

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1953 PCB SA 04-25 Florida Administrative Weekly
SPONSOR(S): State Administration and Benson
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 2340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>6 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill requires the Department of State (DOS), effective December 31, 2005, to electronically publish the Florida Administrative Weekly (FAW) on an Internet website managed by the department, which will serve as the official Internet website for such publication. Such website is free to the public and must allow users to search for notices by type, publication date, rule number, word, subject, or agency; search a database that makes available all notices published on the website for a period of at least five years; subscribe to an automated e-mail notification of selected notices; and view agency forms incorporated by reference in proposed rules.

It permits DOS to continue to publish the printed version of the FAW pursuant to a contract with a publishing firm, so long as FAW subscription revenue is sufficient to fund the costs of printing. If a printed version is made available, DOS must provide free copies to federal and state courts with jurisdiction over residents of this state, state libraries, the Legislature, and state departments.

The bill extends the DEP Internet Publication Pilot Project, which is scheduled under current law to terminate on July 1, 2004, until December 31, 2005, when Internet publication of the FAW is required to begin. It also requires DOS to make training courses available to assist agencies in the transition to publication on the FAW Internet website.

The first year cost for the FAW Internet website is estimated to be a total of \$106,000. This bill appears to have an insignificant fiscal impact to local governments. See "FISCAL IMPACT ON STATE GOVERNMENT" and "FISCAL IMPACT ON LOCAL GOVERNMENTS" sections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1953.sa.doc
DATE: April 16, 2004

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"/> |

For any principle that received a "no" above, please explain:

This bill requires the Department of State to publish on an Internet website the Florida Administrative Weekly accessible free of charge to the public.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Administrative Weekly and Florida Administrative Code

Current law requires the Department of State (DOS) to publish notices and various other materials filed by the state's administrative agencies in the *Florida Administrative Weekly* (FAW).¹ 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 are 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.²

DOS contracts with LexisNexis Matthew Bender for publication of the FAW in a printed format.³ The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices. The FAW has approximately 700 paid subscribers who pay an annual subscription fee of \$249 per year.⁴ In addition to the paper version, DOS also posts copies of the FAW on its Internet website accessible to the public free of charge.

DOS is also required to publish the Florida Administrative Code (FAC), which contains all rules adopted by agencies, together with references to rulemaking authority and history notes. The FAC must be

¹ According to DOS, approximately 300 entities publish notices in the FAW. These entities include state agencies, other units of state and local governments, and nongovernmental entities.

² Section 120.55(1)(b), F.S.

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

⁴ *Id.* at 3.

supplemented at least monthly.⁵ DOS also contracts with LexisNexis Matthew Bender for the printing of the FAC.

Current law creates the Publication Revolving Trust Fund, and specifies that all fees and moneys collected by DOS under the Administrative Procedure Act (APA) be deposited in the fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by DOS in administering APA requirements. Unencumbered balances at the beginning of each fiscal year, which exceed \$300,000, are to be transferred to the General Revenue Fund.⁶

Current law authorizes DOS to: (a) make subscriptions of the FAW available for a price computed as a pro rata share of 50 percent of the costs related to the publication of the FAW; and (b) charge agencies using the FAW a space rate (line charge) computed to cover a pro rata share of 50 percent of the costs related to publication of the FAW. The following fees and moneys were collected by DOS in FY '02-'03:

- \$500,266 was collected for the space rate.⁷
- \$13,380 was collected for royalties from the sale of the FAC.⁸

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

Internet Publication Pilot Project

In 2001, the Legislature authorized the Department of Environmental Protection (DEP) and the State Technology Office (STO) to establish an Internet publication pilot project for the purpose of determining the cost-effectiveness of publishing administrative notices on the Internet, rather than in the FAW, and to submit a report containing findings regarding the cost-effectiveness of Internet publication.⁹ The report indicated that 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 \$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 and recommended that the Legislature permit all agencies to elect Internet publication in lieu of publication in the paper version of the FAW, given the potential for substantial agency savings.¹⁰

2003 Interim Study on FAW Internet Noticing

During the 2003 Legislative Interim, the Joint Administrative Procedures Committee studied the feasibility of Internet noticing for all state agencies and other entities that advertise in the FAW.¹¹ In October 2003, the results were published in the "Report on Internet Noticing of the Florida Administrative Weekly". The report recommended that the FAW be published on a centralized website managed by DOS. Further, it was recommended that the space rate charge continue to be collected by DOS to fund its functions related to publication of the FAW and FAC.

⁵ Section 120.55(1)(a), F.S.

