REPORTER'S COMMENTS

ON

PROPOSED ADMINISTRATIVE PROCEDURE ACT

FOR THE STATE OF FLORIDA

March 9, 1974

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Reporter's Comments*

On March 9, 1974, a proposed Administrative Procedure Act for the State of Florida will be considered for adoption by the Florida Law Revision Council. If approved, this draft statute (labelled "Reporter's Final Draft of 3/1/74" and here called the "Reporter's Draft") will be submitted to the Florida Legislature for consideration during its 1974 Regular Session. This report has been prepared to accompany the Reporter's Draft and explain its origins, purposes and provisions.

1. Origins of the Act.

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

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* The development of a revised Administrative Procedure Act for Florida could not have been achieved without the assistance and cooperation of a great many people. I am particularly grateful for the research, analysis and drafting assistance provided by Professor L. Harold Levinson of Vanderbilt University Law School, John Heuberger, formerly a student at the University of Miami Law School and now with the Securities and Exchange Commission in Washington, D. C., and Greg Scott, a student at Vanderbilt University Law School. Technical support and expertise was provided in immeasurable quantities by the ad hoc task force which was assembled by Milton Carrow, Esq., director of the ABA Center for Administrative Justice.

to bring the laws into harmony with modern conditions.[1] The Council adopted as its principal project for the 1974 Legislature a total revision of Florida's Administrative Procedure Act,[2] and in May 1973 it contracted for the reporter's services in preparing a draft statute for Council consideration.

The Reporter's Draft is 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.[3] After commentary was received on this draft statute and hearings were held before a committee of the

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1. Section 13.96(1) and (2), Florida Statutes.

2. Chapter 120, Florida Statutes. The existing statute was adopted in 1961 (Chapter 61-280, Laws of Florida) as an adaptation of the Uniform Commissioner's Revised Model State Administrative Procedure Act. It has had only minor modifications since its adoption.

3. The task force members are identified in the cover letter of October 26, 1973 which accompanied the first draft statute. A copy of that letter is appended as Exhibit A.

Council and a subcommittee of the Florida Legislature,[4] a full second draft was prepared and disseminated on November 30, 1973. A like process of publication, commentary, meetings[5] and re-drafting produced a third draft dated January 5, 1973, a fourth draft dated February 4, 1974, and the final draft dated March 1, 1974.

2. Purposes of the Act.

The principal purpose for the adoption of a wholly-revised administrative procedure act for Florida is to remedy massive definitional, procedural and substantive deficiencies in existing law (i) by prescribing due process minima for the operation of Florida administrative agencies, (ii) by defining with particularity the agencies covered or excluded, (iii) by clarifying inconsistencies and rectifying incongruities in the existing law, (iv) by expanding the opportunities for flexibility and informality in Florida administrative processes, (v) by broadening public access to the precedents and activities of agencies, and (vi) by clarifying the scope of judicial review.

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4. The administrative law committee of the Council, chaired by Professor L. Harold Levinson, conducted its first hearing on a proposed statute on October 27, 1973. Subsequent public hearings of the committee were held in 1973 on October 27, November 16-17, and December 7-8. The administrative law subcommittee of the House Governmental Operations Committee began its consideration of the reporter's drafts at a public hearing on October 5, 1973. Additional public hearings on the draft law were held in 1973 and January 17, 1974, January 29, 1974, and on February 26, 1974.

5. The full Council held public hearings on the draft statutes on January 11-12, and on February 8-9, 1974.

The development of a wholly new act to achieve these goals was considered essential for at least the following reasons:

(a) Many state agencies have expressed the view that they are excluded from the present administrative procedure act, in whole or in part, because of express legislative directive, imprecise legislative draftsmanship, indirect legislative oversight, judicial decree, or a combination of agency preference and public neglect.[6] The multiple legislative enactments between 1961 and the present, including the Governmental Reorganization Act of 1969 which purported to bring all state agencies under the present law,[7] have so muddled the scope of coverage that further tinkering with the present act would not resolve the confusion.[8]

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6. Commencing in mid-1973, the staff of the House Governmental Operations Committee began an inquiry into the coverage of Florida's statute through a detailed questionnaire sent to all levels in each state agency. This was followed by a series of personal interviews. Preliminary responses to the questionnaire (those responses received during 1973) were tabulated by computer, and a copy of the results is available in the committee's office. The general results of the study was to highlight the wide divergence in the current act's coverage and to uncover varying notions of administrative fairness.

7. Section 20.04(5), Florida Statutes.

8. See prepared Statement of Professor L. Harold Levinson before the House Governmental Operations Committee on February 27, 1973, pp. 2-7.

(b) The present act falls far short of providing due process minima in connection with the actions of state agencies. Practices have been developed by several agencies which provide even less fairness than the act would seem to require. The notions of basic fairness which should surround all governmental activity, such as the opportunity for adequate and full notice of agency activities, the right to present viewpoints and to challenge the view of others, the right to develop a record which is capable of court review, the right to locate precedent and have it applied, and the right to know the factual bases and policy reasons for agency action, are neither uniformly nor universally applied in Florida.[9] The proposed act attempts to rid existing law of the anachronisms which allow those conditions to exist.

(c) Public information about the action of agencies is not readily available in Florida. The publication requirements and procedures for rule-making are generally considered ineffective, and the practices which have been developed with respect to adjudication are worse.[10] The proposed act provides

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9. For example, the questionnaire response analysis (see footnote 6) reveals that agencies will rehear their initial adjudicatory decisions in only 30% of the cases, that the law applied in individual cases is identified in only 58% of the cases, that facts and law are summarized for parties in only 54 1/2% of the cases, and that a pre-hearing opportunity to interview witnesses or examine agency evidence exists in less than 60% of all cases.

10. The questionnaire response analysis (see footnote 6) reveals that only 17 1/2% of all agency adjudications are indexed so as to be accessible to the public, only 31 1/2% are filed publicly, and only 2/3ds of all agency publications are even filed and indexed with the agency itself.

for a broader analysis of agency action through more effective publication and notice procedures, and through the indexing of rules and orders. The proposed act will cut down on the private knowledge of the policies which shape agency decisions which is now possessed only by small groups of specialists and the agencies' staffs.

(d) There is in Florida today no mechanism for informal proceedings which allow participation by affected parties on an expedited basis. On the other hand, there are many extensive proceedings in which the rights of parties are not fully protected. In particular this latter problem is the result of unthinking adherence to "rule-making" and "adjudication" procedures, as if the two were wholly distinct and distinguishable. In fact, agency proceedings frequently affect individual rights and create general policy at the same time, so that they partake of adjudication and rule-making at the same time. A failure of agencies to recognize this fact, and the reluctance of Florida courts to depart from analysis in terms of "judicial" and "legislative" decision-making, has created rigidity in the present act, unwarranted exemptions, and unreviewable agency discretion which defeats due process. A major feature of the proposed act is to eliminate these anachronisms (i) by focusing attention on the rights affected rather than the labels given a particular process, (ii) by allowing total

flexibility for fact-finding in rule-making proceedings and policy-making in individual cases, and (ii) by authorizing informality whenever it is possible to exercise it without affecting rights unfairly.

(e) The present law has no procedure for the enforcement of agency actions, and no sanctions for violations of the act. To enforce its order, an agency must seek judicial enforcement and possibly a contempt of court citation. In some chapters of Florida laws the proscription for violations of administrative decisions is made a misdemeanor, while in other chapters different enforcement mechanisms are established. This lack of general enforcement capability means that a person injured by non-compliance has no practical means of compelling enforcement.

The draft statute provides for the enforcement of agency orders by the agency or a party while eliminating the possibility of duplicate or repetitive actions.

3. Detailed analysis of the Act's provisions.

The following is an analysis of the major individual provisions of the Reporter's Draft, with an identification of their general or specific source. Omissions in paragraphing will appear because not all provisions in the act require comment. The following symbols are used for ease of identification:

"120.__ " refers to sections of present Florida law;
"0120.__ " refers to sections of the proposed act;
"F.S." refers to sections of Florida Statutes;
"RMA" refers to sections in the Uniform Commissioner's Revised Model State Administrative Procedure Act (1961);
"Fed" refers to sections in the federal administrative procedure act found in Chapter 5, United States Code;
"Mass" refers to sections in Chapter 30A, Laws of Massachusetts;
"Ore" refers to sections in Chapter 183, Oregon Revised Statutes;
"Tex" refers to sections in S.B. 139 (2/1/73), a recently-proposed Texas administrative procedure act; and
"HB 2145" refers to House Bill 2145 as passed by both houses of the 1973 Florida Legislature, which act was vetoed by the governor for constitutional reasons in a message dated July 5, 1973.

