



State of Florida
Division of Administrative Hearings
The DeSoto Building, 1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675 • SunCom: 278-9675

Sharyn L. Smith
Director
Ann Cole
Clerk

February 1, 1994

TWENTIETH ANNUAL REPORT

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.

GENERAL

There were two significant agency mergers during calendar year 1993. The former Departments of Environmental Regulation (DER) and Natural Resources (DNR) were combined to form the new Department of Environmental Protection (DEP). The former Departments of Business Regulation (DBR) and Professional Regulation (DPR) were combined to form the new Department of Business and Professional Regulation (DBPR).

The DEP filed 501 cases in 1993, a 26 percent increase over the DER-DNR combined total of 397 cases filed in 1992.

The caseload of DBPR increased by seven percent with a total of 1,182 DBPR cases filed in 1993, up from the DBR-DPR combined total of 1,109 cases filed in 1992. Significant caseload increases for this new agency include the Board of Medicine, which filed 212 cases in 1993, a 91 percent increase over the 111 cases filed in 1992. DBPR's Agency for Health Care Administration's (AHCA) Hospital Cost Containment Board requests also increased by 44 percent, from 18 cases filed in 1992 to 26 cases filed in 1993.

The number of school board requests increased eight percent from 127 cases filed in 1992 to 137 cases filed in 1993. This school board total included 42 requests for hearing on exceptional education student placement.

Cases referred by the Department of Management Services totaled 320 in 1993, an increase of 25 percent over the 256 cases filed in 1992.

Requests from the Ethics Commission also increased by 25 percent from 24 filed in 1992 to 30 filed in 1993.

One of the most significant caseload increases occurred in the Department of Labor and Employment Security, which filed 131 cases in 1993, a 143 percent increase over the 54 cases filed in 1992. Of the 131 hearings requested, 83 were for Neurological Injury Compensation claims (NICA). These NICA cases impact the Division's personnel significantly in the amount of time required for processing in accordance with Chapter 83-251, which became

effective May 14, 1993. The Division has final order authority on NICA cases, and is therefore charged with the preparation of all records on appeal.

In 1993, the Division had a total of 24 contracts with various governmental entities, including cities, counties, water management districts, regional planning councils, etc. These entities filed 68 cases in 1993, an eleven percent increase over the 61 cases filed in 1992.

As noted in the following workload section, requests for Hearing Officer services decreased by five percent in 1993, as compared with 1992. Most significant to this caseload decline is the number of cases filed by the Department of Health and Rehabilitative Services (DHRS). The DHRS' grand total decreased by 16 percent from 4,619 cases filed in 1992 to 3,891 cases filed in 1993. The number of Baker Act cases filed decreased 12 percent, from 3,392 filed in 1992 to 2,970 filed in 1993. The number of DHRS non-Baker Act cases filed decreased by 25 percent, from 1,224 in 1992 to 921 in 1993. Requests for hearing on child abuse cases decreased by 20 percent from 950 filed in 1992 to 759 filed in 1993.

With the elimination of prisoner rule challenges, requests from the Department of Corrections continued to decrease by 37 percent, from 92 filed in 1992 to 58 filed in 1993.

UTILIZATION OF PERSONNEL

The Division has 62 established positions comprised of the Director, Assistant Director, 30 Hearing Officers, 1 Division Clerk, 1 Administrative Services Director, 1 Executive Assistant, 1 Accountant, 1 Purchasing Agent, 1 Personnel Officer, 3 Administrative Assistants, 1 Computer Programmer Analyst, 1 Computer Operator, 5 Staff Assistants, 11 Administrative Secretaries, 1 Senior Word Processing Systems Operator, and 2 Senior Clerks.

WORKLOAD

During calendar year 1993, the Division processed 7,309 hearing requests, a decrease of 420 cases (five percent) from the 7,729 cases filed in 1992. The cases opened are itemized by agency in the attached Appendix 1.

