

STORAGE NAME: h1763s1.ric.doc
DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: CS/HB 1763 (PCB IT 01-02)
RELATING TO: Internet Publication of DEP Administrative Notices
SPONSOR(S): Council for Ready Infrastructure, Committee on Information Technology,
Representative(s) Hart & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INFORMATION TECHNOLOGY YEAS 11 NAYS 0
 - (2) COUNCIL FOR READY INFRASTRUCTURE YEAS 20 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

All Florida administrative agencies are currently required by law to publish certain notices in the Florida Administrative Weekly (FAW). FAW is published by the Department of State and is distributed to various government entities and private subscribers. The Department of State is authorized to charge administrative agencies a fee for publication equal to no more than 50 percent of the cost of publishing FAW. Currently, the Department of Environmental Protection (DEP) estimates that it spends between \$25,000 and \$40,000 per year on publishing notices in FAW.

This bill authorizes an 18-month pilot project, beginning on or before December 31, 2001, between the DEP, the State Technology Office (STO) and the Department of State, aimed at publishing all DEP notices on the Internet rather than in FAW. Under the bill, any notice the DEP is required by law to publish in FAW would be published at the DEP's website. During the pilot, FAW would contain a notice that all DEP notices may be found at the DEP's website. The DEP estimates the annual costs associated with publication of notices could be eliminated by using Internet publication. The bill requires the DEP, the STO, and the Department of State to report to the Governor and the Legislature on the cost-effectiveness of the pilot and any process changes by January 31, 2003.

While this legislation could result in substantial cost savings, changes to agency notice procedures should be implemented cautiously to ensure that Florida's citizens are adequately notified of DEP action. However, because significantly more citizens have Internet access than subscribe to FAW, the bill would increase citizen access to agency rule making and notification.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Florida administrative agencies are currently required by law to publish notices and various other materials in FAW. FAW is published by the Department of State and distributed to administrative agencies, courts, law schools, the Legislature, and other subscribers. FAW currently has nearly 1,000 subscribers and produces approximately 6,000 pages per subscription per year.¹ The current cost of a subscription to FAW is \$208 a year. In addition to publishing the print version of FAW, the Department of State also posts copies of FAW on the Internet.²

Section s. 120.55(1)(b), F.S., requires that FAW 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) (formal agency rule making), 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 conducted in accordance with the provisions of s. 120.525, 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.

In addition to notices required by s. 120.55, F.S., administrative agencies are also required to publish various other materials in FAW. For instance, s. 403.527(1)(e), F.S., requires that the

¹ See the Governor's e-Budget, available at <http://www.myflorida.com>.

² See <http://faw.dos.state.fl.us/fawframes.html> (Last visited March 10, 2001).

Department of Education (DEP) publish various notices in FAW concerning applications filed pursuant to the Transmission Line Siting Act.

Section 120.55(1)(f), F.S. permits the Department of State to charge each agency a "space rate computed to cover a pro rata share of 50 percent of the costs related to the publication of the Florida Administrative Weekly." Currently, the "space rate" charged to the DEP is equal to \$0.90 per line. DEP estimates that it spent \$40,000 on publishing notices in FAW in 1999 and that it spent \$25,000 in 2000.

C. EFFECT OF PROPOSED CHANGES:

The bill creates a joint project between the DEP and the State Technology Office (STO) to begin publishing all notices on the Internet rather than in FAW. The project would begin on or before December 31, 2001, and would end July 31, 2003. Implementation of the bill would likely yield substantial cost savings to the DEP. DEP estimates its existing publication costs could be eliminated by Internet notice publication resulting in a cost savings of between \$25,000 and \$40,000 per year. Because the Department of State can only charge the DEP 50 percent of the cost of producing FAW, the Department of State could save a comparable amount due to decreased production requirements.

The bill contains sufficient safeguards to ensure that citizens would still receive sufficient notice of DEP action. Under the pilot project, whenever DEP is required by law to publish a notice in FAW, DEP would instead publish that notice on the Internet. The bill requires that notices clearly state the posting date and that notices meet the Florida Administrative Code's existing form and content requirements for agency notices.³ Under this legislation, notices could only be posted on the same days that FAW is published. If the notice were related to rule making, the bill requires that DEP maintain the notice on the Internet for at least 12 months after the rule's effective date or at least 3 months after the publication of notice of withdrawal of the proposed rule. All other DEP notices would have to remain on the Internet for at least 3 months after posting.