0120.1 Short title.

Source: new
Comment: self-explanatory

0120.2 Definitions.

(1) [defining "agency"]

Source: F.S. 120.021(1) and 120.21(1).
Comment: (a) The governor and lieutenant governor are specifically identified and covered under the act in all activities other than those which are expressly described in the Constitution, such as suspension, appointment and convening the legislature.
(b) The separate "agency" definitions which appear in the present Florida Act for adjudication and for rule-making are combined, and the combined definition parallels that contained in HB 2145. The term "departmental unit" as set forth in F.S. 20.04, which includes all levels of state government below the department head (such as the lower echelons of the university system), is substituted for an enumeration of each of the units of state government. No state-level governmental units are exempted from coverage.
(c) Local and regional government units of all types are brought under the act to the extent that the legislature chooses to do so by separate enactments, and to the extent that the courts have or will require that they operate within the act. Variations among these types of agencies are so widespread, both in functions and in resources, that their general inclusion in the proposed act does not seem warranted. The approach of the proposed act will allow selective inclusion after an opportunity for legislative analysis and debate or after a court determination that minimum fairness is not being accorded by local agencies. This provision is not intended to overturn, broaden or otherwise affect any court decisions which have held that certain non-departmental officers or units of Florida government were covered by provisions of the existing statute, such as Canney v. Board of Public Instruction, 222 So.2d 803 (D. Ct. App. Fla. 1969).

(2) [defining "agency action"]

Source: Fed 551(13)
Comment: This definition provides a convenient shorthand expression for all the things which agencies do, whether in adjudication, rule-making or otherwise (for example, in part fact-finding and in part policy-making). It is intended, along with other provisions of the act, to focus attention on rights determined or affected by the activities of agencies, rather than the manner in which the action or inaction can most conveniently be characterized. To this end the provisions of the proposed act will make possible the abolition of all forms of judicial distinction which have been developed relative to agency actions, such as "quasi-executive", quasi-judicial", "quasi-legislative" and, more recently, "more judicial than quasi-judicial." The courts have already adopted in principle the concepts contained in the draft bill relative to the undesirability of labeling administrative action. See Carbo, Inc. v. Meiklejohn, 212 So.2d 328 (1st D. Ct. App. Fla. 1968), where the nature of legislative-granted powers determined the availability of judicial review. The new act would save courts, such as in Carbo, the tortuous development and application of terms such as "quasi-executive" and "quasi-judicial". See also Fla. Motor Lines, Inc. v. R. R. Comm'rs, 100 Fla. 538 (1930).

(4) [defining "director"]

Source: new
Comment: A new division has been created in subsection 0120.10(1), for centralized control of hearing officers and related matters. Experience in California over many years has proved that a corps of qualified hearing officers adds competence, more fairness and professionalism to administrative proceedings, without any loss of expertise in technical areas. The variety of ways in which Florida agencies select hearing examiners does not always provide

unbiased decision-making or due process. Concerns over a "new bureaucracy", and the prospect of additional direct costs, must be weighed against the present potpourri of ad-hocracies and the now obscured cost of providing similar services under varying agency compensation arrangements.

(5) [defining "license"]

Source: F.S. 120.21(5); RMA 1(3); Fed 551(8)

Comment: (a) The Florida and Model Act definitions are changed to distinguish a "franchise" from a "certification", rather than lumping them both under the definition "certificate". A franchise is sometimes characterized as a certificate of public convenience and necessity, which applies to the conduct of an activity resulting in some degree of monopoly. A "certification" is an affirmation by the government that stated qualifications have been met, such as the certification of an individual dentist by a dental board. The term "authority", which is derived from Mass. 13, seems preferable to "approval", which appears in both the Florida and Model Acts, and "activity" which appears in the New York statute. "Authority" indicates some formal agency action.
(b) The term "license" is broadened to include all administrative acts, whether mandatory or discretionary, related to privileges conferred by the state. To this extent it is intended to overrule cases which have eliminated any due process minima in, or any judicial review of a licensing process, such as Bay National Bank & Trust Co. v. Dickinson, 229 So.2d 302 (1st D. Ct. App. Fla. 1969).
(c) The revenue-license exemption should be narrowly construed to cover only such items as occupational licenses granted by local governments (unless the local governmental unit by ordinance attempts to exercise control over the right to do business through occupational licensing), and hunting and fishing licenses.

(6) [defining "licensing"]

Source: F.S. 120.21(6); Fed 551(9)
Comment: One change from present law which was considered but not made would have been to substitute "regulation" for "process" in order to indicate that licensing includes sanction powers. The term "issuance" has replaced the term "grant" in order to get away from the privilege concept and to restore language which is more commonly used in administrative bodies.

(7) [defining "official recognition"]

Source: RMA 10(4)
Comment: This act authorizes informal procedures not now defined under Florida law, and it refines the requirements for notice, opportunity for hearing and commentary, agency action and judicial review. It seems appropriate, therefore, to provide a specific definition for officially recognizable matters. The term "official notice" was not used because of the confusion which would develop between its use for this purpose and its use in relation to notifications prior to agency action.

(8) [defining "order"]

Source: F.S. 120.21(3)
Comment: This definition is necessary throughout the act as a reference word for the end product of trial-type and informal proceedings which do not articulate general policy.

(9) [defining "party"]

Source: F.S. 120.21(4); Mass 1(3); RMA 1(5), Fed 551(3)
Comment: Present Florida law contains no definition of the term "party" for purposes of rule-making, although it does define that term with respect to adjudication. The definition in the proposed act expands the present Florida provision and that in the Model Act to incorporate those persons who have a right to participate in or appeal any agency decision. This expanded provision will resolve many jurisdictional questions in appeals and eliminate controversies on technical

points relative to informal intervention. Non-party status, such as that set forth in the Department of Pollution Control's Rule 17-1.11(4), is expressly sanctioned.

(10) [defining "person"]

Source: RMA 1(6)
Comment: Florida law presently contains no definition of "person", either with respect to rule-making or adjudication. A definition of "party" appears in the adjudication provisions of Florida law, authorizing agencies to intervene in other agency proceedings. This concept is continued in the proposed definition, thereby authorizing units of state and local government to participate in the proceedings of other agencies and to seek judicial review of their actions. Two major reasons for authorizing one agency to participate in the administrative activities of another are (1) to avoid costly litigation among agencies because policy has already been formulated, and (2) to authorize local governments to participate in state-wide proceedings which will affect them.

(11) [defining "rule"]

Source: F.S. 120.021(2), RMA 1(7)
Comment: (a) No reference is made to the various technical labels which are given to determinations made in rule-making, such as "order", "regulation" or the like, in order to make clear that all agency action having the effects described are encompassed within the act, no matter how denominated.
(b) All exemptions for individual departments of government are removed, as was done in HB 2145.
(c) The definition is specifically designed to encompass the budget process in administrative agencies, including the proceedings by which budget recommendations are formulated, and agency action in which budget items are allocated after appropriation (such as action by the Board of Regents to divide a lump-sum appropriation among all state universities and colleges.)

(d) The judiciary, in its role as rule-maker, is afforded an opportunity to adopt the minimum fairness procedures of this act.
(e) The exclusion for allocating trust funds provides needed flexibility for the assignment of regulatory fees and industrial assessments by any agency whose sole income is from those sources--i.e., so-called governmental trade associations such as the Citrus Commission.
(f) Attorney general and staff counsel opinions to agencies are not "rules" under the proposed act when they are promulgated, but they become rules when relied upon or used by an agency.

0120.3 Minimum public information.

Source: RMA 2; Fed 552(a)(2).

Comment: (a) The general reason for prescribing minimum publication information concerning administrative agencies is self-evident. This proposed section alters the Model Act, by providing in (2)(c) that each agency shall index orders it adopts and the policies it applies. Because this has never been done before and the task will be formidable, this one provision of the act has a deferred effective date of 14 months after the act becomes law. The purpose of this requirement is to enable persons other than those expert in agency procedures to find the precedents and policies which pertain in all cases or govern any given matter. This refinement on existing practice can be enforced through the initiative provision in subsection 0120.4(3) of this proposed act.
(b) Paragraph 0120.3(1)(c) requires each agency to set procedural guidelines for the flexible rule-making and fact-finding procedures authorized in the proposed act. A similar provision appears in Mass. 2(1)(a) and 3(1)(a).
(c) Enforcement of these minimum fairness requirements is provided by judicial review, through the presumption created in subsection 0120.18(1).

0120.4 Rules; adoption procedures.

(1) [requiring notice of proposed rule-making]

Source: RMA 3(a)(1); F.S. 120.041(4)

Comment: (a) This subsection provides for effective notice of intended rule-making, consistent with minimum due process requirements. It differs radically from present Florida law.

