

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1498

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ring

SUBJECT: State Technology

DATE: January 24, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.			BI	
3.			BC	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill abolishes the Agency for Enterprise Information Technology and transfers its duties to the Agency for State Technology (AST), which is created by the bill. Current duties undertaken by the Department of Management Services (DMS) related to technology and telecommunications are also transferred to the AST.

This bill substantially amends the following sections of the Florida Statutes: 282.0041, 282.0055, 282.0056, 282.201, 282.203, 282.34, 282.702, 20.22, 110.205, 215.22, 215.322, 216.292, 282.318, 282.604, 282.703, 282.704, 282.705, 282.706, 282.707, 282.709, 282.7101, 282.711, 287.012, 282.057, 318.18, 320.0802, 328.72, 364.0135, 328.72, 364.0135, 365.171, 365.172, 365.173, 365.174, 401.013, 401.015, 401.018, 401.021, 401.024, 401.027, 401.465, 445.011, 445.045, and 668.50.

The bill repeals sections 14.204, 282.204, 282.205, and 282.33 of the Florida Statutes, and creates section 14.206.

II. Present Situation:

The operations and organizational configuration of information technology itself reflects the state's traditional avoidance of concentration of authority in any one constitutional or statutory office. This dispersion complemented the separation of powers among the three governmental branches in its early history, but as the reach of state government became greater over the years, it also permitted the development of separately funded enclaves of technology operations within departments and their subordinate units.

Following the adjournment of the 2006 Regular Session of the Florida Legislature, the then Senate Ways and Means Committee was commissioned to undertake a comprehensive review of information technology in state government. That commission resulted in the publication of a wide-ranging study that catalogued all of the state's historical and structural efforts at identifying, operating, and funding information technology.¹ The report discussed the statutory attempts at making programmatic sense of such an evolving technology and the contractual difficulties associated with failed attempts. The complex decision-making environments characteristic of the Florida state government federated executive system of management also played a role in attempting to achieve focus and accountability in this area.

Common themes soon presented themselves in both successful and unsuccessful ventures. Many projects were found to be off-task and off-budget, there was a poor understanding of operational expectations, or personnel and operational practices were insufficient for the proper and timely execution of responsibilities. In its 2007 report², the Senate Governmental Oversight and Productivity Committee identified several common attributes of state agency contractual procurements in which actual performance demonstrated a significant departure from expectations. All of those procurement underperformances reviewed had significant technology components and were found to be beset of one or more of the following conditions:

- A management-directed imperative to execute faster than the agency had capacity;
- Loss of knowledge capital through a strategic disinvestment in agency capacity or over reliance upon contract vendors;
- Decision-making based upon price rather than product or service effectiveness;
- Decision-making motivated by minimizing state investment and maximizing shared federal revenues;
- Claimed tangible savings that were speculative;
- Unwritten understandings accompanied by longer term financial liabilities;
- A rush to the procurement market with a poor understanding of expectations; and,
- Vendor systems that could not deliver the service or product on time, on-task, or on budget.

Limitations on the ability to execute system-wide changes are not confined to information technology. The Department of Management Services' human resources outsourcing initiative fell more than one year behind schedule as its contract vendor, Convergys Customer Management Group, had to contend with a difficult technology migration from the predecessor state personnel system to its successor one.³ As a consequence, there were missed or delayed

¹ *Enterprise Information Technology: Senate Review and Study*, Report No. 2007-140. Tallahassee, FL: January 2007.

² *Id.*

³ The proprietary state legacy system was **COPES** (**CO**operative **P**ersonnel and **E**mployment **S**ystem).

employee payrolls, benefit coverage interruptions, incorrect benefit premium calculations, and ineffective implementation of electronic time and attendance reports. All of these resulted in increased management attention. Shortly after the department renegotiated the contract in late 2009, Convergys announced it was selling this line of business entirely to the English firm NorthgateArinso.

In a March 11, 2005, presentation to the National Association of State Comptrollers, the Department of Financial Services reported to the Nation's other state chief financial officers on Florida's experience to date with Convergys. The report⁴ described the history of the procurement and the many performance expectations that the service provider had not executed well into the early implementation of its nine-year contract with the Department of Management Services.

