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HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 3619

RELATING TO: Computers

SPONSOR(S): Committee on Governmental Operations, Representative Culp and others

COMPANION BILL(S): SB 1162(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
(2) GENERAL GOVERNMENT APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

This bill creates s. 14.025, F.S., providing for the reassignment of resources, including personnel, in the event of an actual or predicted problem attributable to a computer “Year 2000” (“Y2k”) date calculation. If the Governor reassigns resources between agencies under the Governor’s control, the action would be final. If the Governor recommends a transfer of resources involving an agency headed by a Cabinet member, the transfer recommendation must first be approved by the Administration Commission pursuant to s. 14.202, F.S..

Any monies reassigned from one agency to another as a result of an actual or predicted computer failure must be transferred in accordance with the budget amendment process outlined in s. 216.177, F.S. If a recommendation is made to transfer personnel from one agency to another in response to an actual or predicted computer failure, the transfer would follow the framework established in part II of ch. 112, F.S., relating to the interchange of personnel between governmental entities.

The reassignment of resources lasting longer than 90 days requires the approval of the President of the Senate and the Speaker of the House of Representatives, along with a majority of the members of each of the House and Senate fiscal committees. The Legislature is authorized by the bill to terminate the reassignment of resources among agencies by the passage of a concurrent resolution. The provisions related to Y2k computer failure resource transfers are repealed effective July 1, 2003.

Section 112, F.S., dealing with the interchange of personnel between governments is amended to include a provision for interchange between state agencies as well as between state agencies and other governmental entities.

Legislative findings regarding the diligence of the state in addressing and remedying its Year 2000 computer problems are provided, and s. 282.4045, F.S., is created to protect the state, its branches, legal subdivisions and independent establishments, including qualifying schools of medicine, from civil and administrative legal actions resulting from Y2k computer date calculation failures.

This bill will probably result in direct and indirect positive and negative fiscal impact on state government, and have an indirect positive fiscal impact on local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

According to a brochure published by the Year 2000 Task Force and the Governor's Year 2000 Project Office, the Y2k date problem was inadvertently created in the late 1950s and early 1960s—the early days of computers and computer programming. The "millennium bug" as the date problem is popularly referred to, resulted from the use of a two-digit year field in computer applications. For example, a computer application that relies on a two-digit year field cannot determine whether a year represented by "00" is 1900 or 2000.

Two digits, rather than four, were originally used to represent years because in the early days of computer technology, storage and memory were among the highest costs associated with using the emerging technology. Later, as technology improved and storage devices and memory media became relatively less expensive, most applications continued to rely on the tradition of two-digit years because the cost and time required to rewrite applications were determined to be too high to justify the end result.

Although good business and technical decisions have been made throughout the history of computer technology, most businesses and industries did not anticipate the endurance of older technology and applications into the 21st century. Thus, such older applications will begin to fail or to yield erroneous results if the date information is not corrected.

Florida's agencies have been addressing the millennium bug throughout the 1990s with varying degrees of effectiveness. As the end of the century approaches, however, the Governor and the Legislature have provided for a coordinated effort to ensure that all agencies properly identify their respective information technology resources that must be addressed. Toward that end, the Legislature, through proviso in the FY 1997-98 General Appropriations Act, authorized funds for use by agencies in their remediation activities relating to Y2k computer problems, and for the creation of a Year 2000 Project Office within the Governor's Office of Planning and Budgeting. A portion of these funds also were used to hire a consultant to aid the state and the project office in identifying those agencies and those computer systems that represent the greatest risk to the state if they are not prepared to properly handle date-sensitive functions.

The use of remediation funds, the initial creation of the Year 2000 Project Office, and the allocation of funds to specific agencies for remediation all have taken place under the auspices of the Year 2000 Task Force. The Task Force also was created by proviso in the 1997-98 General Appropriations Act. The Task Force consists of three state agency managers and three members of the Legislature. The Legislative Information Technology Resource Committee provided initial staffing and support to the Task Force until its staff was hired October 1, 1997. The statutes do not currently recognize the Y2k computer problem, nor are there currently specific provisions in law to alleviate situations which may occur that are related to Y2k computer failures.

Article X, s. 13, Florida Constitution relates to lawsuits against the state. The constitutional provision protecting the state from lawsuits, except as specified in general law, is known as "sovereign immunity." However, the Florida Constitution authorizes the Legislature, through general law, to permit citizens to bring suit against the state.

Chapter 768, F.S., relates to negligence and damages. The state waives its sovereign immunity in tort actions, under circumstances specified in s. 768.28, F.S. The statutes have other provisions protecting the state, its agencies, and political subdivisions from specified legal and administrative actions. In some laws, the state and subdivisions thereof are protected entirely from legal actions, and in some cases, such as in tort actions, the liability of the state is limited to a specific dollar amount.

