



STATE OF FLORIDA

Department of Administration

Division of Administrative Hearings

Oakland Building, 2009 Apalachee Parkway

TALLAHASSEE

32301

February 1, 1987

THIRTEENTH ANNUAL REPORT

Bob Martinez
Governor

Gilda H. Lambert
Secretary of Administration

Sharyn L. Smith
Director

This report is submitted to the Administrative Procedures Committee and to the Administration Commission in compliance with the requirements of Section 120.70, Florida Statutes, which provides:

Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(1) A summary of the extent and effect of agencies' utilization of hearing officers, court reporters, and other personnel in proceedings under this act.

(2) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto.

On April 25, 1986, the ad hoc Governor's Committee on the Division of Administrative Hearings rendered its final report which reflected generally that the Division was currently being managed efficiently in that cases were being set promptly and orders were being timely issued. See Report of the Governor's Committee attached as App. I. The Committee stated that "We are also impressed with the quality of work exhibited by the Division." The Committee studied all aspects of Division

operations and personnel, and made specific recommendations on the matters enumerated in the Governor's Executive Order No. 85-191, which created the Committee. The Committee made numerous recommendations concerning the operations of the Division which included, inter alia, the following:

1. Two Hearing Officer positions be funded for 1986 to adequately handle the impact of the Growth Management Act;
2. No branch offices be established. The Division should continue to maintain a single office in Tallahassee;
3. Specialization of Hearing Officers is not desirable;
4. The Hearing Officers of the Division of Administrative Hearings need to be independent but accountable;
5. All agency final orders, together with the recommended orders should be published, indexed and accessible to the public;
6. The title of "Hearing Officer" should be changed to "Administrative Law Judge".

In response to the Committee's concern that the Division become autonomous and independent of the Department of Administration, the 1986 Legislature amended Section 120.65, Florida Statutes, to designate the Division as a separate budget entity with the Director as agency head for all purposes. See Section 120.65(1), F.S. (1986 Supp.) Pursuant to the amendment, the Department of Administration continues to provide administrative support to the extent requested by the Director. Section 120.65(2) provides that the Director has the right to

appeal to the Administration Commission actions by the Executive Office of the Governor that would result in amendments to the Division's approved operating budget or personnel actions. It also provides that the appropriations committees may advise the Commission on the issue. Finally, the amendment provided that the approved annual salary rate for the Division shall be as set forth in the General Appropriations Act or statement of intent, subject to adjustment by the Governor's office, and any appeal thereof by the Director under Section 120.65(2).

Workload Increases

During calendar year 1986, the Division processed 5,071 hearing requests, an increase of 606 cases from 1985. The cases opened are itemized by agency in the attached Appendix II.

Of the 5,071 cases, 1,477 were Baker Act cases, and the remainder were filed pursuant to Sections 120.54, 120.56, and 120.57, Florida Statutes. The average number of new cases handled per hearing officer during 1986 was 188. In 1986, each hearing officer conducted an average of 95 hearings and wrote an average of 87 Recommended or Final Orders of varying length and complexity. During the year, the Division closed 4,685 cases.

Budget Constraints

The Division's current approved operating budget increased 16% from the previous fiscal year. Appendix III provides a more detailed comparison, as well as a summary of the Division's FY 1987-89 legislative budget request.

Since 1979, the Division has received trust fund monies from the Department of Professional Regulation (DPR) to help fund salaries and operating expenses. For the last two years, the Division has experienced problems associated with the release of these funds from DPR. Suggestions for rectifying this recurring situation include abolition of the trust fund so that the Division is funded entirely from the General Revenue fund, or possibly the enactment of a program to assess fees based on utilization of the Division by agencies.

The Division has been forced to keep several positions vacant during the current fiscal year in order to manage its budget. The salaries and benefits appropriation is not sufficient to fund all 52 positions for the entire fiscal year due to a lapse of positions and the failure of DPR to release funds as described above.

Office Automation

During 1986, the Division continued modest expansion of its word processing and management information capability which resulted in the ability to rapidly generate case data, schedules of hearings, and statistical information. The second phase of office automation was undertaken in which the capacity of the system disk storage was increased, fine tuning of the case handling system software was begun, advanced training of secretaries in word processing was undertaken, and workstations for supervising hearing officers were acquired.

The impact of office automation is clearly apparent in the statistics on case closures for the past eighteen months, which show an increase from 200 cases closed per month in the first six months, to 400 cases closed per month in the second six months, and 500 cases closed per month for the third six-month period. See Appendix IV. The number of cases opened per month for the same period has remained reasonably constant. The Division closed more cases than were opened during the last six-month period, the first time that this has occurred since such records have been kept. This has resulted in a significant reduction in the standing caseload.

The increase in closure rates is attributable to lower secretarial and clerical processing time, increased hearing officer productivity due to more timely management intervention, and better management of caseloads by individual hearing officers using the case handling system's management software. The Division's experience indicates that office automation is a cost-effective means of increasing productivity as demonstrated by the fact that while productivity has increased 150% (as measured by case closures), the Division's budget has increased 16% from FY 1985-86 to FY 1986-87.

Utilization of Personnel

In 1986, the Legislature authorized three new positions including one hearing officer, one secretary, and one administrative assistant. The Division currently has 52

established positions comprised of the Director, Assistant Director, 27 hearing officers, 4 administrative assistants, 15 secretaries, and 4 clerks.

The Division experienced the loss of only one hearing officer during the year who resigned from government service to enter the private practice of law. Due to budget shortfalls, three hearing officer vacancies could not be filled during the calendar year.