The legislation also ensures that notices posted on the Internet by DEP are made permanently available to citizens. In addition to notifying the public, FAW serves as a permanent record of agency notices. FAW publications are frequently used as evidence in judicial proceedings.⁴ The bill provides deadlines whereby the DEP could remove certain notices from its website. However, to ensure that citizens are given permanent and open electronic access to notices that are published on the Internet, the bill requires that the pilot project develop a searchable database or other electronic system on the Internet to provide a permanent mechanism for accessing Internet notices. Under the bill, once notices are removed from the DEP website pursuant to the 12-month and 3-month time limits, the notices would be archived in a database, available on the Internet, that could be searched by keyword, rule number, or other search terms. The bill also provides that no notice posted on the Internet will be removed until the searchable database is implemented. Additionally, citizens will still be able to request the removed agency notice by making a public records request.

To inform citizens of where DEP notices may be found, the bill requires the Department of State to publish a notice of the pilot project in FAW indicating that DEP notices are being published on the DEP website. The bill requires the pilot project notice in FAW state the DEP Internet address where DEP notices may be found.

³ See FLA. ADMIN. CODE r. 1S-1.002 – 1S-1.004 (2000).

⁴ See Florida Rule of Appellate Procedure 9.190(c)(2)(C), Judicial Review of Administrative Action (requiring parties appealing an administrative action relating to a declaratory statement to attach a copy of notices published in FAW relating to their case).

To ensure the effectiveness of the pilot project, this legislation requires the DEP, the STO, and the Department of State to submit a report to the Legislature and the Governor by January 31, 2003, containing findings on the cost-effectiveness of Internet publication of agency notices. The report would also be required to suggest recommendations, including legislative or rule changes, for modifications to existing processes to improve Internet publication of agency notices.

D. SECTION-BY-SECTION ANALYSIS:

Please refer to C. EFFECT OF PROPOSED CHANGES for a description of the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

While the cost reduction achieved by Internet publication of agency notices by the DEP cannot be determined with certainty, based on FY 1999 and FY 2000 costs, the DEP estimates that its annual savings could range between \$25,000 and \$40,000. Because the Department of State can only charge the DEP 50 percent of the production costs, the Department of State could save a comparable amount due to decreased production requirements.

2. Expenditures:

While the bill does not call for an appropriation of funds, information technology resources from the DEP and the STO will be allocated to implementing the pilot project.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require cities or counties to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Although this bill does not confer rule-making authority on any government agency, the bill alters the way in which DEP currently provides notice of rule making to citizens. However, as described above, Internet publication of agency notices in lieu of publication in FAW, would likely provide more and better access to agency rule-making procedures.

C. OTHER COMMENTS:

Although cost savings resulting from the implementation of this legislation could be substantial, modifications to agency notification procedures should be cautiously implemented. While recent years have seen a dramatic increase in the number of Florida citizens who have Internet access, not all Floridians access the Internet.⁵ However, significantly more citizens have Internet access than currently subscribe to FAW. Additionally, most public libraries also offer free Internet access to patrons. Internet publication of agency notices could result in enhanced citizen access to agency decision-making and agency cost reductions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Ready Infrastructure Council passed the bill as a council substitute. CS/HB 1763 differs from the original bill in that the council substitute:

- Specifically places the language of the bill in s. 120.551, F.S., a new section under the Administrative Procedure Act;
- Sets the 3-month and 12-month time frames in the bill as minimum time requirements by adding "at least" before each reference to such time period; and
- Prohibits the DEP from removing its notices posted on the Internet until its searchable database is implemented.

⁵ A recent study done by the U.S. Commerce Department indicated that approximately 43 percent of Florida households had Internet access. See U.S. Dep't of Commerce, *Falling Through the Net: Toward Digital Inclusion* (October 2000), available at <http://www.digitaldivide.gov/reports.htm> (Last visited, March 10, 2001).

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VII. SIGNATURES:

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