



THE FLORIDA LEGISLATURE



JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

Report on Internet Noticing of the Florida Administrative Weekly *October 2003*

Senator Michael S. "Mike" Bennett, Chair
Representative Juan-Carlos "J.C." Planas, Vice-Chair
Senator Nancy Argenziano
Senator Gwen Margolis
Representative Bill Galvano
Representative Yolly Roberson

REPORT ON INTERNET NOTICING OF THE FLORIDA ADMINISTRATIVE WEEKLY

EXECUTIVE SUMMARY

The Florida Administrative Weekly should be published on a central web site with full text search capability maintained by the Department of State in conjunction with the State Technology Office. A central web site will provide greater access to information and encourage public participation in government activities. There is also the potential for long term cost savings.

State agencies publish notices in the Weekly relating to the adoption of rules, notices of meetings, hearings and workshops, requests for bid proposals, and similar materials that are required by the Administrative Procedure Act. Other government entities and the private sector also use the Weekly to inform the public of their activities. The Florida Administrative Weekly is currently published by the Department of State in a printed format and may also be viewed online. The department ensures that all notices in the Weekly conform to certain statutory requirements before publication.

In 2001, the Legislature enacted section 120.551, Florida Statutes, directing the Department of Environmental Protection to undertake a pilot project to determine the cost-effectiveness of publishing notices on the Internet in lieu of publishing in the Florida Administrative Weekly. At the end of the project, a report to the Legislature by the department, the State Technology Office, and the Department of State concluded that Internet publication of notices saves money, saves time, and results in improved public access.

During the 2003 regular session, legislation was introduced to authorize each state agency to publish notices on its own web site. Issues arose concerning the effect on public access of having to search multiple sites rather than a central site; the increased costs of establishing multiple sites; and loss of the quality control function performed by the Department of State, which reviews notices and identifies mistakes prior to publication in the Weekly. As a result, the legislation was amended to restore the responsibility for publishing the Florida Administrative Weekly to the Department of State. The amended bills required the Department of State to replace publication of the printed Weekly with a fully searchable Internet version. At the end of the session, the absence of sufficient information on the fiscal impact of the proposed changes led to a final amendment that repealed the obsolete pilot project language and extended the authorization for the Department of Environmental Protection to publish notices on its own site for another year.

Following the legislative session, the Joint Administrative Procedures Committee initiated a study of the feasibility of Internet noticing for all state agencies and other entities that advertise in the Florida Administrative Weekly. In gathering information for

this report, the committee staff consulted with the Department of State, the Department of Environmental Protection, the State Technology Office, and an independent technology expert to determine specific technology requirements and estimates of potential costs. The staff also conducted several surveys to determine the Internet capabilities of state agencies and other advertisers, the preferences of current Weekly subscribers, and the publishing methods of other states and the federal government. This report evaluates several possibilities: continuing the publication of the Florida Administrative Weekly in the current format; Internet publication of notices on individual web sites; and Internet publication of notices on a central web site.

The findings of the report support a conclusion that Internet publication of the Weekly on a central web site hosted by the State Technology Office and managed by the Department of State is the most convenient, reliable and potentially cost-effective means to provide increased access to public notices.

BACKGROUND AND PRESENT SITUATION

The Administrative Procedure Act was created by Chapter 74-310, Laws of Florida, and became effective on January 1, 1975.¹ The Act governs the way executive branch agencies interact with the public and regulated entities. It prescribes the procedures an agency must follow when holding meetings, adopting rules, conducting hearings and issuing licenses. One of the main purposes of the Act is to enhance public participation in agency decision making. The Florida Administrative Weekly is the primary means to receive notice of agency activities.

The Florida Administrative Weekly

Section 120.55(1)(b), Florida Statutes, requires the Department of State to publish the Florida Administratively Weekly and the Florida Administrative Code. The Weekly provides notice to the public of a variety of official acts of state and local governments, as well as notices of private sector entities. Agency rulemaking proceedings from rule development through rule adoption are noticed in the Florida Administrative Weekly. The Florida Administrative Code is the official compilation of adopted agency rules. The Weekly and the Code comprise a vital portion of Florida's official public records and documents, which are permanently maintained by the Department of State.

According to the Department of State, approximately 300 entities publish notices in the Florida Administrative Weekly. These entities include state agencies, other units of state and local governments, and nongovernmental entities. Notices of public meetings,

¹ Chapter 120, Florida Statutes.

workshops and hearings, notices related to the adoption of rules, notices of variances and waivers, notices of petitions for declaratory statements, and notices of petitions for administrative determination are all required by the Administrative Procedure Act to be published in the Weekly. Notices relating to the adoption of rules trigger critical timeframes for requesting public hearings, submitting public comments, and challenging proposed rules. Additional public information is either required or permitted by other statutes to be published in the Weekly.

The Weekly contains an index to rules filed during the preceding week, and provides the only public notice of the adoption and effective date of rules. Once a month, a “List of Rules Affected” is published that provides citation to the volume and page of the Weekly where rules were initially proposed, amended, withdrawn or adopted.

All notices submitted for publication in the Florida Administrative Weekly, including rules and incorporated materials that agencies propose to file for adoption, are reviewed by the Department of State, Bureau of Administrative Code, to ensure compliance with applicable timeframes, format, and certain content requirements. The Act requires the department to reject any rules that do not meet all statutory rulemaking requirements.² The Department of State is the official records custodian for the notices, rules, and documents incorporated by reference in the rules, which may include forms, manuals, and standards and codes.

The Department of State has contracted with LexisNexis Matthew Bender for publication of the Weekly in a printed format. The Weekly is published every Friday, with the exception of holidays, when it is published on the first business day preceding the holiday. A subscription to the Weekly costs \$249 per year. There are approximately 700 current subscribers. Copies of the Weekly are provided at no cost to Florida courts, libraries, and many state offices. The Weekly is also available free of charge in a format with no advanced database search capability at the Department of State web site: <http://faw.dos.state.fl.us/fawframes.html>.

