HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
APPROPRIATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1879 (PCB GO 91-01)

RELATING TO: Administrative Procedure Act

SPONSOR(S): Committee on Governmental Operations, Representative Figg & others

STATUTE(S) AFFECTED: s. 120.535; s. 120.57; s. 120.68; s. 163.3177

COMPANION BILL(S):

COMMITTEES OF REFERENCE:

(1) GOVERNMENTAL OPERATIONS	YEA 15	NAY 2
(2) APPROPRIATIONS	YEA 34	NAY 2
(3)		
(4)		
(5)		

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I. SUMMARY:

This bill addresses issues related to the implementation of delegated legislative authority by administrative agencies under the Administrative Procedure Act (APA). At present under the APA, agencies have broad discretion to determine whether delegated authority will be implemented by rule making or application of statements of nonrule policy on an ad hoc basis. Judicial decisions have interpreted the APA to provide agencies with this discretion. This bill would provide by statute a standard for determining when an agency must implement delegated authority by rule making. The bill limits agency discretion by restricting the circumstances under which an agency may rely upon a statement not adopted by rule making. A procedure for challenging agency statements alleged to violate the standard for rule making and a remedy for violations of the standard for rule making are provided by the bill. The bill provides a uniform procedure for review of the substance of statements of nonrule policy in administrative hearings. Further, the bill provides the Division of Administrative Hearings with authority to develop a full-text retrieval system to provide access to administrative orders. The bill requires the Department of Community Affairs to adopt rules for use in the comprehensive planning process.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Under the Administrative Procedure Act (APA), agencies implement delegated legislative authority by rule making and issuing orders. When an agency implements delegated authority by rule making or issuing orders, the procedures required by the APA are designed to facilitate legislative oversight and provide for public notice and participation in the administrative process.

The APA defines a rule as:

> [E]ach agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, 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.

Section 120.52(16), Florida Statutes (F.S.).

Under the APA, an agency must give notice of each rule proposed for adoption, s. 120.54(1), F.S. Any person affected by a proposed rule may present evidence and argument to the agency on the issues under consideration, s. 120.54(3), F.S. An agency may hold a public hearing prior to adoption of a proposed rule, and, if requested by any person affected by the proposed rule, an agency must hold a public hearing, s. 120.54(3), F.S. Before a proposed rule is adopted, any person who would be substantially affected by the proposed rule may challenge the validity of the rule, s. 120.54(4), F.S. An agency must submit each proposed rule to the Legislature's Administrative Procedures Committee prior to adoption of the rule, s. 120.54(11), F.S. That committee reviews each proposed rule for statutory authority and compliance with the procedural requirements of the APA, s. 120.545, F.S. After a rule is adopted, any person substantially affected by the rule may challenge the validity of the rule, s. 120.56, F.S. Most agencies are required to compile adopted rules in a published volume, the Florida Administrative Code (F.A.C.), s. 120.55, F.S.

An order is a final agency decision which does not have the effect of a rule and which is not exempted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form, s. 120.52(11), F.S. Agency determinations that affect the substantial interests of a party must be made in accordance with designated procedures, s. 120.57, F.S. When factual issues are disputed a trial-type hearing is provided under s. 120.57(1), F.S. Orders result when an agency determines substantial interests and often these orders contain statements of agency policy not adopted by rule making (nonrule policy).

Initially, the APA required that all agency orders, issued or adopted after January 1, 1975, be included in a current subject matter index and available for public inspection and copying at no more than cost, s. 120.53(2), F.S. In 1979, this requirement was modified. At present, an agency may

comply with the indexing requirement by designating an official reporter to publish and index by subject matter each agency order issued after a "proceeding which affects substantial interests," s. 120.53(4), F.S.

The APA sufficiently provides for the legislative objectives of oversight and public notice and participation when an agency implements delegated legislative authority. Agency statements of general applicability are defined as rules and must be adopted by the rule making procedure. Rule making provides for legislative review and public notice and participation. Agency orders, including those that contain statements of nonrule policy, are required to be indexed and available to the public and the Legislature.