(b) The notice requirement is broaden to allow, but not require, contact with special classes directly affected by proposed rule-making or rule-changing, along the lines set forth for licensing in paragraph 120.041(4)(c) of the present Florida statute. For example, notice of proposed rule-making directed to the telephone companies of Florida could in the discretion of the Public Service Commission, be disseminated to all telephone subscribers in the state by requiring that a notice be printed and mailed with customers' regular bills.

(c) The requirement for publication in the administrative weekly is intended to replace publication in newspapers of general circulation and in the Florida administrative register. By mailing the weekly publication to all agency heads and interested persons, and by posting it in certain public buildings, anyone interested in a subject area can readily find out when state policy is being changed by agency action. For example, when a rule-making proceeding brought by the attorney general under the deceptive trade practices act is noticed by publication in the administrative weekly, it will have broad dissemination to reach other agencies, attorneys, public interest groups and members of the general public interested in that subject.

(2) [requiring an opportunity for hearing on substantive rules]

Source: RMA 3(2)

Comment: As a matter of fundamental fairness to interested persons, this provision supplies the opportunity to be heard on matters of substance without requiring public hearings when no interested person wants one.

Organizational and procedural type rules do not necessitate the same formalities, but even these will be available for public challenge if manifestly unfair, under 0120.4(3) or 0120.18.

(3) [authorizing initiative-type petitions]

Source: RMA 6; Mass. 4
Comment: This provision provides the mechanism for periodic review of agency policies and procedures, with a requirement that the reasons for old rules be re-articulated if continued.

(4) [authorizing and conditioning official recognition of matters and incorporation by reference]

Source: RMA 3(a) and (b); Tex. 5(a)
Comment: Administrative agencies are presumably expert in matters under their jurisdiction, so they should have the ability to rely on that built-up expertise. Rules should not be adopted, however, without allowing a right to analyze and challenge the matters relied upon.

(5) and (6) [requiring identification of the source of rule-making powers and a simple explanation of purpose]

Source: F.S. 120.031(2) and (3)
Comment: continuation of existing law, slightly modified.

(7) [authorizing emergency rules]

Source: F.S. 120.041(3); RMA 3(b) and 4(b)(2).
Comment: This provision generally continues existing law. Reasons and special facts are required to be stated in connection with emergency rules, so that this provision does not become a way around the other formalities of rule-making.

(8) [authorizing the adoption of model rules]

Source: Ore 183.340
Comment: This provision will enable local government agencies, if brought under the act, to adopt

rules inexpensively. More significantly, it will offer some prospect of statewide uniformity through subsection (b), and some hope of filling the many vacuums which now exist because of agency inaction.

0120.5 Rules: filing and publication.

(1) [requiring the filing of rules with the Department of State]

Source: F.S. 120.041(1); RMA 4(a)
Comment: existing law, with the addition of legislative distribution

(2) [setting the effective date of filed rules]

Source: RMA 4(b); F.S. 120.041(2), (3), (5) and (6).
Comment: The 20-day delay after filing, coupled with the required notice of proposed rule-making which will appear in the administrative weekly (subsection 0120.4(1)), insures that interested persons will know of all rules before they become effective.

(3), (4) and (5) [prescribing the Department of State's duties]

Source: F.S. 120.051
Comment: The Florida administrative weekly is to be printed in looseleaf form so that it may be retained for continuing reference. It is intended that weekly bulletins will replace the Florida administrative register. The weekly is to be prepared in the least expensive way and sold at no more than cost, but issued free of charge to appropriate locations where it can be made available for public inspection and review.

0120.6 Decisions which affect substantial interests.

Source: F.S. 120.22; RMA 9(a)
Comment: (a) The Florida and Model Acts use terms such as "adjudication" or "contested case" to mean agency proceedings in which hearings are held or required. The proposed act eliminates these

Comment: The proposed act differs from predecessor acts most dramatically by defining what will constitute the "record". Subsection (b) allows all types of commentary on proposed agency action, such as citizen correspondence, without requiring full cross-examination or challenge where the comments are not evidentiary. This seems essential to the administrative process, in order to accommodate the cross-bred legislative and judicial nature of administrative agencies.

(2) [setting due process minimums for informal proceedings]

(a) The need for informal procedural mechanisms has long been recognized in order to balance the need of agencies to do their jobs expeditiously, on the one hand, and the need of persons affected by or interested in agency decisions to participate in or influence agency deliberations. See e.g., Lockhart, The Origin and Use of "Guidelines for the Study of Informal Action in Federal Agencies", 24 Admin. Law Rev. 167 (1972).
(b) Minimum fairness requirements are established by requiring reasons to be given for all agency acts and omissions. The need for broader fairness requirements is succinctly stated in Gardner, The Procedures by which Informal Action is Taken, 24 Admin. Law Rev. 155, 156, 159 (1972): "My own guess is that perhaps 90% of the Government's work is conducted outside the boundaries of the Administrative Procedure Act. . . . Possibly the outstanding defect of contemporary governmental procedures is the prevalent failure to make publicly available the rules and the policies which govern agency action."

(4) [exempting agency investigations]

Source: new
Comment: There would appear to be no need for the usual notices and opportunities for confrontation and rebuttal in connection with routine fact-finding investigatory activities, initiated on an agency's own motion or as a result of complaint, through which an agency decides whether to take agency action (which by definition includes a failure to act).

0120.7 Orders.

Source: RMA 12; F.S. 120.26(7); Fed 555(e)
Comment: This provision deals with the question of prompt agency action to conclude its business. This draft provides for a time certain not to exceed ninety days, which can be waived or extended by all of the parties. Extra time is provided where hearings are conducted by a hearing officer, since agencies cannot be responsible for the speed with which this independent group completes its work.

0120.8 Agency action; evidence, record and subpoenas.

(1)(a) [providing basic evidentiary guidelines]

Source: RMA 10(1); F.S. 120.27
Comment: This provision follows the "any evidence" rule for administrative matters, rather than formal court rules of evidence. The thrust of this provision is to free administrative agencies from the evidentiary rules of courts so that their special expertise and particularized functions are not subverted in the course of conducting their affairs. Hearsay evidence for example, would be admissible and eligible for consideration in a proceeding under this act. Three due process checks to prevent arbitrary agency action are the requirements that reasons be stated for all action taken or omitted, that reasons be supported by "the record", and that specific judicial review procedures allow the courts to remedy defects of substance. The express provision on hearsay derives from California law, where it is reported to have worked well.

(1)(b) [providing for full disclosure through discovery]

Source: F.S. 120.25(1)-(4)
Comment: As in existing law, a general grant of powers is made for the conduct of administrative proceedings, rather than authorizing full discovery and the other formalities of the Florida rules of civil procedures.

(1)(c) and (d) [providing guidelines to handle documentary evidence, and a right to cross-examination]

Source: RMA 10(2); RMA 10(3); F.S. 120.26(2)
Comment: self-explanatory

(1)(e) [requiring decision-makers to be familiar with the record]

Source: RMA 11
Comment: (a) The rationale for this provision is mastery of the record by those who must render final agency action. The District of Columbia prescribes a stricter standard for mastery of evidentiary cases by requiring this procedure whenever the majority did not personally bear the evidence. D.C. Code Ann. Section 1-1509(d) (Supp. V 1972). The proposed act follows the less strict Model Act because adequate mastery of evidentiary records in trial-type hearings, where it is most important, should be available through the requirements (i) that a proposed order be prepared by the person who heard the testimony in all cases where he or she is available, (ii) that the proposed order expressly contain findings fact and reasons for all conclusions of law, and (iii) that findings of fact must be based exclusively on evidence of record and matters officially recognized. See paragraph 0120.6(1)(e). These factors should satisfy the type of concerns raised in Wallace v. D. C. Unemployment Comp. Bd., 289 A.2d 885 (D.C. Ct. App. 1972). See generally, Griffin, supra at pp. 597-99.
(b) The necessity for a full understanding of the record by deciding agency officials, which would seem to be an obvious prerequisite of minimum fairness, has become a requirement

demanded by the courts. The failure of a Florida referee to provide explicit findings of fact, including commentary on the demeanor of witnesses, has been found to preclude an agency's ruling against a petitioner on the grounds of unfairness. Simmons v. D.C. Unemployment Comp. Bd., 292 A.2d 797 (D.C. Ct. App. 1972).

(2) and (3) [dealing with subpoenas and discovery orders]

Source: Mass. 12(4) and (5)
Comment: self-explanatory

0120.9 Licensing

Source: RMA 14
Comment: All concerns that have been expressed regarding the operation of subsection (3), including its effect on bonds required for licensed activity, can be resolved administratively in the development of license application criteria.