The Department of State is authorized to assess a space rate, also referred to as a “line charge,” to agencies and other advertisers for publication of their notices. The line charges are currently assessed at the rate of \$.99 per line. According to the Department of State, the 10 largest advertisers account for approximately 60% of line charges, and an estimated 85% of advertisers each pay less than \$1,000 per year. In fiscal year 2001-2002, nearly 20%, or approximately \$100,000, of the advertising revenues came from non-state sources, such as councils and associations. In addition to funding a pro rata share of the Weekly publication costs, the line charges collected by the department are used to fund other functions performed by the bureau. These include tracking rules from the first notice through adoption and printing in the Florida Administrative Code. The line charges also cover non-rule functions related to the production of laws, local government ordinances, and other legal documents.

² §120.54(3)(e)4., F.S.

Section 120.55(5), F.S., creates the “Publication Revolving Trust Fund” of the Department of State. All fees and moneys collected by the department under chapter 120 are to be deposited in the fund for the purpose of paying for the publication and distribution of the Florida Administrative Code and the Florida Administrative Weekly, and for associated costs incurred by the department 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.

Pilot Project

In 2001, the Legislature enacted section 120.551, Florida Statutes, directing the Department of Environmental Protection (DEP) to initiate a pilot project to test the cost-effectiveness of publishing notices on the Internet in lieu of publishing in the Florida Administrative Weekly. DEP, the Department of State, and the State Technology Office were also directed to file a report to the Legislature containing findings on the cost-effectiveness of Internet publication and recommendations, including legislative and rule changes, for modifications necessary to effectuate Internet publication of notices. This report was filed on January 31, 2003. *See Attachment A.*

The pilot project began on December 18, 2001. From the Department of Environmental Protection web site at www.dep.state.fl.us, access to all DEP notices published on or after December 28, 2001, is available by clicking on the link “Official Notices.” Brief topical summaries of each notice can be accessed by publication date, type of notice, rule number, or program area. The summaries can be clicked to access the full text in Adobe Acrobat PDF format. A permanent, searchable database of all Internet notices is also available at this site, although there is no ability to conduct a full text search of the database for specific terms.

In addition to publishing notices online, DEP initiated a free online e-mail registration feature that allows the public to subscribe to an automatic e-mail notification of the posting of new notices. This useful and innovative feature permits subscribers to receive notices related to specific areas of interest. As of December 2002, 704 interested persons had registered for e-mail notification.

The report to the Legislature concluded that online publication saved the Department of Environmental Protection an estimated \$32,100 in line charges for the year 2002. Although DEP incurred a cost of \$10,200 to develop the coded programming and an additional \$20,000 to develop the e-mail registration enhancement, these are not recurring costs and the coded programming is available to share with other agencies at no additional cost. However, an Oracle database system is required to use this coded programming. The report recommended that all agencies be given the option of publishing notices on their individual web sites and proposed legislation was included. The report also noted specific concerns expressed by the Department of State relating to the elimination of prior review of notices and the loss of quality control.

2003 Legislation

In the 2003 legislative session, Senate Bill 1374 was introduced by Senator Peaden and House Bill 1157 was introduced by Representative Murzin to implement the recommendations from the pilot project report. These bills proposed to authorize agencies to publish on their own web sites any notices required to be published in the Florida Administrative Weekly. The notices were to comply with all form and content requirements of the Department of State and were to be published only on the days the Weekly was published. SB 1374 also required each agency choosing Internet publication to establish a link to the MyFlorida.com home page.

Several issues arose during consideration of these bills. Questions were raised as to the continued viability of the Weekly if several of the major rulemaking agencies stopped using the Weekly and instead published notices on their own web sites. This would directly affect the funds used to publish the printed version in two ways. First, it would be a direct loss in advertising revenue into the trust fund used to prepare the Weekly for publication. Second, many subscribers would likely cancel their subscriptions if major rulemaking agencies no longer published in the Weekly. There was also concern that smaller agencies that could not afford the appropriate database software to publish their rules on the Internet would then be unable to pay the costs of preparing the printed version by themselves, and the Weekly could no longer be printed even if the publisher agreed to renew the contract.

Questions also were raised regarding the quality control function performed by the Department of State. The Bureau of Administrative Code currently reviews all notices submitted by agencies and identifies mistakes that can be corrected prior to publication. This quality control function is especially important for agencies that publish less frequently and may not have developed expertise in preparing notices. There was concern that, if notices were no longer filed with the Department of State, there would be no opportunity for the bureau to make corrections or to independently verify compliance with timeframes and other statutory requirements.

Another concern centered on the need to maintain all of the information published in the Weekly in a single location. The Department of State compiles all notices into a single document that can be easily browsed. One of the original purposes of the Weekly was to provide a single location that contained all required agency notices. A single site would allow a citizen to access the notices of all agencies and electronically search that site for desired information.

During the session, SB 1374 and HB 1157 were amended to require the Department of State to replace publication of the print version of the Florida Administrative Weekly with a fully searchable electronic version containing the notices of all agencies. The amended bills struck language in section 120.55, F.S., which created the "Publication Revolving Trust Fund," but did not specify a substitute funding source. It was not determined how to appropriately fund the activities of the department that are unrelated to the production of the Weekly and the Code. Toward the end of the session, the lack of

data on the fiscal impact of the proposed changes resulted in a further amendment of SB 1374 to delete the provisions relating to Internet publication by the Department of State and to extend for another year the Department of Environmental Protection's authority to publish notices on its web site. This would allow more time for evaluation of the potential for Internet noticing on a statewide basis. CS/SB 1374 was signed into law by the Governor as Chapter 2003-145, Laws of Florida.

RESEARCH AND ANALYSIS

The committee staff began researching the concept of Internet publication of all agency notices in the summer of 2003. It quickly became apparent that this issue would have a significant impact on a large number of people, from agencies and advertisers to current subscribers and members of the general public. Meetings with key agency personnel and an independent technology consultant provided realistic estimates of the costs involved in acquiring the technology necessary for statewide noticing. Through a written survey, the staff tried to assess the current Internet capabilities of state agencies and other entities that advertise in the Weekly. Detailed information gathered from these sources is discussed in later sections of this report.

