

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 Peadar

SUBJECT: Administrative Procedures

DATE: April 4, 2003

REVISED: _____

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

I. Summary:

Committee Substitute for Senate Bill 1374 requires the Department of State, effective January 1, 2004, to electronically publish the *Florida Administrative Weekly* (FAW) on an Internet website and discontinue publication of the paper version required under current law as of December 31, 2003. The website shall be established and maintained by the State Technology Office, must be provided for free to state agencies and the public, and must include certain features, including search engines and automated e-mail notices. The committee substitute also makes several conforming changes consistent with the electronic publication of the FAW and the discontinuation of the paper version.

The committee substitute requires each issue of the FAW's paper version, beginning October 1, 2003, to notify readers that the paper version will be discontinued and direct readers to the Internet address of the FAW's future website. The committee substitute requires the Department of State and the State Technology Office to make training courses available for state agencies to assist in the transition to the FAW's electronic version. The committee substitute also removes authority for the Department of State to charge for annual subscriptions to the FAW or charge agencies a "space rate" (i.e., line charge) for publishing notices in the FAW.

This committee substitute substantially amends the following sections of the Florida Statutes: 120.55, 120.551, and 287.042. The committee substitute repeals s. 120.551, F.S., and creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Florida Administrative Weekly

Under current law, the Department of State is required to publish notices and various other materials filed by the state's administrative agencies¹ in the *Florida Administrative Weekly* (FAW) (s. 120.55, F.S.).² 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.³

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.).

The Department of State is responsible for grammatical editing of the FAW and for adopting rules governing the style and form required for rules published in the Florida Administrative Code.⁴ Each week, the department prepares a camera-ready copy of the FAW, which is subsequently printed by Darby Printing Company of Atlanta, Georgia, under contract with the department. The FAW is published on Fridays and distributed to administrative agencies, courts, libraries, law schools, legislative offices, and other subscribers.⁵ According to the department,

¹ 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.

² According to the Department of State, more than 400 governmental entities in the state publish notices in the *Florida Administrative Weekly*.

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.

each of the FAW's 712 paid subscribers pay an annual subscription fee directly to Darby Printing Company of \$319 per year (\$524.40 per year for delivery by first-class mail).

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 general public for free.⁶

Under current law, the Department of State 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 (s. 120.55(1)(a), F.S.). The FAC must be supplemented at least monthly.⁷ The department also contracts with Darby Printing Company for the printing of the FAC.

Section 120.55(5), F.S., created the department's Publication Revolving Trust Fund, and specifies that all fees and moneys collected by the department under the Administrative Procedure Act (APA)⁸ 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 required to be transferred to the General Revenue Fund.⁹

The following fees and moneys are collected by the Department of State under the Administrative Procedure Act:

- The department is required to charge each publishing agency a "space rate" computed to cover a pro rata share of 50 percent of the costs related to the publication of the FAW.¹⁰ The space rate, commonly cited as the "line charge," is currently assessed at the rate of \$0.99 per line.
- The department is also required to charge subscription fees to subscribers of the FAW which 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 printing the code. However, the department receives a portion of the revenues from sales of the FAC as royalties (e.g., according to the department, it received \$19,610 in royalties for calendar year 2002).¹²

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

⁶ See Florida Department of State, *Florida Administrative Weekly*, at <http://faw.dos.state.fl.us> (last visited Apr. 3, 2003).

⁷ Section 120.55(1)(a)1., F.S.

⁸ Chapter 120, F.S.

⁹ Section 120.55(5)(c), F.S.

¹⁰ Section 120.55(1)(f), F.S.

¹¹ Section 120.55(1)(e), F.S.

¹² Section 120.55(1), F.S., does not specifically address sales of the FAC, but authorizes the Department of State to contract with a publishing firm for the publication of the Florida Administrative Code.

of determining the cost-effectiveness of publishing administrative notices on the Internet, rather than in the FAW (ch. 2001-278, L.O.F.; s. 120.551, F.S.). Scheduled to begin on or before December 31, 2001, and terminate on July 1, 2003, the pilot project required DEP, STO, and the Department of State 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.¹³

The January 2003 report recognizes 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.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® 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. As of December 2002, 704 members of the general public had registered for the e-mail notification feature.