0120.10 Hearing officers.

(1)-(6), (9), (10) [creating a central corps of hearing officers]

Source: F.S. 120.24(1)
Comment: (a) This section of the proposed act will improve the fairness of administrative practice before Florida agencies, by replacing agency employees and representatives with independent hearing officers. In lieu of hearing examiners supplied or selected by the agencies themselves, this and subsequent provisions provide for a central hearing examiner system such as exists in California.
(b) If the new division cannot be staffed properly at once, the agencies are not bound to use it. This grace period will last for 2 years.
(c) Judges of industrial claims and unemployment compensation referees have been created by law to act in areas of special expertise as do hearing officers in other matters, and because they have been specially created and qualified they are not included among the staff of hearing officers under the new centralized division.

(d) By providing that agencies will not be charged for their use of hearing officers until 1976, as opposed to the immediate "charge-back" system in California, it is hoped that the use of these officers will be more readily accepted by all agencies which might otherwise use their department or division heads for the conduct of hearings.

(7)-(8) [requiring an annual report on the division's operations]

Source: F.S. 11.45(6)(d) (re auditors' report).
Comment: The annual evaluation provided in subsection (7) is a practical means of ensuring legislative oversight. The purpose of subsection (8) is to prevent unfairness to governmental employees by providing an alleged violator with a chance to rebut any charges made against him. This will eliminate unfounded and frivolous charges from the director's report, yet by providing a copy of the report to the agency head, he or they will be aware of all complaints against agency employees and can act as may be appropriate.

0120.11 Ex parte communications.

Source: RMA 13; F.S. 120.28
Comment: In addition to expanding the prohibition of ex parte communications, serious and practical sanctions against agency personnel and parties are provided for the first time. In addition, additional procedures against attorneys and other professionals are triggered in the event this provision is violated by a representative for a party or someone with a substantial interest.

0120.12 Representation by counsel.

Source: F.S. 120.20(6)
Comment: This provision clarifies the right to be accompanied or represented by counsel or experts. It is broader than the federal counterpart by allowing counsel during investigations.

0120.13 Official recognition.

Source: RMA 10(4)
Comment: self-explanatory

0120.14 Publicity before final action.

Source: new
Comment: self-explanatory

0120.15 Agency investigations.

Source: new
Comment: This provision is not intended to change the result in State ex rel. Vining v. Florida Real Estate Commission, 281 So.2d 487 (Fla. Sup. Ct. 1973), relative to self-incrimination by required responses to agency requests.

0120.16 Exemption from act.

Source: Ore 183.315(4) and (5)
Comment: (a) A workable way to grant exemptions from all or any part of the act has been conceived in Oregon, and is here adapted for Florida. The major, attractive features of this procedure are (i) a required demonstration of need, (ii) a centralization of all exemptions in one place in the act, and (iii) the mandatory review of all exemptions by the legislature, or their expiration.
(b) Spokesmen for the Industrial Claims Commission have asked that this agency be exonerated from the proposed act for a number of reasons. Valid arguments were presented for deviations from the hearing officer and judicial review provisions applicable to other agencies, and appropriate changes have been made in those sections to accommodate that agency's special situation. Total exemption from the act, however, does not appear warranted. As to rule-making, the Commission has filed its rules with the secretary of state pursuant to existing law,

and no reason has been offered to suggest that like filings under the proposed act would be impossible or impractical. Similarly, no good reason has been presented for exemption as to adjudicatory matters. It is suggested that exemption from the proposed act is warranted because the Florida supreme court seemingly approved the Commission's rules of procedure in an opinion filed on November 14, 1973. (Case No. 44,637). Notwithstanding the validity or effect of that opinion, which the court itself left open for later constitutional analysis, there are at least three good reasons why the Commission should be subject to the proposed act. First, it appears that the Commission is an administrative agency and not a court, Fla. Const. 1968 Art. 5, section 1, so that judicial approval of its rules of procedure may be no more than an advisory opinion as to their consistency with minimal due process. The Commission apparently understands this because it has complied with the rule-making requirements of present chapter 120. Second, the conduct of administrative proceedings before the Commission should measure up to and be tested against the due process minima set forth in the proposed act in actual practice, which will not be guaranteed by the advance approval of written rules of procedure. For example, the rules do not deal with ex parte communications although this subject is dealt with (either in the proposed act and elsewhere) for true "court" contests. Third, the rules submitted to the supreme court do not appear to be in conflict with the minimum requirements of the proposed act in any way. The principal effect of the proposed act on industrial claims proceedings will be to require better reference to, indexing of and access to precedents, none of which the proponents of exemption have said they oppose. A final significant reason for including the Commission under the proposed act is highlighted in the supreme court's opinion on the Commission's rules of procedure. After analyzing the role of industrial claims judges and the Commission, the court characterizes the proceedings in that agency

as "more judicial than quasi-judicial". By adding a new layer of distinction to the court-created "quasi-judicial", "quasi-legislative" and "quasi-executive" characterizations, the court has compounded the complexity which has been so unsatisfactory in the past. Only by including the Commission under the act can this distinction be eliminated along with the others.

0120.17 Judicial review; in general.

(1) [authorizing judicial review]

Source: new
Comment: This section declares that the courts will be open to those adversely affected by final administrative actions. It does not grant authority for interlocutory appeals not otherwise expressly available.

(2), (3) [Prescribing review in the district courts of appeal]

Source: F.S. 120.31(1)
Comment: (a) This provision changes existing law as found in sections 120.30 and 120.31, by eliminating declaratory actions in the circuit courts.
(b) Because the term "certiorari" generally connotes discretionary review, the term "petition for review" will better describe appeals as of right from agency action. It would be desirable to allow reviewing courts to entertain all petitions for review without regard to the formalities of their title, and subsections (2) and (3) are intended to allow review of cases which may be wrongly denominated. The principal reason for prescribing one form of review is to make proceedings uniform. While it is recognized that Article 5 of the Florida Constitution (1968) as amended, preserves other forms of action on review, the intent of these provisions are to allow the reviewing court to consider all requests denominated as petitions for review and to grant the relief which is appropriate under the circumstances. This intent is further elaborated in proposed section 0120.18. This proposed provision will

necessitate (and depend upon) a change in Florida Appellate Rule 4.1, which now uses the term "certiorari" to label the judicial review of agency actions.
(c) Judicial review by the supreme court has been authorized by statute for matters before the Industrial Relations Commission (section 440.27(1), Florida Statutes) and before the Florida Public Service Commission (section 366.10, Florida Statutes). Since the legislature has decided to put review for these matters in that court rather than the district courts of appeal, that decision is not changed here.

(4) [providing that judicial review does not automatically stay agency enforcement]

Source: RMA 15(c); F.S. 120.31(3)
Comment: self-explanatory

(5) [describing the record for judicial review]

Source: new
Comment: This provision is designed to distinguish the types of record which are appropriate for the various types of proceedings reviewable under the act. This is particularly important in light of other provisions in the proposed act which require agencies to support their findings of fact on the record and which limit court review "to the record".

(6), (7) [confining review to the record and authorizing fact-finding]

Source: RMA 15(f); F.S. 120.31(1)
Comment: self-explanatory

0120.18 Judicial review; scope.

Source: new
Comment: This more detailed analysis of how courts should review agency action is designed to provide more precise guidelines in Florida than ambiguous provisions such as RMA 15(g). Present Florida law provides no statutory guidance for judicial review, other than the limited grounds for invalidating a rule which

are contained in section 120.30(2). This is one of the key provisions which distinguishes the proposed act from existing practice.

0120.19 Enforcement of agency action.

Source: F.S. 120.071

Comment: (a) This provision enables any agency to seek judicial enforcement of its determinations, except as otherwise provided by statute. Use of the introductory phrase "except as otherwise provided by statute" preserves existing methods of judicial enforcement. The enforcement method contained in these provisions is therefore an additional available alternative which the agency may elect. However, only one enforcement action may be brought, and the agency cannot use these new provisions as a means of obtaining multiple enforcements of a single transaction or occurrence.

(b) Enforcement is obtained in the circuit courts through procedures which are as near as possible to the petitions for review of agency determinations. The scope of review is the same, except that a citizen will lose the right to assert as a defense the invalidity of agency action if he elects to postpone his challenge by defending an enforcement suit after the time for review has expired, rather than by initiating a timely petition for review.

(c) The agency is permitted to file only one suit against a respondent for enforcement of the same agency determination on the basis of the same transaction or occurrence. Thus, the respondent enjoys a "double-jeopardy" type of protection against repetitious enforcement suits.

(d) These provisions deal only with civil sanctions, for a number of reasons. First, criminal enforcement requires jury trial and other distinctive features which cannot feasibly be combined with civil enforcement. Second, criminal enforcement of administrative determinations is seldom provided by statute, and even where provided is seldom invoked. Third, Florida has endeavored in other areas to decriminalize most violations of administrative determinations, and this effort should not be

thwarted. The present draft does not, however, interfere with existing statutory provisions for criminal enforcement.

