

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1374

SPONSOR: Governmental Oversight and Productivity Committee and Senator Peaden

SUBJECT: Administrative Procedures

DATE: March 20, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>ATD</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for SB 1374 amends s. 120.55, F.S., to require that the Florida Administrative Weekly (FAW), beginning January 1, 2004, be electronically published by the Department of State (DOS) on an Internet web site, rather than in its current paper form. The web site is to be established and maintained by the State Technology Officer (STO); however, the DOS remains ultimately responsible for overseeing the FAW's publication. The bill also requires the DOS with the assistance of the STO to make training courses available to all agencies currently required to publish in the FAW in order to assist the agencies with their transition to publishing on the FAW Internet web site.

This bill substantially amends ss. 120.55, 120.551(1), and 287.042(3)(b) of the Florida Statutes. The bill also creates three undesignated sections of law.

II. Present Situation:

The Florida Administrative Weekly-- Section 120.55, F.S., requires the DOS to publish notices and various other materials filed by Florida administrative agencies¹ in the FAW.² The statute specifically requires the FAW to contain:

¹ For purposes of ch. 120, F.S., the term "agency" is defined in s. 120.52, F.S., as: each: (1) state officer and state department and unit; (2) authority, including a regional water supply authority; (3) board and commission; (4) regional planning agency; (5) multicounty special district with a majority of its governing board comprised of nonelected persons; (6) educational unit; (7) entity described in Chapters 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management) and 582 (Soil and Water Conservation), and s. 186.504 (regional planning councils); and (8) other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions. The definition of "agency" expressly excludes any legal entity or agency created in whole or in part pursuant to chapter 361, part II (Joint Electric Power Supply Projects), an expressway authority pursuant to chapter 348, any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless

- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., which concerns agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the FAW where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;
- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week; and
- Any other material required or authorized by law or deemed useful by the department.³

In addition, numerous other statutes require certain materials to be published in the FAW. For example, s. 403.527(1)(e), F.S., requires that the Department of Environmental Protection (DEP) publish various notices in the FAW concerning applications filed pursuant to the Transmission Line Siting Act.

The DOS is responsible for grammatically editing the FAW and for prescribing style and form rules.⁴ Each week the DOS prepares a camera ready copy of the FAW that is then printed by Darby Printing Company pursuant to its contract with the DOS. The FAW is released on Fridays and is distributed to administrative agencies, courts, law schools, the Legislature, and other subscribers.⁵ An annual subscription to the FAW costs \$319 and currently there are 712 paid subscribers. Subscription fees are paid directly to Darby Printing Company.⁶

In addition to producing the paper version of the FAW, the DOS posts copies of the FAW in Adobe Acrobat PDF format on its Internet web site, which may be accessed by the general public for free.⁷

Section 120.55(1)(a), F.S., also requires the DOS to publish the Florida Administrative Code (FAC), which contains all rules adopted by agencies, along with references to statutory authority and history notes. The FAC must be supplemented at least monthly.⁸ As with the FAW, the DOS contracts with Darby Printing Company for the actual printing of the FAC.

Section 120.55(5), F.S., establishes the DOS's "Publication Revolving Trust Fund," and provides that all fees and moneys collected by the DOS under the chapter are to be deposited in the fund

any party to such agreement is otherwise an agency as defined in the section, or any multicounty special district with a majority of its governing board comprised of elected persons.

² Pursuant to written information provided by the DOS on March 17, 2003, approximately 400 governmental entities in Florida publish in the FAW.

³ Section 120.55(1)(b), F.S.

⁴ Section 120.55(1)(c) and (d), F.S.

⁵ Section 120.55(1)(e) and (4), F.S.

⁶ Information regarding the printing contract and subscriptions was provided by the DOS via telephone on March 19, 2003.

⁷ See <http://faw.dos.state.fl.us/>.

