

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 with CS Metropolitan Planning Organizations
SPONSOR(S): Patterson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2110 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation	19 Y, 0 N w/CS	PUGH	MILLER
2) State Administration			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Florida has 25 metropolitan planning organizations (MPO's) that are responsible, pursuant to federal and state laws, for transportation planning. They are largely comprised of city and county officials within designated "urbanized areas" of more than 50,000 persons.

HB 1425 with CS encourages MPO's to work together to form regional solutions to transportation problems that cross county lines, and establishes a process by which contiguous MPO's can join interlocal agreements to make regional planning more viable.

The bill also add MPO's to the list of legal entities not included in the definition of "agency," for the purposes of chapter 120, F.S., rulemaking, and specifies membership on an MPO chair's coordinating committee.

HB 1425 with CS has no fiscal impact on state government, but could have an indeterminate and possibly minimal positive impact on cities and counties, if MPO's don't have to comply with the rulemaking and dispute-resolution procedures mandated by chapter 120, F.S..

The bill raises no apparent constitutional issues. It takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

HB 1425 with CS does not reduce government because it encourages MPO's and local government entities, where contiguous, to enter into interlocal agreements creating yet another entity to address regional transportation concerns. Any recommendations made by this entity still would have to be approved by each individual MPO and local government represented by the entity.

However, HB 1425 with CS may be step toward reduction of costly bureaucracy if these entities creating via interlocal agreement forge regional compromises and solutions, and sharing of funds, for multi-county transportation problems.

B. EFFECT OF PROPOSED CHANGES:

Background on MPO's

As established by chapter 23 U.S. Code Sec. 134, Metropolitan Planning Organizations (MPO's) are directed to develop, in cooperation with state officials, transportation plans and programs for urbanized areas of more than 50,000 persons. The process for developing such plans and programs must provide for the consideration of all modes of transportation and "shall be continuing, cooperative, and comprehensive" to the degree appropriate based on the complexity of the transportation problems.

Pursuant to s. 339.175, F.S., MPO's in cooperation with the state and public transit operators develop "transportation improvement plans" that are the building blocks for the Florida Department of Transportation's statewide Five-Year Work Program. An MPO must be designated for each urbanized area of the state. Such designation must be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area. Each MPO must be created and operated pursuant to an interlocal agreement entered into pursuant to s. 163.01, F.S.

MPO's consist of local elected officials, appropriate state agencies (specifically including the Florida Department of Transportation), and may also include officials of public agencies that administer major modes of transportation within the metropolitan area. Pursuant to s. 339.175(2)(a), F.S.:

"The voting membership of an M.P.O. shall consist of not fewer than 5 or more than 19 apportioned members, the exact number to be determined on an equitable geographic-population ratio basis by the Governor, based on an agreement among the affected units of general-purpose local government as required by federal rules and regulations. The Governor, in accordance with 23 U.S.C. s. 134, may also provide for M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area that do not have members on the M.P.O. County commission members shall compose not less than one-third of the M.P.O. membership, except for an M.P.O. with more than 15 members located in a county with a five-member county commission or an M.P.O. with 19 members located in a county with no more than 6 county commissioners, in which case county commission members may compose less than one-third percent of the M.P.O. membership, but all county commissioners must be members. All voting members shall be

elected officials of general-purpose governments, except that an M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an official of the Spaceport Florida Authority. The county commission shall compose not less than 20 percent of the M.P.O. membership if an official of an agency that operates or administers a major mode of transportation has been appointed to an M.P.O."

MPO's receive transportation planning funds from the Federal Highway Administration and the Federal Transit Administration that are used for staffing and general administration activities. In Florida, the majority of MPO's are located physically and administratively within county government.

There are 25 MPO's in Florida, encompassing all or a portion of 33 counties. Based on the 2002 U.S. Census, Florida has three additional urbanized areas, and as many as three additional MPO's could be created. The Governor's Office, the MPO Advisory Council, and the Department of Transportation continue to discuss proposals for the designation or redesignation of MPO's, but at the very least may recommend greater regional coordination among MPO's.

Four regional coordinating boards already exist among MPO's: the Central Florida MPO Alliance, the West Central Florida Chairs Coordinating Committee, the South Florida Regional Transportation Organization, and the Southwest Florida Regional Metropolitan Transportation Subcommittee. The latter three include members other than MPO's. These groups focus on developing regional transportation plans and strategies for attracting more funds to address their area's unique mobility problems.

Interlocal agreements

Section 163.01(7), F.S., provides the mechanism -- interlocal agreements -- by which MPO's are created. If an interlocal agreement is created that creates a separate entity (an MPO, for instance) to administer the agreement, and if any party to that agreement is an agency, then the created entity is an agency. This section of law defines different categories of entities created pursuant to interlocal agreement, and the powers and responsibilities of each.

Florida Administrative Procedures Act

Chapter 120, F.S., the Administrative Procedure Act, provides the standard and process by which agencies must adopt rules. The standard for rulemaking is set out in s. 120.536, F.S., and limits agency rulemaking to only those rules that implement or interpret the specific powers and duties described in the enabling statute. An agency must adopt rules using the methods set out in s. 120.54. These methods provide for public notice of agency intent to adopt a rule and for intervention by persons substantially affected by the decision to implement that rule.