The 2006 Legislature terminated funding for the State Technology Office in partial response to these cumulative difficulties. It funded an interim Enterprise Information Technology Services unit in the DMS pending a more significant restructuring of state agency relationships.

The Agency for Enterprise Information Technology

The 2007 Legislature enacted CS/CS/SB 1974 to bring particular focus on information technology as an enterprise responsibility that links all of the state's separate business and jurisdictional entities. The head of the Agency for Enterprise Information Technology (agency or AEIT) is the Governor and Cabinet, and the agency is a separate budget entity and is not subject to control, supervision, or direction by the Executive Office of the Governor. The agency has an executive director who is the state's Chief Information Officer, who must have a degree from an accredited postsecondary institution, and at least 7 years of executive-level experience in managing information technology organizations. The Chief Information Officer is appointed by the Governor and confirmed by the Cabinet, subject to confirmation by the Senate, and serves at the pleasure of the Governor and Cabinet.⁵

The agency has the following duties and responsibilities:⁶

- Develop strategies for the design, delivery, and management of the enterprise information technology services established in law.
- Monitor the delivery and management of the enterprise information technology services as established in law.
- Make recommendations to the agency head and the Legislature concerning other information technology services that should be designed, delivered, and managed as enterprise information technology services.
- Plan and establish policies for managing proposed statutorily authorized enterprise information technology services, which includes:
 - Developing business cases that, when applicable, include the components required in business cases to outsource;⁷

⁴ Florida Department of Financial Services, *Outsourcing Human Resource Management*, undated.

⁵ Section 14.204(1), (2), and (3), F.S.

⁶ Section 14.204(4), F.S.

⁷ The requirements for business cases to outsource are specified in s. 287.0571, F.S.

- Establishing and coordinating project-management teams;
- Establishing formal risk-assessment and mitigation processes; and
- Providing for independent monitoring of projects for recommended corrective actions.
- Develop, publish, and biennially update a long-term strategic enterprise information technology plan that identifies and recommends strategies and opportunities to improve the delivery of cost-effective and efficient enterprise information technology services to be proposed for establishment.
- Perform duties related to the state data center system as provided in s. 282.201, F.S.
- Coordinate acquisition planning and procurement negotiations for hardware and software products and services.
- In consultation with the Division of Purchasing in the Department of Management Services (DMS), coordinate procurement negotiations for information technology products as which will be used by multiple agencies.
- In coordination with DMS, establish best practices for the procurement of information technology products.
- Develop information technology standards for enterprise information technology services.
- Provide yearly recommendations to the Legislature relating to techniques for consolidating the purchase of information technology commodities and services, and for establishing a process to achieve savings through consolidated purchases.

The Office of Information Security is created within the agency, which designates a state Chief Information Security Officer to oversee the office and report directly to the executive director. The agency must operate in a manner that ensures the participation and representation of state agencies and the Agency Chief Information Officers Council, and the agency may adopt rules to carry out its statutory duties.⁸

Pursuant to legislative direction, AEIT organizes the required consolidation of agency data centers, and is working on a solicitation, business case analysis, and implementation plan for the provision of an enterprise-wide email system.

According to the 2010-11 AEIT Annual Report:

In Fiscal Year 2010-2011, the AEIT staff facilitated major enterprise IT service initiatives, including a new enterprise e-mail service. Expected savings from enterprise e-mail is approximately \$735,422 for Fiscal Year 2011-12. Over the life of the 7-year contract, outsourcing enterprise e-mail is expected to save the state more than \$15.3 million. Wave I of Data Center consolidation was completed in Fiscal Year 2010-2011 producing more than \$1.1 million in recurring savings through operational efficiencies and consolidation of shared services. Additional savings are expected with consolidation, standardization, and virtualization of existing hardware and software infrastructure.

⁸ Section 14.204(5),(6), and (7), F.S.

Method of Reorganization for the Executive Branch

Pursuant to s. 20.06, F.S., the executive branch of state government must be reorganized by transferring the specified agencies, programs, and functions to other specified departments, commissions, or offices. Such a transfer does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer, and any agency or department to which are transferred the powers, duties, and functions relating to the pending proceeding must be substituted as a party in interest for the proceeding.

