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A SPECIAL ISSUE:

Florida's 1996 Administrative Procedure Act

What do a property owner whose application for a state permit to build a dock has been denied, a real estate salesman who has received an administrative complaint from the Florida Real Estate Commission, a nursing home administrator whose application for licensure has been denied, a doctor who has been accused by the Board of Medicine of committing malpractice, a business which has received an assessment for unpaid state sales tax, and a vendor who submitted the lowest bid to the state agency but was not awarded the contract have in common?

Florida's modern Administrative Procedure Act (APA) dates back to 1975, when the Division of Administrative Hearings (DOAH) was created as a central panel to hear cases involving disputed issues of material fact for state agencies and specific procedures for agency rulemaking were established. That system has remained relatively unchanged and not subject to serious question until the last several years. By then, individual citizens and businesses had become concerned that the balance of fairness of the administrative law system had tilted in favor of the agencies as a result of judicial decisions and agency final orders which had not been appealed. Pressure on the legislature to restore balance to the system began to increase.

Legislative leaders reacted to the perception of their constituents by establishing select committees and task forces to receive comments and propose changes. Despite the hard work of those committees and those from the public and private sectors who appeared before those committees, the 1994 Legislature adjourned after implementing only minor changes. By the time the 1995 Legislature convened, many members were adamant that substantial APA reform would occur. And it did. A major revision to the APA passed the legislature as CS/CS/SB 536.

The Governor exercised his veto power with a detailed veto message which called for simplification of the administrative process, greater flexibility for executive branch decisionmaking, and greater accountability for agency action. Some members of the legislature responded that the veto would be overridden in the 1996 session.

The Governor did not stop with a stroke of his veto pen. He assembled a technical working group (working group) charged with the task of reorganizing and simplifying the APA.¹ The working group on Ch. 120 was composed of attorneys from the Governor's legal office, agency attorneys, private practitioners, and the chair of the Administrative Law Section of The Florida Bar who also served as a DOAH hearing officer. The working group rewrote the APA by deleting redundancies and gender-specific language, by placing like provisions in the same subsection, by moving exceptions to the end rather than leaving them scattered throughout the act, and by adding more headings to make locating provisions easier. The working group attempted to avoid making substantive changes but did prepare a list of recommended changes to be

by Judge Linda M. Rigot and Ralph A. DeMeo, *Guest Editors*

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considered by the substantive group.

As the working group neared completion of its task, the Governor created the Administrative Procedure Act Review Commission (commission) to consider and recommend substantive changes.² The commission consisted of members of both the Senate and the House of Representatives and a former speaker of the House, the Governor's chief of staff, who is an attorney, a nonattorney representative of the business community, private practitioners specializing in administrative law, a lobbyist for environmental interests, and a different DOAH hearing officer. The commission began work using the simplified APA drafted by the working group as its base document.

Early on, the commission contacted the Administrative Law Section of The Florida Bar and requested the section's executive council to review the simplified APA, review CS/CS/SB 536 passed by the 1995 Legislature, and make recommendations to the commission either supporting or opposing the simplified draft and each specific change contained in the 1995 bill. The commission also asked the executive council to make recommendations as to specific ideas the commission had for additional changes to Florida's APA.

The executive council met a number of times and extensively debated the questions asked by the commission. Although the membership of both the section itself and its executive council is approximately half agency lawyers and half private practitioners, the executive council agreed on many ideas and specific proposals and reported those agreements to the commission.

The commission issued its final report to the Governor in February 1996 and proposed legislation was drafted. The 1996 Legislature received draft legislation for a revised APA which was composed of the simplified version, specific recommendations of the commission, and the noncontroversial provisions of CS/CS/SB 536. The bill proceeded smoothly through the legislature, bouncing back and forth between the House and the Senate with last-minute polishing taking place. CS/SBs 2290/2288 passed both chambers of the legislature during the early days of the session, was signed by the Governor on May 1, and became the law on October 1, 1996.

The 1996 APA altered the then-existing balance between Florida's citizens and state regulatory agencies, in some ways dramatically. Case law in a number of ar-

reas was specifically overruled. For example, the standard for successfully protesting an agency's announcement of an intended bid award is lower than the standard developed by case law.