"Agency," as defined in s. 120.52, F.S., means:

- o The Governor;
- o State officers;
- o Each department, authority, board, commission, regional planning agency, multicounty special district with a majority of its governing board comprised of non-elected persons, educational unit, and entities described in chapters 163, 373, 380, and 582 and s. 186.504; and
- o Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

This definition does not include joint expressway authorities, electric supply power projects, any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency as defined in s. 120.52, F.S., or any multicounty special district with a majority of its governing board comprised of elected persons (with the exception of regional water supply authorities).

Chapter 120, F.S., also controls administrative dispute resolution procedures in cases when the effect on a person's substantial interests regarding the enforcement of an administrative decision or application of a rule must be determined. These procedures are applicable in informal proceedings when the case involves only an interpretation of law and also in formal proceedings when a case involves disputed issues of material fact.

Regardless of whether an agency is subject to the Administrative Procedure Act, that agency still must provide notice of its intent to act when its actions impact the substantial interest of a person and that agency must provide due process when its actions compel action on the part of a person or that person desires to challenge that decision.

Effect of HB 1425 with CS

This bill adds MPO's to the list of legal entities not included in the definition of "agency," under chapter 120, F.S. The effect of not being considered an agency for the purposes of chapter 120, F.S., is that MPO's will not have to comply with provisions for rule-making and dispute resolution. However, MPO's retain a constitutional responsibility to provide due process and fairness in developing their policies and resolving disputes, as are all governmental entities that currently are not considered an "agency" for purposes of chapter 120.

The bill also amends s. 339.175, F.S., to clarify that each individual urbanized area of the state is not required to designate its own MPO, but later provisions appear to strongly encourage MPO's in contiguous counties to develop methods of coordinating their transportation planning to take into account regional needs. The bill allows MPO's to join with each other or with other political subdivisions to coordinate transportation planning efforts, and enter into interlocal agreements. These interlocal agreements shall, at a minimum, include:

- o creation of a separate legal or administrative entity to coordinate transportation planning or development;
- o Specify the duration of the agreement and the process by which the agreement may be changed or terminated;
- o Describe the membership, appointment process, and voting rights of the entity;
- o Specify the manner in which the parties to the interlocal agreement will finance their share of administrative and costs associated with the entity; and
- o Specify how individual members of the entity may resolve their differences.

HB 1425 with CS also specifies that an interlocal agreement created pursuant to the bill's provisions is not effective until it has been recorded in the official public records of each county that has a voting member on the entity. It also specifies that nothing in this provision shall be construed as a requirement that multiple MPO's merge into a single MPO.

The bill also clarifies that transportation authorities or other entities must be actively performing transportation functions before they can have a representative on an MPO.

Finally, the bill names the counties who are members of the statutorily created "chair's coordinating committee" of contiguous counties with MPO's. Those counties are Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties, and the committee is collectively called the West Central Florida Chairs Coordinating Committee.

HB 1425 with CS takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Amends s. 120.52, F.S., to exempt metropolitan planning organizations (MPO's) from the definition of "agency," as it pertains to using the Chapter 120, F.S., Administrative Procedures Act.

Section 2: Amends s. 339.175, F.S., to clarify that each individual urbanized area of the state is not required to designate its own MPO. Clarifies that transportation authorities or other entities must be actively performing transportation functions before they can have a representative on an MPO. Clarifies obsolete provision regarding membership of an MPO coordinating committee. States findings about the impact of Florida's growth on MPO's and urbanized areas. Directs MPO's in contiguous counties to develop methods of coordinating their transportation planning to take into account regional needs. Allows MPO's to join with each other or political subdivisions to coordinate transportation planning efforts, and enter into interlocal agreements. Specifies content of such agreements. Specifies that these agreements are not effective until it has been recorded as an official public record in each county which has a voting member on the entity created by the interlocal agreement. Specifies that nothing in this provision shall be construed as a requirement that MPO's merge into a single MPO.

Section 3: Provides that this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Not having to comply with rulemaking and dispute resolution procedures mandated by chapter 120, F.S., could result in an indeterminate cost savings for MPO's, whose operating costs are largely funded by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Indeterminate. Local governments and the state Department of Transportation may experience some cost-savings when doing transportation projects that are planned and implemented on a regional scale, rather than in county-by-county segments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. HB 1425 with CS does not create any fiscal impacts on municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 1425 with CS will eliminate the current requirement that MPO's adopt rules and provide a dispute-resolution process pursuant to chapter 120, F.S. However, MPO's still must provide notice of their intent to act when its actions impact the substantial interest of a person, and must provide due process to citizens and businesses negatively impact their decisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 1425 with CS is based on recommendations by the MPO Advisory Council, and thus has this group's support.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its April 2, 2003, meeting the Transportation Committee adopted without objection one amendment filed by the bill's sponsor. The amendment clarifies that transportation authorities or other entities must be performing transportation functions before they can have a representative on an MPO. The intent of the amendment is to prevent defunct authorities, or those that aren't engaged in building or operating transportation projects, from serving on an MPO.

The committee then voted 19-0 in favor of HB 1425, as amended.