The Division has not reached its authorized secretarial strength because of continuing losses of experienced secretaries leaving for higher paying and less demanding jobs. The loss of each secretary seriously impairs the work of two hearing officers due to the traditional staffing ratio of one secretary to two hearing officers. Fortunately, the continued implementation of office automation has offset the loss of these secretaries and hearing officers and the increase in hearing requests. However, the rate of requests reflects a significant increase at the same time that the productivity curve from word processing implementation is leveling out. As a result, the Division plans to fill two of the vacant hearing officer and secretarial positions in FY 1986-87.

Reorganization

The Division was internally reorganized in the summer of 1986 as a result of the recommendations of the Governor's Select Committee. The Committee recommended that hearing officers not be

specialized, that branch offices not be established, and that, while hearing officers should remain apolitical and chosen upon their individual merit, they should be accountable. In addition, it was determined that the chain of control and accountability which ran from the Director to the Assistant Director to each of the twenty-seven authorized hearing officers was too broad. The Division was restructured into three geographic districts (north, central, and south Florida), each district staffed with approximately nine hearing officers, and each district's activities supervised by a District Hearing Officer who reports directly to the Assistant Director.

This restructuring has resulted in improved supervision permitting better monitoring of caseloads and outputs. It has also improved management's ability to accommodate needed changes in case assignments to reduce costs by eliminating duplicative travel and to balance workloads to eliminate potential problems in timely issuance of orders. This system has already resulted in small but noticeable savings in travel and identification of potential problems in case management which would have gone undetected earlier. Timely intervention and management made possible by the management information portion of the case handling system has resulted in 97% of all cases being set for hearing within 90 days of receipt by the Hearing Officer and 80% of all cases being closed within 120 days of receipt by the Hearing Officer. Given the number of major cases which require longer periods to prepare for hearing, these percentages reflect

a well-monitored and continuous work flow within the acceptable parameters of performance standards established by the Division.

Space Utilization

The Division has experienced rapid growth during the last seven years, and additional growth is anticipated. The Division is presently housed in the Oakland Building (on the Apalachee Parkway), and the potential for office expansion is limited. In its final report, the Governor's Committee on the Division of Administrative Hearings stated that "The Division's library is totally inadequate for the type of research required in the vast majority of administrative cases." It was also concluded that "the most cost-effective approach to dealing with the problems of space, location and library facilities would be relocating the Division to a building within walking distance of an established full service law library."

The Division entered into a lease agreement effective February 1, 1981 to occupy the Oakland Building. Prior to that time, the Division was located in the Collins Building. The area occupied by the Division has increased from 11,773 square feet in 1984 to 15,239 square feet in 1987. The amount of office space determined adequate to house the Division has increased from 13,289 square feet in 1984 to 15,572 square feet in 1987. During this three-year period, the actual square footage utilized by the Division has averaged 1,266 square feet below the requirements contained in the Division's Letters of Agency Staffing. Although

the Governor's Committee recommended housing the Division close to one of the existing major law libraries (FSU, Supreme Court, or First District Court of Appeal), there are currently no facilities in the Capitol complex with enough available space to accommodate the Division.

To avoid conflicts of interest and to provide the Division with the autonomy it requires to carry out its mission, it is recommended that the Division not share office space with other agencies. The Division has been informally notified that the landlord anticipates constructing a building which would have approximately 20,000 square feet. By the time it is completed, the space needs of the Division should be comparable to the space planned, and the building could be designed to meet the special needs of the Division which include: library and filing spaces with reinforced floors, hearing rooms with adequate exits and separate heating and air conditioning facilities, and ample parking. The building could also be designed for easy and safe installation of computer and telephone wiring, and an electrical system compatible with the Division's computer equipment.

Recommendations Concerning the APA

In 1984 and 1986, the Legislature amended Chapter 120, F.S. to reflect recommended improvements by the Division. At this time however, the Division does not intend to recommend any changes in Chapter 120, F.S., to either the Administration Commission or the Legislature. The recommendation of the

Governor's Committee that all agency orders, both recommended and final be published, indexed and accessible to the public does not require any substantive change in the APA, but does require a significant commitment in funds to be implemented.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sharyn L. Smith".

SHARYN L. SMITH
Division of Administrative Hearings

GOVERNOR'S COMMITTEE ON
THE DIVISION OF ADMINISTRATIVE HEARINGS

FINAL REPORT - APRIL, 1986

Growth Management Act of 1985

The Committee assessed the effects of the Act on the Division and any immediate needs that might be generated. Based on the Committee's assessment of the Act, it does not appear there will be a significant immediate impact on the Division. However, at the close of the 1986 Legislative Session, a number of potentially time-consuming rule challenges can be expected. This should continue through 1988, at which time significant numbers of cases can be expected to be filed.

It is obvious that within a two-year period the Division could experience a major increase in requests for hearings. While there is no need for alarm prior to the 1986 Session, the Division is planning for a dramatic impact within the next two years. As can be seen in the flow chart attached at Annex 1, the Division's role in growth management is critical. In order for the legislative intent concerning growth management to be implemented, these cases must be heard and decided as promptly as possible. To accomplish this goal, the Division must be assured of adequate resources, in both personnel and support services.

The Division has requested two Hearing Officers and support personnel for the next fiscal year. These positions should be

fully funded and brought on line by January, 1987 to ensure adequate personnel are available to expeditiously hear the expected lengthy and complicated challenges to growth management rules promulgated pursuant to the Growth Management Act of 1985.

Branch Offices

The Committee determined there was no need to establish branch offices, and that there exist greater advantages in locating all Hearing Officers in one office. This is based primarily on the relatively small number of Hearing Officers (28) and the concern that branch offices would tend to make those Hearing Officers isolated. Also, decisions could materially differ from office to office, and there could be forum shopping for particular Hearing Officers. While there may be some expense and time associated with traveling by Hearing Officers located in Tallahassee, branch offices would create a substantial amount of duplication of capital and operating expense, such as acquiring libraries, additional word processing systems, and coordinating a centralized filing system.