⁶ Section 120.55(5), F.S.

⁷ The current charge is \$0.99 per line.

⁸ Currently, copies of the FAC are sold by LexisNexis Matthew Bender. The majority of revenues from the sale of the FAC are retained by the company as compensation for printing the code. DOS receives a small amount in royalties.

⁹ Chapter 2001-278, L.O.F.; s. 120.551, F.S.

¹⁰ *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.

¹¹ This study included conducting surveys and consulting with DOS, DEP, STO, and an independent technology expert to determine specific technology requirements and estimates of potential costs.

Effect of Bill

This bill requires DOS, effective December 31, 2005, to electronically publish the FAW on an Internet website managed by the department, which will serve as the official Internet website for such publication. Such website is free to the public and must allow users to:

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

It permits DOS to continue to publish the printed version of the FAW pursuant to a contract with a publishing firm, so long as FAW subscription revenue is sufficient to fund the costs of printing. If a printed version is made available, DOS must provide free copies to federal and state courts with jurisdiction over residents of this state, state libraries, the Legislature, and state departments.

The bill:

- Requires DOS to review agency notices for compliance with format and numbering requirements before publication on the FAW Internet website.
- Extends the DEP Internet Publication Pilot Project from its current termination date of July 1, 2004, to December 31, 2005, when Internet publication of the FAW is required to begin.
- Requires DOS to make training courses available to assist agencies in the transition to publication on the FAW Internet website.

The bill removes current requirements that the annual subscription price and the space rate be computed to cover only costs related to the FAW. Instead the space rate that may be charged is to cover the costs related to the FAW and the FAC, and no exact basis for determining an annual subscription price for the printed FAW is specified. It also amends current law to provide that the trust fund shall fund the costs incurred by the DOS in carrying out the APA.

The bill provides that forms created by an agency, which are incorporated by reference into a rule noticed pursuant to s. 120.55(1)(a), F.S., after December 31, 2005, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated. It requires the FAW to contain: (1) the text of all proposed rules, rather than permitting a reference to that text in a prior edition of the FAW; and (2) a cumulative list of all rules that have been proposed, but not filed for adoption. The bill requires an agency, upon request, to provide copies of its rules with citations to, "the grant of rulemaking authority and the specific law implemented for each rule." It also requires DOS to maintain a permanent record of all notices published in the FAW.

C. SECTION DIRECTORY:

Section 1 amends s. 120.55(1), F.S., requiring DOS to publish the FAW on an Internet website.

Section 2 amends s. 120.551, F.S., repealing the section December 31, 2005.

Section 3 requires DOS to provide training courses for agency personnel.

Section 4 provides a July 1, 2004 effective date, unless otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

It has not been determined how much money agencies will save after the second year that the FAW Internet website is operational.

2. Expenditures:

It is estimated that the FAW Internet website will require a non-recurring cost of \$70,000 for application development (enhancement of the software utilized by DEP) so that it may be used by all agencies for FAW Internet publishing. Recurring costs for the website are estimated to be \$36,000 for software maintenance. The \$70,000 cost for software is based on an estimate provided to the STO by Shoemaker Consulting, Inc., the company that developed the DEP administrative noticing website. The STO suggested that competitive solicitation of the application development services might result in a cost less than \$70,000.¹² Accordingly, the first year cost for the FAW Internet website is estimated to be a total of \$106,000.

DOS indicates that it will continue to charge 99 cents per line to agencies using the FAW from now through the second year that the FAW Internet website is operational. DOS also states that these revenues will be used to fund all costs associated with the Law, Code, and Administrative Weekly section within the Division of Library and Information Services.¹³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

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

Agencies subject to the space rate may include a limited number of counties or municipalities.¹⁴ The state has never funded any requirement that such entities publish in the FAW. Further, this bill does not fund that requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, DOS publishes the FAW on its Internet website. This website is accessible by the public free of charge, but cannot be searched by topic. The bill provides for a free, fully searchable FAW Internet website, the ability for users to have selected notices e-mailed to users, and to access forms incorporated by reference in rules. Accordingly, this bill will provide the public with greater access to the FAW and with advanced search capabilities.

D. FISCAL COMMENTS:

None.

¹² Senate Staff Analysis and Economic Impact Statement for CS/SB 2340, March 10, 2004, at 9.

¹³ *Id.* at 9.

¹⁴ Section 120.52(1)(c), F.S., provides that agencies subject to chapter 120, F.S., requirements may include counties and municipalities to the extent they are made subject to the act by general or special law or existing judicial decisions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.