(e) Once an agency has made an adjudicatory determination, the agency is likely to follow through and seek enforcement. However, if an agency has made a rule-making determination, possibly at some remote time in the past, the agency may not be diligent in seeking enforcement. Paragraph (1)(b) confers standing on other agencies, or on any citizen, to seek judicial enforcement of any agency determination, as a means of overcoming agency inaction. A similar provision for standing appears in the Florida Environmental Protection Act, Section 403.412(2), Florida Statutes. This provision gives the agency which made the determination an opportunity to seek enforcement of its own determination before third parties intervene.

(f) Subsection (4) provides the equivalent of a presumption of innocence, by requiring that the petitioner (normally, the agency) must prove that respondent is not in compliance with the agency determination. In all other respects, the agency determination is presumed correct under the provisions setting the scope of judicial review.

0120.20 Disqualification of agency personnel.

Source: F.S. 120.09
Comment: self-explanatory

Section 2.

Source: RMA 17
Comment: standard severability clause

Section 3.

Source: RMA 18
Comment: All conflicting laws should be identified and eliminated at the time this act is adopted.

Section 4.

(2)

Source: F.S. 120.331
Comment: The requirement in subsection (2) that all existing rules which are challenged must be

repromulgated repeats the 1961 requirement of Florida's present statute, except that the minimum fairness requirements of the new law must be applied. Under the 1961 act, existing rules were "grandfathered" in without hearing, merely by re-adoption, thus creating a significant escape from the revised fairness requirements.

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

Section 1. Chapter 120, Florida Statutes, is amended to read:

Chapter 0120
Administrative Procedure Act

0120.1 Short title. -- This chapter may be known and cited as the "Florida administrative procedure act."

0120.2 Definitions.-- As used in this act:

(1) "agency" means

(a) the governor and lieutenant governor in their exercise of all executive powers other than those described in the Constitution;

(b) each other state officer and each state department, departmental unit described in section 20.04, Florida Statutes, commission and board, but not the legislature and courts; and

*(c) each other unit of government in the state, including counties, municipalities, regional planning agencies, districts, boards and authorities to the extent they are

* Indicates a textual change (other than mere re-numbering or changed placement) from Reporter's Draft No. 4.

made subject to this act by statute or by judicial decision.

* (2) "Agency action" means the whole or a part of an agency rule or order, or the denial thereof. The term also means any failure to act on any request made under section 0120.4(3).

* (3) "Agency head" means the individual or collegiate body which is elected or appointed to serve at the highest level prescribed by law or constitution for each state department, commission or board.

* (4) "Director" means the director of the division of administrative hearings in the department of administration.

* (5) "License" includes the whole or part of any agency franchise, permit, certification, authority, charter, or similar form of permission required by constitution, statute, rule or judicial decision. The term does not include a license required principally for revenue purposes where issuance of the license is merely a ministerial act.

(6) "Licensing" means any agency process for the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, amendment, or imposition of terms for the exercise of a license.

(7) "Official recognition" means the act of an agency in recognizing for any agency determination judicially cognizable facts and generally recognized technical or scientific facts within the agency's specialized knowledge.

* (8) "Order" means the whole or any part of a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule under subsection (11), whether affirmative, negative, injunctive or declaratory in form. An oral agency decision shall be considered final when rendered unless reduced to writing without

substantial modification and served on all parties within five calendar days, in which case it shall be considered final from the date of the writing.

* (9) "Party" includes (a) specifically named persons whose substantial interests are being determined in the proceeding, (b) any other person who as a matter of constitutional right, provision of statute, or provision of agency regulation is entitled to participate in whole or part in the proceeding or whose substantial interests will be affected by proposed agency action, and who makes an appearance, and (c) any other person, including staff of the agency, allowed by the agency to intervene or participate in the proceeding as a party. Any agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become "parties" within the meaning of this act.

* (10) "Person" means any person described in section 1.01, Florida Statutes, any agency described in paragraphs 0120.2(1)(a) and (b) except the legislature and the courts, and any other unit of government in or outside the state.

* (11) "Rule" means any statement of general applicability by an agency made to implement, interpret, or prescribe law or policy; to describe the organization, procedure, or practice requirements of an agency; to allocate or spend state resources and funds; or to amend or repeal a prior rule. The term "rule" includes rules of court promulgated by the Florida Supreme Court, if and to the extent that the Court expressly elects to bring those rules within the purview of this act. The term does not include (a) internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public, (b) legal memoranda or opinions issued to an agency by the attorney general or counsel to the agency prior to their use in connection with agency action, or (c) the allocation of trust funds within an agency which derives none of its resources from the general revenue fund of the state.

0120.3 Minimum public information. --

(1) In addition to other requirements imposed by law, each agency shall adopt as a rule:

(a) a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(b) rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency; and

(c) rules of procedure appropriate for the presentation of arguments concerning issues of law or public policy, and for the presentation of evidence on any pertinent fact that may be in dispute.

(2) Each agency shall make available for public inspection and copying at no more than cost:

* (a) all rules formulated, adopted, or used by the agency in the discharge of its functions;

(b) all agency orders; and

* (c) a current cross-index and subject matter index providing identifying information as to any rule or order issued, adopted, or promulgated at any time after the effective date of this act.

* 0120.4 Rules; adoption procedures. --

(1) Prior to the adoption, amendment or repeal of any rule not described in subsection (7), the agency shall give notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, and the specific legal authority under which its adoption is authorized.

(a) The notice shall be published in the Florida administrative weekly not less than fourteen days prior to the intended action.

* (b) Not later than the date of publication, the notice, with a copy of the proposed rule attached if it is not included in the notice, shall be mailed to all persons named in the proposed rule and to all persons who have made timely requests of the agency for advance notice of its proceedings.

* (c) In all cases where the agency's authority and its intended action are directed to or known to be of special interest to a particular class of persons, timely notice may but shall not be required to be provided through any specialized periodical distributed to or circulated among that class, or through mailings or publications known to be addressed or distributed to that class.

(2) If the intended action concerns any rule other than one relating exclusively to organization, procedure or practice, then upon the request of any person received within fourteen calendar days after the date of publication of the notice, the agency shall provide an opportunity for such public hearing as may be appropriate to inform it of the contentions of interested persons.

(3) Any person may petition an agency to promulgate, amend or repeal a rule, or to provide the minimum public information required by section 0120.3. Not later than thirty calendar days after the date of filing a petition, the agency shall initiate rule-making proceedings under this act or otherwise comply with the requested action, or it shall deny the petition with a written statement of its reason for the denial.

(4) In rule-making proceedings conducted under this act, the agency may take "official recognition" and it may provide that written data, reports or other documents in its files shall be incorporated into the record of the proceeding. Before completing the record of any proceeding, all parties to the proceeding shall be provided a list of materials recognized or incorporated, and they shall be given a reasonable opportunity to examine and to offer written comments upon or written rebuttal to all such materials.

(5) Each rule adopted shall be accompanied by a reference to the specific legal authority pursuant to which the rule was adopted and a reference to the section or subsection of law being implemented, interpreted or made specific.

(6) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and a reference to the rules repealed or amended, which statement need not be printed in the Florida administrative code.

(7) (a) If an agency finds that an immediate danger to the public health, safety or welfare requires emergency action, the agency may adopt any rule by such abbreviated procedure as is fair under the circumstances and is necessary to protect the public interest, provided

(i) that the procedures do not afford less than the procedural protections afforded by the Florida or United States Constitutions or explicitly by statute;

(ii) that the agency takes only such action under the extraordinary procedure as is necessary to protect the public interest; and

(iii) that the agency publishes in writing at the time of or prior to its action its specific facts and reasons for finding an immediate danger to the public health,

safety or welfare and its reasons for concluding that the procedure afforded is fair under the circumstances.

(b) Any rule adopted under this subsection:

* (i) may not be effective for a period longer than forty-five calendar days, except that one extension may be made not exceeding forty-five calendar days if the requirements of this subsection are again met;

* (ii) shall be subject to judicial review, which the courts of this state are authorized to expedite, to the extent set forth in this act and additionally to allow review of the agency's findings of immediate danger, necessity and procedural fairness;

(iii) shall not preclude the taking of identical action by normal rule-making procedures.

(8)*(a) The attorney general shall prepare and adopt under the procedures of this act one or more sets of model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules by reference after notice in the manner provided by subsection (1). The Florida administrative code shall include with the model rules a reference to the agencies which have adopted them in whole or in part and in the case of partial adoption a reference to the specific rules or parts adopted. Neither the attorney general nor any agency shall adopt, amend or repeal the model rules or any part thereof unless he or it complies with the provisions of this act relative to the promulgation of rules.

