MEMORANDUM

TO:        Ms. Colleen Castille, Secretary  
            Florida Department of Community Affairs

FROM:      Sean Loughlin

CC:        Ms. Glenda Hood, Secretary  
            Florida Department of State

SUBJ:      Proposed Resolution Procedure Design

DATE:      April 30, 2003

As we recently discussed, the Florida Department of Community Affairs has an adopted process through which program rules are amended. This process takes the approach of the three agency divisions preparing recommendations for change and proceeding with the formal rulemaking process as adopted by the Clerk’s office. Within this process, program stakeholders from throughout the State can provide their feedback prior to the rule changes coming to fruition.

The purpose of this memo is to encourage the Department of Community Affairs to consider an alternative approach for the more contentious rule changes through a negotiated rulemaking process. This process would consist of facilitated workshops aside from the existing public hearing requirements. Through a participatory process as opposed to a ‘propose and defend’ approach as has typically been the case, assurance could be made that early concessions will not lead to more problems well into the rule process. All too often with the existing rule process, stakeholders are defensive because they do not feel their feelings are really being taken into consideration. They know that once the first announcement is advertised for the rule change, the Department wants to proceed as expeditiously as possible in making the changes they want.

The process that I am recommending to you consists of the following general principles.

1) Each division director, through the knowledge they have of their programs and stakeholders, shall meet with the agency Secretary, to discuss the idea of having facilitated workshops relating to atypical, potentially contentious program changes. The purpose of meeting with the agency Secretary is because a facilitated process takes a great deal of time and money and it is important that routine rule changes that do not go through such a process and given this
level of attention. However, for the most sensitive of rule changes, the negotiated process would worthwhile, saving a substantial time once the formal rule process begins. Such a process, too, could only increase the level of trust and respect that program stakeholders have for one another.

(2) Each division, like they always have done with substantial rule changes, shall do research and data collection on the issue(s) at hand to substantiate how the changes would benefit program stakeholders. That research would have to be complete and ready to go once it is decided to proceed with facilitated workshops.

(3) Through mailings and staff interaction, information would be disseminated to stakeholders. Determining the stakeholders could be done from all levels of the Department, from the division director to the staff that is knowledgeable about the program.

(4) Input from a Division’s respective advisory committee and staff should part of the proposed rule change(s).

(5) This is the part of the process where there is a great deal of flexibility. Typically, this is where the regular rule process would begin. However, at this step the respective program director and division head should disseminate information to chosen stakeholders though: program staff, mailings, and, ultimately, the stakeholder meetings.

(6) The decision of how many meetings, the setup of those meetings, and choice of facilitator(s) for the meetings can be determined by division and program directors. Groundrules, too, for the workshops could vary as long as they are mutually agreed upon. The goal is for each facilitation process to be flexible and address the unique issues at hand.

(7) The goal of the facilitated process, again, is to affirm assurance that early concessions will make for a smoother rule change process when that begins.

(8) The goal should be to have only the number of meetings that are necessary to work through the issues. Furthermore, as each meeting takes place, the goal is not to re-address issues that have already been brought up. Points that have been made and taken into consideration by the agency do not need to be talked about more than once for the sake of time and efficiency. Stakeholders should only be raising new issues.
(9) Regarding the stakeholder meetings, the following provides some insight as to their process and design:

- Have daylong, facilitated workshops with lunch.
- Have groundrules that are mutually agreed upon.
- Goals and objectives of meeting are clearly laid out.
- Make it clear that the intent of the process is to encourage productive interaction amongst program stakeholders, regardless of affiliation.
- Ask stakeholders what they want from an improved process.
- Reach consensus on the purpose of changes.
- Brainstorm by stakeholder group through Post-Its or color coding. Groups should present their findings, determining where there is consensus and where there is not.
- Shape recommendations for resolving conflicts in heterogeneous groups.
- Recap rulemaking process and ensure that continued input will be sought through other stakeholder meetings to address unresolved issues.
- Information from stakeholder meeting and future meetings shall be distributed to stakeholders as part of information distribution process.
- Begin rulemaking process that would have otherwise begun at step six.

Attached please find a diagram that visually outlines the information that has been presented to you. I also have (separately) a mock agenda are to what a day-long stakeholder meeting might look like. Overall, I feel that this proposed design is very appropriate for select program changes that are complex and controversial. The State needs to do a better job of pursuing important program changes through a well-thought-out, participatory process to further develop the relationship it has with its constituents.

On a final note, there are a couple of other things worth thinking about. First, is whether it might be worth advertising that the rulemaking process first, before facilitated workshops. The thinking is that if a formal advertisement is not made, some stakeholders might try to drag the
process as long as they can to stall the Department from the formal rulemaking process that would be in effect once an advertisement is made in the *Florida Administrative Weekly*. Second, it might be worth having the Joint Administrative Procedures Committee (JAPC) involved in the process early on. This would ensure that any issues are resolved beforehand, particularly with regard to program language changes that are sought.

Thank you for your attention to this matter. Please feel free to contact me if you would like to further discuss process design. I believe that this information at least provides a start for the Department to visually see how rule changes in the future could be approached. I do hope that alternative approaches to rulemaking can be investigated upon the merger of the Department with the Department of State as well.

Sincerely yours,

Sean P. Loughlin

Attachment:
Process Design Diagram