The report cites that the Department of Environmental Protection (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.

The report recommended the Legislature permit all agencies to elect Internet publication in lieu of publication in the paper version of the FAW. According to the report, publishing notices on the Internet could result in a substantial savings for agencies in FAW line charges (e.g., the Department of Environmental Protection was not required to remit \$32,100 for FAW line charges in 2002).

III. Effect of Proposed Changes:

The committee substitute requires the Department of State, effective January 1, 2004, to electronically publish the *Florida Administrative Weekly* (FAW) on an Internet website and discontinue publication of the paper version required under current law as of December 31, 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.* (Jan. 31, 2003).

The website shall be established and maintained by the State Technology Office, must be provided for free to state agencies and the public, and must contain certain features. These features must allow users to:

- 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 website; and
- Subscribe to an automated e-mail notification of selected notices.

The committee substitute also makes several conforming changes consistent with the electronic publication of the FAW on an Internet website and the discontinuation of the paper version of the FAW, which include:

- **Format and numbering.**—Requires the Department of State to review agency notices for compliance with format and numbering requirements before publication on the FAW’s Internet website.¹⁵
- **Printing contract.**—Removes authority for the Department of State to contract with a publishing firm for publication of the FAW.
- **Subscriptions fees and line charges.**—Removes authority for the Department of State to charge for annual subscriptions to the FAW or charge agencies a “space rate” (i.e., line charge) for publishing in the FAW.
- **Free copies of paper version.**—Removes a requirement that the Department of State provide copies of the paper version of the FAW without charge or upon the request of administrative agencies, courts, libraries, law schools, and legislative offices.
- **Trust fund.**—Terminates the Publication Revolving Trust Fund within the Department of State, which is currently used by the department for the purpose of paying for the publication of the FAW and the Florida Administrative Code and for associated costs incurred by the department in administering requirements of the Administrative Procedure Act (ch. 120, F.S.).
- **Pilot project.**—Extends the pilot project on the electronic publication of the Department of Environmental Protection’s public notices on an Internet website, which is scheduled under current law to terminate on July 1, 2003. The committee substitute extends the pilot project until December 31, 2003, when the project is terminated to coincide with the electronic publication of the FAW on January 1, 2004.
- **Procurement notices.**—Deletes a provision requiring the Department of Management Services to publish notices in each issue of the FAW for a 1-year period (July 1, 2002, until July 1, 2003), directing readers to the website address of the centralized Internet website used by agencies to electronically post solicitations, decisions or intended decisions, and other matters relating to procurement (*see* s. 287.042(3), F.S.).

¹⁵ The substantive contents for the *Florida Administrative Weekly*, as specified under current law in s. 120.55(1)(b), F.S., are not amended by the committee substitute. The committee substitute also maintains the responsibilities of the Department of State to adopt rules governing the style and form required for rules published in the Florida Administrative Code; to correct grammatical, typographical, and other errors in rules; and to insert history notes in rules (s. 120.55(1)(c) and (d), F.S.). According to the department, if the committee substitute becomes a law, it intends to continue its current practice of publishing the FAW on Fridays.

- **Notices in paper version.**—Requires each issue of the FAW’s paper version, beginning October 1, 2003, to include a notice that the paper version will be discontinued and directing readers to the Internet website address of the FAW’s future website.
- **Transition training.**—Requires the Department of State and the State Technology Office to make training courses available to assist state agencies in the transition to the FAW’s electronic version. The committee substitute authorizes these training courses to be provided in the form of workshops or self-training software packages.

The committee substitute provides that it takes effect upon becoming a law, except as otherwise expressly provided in the committee substitute.