The Division should maintain a single office in Tallahassee, but with the support of the Governor's office, explore utilization of teleconferencing as the State develops the Florida Satellite Network system, which would use locations at community colleges throughout Florida. Some thought should be given to making these facilities available for the conduct of administrative hearings.

Assuming branch office facilities are not established, it can be expected that the Division will outgrow its current location in the near future. The Division presently occupies space in the Oakland Building, isolated from the Capitol Complex and the capability for expansion is limited. The Division presently has only three hearing rooms, which are clearly insufficient to schedule the number of hearings occurring in Tallahassee with ever-increasing frequency. As a result, hearings have been held in Hearing Officers' offices and various other inappropriate locations. The Division's library is totally inadequate for the type of research required in the vast majority of administrative cases. For example, the library contains only one complete set of Southern Reporter and only two sets of Florida Statutes Annotated for 28 attorneys. A significant capital expenditure is required to create an adequate library for the Division.

Considering all of these factors, it was concluded that the most cost-effective approach to dealing with the problems of space, location and library facilities would be relocating the Division to a building within walking distance of an established full service law library. The logical location to the Committee is the new state office building proposed to be built behind the Tallahassee-Leon County Civic Center and across the street from the Florida State University College of Law. This would place the Division in a location convenient to state agencies, near most private attorneys' downtown law firms and give the Division

access to a complete law library for legal research, thus avoiding the unnecessary cost of duplicating another full-scale law library in Tallahassee.

Specialization

The Committee reviewed the issue of subdividing the Division's Hearing Officers by subject matter, including the issue of having specialized Hearing Officers. Presently, of the 28 Hearing Officers, two are designated by statute to preside over cases arising from decisions of the Hospital Cost Containment Board. The Committee discussed whether there was actual need for special expertise in certain subject areas. Some of the advantages would be knowledge of subject, consistency of judgments, and speed in assigning cases.

The Committee determined the disadvantages of having specialized Hearing Officers outweighed the perceived advantages. The Committee determined that no mandated specialization of Hearing Officers or breakdown by subject area is desirable. The Director is and should be responsible for educating Hearing Officers to new procedures and developing their expertise to handle new types of cases, and is and should continue to be responsible for assignment of cases to Hearing Officers. This flexibility of assignment is desirable from a management standpoint and enhances fairness. However, the Office of Management and Budget and the Legislature should ensure funds are appropriated to train Hearing Officers on a continuing

basis. In the past, budget requests of the Division for funds for training of new Hearing Officers have been rejected. This is clearly counterproductive since it directly affects the quality of agency decision making and involves relatively small amounts of dollars.

Location of the Division of Administrative Hearings Within State Government

The Committee agreed that the Division should be independent but accountable. In being independent, the Division must be totally free from any executive branch intrusion, financial control, or threat thereof. The Division should be responsible for its expenditures, but accountable to the Comptroller and the Legislature rather than its parent department, the Department of Administration.

The Legislature has specifically recognized the need for the Division to be independent of the Department of Administration by amending Chapter 120, Florida Statutes, in 1979 to provide that "[t]he division shall not be subject to control, supervision or direction of the Department of Administration." See Section 120.65(1), Florida Statutes. However, notwithstanding the Legislature's statement to the contrary, the Department has continued to exercise supervisory powers over the Division in such matters as purchasing, expenditure of funds and personnel. Legislation should be enacted which states as specifically as possible that the Director of the Division is the agency head for

all purposes and that all personnel decisions will be made by the Director rather than the Department.

The Division's Funding Problems

The Committee addressed a number of areas associated with the budgetary problems facing the Division. The Division faces a continuing resource problem as the Legislature creates and expands the right to 120 proceedings into new areas without, in many instances, carefully considering the impact of such growth on the Division. The Division handled approximately 4,300 cases during the past year and was appropriated approximately \$2,250,000 for a per case cost of approximately \$500.

Within the executive branch, the workload of the Division is unique. The agency performs only one statutory duty, to hear contested cases, and functions almost identically to an Article V Court. However, because of its placement with the Department of Administration, the Division's budget is assigned for review by the general government appropriations subcommittees in the Legislature. In order to realistically assess the needs as well as the performance of the Division, the Legislature should move the review of the Division's budget from the general government appropriations subcommittees to the judiciary appropriations subcommittees, where a more focused analysis of the Division's operations could be made.

In making such a transfer, the Legislature could obtain more useful information concerning administrative adjudication and its

impact on Article V Courts and impose a more thoughtful and consistent approach to the appropriation of funds for all adjudicative tribunals.

During its December, 1985 meeting, the Committee discussed in detail the issue of the Division's budgetary and rate exemption from Chapter 216, Florida Statutes. Although Chapter 120, Florida Statutes, grants the Division a total exemption from Chapter 216, Florida Statutes, the Division has voluntarily complied with the requirements of Chapter 216, Florida Statutes, by submitting its budget to the Office of Planning and Budgeting. A corollary issue arose, however, as a result of the Director hiring more experienced Hearing Officers at a rate of pay above the base set by the Department of Administration.

The Division has taken the position that since it is exempt from Chapter 216, Florida Statutes, including the provisions contained relating to rate, it has the authority to hire personnel within the amounts appropriated by the Legislature without regard to the rate assigned a particular pay category. The Office of Planning and Budgeting has taken an opposite view as indicated in a letter dated January 21, 1986, attached as Annex 2.

