

STORAGE NAME: s1334s2z.uco
DATE: July 27, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-164, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON UTILITIES & COMMUNICATIONS
FINAL ANALYSIS**

BILL #: CS/CS/SB 1334

RELATING TO: Electronic Commerce

SPONSOR(S): Committee on Governmental Oversight and Productivity, Committee on Commerce and Economic Opportunities and Senator Klein

TIED BILL(S):

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

- (1) COMMITTEE ON ECONOMIC OPPORTUNITIES YEAS 8 NAYS 0
- (2) GOVERNMENTAL OVERSIGHT AND PRODUCTIVITY YEAS 5 NAYS 0
- (3) FISCAL POLICY YEAS 6 NAYS 0
- (4)
- (5)

I. SUMMARY:

The bill codifies the Uniform Electronic Transaction Act adopted by the National Conference of Commissioners on Uniform State Laws in 1999. The bill also requires county recorders to produce, by January 1, 2002, a current index of documents recorded in the official records of the county beginning with those documents filed on or after January 1, 1990.

A Chief Information Officer for the executive branch is created in Department of Management Services (DMS) to assume primary responsibility for agencies' information resource development and to provide direction to agencies on information technology matters. The bill also enhances the responsibilities of the State Technology Office (Office) in DMS. It dissolves the State Technology Council and reestablishes the Task Force on Privacy and Technology.

The bill encourages the use of credit and debit cards by state agencies and eliminates the requirement that the Office of Planning and Budgeting must recommend the use of the cards. It provides for the duties of the State Technology Office and the Treasurer. State agencies are authorized to accept bids and proposals by electronic means. The bill requires the Office to develop a program for online procurement of commodities and contractual services for qualified bidders.

Enterprise Florida, Inc., is required to create a marketing campaign to help attract, retain, and grow information technology businesses in Florida. The bill also requires the Department of Labor and Employment Security to develop a website about Florida's information technology industry. It also provides a 5-year sales tax refund for equipment purchased by a telecommunications service provider for the deployment of broadband technology.

The bill provides an exemption to the "one call" notification requirements, if a member operator or agent is excavating, up to a depth of 10 inches, on behalf of a single-family property owner on his land, using due care, and with no encroachment of the right of way. The bill also provides that the members of the Florida Public Service Commission Nominating Council appointed by the President of the Senate or Speaker of the House shall serve at their pleasure. Members may not be reappointed, except for legislative members serving a 2-year term.

The Estimating Impact Conference determined that a fully implemented refund would have a fiscal impact of \$2.6 million in tax refunds. The bill appropriates \$700,000 for refunds.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

Uniform Electronic Transactions Act

The Uniform Electronic Transactions Act, (UETA) was drafted, approved and recommended for enactment in all states by National Conference of Commissioners on Uniform State Laws (NCCUSL) at its July 1999 Annual Conference.

The National Conference of Commissioners on Uniform State Laws is now in its 108th year. The organization is comprised of more than 300 lawyers, judges, and law professors, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The group drafts proposals for uniform and model laws for consideration and enactment in state legislatures. Since its inception in 1892, the group has promulgated more than 200 acts, among them the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.

According to NCCUSL, the purpose of the Act is to remove barriers to electronic commerce by validating and effectuating electronic records and signatures. It is not a general contracting statute or a digital signature statute. To the extent that a state has a Digital Signature Law, the UETA is designed to support and compliment that statute.

According to the National Conference of State Legislators (NCSL), 18 states have enacted the Uniform Electronic Transactions Act and 10 states have legislation pending.

In Florida, the laws governing digital or electronic signatures are found in chapter 282, Part III, Florida Statutes, Electronic Signatures. Pursuant to section 282.71, Florida Statutes, it is the legislative intent of the act to:

- (1) Facilitate economic development and efficient delivery of government services by means of reliable electronic messages.
- (2) Enhance public confidence in the use of electronic signatures.
- (3) Minimize the incidence of forged electronic signatures and fraud in electronic commerce.

(4) Foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to writings in any electronic medium.

(5) Assure that proper management oversight and accountability are maintained for agency-conducted electronic commerce. Section 282.73, Florida Statutes, provides that:

Unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature.

Section 282.75, Florida Statutes, provides that the agency head is to be responsible for adopting and implementing control procedures that ensure the adequate security, confidentiality, and audit ability of business transactions that are conducted using electronic commerce.