The staff also conducted several other surveys to gain additional information. A telephone survey of current subscribers to the Florida Administrative Weekly revealed that 59% favored replacing the printed Weekly with a free electronic version, while only 25% were opposed to the idea. More than 90% of those responding favored publication on a central web site over publication on individual web sites. *See Attachment B.*

A telephone survey of 21 states³ was conducted regarding the publication of agency rules and rulemaking notices. Most of the states surveyed provide both a printed version and an electronic version of notices, and three states publish only paper versions. In many cases, state law requiring publication in a printed format was cited as justification for the decision to publish a printed version. Consumer preference for a paper version and concerns about access to the Internet were also cited as justification for a printed format. Six states either published proposed and existing rules solely online, or were in the process of phasing out all paper publications. Three of the respondents expressed concerns about the reliability of an electronic format. *See Attachment C.*

The Federal Register's printing office was contacted for information. The Federal Register publishes the Code of Federal Regulations, which is comparable to the Florida Administrative Code on the federal level. The Federal Register Internet system is run by the Government Printing Office (GPO) and the National Archives and Records

³ The following states were surveyed: Alabama, California, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, South Dakota, Texas, Utah, Virginia, and Wyoming.

Administration (NARA). Proposed federal regulations are submitted to NARA and forwarded to the GPO, which posts them on a central site for a specified number of days. The hard copies and electronic documents are returned to NARA for archiving. The GPO has format consistency control over documents published on the site. NARA is responsible for managing an archives site and maintains its own server. The GPO is attempting to improve its site's search capabilities, and is attempting to require electronic signatures for document submission.

The committee staff used all of the information gathered to evaluate several possibilities for the publication of notices currently found in the Florida Administrative Weekly: maintaining the current format of the Weekly; Internet publishing of notices on individual web sites; and Internet publishing of notices on a central web site.

Maintain Current System of Publishing the Weekly

The Department of State has published the Florida Administrative Weekly in a printed format for nearly 30 years. During this time, the Weekly has been the primary source of public information regarding the activities of state agencies and other entities. The committee staff encountered no apparent dissatisfaction with the current version of the Weekly. In the last several years, the Department of State has increased the usefulness of the Weekly by adding an online version of the printed format. Although the online version is not searchable except by browsing the entire document, the department is working to enhance the site's search capabilities. These improvements have been accomplished without increased costs to advertisers and subscribers or changes to the current funding structure of the Weekly.

According to information provided by the Department of State, revenue from advertiser line charges exceeds the cost of producing the Weekly. For example, for fiscal year 2002-2003, the total estimated costs for the Weekly were \$226,448. Revenue from advertising collected in fiscal year 2001-2002 was approximately \$531,535. The additional revenue is applied to the costs, including salaries and benefits, incurred in the publication of the Florida Administrative Code as well as to the costs of processing laws, local government ordinances, and other documents. The subscription fees to the Weekly are collected and retained by the independent publisher to cover the costs of printing and distribution. The department does not derive revenues from subscriptions.

While the current system of publishing the Weekly has worked well, the potential for greater public access must be considered. The printed Weekly is not easily available to the general public except through paid subscription or at a library or government office. Although the Weekly can be viewed online, it is not possible to search for particular subject areas. A fully searchable web site would be much more useful and convenient. In addition to increased public access, a central web site with advanced capabilities offers the potential for future enhancements, such as interactive public participation in agency rulemaking and bid proceedings, that the printed Weekly cannot provide.

Internet Publication of Notices on Individual Web Sites

The legislation recommended by the Department of Environmental Protection following the pilot project authorized each agency to publish notices on its own web site. Using the DEP web site as a model for other agencies, each individual web site would require a server, Oracle software and coded programming. For those agencies without the resources and expertise of DEP, establishing a web site with the required capabilities could be difficult.

For a web site to have meaningful content and search capability, the advertiser must have its own server on which to store data, and the advertiser must purchase or develop software to support these functions. Advertisers that do not currently have the necessary servers and coded program would be required to acquire them at a substantial cost. According to Philip Shoemaker, of Shoemaker Consulting Incorporated, who developed the coded program used in the DEP pilot project, each server would cost approximately \$4,000 to \$8,000 depending on the type of server deployed. The type of server is based solely on the level of scalability, reliability and performance requirements needed for a project of this type. In general practice, servers of this type are deployed with the intent to be used for a period of at least three to five years. At a minimum, a publicly aware web server and a secure access database server protected by a firewall would be required. In the event that an agency did not already have an Oracle database infrastructure, this would have to be procured at an estimated cost of \$30,000 for an enterprise license, plus additional maintenance costs to keep the Oracle software running. Additional staff would also have to be trained, hired, or outsourced to a contractor to maintain the Oracle database infrastructure. Mr. Shoemaker estimated that modifying the DEP software code to meet the needs of a specific agency would cost \$25,000 to \$30,000 depending on the scope of the work. In the event that an agency chose to expand the functionality of the DEP software beyond its current configuration, the cost could exceed these estimates. An annual maintenance agreement for implementation would also need to be put in place to ensure timely support at an additional cost of \$12,000.

All entities that currently advertise in the Florida Administrative Weekly, including state agencies, local and regional governments, and private entities, were surveyed by the committee staff regarding their ability to post their own notices on the Internet. *See Attachment D.* One hundred of the approximately 300 entities responded. Most of those responding have a basic web site with very limited search capability; however, only about 39% have an advanced, database-driven web site that can readily search its own internal database. The remaining 61% would need a coded program to allow a ready search of its database or published content. Only about 50% of the respondents have their own server and are thereby able to host their own web site. Those advertisers without both a server and an advanced database-driven web site would not be able to publish searchable notices without significant investment in hardware, software and support staff.

If the survey is considered a representative sample of the 300 advertisers, as many as 150 advertisers may be required to purchase servers in order to publish their own internally searchable notices. The purchase of servers, at an estimated cost of \$4,000 each, using a

lowest cost server implementation model, would cost \$600,000. Further, 186 of the 300 advertisers currently without an advanced database-driven web site would have to develop and maintain coded programming to support a fully searchable site. The programming would cost approximately \$40,000 for each of those 186 advertisers, or \$7,440,000.