After carefully considering the legal issues involved in this question, it is the opinion of the Committee that, as a later and more specific act, Chapter 120, Florida Statutes, supersedes Section 216.351, Florida Statutes, to the extent of any inconsistency. The Committee is not convinced there is in

fact an inconsistency between the two acts. A number of suggestions for resolving this issue were discussed, including initiation of a Section 120.565, Florida Statutes, declaratory statement remedy, or amending Chapter 120, Florida Statutes. The Committee does not believe amendatory legislation is necessary inasmuch as the express exemption works to ensure the Division's independence. Since this issue directly relates to the ability of the Director to hire qualified Hearing Officers and could affect, at some time in the future, the independence of the Division, it is urged that the Governor take the lead in finally resolving this question.

Reporting System

One of the primary difficulties encountered by counsel and Hearing Officers is the lack of a complete and timely reporting system of administrative decisions. This problem has existed since the enactment of the Administrative Procedure Act but has progressively worsened as the number of orders issued by agencies and the Division has increased through the years. The Division's recommended and final orders are exceedingly difficult to locate since these orders have not been fully indexed for over ten years. An identical problem exists in virtually every state agency. As a result, administrative practice has become more specialized as particular attorneys are sought out because of their access to information not readily available to the general public. This is contrary to the purpose of the Administrative

Procedure Act and can only be corrected when all agency decisions, including the Division's, are published, indexed and accessible to the public.

To begin the publication and indexing of the volume of past and present administrative cases requires a significant commitment of time and dollars. This must, however, be accomplished as quickly as possible before the costs of such an undertaking become prohibitive.

Selection and Retention of Hearing Officers

The status of the Hearing Officers has been a subject of confusion within state government since the creation of the Division. The Administrative Procedure Act gives significant powers and responsibilities to the Hearing Officers and they function in most respects the same as judges.

To ensure Hearing Officers remained independent, the Legislature kept them in the career service system when all other attorney positions in the state were exempted in 1985. Presently, the only personnel within the Division who are not in the career service system are the Director, who is appointed by the Administration Commission, and the Assistant Director, who is a senior management employee appointed by the Director.

The Committee agrees having Hearing Officers classified and evaluated as career service employees was clearly inappropriate and that, eventually, as their powers and responsibilities increase, a system of selection and retention patterned after,

but not necessarily identical to, the judicial nominating process should be substituted. A number of alternatives were discussed but no particular selection and retention scheme was finally endorsed.

The method finally selected for selection and retention should contain a procedure for thorough periodic evaluation of Hearing Officers and a mechanism established so that Hearing Officers who do not perform at a reasonable level of competence could be terminated.

The Committee also agreed that the title "Hearing Officer" was ambiguous and failed to convey, especially to private parties and litigants, the actual role of the Hearing Officer in the adjudicative process. To clarify this, Florida should follow the lead of California, Minnesota and other states and change the title of "Hearing Officer" to "Administrative Law Judge."

Finality of Agency Orders

This subject area is a matter which is continuously discussed and is currently incorporated in a bill pending before the Florida Legislature. The Committee voted to take this matter up and a full discussion was had on the topic.

The Committee first agreed that the Division should remain an administrative entity and not become an Article V Court. The Committee concluded that in proceedings under Section 120.57(1), Florida Statutes, where an agency initiates action against a person licensed by the State, a Hearing Officer's order should be

final agency action. If the Division is given this final order authority, the Division should also permit petitions for rehearing. In addition, appropriate amendments should be made to the Florida Equal Access to Justice Act, Section 57.111(4)(a), Florida Statutes, which would state:

If the agency enters an order in a proceeding pursuant to Section 120.57(1) altering a recommended order's findings of fact or modifying its conclusions of law without a reasonable basis in the record, a prevailing party on appeal shall be entitled to costs and fees under this section.