Chapter 117, Florida Statutes, outlines the provisions for notaries public. Section 117.01, Florida Statutes provides in part that:

(1) The Governor may appoint as many notaries public as he or she deems necessary, each of whom shall be at least 18 years of age and a legal resident of the state. A permanent resident alien may apply and be appointed and shall file with his or her application a recorded Declaration of Domicile. The residence required for appointment must be maintained throughout the term of appointment. Notaries public shall be appointed for 4 years and shall use and exercise the office of notary public within the boundaries of this state. An applicant must be able to read, write, and understand the English language.

(2) The application for appointment shall be signed and sworn to by the applicant and shall be accompanied by a fee of \$25, together with the \$10 commission fee required by s. 113.01, and a surcharge of \$4, which \$4 is appropriated to the Executive Office of the Governor to be used to educate and assist notaries public. The Executive Office of the Governor may contract with private vendors to provide the services set forth in this section. . .

Article V, Section 16, Florida Constitution, provides for the establishment of the clerk of the circuit court in each county of the state. The duties of the clerk are to be established by special or general law.

Section 28.222, Florida Statutes, provides that "the clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk."

Information Technology Administration

Chapter 282, Florida Statutes, provides that each state agency head is responsible and accountable for the planning, acquisition, development, use and management of information technology resources within the agency. The coordination of these efforts currently is assigned to the Department of Management Services (DMS).

The State Technology Office is established pursuant to section 282.3093, Florida Statutes, within DMS. The office is charged with providing support to various workgroups, such as the State Technology Council and the Chief Information Officers Council, and with facilitating educational and training efforts with respect to the state's use and management of information technology resources. With respect to the issue of providing information and services to businesses and individuals electronically, the State Technology Office advises that state government currently has a system that includes nearly 150 individual websites.

The State Technology Council is created by section 282.3091, Florida Statutes, and is placed administratively in DMS. The council has the duty to recommend to the Executive Office of the Governor and to the Legislature statewide policies for information resources management. The council also is directed to establish a Task Force on Privacy and Technology and report in February, 2000 to the Governor and Legislature (this subsection is repealed July 1, 2000).

The Department of Management Services is also responsible for administering the state's SUNCOM Network and the State Agency Law Enforcement Radio System. The department is authorized to spend up to 1 percent of the SUNCOM Network's annual budget in any fiscal year for conducting experiments in communications technology and for implementing enhancements in the state's communications system. Funding for this purpose is derived from SUNCOM Network service revenues.

Use of Credit Cards by State Government

The state and its political subdivisions are authorized to accept credit cards for payment of goods and services under the provisions of section 215.322, Florida Statutes. This section provides that it is the intent of the Legislature to encourage state agencies, the judicial branch, and local governments to:

make their services more convenient to the public and to reduce the administrative costs of government by acceptance of payments by credit cards, charge cards, and debit cards to the maximum extent practicable.

A state agency or the judicial branch may accept credit cards, charge cards, or debit cards for payment for goods and services upon the recommendation of the Office of Planning and Budgeting and with prior approval of the Treasurer.

The Treasurer is required to adopt rules governing the establishment and acceptance of credit cards, charge cards, or debit cards. The rules shall include but not be limited to: (1) utilization of a standard contract developed by the Treasurer or an approved substitute agreement, (2) procedures permitting an agency accepting payments by these cards to impose a convenience fee, (3) invoicing of service fees in a manner satisfactory to the Comptroller and (4) submission of information to the Treasurer regarding the acceptance of

STORAGE NAME: s1334s2z.uco

DATE: July 27, 2000

PAGE 5

these cards. The convenience fee may not exceed the total cost to the state of contracting for such card services.

The Treasurer is also authorized to contract with one or more institutions that are authorized by law to process card collections for the state. A state agency or judicial branch that accepts card payments must use at least one of the contractors or be approved by the Treasurer to use another contractor. If the agency or branch uses another contractor, it must be more advantageous to the agency or branch to use that contractor.

State universities are authorized to enter into agreements, pursuant to section 215.322, Florida Statutes, to accept credit cards, charge cards, and debit cards for "compensation for goods, services, tuition, and fees in accordance with rules established by the Board of Regents."

Procurement of Commodities and Contractual Services

Chapter 287, Florida Statutes, provides procedures for the state agencies to procure personal property and services. Currently, procurement of commodities and contractual services is usually conducted through a process using "competitive sealed bids" or "competitive sealed proposals." These are defined by section 287.012(5), Florida Statutes, as the "receipt of two or more sealed bids or proposals submitted by responsive and qualified bidders or offerors."