Purchasing servers for the 150 advertisers that do not have their own server, plus development of coded programming for the 186 advertisers currently without the advanced database-driven web sites would cost approximately \$8,000,000. Annual maintenance fees could cost approximately \$2,232,000.

Allowing advertisers to publish notices on their own web sites in lieu of publication in the printed Weekly would eliminate the advertiser line charge and the cost to subscribers. It would also give agencies more flexibility in meeting publication deadlines. However, this method presents a number of disadvantages, aside from increased costs, that must be considered.

The compilation of all notices into one permanent document would be lost if each agency published on its own site. There would be no prior review for compliance with applicable timeframes and form and content requirements, as currently performed by the Bureau of Administrative Code. The bureau's oversight and quality control result in more uniform notices with fewer inaccuracies. Without this prior review and the ability of the bureau to reject rule adoptions for failure to meet the requirements of the Act, rules could be noticed, changed and adopted without the protections enacted by the Legislature in 1974.

There are other disadvantages inherent in individual web sites. Each agency would need its own database, and a search of multiple databases would be required to locate all information related to a specific subject. This could be a very time consuming process depending on the nature of the search. Issues of site security and daily management would be more complicated with individual web sites than with a central site. Problems that might arise would have to be addressed and corrected at numerous sites rather than at one site. Each agency would be required to employ skilled personnel to oversee the functioning of its web site. In contrast, a central site would require no more than a few employees dedicated to site maintenance. Any future enhancements to database capabilities would likely demand costly upgrades of all individual web sites instead of one central site.

In addition, the majority of the 300 entities that publish in the Weekly currently lack the technology required to publish notices in a format that supports searching changing data. If the option of Internet publication is authorized, the larger agencies with the most advanced technology are likely to cease publication in the printed Weekly, resulting in higher costs of publishing the remaining notices. It is also likely that many present subscribers would cancel their subscriptions. Consequently, it may no longer be feasible to continue publishing a printed version of the Florida Administrative Weekly.

Internet Publication of Notices on a Central Web Site

Internet publication of all notices on one web site would provide access to a database housed in a central server maintained by a single entity for the benefit of all agencies and other advertisers. The many advantages of a central web site for publication of the Weekly are clear.

A central Internet location would be far less costly than individual web sites and appears to offer the greatest potential for reducing costs to the agencies and to the public. According to Mr. Shoemaker, a single server that would be adequate to accommodate all current advertisers in the Weekly would cost approximately \$15,000. However, the State Technology Office indicates that no upfront costs for hardware would be required if the application were hosted at their Shared Resource Center. Additional servers may be required under either alternative to archive more data in the future. Mr. Shoemaker estimated that the cost to enhance the coded programming used in the Department of Environmental Protection pilot project in a manner sufficient to support a centralized interactive site would cost approximately \$70,000. Mr. Shoemaker further estimated that annual maintenance for his software would cost approximately \$36,000, which is based on 40 hours of support per month across the enterprise. The State Technology Office stated that their annual cost for hosting, maintenance, and backup and recovery would be \$26,300, based on 100 gigabytes of storage.

Instead of the \$8,000,000 start-up costs for a system in which each advertiser must have its own interactive web site, a central web site system could cost only \$132,300 initially, including recurring and non-recurring costs. While the annual recurring costs are estimated at \$62,300 thereafter, the annual software maintenance estimate of \$36,000 may not be incurred in total according to the DEP pilot application maintenance costs to date. Moreover, if the data submitted for publication can be formatted in a manner to meet the specification of the printer and the web site, it may be possible to reduce staffing needs.

The programming available would enable a central site to offer a number of useful features. These include a centralized input interface for all agencies to ensure consistent format of the notice content; a database searchable by date or volume, agency name, rule number and specific word; e-mail notification of notices pertaining to a specific area of interest; the ability to browse one or more volumes; searchable access to past notices for a period of at least five years; links to selected documents incorporated by reference in agency rules; and links between agency web sites and the Florida Administrative Weekly web site. A future enhancement could include the opportunity for online public comments.

A central web site presents other advantages to the public, including a higher level of site security, fewer external disruptions, and the ability to correct any problems more easily. In addition, searches would be greatly simplified with one database rather than multiple databases. Instead of searching numerous web sites for information, a user could access a single site, which would be much more efficient and convenient.

The benefits of a centralized web site would be maximized by placing the responsibility for managing the site with the Department of State. The department's prior review of notices and general oversight of the rule adoption process would continue. These important functions are among the many vital services provided by the department. A central web site for publication of the Weekly would allow the department to compile all notices into a single document that will become part of the state records. The Department of State is the official repository of all state records and performs a crucial function in preserving these records and documents. Information contained in the Weekly has long term legal and historical research value. The Florida Administrative Weekly, in combination with other state government public records and documents in the department's State Library and Archives, provides a complete record of the activities of state government and its impact on the lives of Florida's citizens. The department is currently establishing a comprehensive electronic database of all state documents and research materials. For these reasons, the department is best suited to manage a central Florida Administrative Weekly web site.

CONCLUSION AND RECOMMENDATION

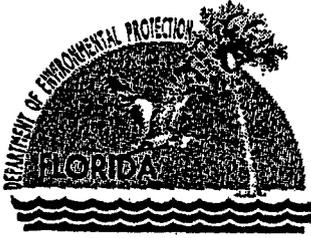
Recent advances in electronic technology offer the potential to significantly improve access to public information. The Florida Administrative Weekly contains vital information concerning state agency programs and activities, including the rulemaking process, as well as the activities of other entities. By making this information available through a central Internet site with advanced search capabilities, public access and participation will be greatly enhanced. The Department of State, as the official custodian of all public records, is well suited to manage a central site in collaboration with the State Technology Office.

After initial start-up costs to establish the server and software necessary to support the publication of all agency notices in a searchable database, it appears likely that Internet publication will result in overall savings to state agencies, other advertisers, and the department. Technology advances in the areas of content management and automation will reduce the staff time required by the department to prepare the Weekly for publication on the Internet.