Of the 7,309 cases, 2,970 were Baker Act cases. The remaining 4,339 cases were filed pursuant to Sections 120.535, 120.54, 120.56, and 120.57, Florida Statutes. In 1993 each Hearing Officer handled an average of 152 new cases, conducted an average of 91 hearings, and wrote an average of 79 recommended or final orders of varying length and complexity.

In 1993 the Division held a total of 4,627 hearings, 411 hearings less than the 5038 hearings held in 1992. About half of that decline, or 208 hearings, reflect the decline in the number of Baker Act cases filed. During the year the Division closed 7,136 cases, an average of 140 closures per Hearing Officer.

OFFICE AUTOMATION

The primary systems applications for the Division are its Case Tracking System (CTS), a full text retrieval and indexing system for all DOAH recommended and final orders and agency final orders (ACCESS -- Administrative Case Compendium and Electronic Search System) from 1985 to the present, and word processing. Secondary applications include electronic mail, an automated desk calendar, and computerized Florida Statutes. In 1992 the Division added a personal computer in its library to facilitate electronic legal research, including the Florida Administrative Code and West's Florida Cases on CD-ROM.

The Division continued to upgrade its computer hardware by replacing older-style workstations with new models that can run both the CTOS and DOS operating systems concurrently on faster processors.

In association with the Division's project to electronically index all recommended and final orders, remote sites were established at the Department of Banking and Finance and the House of Representatives Select Committee on Agency Rules, which allow these entities to access specialized documents, as well as DOAH orders, via modem. In the upcoming year, the Division will be working with the Department of Management Services' computer center to make DOAH's data base of orders available to all state agencies via the SUNCOM network.

OPERATING BUDGET

Appendix 2 summarizes the Division's actual and estimated expenditures for FY 1992-93 and FY 1993-94, respectively. Appendix 2 also outlines funds requested in the Division's FY 1994-95 Legislative Budget Request.

Since FY 1987-88, the Division has conducted studies to determine a more equitable method of apportioning its operating costs among all users. The Division is responsible for preparing annual reports which summarize the number of hours scheduled by agencies for prehearing conferences, motion hearings, cancelled/continued hearings, and final hearings.

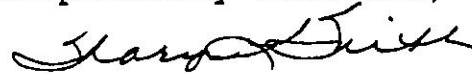
In August, 1993, the Division submitted the results of its seventh annual study to the Legislature and Executive Office of the Governor (see Appendix 3). In FY 1992-93, agencies scheduled a total of 26,006 hearing hours with the Division. Of the 26,006 hours scheduled in FY 1992-93, the Division's Hearing Officers actually spent 6,513 hours in administrative proceedings. In FY 1992-93, 19,493 hearing hours scheduled were cancelled or continued.

In FY 1993-94, the Division will receive 93 percent of its approved operating budget from the agencies it serves and 7 percent from the General Revenue fund for designated projects. It should be noted that the lawsuit filed in early FY 1991-92 by school districts against the State Board of Education, the Legislature, and the Division challenging the constitutionality of the laws providing fund transfers from the school districts to the Division is still pending in the First District Court of Appeal, with oral argument scheduled for March 1, 1994.

RECOMMENDATIONS CONCERNING THE A.P.A.

The Division has no current recommendations concerning the Administrative Procedure Act.