An "invitation to bid" is a written solicitation for competitive sealed bids pursuant to section 287.012(11), Florida Statutes, with the title, date, and hour of the public bid opening being stated in the solicitation document. The invitation to bid must also define the type of commodity, group of commodities, or services that are being sought. Subsection (15) of this section provides that a "request for proposals" is a written solicitation for competitive sealed proposals. The title, date, and hour of the public opening must be stated in the request.

Any purchase price for commodities or contractual services exceeding purchasing CATEGORY TWO (\$25,000) must be made using competitive sealed bids or competitive sealed proposals, except as provided in section 287.057(3), Florida Statutes.

The State of Pennsylvania has conducted several online auction-style procurement of commodities under a pilot program. The Pennsylvania Department of General Services contracted with a private software vendor to conduct the on-line bidding activity. The department conducted three online auction-style procurement under this program through the summer of 1999. The procurement involved the purchase of 2.4 million pounds of coiled aluminum for the manufacture of license plates, 31 lots of anthracite coal to heat state institutions and facilities, and 972,000 tons of road salt. According to a representative of the software vendor, the state is looking into the feasibility of conducting auction-style procurement of contractual services.

Information Service Technology Development Task Force

Chapter 99-354, Laws of Florida, created the Information Service Technology Development Task Force (Task Force) for the purpose of developing policies that will benefit residents of Florida by fostering the free market development and beneficial use of advanced communications networks and information technologies within this state. The Task Force, which dissolves July 1, 2001, must:

Develop overarching principles to guide state policy decisions with respect to the free market development and beneficial use of advanced communications networks and information technologies, identify factors that will affect whether these technologies will flourish in Florida, and develop policy recommendations for each factor.

By February 14 of the calendar years 2000 and 2001, submit a report to the Governor, the President of the Senate and the Speaker of the House of Representatives outlining principles, policy recommendations, and any suggested legislation.

Creation of an IT marketing and Image Campaign for Florida

The eBusiness Development, Retention, and Recruitment Subcommittee, in the Task Force's *2000 Legislative Report*, at p. 11, recommends that Enterprise Florida, Inc., be given the task of creating and implementing a marketing and image campaign to build a positive recognition of Florida as a leader in information technology (IT). The subcommittee further recommends that this campaign be funded with public funds that are leveraged with private sector funds.

Job seeker Websites

The Task Force has developed a website (www.itflorida.com) to promote its work, as well as to promote the IT industry in Florida. This website provides profiles on Florida IT companies, IT venture capitalists, public Internet sites, and IT events. The itflorida.com website also provides a link (www.floridahightechjobs.com) to a website that provides information on high-tech jobs in Florida. This website is an initiative by the Task Force, and is maintained and supported by the Florida Department of Labor and Employment Security. The website allows job seekers to locate Florida's high-tech jobs, post an online resume, and find Florida high-tech employers by searching an online directory, and allows employers to list available jobs and receive potential job seekers online, search online resumes, and list their companies in a high-tech directory.

Other websites, maintained by the private sector, exist which provide information about employment opportunities in the information technology industry. Some of these include: Monster Jobs (www.monster.com); Hot Jobs (www.hotjobs.com); and Jobs4IT (www.jobs4it.com).

Network Access Point

A Network Access Point (NAP) is a switching facility that acts as an exchange point for Internet traffic served by different Internet Service Providers (ISPs). At a Network Access Point, ISPs connect their networks for the purpose of exchanging traffic with other ISPs.

The *2000 Legislative Report* of the Task Force, at p. 99, states that NAPs are "seen as the technological catalyst for sustained economic growth throughout the state, nationally, and in the continued effort to brand Florida as the gateway to Latin America," and have the capability to "attract huge investments in the latest and fastest technology from telecommunications carriers." Accordingly, the report recommends that the Task Force's eInfrastructure Subcommittee, in coordination with Enterprise Florida, Inc., investigate

opportunities for placement of a NAP in Florida, as well as incentives and advantages for other companies to private peer in Florida.

Discussions on the development of a NAP in Florida are currently under way. Interested parties, including telecommunications providers, ISPs, and Internet solutions companies, have participated in meetings to determine benefits, feasibility, and costs of a NAP, as well as to determine appropriate roles for all interested parties.

Private Sector Incentives/Advantages -- Sales and Use Tax

As part of its implementation strategy for realizing an in-state Global Network Access Point, the Task Force's eInfrastructure Subcommittee, in coordination with Enterprise Florida, itflorida.com, and support of the private sector, will investigate not only opportunities for the placement of a NAP in Florida, but also incentives/advantages for companies to private peer in Florida.

