

# 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 2340

SPONSOR: Governmental Oversight and Productivity Committee and Senator Bennett

SUBJECT: Administrative Procedure

DATE: March 10, 2004 REVISED: \_\_\_\_\_

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

## I. Summary:

The committee substitute amends section 120.55, F.S., to require the Department of State (DOS), effective December 31, 2005, to electronically publish the Florida Administrative Weekly on an Internet website. The bill also permits the Department of State to continue to publish the printed version of the Florida Administrative Weekly if subscription revenue is sufficient to pay the costs associated with printing.

The bill specifies that the Florida Administrative Weekly Internet website is to be managed by the Department of State and hosted by the State Technology Office; must be provided for free to the public; must contain specified search features; and must allow the public to subscribe to an automated e-mail notification of selected notices.

The bill provides that a space rate may be charged to agencies by the Department of State to fund costs associated with the Florida Administrative Weekly and the Florida Administrative Code. Further, the bill specifies that all fees deposited into the department's "Publication Revolving Trust Fund" are to be used for paying the department's costs under ch. 120, F.S.

The bill requires the Department of State to make training courses available to all agencies required to publish in the Florida Administrative Weekly, which will assist the agencies in their transition to publishing on the Internet.

This bill amends ss. 120.55 and 120.551 of the Florida Statutes.

## II. Present Situation:

### Florida Administrative Weekly

Under current law, the Department of State (DOS) is required to publish notices and various other materials filed by the state's administrative agencies<sup>1</sup> in the *Florida Administrative Weekly* (FAW).<sup>2 3</sup> The FAW must contain:

- 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., concerning 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.<sup>4</sup>

In addition, numerous other laws require certain materials to be published in the FAW. For example, s. 403.527(1)(e), F.S., requires the Department of Environmental Protection to publish various notices in the FAW concerning applications filed under the Transmission Line Siting Act (ss. 403.52-403.5365, F.S.).

Responsibility for the grammatical editing of the FAW is statutorily assigned to the DOS. Additionally, the DOS is required to adopt rules that prescribe the style and form required for rules submitted for filing and that establish the form for rule certification.<sup>5</sup>

The DOS contracts with LexisNexis Matthew Bender for publication of the FAW in a printed format.<sup>6</sup> The FAW is published on Fridays and distributed for free to administrative agencies,

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<sup>1</sup> For purposes of ch. 120, F.S., the term "agency" is defined in s. 120.52, F.S., as the Governor and each: (1) state officer and state department and unit; (2) authority, including a regional water supply authority; (3) board or 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 ch. 163, F.S. (Intergovernmental Programs), ch. 373, F.S. (Water Resources), ch. 380, F.S. (Land and Water Management), ch. 582, F.S. (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 Administrative Procedure Act (ch. 120, F.S.) by law or existing judicial decisions. The definition of "agency" expressly excludes any legal entity or agency created under part II of ch. 361, F.S. (Joint Electric Power Supply Projects), an expressway authority under ch. 348, F.S., any legal or administrative entity created by an interlocal agreement under s. 163.01(7), F.S., unless 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.

<sup>2</sup> Section 120.55, F.S.

<sup>3</sup> According to the DOS, approximately 300 entities in the state publish notices in the *Florida Administrative Weekly*. These entities include state agencies, other units of state and local governments, and nongovernmental entities.

<sup>4</sup> Section 120.55(1)(b), F.S.

<sup>5</sup> Section 120.55(1)(c) and (d), F.S.

courts, libraries, law schools, and legislative offices.<sup>7</sup> According to the DOS, the FAW has approximately 700 paid subscribers, who pay an annual subscription fee of \$249 per year.<sup>8</sup> In addition to producing the paper version of the FAW, the Department of State posts copies of the FAW in Adobe® Acrobat® Portable Document Format (PDF) on its Internet web site, which may be accessed by the public for free.<sup>9</sup>

The DOS is also required to publish the Florida Administrative Code (FAC), which contains all rules adopted by agencies, together with references to rulemaking authority and history notes.<sup>10</sup> The FAC must be supplemented at least monthly.<sup>11</sup> The department also contracts with LexisNexis Matthew Bender for the printing of the FAC.

Section 120.55(5), F.S., creates the DOS's Publication Revolving Trust Fund, and specifies that all fees and moneys collected by the DOS under the Administrative Procedure Act (APA)<sup>12</sup> must be deposited in the fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by the department in administering the APA's requirements. Unencumbered balances at the beginning of each fiscal year, which exceed \$300,000, are to be transferred to the General Revenue Fund.<sup>13</sup>

Regarding the FAW, current law authorizes the DOS to: (a) make subscriptions of the FAW available for a price computed as a pro rata share of 50 percent of the costs related to the publication of FAW; and (b) charge agencies using the FAW a space rate, a.k.a. line charge, computed to cover a pro rata share of 50 percent of the costs related to publication of the FAW. Current law does not specifically address how costs related to the FAC should be computed.