Respectfully submitted,



SHARYN L. SMITH
Director of Administrative
Hearings

SLS/csm

DIVISION OF ADMINISTRATIVE HEARINGS
ANALYSIS OF AGENCY REQUEST FOR
HEARING OFFICERS FOR CALENDAR YEAR 1993

AGENCY	Jan-June	Jul-Dec	TOTAL
Department of Agriculture and Consumer Services.....	18	24	42
Produce Disputes.....	8	7	15
Department Total.....	26	31	57
Department of Business Regulation.....	1		1
Division of Alcoholic Beverages and Tobacco.....	55		55
Division of Hotels and Restaurants.....	6		6
Division of Land Sales Condos. and Mobile Homes....	13		13
Division of Pari-Mutuel Wagering.....	7		7
State Athletic Commission.....	1		1
Department Total.....	83	*	83
*See Department of Business and Professional Regulation for Jul-Dec Totals			
Department of Commerce.....	5	0	5
Department of Community Affairs.....	63	44	107
Florida Housing Finance Agency.....	2	0	2
Department Total.....	65	44	109
Office of Comptroller			
Department of Banking and Finance.....	39	27	66
Division of Securities.....	3	11	14
Department Total.....	42	38	80
Contract Hearings			
City of Clearwater.....	11	9	20
Clay County.....	1	3	4
Jacksonville Transportation Authority.....	0	1	1
Pinellas Construction Licensing Board.....	12	6	18
Contract Hearing Total.....	24	19	43
Department of Corrections.....	5	20	25
Mental Health Institute.....	17	16	33
Department Total.....	22	36	58
Department of Education.....	3	4	7
Division of Blind Services.....	0	5	5
Education Practices Commission.....	25	46	71
EPC, Declaration of Default.....	8	21	29
Palm Beach Junior College.....	2	0	2
Board of Regents.....	4	0	4
Miami Dade Community College.....	0	1	1
University of Florida.....	1	1	2
University South of Florida.....	1	2	3
Non-School Board Total.....	44	80	124

Department of Education (continued)

School Board Cases,

includes 42 Exceptional Education Cases filed

Alachua County School Board.....	0	2	2
Bay County School Board.....	2	0	2
Bradford County School Board.....	1	0	1
Brevard County School Board.....	4	4	8
Broward County School Board.....	4	5	9
Citrus County School Board.....	0	1	1
Clay County School Board.....	0	2	2
Collier County School Board.....	1	1	2
Columbia County School Board.....	0	1	1
Dade County School Board.....	10	13	23
Flagler County School Board.....	0	1	1
Gadsden County School Board.....	0	1	1
Highlands County School Board.....	5	0	5
Hillsborough County School Board.....	0	5	5
Indian River County School Board.....	1	0	1
Lake County School Board.....	0	1	1
Lee County School Board.....	7	2	9
Leon County School Board.....	2	0	2
Liberty County School Board.....	1	0	1
Manatee County School Board.....	0	1	1
Marion County School Board.....	1	0	1
Monroe County School Board.....	1	1	2
Orange County School Board.....	2	5	7
Palm Beach County School Board.....	10	1	11
Pinellas County School Board.....	16	11	27
Polk County School Board.....	1	0	1
Seminole County School Board.....	4	2	6
Sumter County School Board.....	0	1	1
Volusia County School Board.....	1	1	2
Washington County School Board.....	1	0	1
School Board Total.....	75	62	137
Department Grand Total.....	119	142	261
Department of Elder Affairs.....	0	1	1
Department of Environmental Protection			
Formerly Department of Environmental Regulation			
and Department of Natural Resources.....	169	287	456
Marine Fisheries Commission.....	*	3	3
Department Total.....	169	290	459
*See Department of Natural Resources for Jan-Jun Totals			
Ethics Commission.....	16	14	30
Florida Game and Fresh Water Fish Commission.....	0	4	4
Office of the Governor			
Administration Commission.....	0	5	5
Florida Land and Water Adjudicatory Commission.....	25	8	33
Department Total.....	25	13	38

Department of Health and Rehabilitative Services

Non-Baker Act Cases:

Miscellaneous.....	20	13	33
Audit Services.....	48	0	48
Child Support.....	0	1	1
Child Abuse Cases.....	400	359	759
Developmental Services Program.....	0	3	3
Emergency Medical Services.....	0	2	2
Health Program Office.....	8	14	22
Health Program Office Pharmacy.....	0	1	1
Office of Central Administrative Services.....	0	2	2
Office of Personnel.....	1	1	2
Office of Radiological Health Services.....	1	0	1
Program Development for Children, Youth and Families.....	12	9	21
Program Development for Human Services.....	0	1	1
Program Development for Medicaid Disputes.....	22	1	23
Program Development for Mental Health.....	0	1	1
Program Development for Aging and Adult Services...	0	1	1
Non-Baker Act Total.....	512	409	921

