

Chapter 90-302

Committee Substitute for Committee Substitute for House Bill No. 1325

AN ACT relating to postsecondary education; amending s. 240.115, F.S.; providing for the admission of a community college associate in arts graduate into certain programs at a state university pursuant to a required provision of the articulation agreement; providing for the admission of other specified community college students; requiring each state university to include an explanation of that provision of the articulation agreement in its orientation programs and student handbooks; amending ss. 240.209, 240.2097, F.S.; directing the Board of Regents to quickly disburse financial aid generated from student fees; restricting the carryforward of unexpended fees; providing duties of the Board of Regents relating to limited access programs; requiring reports; providing for the development and distribution of a systemwide counseling manual; amending s. 240.107, F.S.; increasing the number of semester hours or equivalent necessary to take the college-level communication and computation skills examination; authorizing use of student financial assistance for approved programs of study in another state or foreign country; precluding use of financial aid for certain institutions; amending s. 240.529, F.S., relating to approved teacher education programs; authorizing universities and community colleges to establish preteacher education and teacher education pilot programs; providing requirements; requiring an annual report; requiring the Commissioner of Education to make certain recommendations; authorizing community colleges to employ police officers to maintain order on campus; specifying the powers and duties of such police officers; requiring such officers to deliver persons they arrest to the local sheriff or law enforcement agency; providing that such officers must meet certain minimum training standards; requiring community colleges to maintain a surety bond on each officer it employs; requiring community colleges in cooperation with the Department of Law Enforcement to adopt rules for appointing, employing, and removing such officers and to write a policy manual specifying certain procedures for community college police; requiring each community college to prepare certain reports of statistics of crimes committed on its campus; requiring the State Board of Community Colleges to compile such reports into a single report for submission to the Commissioner of Education; amending s. 240.319, F.S.; deleting limitations on the policies of district boards of trustees relating to law enforcement activities; amending s. 240.61, F.S.; providing for the State Board of Education to select proposals for the receipt of college reach-out funds; providing criteria for selecting such proposals; authorizing independent colleges and universities to submit proposals to implement college reach-out programs and participate in the program; revising the membership of the advisory committee appointed to review proposals; amending s. 240.2601, F.S.; providing for the use of

moneys from the Capital Facilities Matching Trust Fund and private donations to construct common areas connecting facilities the construction of which is paid from the fund and from private donations; requiring the return of interest income accruing to private donations to the university foundation; requiring universities to return private donations plus interest earned thereon to donors, if the construction project is canceled; amending s. 240.295, F.S.; providing for the payment of the entire construction costs of a facility at a state university by a private donor; amending s. 240.2605, F.S.; repealing a provision that limits contributions to the New College Foundation Trust Fund account for new donors; amending s. 228.086, F.S.; providing that museums of science may establish regional centers of excellence in mathematics, science, computers, and technology; revising provisions relating to the reporting and coordinating regions of the Department of Education in which centers shall be located; creating s. 240.4093, F.S.; establishing the Vocational Student Assistance Grant Fund; providing eligibility for grants; providing amount of grants; requiring institutions which receive grant moneys to submit reports to the Department of Education; creating a Vocational Student Assistance Grant Trust Fund; providing for implementation; amending s. 240.404, F.S., relating to general requirements for student eligibility for state financial aid; conforming provisions; amending s. 240.4097, F.S.; revising eligibility requirements for Florida postsecondary student assistance grants; amending s. 295.019, F.S.; revising eligibility requirements for financial aid for certain children of servicemen killed in the Persian Gulf incident; amending s. 232.2465, F.S.; authorizing the award of Florida Academic Scholars' certificates to certain students under specified circumstances; requiring such students to satisfy the course requirement by a specified time; amending s. 240.118, F.S.; requiring the State Board of Education to adopt rules which require state universities, public community colleges, and public postsecondary vocational schools to report to the Commissioner of Education with respect to the performance of certain students; requiring the State Board of Education to report to the Legislature with respect to the number of high school graduates referred for remediation through preparatory programs; providing duties of the Commissioner of Education; amending s. 229.575, F.S.; requiring the Commissioner of Education's annual report to contain certain information about high school graduates who enroll in public postsecondary educational institutions and about the high school completion rate in the state; requiring each school district's annual report to include certain information about its graduates' performance and about transfers to adult education programs and preparatory programs; requiring each school's annual report to include information about its graduates' performance and about transfers to adult education programs and preparatory programs; creating an Elderly Education Program; requiring the Department of Education to administer the program of noncredit activities; providing eligibility of grant recipients and participants; requiring the State Board of