⁸ Section 120.55(1)(a)1., F.S.

for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by the DOS in carrying out the chapter's requirements. Unencumbered balances at the beginning of each fiscal year that exceed \$300,000 are required to be transferred to the General Revenue Fund.⁹

Fees and moneys collected by the DOS under the chapter are:

- Each publishing agency may be charged a “space rate” that is computed to cover a pro rata share of 50 percent of the costs related to the publication of the FAW. The “space rate” is more commonly referred to as “line charges,” which currently are assessed at the rate of 99 cents per line.¹⁰
- Subscribers to the FAW may be charged subscription fees that are computed to cover a pro rata share of 50 percent of the costs related to the FAW.¹¹
- Copies of the FAC are sold by Darby Printing Company. The majority of revenues from the sale of the FAC are retained by the company as compensation for publishing the code. The DOS only receives a small percentage in royalties from FAC sales, e.g., \$19,610 was received by the DOS in royalties for calendar year 2002.¹²

The DEP Internet Publication Pilot Project— In 2001, ch. 2001-278, L.O.F., created s. 120.551, F.S., to authorize the DEP to establish a pilot project for the purpose of determining the cost effectiveness of publishing administrative notices on the Internet, rather than in the FAW. The project was scheduled to begin on December 31, 2001 and end on July 1, 2003, and required the DEP in conjunction with the STO and DOS to:

- Publish notices on the Internet on the same days as the FAW is published;
- Establish a permanent, searchable archive of all notices published on the Internet; and
- Submit a report by January 31, 2003, to the Governor and Legislature that contained findings regarding cost-effectiveness of Internet publishing versus FAW publishing, and recommendations for future legislative or rule changes necessary to effectuate future publication of notices on the Internet.¹³

The January 2003 report indicated that the pilot project may be found on the Internet at www.dep.state.fl.us, and that users of the site may search for notices by type, publication date, program area, or rule number.¹⁴ Brief topical summaries of each notice are provided and users may click the summary to obtain the notice's full text in Adobe Acrobat PDF format. Further, a permanent, searchable database of all Internet published notices is available at the site and users may register to receive an automatic e-mail notification whenever a new notice has been

⁹ Section 120.55(5)(c), F.S.

¹⁰ Section 120.55(1)(e), F.S.

¹¹ Section 120.55(1)(f), F.S.

¹² Section 120.55(1), F.S., does not specifically address sales of the FAC. Instead, the subsection states only that the DOS may contract with a publishing firm for the publication of the FAC. Information regarding calendar year 2002 revenues was provided by the DOS via telephone on March 19, 2003.

¹³ Section 120.551, F.S.

¹⁴ See “Joint Report and Recommendations of the Department of Environmental Protection, The State Technology Office, and The Department of State on the Internet Publication Pilot Project under Sec. 120.551, F.S.,” January 31, 2003.

published in a selected area of interest. As of December 2002, 704 members of the general public had registered for the e-mail notification feature.

The report stated that the DEP paid costs of \$44,179 for FAW line charges during calendar year 2001, and that the DEP would have had to pay costs of \$32,100 for FAW line charges during calendar year 2002 if Internet notice publishing had not been permitted. Non-recurring costs to establish the notice publishing web site were: (a) \$10,200 to develop the computer software application; and (b) \$20,000 to program the e-mail registration service enhancement. The report indicated that the computer software application may be shared with other agencies at no cost.

The report concluded by recommending that the Legislature enact law permitting all agencies to elect Internet notice publishing, rather than FAW publishing. According to the report, Internet notice publishing could result in a substantial savings for agencies in FAW line charges, e.g., the DEP saved \$32,100 in FAW line charges in 2002.

III. Effect of Proposed Changes:

The bill amends s. 120.55, F.S., to require that the FAW, beginning January 1, 2004, be electronically published by the DOS on an Internet web site, rather than in its current paper form. The web site is to be established and maintained by the STO; however, the DOS remains ultimately responsible for overseeing the FAW's publication, e.g., the DOS is required to prescribe rules concerning style and form for materials published in the FAW, review notices for compliance with rule requirements, grammatically edit, and insert history notes.¹⁵

Pursuant to the bill, the FAW Internet web site must be provided to agencies and the general public for free, and must be designed so that users may:

- Search for notices by type, publication date, program area, rule number, or agency;
- Search by word or subject;
- Search a permanent database that archives all notices published on the web site; and
- Subscribe to an automated e-mail notification of selected notices.