To ensure adequate funding of the department's functions related to publication of the Weekly and the Florida Administrative Code, it is advisable to retain the space rate charge to advertisers. The space rate provides needed flexibility to the department to assess a charge that will equitably fund the costs of producing the Weekly and the Code in proportion to the volume of material published by each entity. Space rate charges have the potential to decline as technology allows for the automation of processing functions now performed by the department.

The information gathered for this study confirms that publication of the Florida Administrative Weekly on a central web site managed by the Department of State in conjunction with the State Technology Office is the most efficient and economical means to expand access to information that impacts all Floridians. The current system of publishing the Weekly allows limited accessibility to the public. With enhanced search capabilities on an Internet site, many more people will be able to locate specific information that is of interest to them. A central web site also holds the promise of interactive public participation in the future.

Because the current Administrative Procedure Act requires only a printed version of the Weekly, the Act should be amended to provide for a central web site with advanced capabilities.



Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

January 31, 2003

RECEIVED
2003 AUG 1
AM 9:23
David B. Struhs
Secretary
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

The Honorable Jeb Bush
Governor
The Capitol
Tallahassee, FL 32399-0001

The Honorable James E. King, Jr.
President of the Senate
The Florida Legislature
The Capitol
Tallahassee, FL 32399-1100

The Honorable Johnnie Byrd
Speaker of the House
The Florida Legislature
The Capitol
Tallahassee, FL 32399-1300

Re: Report on Internet Noticing Pilot Project authorized under Sec. 120.551, F.S.

Dear Governor, Mr. President, and Mr. Speaker:

Section 120.551 of the Florida Statutes (2001) directed the Department of Environmental Protection to establish a pilot project to determine the cost effectiveness of publishing official notices on the Internet in lieu of publication in the Florida Administrative Weekly (FAW). Section 120.551 also provides that the Department of Environmental Protection, the Department of State, and the State Technology Office shall file a joint report to the Governor, the President of the Senate, and the Speaker of the House on the cost-effectiveness of publication of notices on the Internet in lieu of publication in the FAW. The report is required to include recommendations, including recommendations for legislation, rule changes, or modifications to the process necessary to effectuate publication of notices on the Internet.

With the concurrence of the State Technology Office and the Department of State, I hereby submit this joint report of the Department of Environmental Protection, the State Technology Office, and the Department of State. If you have any questions, please contact Jim Stoutamire at 850-245-8490.

PS -
- Saving Money
- Saving Time
- Better Public Access

Sincerely,

David B. Struhs
Secretary

The Honorable Al Lawson, Chair, Senate Committee on Natural Resources
The Honorable Stephen Wise, Chair, Senate Committee on Governmental Oversight and Productivity
The Honorable Joseph Spratt, Chair, House Committee on Natural Resources
The Honorable Michael Bennett, Chair, and the Honorable Juan-Carlos Planas, Vice-Chair, Joint Administrative Procedures Committee
Jim Stoutamire (DEP)
Mike Joyner (DEP)
Kimberly Bahrami, Chief Information Officer, State Technology Office
Edward C. Kast, Director, Division of Elections, Department of State

RECEIVED
2009 AUG -7 AM 9:23
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

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

Background

Section 120.551 of the Florida Statutes (2001) directed the Department of Environmental Protection (DEP) to establish a Pilot Project to determine the cost effectiveness of publishing official notices on the Internet in lieu of publication in the Florida Administrative Weekly (FAW). Section 120.551 also provides that the Department of Environmental Protection, the Department of State, and the State Technology Office (STO) shall file a joint report to the Governor, the President of the Senate, and the Speaker of the House on the cost-effectiveness of publication of notices on the Internet in lieu of publication in the FAW. The report is required to include recommendations, including recommendations for legislation, rule changes, or modifications to the process necessary to effectuate publication of notices on the Internet. The Pilot Project became fully operative on December 18, 2001.

This report constitutes the joint report of the Department of Environmental Protection, the State Technology Office, and the Department of State.

Features of the Internet Publication Pilot Project

The Pilot Project can be accessed from the Department's web site at www.dep.state.fl.us by clicking on "Official Notices" in the left hand menu titled "Categories." Users may selectively search for notices under Type of Notice, Publication Date, Program Area, or Rule Number. Brief topical summaries of each notice are provided, and users may click on the summary to obtain the full text of the notice in Adobe Acrobat pdf format. Software for reading Adobe Acrobat pdf documents is available at no cost through a link provided on this Internet site.

The Pilot Project site contains both current and archived notices from prior years (year by year), and allows the public to research archived notices by year of publication, month and day of publication, type of notice, program area, or rule number for any notice published during the pilot project. This archive of notices will be permanently maintained.

On September 6, 2002, the site was enhanced beyond that required by section 120.551 to include a free e-mail subscription service. This feature allows the public an option to register to receive an automatic e-mail notification when a new notice has been posted under a rule number, program area, or notice type they selected in their registration. The e-mail will contain an active link to the applicable notices. Under this enhancement, users are relieved of the necessity to visit the web site each week--all they need to do is register and indicate one or more notice types, program areas, or rule numbers for which they want to receive an automatic e-mail notification when such notices are posted on the Internet site. As of December 30, 2002, there were a total of 772 subscribers, 704 from the general public and 68 from within the Department of Environmental Protection.

Costs Savings under the Internet Publication Pilot Project

The Department commenced publication of official notices under the Pilot Project on December 18, 2001. For calendar year 2001, the cost to the Department for publication in the Florida Administrative Weekly was \$44,179. For calendar year 2002, under the pilot project the Department's estimated savings in publication costs were \$32,100. This estimate of savings has not been adjusted to reflect the cost of publishing summaries of notices in the FAW because, as noted below, it is recommended that the requirement to publish summaries in the FAW be discontinued if the pilot program is extended or made permanent.