(b) The attorney general's model rules of procedure shall apply in all proceedings before an agency to the extent the agency has not adopted a specific rule of procedure covering the subject matter contained in the model rules.

* 0120.5 Rules; filing and publication. --

* (1) Each agency shall file with the department of state three copies of each rule it has adopted, and the department shall furnish a copy to the president of the Florida Senate and to the speaker of the Florida house of representatives.

* (2) A rule shall become effective twenty calendar days after filing with the department of state, except that:

(a) a later date is the effective date if required by statute or specified in the rule; or

(b) subject to applicable constitutional and statutory provisions, an emergency rule under subsection 0120.4(7) becomes effective immediately upon filing, or at a stated date less than 20 days thereafter, if the agency finds that the earlier effective date is necessary because of immediate danger to the public health, safety, or welfare.

(3) The department of state shall:

(a) prescribe by rule the style, form and procedures required for the submission of rules for filing;

(b) conduct a systematic and continuing study of rules in the Florida administrative code to reduce their number and bulk, to remove redundancies, to correct grammatical, typographical and like errors not affecting the construction or meaning of the rules, and to make changes in style and form as are required by paragraph (a), in each case after obtaining the consent of the affected agency;

(c) publish, or contract for publication on the basis of competitive bidding, in a permanent compilation entitled the Florida administrative code all rules adopted by each agency and complete indices to all matters contained in the code. Supplementation of the code shall be made as often as is practicable, but no less frequently than monthly;

(d) publish, or contract for publication on

the basis of competitive bidding, in looseleaf form a weekly pamphlet entitled the Florida administrative weekly which shall contain (i) a summary of and an index to all rules filed during the preceding week, and (ii) all hearing notices required by subsection 0120.4(1) showing the time, place and date of the hearing and the agency's explanation of all rules proposed for adoption or consideration at the hearing;

* (e) make copies of the Florida administrative code and weekly available for sale at no more than cost.

(4) Each agency may, at its own expense, either print and distribute its rules which are on file with the department of state or purchase printed copies from the department of state for its own distribution.

* (5) (a) The department of state shall furnish one copy of the Florida administrative code and weekly without charge to each federal and state court having jurisdiction or authority over the citizens or residents of the state, each state university library, each law school library in Florida, the legislative library and the state library, and upon request to each United States senator and congressman from Florida and each state legislator. In addition, three sets shall be made available to the library of the attorney general and two sets shall be made available to each agency head without charge.

(b) The department of state shall furnish one copy of the Florida administrative weekly, without charge, to all main public libraries in Florida, to the clerk of the circuit court in each county in Florida, and to the headquarters office of each state department, for posting or other prominent placement for convenient public inspection.

* 0120.6 *Decisions which affect substantial interests.* -- The provisions of this section shall apply in all proceedings

including rate-making and licensing, in which the substantial interests of a party are determined by an agency. Rule-making proceedings shall be governed solely by section 0120.4 unless and to the extent that a party timely asserts that his or its substantial interests will be affected in the proceeding and affirmatively demonstrates that the proceeding does not provide adequate opportunity to protect those interests. Subsection (1) shall apply whenever and to the extent that the proceeding involves a disputed issued of material fact, of policy, or of the interpretation of a provision having the effect of law. It shall also apply whenever a hearing is required by constitutional right or a statute other than this act. Subsection (2) shall apply in all other cases.

(1) In those instances described as applicable to this subsection, the following procedures shall apply.

(a) All parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include:

(i) a statement of the time, place and nature of the hearing;

(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(iii) a reference to the particular sections of the statutes and rules involved;

(iv) a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given; provided that if the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than three days prior to the date set for the hearing.

(b) In any proceeding under this subsection, opportunity shall be afforded all parties to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, and to file exceptions to any order or

recommended order. Reasonable opportunity shall also be afforded to parties and other persons to present written communications which shall not be made a part of the record of the proceeding or considered by the agency in its deliberations on the issues, and if the agency at any time proposes to consider or rely upon such material then all parties shall be given an opportunity to cross-examine, challenge or rebut such material.

(c) The record in cases governed by this subsection shall only consist of;

(i) all pleadings, motions and intermediate rulings, including the notice;

(ii) evidence received or considered;

(iii) a statement of matters officially recognized;

(iv) questions and offers of proof, objections and rulings thereon;

(v) proposed findings and exceptions;

* (vi) any decision, opinion, proposed order or report by the officer presiding at the hearing;

* (vii) all staff memoranda or data submitted to the hearing officer or to the agency during the hearing; and

(viii) all matters placed on the record after an ex parte communication pursuant to subsection 0120.11(2).

(d) The agency shall, by stenographic or mechanical device, accurately and completely preserve all testimony in the proceeding, and it shall make a full or partial transcript available at cost upon the request of any party.

(e) Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

* (2) In those instances not described as applicable to subsection (1):

(a) the agency shall, in accordance with its rules of procedure,

(i) give such notice as is best calculated to inform such persons or parties of the agency's action, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal and policy grounds therefor;

(ii) afford such persons or parties, or their counsel, at a convenient time and place, an opportunity to present to the agency or hearing officer written evidence in opposition to the agency's action or refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction;

(iii) if feasible, an opportunity to present oral testimony and argument in lieu of or in addition to written presentations; and

(iv) if the objections of the persons or parties are overruled, provide them within seven calendar days, by the means best calculated to reach them, a written decision explaining why such objections have been overruled.

(b) the record shall only consist of:

(i) the notice and summary of grounds;

(ii) evidence received or considered;

(iii) all written statements submitted by persons and parties;

(iv) any decision overruling objections; and

(v) all matters placed on the record after an ex parte communication pursuant to subsection 0120.11(2).

(3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order or default.

(4) This section shall not apply to agency investigations preliminary to agency action.

0120.7 Orders. --

*(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record, shall include findings of fact and conclusions of law separately stated, and shall be rendered within ninety days (a) after the hearing is concluded if conducted by the agency, (b) after a proposed order is submitted to the agency and mailed to all parties if conducted by a hearing officer, or (c) after the agency has received the written and oral material it has authorized to be submitted if there has been no hearing. All parties may waive or extend the ninety day period.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(3) If an agency finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite such finding in a final order which shall be appealable from the date rendered.

(4) Parties shall be notified either personally or by mail of any order and, unless waived, a copy of the final order shall be delivered or mailed to each party or to his attorney of record.

0120.8 Agency action; evidence, record and subpoenas. --

*(1) In agency proceedings for a rule or order:

*(a) irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type

commonly relied upon by reasonably prudent men in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all oral testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

*(b) an agency, its duly empowered presiding officer, or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery upon the written request of any party or upon its own motion by means of written interrogatories, written and oral depositions of parties or witnesses, and other means available to the courts.

(c) documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

*(d) a party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record, for a full and true disclosure of facts.

*(e) if the agency head which is to render the final decision has not heard the oral testimony, if any, or read the entire record, a decision adverse to a party to the proceeding other than the agency itself shall not be made until a proposal for order or rule is served upon the parties and an opportunity is afforded them to file exceptions and present briefs and oral arguments to the official or officials who are to render the decision. Any proposal for order shall

contain findings on each issue of fact and a statement of reasons for all issues of law necessary to the proposed order, and it shall be prepared by the individual who conducted the hearing or, if unavailable, by one who has read the complete record. The parties by written stipulation may waive compliance with this paragraph.

*(2) Any person subject to a subpoena or order directing discovery may, before compliance therewith and upon timely petition, request the agency having jurisdiction of the dispute to invalidate the subpoena or order on the ground that it was not lawfully issued, is unreasonably broad in scope, or encompasses irrelevant material, but the decision of the agency on any such request shall not require an opportunity for hearing under subsection 0120.6(1).

*(3) Any person failing to comply with a subpoena or order directing discovery issued under the authority of this act shall be in contempt of the agency issuing the subpoena or order and shall be subject to any penalties or requirements which the agency is authorized by law to prescribe; provided that no person shall be in contempt while the subpoena or order is being challenged under subsection (2). In the absence of agency action on the default within a reasonable time, the party requesting the subpoena or order may bring proceedings in an appropriate circuit court for its enforcement.

0120.9 Licensing. --

(1) Unless otherwise provided by statute enacted subsequent to the effective date of this act, licensing is subject to the provisions of subsection 0120.6(1).

(2) When an application for a license is made as required by law, the agency shall conduct the proceedings required with reasonable dispatch and with due regard to the interests of all interested parties.

(3) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by operation of law, or for a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally acted upon by the agency and, if the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the revieving court.

