

Analysis of New Administrative Procedure Act
CS/SB 892

Florida's new administrative procedure act, which will become fully effective on January 1, 1975, has far greater implications for the operation of Florida's State government than most people in this state have yet realized. This memorandum will summarize seven highly significant reforms which will affect the executive and judicial branches of Florida state government. Following a brief discussion of each reform I have inserted a "key" which identifies the particular provisions of the new act in which the mechanism for reform is expressed.

1. Coverage: Florida's 1961 administrative procedure act ("the old act") was widely ignored by many agencies of state government in Florida, and was riddled with statutory and judicial exceptions. The new act is almost exemption-free. Most significantly, exemptions under the new act will have to be visible because the Administration Commission (the Governor and Cabinet) will be accountable for their creation. Thus, under the new act due process procedures will apply for the first time to all agencies of Florida government, including the Department of Banking and the boards of professional and occupational regulation. KEY: Sections 120.52(6); 120.57 (first sentence); 120.63.

2. Openness in government: Several provisions of the new act combined to wrest from small groups of experts and from bureaucrats the ability to secrete from the public the decisions which agencies make and the reasons for those decisions. Principle among these provisions are the guarantees of minimum information necessary to know how an agency works and to provide a uniform set of procedures which any interested citizen can utilize. KEY: Sections 120.53; 120.54(9). A second feature leading to openness in government is the more sophisticated means of disseminating information about the workings of government to the general public. KEY: Sections 120.55(1) (c); 120.55(3) (b). A third like feature is the requirement that all statements of policy and all agency decisions will be made fully public for the first time. KEY: Sections 120.52(13); 120.53(2).

3. Integrity in the decisional process: The new act provides very stringent requirements regarding all decisions which governmental agencies are required to make. The gist of these requirements is to assure

that the person or group responsible for final agency action has available to him or them not only the summary of the agency's staff but the spoken and written concerns of the parties who are going to be affected by the action. In other words, persons in state government who are charged with the responsibility for making ultimate decisions will now be required to listen to the arguments of affected persons, and to decide all controversies on the basis of and by specific reference to identified facts. KEY: Sections 120.57(1) (h); 120.58(1) (d).

4. Delineation of judicial review: Under the old act, the courts of Florida were given no guidance in their review of administrative decisions, as a consequence of which the standards for review were extremely vague. Under the new act, precise guidelines are developed for judicial review, thereby curtailing variations in judicial decision-making as between agencies and between regions of the state. KEY: Sections 120.57(1) (f); 120.57(2) (b); 120.68.

5. Conflict of Interest and Ethics: The new act makes a major change in the way agency decisions will be made, designed to eliminate conflicts of interest and the potentiality for ethical taint. A central pool of hearing examiners will replace the practice by which agency employees act both as advocates before and advisors to their employer agency. For the first time, the act also attempts to prevent ex parte communications by which one side of a controversy has the private ear of decision-makers for the purpose of presenting information which could have a bearing on the outcome of the proceeding. KEY: Sections 120.65; 120.66.

6. Abuse of Agency Process: Under the old act, agencies were able to issue oral orders which, by their very nature, were subject to retroactive administrative change and were virtually unreviewable in the courts. Moreover, agencies were able to delay or withhold decisions whenever the decision-making process would prove to be embarrassing or controversial. Under the new act, these abuses of administrative process will no longer be possible. KEY: Sections 120.52(2); 120.52(8); 120.59.

7. Citizen Participation: Under the old act, there was no way in which a person interested in the workings of a particular agency could force a decision when the agency felt that it was inappropriate or impolitic to act. The new act contains a mini-initiative provision by which the policy decisions of agencies in Florida can be raised or challenged. KEY: Section 120.54(4).

June 25, 1974

Prepared by:

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Reporter to the Law Revision
Council on administrative
procedure*

* On March 9, 1974, a proposed Administrative Procedure Act for the State of Florida (labeled "Reporter's Final Draft of 3/1/74" and here called the "Reporter's Draft") was considered and adopted by the Florida Law Revision Council. The Reporter's Draft originated as follows:

The Florida Law Revision Council ("the Council") was created by Chapter 67-472, Laws of Florida, to examine the laws of Florida, to discover defects and anachronisms, and to recommend such reforms and changes as are necessary to bring the laws into harmony with modern conditions. The Council adopted as its principal project for the 1974 Legislature a total revision of Florida's Administrative Procedure Act, and in May 1973 it contracted for the reporter's services in preparing a draft statute for Council consideration.

The Reporter's Draft was the fifth full statute prepared for public and professional scrutiny. The first draft, published on October 26, 1973, was prepared in conjunction with an ad hoc task force of prominent administrative law scholars and practitioners from around the United States which had been assembled by the Director of the American Bar Association's Center for Administrative Justice. After commentary was received on this draft statute, and after extensive public hearings were held before a committee of the Council and a House Subcommittee of the Florida Legislature, a full second draft was prepared and disseminated on November 30, 1973. A like process of publication, commentary, meetings and re-drafting produced a third draft dated January 5, 1974, a fourth draft dated February 4, 1974, and the final draft dated March 1, 1974.

The Committee on Governmental Operations met at 8:00 o'clock on May 16, 19 74, in Room 21, and considered CS for SB 892.

On motion to report the bill FAVORABLE
 FAVORABLE WITH 2 AMENDMENTS
(number)
 FAVORABLE WITH SUBSTITUTE

the vote was:

YEA	MEMBER	NAY	YEA	MEMBER	NAY	
	Andrews		X	Mattox		
X	Birchfield		X	Nergard		
	Boyd		X	Tobiassen		
	Crane		X	Tubbs		
X	Gibson		X	Williams		
X	Harlee, V-chm.		X	MacKay, Chn.		
X	Harris					
X	Hartnett					
X	Hazelton					
X	Hector					
X	Hodes					
X	Hutto					
X	Kiser					
TOTAL YEAS			16	TOTAL NAYS		0

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during consideration of this bill:

NAME	REPRESENTING	ADDRESS