However, judicial decisions have modified the procedural requirements of the APA. The First District Court of Appeal in McDonald v. Department of Banking and Finance, 346 So. 2d 569 (Fla. 1st DCA 1977), determined that "incipient policy" was not of general applicability and could be implemented by agencies on an ad hoc basis. Subsequent decisions have interpreted general applicability restrictively. See Hill v. School Board of Leon County, 351 So. 2d 732 (Fla. 1st D.C.A.); Florida League of Cities, Inc. v. Administration Commission, 12 F.L.A.R. 1149 (March 2, 1990) (DOAH Case No. 89-6203R). The judicially created exception from rule making provided for "incipient policy" has been viewed expansively. See Southern Bell Telephone and Telegraph Company v. Public Serv. Comm'n, 443 So 2d 92 (Fla. 1983); Florida Cities Water Co. v. Public Serv. Comm'n, 384 So. 2d 1280 (Fla. 1980); Anheuser-Busch, Inc. v. Department of Business Regulation, 393 So. 2d 1177 (Fla. 1st D.C.A.); Florida Power Corporation v. State Siting Board, 513 So. 2d 1341 (Fla. 1st D.C.A. 1987). These decisions allow agencies to exercise broad discretion when selecting between rule making and statements of nonrule policy as a means for the implementation of delegated authority. See generally, Burris, The Failure of the Florida Judicial Review Process to Provide Effective Incentives for the Rule Making Process under the Administrative Procedure Act, 18 Fla. St. U. L. Rev. ---(1991).

A meaningful system for access to agency orders is necessary because these orders may provide the only means for identification of statements of an agency's nonrule policy. However, while some agencies comply with the spirit and requirements of the law with respect to the indexing and availability of orders, the practices and procedures of a significant number of agencies fail to carry out the objectives or requirements of the APA.

At present, many agencies neither subject policies of general applicability to the rule making procedure, nor index and make available orders that contain statements of nonrule policy in the manner required by law. This restricts legislative oversight and limits public notice and participation in the administrative process.

Chapter 9J-5, F.A.C., contains rules adopted by the Department of Community Affairs for use in the review of local government comprehensive plans. Section 163.3177(10)(k), F.S., prohibits challenges to the validity of chapter 9J-5 under s. 120.56, F.S. Amendments to 9J-5 subsequent to July 1, 1987 are subject to the full chapter 120, F.S., process.

B. EFFECT OF PROPOSED CHANGES:

This bill is intended to limit the discretion currently exercised by administrative agencies in determining whether delegated legislative authority will be implemented by rule making or application of statements of nonrule policy on an ad hoc basis. The bill provides a standard for determining when an agency statement must be adopted by rule making.

The bill creates s. 120.535, F.S. Subsection (1) of s. 120.535 requires that each agency statement defined as a rule under s. 120.52(16), F.S., be adopted by the rule making procedure provided by s. 120.54, F.S., as soon as feasible and practicable. The term "rule" should be construed broadly. The word "statement" used in the definition of "rule" is intended to encompass any form of communication by an agency. The words "general applicability" used in the definition of "rule" are intended to be given their plain meaning. The restrictive interpretation given "general applicability" by the case decisions should be disregarded. See Hill v. School Board of Leon County, 351 So. 2d 732 (Fla. 1st, D.C.A.); Florida League of Cities, Inc. v. Administration Commission, 12 F.L.A.R. 1149 (March 2, 1990) (DOAH Case No. 89- 6203R). A broad interpretation of the term "rule" gives effect to the Legislature's intent to maximize the applicability of the rule making standard to the implementation of delegated authority by administrative agencies.

The only limitation on the broad rule making requirement established by s. 120.535 is consideration of the feasibility and practicability of rule making. Feasibility concerns the time at which an agency statement must be addressed by rule making. Practicability concerns the amount of detail and precision with which an agency statement must be addressed by rule making at a given point in time. The Legislature intends for agencies to adopt rules as soon as feasible and with as much detail and precision as is practicable at a given point in time. An agency's ability to provide further elaboration of its policy will usually increase over time. Because rule making is a dynamic and not a static process, agencies must periodically consider whether new rules need to be adopted or further detail and precision added to existing rules. The bill provides an exclusive set of factors for consideration in determining whether rule making is feasible and practicable. The Legislature intends for these factors to be construed strictly against an agency that has not adopted a statement by rule making.