Prior to implementation of the web site, the bill requires: (a) the DOS to publish a notice in the FAW beginning on October 1, 2003, indicating that the paper version of the FAW will no longer be published as of December 31, 2003, and indicating the Internet URL or address for the future FAW Internet web site; and (b) the DOS with the assistance of the STO to make training courses, either in the form of workshops or self-training software packages, available to all agencies, which are currently required to publish in the FAW, for the purpose of assisting the agencies with their transition to publishing on the FAW Internet web site.

The bill strikes language in s. 120.55(1) and (5), F.S., that created the DOS's "Publication Revolving Trust Fund," which is funded by fees charged by the DOS under the chapter. The purpose of the trust fund, as currently stated in the section, is to pay for the publication and distribution costs of the Florida Administrative Code and the FAW, as well as associated costs to

¹⁵ The substantive contents of the FAW, as currently specified in s. 120.55(1)(b), F.S., are not amended by the bill and the DOS has indicated that it will continue its current practice of publishing the FAW on Fridays.

the DOS in carrying out the chapter's requirements. Although the bill removes this funding source, it does not yet specify a substitute funding source.

The bill also amends s. 120.551, F.S., to extend the DEP's authority to publish its administrative notices on the Internet from July 1, 2003 to December 31, 2003. Effective January 1, 2004, the bill repeals s. 120.551, F.S., as this authority will no longer be needed once the new FAW Internet web site is implemented.

Finally the bill amends s. 287.042, F.S., to strike a provision, which becomes obsolete on July 1, 2003, that requires the Department of Management Services (DMS) to publish a notice in the FAW indicating the URL or Internet address for its procurement web site.

The bill provides that the act takes effect on becoming a law, except as otherwise provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would result in saving each of the 712 paid FAW subscribers \$319 for his or her annual subscription cost. Under the bill, the public may access the FAW Internet web site and its contents for free.

C. Government Sector Impact:

The STO has indicated that it will modify the existing FAW Internet application housed within the DEP into an enterprise application housed within the STO. In order to recover its costs for this project, the STO will invoice the DOS¹⁶ on a monthly basis. The

¹⁶ In the event that SB 2528 and HB 1687 are enacted into the law, the STO will invoice the DMS. See "Related Issues," *infra*.

preliminary estimate of non-recurring costs to the STO is \$70,000 for modification of the DEP's existing FAW Internet application and a yet unknown amount for the purchase and installation of servers. The preliminary estimate of recurring costs to the STO is \$181 per month per server for hosting and \$539 per month for STO employee maintenance and support. Additionally, there will be recurring costs for DOS Bureau of Administrative Code and Weekly (BAC) staff to execute the BAC's responsibilities under the bill and potentially nonrecurring and recurring costs to governmental agencies publishing in the FAW for software and other technology necessary for electronic publishing.

The bill, as currently drafted, eliminates the DOS's "Publication Revolving Trust Fund." This fund in the past has been used to pay for BAC costs associated with publication of both the FAW and the FAC, and has been funded through line charges for agency publishing and royalties obtained from FAC sales.¹⁷ In fiscal year 2001-2002, agency line charges were \$518,695.82 and in calendar year 2002, royalties from FAC sales were \$19,610.

Under the bill, line charges would be eliminated and an alternative funding source is not yet specified in the bill. Currently, staffs in affected executive branch departments are working on the funding issue. Once the funding source has been identified the bill may need to be amended to specify this source.

It is expected that this project will result in lowering total BAC costs for publishing the FAC and FAW. If ultimately the bill is amended to pass BAC costs on to agencies publishing in the FAW and/or to the public that accesses the FAW, it is expected that the bill's cost savings will permit line charges and subscriber fees to be less than those currently assessed by the DOS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Both SB 2528 and HB 1687 currently propose to transfer the DOS's duties concerning the FAC and FAW to the Department of Management Services. Accordingly, if this proposed legislation is enacted into law, the DMS, rather than the DOS, will be responsible for carrying out this bill's requirements.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹⁷ Additional revenues are received from subscription sales of the FAW; however, these revenues are paid directly to Darby Printing Company as compensation for its FAW printing services.