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 2110

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Metropolitan Planning Organizations

DATE: April 8, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAuliffe	Meyer	TR	Fav/CS
2.			CP	
3.			GO	
4.				
5.				
6.				

I. Summary:

This CS amends s. 120.52, F.S., providing Metropolitan Planning Organizations (MPOs) are not agencies of the state and are, therefore, exempt from the requirements of ch. 120, F.S., the Administrative Procedures Act (APA). The CS amends s. 339.175, F.S., to provide individual MPOs do not have to be designated for each urbanized area of the state. The section is amended to provide, in order for an agency which was created by law to perform transportation functions to have representation on an MPO, the agency must actually perform transportation functions. The section is further amended to create a chair's coordinating committee composed of the Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk and Sarasota County MPOs. Further, the CS provides a template for the coordination of cross-jurisdictional planning.

This CS substantially amends sections 120.52 and 339.175 of the Florida Statutes.

II. Present Situation:

The Administrative Procedure Act

Chapter 120, F.S., the APA, allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions. For purposes of ch. 120, F.S., the term "agency" is defined in s. 120.52, F.S. as each:

1. State officer and state department, and each departmental unit described in s. 20.04, F.S.
2. Authority, including a regional water supply authority.
3. Board and commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.

4. Regional planning agency.
5. Multi-county special district with a majority of its governing board comprised of non-elected persons.
6. Educational units.
7. Entity described in chapters 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation) and s. 186.504 (regional planning councils).
8. 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.

The definition expressly excludes any legal entity or agency created in whole or in part pursuant to chapter 361, part II, F.S. (Joint Electric Power Supply Projects), an expressway authority pursuant to chapter 348, F.S., any legal or administrative entity created by an interlocal agreement, 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. The definition expressly includes a regional water supply authority.

Administrative hearings involving disputed issues of fact are generally referred to the Division of Administrative Hearings (DOAH), an independent group of administrative law judges (ALJs) who hear cases involving most state agencies. The DOAH's ALJs also determine whether proposed and existing agency rules are invalid exercises of delegated legislative authority based on certain statutory grounds, and based on constitutional grounds in the case of proposed rules. DOAH proceedings are conducted like nonjury trials and are governed by ch. 120, F.S., and the rules adopted to implement those statutory provisions.

Chapter 120, F.S., also sets forth the general standards and procedures all agencies must follow when adopting administrative rules. Agencies do not have inherent rulemaking authority. Shaping public policy through lawmaking is the exclusive power of the Legislature. Section 120.52(15), F.S., provides the Legislature, however, may delegate to agencies the authority to adopt rules that implement, enforce, and interpret a statute. An enabling statute that delegates rulemaking authority to an agency cannot provide unbridled authority to an agency to decide what the law is, but must be complete, must declare the legislative policy or standard, and must operate to limit the delegated power.

Section 120.54(1), F.S., provides agencies are not authorized to determine whether or not they want to adopt rules. They are required by law to adopt as a rule each agency statement that meets the definition of a rule as soon as feasible and practicable. Rulemaking is presumed to be feasible and practicable unless the agency proves certain statutory standards. Whenever an act of the Legislature requires implementation by rule, an agency has 180 days after the effective date of the act to do so, unless the act provides otherwise.

Metropolitan Planning Organizations

Florida MPOs have been involved in the transportation planning and prioritization process through interlocal agreements and public involvement since the early 1970's. The shift toward metropolitan planning began nationally in 1975 with the issuance of joint planning regulations

by the Federal Highway Administration and the Urban Mass Transit Administration (now known as the Federal Transit Administration). The new regulations gave major responsibility for transportation planning to MPOs. The federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), greatly expanded the role of MPOs in the transportation planning process and the Transportation Equity Act for the 21st Century (TEA-21) solidified the current process.

In order to carry out transportation planning, federal law (23 USC Sec. 134) and state law (s. 339.175, F.S.) requires a Metropolitan Planning Organization to be designated for each urbanized area of more than 50,000. This designation is accomplished by an agreement between the Governor and the local government which represents at least 75 percent of the population of that urbanized area. The boundaries of a MPO are determined by agreement between the Governor and the MPO. A MPO may have no less than five members and no more than 19, and all MPO members must be elected local officials. However, if possible, no less than one-third of a MPOs membership must be county commissioners.