The Task Force has also identified, in its *2000 Legislative Report*, at pp. 16-18, existing incentives for information technology businesses to locate or remain in Florida, and recommends potential improvements to these incentives. These include:

1. The Qualified Target Industry Tax Refund Program -- this program allows a refund to certain qualified high-value-added service and manufacturing industries based on the number of jobs they provide, with bonuses given for higher wage jobs. However, a lifetime cap on the amount of available refunds limits the potential effectiveness of this incentive for industries like information technology which expand rapidly, adding significant employment; and
2. The Silicon Technology Tax Exemption -- this program exempts certified silicon technology businesses from the sales and use tax on production and research and development machinery and equipment. Currently, only silicon wafer manufacturers are eligible for certification. However, silicon is no longer the only medium used to produce semiconductor chips.

The Task Force recommended amendments to each of these programs to foster the growth of Florida's IT industry. However, neither of these tax incentive programs directly fosters incentives toward the use or development of NAP-based private peering in Florida.

The State currently levies a 6 percent sales tax on most sales of tangible personal property in Florida and on some services pursuant to chapter 212, Florida Statutes. The law provides for more than 200 exemptions. Generally, these exemptions apply either to the sale of specific items (i.e., certain groceries, certain medical items, certain farm equipment), the sale of items that are used for a particular purpose (i.e., items used in agriculture, equipment used to produce steam energy, equipment used for silicon technology production or research and development), or to the purchase or sale of items by a particular organization. Such organizations include government, churches, and charitable organizations. No specific exemption exists which might provide an incentive toward the use and development of a NAP.

Underground Facilities

Many utility services, such as water, sewer, communication, electric, or pipeline utility services are delivered by way of underground facilities like pipelines, pipes, sewers, conduits, cables, valves, or lines. In order to prevent personal injury, disruption of service, or destruction of property, the Legislature enacted the Underground Facility Damage Prevention and Safety Act (Act), chapter 556, Florida Statutes, creating a corporation consisting of every underground facilities operator in the state.

Pursuant to the Act, any person planning an excavation or demolition must, between two and five business days before such excavation or demolition, call a toll-free notification system and notify the member operators of the planned excavation or demolition. The system then notifies the affected member operators. If a member operator determines that the project is near its underground facility, that operator must mark the horizontal route of the facility to within 24 inches of its outer edge.

After making notification, an excavator may not begin excavation until all facilities have been marked, the excavator has been notified that the area is free of underground facilities, or has not received a response after 48 hours. In the case of demolition, no demolition may commence until facilities are marked or notice is given that none are present.

Section 556.107, Florida Statutes, provides for noncriminal infractions for violating certain provisions of the chapter. Section 556.108, Florida Statutes, provides certain exemptions to the requirement of an excavator to notify the state-wide system.

Public Service Nominating Council

Prior to 1978, members of the Florida Public Service Commission were elected. That year, the Legislature enacted chapter 78-426, Laws of Florida which created an appointment process under which a nominating council recommends appointees to the Governor, who makes the appointment, which is subject to confirmation by the Senate. The law established four-year terms for commissioners and phased-in the new appointment process by providing that the commissioners serving on July 1, 1978, were to remain in office until the completion of their current terms, at which time successors were to be appointed under the new process, with some appointees to serve an initial term of only three years.

Section 350.001, Florida Statutes, provides that the Florida Public Service Commission has been and shall continue to be an arm of the legislative branch of government, but further states that it is the desire of the Legislature that the Governor participate in the appointment process of commissioners to the Public Service Commission. The section delegates to the Governor limited authority with respect to the Public Service Commission by authorizing the Governor to select members only from a list provided by the Florida Public Service Commission Nominating Council in the manner prescribed by section 350.031, Florida Statutes.

The terms of the Public Service Commissioners are established pursuant to section 350.01, Florida Statutes.

Section 350.031, Florida Statutes, creates the Florida Public Service Commission Nominating Council. The council has nine members, at least one of whom must be 60 years of age or older. Three members, including one member of the House of Representatives, are appointed by the Speaker of the House; three members, including one member of the

Senate, are appointed by the President of the Senate; and three members are selected and appointed by a majority vote of the other six members of the council. All terms are for 4 years, except those members of the House and Senate, who serve 2-year terms concurrent with the 2-year elected terms of House members. Vacancies on the council are filled for the unexpired portion of the term in the same manner as original appointments to the council.