The Department estimated its cost savings by a formula derived from the number of characters plus spaces and the FAW charge for a 22-page notice published in the November 16, 2001, Florida Administrative Weekly, Vol. 27, No. 46, pages 5410 to 5432. That notice contained a total of 124,146 "characters plus spaces" and the FAW charge was \$2,265.12.¹ The number of "characters plus spaces" was used because the FAW charges on a per line basis and uses a dual column, fully justified, format. Because the formula is based on a large (22-page) FAW published notice, it averages out the number of characters plus spaces per FAW line, and provides a good estimate of how many FAW lines a given notice would have required if published in the FAW, and what the FAW charge would have been. Based on this reference notice, the cost per character or space is \$0.0182456 ($\$2,265.12/124,146 = \0.0182456). Thus, the formula used for estimating savings is: Estimated Cost Savings = (number of characters plus spaces published) x (\$0.0182456).²

The Department incurred a cost of \$7,741.80³ to publish summaries of the official notices in the FAW. Because the Department had an existing Internet site, it incurred little if any cost in implementing the pilot project other than a cost of \$10,200 to develop the computer software application to implement the site. The cost of programming the e-mail registration service enhancement was \$20,000. The application software for the basic site and the e-mail registration enhancement was developed by Shoemaker Consulting, Inc.,⁴ and is available to share with other agencies at no cost in the event that the Legislature extends the Internet publication authorization to other agencies.

¹ Characters plus spaces were calculated using the tool in Word 2000).

² In calendar year 2002, the Department published 502 notices having a grand total of 1,759,311 characters plus spaces. Therefore, the estimated savings was $1,759,311 \times (\$0.0182456) = \$32,100$.

³ The number of lines published was 7,820.

⁴ Shoemaker Consulting, Inc., P.O. Box 14978, Tallahassee, FL 32317, telephone 850-878-0816, facsimile 850-701-2845, www.scitg.com.

Public Use and Acceptance of the Pilot Project Internet Site

The number of visitors to the Department's Internet Publication has risen from an initial rate of approximately 3,000 "hits" each week to a rate of approximately 10,000 "hits" per week. The Department has received very positive feedback from the public on this service, and only a handful of complaints.⁵ As noted above, as of December 30, 2002, over 772 people have subscribed to the automatic e-mail service.

Concerns expressed by the Bureau of Administrative Code of the Department of State, and DEP's Response to those Concerns

In discussions and correspondence with the DEP, the Bureau of Administrative Code (BAC) expressed a concern that allowing agencies to publish notices without going through prior BAC review may result in a loss of quality control over compliance with the rulemaking procedures of Chapter 120 and the provisions of rules 1S-1.002--004, F.A.C. BAC currently works with sixty-eight agencies and over 400 entities within those agencies. BAC believes that almost all rules filed have "problems," and, upon filing with the BAC, the problems are identified and corrected. BAC expressed a concern that the absence of this auditing procedure prior to rule adoption might result in a higher number of "invalid or vitiated" rules. By way of example, BAC stated that under DEP's pilot project a notice of change for proposed amendments to rule 62-730.150 was not published,⁶ changes in the laws implemented in proposed amendments to 62-160.110 were not reflected in the final rule filed for adoption,⁷ and a change in title of rule 62-213.202 was not noticed.⁸

BAC also believes that an added value of having all notices go through them is that there would be a single Internet site for all agency notices.

⁵ A small number of people objected to the use of the Internet for noticing. One person requested that more information be provided in the summary notices published in the FAW.

⁶ Clerical error resulted in an unintended variation between rule language as proposed by the Department of Environmental Protection in its Notice of Proposed Rulemaking published on July 26, 2002, and the rule language as published in the Florida Administrative Code. No change to the proposed rule was intended; therefore no notice of change was published. A Notice of Correction will be published in the Florida Administrative Weekly on January 31, 2003, to correct the error and conform the final rule with the proposed rule.

⁷ DEP does not view this as a substantive matter because the BAC allows agencies to make changes to specific authority and laws implemented without the need for formal noticing or rulemaking.

⁸ DEP records show that rule 62-213.202 was created as a new rule with the title "Responsible Official" in June, 2002, after notice of such creation and title in both the published Notice of Rule Development and the Notice of Rulemaking.

DEP responds to these concerns by noting that, under section 120.545 of the Florida Statutes, the legislature's Joint Administrative Procedures Committee is charged with reviewing all proposed rules and inevitably catch any errors or omissions. Furthermore, if an agency improperly noticed a proposed rule or otherwise materially failed to follow proper rulemaking procedures, the rule would be invalid under section 120.52(8)(a), F.S. The consequence of having a rule invalidated under section 120.54(8)(a) is more than adequate motivation for agencies to assure compliance with proper rulemaking procedures. DEP also notes that BAC has the opportunity for final review of any proposed rule before accepting the rule adoption certification, which must be filed with the BAC. Regarding the desirability of a single Internet noticing site, this would occur in any event because, under the recommendations of the Department and the State Technology Office, the STO would establish a single portal or link on the MyFlorida.com home page for the official notices of all agencies. Finally, DEP believes that any value of the review by BAC (which, as noted above, duplicates the review by the Joint Administrative Procedures Committee) far exceeds the cost of the BAC review which costs DEP approximately \$32,000 to \$44,000 annually and, cumulatively for all agencies, probably exceeds over \$100,000 annually.

Recommendations of the Department of Environmental Protection, the State Technology Office, and the Department of State

The proposed draft legislation would implement the following recommendations:

- (1) It is recommended that the Legislature amend section 120.551, F.S., as shown in Exhibit A (attached) to permanently grant all agencies within the meaning of Chapter 120 the option of publishing official notices on the Internet in lieu of publication in the FAW. Under the proposed amendment, the FAW would contain a section listing the agencies that have elected to publish on the Internet in lieu of publication in the FAW. The proposed legislation would also require agencies electing to publish on the Internet to provide an optional free e-mail subscription service that directly notifies registered subscribers when a notice has been published concerning an area of interest specified in the person's subscription registration.

As noted above, the Department of Environmental Protection reaped an estimated cost savings of \$32,100 in calendar year 2002 under the Pilot Project. Similar savings would be expected by the water management districts and other large state agencies if the Legislature extended the Internet publication authority to them. Accordingly, recurring annual savings well in excess of \$100,000 would likely result if the Legislature implements this recommendation.