Certain larger counties are authorized to reapportion the membership of the MPO to include more involvement from municipalities. Federal and state laws establish many requirements for the MPO and statewide transportation planning and prioritization processes. Long and short-range transportation plans are required to be produced at the local and state level and must address a number of specific factors. In particular, MPOs must develop annually a list of project priorities and a transportation improvement program (TIP) for all federally funded transportation projects. In developing the long-range transportation plan and the TIP, each MPO must consider projects and strategies that will:

1. Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
2. Increase the safety and security of the transportation system;
3. Increase the accessibility and mobility options available to people and for freight;
4. Protect and enhance the environment, promote energy conservation, and improved quality of life;
5. Enhance the integration and connectivity of the transportation system between modes;
6. Promote efficient system management and operation; and
7. Emphasize the preservation of the existing transportation system.

MPO Coordination

In the past, MPOs have been criticized for a lack of coordinated regional planning. There are very few multi-county MPOs in the state and each MPO has its own priorities. MPOs have recently made some moves to take a more regional perspective.

The Central Florida MPO Alliance began as a two county alliance between Orlando and Volusia MPOs in 1997 and expanded in 2000 to include the Brevard MPO, Lake County Government, METROPLAN Orlando and the Volusia County MPO. The South Florida Regional Transportation Organization was created in 1997 by interlocal agreement and is comprised of the Broward County Commission, Miami-Dade County Commission, Palm Beach County Commission, Broward MPO, Miami-Dade MPO, Palm-Beach MPO, Tri-County Commuter Rail Authority, and the FDOT.

The Southwest Florida Regional and Metropolitan Transportation Subcommittee is comprised of one appointed elected official from the Sarasota/Manatee MPO, Charlotte County-Punta Gorda MPO, Lee County MPO, and the Collier County MPO, an official representative from each of the 6 counties, an appointee from the local office of economic development, a representative from the Southwest Florida Transportation Initiative and a representative of the FDOT.

West Central Florida MPOs Chairs' Coordinating Committee was created in 1992. However, the Legislature questioned the effectiveness of the Coordinating Committee's regional perspective and passed legislation in 2000 strengthening the Committee's coordination efforts. The Committee is comprised of the Chairmen from the six MPOs in the region, including the Hernando, Hillsborough, Pinellas, Pasco, Polk and Sarasota/Manatee County MPOs. In addition the FDOT District Secretaries and the Regional Planning Councils are represented in a non-voting capacity.

III. Effect of Proposed Changes:

This CS amends s. 120.52, F.S., providing MPOs are not agencies of the state and are, therefore, exempt from the requirements of ch. 120, F.S. This would exempt MPOs from the rulemaking requirements provided in ch. 120, and would prevent any person from challenging an action by an MPO through DOAH. However, an action of an MPO may be challenged in court.

The CS amends s. 339.175, F.S., to provide individual MPOs do not have to be designated for each urbanized area of the state. The section is further amended to create a chair's coordinating committee composed of the Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk and Sarasota County MPOs. The section is amended to provide, in order for an agency which was created by law to perform transportation functions to have representation on an MPO, the agency must actually perform transportation functions.

Section 339.175, F.S., is further amended to provide Legislative findings that the state's rapid growth in recent decades has caused many urbanized areas subject to MPO jurisdiction to become contiguous to each other. As a result, various transportation projects may cross from the jurisdiction of one MPO into the jurisdiction of another MPO. The CS provides in order to accomplish the purposes for which MPO's have been mandated, MPO's may develop coordination mechanisms with one another to expand and improve transportation within the state. The section provides the appropriate method of coordination between MPO's may vary depending upon the project involved and given local and regional needs.

The CS provides a template for the coordination of cross-jurisdictional planning. The CS provides any MPO may join with any other MPO or any individual political subdivision to coordinate activities or to achieve any federal or state transportation planning or development goals or purposes consistent with federal or state law. When an MPO determines it is appropriate to join with another MPO or any political subdivision to coordinate activities, the MPO or political subdivision may enter into an interlocal agreement, which, at a minimum:

- Creates a separate legal or administrative entity to coordinate the transportation planning or development activities required to achieve the goal or purpose;

- provides the purpose for which the entity is created;
- Provides the duration of the agreement and the entity, and specifies how the agreement may be terminated, modified, or rescinded;
- Describes the precise organization of the entity, including who has voting rights on the governing board, whether alternative voting members are provided for, how voting members are appointed, and what the relative voting strength is for each constituent MPO or political subdivision;
- Provides the manner in which the parties to the agreement will provide for the financial support of the entity and payment of costs and expenses of the entity;
- Provides the manner in which funds may be paid to and disbursed from the entity;
- Provides how members of the entity will resolve disagreements regarding interpretation of the interlocal agreement or disputes relating to the operation of the entity.

Such interlocal agreement will become effective upon its recordation in the official public records of each county in which a member of the entity created by the interlocal agreement has a voting member. None of the changes to s. 339.175, F.S., provided in this CS requires an MPO to join another MPO. Further, under current law, MPOs are already authorized to enter into interlocal agreements as provided in this CS.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.