Council members may not hold stocks or bonds of any company regulated by the commission other than through ownership of shares in a mutual fund; may not be an agent or employee of, or have any interest in, any company regulated by the commission; and may not be an agent or employee of, or have any interest in, any firm which represents in any capacity either companies that are regulated by the commission or affiliates of such companies. A member of the council may be removed by the Speaker of the House of Representatives and the President of the Senate upon a finding by the Speaker and the President that the council member has violated these restrictions or for other good cause. In such a case, the President of the Senate or the Speaker of the House of Representatives, as appropriate, may appoint a legislative replacement.

A majority of the membership of the council may conduct any business before the council. All meetings and proceedings of the council are staffed by the Office of Legislative Services and are subject to the open records and open meetings laws. Members of the council are entitled to receive per diem and travel expenses, which are funded by the Florida Public Service Regulatory Trust Fund. Applicants invited for interviews before the council may, in the discretion of the council, receive per diem and travel expenses, also funded by the Florida Public Service Regulatory Trust Fund.

The council establishes the policies and procedures to govern the process by which applicants are nominated. Before the council may nominate a person, it must determine that the person is competent and knowledgeable in one or more fields including, but not be limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or another field substantially related to the duties and functions of the commission. The commission must represent fairly these enumerated fields. Nominations must be nonpartisan.

The council must nominate to the Governor not fewer than three persons for each vacancy occurring on the Public Service Commission. If a vacancy exists due to expiration of a term (which begin and end in January), the council must submit its nominations to the Governor by October 1 of the year preceding that expiration. If a vacancy occurs for any reason other than the expiration of the term, the council must submit the nominations to the Governor within 60 days after the vacancy occurs.

The Governor must fill a vacancy occurring on the Public Service Commission by appointment of one of the applicants nominated by the council. An appointment can be made only after a background investigation of the applicant has been conducted by the Florida Department of Law Enforcement. If the Governor has not made an appointment by December 1 to fill a vacancy for a term to begin the following January, then the council, by majority vote, is to appoint one person from the applicants previously nominated to the Governor by December 31. If the Governor has not made the appointment to fill a vacancy occurring for any reason other than the expiration of the term by the 60th day following receipt of the nominations of the council, the council by majority vote shall appoint within 30 days thereafter, one person from the applicants previously nominated to the Governor.

Each appointment to the Public Service Commission is subject to confirmation by the Senate. If the Senate refuses to confirm or rejects the Governor's appointment, the council is to initiate the nominating process within 30 days.

C. EFFECT OF PROPOSED CHANGES:

Short Title

The bill codifies the substantive provisions of the UETA and provides that section 1 may be cited as the "Uniform Electronic Transactions Act." The bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements.

Definitions

The following terms are defined by the bill: "agreement," "automated transaction," "computer program," "contract," "electronic," "electronic agent," "electronic record," "electronic signature," "governmental agency," "information," "information processing system," "person," "record," "security procedure," "state," and "transaction."

Scope

The provisions of the bill apply to electronic records and electronic signatures relating to a transaction, but will not apply to a transaction to the extent that it is governed by:

- Provisions of law governing the creation and execution of wills, codicils, or testamentary trusts;
- The Uniform Commercial Code other than s. 671.107, F.S. (section 1-107) and s.671.206, F.S.(section 1-206), ch. 672, F.S. (Article 2) and ch. 680, F.S. (Article 2A);
- The Uniform Computer Information Transactions Act; or
- Rules relating to judicial procedure.

The bill applies to an electronic record or signature that might otherwise be excluded under this section to the extent that it is governed by a provision of law other than those specified above. The bill provides that a transaction subject to its provisions will also be subject to other applicable provisions of substantive law.

Prospective Application

The bill applies to electronic records or signatures created, generated, sent, communicated, received, or stored on or after July 1, 2000.

Use of Electronic Records and Electronic Signatures

The bill only applies to transactions between parties that have agreed to conduct transactions by electronic means, as determined by the context of the circumstances surrounding the agreement and by the parties' conduct. The bill does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form. A party has the right to agree

to conduct certain transactions by electronic means and to refuse to conduct other transactions by electronic means, and the provisions of the bill, unless expressly mandatory, may be modified by agreement of the parties. The legal consequences of an electronic record or electronic signature will be governed by the provisions of the bill and of substantive law.

Construction and Application

The bill is to facilitate electronic transactions consistent with other applicable provisions of law, to be consistent with reasonable practice concerning electronic transactions and with the continued expansion of the practices, and to effectuate its purpose to make uniform the law created by the bill among states enacting similar legislation.