Rule making is presumed feasible under the bill. An agency may overcome this presumption if it proves that at least one of the factors provided in s. 120.535(1)(a) is applicable. If an agency demonstrates that a factor is applicable, rule making is not required at that point in time. The factors provided include the time an agency has had to acquire the knowledge and experience reasonably necessary to address a statement by rule making. This factor is applicable if an agency proves it has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rule making. An important consideration regarding the time an agency needs to address a statement by rule making is prior reliance by the agency on a statement or a substantially similar statement. This factor is not applicable if an agency has gained sufficient knowledge and experience from prior reliance on a statement to permit rule making. The frequency with which an agency has relied on a statement or a substantially similar statement is another important consideration. This factor is not applicable if an agency has relied upon a statement with a degree of frequency that indicates rule making is feasible. The second factor provided is the extent to which related matters are sufficiently settled to permit an agency to address a statement by rule making. This factor allows consideration of related matters that must be resolved as a condition precedent to rule making. This factor is applicable if related matters are not sufficiently resolved to permit rule making. An agency must proceed to rule making as soon as related matters are sufficiently settled to permit rule making. The final factor provided is expeditious, good faith, use of the rule making procedure by an agency

to adopt rules which address a statement. An agency must currently be using the rule making procedure for this factor to apply. Use of the rule making procedure must be expeditious and in good faith. An agency should not be penalized if it is currently using the rule making procedure expeditiously and in good faith to adopt rules which address a statement. Evidence that an agency is using the workshop process to develop proposed rules may indicate that this factor is applicable. The presumption created under s. 120.535(5) that an agency is not proceeding expeditiously and in good faith to adopt rules does not apply to s. 120.535(1)(a)3.

Rule making is presumed practicable under the bill to the extent necessary to provide fair notice to affected parties of relevant agency procedures and applicable principles, criteria, or standards for agency decisions. The Legislature intends for agencies to adopt all rules necessary to provide affected persons with knowledge of pertinent agency procedures and the standards, criteria, or principles upon which agency decisions will be based. The pertinent consideration with regard to the practicability of rule making is whether adopted rules provide fair notice. Actual knowledge of an agency statement not adopted by rule making does not suffice as fair notice. Rule making is practicable unless fair notice may be attained solely upon review of adopted agency rules. Rule making is presumed practicable to the extent necessary to provide fair notice unless the agency demonstrates that at least one of the factors provided by s. 120.535(1)(b) is applicable. Rule making is not practicable if detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances. Under this factor, if no reasonable consensus of opinion exists within a discipline on an issue, an agency may not be able to provide further detail or precision by rule making. Further, if the technology necessary to provide detail or precision by rule making is not reasonably available to an agency, this factor may be applicable. Finally, rule making is not required to the extent that the questions that must be addressed are so narrow in scope that more detail or precision *is* precluded outside of an adjudication to determine substantial interests of a party based on individual circumstances.

Subsection (2) of s. 120.535 provides the procedure for challenging an agency statement alleged to violate the standard for rule making. Under subsection (2), any person substantially affected by an agency statement may challenge the statement as a violation of the rule making standard. The requirement that a person be substantially affected by an agency statement is parallel with the standing requirement under s. 120.56, F.S. Standing is provided to associations under the substantially affected person standard. The substantially affected person standard is applicable for challenges to agency statements alleged to violate the rule making standard. This is not the applicable standard for purposes of demonstrating entitlement to costs and attorney's fees under s. 120.535(6). A challenge to an agency statement under s. 120.535 is instituted by petition to the Division of Administrative Hearings (DOAH). The petition must be in writing and allege facts sufficient to demonstrate that the person is substantially affected by an agency statement, that the statement constitutes a rule under s. 12.52(16), and that the statement has not been adopted by the rule making procedure. The petition must include the text of the challenged statement or a description of the statement sufficient to provide notice of the substance of the challenged statement. Upon receipt of a petition, the DOAH must forward copies of the petition to the agency whose statement is challenged, the Legislature's Joint Administrative Procedures Committee (JAPC), and the Department of State. The Department of State must publish notice of the petition including the text or a description of the challenged statement sufficient to provide notice of the substance of the

statement in the first available issue of the Florida Administrative Weekly (FAW). If the director of the DOAH finds that the allegations of the petition are sufficient, the petition is assigned to a hearing officer. The hearing officer must conduct a hearing within 30 days of assignment of the petition, unless the petition is withdrawn. The hearing officer may postpone the date for hearing for good cause. If a hearing is held, the petitioner has the initial burden of proving the allegations of the petition. The petitioner is not required to prove that rule making is feasible and practicable. Rule making is presumed feasible and practicable under s. 120.535(1). If the allegations of the petition are proven, the burden shifts to the agency which must prove under the factors provided by s. 120.535(1) that it is not feasible and practicable to address the challenged statement by rule making.

