

STORAGE NAME: h1585.sgc.doc
DATE: February 27, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1585
RELATING TO: Metropolitan planning organizations
SPONSOR(S): Representative Flanagan
TIED BILL(S):

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

- (1) STATE ADMINISTRATION YEAS 3 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 14 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill adds metropolitan planning agencies to the list of legal entities not included in the definition of "agency," for the purposes of ch. 120, F.S. The effect of not being considered an agency under chapter 120, F.S., is that metropolitan planning agencies will not have to comply with provisions for rule-making and dispute resolution found therein.

This bill does not have a fiscal impact on state government. Not having to comply with rulemaking and dispute resolution procedures mandated by ch. 120, F.S., could result in an indeterminate cost savings for local governments, which substantially fund the operations of metropolitan planning organizations.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

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:

Metropolitan Planning Organizations

Metropolitan Planning Organizations (MPOs) are established by federal law¹ to develop, in cooperation with the state, transportation plans and programs for urbanized areas of more than 50,000 individuals. 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.

Under Florida law, MPO's must develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas. 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.²

Each MPO must be created and operated pursuant to an interlocal agreement entered into pursuant to s. 163.01, F.S. The signatories to the interlocal agreement must be the department and the governmental entities designated by the Governor for membership on the MPO.³

MPOs consist of local elected officials,⁴ 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.⁵

¹ 23 USC Sec. 134.

² Section 339.175, F.S.

³ *Id.*

⁴ 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

There are 25 MPOs in Florida. Florida's MPO metropolitan planning areas encompass all or a portion of 33 counties. MPOs 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 vast majority of MPOs are located physically and administratively within county government.⁶

Section 163.01(7), F.S.

Section 163.01(7), F.S., provides the mechanism (interlocal agreements) by which metropolitan planning organizations are created. If an interlocal agreement is created that creates a separate entity (a MPO, for instance) to administer the agreement, and if any party to that agreement is an agency, then the created entity is an agency.

As discussed below (under "definition of Agency"), if an entity is created pursuant to s. 163.01(7), F.S. and *any party* to such agreement (i.e., any member of the entity) is an *agency* (as is the Florida Department of Transportation),⁷ then the entity is considered an *agency*.

Definition of "Agency"

Agency," as found in the Administrative Procedures Act (ch. 120, F.S.), means:

- The Governor;
- State officers;
- Each (state) 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 163,⁸ 373,⁹ 380,¹⁰ and 582¹¹ and s. 186.504;¹² and
- 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.¹³

This definition does not include joint electric supply power projects,¹⁴ expressway authorities,¹⁵ 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; however, this definition does include a regional water supply authority.

Being considered an 'agency' under ch. 120, F.S., places certain responsibilities upon an entity, primarily relating to rulemaking and dispute resolution.

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."

⁵ *Id.*

⁶ Pursuant to a phone conversation with the Executive Director of the Florida Metropolitan Planning Organization Advisory Council, on 2-19-02.

⁷ Section 339.175(3)(a), F.S., provides that the Department of Transportation is a non-voting member of every MPO.

⁸ Various intergovernmental programs.

⁹ Water Management Districts.

¹⁰ Various entities, related to land and water management.

¹¹ Soil and water conservation entities.

¹² Regional Planning Councils.

¹³ Section 120.52, F.S.

¹⁴ Chapter 361, part II, F.S.

¹⁵ Chapter 348, F.S.

Chapter 120, F.S.

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.

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 an 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 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.

C. EFFECT OF PROPOSED CHANGES:

This bill adds metropolitan planning agencies (MPOs) to the list of legal entities not included in the definition of "agency," under ch. 120, F.S. The effect of not being considered an agency for the purposes of ch. 120, F.S., is that MPOs will not have to comply with provisions for rule-making and dispute resolution found therein.

It should be noted that although the effect of this bill is to free MPOs from complying with the provisions of ch. 120, F.S., MPOs -- like all governmental entities which are *presently* not considered an "agency" for purposes of ch. 120 -- retain a constitutional responsibility to provide due process and fairness in developing their policies and resolving disputes.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes" section of the analysis.

III. 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:

Not having to comply with rulemaking and dispute resolution procedures mandated by ch. 120, F.S., could result in an indeterminate cost savings for MPOs (which are largely funded by local governments).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This 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:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The proponents of this bill note that it is only logical that MPOs should not be considered subject to ch. 120, F.S., since they are essentially an amalgam of local governments -- and local governments are not subject to ch. 120, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Gip Arthur

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Gip Arthur

Council Director:

Don Rubottom