The following fees and moneys were collected by the DOS under the APA in FY '02-'03:

- \$500,266 was collected by the DOS for the space rate, a.k.a. line charge. The current charge is \$0.99 per line.
- \$13,380 was collected by the DOS for royalties from the sale of the FAC. Currently, copies of the FAC are sold by LexisNexis Matthew Bender. The majority of revenues from the sale of the FAC are retained by the company as compensation for printing the code. The DOS receives a small amount in royalties.

Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW. The DOS does not receive royalties from FAW subscriptions.

In sum, the current practice at DOS is: (1) publication costs of the FAC are paid for with purchases of the FAC; and (2) publication costs of the FAW are paid through subscriptions to the

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<sup>6</sup> *Report on Internet Noticing of the Florida Administrative Weekly*, Florida Joint Administrative Procedures Committee, October 2003, pp. 2-3.

<sup>7</sup> Section 120.55(1)(e) and (4), F.S.

<sup>8</sup> *Report on Internet Noticing of the Florida Administrative Weekly* at 3.

<sup>9</sup> See *Florida Administrative Weekly*, at <http://faw.dos.state.fl.us> (last visited March 8, 2004).

<sup>10</sup> Section 120.55(1)(a), F.S.

<sup>11</sup> Section 120.55(1)(a)1., F.S.

<sup>12</sup> Chapter 120, F.S.

<sup>13</sup> Section 120.55(5)(c), F.S.

FAW. Line charges and FAC royalties are used by the DOS to pay for costs associated with: (1) preproduction duties for the FAC and FAW, e.g., typesetting, proofing, formatting, and editing; (2) tracking rules from notice to adoption; and (3) production of the Laws of Florida, Executive Orders, county ordinances, and other legal documents.<sup>14</sup>

### **Internet Publication Pilot Project**

In 2001, the Legislature authorized the Department of Environmental Protection (DEP) and the State Technology Office (STO) to establish an Internet publication pilot project for the purpose of determining the cost-effectiveness of publishing administrative notices on the Internet, rather than in the FAW.<sup>15</sup> Scheduled to begin on or before December 31, 2001, and terminate on July 1, 2003, the pilot project required DEP, STO, and the DOS to:

- Publish notices on the Internet on the same days that the FAW is published;
- Establish a permanent, searchable archive of all notices published on the Internet;
- Publish notices in the FAW directing readers to the Internet website address where DEP's notices were published; and
- Submit a report no later than January 31, 2003, to the Governor and the Legislature containing findings on the cost-effectiveness of Internet publication in lieu of publication in the FAW and recommendations on legislative or rule changes necessary to effectuate publication of notices on the Internet.<sup>16</sup>

The January 2003 report indicates that the pilot project may be found on the Internet at <http://www.dep.state.fl.us>, and that users of the website may search for notices by type, publication date, program area, or rule number.<sup>17</sup> Brief topical summaries of each notice are provided, and users may click the summary to obtain the notice's full text in Adobe Acrobat® Portable Document Format (PDF). Further, a permanent, searchable database of all notices published on the Internet is available on the website, and users may register to receive an automatic e-mail notification when new notices are published in a selected area of interest.

The report indicates that the DEP paid \$44,179 for FAW line charges during calendar year 2001 and would have paid approximately \$32,100 for FAW line charges during calendar year 2002 if Internet publication had not been permitted. Nonrecurring costs to establish Internet publication were noted as follows: \$10,200 to develop the computer software application; and \$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<sup>18</sup> and recommended that the Legislature permit all agencies to elect Internet publication in lieu of publication in the paper version of the FAW, given the potential for substantial agency savings in FAW line.

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<sup>14</sup> Fiscal data provided by the DOS on March 9, 2004.

<sup>15</sup> Chapter 2001-278, L.O.F.; s. 120.551, F.S.

<sup>16</sup> Section 120.551, F.S.

<sup>17</sup> 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.*, Jan. 31, 2003.

<sup>18</sup> An Oracle database is required to use the Internet publication computer software application.