Legal Recognition of Electronic Records, Signatures, and Contracts

The bill prohibits a record or signature from being denied legal enforceability solely on the basis that the record or signature is in electronic form, and provides that a contract may not be denied legal enforceability solely because an electronic record was used in its formation. If a provision in law requires a record to be in writing or a signature, an electronic record or electronic signature will satisfy the requirement.

Provision of Information in Writing/Presentation of Records

In a transaction by electronic means, and a person is required by law to provide, send, or deliver information in writing to another person, that requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient, if the sender or the sender's information processing system inhibits the ability of the recipient to print or store the electronic record.

In addition, if a provision in law requires the posting, display, communication, or formatting of information in a certain manner, the information must be posted, communicated, or formatted according to the law.

An electronic record will not be enforceable against a recipient who cannot store or print an electronic record if the sender inhibits the recipient's ability to do so.

A provision in law allowing the parties to vary by agreement the manner of providing information be permitted under the bill to the same extent.

Attribution and Effect of Electronic Records and Electronic Signature

The bill provides that an electronic record or electronic signature is attributable to a person if the record or signature was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

The effect of an electronic record or signature attributed to a person under this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Effect of Change or Error

The bill provides rules when a change or error in an electronic record occurs in a transmission between parties to a transaction. If the parties have agreed to use a security procedure that detects changes or errors and one party has conformed to the procedure and one party has not, then the conforming party may avoid the effect of the change or error if the nonconforming party would have detected the change or error by following the procedure.

In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with an electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, he or she promptly notifies the other person of the error and that he or she did not intend to be bound by the record received by the other person; the individual takes reasonable steps to return to the other person or, if instructed to do so, to destroy any consideration received as a result of the error; and the individual has not used or received any benefit or value from any consideration received from the other person. If none of these provisions apply, the change or error will have the effect provided by any other applicable provision in law, including the law of mistake, and the parties' contract, if any. These provisions may not be varied by agreement of the parties.

Notarization and Acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized by applicable law to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. Neither a rubber stamp or an impression-type seal is required for an electronic notarization.

The bill requires a first-time applicant for a notary commission to submit proof that he or she has completed at least 3 hours of interactive or classroom instruction covering the duties of the notary public including electronic notarization. It also requires that courses satisfying this provision may be offered by any public or private person or entity registered with the Executive Office of the Governor and must include a core curriculum approved by that office.

Retention of Electronic Records

The bill provides that an appropriate electronic record of any document will satisfy any law requiring the record to be retained, if it accurately reflects the information set forth in the record after the record was first generated in final form as an electronic record or otherwise and if it remains accessible for later reference. If a provision of law requires a record to be presented or retained in its original form, that requirement is satisfied by an electronic record retained in accordance with the above provisions. If a provision of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with the above provisions. In addition, the bill provides that a record retained as an electronic record satisfies a provision of law requiring a person to retain a record for evidentiary, audit, or similar purposes, unless a provision of law enacted after July 1, 2000 specifically prohibits the use of an electronic record for a specified purpose. A governmental agency of the state may specify additional requirements for the retention of a record subject to the agency's jurisdiction.

Admissibility in Evidence

The bill provides that the evidence of a record or signature may not be excluded solely because the record or signature is in electronic form.

Automated Transactions

The bill allows for the creation of a contract by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements. In addition, a contract may be formed between an individual and an electronic agent, including a contract created where the individual performs actions that he or she is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance. Terms of any contract created under this provision shall be determined by the substantive law applicable to the contract.

Time and Place of Sending and Receiving

The bill provides that, unless otherwise agreed between the sender and the recipient, an electronic record is sent when the record:

- ▶ Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and form which the recipient is able to retrieve the electronic record;
- ▶ Is in the form capable of being processed by that system; and
- ▶ Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the recipient's control.

Unless otherwise agreed by the sender and the recipient, an electronic record is received when the record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record, in a form capable of being processed by that system. This provision applies even if the information processing system is at a different location from the place where it is deemed to be received.

In addition, unless expressly provided in the electronic record or agreed between the sender and recipient, an electronic records is deemed to be sent from the sender's place of business to the recipient's place of business. The following rules apply:

- ▶ If the sender or recipient has more than one place of business, the place of business is the location having the closest relationship to the underlying transaction.
- ▶ If the sender or recipient does not have a place of business, the place of business is the person's residence.

An electronic record is received whether or not anyone is aware of its receipt. Receipt of an electronic acknowledgment establishes that the record has been received, but does not establish that the content sent corresponds with the content received.