The Governor's and the legislature's common goals of flexibility and accountability are woven throughout the 1996 APA. Agencies are made more accountable for their decisions by provisions for the award of attorneys' fees and costs to nongovernmental parties in additional circumstances. The kinds of rules agencies are permitted to promulgate are more limited, and the opportunities for substantially affected persons to challenge rules are more numerous. The Joint Administrative Procedures Committee (JAPC) can restrict agencies from promulgating rules unless more specific statutory authority exists than was previously required, and the legislature may exercise more oversight of agency rulemaking.

For the first time, citizens can request a variance from, or waiver of, any state agency rule, a right unique to Florida. The APA now contains a specific mediation process for the resolution of disputes prior to any request for an administrative hearing. Finally, the circumstances under which agencies can modify findings of fact or conclusions of law contained in recommended orders entered by DOAH administrative law judges (formerly, hearing officers) have been further limited, and attorneys' fees are available if agencies stray beyond those limitations.

The passage of the 1996 APA occurred in an unusual environment of cooperation between the legislative and executive branches of state government. The Governor's efforts to avoid a veto override by responding to the concerns of the legislature and of Florida's regulated community produced a substantial revision to the manner in which state agencies conduct business. The new APA allows state agencies an unprecedented degree of flexibility while making those agencies accountable for arbitrary actions.

Following the passage of the 1996 APA, the Governor's office again enlisted the aid of the Administrative Law Section of The Florida Bar, requesting the section to draft Uniform Rules of Procedure (uniform rules) for all state agencies. A drafting committee within the section wrote a comprehensive set of procedural rules.³ The draft was approved by the section's executive council. A public workshop to receive comments of all interested persons was held, with section members who participated in the draft-

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ing project available to answer questions and discuss suggestions.

The Governor and Cabinet, sitting as the Administration Commission, approved the revised draft for publication last November. The proposed uniform rules are now in the final stages of the rulemaking process, with an anticipated effective date as early as April 1, 1997, or soon thereafter.

Because Florida's administrative law processes touch the lives of all of its citizens, and because those processes have been substantially revised, this issue of *The Florida Bar Journal* is dedicated to an analysis of the 1996 APA. The articles which follow were written by persons who drafted specific provisions on behalf of the legislature or the Governor's office and/or were members of the working group which drafted the simplified APA, of the Governor's APA Review Commission, of the Administrative Law Section's Uniform Rules of Procedure drafting committee, or section officers who responded to requests for recommendations and guidance by legislative staff and the Governor's staff as specific provisions were being considered. We are also pleased to provide members of *The Florida Bar* with a special message from the Governor "on rules reduction and rational executive branch reform." The authors of this special issue are well versed in the 1996 amendments and uniform rules and with the intent behind specific provisions.

Also included in this special issue are tracking charts to assist practitioners in locating old provisions which were moved in the 1996 APA and in identifying new provisions. When the next person walks into your office with an administrative law problem, you will be ready.

Oh, yes, the answer to the question posed at the beginning of this article: They all have the right to an administrative hearing to have their disputes with state government adjudicated, and all state agencies will resolve those disputes using the same rules of procedure.

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¹ The Governor's technical work group was composed of Debby Kearney and Phyllis Slater Hampton who led the group on behalf of the Governor's legal office, and Judge Linda Rigot, Dan Stengle, Steve Pfeiffer, Cathy Lannon, David Gluckman, Dan Thompson, Carol Forthman, and Li Nelson.

² The Governor's Administrative Procedure Act Review Commission was composed of Robert M. Rhodes, who chaired the

commission, and Rep. David I. Bitner, Rep. Irlo "Bud" Bronson, Sen. Locke Burt, Sen. Rick Dantzler, former Speaker of the Florida House Jon Mills, Rep. Ken Pruitt, Rep. Dean Saunders, Judge Eleanor Hunter, Wade Hopping, Martha Edenfield, Clay Henderson, Jon Moyle, Jr., Linda Loomis Shelley, and Alan Starling.

³ The Uniform Rules of Procedure drafting committee was composed of Steve Pfeiffer, who chaired the committee, and Judge Linda Rigot, Ralph A. DeMeo, Dan Stengle, Bill Williams, Bill Hyde, Cathy Lannon, Ralf Brookes, Booter Imhof, Paul Rowell, Elizabeth McArthur, Diane Tremor, Judge Mike Ruff, Jim Rhea, Martha Edenfield, and Lynda Goodgame.



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