The Florida Constitution establishes the Cabinet, which consists of six elected officials. As provided in Art. IV, s. 4, Fla. Const., the Cabinet officers are the Secretary of State, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Agriculture, and the Commissioner of Education. The Constitution specifically assigns independent responsibilities to each Cabinet officer. In addition, the Constitution provides that the Governor and Cabinet sit as various boards or as the head of various agencies to administer certain state policies. This collegial form of state government is unique to Florida. Many of the statutory and constitutional powers of the Governor are outlined in ch. 14, F.S.

Each Cabinet officer serves as the head of a department as provided in general law. In 1969, following several years of study, the Legislature reorganized the executive branch by enacting the Governmental Reorganization Act of 1969. The 1969 act assigned each Cabinet officer to serve as the head of a department charged with administering the duties constitutionally assigned to the respective Cabinet officer. These departments, however, administer many other programs and functions, in addition to administering programs directly relevant to the constitutional duties and functions charged to their respective agency heads.

In addition, general law provides that the Governor and Cabinet sit as various other collegial bodies to administer certain programs. Such boards include the Board of Trustees of the Internal Improvement Trust Fund, which purchases and holds title to the lands of the state; the Administration Commission, which reviews and approves numerous actions and policies of the executive branch; and the Board of Executive Clemency, which reviews petitions for clemency from inmates of the state prison system, among others. The respective policies of the boards, commissions, and other entities comprised of the Governor and Cabinet are determined in public meetings by official actions.

Chapter 20, F.S., establishes four departments that are headed by the Governor and the Cabinet. These are the departments of Veterans' Affairs, Revenue, Highway Safety and Motor Vehicles, and Law Enforcement. Each of these departments is supervised by an executive director who reports to the Governor and Cabinet. Many of the actions and functions of these agencies are discussed and approved in official meetings of the Governor and Cabinet.

Chapter 110, F.S., relates to state employment and state employees. The law assigns various duties to the Administration Commission with respect to actions and administrative rules that affect state employees. For example, s. 110.1225, F.S., directs the Administration Commission to remedy a deficit projected by the Revenue Estimating Conference in any fund supporting salary and benefit appropriations. If necessary, the Administration Commission may propose to the Legislature a plan to furlough state employees in order to remedy a deficit.

Chapter 216, F.S., relates to planning and budgeting on behalf of all three branches of government. As a result, the Administration Commission is given many responsibilities to review and approve executive agency action with respect to changes in revenue and agency budgets.

Chapter 112, F.S., relates to public officers and employees. Part II of that chapter, consisting of ss. 112.24-112.31, F.S., governs the exchange of personnel between governmental entities. The provisions relating to the exchange of employees are designed to encourage the economical and effective use of public employees. The framework for “lending” employees among agencies also provides flexibility to address temporary shortfalls and emergency situations without the necessity for hiring permanent staff.

B. EFFECT OF PROPOSED CHANGES:

Section 14.025, F.S., would be created authorizing the Governor, or the Governor and Cabinet members, to reassign resources, including personnel and funding, among agencies in the event a Y2k computer failure is anticipated in an executive agency. The Governor would be authorized to act alone if the affected agencies are under the direct control of the Governor.

If a Cabinet agency, or an agency headed by the Governor and Cabinet, is affected by a Y2k computer failure, and the Governor recommends the reassignment of resources to address such a predicted failure, the Governor’s recommendations would be subject to the approval of the Administration Commission.

Any reassignment of fiscal resources to address a predicted computer failure would be made within the framework for budget transfers outlined in s. 216.177, F.S. Any reassignment of personnel to address a Y2k computer failure would be made in accordance with the requirements of part II of ch. 112, F.S., governing the exchange of personnel among governmental entities.

The Governor and Cabinet would be authorized to reassign resources among agencies for a period not to exceed 90 days. Any reassignment over 90 days would be subject to the approval of the Senate President, the Speaker of the House of Representatives, and a majority of the members of each of the budget committees of the two houses of the Legislature. The Legislature would be authorized to terminate any reassignment of state resources by concurrent resolution.

Section 14.025, F.S., which is created by this bill to provide for Y2k resource transfers, would repeal July 1, 2003.

Legislative findings are provided outlining the diligence and care taken by the state in identifying and remedying potential Y2k computer problems. Section 282.4045, F.S., is created by the bill to reinforce, and specify the applicability of sovereign immunity for the state, its branches, agencies, instrumentalities, units of local government, and independent establishments, from civil and administrative legal actions for alleged damages resulting from a Y2k computer date calculation failure.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Inasmuch as the bill provides for reassignment of personnel from one work entity to another, there are evident increases in responsibilities for those determining the necessity for, and arranging for, such reassignments. Moreover, there may be increased work loads for remaining personnel in work areas from which personnel are transferred.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No, except to the extent that problem avoidance facilitated by personnel transfers prevents an interruption of an option otherwise available..