The bill also provides that if a person is aware that an electronic record that was purportedly sent or received, was not actually sent or received, then the legal effect is determined by other provisions of law. Unless allowed by other provisions of law, these requirements may not be varied by agreement of the parties.

An automated transaction does not establish acceptability of an electronic record for recording purposes under this bill.

Transferable Records

The bill defines a “transferable record” as a record that would be a note under chapter 673, Florida Statutes, (Article 3 of the UCC) or a document under chapter 677, Florida Statutes, (Article 7 of the UCC) if the record was in writing, and the issuer of the electronic record expressly agrees that the record is transferable.

The bill provides that a person has control of a transferable record, if the system for transferring the record reliably identifies the person to whom the record was issued or transferred. A system is reliable and a person is in control of the transferable record if:

- ▶ A single authoritative copy of the record exists which is unique, identifiable and unalterable, except as provided below.
- ▶ The authoritative copy identifies the person to whom the record was issued or the person to whom the record was most recently transferred.
- ▶ The authoritative copy is communicated and maintained by the person asserting control or a designee.
- ▶ Copies or revisions that add or change the assignee may only be made with the consent of the person asserting control.
- ▶ Each copy of the authoritative copy and any other copies are readily identified as copies and not the authoritative copy.
- ▶ Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

The bill also provides that, unless otherwise agreed, the person having control of a transferable record is the holder as defined by section 671.201(20), Florida Statutes, and has the same legal rights as a holder of an equivalent record under the provisions of the UCC. This includes the rights of a holder in due course, a holder of a negotiable document, or a purchaser, if the applicable requirements of ss. 673.3021, 677.501, or 679.308, Florida Statutes have been satisfied. In addition, an obligor of a transferable record has the same rights as an equivalent obligor under the UCC.

A person seeking to enforce a transferable record must, upon request, provide reasonable proof that the person is in control of the record. Proof may include access to the authoritative copy of the record, related business records to show the terms of the record and to establish the identity of the person having control of the record.

Creation and Retention of Electronic Records by the State

The bill allows each governmental agency to determine whether, and to what extent it will create and retain electronic records and convert written records to electronic records.

Acceptance and Distribution of Electronic Records by Governmental Agencies

The bill allows each governmental agency to determine whether and the extent to which it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely on electronic records and signatures. The bill allows the State Technology Office, in consultation with those agencies that use electronic records or signatures, to:

- ▶ Specify the manner and format in which the records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes.
- ▶ Determine, if the electronic records must be signed by electronic means, the type of electronic signatures required, the manner and format in which the signature must be affixed to the record, and the identity of or criteria that must be met by any third party used by a person filing a document to facilitate the process.
- ▶ Specify the control processes to ensure integrity and security of the records.
- ▶ Specify any other attributes required for electronic records which are specified for the corresponding nonelectronic records and that may be reasonably necessary under the circumstances.

The bill makes clear that it does not require a governmental agency to use or permit the use of electronic records or electronic signatures, and further provides that the fees that may be imposed for the filing of nonelectronic records shall apply in kind to the filing of electronic records.

Interoperability

The bill provides that the State Technology Office may encourage and promote consistency and interoperability with any similar requirements adopted by other government agencies of this state, other states, and the federal government as well as those private entities that interact with government. The office may adopt differing standards for particular applications.

Severability

The bill provides a standard severability clause for provisions establishing the Uniform Electronic Transactions Act.

County Records

The bill requires the Clerk of the Court as the county recorder for each county of the state to provide by January 1, 2002, a current index of documents recorded in the official records of the county on a publicly available Internet website. The index shall include documents for the period beginning no later than January 1, 1990. The bill also requires that the website contain a document requisition point for obtaining images or copies of the

documents reflected in the index. The index must have the capability of electronically providing the index data to a central statewide search site.

The bill requires the county recorder to use appropriate security measures to ensure that no person has the ability to alter or to modify any public record. Unless otherwise provided by the law, information retrieved electronically pursuant to this section is not admissible as an authenticated document.

The bill also requires each county recorder to provide for the electronic retrieval, at a minimum, of images of the documents referenced in the index by January 1, 2006.

State Technology Office

The bill amends section 282.005, Florida Statutes, to add additional findings and intent regarding the state's use and management of information technology. It requires the head of each state agency to consult with the State Technology Office in the Department of Management Services (DMS) in the management of information technology resources and assigns that office with the responsibility for managing the information technology resources for the Executive Branch. The bill does not affect the supervision or control of the personnel or data-processing equipment that the Comptroller or the Attorney General deem necessary in the exercise of their constitutional duties.