(4) No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency has given reasonable notice by certified or registered mail to the licensee of facts or conduct which warrant the intended action, and the licensee has been given an opportunity to show compliance with all lawful requirements for the retention of the license.

(5) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension of a license, it must proceed in the manner described in subsection 0120.4(7) and incorporate a finding to that effect in its order. In that case, summary suspension may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

* 0120.10 Hearing officers. --

(1) There is hereby created the division of administrative hearings within the department of administration, to be headed by a director who shall be selected by the secretary of the department.

*(2) All hearings under subsection 0120.6(1) shall be conducted by the agency head, whether individual or collegiate, or by a hearing officer assigned by the director as provided in this section. This subsection shall not apply to hearings

before the judges of industrial claims or unemployment compensation appeals referees.

*(3) (a) The director shall appoint, or contract for, and maintain, a staff of hearing officers to conduct hearings required by this act or other law. No person may be considered for employment as a hearing officer unless he has been a member of The Florida Bar for five years.

(b) If at any time within two years after the effective date of this act the director advises an agency that his staff is insufficient to provide a requested hearing officer within a reasonable time, the agency may conduct the hearing without regard to the provisions of subsection (2).

(c) The director shall appoint or contract for other personnel required to perform duties essential to the conduct and support of administrative hearings.

*(4) By rule adopted in accordance with this act, the director may establish further qualifications for hearing officers and he shall establish procedures by which candidates will be considered for employment or contract, the manner in which public notice will be given of vacancies in the staff of hearing officers, and procedures for the assignment of hearing officers. The terms of employment, contract and tenure of hearing officers may be prescribed by law.

*(5) Upon the request of any agency, the director shall assign a hearing officer to conduct a hearing with due regard to the expertise required for the particular matter, but no agency may request a hearing officer by name. Any party may request the disqualification of any hearing officer by filing an affidavit with the director prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. All hearing officers shall be employees of or on

contract to the division, and not the agency to which assigned, and the compensation or fees for all hearing officers shall be paid from appropriations to the division.

*(6) (a) A hearing officer who has conducted a hearing shall complete and submit to the agency and all parties a proposed order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, recommended penalty, if applicable, and any other information required by law or agency rule to be contained in a final order. The agency shall allow each party at least ten days in which to submit written exceptions to the proposed order.

(b) The agency may accept the proposed order and adopt it as the agency's final order. The agency in its final order may reject or modify the conclusions of law and the interpretations of administrative rules in the proposed order, but it may not reject or modify the proposed order's findings of fact unless the agency first determines from a review of the complete record and states with particularity in its order that the findings of fact were not based upon substantial evidence. The agency may accept or reduce a recommended penalty in the proposed order but may not increase it without a review of the complete record.

(c) If the hearing officer assigned to a hearing becomes unavailable, the director shall assign another hearing officer who shall use the existing record and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

(7) Not later than February 1 of each year, the director shall issue a written report directed to the president of the Florida senate, the speaker of the Florida house of representatives and the secretary of the department of administration, copies of which shall be made available to the public, containing for the preceding calendar year at least the following

statements to the agencies no less frequently than quarterly.

*(10) The division is authorized to provide hearing officers on a contract basis to any governmental entity for the purpose of conducting any hearing not covered by this section.

0120.11 Ex parte communications. --

(1) No ex parte communication relative to the merits of pending agency action shall be made to a hearing officer or to any member of the agency who is or may be involved in the decisional process by:

(a) a staff member of the agency or any other public employee or official engaged in the performance of investigation, prosecution or advocacy in connection with the matter under consideration or a factually-related matter; or

(b) a party to the proceeding, any person who directly or indirectly would have a substantial interest in the proposed agency action, or their authorized representatives and counsel.

*(2) A hearing officer or agency member who is or may be involved in the decisional process and who receives an ex parte communication in violation of this section shall place on the record of the pending matter (a) all written communications received, (b) a memorandum stating the substance of all oral communications received, (c) all written responses to the communication, and (d) a memorandum stating the substance of all oral responses made. He shall also promptly advise all parties and the director that such matters have been placed on the record. He may, in his sole discretion, withhold an order until the effect of the communication has been eliminated (notwithstanding the ninety-day requirement of subsection 0120.7(1)), or where appropriate report the violation to appropriate

disciplinary bodies charged with the responsibility to investigate the conduct and qualifications of authorized representatives or counsel.

*(3) A violation of subsection (1), even if action has been taken under subsection (2), or a failure to act upon a violation in accordance with subsection (2), shall constitute a violation of the career service laws of this state and shall subject the violator to fine, discharge or such other disciplinary action as the administrator of career service determine, or if the violator is not subject to the career service laws, shall be filed with the office of the governor (if the violator is an appointed official) or the elections division of the department of state (if the violator is an elected official).

0120.12 Representation by counsel. -- Any person compelled to appear or who appears voluntarily before any hearing officer, agency or representative thereof in the course of an investigation or in any agency proceeding, shall be accorded the right to be accompanied, represented, and advised by counsel and, if permitted by agency rule, by other qualified representatives, at his own expense. Every party shall be accorded the right to appear in any agency proceeding in person, by or with counsel, by or with other duly authorized representatives, and in the case of corporations and artificial entities by or with officers and employees.

0120.13 Official recognition. -- Where official recognition is requested or determined in proceedings which depend upon facts, parties shall be notified either before or during a hearing, or by reference in preliminary reports or otherwise, of the material recognized, including any staff memoranda or data, and they shall be afforded an opportunity to examine and contest the material so recognized.

0120.14 Publicity before final action. -- Prior to final agency action in any matter, no agency head, agency employee, hearing officer or party shall make or release any statement or other publicity not on the record which is intended to influence the agency's action.

0120.15 Agency investigations. -- No process, requirement of a report, inspection or other investigative act or demand shall be issued, made or enforced in any manner or for any purpose except as authorized by law. Every person who responds to a request or demand by any agency or representative thereof for written data or for an oral statement shall be entitled to retain a copy of any data submitted and shall be entitled upon payment of lawfully-prescribed costs to procure a transcript of his oral statement.

0120.16 Exemption from act. --

(1) Upon application of any agency, the governor may by executive order exempt any type of process or proceeding governed by this act from one or more requirements of this act when:

(a) the agency head has certified that the requirement would conflict with any provisions of federal law or rules with which the agency must comply as a condition to the receipt of federal funds, or in order to permit persons in the state to receive tax benefits under any federal law; or

(b) the governor has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the proceeding and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) When the governor grants an exemption from one or more requirements of this act pursuant to this section, he shall establish alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the governor shall hold or designate the attorney general to hold a public hearing after notice given as provided in subsection 0120.4(1).

(b) An exemption and any alternative procedure prescribed shall terminate upon the adjournment sine die of the next regular legislative session after issuance of the exemption, but any exemption may be renewed after adjournment on the basis of another hearing under this section.

0120.17 Judicial review; in general. --

*(1) Any party adversely affected by any final agency action is entitled to judicial review thereof after all administrative remedies have been exhausted.

*(2) Except in matters for which judicial review by the supreme court is expressly authorized by statute, all proceedings for judicial review shall be initiated by filing a petition for review in the district court of appeal in the judicial district where the agency maintains its headquarters office, or where the aggrieved party resides.

*(3) Review proceedings shall be conducted in accordance with this act and the Florida Appellate Rules, whether brought under this act or any other statutory provision.

* (4) The filing of a petition for review does not itself stay enforcement of the agency action. The agency may grant,

or the reviewing court may order, a stay upon appropriate terms.

(5) The record for judicial review shall be:

(a) For review of an agency order after proceedings conducted in accordance with section 0120.6, the record transmitted or certified to the reviewing court shall consist of the agency's written document expressing the order, the statement of reasons therefor, if issued, and the record adduced before the agency under the provisions of that section.

(b) For review of an agency rule after proceedings conducted in accordance with section 0120.4, the record transmitted or certified to the reviewing court shall consist of the agency's written document expressing the action, the statement of reasons therefor, if issued, and the materials considered by the agency under that section.

*(c) For review of agency action where there has been no agency proceeding under section 0120.4 or 0120.6, the record transmitted or certified to the reviewing court shall consist of the agency's written document expressing the action, and all other written documents identified as having been considered by the agency before its action and used as a basis for its action.

(6) Judicial review of any agency action shall be confined to the record transmitted, and any additions made thereto in accordance with subsection (7).

(7) (a) In the case of disputed allegations or irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the reviewing court may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them.

(b) When the agency action is not based on facts found after an opportunity for a hearing, but the reviewing courts find that the validity of the action depends upon

disputed facts, the court shall (i) order the agency to conduct a prompt fact-finding proceeding under this act, or (ii) if such agency proceeding cannot be promptly set and concluded, order that a master be appointed to establish the facts relevant to the agency action. Prior to either procedure, the agency shall be afforded a reasonable opportunity to reconsider its determination on the record of the proceedings.