## 2003 Legislation

During the 2003 Regular Legislative Session, Senate Bill 1374 and House Bill 1157 were introduced for the purpose of implementing the recommendations contained in the DEP pilot project report. These bills would have authorized agencies to publish administrative notices on their own websites, rather than in the FAW. This concept, however, posed numerous concerns:

- If numerous agencies had opted for Internet publication, FAW line charge revenues might have been reduced such that continuance of the printed FAW would have been fiscally infeasible and agencies that had not opted for Internet publication would then have had no means for publication.
- The requirement that DOS review all notices submitted for publication would have no longer been effective for agencies opting for Internet publication and thus, the potential for a loss of quality control existed.
- Multiple websites would have been confusing and difficult to browse.<sup>19</sup>

Subsequently, both the Senate and House bills were amended in committee to require the DOS to replace the printed FAW with a fully searchable, electronic version on a single Internet website. These bills also struck the authority in s. 120.55, F.S., for the “Publication Revolving Trust Fund,” but did not specify how costs incurred by the DOS for Internet publication of the FAW nor for publication of the FAC would be funded. Ultimately, due to the lack of data on fiscal impact, the bills were amended to delete the provisions substituting Internet publication for the printed version of the FAW and to extend the DEP’s authority in s. 120.551, F.S., for Internet publication until July 1, 2004.<sup>20</sup>

## 2003 Interim Study on FAW Internet Noticing

During the 2003 Legislative Interim, the Joint Administrative Procedures Committee studied the feasibility of Internet noticing for all state agencies and other entities that advertise in the FAW. This study included conducting surveys and consulting with the DOS, DEP, STO, and an independent technology expert to determine specific technology requirements and estimates of potential costs. The study’s results were published in October 2003 in a report entitled, “Report on Internet Noticing of the Florida Administrative Weekly.”

The report’s findings included the following:

- A telephone survey of current FAW subscribers indicated that 59 percent favored replacing the printed FAW with a free electronic version, while only 21 percent were opposed to the concept.
- A telephone survey of 21 states indicated that the majority published both an electronic and printed version of administrative notices. Three states published only a printed version and six states either published solely on the Internet or were in the process of phasing out their printed publications. Reasons for printing both electronic and printed versions included

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<sup>19</sup> *Report on Internet Noticing of the Florida Administrative Weekly* at 5.

<sup>20</sup> *Id.* at 5-6.

concerns about Internet access, consumer preferences for the printed version, and statutory requirements for a printed version.

- The DEP's recommendation in its January 2003 report that agencies be permitted to publish administrative notices on individual websites may not be feasible as some agencies lack the information technology resources and expertise necessary to establish and maintain such websites. Further, it appeared that start-up costs for individual websites could be as much as \$8 million.
- Publication of administrative notices on a centralized Internet website appears to have the greatest potential to reduce costs to agencies and the public. The STO indicated that no upfront costs for hardware would be necessary if the website were hosted by the Shared Resource Center. Non-recurring first year expenses were estimated to be \$70,000 for software. Recurring annual costs were estimated to be \$36,000 for software maintenance and \$26,300 for STO hosting, hardware maintenance, and backup and recovery services. In addition to lower costs, publication on a centralized Internet website would also permit maintenance of quality control through continued DOS review of notices to be published, e-mail notification of selected notices, and more advanced searching capabilities. Further, it was suggested that future enhancements to a centralized website could include providing the public with the opportunity to make comments online.<sup>21</sup>

The report concluded by recommending that the FAW be published on a centralized website managed by the DOS in collaboration with the STO. Further, it was recommended that the space rate charge continue to be collected by the DOS to fund its functions related to publication of the FAW and FAC.

### III. Effect of Proposed Changes:

#### Publication of the FAW

The bill amends s. 120.55, F.S., to require the DOS, effective December 31, 2005, to electronically publish the FAW on an Internet website. Further, the bill permits the DOS to continue to publish the printed version of the FAW pursuant to a contract with a publishing firm, so long as FAW subscription revenue is sufficient to fund the costs of printing. If a printed version is made available, the DOS must provide free copies to federal and state courts with jurisdiction over residents of this state, state libraries, the Legislature, and state departments.

The bill states that the FAW Internet website must be managed by the DOS and hosted by the STO, must be provided for free to the public, and must contain features that allow users to:

- Search for notices by type, publication date, program area, rule number, word, subject, or agency;
- Search a database that makes available all notices published on the website for a period of at least five years;
- Subscribe to an automated e-mail notification of selected notices; and
- Access agency forms incorporated by reference in rules.

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<sup>21</sup> *Id.* at 6-11.

The bill makes several conforming changes consistent with the requirement of electronic publication of the FAW, which include:

- **Format and numbering.**—Requires the DOS to review agency notices for compliance with format and numbering requirements before publication on the FAW’s Internet website.
- **Free copies of paper version.**—Removes a requirement that the DOS provide copies of the printed FAW without charge and upon the request of administrative agencies, courts, libraries, law schools, and legislative offices.
- **Pilot project.**—Extends the DEP Internet Publication Pilot Project, which is scheduled under current law to terminate on July 1, 2004, until December 31, 2005, when Internet publication of the FAW is required to begin.
- **Transition training.**—Requires the DOS and STO to make training courses available to assist agencies in the transition to publication on the FAW Internet website. The courses may be provided in the form of workshops or self-training software packages.