Baker Act Cases:

Anclote Manor Hospital.....	2	3	5
Bay Mental Health Center.....	0	3	3
Florida State Hospital.....	446	363	809
G. Pierce Wood Memorial Hospital.....	376	270	646
James A. Haley Veterans Hospital.....	1	0	1
Northeast Florida State Hospital.....	504	501	1005
South Florida State Hospital.....	262	235	497
Veterans Administration Medical Center.....	0	1	1
West Florida Community Care Center.....	1	2	3
Baker Act Total.....	1592	1378	2970
Department Grand Total.....	2104	1787	3891

Department of Highway Safety and Motor Vehicles.....	25	25	50
--	----	----	----

Department of Insurance and Treasurer.....	62	96	158
Medical Arbitration.....	0	5	5
Department Total.....	62	101	163

Department of Labor and Employment Security.....	6	3	9
Bureau of Agricultural Programs.....	0	5	5
Bureau of Self Insurance.....	3	0	3
Division of Employment and Training.....	9	3	12
Neurological Injury Compensation Association.....	64	19	83
Division of Unemployment Compensation.....	0	1	1
Division of Vocational Rehabilitation.....	0	9	9
Division of Workers Compensation.....	4	5	9
Department Total.....	86	45	131

Department of Law Enforcement.....	1	0	1
Criminal Justice Standards and Training Commission.....	30	20	50
Department Total.....	31	20	51

Department of Management Services.....	50	35	85
Human Relations Commission.....	89	106	195
State Employee Insurance and Retirement.....	15	25	40
Department Total.....	154	166	320
Department of Natural Resources.....	37		37
Marine Fisheries Commission.....	5		5
Department Total.....	42	*	42
*See Department of Environmental Protection for Jul-Dec Totals			
Parole and Probation Commission.....	0	1	1
Department of Business and Professional Regulation			
Formerly Department of Business Regulation			
and Department of Professional Regulation.....			
Division of Alcoholic Beverages and Tobacco.....	0	2	2
Construction Industry Licensing Board.....	*	70	70
Board of Accountancy.....	24	26	50
Division of Land Sales Condos. and Mobile Homes....	0	6	6
Board of Nursing.....	*	6	6
Division of Pari-Mutuel Wagering.....	7	7	14
Board of Professional Engineers.....	*	7	7
Florida Real Estate Commission.....	9	8	17
Florida Real Estate Commission.....	84	61	145
*See Department of Business Regulation for Jan-Jun Totals			
Department Total.....	124	193	317
Division of Medical Quality Assurance			
Board of Acupuncture.....	1	0	1
Audit Quality Control Services.....	0	40	40
Board of Chiropractic.....	14	16	30
Clinical Social Workers.....	1	2	3
Board of Dentistry.....	7	12	19
Laboratory Clinical Personnel.....	0	1	1
Marriage and Family Therapists.....	1	0	1
Medicaid Program Integrity.....	0	38	38
Midwifery Council.....	0	1	1
Board of Medicine.....	106	106	212
Board of Mental Health Counselors.....	3	1	4
Occupational/Physical and Respiratory Therapy.....	5	0	5
Board of Optometry.....	4	11	15
Board of Osteopathic Medical Examiners.....	6	5	11
Board of Pharmacy.....	6	2	8
Podiatric Medicine.....	5	4	9
Board of Psychological Examiners.....	1	2	3
Speech Language Pathology and Audiology.....	1	0	1
Board of Veterinary Medicine.....	1	6	7
Division Total.....	162	247	409
Division of Professions			
Board of Architecture.....	2	6	8
Board of Auctioneers.....	7	0	7
Barbers Board.....	2	1	3
Board of Cosmetology.....	2	3	5
Electrical Contractors Licensing Board.....	2	8	10
Employee Leasing.....	1	1	2
Board of Funeral Directors and Embalmers.....	2	2	4

