RESOLUTION PROCEDURE PLAN:
“RE-DESIGN OF CHAPTER 120, FLORIDA STATUTES,
RULE DEVELOPMENT PROCEDURE”
MEMORANDUM

TO: Florida Senate  
    Florida House of Representatives

FROM: Lola M. Swaby (URP 5122)

DATE: April 25, 2000

RE: Re-Design of Chapter 120, Florida Statutes, Rule Development Procedure

My name is Lola Swaby and I am a lobbyist with the Florida Dental Association (hereinafter the “Association”), which is an organization whose membership consists of licensed dentists in the State of Florida. The Association’s role is to ensure that its members are informed of all law and rules that are applicable to their profession, as well as any changes to those laws and rules. In addition, in its role as advocate for its members, the Association also proposes possible statutory amendments on a regular basis. As such, during this legislative session, the Association sought to introduce a proposed amendment to section 120.54(2), Florida Statutes, which sets forth the rule development procedure that must be followed by all agencies prior to their publication of a notice of a proposed rule. Therefore, this correspondence is written in an attempt to provide the members of the Florida Legislature with a detail account of the Association’s procedure design.

**CURRENT RULE DEVELOPMENT PROCEDURE:**
Currently, section 120.45(2), Florida Statutes, provides that prior to the publication of a notice of proposed rule, an agency must publish a notice of rule development in the Florida Administrative Weekly (FAW). The statute requires that the notice of rule development must “indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without

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1 All personal reference to a job title and/or duties as a lobbyist on behalf of the Florida Dental Association is due in part to creative writing, written only for the purposes of this assignment.
cost, a copy of any preliminary draft, if available.” See § 120.54(2)(a), Fla. Stat. The statute also requires that an agency must “hold public workshops in various regions of the state or the agency’s service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary.” See § 120.54(2)(c), Fla. Stat. The statute allows an agency to utilize “negotiated rulemaking in developing and adopting rules” and to consider using “negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated.” See § 120.54(2)(d), Fla. Stat.

**PROPOSED RULE DEVELOPMENT PROCEDURE DESIGN:**

The current rule development procedure does not place a mandatory requirement on agencies to publish the preliminary text of proposed rules with notices of rule development. As such, the public is normally unaware of the actual preliminary languages of proposed rules until rule notices are done by the agencies. This serve to not only circumvent the procedure that the Legislature has put in place for the benefit of the public, but also the checks and balances on the individual agencies statutory authorities. Thus, the negotiated rulemaking procedure is often not used since the public, in most instances, does not request a rule development workshop because it is unaware of the exact wording of a proposed rule until later into the rule rulemaking process.

Therefore, the Association is recommending that the Legislature amend section 120.54, Florida Statutes, as well as the Uniform Rules, Chapter 28, Florida Administrative Code, and make it a mandatory requirement that all agencies – intending to proposed rules – publish the preliminary text of all proposed rule during the rule development phases of the rulemaking process. Requiring the publication of all rule languages with rule development notices, would place the public on notice of the agencies intended action and provide members of the public with an opportunity to respond prior to rule notice being given. This would allow the public an opportunity to become an active participant in the rulemaking process. Thus, in cases where the rule language would spark controversy, all parties with an interest in the process would be able to participate in a negotiated procedure that was facilitated by a neutral party. This participation would be
done early in the process, thereby, allowing the parties to reach an agreed upon settlement of any controversial issues. This proposed statutory amendment would also be a cost effective endeavor for the Legislature, whereby, agencies would not spend as much money, as in the past, on defending rule challenges. Thus, monies normally spent on rule challenges could be utilized by the legislature and/or the agencies in other areas, such as combating unlicensed practices and promoting the individual professions.