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

This bill creates ss. 14.025 and 282.4045, F.S.; and amends ss. 112.24 and 112.27, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 - For the purpose of repairing or preventing computer system problems related to the Y2k date change, this bill **creates s. 14.025, F.S**., providing: **1)** executive power to the Governor to reassign resources, including personnel, between agencies or departments under the control of the Governor; **2)** that recommendations of reassignments made by the Governor in situations involving an agency under the control of the Governor and Cabinet, or under the control of a Cabinet officer, be approved by the Administration Commission; **3)** monies reassigned due to Y2k problems be reassigned pursuant to s. 216.177, F.S.; **4)** that the Governor shall follow the process in part II of chapter 112, related to transferring personnel among affected agencies; **5)** that transfers of personnel or monies for more than 90 days must have concurrence of the Senate President, House Speaker, and a majority of the members of each of the House and Senate fiscal committees; **6)** the Legislature may, by concurrent resolution, terminate the reassignment of resources due to Y2k problems; and **7)** that this section is repealed July 1, 2003.

Section 2 - Amends s. 112.24, F.S., providing for the addition of *other state agencies* as governmental entities among those between which state agencies can make agreements to make temporary assignments or to interchange personnel.

Section 3 - Amends s. 112.27, F.S., providing that any department, agency, or instrumentality of the state is authorized to participate in a program of interchange of employees with other such state entities.

Section 4 - Creates s. 282.4045, F.S., providing a declaration of due care efforts by the state with respect to Y2k issues, and specifically providing that no waiver of sovereign immunity shall be made for the state, its branches, agencies instrumentalities, any unit of local government, or independent establishments of the state, with respect to problems caused by a Y2k computer date calculation failure.

Section 5 - Provides an effective date of upon becoming a law.

III. <u>FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   Indeterminable.

2. Recurring Effects:

   Indeterminable.

3. Long Run Effects Other Than Normal Growth:

   Indeterminable.

4. Total Revenues and Expenditures:

   According to the Legislative Information Technology Resources Committee, Andersen Consulting LLP conducted a study late in 1997, and estimated the total cost of the Y2k problem for state executive agencies will be between $75 million and $90 million to remedy computer applications so that miscalculations due to the millennium change are averted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   The Legislative Information Technology Resource Committee does not anticipate a significant direct fiscal impact on local governments, however there may be a significant indirect positive fiscal impact to the extent that suits are prevented due to the declaration of sovereign immunity with regard to Y2k problems.

2. Recurring Effects:

   See Non-recurring Effects.

3. Long Run Effects Other Than Normal Growth:

   See Non-recurring Effects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   This bill will not result in direct private sector costs, but to the extent that litigation might be prevented by the bill, there would be an indirect cost to those who otherwise would have successfully litigated a related matter.

2. Direct Private Sector Benefits:

   Indeterminable. There would, however, be benefits to the private sector to the extent that reassignment of resources prevents Y2k problems affecting the private sector.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Indeterminable.

D. FISCAL COMMENTS:

At a November 1996 meeting of the Information Resource Commission, an estimate was presented which placed the worldwide cost to correct the Y2k problem at $1.5 trillion, with about $300 billion attributable to litigation. The total cost estimate for the United States was placed at $260 billion. Assuming the same total cost/litigation ratio as that of the worldwide problem, the litigation amount in the United States would be approximately $52 billion. As a major population state, with a larger than average sized government presence, it is likely that potential litigation costs in Florida would represent a disproportionate share of that $52 billion. Therefore, the indirect fiscal benefit realized by the specific declaration that there shall be no waiver of sovereign immunity in Y2k matters, may be very significant.

According to the General Government Appropriations Committee, a fiscal provision of $20 million (general appropriations), and approximately $6,470,000 (trust fund) is being made in the 1998/1999 budget for expenses related to the Year 2000 Task Force.

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 counties or municipalities have to raise revenues in the aggregate.

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

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

V. COMMENTS:

Article I, Section 10, of the Florida Constitution provides, in relevant part, "No...law impairing the obligation of contracts shall be passed." When the Legislature passes laws altering state-held contracts, the courts will subject such actions to an elevated level of scrutiny. It is possible that this provision may come into conflict with the Florida Constitution's provision related to sovereign immunity.

AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on March 30, 1998, the Committee on Governmental Operations adopted four amendments. The amendments provide: 1) the procedure for resource transfers involving agencies under the control of Cabinet officers; 2) that the state's agencies or instrumentalities include any public or private university school of medicine which is part of a university supported by state funds, and having an affiliation with a local government or state instrumentality; 3) a renumbering identifier; and 4) clarification that state agencies includes the executive, legislative and judicial branches of government, as well as the independent establishments of the state.

The bill was reported favorably as a committee substitute.

VI. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Legislative Research Director:
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