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 committee substitute discontinues the paper version of the *Florida Administrative Weekly* (FAW) and requires public notices to be published on an Internet website provided for free to state agencies and the public. Because the Department of State currently publishes the full text of the FAW on its Internet website in Adobe® Acrobat® Portable Document Format (PDF), available for free to the public, the committee substitute has the effect of eliminating the option for subscribers to pay for a paper version of the FAW to be provided by mail. Although paid subscribers currently pay \$319 per year (\$524.40 per year for delivery by first-class mail), the public may currently obtain the FAW for free on the department’s Internet website.

C. Government Sector Impact:

Department of State

The committee substitute terminates the Publication Revolving Trust Fund within the Department of State. Funds credited to the trust fund are currently used by the department

for the purpose of paying for the publication of the FAW and the Florida Administrative Code (FAC) and for associated costs incurred by the department in administering requirements of the Administrative Procedure Act (ch. 120, F.S.). These funds are derived from interagency transfers for charges from the “space rate” (i.e., line charge) for publishing in the FAW, currently assessed at the rate of \$0.99 per line, and royalties from sales of the FAC.¹⁶ During fiscal year 2001-2002, agency line charges accounted for \$518,695.82, and royalties from sales of the FAC totaled \$19,610 in calendar year 2002.

The committee substitute removes authority for the Department of State to assess agencies line charges for publishing in the FAW. The department consequently estimates a recurring revenue impact to the department of \$531,536 for fiscal year 2003-2004 through fiscal year 2005-2006. Although the committee substitute has a revenue impact on the department, because the source of these revenues is interagency transfers, the committee substitute would not have a revenue impact on state government. The department estimates the committee substitute would permit the department to reduce its number of full-time-equivalent (FTE) positions from 10 FTE to 6 FTE positions. The department explains that these positions are needed to prepare notices for electronic publication of the FAW on an Internet website, continue publication of the FAC, and perform other functions of the department (classification and numbering of acts of the Legislature; filing of county and municipal ordinances; and filing of executive orders, proclamations, executive clemency orders, and extraditions). The department estimates the recurring costs for salaries, benefits, and related expenses for these 6 FTE positions would be approximately \$352,670. The committee substitute does not include an appropriation to fund these positions.

State Technology Office

The committee substitute requires that the Internet website for the FAW be established and maintained by the State Technology Office (STO). According to STO, if the committee substitute becomes a law, STO would modify the existing FAW Internet application housed within the Department of Environmental Protection (DEP) into a portal application housed within STO.¹⁷ To recover its costs for this project, STO would invoice the Department of State¹⁸ on a monthly basis. The preliminary estimate of nonrecurring costs to STO is \$70,000 for modification of DEP’s existing FAW Internet application and an unknown amount for the purchase and installation of servers. The preliminary estimate of recurring costs to STO is approximately \$181 per month per server for web-hosting services and \$539 per month for STO employee maintenance and support. The committee substitute does not include an appropriation to fund these information technology services to be invoiced to the Department of State.

¹⁶ Additional revenues are received from subscription sales of the FAW; however, these revenues are paid directly to Darby Printing Company as compensation for printing the FAW.

¹⁷ A “portal” is a type of website which allows users to visit an anchor site for direction to other independent websites. The State of Florida’s portal is maintained by the State Technology Office at <http://MyFlorida.com>.

¹⁸ If SB 2528 or HB 1687 becomes a law, the State Technology Office would invoice the Department of Management Services. See “Related Issues,” *infra*.

Administrative Agencies

The committee substitute removes authority for the Department of State to charge agencies a “space rate” (i.e., line charge) for publishing in the FAW, currently assessed at the rate of \$0.99 per line. The committee substitute would, accordingly, eliminate interagency transfers to the Department of State.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Bill 2528 and HB 1687 currently propose to transfer the Department of State’s duties concerning the *Florida Administrative Weekly* and the Florida Administrative Code to the Department of Management Services (DMS). Accordingly, if the committee substitute becomes a law, DMS, rather than the Department of State, would be responsible for implementing the committee substitute.

VIII. Amendments:

None.