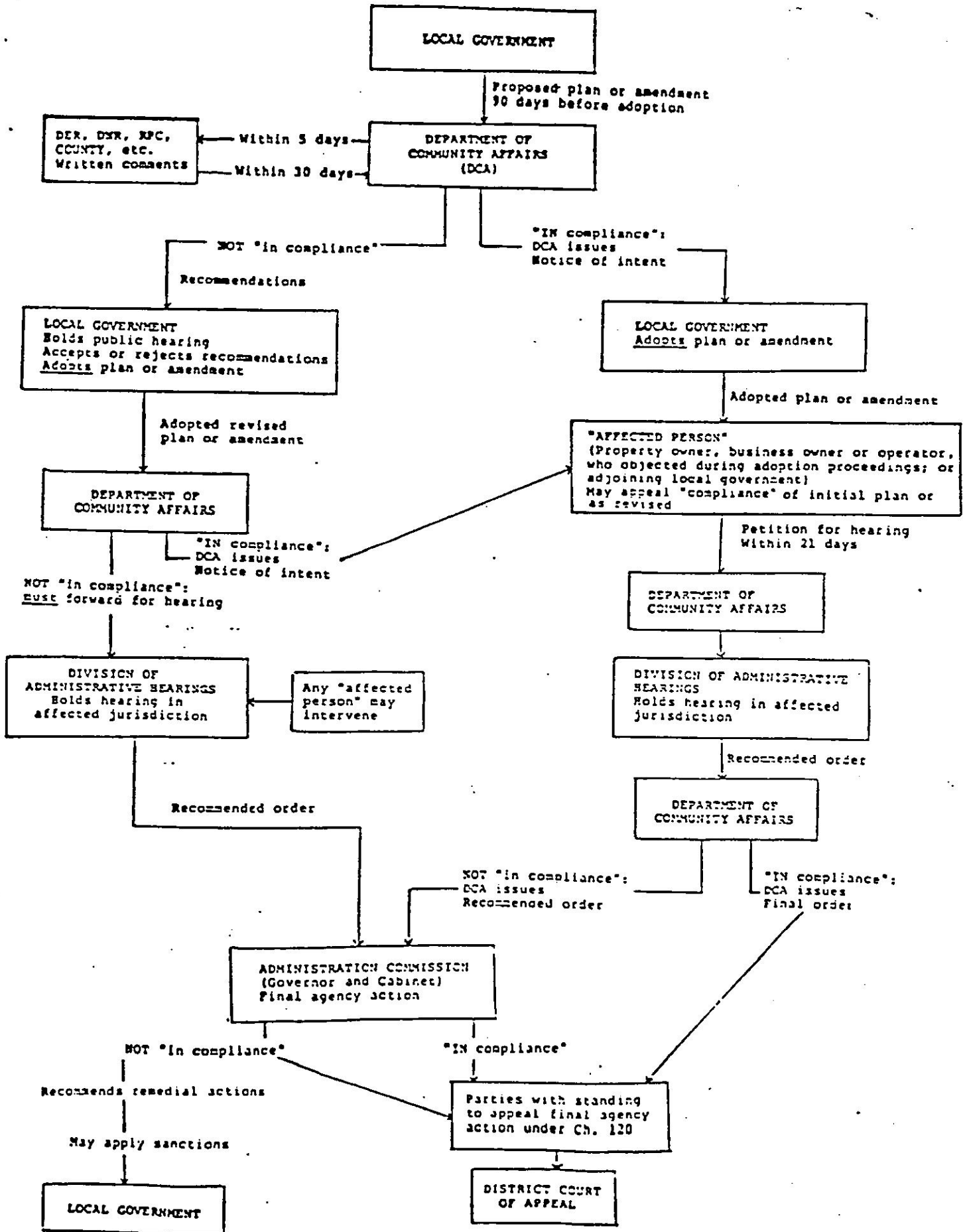
Likewise, the costs and attorney's fees provision of Section 120.57(1)(b) 9. should be amended as follows:

When there is an appeal, the court in its discretion may award reasonable attorney's fees and costs to the prevailing party if the court finds that the appeal was frivolous, meritless or an abuse of the appellate process. If the agency in its final order modified a recommended order's findings of fact or modified conclusions of law without a reasonable basis in the record, the appellate court shall award costs and attorney's fees to the prevailing party.

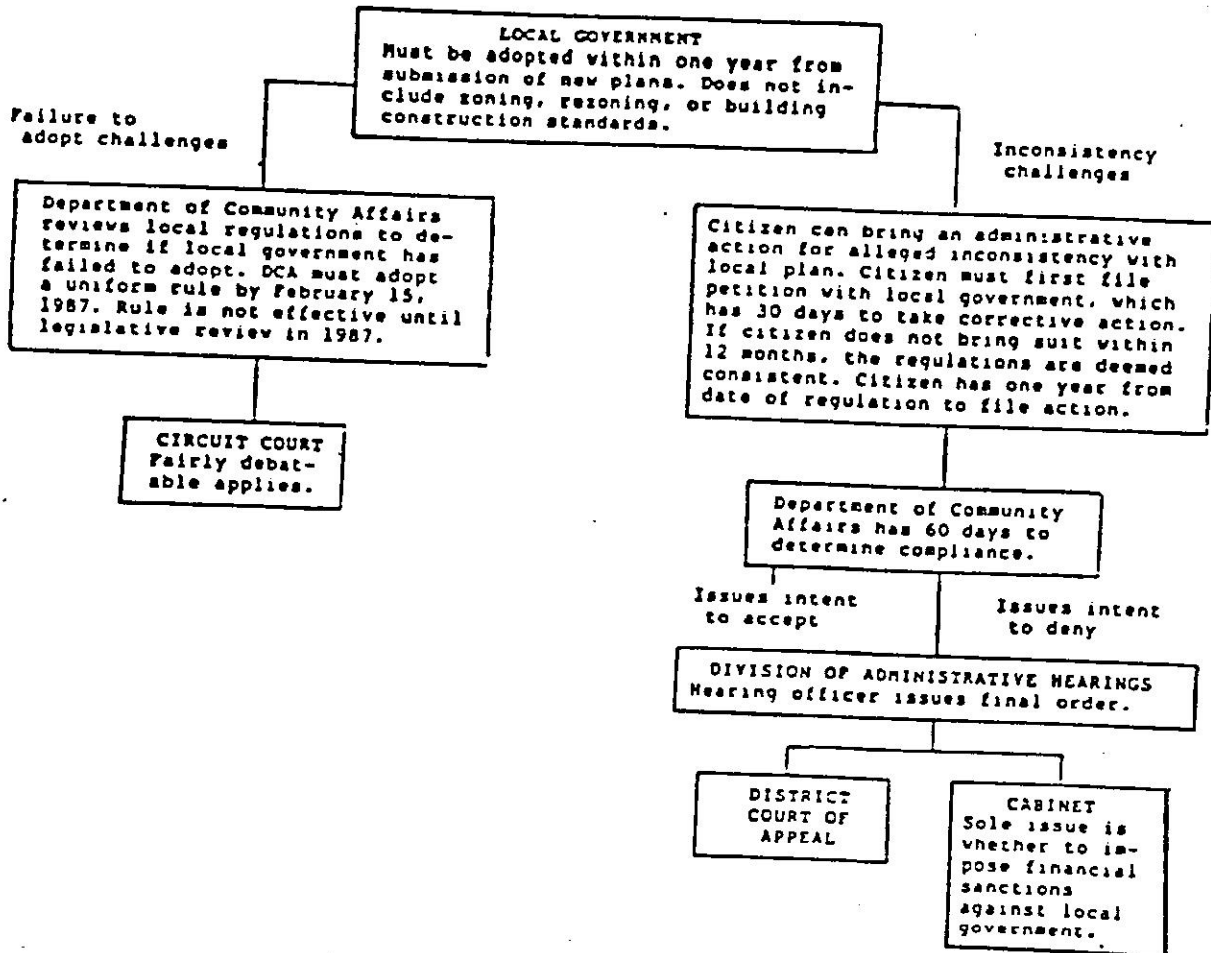
Florida Bar Administrative Law Section

The Committee recommends that the Administrative Law Section of The Florida Bar be consulted and included in any future studies regarding the functions and operations of the Division of Administrative Hearings.