Subsection (3) of s. 120.535 requires the hearing officer to issue a written order within 30 days of the conclusion of the hearing. The hearing officer's order constitutes a final order. The hearing officer may find that all or part of an agency statement violates the rule making standard. The DOAH must provide copies of the final order to the JAPC, and the Department of State, which must publish notice of the final order in the FAW.

Subsection (4) of s. 120.535 provides that if the hearing officer determines that all or part of an agency statement violates the rule making standard, the agency must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action. Upon entry of a final order determining that an agency statement violates the rule making standard, the agency must refrain from further use of the statement or any substantially similar statement as a basis for agency action. However, the agency may publish proposed rules which address the statement under s. 120.535(5).

Subsection (5) of s. 120.535 provides that after an agency statement is determined to violate the rule making standard, the agency is permitted to rely upon the statement as a basis for agency action, if, prior to reliance on the statement, the agency publishes proposed rules which address the statement. An agency need not issue proposed rules which address the statement verbatim. However, the substance of the agency statement must be addressed by the proposed rules. If an agency publishes proposed rules that address the statement, the agency is permitted to rely upon the statement as a basis for agency action if the agency proceeds expeditiously and in good faith to adopt rules that address the statement. An agency is permitted to amend proposed rules prior to adoption, but rules that the agency ultimately adopts must address the substance of the statement that was determined to violate the rule making standard. If the agency fails to adopt rules which address the statement within 180 days of publication of proposed rules, a presumption is created that the agency is not acting expeditiously and in good faith to adopt rules. The presumption that an agency is not proceeding expeditiously and in good faith to adopt rules is only applicable for purposes of subsection (5) and does not apply to determinations of the feasibility of rule making under s. 120.535(1). If an agency's proposed rules are challenged under s. 120.54(4), F.S., the 180 day period is tolled until the rule challenge proceeding is resolved. If an agency relies upon a statement under subsection (5) the statement must comply with s. 120.57(1)(b)15.

Subsection (6) of s. 120.535 provides for payment of reasonable costs and attorney's fees under designated circumstances. This subsection provides that subsequent to a determination that an agency statement violates the rule making standard, if an agency relies upon the statement or a

substantially similar statement as the basis for agency action, and the substantial interests of a person are determined by the agency action, that person is entitled to payment by the agency of all reasonable costs and attorney's fees incurred by the person, if the person successfully demonstrates that under subsections (4) or (5) the agency is not permitted to rely upon the statement as a basis for agency action. Payment under this subsection is not available unless an agency statement was determined in a prior s. 120.535 proceeding to violate the rule making standard. No payment is available in s. 120.535 proceedings brought to determine as an initial matter whether an agency statement violates the rule making standard. Payment is available when an agency continues to apply a statement which was determined in a prior s. 120.535 proceeding to violate the rule making standard. The agency must rely on the statement as the basis for an agency action. The substantial interests of the person seeking payment must be determined as a result of that agency action. This standard contemplates more direct and significant harm to the person than is required by the substantially affected person standard. The person must successfully demonstrate that the agency is not permitted under subsections (4) or (5) of s. 120.535 to rely upon the statement as a basis for agency action. Subsection (4) prohibits reliance upon a statement as a basis for agency action if the statement is determined to violate the rule making standard. However, subsection (5) permits an agency to rely upon a statement previously determined to violate the rule making standard, if, prior to such reliance, the agency publishes proposed rules that address the statement. Subsection (5) requires the agency to proceed expeditiously and in good faith to adopt rules which address the statement. If an agency is proceeding expeditiously and in good faith to adopt rules, reliance on the statement is permitted under subsection (5). If an agency is not proceeding expeditiously and in good faith to adopt rules, subsection (5) does not permit the agency to rely upon a statement previously determined to violate the rule making standard. If an agency is in compliance with subsection (5), reliance on the statement is permitted and payment is not required.