- (2) It is recommended that enabling legislation require all agencies electing to publish notices on the Internet to use a common portal or link on MyFlorida.com to their respective Internet noticing sites, and that the State Technology Office be directed to establish such a link on the home page of MyFlorida.com, and that additional

links to the Internet noticing site may also be placed on the agency's own Internet home page.

- (3) It is recommended that such Internet noticing site shall at a minimum:
 - (a) conform to all applicable procedures or guidelines established by the State Technology Office;
 - (b) organize published notices under the same categories as provided in Sections I through XII of the Florida Administrative Weekly;
 - (c) allow the public to research notices by date of publication, category of notice, or applicable rule chapter number;⁹
 - (d) maintain a permanent searchable database or other electronic system for the purpose of archiving all notices published on the Internet and allowing citizens permanent electronic access to such archived records; and
 - (e) provide an optional free e-mail subscription service that directly notifies registered members of the public when a notice has been published concerning an area of interest specified in the person's subscription registration.
- (4) It is recommended that the requirement in the Pilot Project to publish summaries in the FAW not be included in any permanent authorization for Internet publication. As noted above, the Department's cost of publishing these summaries in the FAW in calendar year 2002 was \$7,741.80. The publication of the summaries in the FAW provided little, if any, additional service to the public, especially in view of the available option of a free Internet e-mail subscription service that directly notifies registered subscribers when a notice has been published concerning a program area, notice type, or rule chapter number specified in the person's subscription registration. The attached proposed bill would implement this recommendation.
- (5) Under the bill proposed in Exhibit A, there would be no need for any amendments to rules.

⁹ This recommendation specifies rule chapter numbers (e.g., 62-4, 62-343) to keep the number of choices to a manageable level and to facilitate research of published notices.

EXHIBIT A

2003 Legislature

SB/HB _____

A bill to be entitled

An act relating to administrative procedures; amending section 120.551; providing for publication of notices on the Internet in lieu of publication in the Florida Administrative Weekly; providing for an effective date.

Be It Enacted by the Legislature of the state of Florida:

Section 1. Section 120.551, F.S., is amended to read:

120.551 Internet publication of notices in lieu of publication in the Florida Administrative Weekly pilot project.--

(1) Notwithstanding any other provision of law, whenever an agency is required to publish notices in the Florida Administrative Weekly, in lieu of publication in the Florida Administrative Weekly the agency may elect to publish such notices on the Internet. Notices published on the Internet under this provision shall clearly state the date the notice was first posted on the Internet, shall be posted only on the same days the Florida Administrative Weekly is published, and shall comply with the form and content provisions of rules 1S-1.002--.004, F.A.C. On or before December 31, 2001, the Department of Environmental Protection and the State Technology Office shall establish and commence a pilot project to determine the cost effectiveness of publication of notices on the Internet in lieu of complete publication in the Florida Administrative Weekly. The pilot project shall end on July 1, 2003. Under this pilot project, notwithstanding any other provision of law, whenever the Department of Environmental Protection is required to publish notices in the Florida Administrative Weekly, the Department of Environmental Protection instead may publish a summary of such notice in the Florida Administrative Weekly along with the specific URL or Internet address where the complete notice required by law shall be published. The Department of Environmental Protection shall publish all other notices in the manner prescribed by law. Notices published on the Internet under this section shall clearly state the date the notice was first posted on the Internet and shall be initially posted only on the same days the Florida Administrative Weekly is published. Notices related to rulemaking published on the Internet under this provision shall be maintained on the Internet for a period of at least 12 months after the effective date of the rule or at least 3 months after the publication of a notice of withdrawal of the proposed rule. All other notices published on the Internet under this provision shall be maintained on the Internet for a period of at least 3 months after the date first posted. Each agency electing to publish on the Internet under this provision shall establish an Internet noticing site accessible through the State Technology Office

home page, MyFlorida.com. Additional links to the Internet noticing site may also be placed on the agency's own Internet home page. Such Internet noticing site shall at a minimum:

(a) conform to all applicable procedures or guidelines established by the State Technology Office;

(b) organize published notices under the same categories as provided in Sections I through XII of the Florida Administrative Weekly;

(c) allow the public to search notices by date of publication, category of notice, or applicable rule chapter number;

(d) maintain a permanent searchable A-searchable database or other electronic system to be permanently maintained on the Internet for the purpose of archiving all notices published on the Internet and allowing citizens permanent electronic access to such archived records; and

(e) provide an optional free e-mail subscription service that directly notifies registered subscribers when a notice has been published concerning an area of interest specified in the person's subscription registration, shall also be established by the pilot project.

(2) If an agency elects to publish notices on the Internet, the agency shall publish notice of that election in each weekly publication of the Florida Administrative Weekly for at least 90 days before the implementation of such election, provided however, the Department of Environmental Protection may continue to publish notices on the Internet without such prior notice of that election. Upon commencement of publication in the Internet under such election, the agency shall publish in each weekly publication of the Florida Administrative Weekly a notice stating: "Pursuant to section 120.551, F.S., the [name of agency] has elected to publish notices on the Internet at the following internet URL or address: [state URL or Internet address]." The Department of State shall establish in the Florida Administrative Weekly a specific section for all such notices. The Department of State shall publish notice of this pilot project in each weekly publication of the Florida Administrative Weekly. The notice shall state: "Under a temporary pilot project, in conjunction with the State Technology Office, to determine the cost-effectiveness of Internet publication of notices in lieu of complete publication in the Florida Administrative Weekly, summaries of notices of the Department of Environmental Protection are being published in the Florida Administrative Weekly along with a reference to the specific Internet URL or address where the complete notice required by law shall be published."

(3) No later than January 31, 2003, the Department of Environmental Protection, the e Technology Office, and the Department of State shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing findings on the cost-effectiveness of publication of notices on the Internet in

~~lieu of publication in the Florida Administrative Weekly, and recommendations, including legislative or rule changes, for modifications to the process necessary to effectuate publication of notices on the Internet.~~

Section 2. This act shall take effect on July 1, 2003.

