

Metropolitan planning organization, F.S. 120

Number: AGO 78-27

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Subject:
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ADMINISTRATIVE PROCEDURE ACT--APPLICABLE TO METROPOLITAN PLANNING ORGANIZATION

To: Gerald L. Knight, Attorney for Broward County Metropolitan Planning Organization, Fort Lauderdale

Prepared by: Thomas M. Beason, Assistant Attorney General

QUESTION:

Does the Administrative Procedure Act, Ch. 120, F. S., apply to the Broward County Metropolitan Planning Organization?

SUMMARY:

Since the Broward County Metropolitan Planning Organization is a regional agency, board, district, or authority described in Ch. 163, F. S., it is expressly made subject to the Administrative Procedure Act by the provisions of s. 120.52(1)(b), F. S.

The Administrative Procedure Act broadly defines agency in s. 120.52(1), F. S., to include in pertinent part:

"(a) The Governor in the exercise of all executive powers other than those derived from the Constitution.

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters 160, 163, 298, 373, 380 and 582.

(c) Each other unit of government in the state, including counties and municipalities to the extent they are expressly made subject to this act by general or special law or existing judicial decisions."

As set out in your letter, and the accompanying material, the Broward County Metropolitan Planning Organization is created pursuant to an agreement under the Interlocal Cooperation Act of 1969, s. 163.01, F. S., the Local Government Comprehensive Planning Act of 1975, ss. 163.3161-163.3211, F. S., and under the authority of certain federal acts. In AGO 077-15 I observed that metropolitan planning organizations formed under s. 163.01 and applicable federal

laws may consist of a public agency of this state, such as a county, and other agencies either in the county or in other counties or other states. Hence a planning organization may be entirely intracounty in nature or it may be intercounty or interstate. See *also* AGO 077-16.

As I recently noted in AGO 077-142, s. 120.52(1)(b), F. S., expressly enumerates the various types of intergovernmental programs and regional governmental agencies or districts which are designated state agencies for the purposes of the Administrative Procedure Act. That section expressly includes within the purview of the Administrative Procedure Act regional planning agencies, boards, districts, and authorities such as those described in Ch. 163, F. S. This express inclusion is not conditioned on whether the planning organization is intercounty or solely intrastate.

I recognize that the Broward County Metropolitan Planning Organization is a creature of the county and municipalities therein and that counties and municipalities are subject to the Administrative Procedure Act only to the extent they are included by general or special law or existing judicial decision. See AGO 075-140. However, given the Legislature's express inclusion in the definition of "agency" of regional planning agencies, boards, districts, and authorities, including those described in Ch. 163, F. S., irrespective of whether they are intercounty or intracounty, I conclude that pursuant to s. 120.52(1)(b), F. S., the Broward County Metropolitan Planning Organization is an agency subject to the provisions of Ch. 120, F. S.