A type one transfer is the transferring intact of an existing agency or department so that the agency or department becomes a unit of another agency or a department. Any agency or department transferred to another agency or department by a type one transfer will exercise its powers, duties, and functions as prescribed by law, subject to review and approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made, unless otherwise provided by law. Any agency or department transferred by a type one transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, transferred to the agency or department to which it is transferred. Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished. Any agency or department or a program, activity, or function transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided. Unless otherwise provided, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions. Unless otherwise provided, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

III. Effect of Proposed Changes:

Section 1 abolishes the Agency for Enterprise Information Technology (AEIT), and transfers all its duties, functions, funds, rules, and contracts by type two transfer to the Agency for State Technology (AST, or agency).

Section 2 transfers the DMS technology program established in s. 20.22(2), F.S., by type one transfer to the AST, in addition to specified DMS responsibilities under parts II and III of chapter 282, F.S., responsibilities under s. 364.0135, F.S., specified responsibilities in chapter 365, F.S., and certain responsibilities under part 1 of chapter 401, F.S. The bill also transfers related funds, orders, rules, and regulatory authority.

The bill transfers the Northwood Shared Resource Center and Southwood Shared Resource center from DMS to AST by type one transfer.

The bill transfers the Communications Working Capital Trust Fund, Emergency Communications Number E911 System Fund, and State Agency Law Enforcement Radio System Trust Fund from DMS to AST by type one transfer.

Section 3 repeals s. 14.204, F.S., which creates the AEIT.

Section 4 creates the AST in s. 14.206, F.S., in the Executive Office of the Governor for administrative purposes only. The head of the agency is the Governor and Cabinet. The agency must have an executive director who is the state's Chief Information Officer, appointed by the Governor, subject to confirmation by the Cabinet and the Senate, and serving at the pleasure of the Governor and Cabinet. The executive director must appoint a Chief Technology officer and Chief Information Security Officer, and may appoint employees necessary to carry out the duties of the agency.

The Governor must appoint a search committee to recruit an executive director. The bill does not specify how many members the search committee will have, or what kind of credentials the search committee members must possess. The Attorney General, Chief Financial Officer, and Commissioner of Agriculture must each have one appointment to the search committee, which will determine the knowledge, skills, and abilities that qualified candidates must possess, and recommend top candidates to the Governor and Cabinet.

The bill establishes the divisions and units of the agency.

The AST must publish a long term State Information Technology Resources Strategic Plan, manage IT services, provide status reports on IT service consolidations, operate the shared resource centers, develop a means of chargeback for primary data center services, and may adopt rules.

Section 5 amends s. 282.0041, F.S., by modifying and adding some definitions, and replacing the AEIT with AST.

Section 6 substantially amends s. 282.0055, F.S., by specifying that AST has the duties of planning, designing, and procuring enterprise information technology services; supervision and maintenance of state-agency specific or unique software applications will remain with the state agency. AST must create a road map for enterprise IT consolidation, and a yearly transition plan for consolidations. State agencies must submit transitions plans to AST, and may not create or expand computing services that are designated enterprise IT services. AST may grant exceptions to data center consolidation if the primary data center lacks sufficient capacity.

Section 7 amends s. 282.0056, F.S., to specify the requirements for the biennial Information Technology Resources Strategic Plan, and requires state agencies to develop their own information technology plans.

Section 8 amends s. 282.201, F.S., to change duties related to the state data center system. The bill specifies legislative intent, requires AST to provide yearly recommendations for the schedule for consolidating state data centers, requires agencies to execute memorandums of understanding when consolidating into a primary data center, suspends data center consolidations for the 2012-13 fiscal year, and requires all data centers and computing facilities to be consolidated into the agency by June 30, 2018.

Section 9 amends s. 282.203, F.S., relating to primary data centers. The bill requires primary data centers to serve and cooperate with state agencies, comply with rules adopted by AST, and provide transparent financial statements to participating state agencies. Each primary data center must enter onto a memorandum of understanding (MOU) with each participating agency.

Sections 10 and 11 repeal sections 282.204 and 282.205, F.S., which establish the Northwood Shared Resource Center and Southwood Shared Resource Center. These entities will become part of AST by operation of this bill.

Section 12 creates s. 282.206, F.S., which establishes the Fletcher Shared Resource Center within the Department of Financial Services. The center *must* collaborate with AST on developing policies and procedures, and *may* comply with AST policies and rules. The center must provide collocation services to the Department of Legal Affairs (DLA) and the Department of Agriculture and Consumer Services (DACs), and the center must be governed by a master MOU and complemented by a steering committee comprised of the chief information officers of the member agencies.