An action for payment of costs and attorney's fees may be brought pursuant to s. 120.57(1) or s. 120.535. To prove entitlement to payment under either section a person must prove that an agency statement was previously determined to violate the rule making standard, that the agency is relying on the statement or a substantially similar statement as the basis for agency action, that the person's substantial interests are determined by the agency action, and that the agency is not permitted to rely upon the statement as a basis for agency action under subsections (4) or (5) of s. 120.535. Proceedings brought pursuant to s. 120.535 result in a final order by the hearing officer and are otherwise conducted in the same manner as proceedings pursuant to s. 120.57(1). A proceeding for payment under s. 120.535 may be brought in conjunction with or consolidated with a proceeding under any other section of chapter 120. If a s. 120.535 proceeding for payment is brought in conjunction with or consolidated with another proceeding, the hearing officer's order on the issue of payment is a final order under s. 120.535. Payment of costs and attorney's fees must be made from the budget entity of the head of the agency whose statement is determined to violate the rule making standard. The agency may not be reimbursed for such payment under any provision of law. Structuring payments in this manner is intended to reinforce the serious nature of continuing violations of the standard for rule making.

The bill amends s. 120.68(3), F.S., to provide that the filing of a petition appealing a final order issued by a hearing officer pursuant to s. 120.535, whether filed by the agency or a party, does not stay enforcement of the order. If an automatic stay were provided to an agency, legislative policy

favoring rule making would be frustrated while the case was on appeal. Agencies would simply appeal an adverse determination and avoid rule making. However, the bill provides that the agency or a party may petition the appellate court to stay the final order of the hearing officer. The appellate court may stay the hearing officer's final order if it determines that a stay is necessary to avoid probable danger to the health, safety or welfare of the state. If a petition to stay the final order is granted the agency may continue to rely on the statement as a basis for agency action until the appeal is resolved. An agency statement not adopted by rule making must comply with s. 120.57(1)(b)15, F.S. This provision does not conflict with Rule 9.310, Florida Rules of Appellate Procedure. This is an exception to that rule provided by general law as provided for by Rule 9.310(a), Florida Rules of Appellate Procedure. But see City of Jacksonville Beach v. Public Employees relations Commission, 359 So. 2d 578 (Fla. 1st DCA 1978) .

This bill provides a uniform proof requirement for agency statements not adopted by rule making. The bill creates subparagraph 15 of s. 120.57(1)(b), F.S., which reiterates the constitutional requirement that an agency statement may not enlarge, modify, of contravene the specific provision of law implemented or otherwise exceed delegated authority. There must be legislative authority for all agency statements and these statements must be consistent with that authority. Agency statements that affect the determination of a party's substantial interests are subject to de novo review by a hearing officer. Agency statements are not presumed correct when reviewed by a hearing officer. A statement that is applied as the result of a hearing must be proven at the hearing to be the statement that best complies with and promotes legislative intent. The determination of a statement to be applied as the result of a hearing must be based exclusively on evidence of record and matters officially recognized. Recommended and final orders must explain the basis for all statements applied. The explanation of a statement must identify the evidentiary basis for a statement, and discuss generally why the statement applied is justified over alternative statements within the scope of delegated authority. The intent of this proof requirement is to assure that all agency statements are based on delegated authority, and that agency statements are not presumed correct and given deference over alternative statements offered at the hearing.

The bill authorizes the Division of Administrative Hearings (DOAH) to direct a study and pilot project to implement a full-text retrieval system to provide access to recommended orders, final orders, and declaratory statements. This provision allows the DOAH to explore alternative means and available technologies to assure public access to agency orders.