Education to adopt rules to implement the program; creating s. 229.559, F.S.; requiring each public school district to collect students' social security numbers and begin using social security numbers as standard identification numbers by the 1991-1992 school year; providing exceptions; requiring a progress report; amending s. 228.093, F.S.; providing that a student's social security number included in school records is protected from public scrutiny; amending s. 240.35, F.S.; directing community colleges to quickly disburse financial aid generated from student fees; restricting the carry-forward of unexpended fees; providing requirements for the distribution of specified financial aid funds; amending section 2 of chapter 78-94, Laws of Florida, as amended; revising the membership of the Board of Trustees of the Manatee County Community College District; directing the Auditor General to conduct program and fiscal audits of specified state financial aid programs and make recommendations; creating the Florida Student Financial Aid Task Force; providing task force membership; providing for staff support from the Department of Education; specifying the issues to be addressed by the task force; authorizing per diem and travel expenses for members; requiring the task force to submit reports; amending s. 240.327, F.S.; requiring legislative approval for the construction of community college facilities under certain conditions; amending s. 240.331, F.S.; authorizing community college direct-support organizations to construct dormitories; prohibiting the use of Community College Program Fund and Public Education Capital Outlay funds for the construction, maintenance, and operation of such dormitories; amending s. 240.4068, F.S.; providing requirements for additional scholarship loans; providing for selection of recipients; amending s. 240.137, F.S.; creating a Florida-Soviet Union linkage institute; creating a Florida-West Africa linkage institute; amending s. 120.53, F.S.; specifying when a protest of specifications in an invitation to bid or request for proposals must be filed; reenacting ss. 24.109(2), 120.54(10), 120.68(8), 287.042(2), 325.208(1), F.S., relating to the Department of the Lottery, model rules of procedure, judicial review, procurement of property and services, and motor vehicle inspections, to incorporate the amendment to s. 120.53, F.S., in references thereto; providing an effective date.

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

Section 35. Subsection (5) of section 120.53, Florida Statutes, is amended to read:

120.53. Adoption of rules of procedure and public inspection

(5) An agency which enters into a contract pursuant to the provisions of ss. 282.301-282.313, chapter 255, chapter 287, or chapters 334-349 shall adopt

rules specifying procedures for the resolution of protests arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any decision of the Division of Purchasing of the Department of General Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Division of Purchasing, notice of a decision or intended decision shall be given by posting such notice in the office of the Division of Purchasing.

3. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested. The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is affected adversely 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 bid tabulation or after receipt of the notice of the agency decision or intended decision and shall file a formal written protest within 10 days after the date he filed the notice of protest. With respect to a protest of the specifications contained in an invitation to bid or in a request for proposals, the notice of protest shall be filed in writing within 72 hours after the receipt of notice of the project plans and specifications or intended project plans and specifications in an invitation to bid or request for proposals, and 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.

(c) Upon receipt of the formal written protest which has been timely filed the agency shall stop the bid solicitation process or the 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 bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d) The agency, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to s. 120.57(2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of 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 for proceedings under s. 120.57(1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the division director shall expedite the hearing and assign a hearing officer who shall conduct a hearing within 15 days of the receipt of the formal written protest by the division and render a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the hearing officer, whichever is later. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) The Administration Commission shall promulgate model rules of procedure pursuant to the provisions of s. 120.54(10) for the filing of notice of protests and formal written protests.