RECEIVED
2003 AUG -7 AM 9:23
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

FAW Subscribers Phone Survey Responses Report

		<i>Percentage</i>
<i>If you had free access to only an electronic version of the Florida Administrative Weekly rather than the printed version of the FAW that is currently available, how would this affect you?</i>	<i>Positive Effect</i>	89 48.1%
	<i>Negative Effect</i>	51 27.6%
	<i>No Effect</i>	45 24.3%
<i>If agency notices were published on individual agency web sites rather than a single centralized site, how would this affect you?</i>	<i>Positive Effect</i>	12 6.5%
	<i>Negative Effect</i>	153 82.7%
	<i>No Effect</i>	20 10.8%
<i>Are there other features that would be useful to you (such as automatic email notification when rules of special interest are noticed)?</i>	<i>E-Mail Notification</i>	126 68.1%
	<i>Archive Feature</i>	2 1.1%
	<i>Comment Section</i>	1 0.5%
	<i>All of the Above</i>	29 15.7%
	<i>Not Applicable</i>	27 14.6%
<i>On a scale of 1-5, with 1 being "strongly opposed" and 5 being "strongly in favor," how much do you support replacing the printed FAW with a free Internet version?</i>	<i>1 strongly opposed</i>	29 15.7%
	<i>2 opposed</i>	17 9.2%
	<i>3 no opinion</i>	23 12.4%
	<i>4 favor</i>	45 24.3%
	<i>5 strongly favor</i>	71 38.4%
<i>Would you prefer to have agency notices published on individual agency web sites or on a single centralized web site?</i>	<i>Individual Agency Sites</i>	13 7.1%
	<i>Centralized Site</i>	166 89.7%
	<i>Not Applicable</i>	6 3.2%
	<i>Number of Surveys Completed</i>	185

Survey of States on Notices of Proposed Rulemaking

STATE	AVAILABLE IN HARD COPY	AVAILABLE ON-LINE	NOTICE IN NEWSPAPER	TEXT OF PROPOSED RULE NOT NOTICED	DISCUSSING ELIMINATION OF HARD COPY / HARD COPY ALREADY ELIMINATED?
Alabama	X	X		X	NO – Concerned about Internet access
California	X	X			NO – No proposals to eliminate hard copy
Georgia	X				NO – State law requires hard copy
Illinois	X	X			NO – Demand for hard copy
Iowa	X	X			NO – Concerned with reliability of electronic format; hard copy is official record
Maine			X	X	NO – Although some agencies notice proposed rules on their individual web sites, centralized Internet noticing or mandated noticing on agency web sites not explored for political reasons; notices appear in the newspapers of the state's 5 largest cities
Maryland	X	X			NO – Only the 6 most recent issues are available on-line; do not consider on-line publications as official document
Massachusetts	X				NO – In the beginning phases of setting up a web site, but do not plan to eliminate hard copy since this is required by rule
Michigan	X	X			YES – Not sure if hard copy will be available in 2004; subscriptions have dropped dramatically and a law was passed giving authority to suspend printing of hard copy
Missouri	X				YES – System is being automated in order to reduce costs and should be completed in 18 months; hard copy will not be eliminated initially, but may be eventually
Nevada	X				NO – Publication is new; required by law to be provided in hard copy to libraries and other entities
New Hampshire	X	X		Text in hard-copy version only	NO – Subscribers still demand hard copy; no reduction in subscriptions since became available on-line
New Mexico	X	X	X	X	NO – Proposed rule text not published until adopted, although agencies must notice proposed text on-line <i>if</i> they have a web presence; required by law to provide hard copy of Register to anyone who requests it (currently only 18 subscribers)
New York	X	X		X	NO – Table of contents is all that is currently available on-line; considering having more available on-line
Ohio		X			YES – ALREADY ELIMINATED
Pennsylvania	X	X			NO – Hard copy required by statute; expect a change in this law eventually; significant decrease in subscribers causing unexpected expense for the department
South Dakota	X	X		X	NO – Provide a few subscriptions to out-of-state subscribers
Texas	X	X			YES – Due to rising cost of publication and reduction in number of subscribers since information is available on-line; some resistance from legislators and libraries
Utah		X			YES – ALREADY ELIMINATED due to budget cuts; available on-line in multiple formats
Virginia	X	X			NO – Due to subscriber demand
Wyoming		X		X	YES – NEVER HAD PRINTED VERSION; some agencies have rule text on their web site, but are not required to do so

FAW Advertiser Internet Capabilities

What type of web presence do you currently have?	Basic Web Site	43	43.0%
	Advance Database driven content	39	39.0%
	Document publishing	2	2.0%
	None	2	2.0%
	NA	14	14.0%
Do you host your own web presence or outsource it to an ISP?	Host own	48	48.0%
	Outsource to ISP	35	35.0%
	Both	1	1.0%
	NA	16	16.0%
What type of operating system is running on your web server?	Unix	11	11.0%
	Microsoft Windows 2000 Server	48	48.0%
	Linux	7	7.0%
	Combination or Other	23	23.0%
	NA	11	11.0%
What type of web services are installed on your web server?	Apache	17	17.0%
	Microsoft IIS	47	47.0%
	Combination or Other	19	19.0%
	NA	17	17.0%
What type of internet access in terms of bandwidth do you have?	512KB	7	7.0%
	768KB	7	7.0%
	T-1	56	56.0%
	Other	30	30.0%
What type of database system is available to your web server?	Oracle	9	9.0%
	Microsoft SQL Server	31	31.0%
	Sybase	0	0.0%
	Other	48	48.0%
	None	12	12.0%
What type of IT support is currently maintaining your web services?	In House	52	52.0%
	Outsourced/Contracted	21	21.0%
	Both	15	15.0%
	NA	12	12.0%
How many times in one year do you publish in the FAW?	Less than 10 times	50	50.0%
	Between 10 and 50	31	31.0%
	More than 50	19	19.0%
How do you post to the FAW?	Deliver paper product to DOS	8	8.0%
	Send electronic documents	49	49.0%
	Both	9	9.0%
	NA	34	34.0%
# Surveys Returned		100	