Finally, the bill creates subsection (11) of s. 163.3177, F.S., which requires the Department of Community Affairs (DCA) to comprehensively review chapter 9J-5, Florida Administrative Code (F.A.C.). Under paragraph (a) of subsection (11), the DCA is required to adopt by rule those policies, standards, and criteria which the department uses or intends to use in reviewing local government comprehensive plans scheduled under chapter 9J-12, F.A.C., for submission after July 1, 1991; amendments to local government comprehensive plans; and evaluation and appraisal reports. Paragraph (b) requires the DCA to submit proposed rules to comply with the directive in paragraph (a), and related issues it wishes to propose as legislation, to the Speaker of the House and the President of the Senate no later that December 1, 1991. Paragraph (c) provides that until the rules required by paragraph (a) are adopted the protection provided to rule 9J-5, F.A.C., under s. 163.3177(10)(k), F.S., remains effective. Rules submitted pursuant to paragraphs (a) and (b) do not

become effective until after the rules are submitted to the Speaker and Senate President or any rule challenge proceeding pursuant to s. 120.54, F.S., is resolved, whichever is later.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 --Creates s. 120.535, F.S., which provides a standard for required rule making; a procedure for challenges to agency statements alleged in violation of the standard for required rule making; and provides a remedy for violations of the standard for rule making.

Section 2 --Amends s. 120.57(1)(b), F.S., to provide a uniform procedure for the review of agency statements not adopted by rule making in administrative hearings.

Section 3 --Amends s. 120.68(3), F.S., to provide for the stay of a hearing officer's final order issued pursuant to s. 120.535 pending judicial review.

Section 4 --Authorizes the Division of Administrative Hearings to direct a study and pilot project to implement a full-text retrieval system to provide public access to recommended orders, final orders, and declaratory statements.

Section 5 --Amends s. 163.3177, F.S., to require the Department of Community Affairs to adopt rules for use in the comprehensive planning process.

Section 6 --Provides an effective date of October 1, 1991.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT: 91-92 92-93

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

EXPENDITURES:
Department of Community Affairs
General Revenue Fund
Expenses $15,000

(See fiscal comments)

2. Recurring Effects:

Indeterminate

(See fiscal comments)

3. Long Run Effects Other Than Normal Growth:

Indeterminate

(See fiscal comments)

4. Total Revenues and Expenditures:

EXPENDITURES:
Department of Community Affairs
General Revenue Fund
Expenses $15,000

(See fiscal comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

The Department of Community Affairs estimated that an additional $15,000 in travel and various expenses would be necessary in order to implement this bill.

In their original analysis of HB 1879, the Division of Administrative Hearings estimated that there would be approximately 75 requests for hearings per year and, in an effort to handle this increase in caseload, DOAH would require three new positions: one hearing officer, one administrative secretary, and one senior clerk (approximately $21,488 in nonrecurring costs and $116,826 in recurring costs). In addition, the Division estimated that approximately $155,000 would be necessary to implement the full text retrieval system.

In a revised analysis, the Division of Administrative Hearings stated that the fiscal impact would not be immediate or substantial until the beginning of the next calendar year, at the earliest. At that time, DOAH would be able to provide an analysis of the fiscal impact required to make the necessary adjustments to ensure that these cases would be processed within the time frames set forth in the bill.

The Committee on Appropriations adopted the following amendments:

1. Clarifies procedure for actions to recover attorney's fees.

2. Clarifies that agencies and other parties must petition for a stay of a hearing officer's final order pending judicial review.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None

V. COMMENTS:

This bill is intended to reestablish rule making as the primary means for administrative agency implementation of delegated legislative authority. Under the bill, agencies will be required to adopt all statements within the statutory definition of the term "rule" by the rule making procedure as soon as feasible and practicable. The bill limits the discretion which judicial decisions have provided agencies to choose between rule making and statements of nonrule policy applied on an ad hoc basis. The bill provides a uniform procedure for review of agency statements not adopted by rule making in proceedings to determine the substantial interests of parties. Agency statements are subject to de novo review by a hearing officer and

are not presumed correct. A statement applied as the result of a substantial interest proceeding must be demonstrated to be the statement which best complies with and promotes the intent of the legislature based on the record of the proceeding. The bill seeks to take full advantage of technology to provide public access to agency orders by providing for the Division of Administrative Hearings authority to develop a pilot project for the implementation of a full-text retrieval system for agency orders. The bill requires the Department of Community Affairs to adopt rules for use in the comprehensive planning process.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Staff Director:
David W. Nam	Jimmy O. Helms

COMMITTEE ON APPROPRIATIONS:

Prepared by:	Staff Director:
Ruth M. Storm	Peter J. Mitchell