

## Florida Amends APA

By Larry Sellers<sup>3</sup>

Last year, Governor Jeb Bush vetoed a bill that would have amended Florida's Administrative Procedure Act (APA). This year, the Legislature again approved similar legislation, but incorporated several changes designed to address the Governor's concerns. Here's a brief summary of some of the key provisions in the 2006 bill, Chapter 2006-82.

*Expansion of E-Rulemaking to All Agencies.* In 2002, the Legislature created a pilot project by which the Department of Environmental Protection publishes its official notices on its website, rather than in the Florida Administrative Weekly. Chapter 2006-82 expands this project to all state agencies by providing for the electronic publication of the Weekly on an internet website managed by the Department of State. The Department also is required to continue to publish a printed version of the Weekly and to make copies available on an annual subscription basis. The bill requires this website to allow users to search notices, subscribe to an automated e-mail notification of selected notices, and to comment electronically on proposed rules. The Department recently has established a new Florida Government Electronic Rulemaking System, which may be found at [www.flrules.com/default.asp](http://www.flrules.com/default.asp).

*Equitable Tolling.* Several judicial decisions, in dicta, have suggested that the doctrine of equitable tolling may be applied to extend the administrative time limit in cases where the petitioner "has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum." Chapter 2006-82 revises Section 120.569(2)(c) to simply provide that "this paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition." Language in the 2005 bill that was intended to codify the judicial definitions of equitable tolling was not included, as this language was one of the stated reasons for the Governor's veto.

*Revision of Required Enforcement/Disciplinary Petition Contents.* An appellate court had recommended that the Legislature amend the provisions in the APA governing the sufficiency of a petition when the administrative action is initiated by the filing of an administrative complaint by the agency. In particular, the court suggested that it should be sufficient for the respondent to submit a document that sets forth those paragraphs of the administrative complaint that are admitted, denied, or as to which the respondent is without knowledge, similar to what is allowed by Florida Rules of Civil Procedure. The 2005 bill would have revised Section 120.54(5)4 to make clear that the Uniform Rules may establish less-detailed pleading requirements for persons requesting hearings in response to agency enforcement or disciplinary cases brought by an agency. The Governor interpreted this provision as exempting actions relating to agency enforcement and disciplinary actions altogether

from any pleading requirements, and he objected because he thought it was important for petitions in such cases to contain certain basic information, including whether there are disputed issues of material fact. Chapter 2006-82 addresses this objection by requiring the Uniform Rules to establish specific pleading requirements for a request for administrative hearing filed by a respondent in agency enforcement and disciplinary actions.

*Clear "Point of Entry" for Declaratory Statements.* Chapter 2006-82 also requires the Uniform Rules to describe the contents of the notices that must be published in the Florida Administrative Weekly, including any applicable time limit for the filing of petitions for leave to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

*Summary Hearings.* One of the frequently-heard complaints about the Florida APA is that it has become too complex or complicated for resolving the "garden variety" dispute. Another complaint is that the administrative hearing process has become too time-consuming and expensive. In 1996, the Legislature amended the APA to establish the summary hearing process. The process has been little used, no doubt because it requires the agency to agree that the Administrative Law Judge (rather than the agency) will issue the final order. It has been suggested that the Legislature should require that certain types of cases be conducted pursuant to the summary hearing process. In an effort to identify those cases, Chapter 2006-82 requires each agency and the Division of Administrative Hearings annually to list the types of disputes in which the agency is involved that would be amenable to the summary hearing process.

*"Small Business Party" Under FEAJA.* Although not located within the APA itself, the Florida Equal Access to Justice Act authorizes an award of attorney's fees and costs to a prevailing "small business party" in any adjudicatory proceeding or administrative proceeding pursuant to the APA initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist that would make the award unjust. The appellate courts had split on whether an individual is a "small business party" eligible for attorneys fees under Section 57.111, and the Florida Supreme Court held that it is not. The 2005 bill sought to correct this, but the Governor's veto message expressed concern that this new provision "could generate unwarranted litigation that consumes limited legal, programmatic and fiscal resources, regardless of whether an agency's actions were substantially justified." The 2006 bill addresses this objection by revising the definition of "small business party" to simply fix the problem created by the Florida Supreme Court's decision. In particular, Chapter 2006-82 revises Section 57.111(3)(d) to make clear that a small business party includes an "individual whose net worth does not exceed \$2 million at the time the action is initiated by a state agency when the action is brought against that individual's license to engage in the practice or operation of a business, profession, or trade."

The bill was approved by Governor Bush on June 7, and it became effective on July 1. ○

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