0120.18 Judicial review; scope. --

The reviewing court shall deal separately with disputed issues of (a) agency procedure, (b) interpretations of law, (c) determinations of fact, and (d) policy within the agency's exercise of delegated discretion.

(1) 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. The failure of any agency to comply with the requirements of section 0120.3 shall be presumed to require remand.

(2) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

*(3) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of subsection 0120.6(1) of the act, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends to any

extent on any finding of fact that is not supported by substantial evidence on the record.

(4) If the agency's action depends on facts determined pursuant to subsection 0120.17(7), the court shall set aside, modify, or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility."

(5) The court shall remand the case to the agency if it finds the agency's exercise of discretion or choice of policy (i) to be outside the range of discretion or policy delegated to the agency by law, (ii) to be inconsistent with an agency rule, an officially stated agency policy, or a prior agency practice argued to and not explained by the agency, or (iii) to be otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion or choice of policy.

(6) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action under a specified provision of this subsection, it shall affirm the agency's action.

(7) The reviewing court's decision may be mandatory, prohibitory or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings, or declare the rights, privileges, obligations, requirements, or procedures at issue between the parties, and may order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully

taken or withheld. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

0120.19 Enforcement of agency action. --

(1) Except as otherwise provided by statute,

*(a) any agency may seek enforcement of an action by filing a petition for enforcement in the circuit court with jurisdiction over the person;

(b) a petition for enforcement of any agency action may be filed by any person who is a resident of the state; provided that no such action may be commenced (i) prior to sixty days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the attorney general and any alleged violator of the agency action, or (ii) if an agency has filed and is diligently prosecuting a petition for enforcement;

(c) a petition for enforcement filed by a non-governmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply;

(d) in an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request (a) declaratory relief, (b) temporary or permanent equitable relief, (c) any fine, forfeiture, penalty or other remedy provided by statute, or (d) any combination of the foregoing.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same respondent for enforcement of the same

agency action on the basis of the same transaction or occurrence. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

* (4) In an enforcement proceeding, the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action and the court may review the agency's action in the manner provided in section 0120.18.

* (5) In all enforcement proceedings:

* (a) if enforcement depends upon any facts other than appear in the record, such as respondent's non-compliance, the court may ascertain such facts;

* (b) if petitions for enforcement and for review are pending at the same time in the same or several courts, all such actions shall be transferred to and consolidated into the court considering the first filed petition. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings;

(c) should any party willfully fail to comply with an order of the court, the court shall punish it in accordance with the law applicable to contempt committed by a person in the trial of any other action.

* (6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's

action presents an irminent and substantial threat to the public health, safety or welfare, the agency may bring suit for immediate temporary equitable relief, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement, the court may award the costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(8) If a petitioning citizen is seeking a temporary restraining order or preliminary injunction, or if the court has reasonable grounds to doubt that a petitioning citizen is solvent or has the ability to pay the costs of a judgment which might be rendered against him in an enforcement action brought under this act, the court may order the petitioner to post a surety bond or equivalent security.

0120.20 Disqualification of agency personnel. --

*(1) Any individual serving alone or with others as any agency head may be disqualified from serving in an agency proceeding, either voluntarily or involuntarily, for bias, prejudice, interest or other causes. If the disqualified individual holds his position by appointment, the appointing power shall appoint a substitute to serve temporarily in the matter from which the individual is disqualified. If the individual is an elected official, the governor shall appoint a substitute to serve temporarily in the matter from which the individual is disqualified.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

Section 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and for this purpose the provisions of the act are severable.

Section 3. To conform other statutes to this act, the following laws are repealed and replaced with the language indicated:

(1) Subsections 214.25(1) and (2), Florida Statutes, are replaced by subsection 214.25(1) to read: "(1) Judicial review of assessments under this chapter shall be taken in accordance with the venue and procedure provisions prescribed in the administration procedure act, chapter 0120, Florida Statutes.

*(2) Sections 194.171, 194.81, 194.211, 206.26, 206,97 and 211.19, and subsections 212.15(4) and (5), Florida Statutes, ...

(3) . . . .

Section 4.

*(1) This act shall become effective sixty days after becoming law, except as to paragraph 0120.3(2)(c) which shall become effective fourteen months after becoming law.

*(2) Any rule in effect on the effective date of this act, whether published in the Florida administrative code or not, shall become invalid and of no effect 180 days after the effective date of this act if the agency or the department of state has by that date received any writing requesting its abatement. Any rule as to which such a writing is received may be repromulgated in accordance with the procedures contained

in this act, except that the emergency procedures for adopting rules shall not be available for that purpose.

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October 26, 1973

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TO WHOM IT MAY CONCERN:

Attached to this letter is a draft of a revised administrative procedure act for the State of Florida. This draft has been prepared at the request of the Florida Law Revision Council, for the purpose of compiling in statutory form most of the matters which will have to be considered when and if a revised administrative procedure law is proposed for adoption. The starting point for this draft statute was the Uniform Commissioner's Revised Model State Administrative Procedure Act. This is the act from which Chapter 120, Florida Statutes, was originally derived. It seemed appropriate to begin a revision of the Florida law from the same source as the original enactment.

As of the date of this draft, no public or private meetings of the Florida Law Revision Council, its committees or of any legislative committees have been held to review or consider this draft statute.

This draft statute was prepared in conjunction with an ad hoc task force organized by the director of the Center for Administrative Justice, an organization created in 1972 by the American Bar Association in order to further administrative justice in the United States. Members of the task force, who were selected for their experience, technical expertise and interest in administrative law matters, were:

Milton M. Carrow, Director
Center for Administrative Justice
Professor Frederick Davis
University of Missouri Law School
Carroll L. Gilliam, Esquire
Washington, D.C.
Cornelius B. Kennedy, Esquire
Washington, D.C.
Joseph P. Griffin, Esquire
Washington, D.C.
Professor Harold Levinson
Vanderbilt University Law School
Professor Hans Linde
University of Oregon Law School
Professor Robert Park
George Washington University Law School

The task force met in Washington, D.C. on September 28, 29 and 30, 1973, and there worked toward the development of a model state administrative procedure law for Florida. Major attention and effort was given to incorporating into the draft act recent judicial and statutory notions of administrative fairness and adopting in statute form many aspects of administrative fairness which have never been given legislative attention, such as informal adjudication.

For purposes of the draft statute, the traditional terms "adjudication" and "rule-making" have been retained. The draft has been developed, however, on the assumption that these terms are operationally too narrow and confining. The draft has expanded these terms and their usage to accommodate informal adjudications, and to provide agencies with the flexibility to accomplish under a mixed set of procedures any result which is necessary to the conduct of their affairs. Thus, authority is provided in rule-making proceedings to determine disputed facts in a hearing, and in adjudicatory proceedings to establish policy with the mechanics of rule-making. In other words, the traditionally narrow paths to administrative determinations have been varied to allow function-oriented goals, rather than continuing a pattern of procedures pre-conditioned by the first denomination of the proceeding.

In contemplating a format for the revised act, it was recognized that there are wide variations among all agencies of state and local government which cannot be accommodated in a single statutory scheme. Accordingly, this draft was designed to prescribe uniform fairness minima governing all agency actions which affect persons within Florida, without imposing a rigid set of procedural rules to be used by all governmental units.

Interested persons should note that the following provisions in Florida's present administrative procedure act have been omitted from this draft:

Section 120.011, providing legislative intent for Part I;
Section 120.042, relating to governmental agreements;
Section 120.061, providing an appropriation;
Section 120.09, providing for disqualification of commissioners;
Section 120.20, providing legislative intent for Part II; and
Section 120.321, providing an exemption for the Citrus Commission.

Finally, the following symbols have been used in the proposed act for identification:

"120.__" refers to sections of present Florida law;
"0120.__" refers to sections of the proposed act;
"F.S." refers to sections in Florida Statutes;
"RMA" refers to sections in the Uniform Commissioner's Revised Model State Administrative Procedure Act (1961);
"Fed" refers to sections in the federal administrative procedure act found in Chapter 5, United States Code;
"Mass" refers to sections in Chapter 30A, Laws of Massachusetts;
"Ore" refers to sections in Chapter 183, Oregon Revised Statutes;
"Tex" refers to sections in S.B. 139 (2/1/73), a recently-proposed Texas administrative procedure act; and
"HB 2145" refers to House Bill 2145 as passed by both houses of the 1973 Florida Legislature, which act was vetoed by the governor for constitutional reasons in a message dated July 5, 1973.

Arthur J. England, Jr.

Arthur J. England, Jr.
Reporter to the Florida
Law Revision Council

AJEJr/jt