Section 36. For the purpose of incorporating the amendment to section 120.53, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

24.109. Administrative procedure

(2) The provisions of s. 120.53(5) apply to the department's contracting process, except that:

(a) A formal written protest of any decision, intended decision, or other action subject to protest shall be filed within 72 hours after receipt of notice of the decision, intended decision, or other action.

(b) As an alternative to any provision in s. 120.53(5)(c), the department may proceed with the bid solicitation or contract award process when the secretary of the department sets forth in writing particular facts and

circumstances which require the continuance of the bid solicitation process or the contract award process in order to avoid a substantial loss of funding to the state or to avoid substantial disruption of the timetable for any scheduled lottery game.

120.54. Rulemaking; adoption procedures

(10) The Administration Commission shall promulgate one or more sets of model rules of procedure which shall be reviewed by the committee and filed with the Department of State. On filing with the department, the appropriate model rules shall be the rules of procedure for each agency subject to this act to the extent that each agency does not adopt a specific rule of procedure covering the subject matter contained in the model rules applicable to that agency. An agency may seek modification of the model rules of procedure to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or 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 modification shall be published in the Florida Administrative Weekly. Agency rules adopted to comply with ss. 120.53 and 120.565 must be in substantial compliance with the model rules.

120.68. Judicial review

(8) The court shall remand the case for further agency action if it finds that either 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. Failure of any agency to comply with s. 120.53 shall be presumed to be a material error in procedure.

287.042. Powers, duties, and functions

The division shall have the following powers, duties, and functions:

(2)(a) To plan and coordinate purchases in volume and to negotiate and execute purchasing agreements and contracts under which the division shall require state agencies to purchase commodities and under which a county, municipality, or other local public agency may purchase commodities. Purchases by any county, municipality, or other local public agency under the provisions in the state purchasing contracts shall be exempt from the competitive bid requirements otherwise applying to their purchases.

(b) As an alternative to any provision in s. 120.53(5)(c), the division may proceed with the bid solicitation or contract award process of a term contract bid when the director of the division sets forth in writing particular facts and circumstances which demonstrate that the delay incident to staying the bid

process or contract award process would be detrimental to the interests of the state. After the award of a contract resulting from a bid in which a timely protest was received and in which the state did not prevail, the contract may be canceled and reawarded to the prevailing party.

(c) Any person who files an action protesting a decision or intended decision pertaining to contracts administered by the division or a state agency pursuant to s. 120.53(5)(b) shall post with the division or the state agency at the time of filing the formal written protest a bond payable to the division or state agency in an amount equal to 1 percent of the division's or the state agency's estimate of the total volume of the contract or \$5,000, whichever is less, which bond shall be conditioned upon the payment of all costs which may be adjudged against him in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of decisions or intended decisions of the division pertaining to agencies' requests for approval of exceptional purchases, the bond shall be in an amount equal to 1 percent of the requesting agency's estimate of the contract amount for the exceptional purchase requested or \$5,000, whichever is less. If, after completion of the administrative hearing process and any appellate court proceedings, the agency prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him. If the person protesting the award prevails, he shall recover from the agency all costs and charges which shall be included in the final order of judgment, excluding attorney's fees.

325.208. Protests of contract awards and requests for proposals

(1) The provisions of s. 120.53(5) shall control all protests of requests for proposals and contract awards, except that any person who wishes to file an action protesting the specifications or requirements of the request for proposals may do so within 10 days after publication of the request for proposals and may not file any other protest with respect to requests for proposals, and any subsequent protest action shall be filed in response to the contract award only and in accordance with the provisions of chapter 120.

FL ST §§ 24.109, 120.54, 120.68, 287.042, 325.208 Note

Section 37. This act shall take effect upon becoming a law, except that section 36 of this act shall take effect October 1, 1990, and shall apply to invitations to bid or requests for proposals issued on or after that date.

Approved by the Governor July 3, 1990.

Filed in Office Secretary of State July 3, 1990.

[FN1] Tentative assignment as 240.4098.

[FN2] Tentative assignment as 240.38.

[FN3] Tentative assignment as 240.3815.

[FN4] Tentative assignment as 240.40985.

[FN5] Tentative assignment as 240.418.