LOCAL GOVERNMENT COMPREHENSIVE PLANS



LAND DEVELOPMENT REGULATIONS





BOB GRAHAM
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE 32301

January 2, 1986

RECEIVED
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ADMINISTRATIVE HEARINGS
TALLAHASSEE

Ms. Sharyn L. Smith, Director
Division of Administrative Hearings
Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301

Dear Ms. Smith:

This letter is in response to your September 16, 1985 letter on several budget issues, chiefly, your division's exempt status and the state budget law (Chapter 216, Florida Statutes). Your claim is based on existing provisions of substantive law (Subsection 120.65(1)), which appears to explicitly exempt the Division of Administrative Hearings from Chapter 216.

Several meetings and contacts between my staff and the Governor's legal office have occurred on this issue and our position can be capsulized as follows: Due to the fact that the Division's substantive law fails to cite Section 216.351, which is mandatory for any type of exempt status, my office will, retroactive to July 1, 1985, consider the Division wholly subject to Chapter 216.

Note that the salary rate purge which occurred on June 30, 1985, and found the Division in violation of the maximum authorized rate (\$53,477) will be allowed and appropriated for 1986-87. However, you are encouraged to now manage rate and funds to avoid an overage on the next purge date.

In line with the above position, we will continue to purge vacancies and establish new positions at the approved minimum of the range for Hearing Officers as long as the current state policy continues this requirement. Even though various of your Hearing Officer classes received special longevity increases, we are aware of nothing that affected the class minimum, other than the statewide 5% increase.

A second concern in your letter focuses on the approval date of the four new FTE for expedition of DOT bid protest hearings. Approval of these positions occurred effective July 1, 1985, which was a retroactive approval.

Page Two

Ms. Sharyn L. Smith
January 2, 1986

Finally, the budget amendment transfer which you refer to in the final paragraph was approved on November 5, 1985.

I apologize for the time lapse in responding, but the rate issue engendered significant discussion by all parties. Should you require additional information on these concerns, please call.

Sincerely,



Glenn W. Robertson, Jr., Director
Office of Planning and Budgeting

GWR/jme

State of Florida
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 85-191

WHEREAS, administrative law and procedure is an increasingly important and demanding part of the government and laws of the State of Florida, and

WHEREAS, Chapter 120, Florida Statutes, the Administrative Procedure Act, is the statutory vehicle under which increasing numbers of controversies are resolved, and

WHEREAS, the Department of Administration, Division of Administrative Hearings, supervises and provides hearing officers for the numerous administrative determinations under Chapter 120, Florida Statutes, and

WHEREAS, many new statutory enactments have amended the Administrative Procedure Act and added responsibilities to the Division of Administrative Hearings, requiring additional personnel and facilities, and

WHEREAS, the number of cases submitted for determination to the Division of Administrative Hearings has dramatically increased to 4,700 cases a year and will continue to increase in the foreseeable future, and

WHEREAS, the complexity and difficulty of the cases submitted for determination to the Division of Administrative Hearings has dramatically increased and will continue to increase in the foreseeable future, and

WHEREAS, there is a need for study and long-term analysis of the goals, procedure, personnel, and facilities of the Division of Administrative Hearings,

NOW, THEREFORE, I, BOB GRAHAM, Governor of Florida, pursuant to the Constitution and Laws of the State of Florida, do hereby promulgate the following Executive Order effective immediately:

Section 1.

There is hereby created "The Special Committee to Study and Recommend Revisions to the Operation of the Division of Administrative Hearings."

Section 2.

The Governor shall determine the composition and number of committee members. Members of the Special Committee shall be appointed by the Governor and continue to serve at the pleasure of the Governor. The Governor shall appoint the Chairperson and Vice-chairperson of the Special Committee.

Section 3.

The Special Committee shall study all aspects of the goals, procedures, personnel, and facilities of the Division of Administrative Hearings in order to make recommendations to the Governor and the Legislature of Florida for statutory, rule, and procedural revisions for the more efficient operation of the Division of Administrative Hearings, including making recommendations concerning the following:

1. Reorganizing the Division of Administrative Hearings into appropriate divisions;
2. Analyzing the need for specialized hearing officers;
3. Obtaining and retaining highly qualified hearing officers;
4. Dealing effectively with the existing workload and the future increases in workload;
5. Obtaining a permanent solution to the Division of Administrative Hearings' increasing demands for space and for hearing rooms both in Tallahassee and around the State; and
6. Defining a continuing source of funding to meet the increasing needs of the Division of Administrative Hearings.

Section 4.

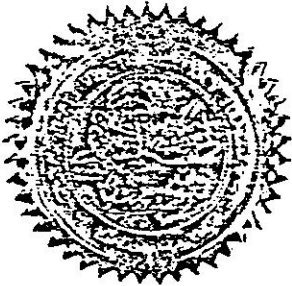
The Special Committee shall make a preliminary report of its findings to the Governor and the Legislature by March 1, 1986. The Special Committee shall make its final report to the Governor and the Legislature by December 1, 1987.