Department of Business and Professional Regulation

Division of Professions (continued)

Hearing Aid Specialists.....	0	2	2
Board of Land Surveyors.....	2	10	12
Board of Landscape Architects.....	1	0	1
Board of Massage	7	5	12
Board of Nursing Home Administrators.....	1	3	4
Board of Opticianry	1	0	1
Board of Pilot Commissioners.....	1	3	4
Board of Talent Agencies.....	1	2	3
Division Total.....	32	46	78
Agency for Health Care Administration.....	10	30	40
Hospital Cost Containment Board.....	11	15	26
Office of Licensure and Certification.....	31	6	37
Office of Community Medical Facilities (CON cases) .	54	138	192
Agency Total.....	106	189	295
Department Grand Total.....	424	675	1099
Public Service Commissions.....	4	4	8
Department of Revenue.....	61	35	96
State Attorney.....	0	3	3
Department of State.....	1	2	3
Division of Licensing.....	34	25	59
License Denial Cases.....	16	17	33
Department Total.....	51	44	95
Department of Transportation.....	37	43	80
Sign Disputes.....	16	9	25
Department Total.....	53	52	105
Department of Veterans Affairs.....	0	1	1
Water Management Districts			
Northwest Florida Water Management District.....	1	0	1
St. Johns River Water Management District.....	12	0	12
South Florida Water Management District.....	4	0	4
Southwest Florida Water Management District.....	8	0	8
Water Management District Total.....	25	0	25
NON-BAKER ACT TOTAL.....	2126	2213	4339
DOAH GRAND TOTAL.....	3718	3591	7309

SUMMARY

Division of Administrative Hearings
Actual and Estimated Expenditures
and Legislative Budget Request

<u>Appropriation Category</u>	<u>Actual Expenditures FY 1992-93</u>	<u>Estimated Expenditures FY 1993-94</u>	<u>Requested FY 1994-95</u>
Salaries & Benefits	\$3,768,606	\$3,855,540	\$4,030,041
Other Personal Services	81,131	184,260	164,019
Expenses	695,485	757,649	724,510
Operating Capital Outlay	<u>32,939</u>	<u>285,621</u>	<u>111,038</u>
TOTAL	<u>\$4,578,161</u>	<u>\$5,083,070</u>	<u>\$5,029,608</u>
 Positions	 62	 62	 66

FY 1992-93 Apportionment Study - Final Report
For the Period 07/01/92 through 06/30/93