The DLA must move its data center equipment to the center by June 30, 2014; DACs must move its Mayo Building data center equipment to the center by that date.

Section 13 repeals s. 282.33, F.S., which requires AEIT to establish standards for data center energy efficiency.

Section 14 amends s. 282.34, F.S., to provide that the agency must reevaluate the current contract for enterprise –email services. DACs, DLA, the Department of Financial Services (DFS), and the State Board of Administration are excluded from the requirement that all state agencies receive their email through AST. Those entities may use the Fletcher center or AST for email. The bill also deletes provisions relating to the implementation of a statewide email service.

Section 15 amends s. 282.702, F.S., to give the duties of AEIT to AST, and require the AST to develop a plan for statewide voice-over-internet protocol service.

Section 16 amends s. 364.0135, F.S., to give the duties of DMS with regards to the promotion of broadband adoption to the AST, and require the agency to use its expertise and associations in

the telecommunications industry to “foster” the goals of broadband adoption, and to assist entities with broadband projects. The agency must direct its assistance to “the entities with the most suitable expertise, resources, and capabilities” to contribute to the goals of broadband adoption.

Section 17 amends s. 20.22, to delete the technology program from DMS’ list of established programs.

Section 18 amends s. 110.205, F.S., to provide that the Governor and Cabinet set the salary and benefits for the executive director of the AST.

Section 19 amends s. 215.22, F.S., to move the Communications Working Capital Trust Fund from DMS to AST.

Sections 20 through 31 amend statutory provisions to reflect the transfer of technology duties from DMS and AEIT to the AST.

Section 32 amends s. 287.012, F.S., to change the definition of “information technology” to equipment, hardware, software, mainframe maintenance, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

Sections 33 through 50 amend statutory provisions to reflect the transfer of technology duties from DMS and AEIT to the AST.

Section 51 provides that the bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, section 3 of the Florida Constitution creates the three branches of Florida’s government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its

constitutionally assigned powers to another branch.⁹ Therefore, statutes granting power to the executive branch “must clearly announce adequate standards to guide in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.”¹⁰ The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.¹¹

The bill provides that a search committee appointed by the Governor, to include one appointment by each of the three other Cabinet officers, is responsible for the following, in regards to recruiting the executive director of the new agency:

- Determining the position description;
- Establishing the knowledge, skills, and abilities that qualified candidates must possess;
- Defining and conducting the search process;
- Recommending top candidates for approval; and
- Recommending salary ranges.

The bill contains no legislatively-set standards or guidelines for the qualifications of the executive director. The qualifications are to be set entirely by the search committee, which may be a delegation issue, as the search committee’s decisions may supplant the Legislature’s duty to determine the law.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

DFS estimates that \$334,791,454 in budget and 319 Full Time employees (FTE) (based on the 2011-12 General Appropriations Act) will be transferred from AEIT, DMS, and the shared resource centers to the AST. DFS estimates that AST will need 4 FTEs for new resources, and \$600,900 - \$825,900 in additional budget to fund the new FTEs and an increase in the Executive Director’s salary to an amount between \$175,000 and \$400,000, depending on legislative direction.

⁹ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991).

¹⁰ *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).

¹¹ *Dep’t of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 363 (Fla. 1st DCA 1985).

The AST will also need administrative services support. Creating and funding a Division of Administration would require an estimated 15 FTEs at an estimated cost of \$992,250, but these additional costs can be offset by the over \$1.3 million that DMS' Technology Program and the shared resource centers currently pay to DMS for administrative services support. There are multiple options for providing AST with administrative support, depending on legislative direction.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the agency to “foster” the goals of broadband adoption. If it is not clear what is meant by the term “foster,” it will be difficult to evaluate whether the agency is effectively doing so.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 1, 2012:

The CS:

- Specifies that the State Board of Administration is an optional user of the statewide email system.
- Provides that the qualifications for the executive director will be established by a search committee.
- Specifies that state data center consolidations must be completed by June 30, 2018.
- Requires the agency to reevaluate the current enterprise email contract to ensure it is meeting goals.

B. Amendments:

None.