Section 5.

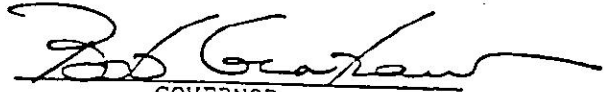
The Special Committee shall be staffed by the Division of Administrative Hearings, and all other state agencies, upon request, shall render all necessary assistance to the Special Committee.

Section 6.

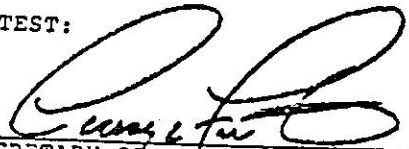
Committee members shall not receive payment for their services, but members other than public officers and employees may be reimbursed by the Executive Office of the Governor for travel and per diem expenses in accordance with Section 112.061, Florida Statutes. Members who are public officers and employees shall be reimbursed by their respective agencies for travel and per diem expenses in accordance with Section 112.061, Florida Statutes.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 12th day of September, 1985.


GOVERNOR

ATTEST:


SECRETARY OF STATE

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DIVISION OF ADMINISTRATIVE HEARINGS

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April 25, 1986

Honorable Bob Graham
Governor of Florida
The Capitol
Tallahassee, Florida 32301

Dear Governor Graham:

The Governor's Committee on the Division of Administrative Hearings is pleased to submit its final report in accordance with your Executive Order 85-191 dated September 12, 1985.

Pursuant to your Executive Order, our 18-member Committee began meeting in October, 1985 and concluded business in February, 1986. The Committee invited the General Counsels from all state agencies to participate in our discussions and provide input throughout the Committee process. We also welcomed participation from the Administrative Law Section of The Florida Bar.

It should be noted that our ability to comprehensively research issues and do in-depth analyses was limited by our lack of resources. Our Committee, composed of practitioners and legislators knowledgeable in the administrative law field, examined the issues with available information and drew upon our collective expertise and practical experience in reaching our decisions. All members fully recognize the increasing importance and complexity of the administrative hearing process and desire to have the Division continue to be run in an impartial, efficient and timely manner.

The following recommendations, which are discussed in greater length in the Committee report, are respectfully submitted:

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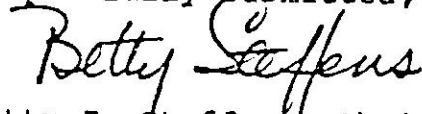
1. Two Hearing Officer positions to be funded for 1986 to adequately handle the immediate impact of the Growth Management Act;
2. No branch offices need to be established. The Division should continue to maintain a single office in Tallahassee;
3. Specialization of Hearing Officers is not desirable;
4. The Hearing Officers of the Division of Administrative Hearings need to be independent but accountable;
5. The Legislature should move review of the Division's budget from general governmental appropriation subcommittees to judiciary appropriation subcommittees;
6. The Governor's Office of Planning and Budget should support the Division in resolving matters related to "rate";
7. All agency final orders, together with the recommended orders should be published, indexed and accessible to the public;
8. The selection and retention of Hearing Officers should be done outside of a political framework and include a procedure for thorough periodic evaluation of the Hearing Officer;
9. The title of "Hearing Officer" should be changed to "Administrative Law Judge";
10. Where an agency initiates action against a person licensed by the State, a Hearing Officer's order should be final agency action.

These recommendations and our report address the issues and concerns you, as Florida's Chief Executive, have raised regarding the functions and operation of a division of state government

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which was created to administrate justice. We have found that the Division is currently being managed efficiently in that cases are being set promptly and orders are being timely issued. We are also impressed with the quality of work exhibited by the Division.

Respectfully submitted,



Betty J. Steffens, Chairperson

GOVERNOR'S COMMITTEE ON THE
DIVISION OF ADMINISTRATIVE HEARINGS

BJS:pa

DIVISION OF ADMINISTRATIVE HEARINGS
ANALYSIS OF AGENCY REQUESTS FOR HEARING OFFICERS
FOR CALENDAR YEAR 1986

Agency	Number Requested
Department of Administration	1
Division of Administrative Hearings	0
Human Relations Commission.	54
Office of State Employees' Insurance.	11
Division of Retirement.	15
Department Total	81
Department of Agriculture and Consumer Services. . .	21
Produce Dispute Cases	28
Department Total	49
Department of Banking and Finance.	83
Office of the Comptroller	51
Division of Securities.	8
Department Total	142
Department of Business Regulation	
Division of Alcoholic Beverages and Tobacco . . .	87
Division of Hotels and Restaurants.	32
Division of Florida Land Sales, Condominiums and Mobile Homes	67
Division of Pari-Mutuel Wagering.	3
Department Total	189
City of Clearwater	37
Department of Community Affairs.	8
Department of Corrections.	26
Mental Health Institute	37
Department Total	63
Department of Education.	9
Division of Blind Services.	5
Board of Regents.	1
Education Practices Commission.	49
EPC: Declaration of Default Cases.	9
Exceptional Education Cases	8
Florida School for the Deaf and Blind	2
Ind. Post-Secondary Vocational, Technical, Trade and Business Schools	3
Universities:	
Florida International University	1
Florida State University	3
University of Florida.	1
University of West Florida	1