AGENCY	PREHEARING CONFERENCE	MOTION HEARING	CANC./CONT. HEARING	FINAL HEARING	TOTAL HOURS	% OF TOTAL		% OF 9495	
						HOURS	HOURS	FINAL LBR, ADJ. FOR PIPELINE HRGS*	FINAL LBR
AGR	4.25	5.50	170.00	94.00	273.75	1.13172%		\$52,977	\$52,977
CMP	0.50	11.25	398.75	50.75	461.25	1.90688%		\$89,262	\$89,262
COM	0.25	0.00	0.00	5.50	5.75	0.02377%		\$1,113	\$1,113
COR	0.00	0.50	81.00	38.00	119.50	0.49403%		\$23,126	\$23,126
DBR	3.25	7.25	747.00	103.25	860.75	3.55847%		\$166,574	\$166,574
DCA	21.25	40.75	2,435.00	456.25	2,953.25	12.20919%		\$571,519	\$571,519
DER*	8.50	50.50	2,018.75	436.75	2,514.50	10.39533%		\$486,611	\$604,145
DLA	0.00	0.00	3.00	8.00	11.00	0.04548%		\$2,129	\$2,129
DLE	0.00	0.50	214.25	102.25	317.00	1.31053%		\$61,346	\$61,346
DMS	7.00	25.25	1,115.00	432.75	1,580.00	6.53196%		\$305,765	\$305,765
DNR	5.00	5.25	303.00	109.25	422.50	1.74668%		\$81,763	\$81,763
DOE	5.00	6.25	376.50	113.75	501.50	2.07328%		\$97,051	\$97,051
DOS	1.00	3.75	259.00	65.25	329.00	1.36014%		\$63,669	\$63,669
DOT	2.75	18.75	354.00	115.25	490.75	2.02884%		\$94,971	\$94,971
DPR	29.00	77.25	3,134.00	744.25	3,984.50	16.47253%		\$771,089	\$771,089
DPR/CA	12.50	84.75	1,558.50	369.75	2,025.50	8.37373%		\$391,979	\$391,979
ETII	0.75	2.00	113.50	38.25	154.50	0.63873%		\$29,899	\$29,899
FWF	0.00	0.00	6.00	2.00	8.00	0.03307%		\$1,548	\$1,548
GOV	3.75	14.50	160.00	5.00	183.25	0.75758%		\$35,463	\$35,463
HRS	36.50	106.00	3,701.50	1,399.75	5,243.75	21.67847%		\$1,014,781	\$1,014,781
HSM	5.00	9.25	314.00	71.75	400.00	1.65366%		\$77,409	\$77,409
INS	10.00	20.50	477.00	114.25	621.75	2.57041%		\$120,322	\$120,322
LES	1.00	17.50	237.00	72.50	328.00	1.35600%		\$63,475	\$63,475
LOT	0.00	0.00	14.50	0.00	14.50	0.05995%		\$2,806	\$2,806
PSC	0.00	0.25	12.00	11.00	23.25	0.09612%		\$4,499	\$4,499
REV	1.25	6.25	287.50	66.25	361.25	1.49346%		\$69,910	\$69,910
TOTAL	158.50	513.75	18,490.75	5,025.75	24,188.75**	100.00000%		\$4,681,056	\$4,798,590

NOTES:

- (1) The Division has requested that DER transfer \$117,534 for hearings resulting from the 1992 Natural Gas Transmission Pipeline Siting Act, Chapter 92-284, Laws of Florida (Issue #3100500).
- ** (2) Hearing hours scheduled by school districts and other educational entities are excluded due to pending litigation and due to the elimination of proviso language in the FY 1993-94 Appropriations Act authorizing DOE to bill these entities for hearing officer services. However, hearing hours scheduled by these entities are reported separately.
- ** (3) Hearing hours scheduled by contract agencies (water management districts, regional planning councils, cities, counties, etc.) are reported separately.
- (4) The Division's Schedule I in its FY 1994-95 LBR reflects combined transfers in Column A11 for these agencies:
- (a) Department of Business and Professional Regulation (DBPR): Includes DBR, DPR, and DPR/ARCA.
- (b) Department of Environmental Protection (DEP): Includes DER and DNR.
- ** School district hours (1,066,000) and contract agency hours (751,000) total 1,817,000.

KEY TO AGENCY TITLE ABBREVIATIONS

<u>Abbreviated Agency Title</u>	<u>Full Agency Title</u>
AGR	Department of Agriculture & Consumer Services
CMP	Department of Banking & Finance/Comptroller
COM	Department of Commerce
COR	Department of Corrections
DBR	Department of Business Regulation
DCA	Department of Community Affairs
DER	Department of Environmental Regulation
DLA	Department of Legal Affairs
DLE	Department of Law Enforcement
DMS	Department of Management Services
DNR	Department of Natural Resources
DOE	Department of Education
DOS	Department of State
DOT	Department of Transportation
DPR	Department of Professional Regulation
DPRAHCA	Department of Professional Regulation - Agency for Health Care Administration
ETH	Ethics Commission
FWF	Game and Fresh Water Fish Commission
GOV	Executive Office of the Governor
HRS	Department of Health & Rehabilitative Services
HSM	Department of Highway Safety & Motor Vehicles
INS	Department of Insurance and Treasurer
LES	Department of Labor and Employment Security
LOT	Department of Lottery
PSC	Public Service Commission
REV	Department of Revenue