### **Funding for the FAW and FAC**

The bill retains current law that permits the DOS to: (1) make annual subscriptions of the printed version of the FAW available; and (2) charge each agency using the FAW a space rate to cover the costs of the FAW. The bill, however, removes current law’s requirements that the annual subscription price and the space rate be computed to cover *only* costs related to the FAW. Instead, under the bill: (1) the space rate that may be charged is to cover the costs related to the FAW and the FAC; and (2) no exact basis for determining an annual subscription price for the printed FAW is specified.

The bill retains current law’s creation of the “Publication Revolving Trust Fund” in the DOS, and its requirement that all fees and moneys collected by the DOS under the APA be deposited in that trust fund. The bill, however, amends current law to provide that the trust fund shall fund the costs incurred by the DOS in carrying out the APA.

### **Miscellaneous Amendments**

The bill amends s. 120.55(1)(a)4., F.S., to provide that forms created by an agency, which are incorporated by reference into a rule after December 31, 2005, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

The bill amends s. 120.55(1)(b), F.S., to require the FAW to contain: (1) the text of all proposed rules, rather than permitting a reference to that text in a prior edition of the FAW; and (2) a cumulative list of all rules that have been proposed, but not filed for adoption.

The bill amends s. 120.55(2), F.S., which currently requires each agency to, “print or distribute copies of its rules, citing the specific rulemaking authority” for the rule. Under the bill, this section requires an agency, upon request, to provide copies of its rules with citations to, “the grant of rulemaking authority and the specific law implemented for each rule.” The bill’s amendments conform this subsection to the current requirements of s. 120.536(1), F.S., that rules implement a specific law.

**Effective Date**

The bill takes effect upon becoming a law, except as otherwise specifically provided in the bill.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Section 120.55(1)(f), F.S., currently provides that agencies using the Florida Administrative Weekly may be charged a space rate to cover costs related to the FAW and FAC. During FY '02-'03, the space rate charged to agencies by DOS totaled \$500,266. The bill continues current law's provision for the space rate charge.

Agencies subject to the space rate may include a limited number of counties or municipalities.<sup>22</sup> The state has never funded any requirement that such entities publish in the FAW. Further, this bill does not fund that requirement.

Pursuant to Art. VII, s. 18 of the Florida Constitution, the provision concerning local mandates, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. Any requirement to pay associated with this bill, however, is anticipated to have an insignificant fiscal impact, i.e., less than \$1.7 million, given that only \$500,266 was collected from all agencies for space rate charges in FY '02—'03. Further, only a small percentage of this amount would have been charged to counties and municipalities. Thus, the bill appears to be exempt from the constitutional mandate funding requirements.

**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:**

Currently, the DOS publishes the FAW on its Internet website in Adobe Acrobat® Portable Document Format (PDF). This website is accessible by the public for free, but cannot be searched by topic. The bill provides for a free, fully searchable FAW Internet website and the ability for users to have selected notices e-mailed to users and to access

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<sup>22</sup> Section 120.52(1)(c), F.S., provides that agencies subject to ch. 120, F.S., requirements may include counties and municipalities to the extent they are made subject to the act by general or special law or existing judicial decisions.

forms incorporated by reference in rules. Accordingly, this bill will provide the public with greater access to the FAW and with advanced search capabilities.

**C. Government Sector Impact:**

The STO estimates that the FAW Internet website will require a non-recurring cost of \$70,000 for application development, i.e., enhancement of the software utilized by the DEP so that it may be used by all agencies for FAW Internet publishing. Recurring costs for the website are estimated by the STO to be: (a) \$36,000 for software maintenance; and (b) \$26,300 for STO hosting, maintenance, and backup and recovery services.<sup>23</sup> The \$70,000 cost for software is based on an estimate provided to the STO by Shoemaker Consulting, Inc., the company that developed the DEP administrative noticing website. The STO suggested that competitive solicitation of the application development services might result in a cost less than \$70,000.

Accordingly, the first year cost for the FAW Internet website is estimated by the STO to be a total of \$132,300. For second and future years, the FAW Internet website is estimated to be a total of \$62,300.

The DOS indicates that it will continue to charge 99 cents per line to agencies using the FAW from now through the second year that the FAW Internet website is operational. The DOS states that these revenues will be used to fund all costs associated with the Law, Code, and Administrative Weekly section within the Division of Library and Information Services.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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<sup>23</sup> These estimates are contained in the report entitled, "Cost Estimate for the Florida Administrative Weekly Enterprise Application" prepared by the STO and dated October 15, 2003.