on file with committee.

⁵ E-mail from DOAH to Committee on Feb. 10, 2010; Information on file with committee.

⁶ See Amendments to the Florida Rules of Workers' Compensation Procedure, 891 So.2d 474 (Fla. 2004) (citing Art. 5 s. 1, Fla. Const.).

⁷ Amendments to the Florida Rules of Workers' Compensation Procedure, 891 So.2d 474 (Fla. 2004).

file by certified mail or electronic means approved by the Deputy Judge of the OJCC. All parties in s. 120.56 and s. 552.40, F.S., hearings, whether represented by an attorney or not, will be required to file electronically. In cases in which electronic filing is used, DOAH (both the OJCC and the Adjudication of Disputes Program) will be required to serve documents electronically.

The bill provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Costs associated with traditional filing such as courier or certified postal service will be unnecessary for attorneys who adopt electronic filing. Any offices without access to a computer or the internet will need to obtain such necessities to be able to file electronically. There is no charge to register for DOAH's electronic filing service.

C. Government Sector Impact:

DOAH estimates that it will save at least \$9,500 per year on electronic service of documents alone.⁸ DOAH also notes that electronic receipt and service of documents will save incalculable processing and filing time (including the scanning of paper documents into electronic format for storage purposes.)⁹

Should the Legislature require DOAH to maintain and index all Agencies' final orders and rules, the Division notes that it may need to increase its data storage capacity.¹⁰

⁸ Governmental Oversight and Accountability 2010 Bill Analysis. SB7074 (on file with committee.) These savings are largely accounted for in an increased use of e-service by the ALJs, as the OJCC already e-serves approximately 99% of its documents.

⁹ Office of the Judges of Compensation Claims, *2007 Annual Report of the Office of Judges of Compensation Claims*, p 8 (2007).

¹⁰ Division of Administrative Hearings, *Thirty-Sixth Annual Report*, p. 17 (Feb 1, 2010).

Fiscal impact to state agencies should be minimal. State agencies, which participate in 94% of cases in the Adjudication of Disputes program, already have the access to computers and the internet required to submit documents electronically.¹¹ This practice will reduce Agencies' administrative costs related to traditional filing such as paper, postage, and delivery.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹¹ Division of Administrative Hearings, *Thirty-Sixth Annual Report*, p. 3 (Feb 1, 2010).