

SUB: SB 860; HB 1751

DATE: April 28, 1978

This bill contains suggestions made by representatives of various agencies at a workshop conducted by staff of the Administrative Procedures Committee as well as the Governor's Office on February 9, 1978. While not all suggestions presented at this workshop are included, the bill contains those which were recommended and approved by the Administrative Procedures Committee.

Section 1 of the bill amends the definition "agency" to specifically except Joint Electric Power Supply Projects. These projects are created under Chapter 361, Florida Statutes, but do occasionally enter into interlocal agreements under Chapter 163. Since entities created under Chapter 163 are presently included within the definition of "agency" there may be some confusion as to whether entities which are not created under Chapter 163 but which utilize Chapter 163 are covered. This amendment clarifies the fact that power supply projects created under Chapter 361 are not covered by the Administrative Procedure Act simply because they execute agreements under Chapter 163.

Section 2 of the bill substantially revises the Economic Impact Statement requirement to eliminate any references to "professionally accepted methodology" and simplifies the requirements of the statement. The proposed amendment substitutes the word "estimate" for "determination" and requires the adopting agency to provide a detailed statement of the data and the method used in arriving at the required estimates. This section also would require the agency to cite either a Florida Statute or a Law of Florida as the Law Implemented for each rule. The agency could still cite the Federal regulation and might be required to, but the Florida Statute authorizing the implementation of a Federal provision would also appear. This would also probably cover situations in which a subordinate agency implements a rule of a superior agency. Finally, this section would clearly state that if a public hearing is held but no material is authorized to be submitted nor transcript prepared, the 21 to 45 day period for filing applies.

Section 3 of the bill specifies that the declaratory statement shall apply only to the person requesting the statement so that agencies won't be able to promulgate "rules" of general applicability under the guise of declaratory statements.

Section 4 of the bill contains language which should make it clear that a request to the agency for a stay is an option open to the licensee and not a prerequisite to a petition for supersedeas when seeking judicial review of agency action.

Section 5 of the bill clarifies a conflict between Section 120.71 and 112.3143, Florida Statutes. Section 120.71 provides that an individual serving alone or with others as an agency head shall be disqualified from serving in an agency proceeding for the reasons a judge may be recused. Section 112.3143 states that no public officer shall be prohibited from voting in his official capacity on any matter. These two provisions are obviously in direct conflict. The Chapter 112 provision requires the vote but requires that it be accompanied by a memorandum of disclosure of a conflict of interest. The Chapter 120 provision prohibits the vote.