



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MICHAEL S. "MIKE" BENNETT
21st District

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April 1, 2008

Mr. Tom Hall,
Clerk of the Court
The Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

IN RE: Proposed Rule Amendment to Florida Rules of Appellate
Procedure, Case No. SC08-147; Rule 9.310(b)(2) - Stay
Pending Review; Exceptions; Public Bodies; Public Officers.

Dear Mr. Hall:

The purpose of this letter is to express strong support for the proposed amendment to Rule 9.310(b)(2) to conform the rule to the Administrative Procedure Act (APA), and particularly Sections 120.68(3) and 120.56(4), Florida Statutes (2007).

As noted in the report issued by your Appellate Rules Committee, the current rule conflicts with these two statutes by granting an automatic stay of final administrative orders entered by state agencies pending review, to certain public bodies and public officers. The proposed rule amendment would remove this conflict and thus defer to the Legislature's determination that "the filing of the petition [for judicial review] does not itself stay enforcement of the agency decision..." Section 120.68(3), Florida Statutes.

Generally speaking, public bodies and public officers are subject to the laws enacted by the Legislature. As such, whether a public body or public officer should be entitled to an automatic stay of a final decision made by another administrative agency is a policy question that, with all due respect to this Court, should be and has been decided by the Legislature. Of course, a public body or public officer—like any other party to the appeal— may seek a stay in accordance with Rule 9.190(e). And the proposed rule change applies only to appeals of final agency action under the APA; it does not affect the automatic stay for public bodies and public officers in other appeals.

REPLY TO:

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KEN PRUITT
President of the Senate

LISA CARLTON
President Pro Tempore



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Accordingly, for these and the reasons set out in your Committee's report, we respectfully urge the Court to adopt the proposed amendment to Rule 9.310(b)(2).

Sincerely?

A handwritten signature in black ink, appearing to read "Mike Bennett".

Michael S. "Mike" Bennett

A handwritten signature in black ink, appearing to read "Greg Evers".

Representative Greg Evers
House District 1

cc: Steve Brannock
Lawrence E. Sellers, Jr.