SUGGESTED CHANGES TO THE
ADMINISTRATIVE PROCEDURE ACT 1978

SECTION 120.54(2)(a), FLORIDA STATUTES

PROBLEM

The present law requires that Statements of Economic Impact be prepared by "...using professionally accepted methodology..." Most agencies do not have the expertise required to comply with this requirement and, whether done in-house or by an outside consultant, the preparation of the Economic Impact Statement often has a cost which exceeds the economic impact of the rule itself.

Recent judicial decisions have held that the Statement of Economic Impact is an essential part of the rulemaking process and rules have been declared invalid due to defective Economic Impact Statements.

The heart of the legislative intent in enacting the economic impact requirement seems to be met by the consideration of three items:

1. The cost to the agency of implementing the rule;
2. The cost to the people affected by the rule; and
3. The effect of the rule upon competition and employment.

Of course the agency would be expected to supply a detailed statement of the data and methods used in arriving at these conclusions.

SUGGESTED SOLUTION

The attached proposed amendment eliminates any reference to "professionally accepted methodology" and simplifies the requirements of the statement. The proposed amendment substitutes the word "estimate" for "determination" and requires the adopting agency to provide a detailed statement of the data and the method used in arriving at the required estimates.

SECTION 120.54(7), FLORIDA STATUTES

PROBLEM

Several agencies have made it a practice to cite Federal regulations as the Law Implemented without making any reference to a Florida Statute which authorizes the implementation of the Federal provision.

SUGGESTED SOLUTION

The attached amendment would require the agency to cite either a Florida Statute or a Law of Florida as the Law Implemented for each rule. The agency could still cite the Federal regulation and might be required to, but the Florida Statute authorizing the implementation of a Federal provision would also appear. This would also probably cover situations in which a subordinate agency implements a rule of a superior agency.

SECTION 120.54(11)(b), FLORIDA STATUTES

PROBLEM

In its original form, this paragraph required an agency to adopt a proposed rule 21 days following the F.A.W. notice. It soon became apparent that this establishment of a date certain for filing created a requirement frequently impossible to meet and thus the requirement was usually treated as a mere legislative suggestion.

The Act was amended in the 1976 session to provide a time span of 21 to 45 days or 10 days after the final public hearing on the rule, if one was held, whichever was later. Some agencies which hold very complex rulemaking hearings, the Public Service Commission, for example, found that this provision did not give them time to receive a transcript of the hearings or to consider other material which they had authorized to be submitted. Thus this provision was again amended to address this problem. The 1977 amendment permitted an extension of time for filing to 21 days after receipt of any material authorized to be submitted at the hearing or after receipt of the transcript, if one is made, in those cases in which there is a public hearing. By providing this time span for rules on which there is a public hearing and retaining the old 21 to 45 day span on rules on which there is no public hearing, a loophole was provided for rules on which there is a public hearing and no material is authorized to be submitted nor transcript is made.

SUGGESTED SOLUTION

A proposed amendment has been prepared which would clearly state that if a public hearing is held but no material is authorized to be submitted nor transcript prepared, the 21 to 45 day period applies.

SECTION 120.565, FLORIDA STATUTES

PROBLEM

Agencies, when requested to render declaratory statements, often phrase these statements in a manner which makes the statement fall into the definition of a rule. This results in a bypassing of the rulemaking provisions of the act and the improper promulgation of a rule under the guise of issuing a declaratory statement. The legislative intent in the declaratory statement provision appears to have been to permit the citizen to inquire of an agency as to how a particular rule or statute applies to him. If a citizen wishes to know the general interpretation of a rule or statute, his vehicle is a petition for rulemaking under Section 120.54(5).

SUGGESTION SOLUTION

The attached amendment to Section 120.565 specifies that the declaratory statement shall apply only to the person requesting the statement unless interpretation of the rule or statute is already set out in an agency rule.

SECTION 120.68(3), FLORIDA STATUTES

PROBLEM

The 1976 amendment to this subsection was intended to assure the aggrieved citizen a supersedeas when an agency is about to revoke or suspend a license. Recent court decisions have held that the citizen must first apply to the agency for a stay prior to petitioning the court for supersedeas. This interpretation makes it possible for the agency to drag out a proceeding for an indefinite period while it considers whether to grant the stay, leaving the licensee with little or no remedy. In addition, it is often the practice to include a petition for supersedeas with the notice of appeal, thus avoiding a duplication of effort. Under both the present and proposed language, the court may deny supersedeas upon a showing of a probable danger to the public health, safety or welfare.

(§120.68(3) continued)

SUGGESTED SOLUTION

The attached amendment contains language which should make it clear that a request of the agency for a stay is an option open to the licensee and not a prerequisite to a petition for supersedeas.

SECTION 120.71, FLORIDA STATUTES

PROBLEM

Section 120.71 provides that an individual serving alone or with others as an agency head shall be disqualified from serving in an agency proceeding for the reasons a judge may be recused. Section 112.3143 states that no public officer shall be prohibited from voting in his official capacity on any matter. These two provisions are obviously in direct conflict. The Chapter 112 provision requires the vote but requires that it be accompanied by a memorandum of disclosure of a conflict of interest. The Chapter 120 provision prohibits the vote.

SUGGESTED SOLUTION

The proposed amendment would place an exception in Chapter 120, from the prohibition in Chapter 112.