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A SYMPOSIUM ON THE FLORIDA ADMINISTRATIVE PROCEDURE ACT

FIVE EASY PIECES ON CHANGING THE FLORIDA APA: AN INTRODUCTION TO THE SYMPOSIUM

STEPHEN T. MAHER*

The 1994 legislative session did not leave a lasting impression on the Florida Administrative Procedure Act (APA).¹ Many significant APA related bills were introduced.² Only one minor APA bill passed.³ While the session did not leave its mark on the Act, it made a clear impression on observers interested in the APA. Major changes came very close to adoption.

Usually articles in this legislative issue are written about legislation that was enacted, not about what almost happened. However, what almost happened to the APA during the 1994 Regular Session is more important than might at first appear. Not only does the 1994 Regular Session provide advance warning of a possible future legislative agenda, it illuminates some fundamental views that people hold about the nature and purpose of the Florida APA.

The following five pieces on changing the APA are easy because no major changes to the APA were adopted during the session. But they raise difficult questions. Is there something fundamentally wrong with the APA that must be addressed through new legislation? If the Act should be changed, how should it be changed? Should it be made more complex, or should it be simplified? How will those changes affect those who work with the Act and those whose substantial interests are affected by agencies?

This Symposium is a recognition that it would be hard to capture the flavor of the debate over changing the APA through a summary

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1. Chapter 120, *Florida Statutes*.

2. Many of the proposals considered by the Legislature during the 1994 Regular Session are discussed in the five articles in this Symposium.

3. House Bill 1981 "added to § 120.58 a provision on the admissibility of similar fact evidence in an administrative hearing, as well as restrictions on the use the certain evidence in professional licensure proceedings that involve allegations of sexual misconduct." Sally Bond Mann, *Legislative Reform of the Administrative Procedure Act: A Tale of Two Committees*, FLA. B.J., July/Aug. 1994, at 57, 58.

by a single commentator. The five pieces that follow are an attempt to have people with different perspectives on changing the APA recreate some of the debate and explore some of the issues that have animated discussion about the APA over the last few years. The authors have not only thought about these issues, they have participated in the legislative process about which they write. They represent five different perspectives on the basic question of what changes, if any, should be made to the APA.

It is important to have five different perspectives represented here because, while the call to amend the APA during the 1994 Regular Session was loud, those who sought change did not speak with one voice. Some called for simplification of the process so people could participate effectively without counsel. Others called for the addition of further complexities to the process so that substantial interests would be even better protected than they are now. The authors included here will explain their positions, advocate for change or against it, criticize the proposals of others, call for action or counsel caution, and otherwise illuminate the concerns that drove both the forces of change and those who opposed it.

The authors are:

F. Scott Boyd is Senior Attorney at the Joint Administrative Procedures Committee. He has worked with the Florida APA daily for the last ten years. He has also conducted research into the administrative procedure acts of other states and recently represented Florida in a program sponsored by the National Conference of State Legislatures.

David Gluckman has had experience with the Florida Administrative Procedure Act throughout its twenty year history in his role as an environmentalist and a lawyer and lobbyist on environmental issues. He brings that perspective to bear in his analysis of the APA issues raised during the 1994 session.

Sally Bond Mann was during the 1994 Regular Session a staff attorney with the Florida House of Representatives Select Committee on Agency Rules and Administrative Procedures. She was directly involved in the development of House Bill 237, one of the most important bills of the session. She has also written about that experience in an earlier article.⁴

Lawrence E. Sellers, Jr. is a partner in the Tallahassee office of Holland & Knight. A large part of his practice involves representing clients in rulemaking proceedings before state agencies. Over the years, he has seen examples of good and bad rulemaking procedure.

4. See Mann, *supra* note 3. Since the session, Mann has become Executive Director of the Florida Water Management District Review Commission.

During the 1994 Regular Session, he worked with other volunteer members of the Florida Chamber's Governmental Reform Committee to develop and urge the passage of legislative reforms in the rulemaking process.

I am a longtime student of the Florida APA. I began practicing law in 1975, right after the present APA became effective. I became involved in litigation that defined some of the parameters of the Legislature's new administrative scheme. Later, when I joined the full-time faculty of the University of Miami Law School, I had the opportunity to teach Administrative Law at the law school level and I began writing articles on the Florida APA. After returning to practice, I have continued to write and practice in the administrative law area.

My service as Chair of the Administrative Law Section of the Florida Bar during the 1994 legislative session drew me into the thick of the legislative debate during the session. The *Florida State University Law Review* and I organized this Symposium in the hope that it could be a resource during the 1995 session and could contribute something to the broader debate about changing the Florida APA.