Agency	Number Requested
School Boards:	
Alachua County School Board	2
Broward County School Board	9
Clay County School Board	1
Dade County School Board	66
Duval County School Board	2
Escambia County School Board	5
Franklin County School Board	3
Gulf County School Board	1
Hillsborough County School Board	3
Jefferson County School Board	1
Lake County School Board	1
Lee County School Board	1
Marion County School Board	1
Okaloosa County School Board	1
Orange County School Board	4
Palm Beach County School Board	6
Pinellas County School Board	4
Polk County School Board	2
Putnam County School Board	4
St. Lucie County School Board	1
Santa Rosa County School Board	1
Sarasota County School Board	3
Seminole County School Board	4
Department Total	218
Department of Environmental Regulation	479
Executive Office of the Governor	5
Administration Commission	33
Hospital Cost Containment Board	41
Florida Land & Water Adjudicatory Commission. . .	8
Department Total	87
Florida Game & Fresh Water Fish Commission	1
Department of General Services	16
Department of Health and Rehabilitative Services	
Non-Baker Act Cases:	
Audit Services	60
Central Administrative Services.	2
Child Abuse Cases.	82
Community Medical Facilities	359
Developmental Services	1
Economic Services.	3
Office of Entomology	5
Health Program Office.	25
HPO: Pharmacy Services	3
Office of License Certification.	125
Low Income Energy Assistance	1

Agency	Number Requested
Medicaid Disputes.	2
Miscellaneous.	72
Operations: Child Support Enforcement.	5
Operations: Abuse Registry	1
Office of Radiological Health Services	6
Non-Baker Act Total	752
Baker Act Cases:	
Anclote Manor Hospital	44
Florida State Hospital	913
G. Pierce Wood Memorial Hospital	233
Northeast Florida State Hospital	104
Sarasota Palms Hospital.	1
Seagrave House	1
South Florida State Hospital	172
West Florida Community Care Center	9
Baker Act Total	1,477
Department Total	2,229
Department of Highway Safety & Motor Vehicles.	28
County of Hillsborough	3
Department of Insurance & Treasurer.	105
Rate/Auto Cases	9
Total Department	114
City of Jacksonville	1
Department of Labor & Employment Security.	29
Department of Law Enforcement.	1
Criminal Justice Standards & Training Comm.	30
Department Total	31
Department of Legal Affairs.	1
Department of Natural Resources.	38
Marine Fisheries Commission	2
Department Total	40
Department of Professional Regulation.	1
Board of Accountancy.	9
Board of Acupuncture	12
Board of Architecture	4
Board of Barbers.	11
Board of Chiropractic Examiners	12
Florida Construction Industry Licensing Board	188
Board of Cosmetology.	36
Board of Dentistry.	28

Agency	Number Requested
Electrical Contractors Licensing Board.	12
Board of Funeral Directors and Embalmers.	7
Board of Hearing Aid Specialists.	12
Board of Land Surveyors	4
Board of Landscape Architects	2
Board of Massage.	3
Board of Medical Examiners.	221
Board of Naturopathic Examiners	1
Board of Nursing.	61
Board of Nursing Home Administrators.	4
Board of Opticianry	4
Board of Optometry.	18
Board of Osteopathic Medical Examiners.	41
Board of Pharmacy	38
Board of Pilot Commissioners.	4
Board of Podiatry	4
Board of Professional Engineers	34
Board of Psychological Examiners.	3
Florida Real Estate Commission.	152
Board of Veterinary Medicine.	15
Department Total	941
Public Service Commission.	5
Department of Revenue.	25
Department of State.	1
Division of Corporations.	3
Division of Licensing	20
Department Total	24
Department of Transportation	116
Sign Cases.	92
Department Total	208
Water Management Districts	
Northwest Florida Water Management District	1
St. Johns River Water Management District	10
South Florida Water Management District	10
Suwannee River Water Management District.	1
WMD Total.	22
TOTAL REQUESTS	5,071

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OVERVIEW
 Division of Administrative Hearings
 1987-89 Legislative Budget Request

<u>Appropriation Category</u>	<u>FY 1985-86 Budget</u>	<u>FY 1986-87 Budget</u>	<u>FY 1987-88 Request</u>	<u>FY 1988-89 Request</u>
Salaries and Benefits	\$1,865,830	\$2,235,887	\$3,064,082	\$3,064,082
Other Personal Services	39,342	25,810	33,280	33,280
Expenses	369,527	433,044	557,116	570,105
Operating Capital Outlay	<u>82,435</u>	<u>39,691</u>	<u>71,223</u>	<u>48,414</u>
TOTAL	<u>\$2,357,134</u>	<u>\$2,734,432</u>	<u>\$3,725,701</u>	<u>\$3,715,881</u>
Total Positions	49	52	55	55

SUMMARY OF INCREASES
 Division of Administrative Hearings
 1987-89 Legislative Budget Request

	FY 1987-88 Request		FY 1988-89 Request	
	Pos.	Amount	Pos.	Amount
1. <u>System Generated Increases</u> Includes additional money to fund currently authorized positions, and price level increases for expenses.		\$ 679,589		\$ 683,165
2. <u>Non-System Generated Continuation Increases</u> Includes increases for travel, building rental, insurance premiums, replacement equipment, maintenance contracts, and supplies. Also includes continuation of OPS activities and additional space for hearing rooms.		151,176		156,953
3. <u>New Activity Increases</u> Includes three new positions: one hearing officer and one assistant to handle insurance rate cases, and one computer programmer to provide programming services for DOAH. Also includes reclassification of DOAH's administrative secretaries as judicial assistants.	3	204,695	3	185,522
Total Increases	3	\$1,035,460	3	\$1,025,640
Add: 1986-87 Budget	52	2,734,432	52	2,734,432
Deduct: Nonrecurring Issues		(44,191)		(44,191)
Total Request	<u>55</u>	<u>\$3,725,701</u>	<u>55</u>	<u>\$3,715,881</u>