Section 282.101, Florida Statutes, is amended to define "information technology."

The bill amends section 282.102, Florida Statutes, to expand the duties of the State Technology Office and maintains that office in DMS. It creates the Senior Management Service position of Chief Information Officer to head the State Technology Office and makes the position a gubernatorial appointment.

The bill increases the amount of money available to the State Technology Office for conducting experiments relating to the state's information technology services and for implementing enhancements to the system. The State Technology Office will be able to spend up to 2 percent of SUNCOM's annual budget for these purposes and will have access to other monies through the General Appropriations Act for fiscal year 2000-2001.

Section 282.102, Florida Statutes, is further amended to require an integrated electronic system for deploying governmental products, services and information to individuals and businesses. In conjunction with the effort to create a "single portal" strategy for Florida, the State Technology Office is directed to study the feasibility of implementing online voting in Florida and to report to the Legislature and Governor its findings and recommendations.

Other sections in chapter 282, Florida Statutes, are amended to conform the responsibilities of the State Technology Office. Section 282.3063, Florida Statutes, is amended to change the "Agency Annual Information Resources Management Report" to the "Agency Annual Enterprise Resource Planning and Management Report."

The bill repeals the State Technology Council and re-establishes the Privacy and Technology Task Force in section 282.3095, Florida Statutes. The task force is extended until July 1, 2001 and is to report and make policy recommendations to the Legislature and Governor by February 1, 2001.

Credit Cards, Charge Cards, and Debit Cards

The bill amends section 215.322, Florida Statutes, to provide additional legislative intent to encourage the use of credit cards, charge cards, and debit cards for payment to state agencies, the judicial branch, and local governments to make government more convenient to the public. It also specifically states that the Legislature encourages the use of these cards "when the benefits to the participating agency and the public substantiate the cost of accepting these types of payments."

The bill also eliminates the requirement that the Office of Planning and Budgeting must recommend the use of these cards. The State Technology Office is required to review and recommend any request to use the cards when the Internet or other related electronic methods are used as a collection medium.

Other "appropriate intermediaries" are allowed to contract with the agencies or judicial branch. The total amount of any convenience fees are not allowed to exceed the cost to the state agency. Currently, these fees may not exceed the total cost to the state of contracting for the card services. According to the Treasurer's Office, the contract rate for the use of these cards is an average of 2.15%.

The Treasurer is also required to develop a methodology, by rule, for agencies to use when evaluating the cost-benefits for the state for using the cards. The methodology must include all quantifiable cost reductions, as well as "other benefits to the agency" and the potential impact on the general revenue. It must also consider such benefits as the convenience to the individuals and businesses that pay for state goods and services through the use of these cards.

Electronic Procurement

Section 287.012, Florida Statutes, is amended to allow agencies to receive bids and proposals by electronic means in lieu of, or in addition to traditional written bids or proposals, and defining a "written solicitation" to include a solicitation published or transmitted by electronic means.

The bill amends section 287.042(16)(a), Florida Statutes, to require the Department of Management Services to consult with the State Technology Office on joint agreements involving purchases of information technology resources. Currently, the department is authorized to, but not required to consult with the State Technology Office involving such purchases.

On-Line Procurement

The bill also creates a new subsection (22) in section 282.057, Florida Statutes, to require the State Technology Office to develop a program for on-line procurement of commodities and contractual services. It provides that only pre-qualified bidders may participate in on-line procurement. The bill allows the State Technology Office to contract for equipment and services necessary to implement on-line procurement.

The State Technology Office is authorized to adopt rules to implement the program for on-line procurement.

Marketing and Image Campaign

The bill directs Enterprise Florida, Inc., to work collaboratively with the private sector in an effort to create a marketing campaign designed to help attract, retain, and grow information

technology (IT) businesses in Florida. Any such campaign must coordinate with existing economic development promotion efforts, and must be jointly funded from public and private resources.

This marketing campaign must be designed with the purpose of increasing national and international awareness of Florida as a state well-suited for a growing IT industry. In addition, the bill enumerates several strategies and efforts that must be included in the campaign. These must include:

- development of promotional materials;
- Internet and print advertising;
- public relations and media placement;
- trade show attendance at IT industry events;
- follow-up activities;
- identification and coordination of existing business technology resources;
- partnerships with economic development organizations and private sector businesses;
- continued retention and growth of Florida-based producers of high-tech products or manufacturers using high-tech skills; and
- recruitment of new business in high-tech areas.

Marketing and Workforce Website

The bill requires the Florida Department of Labor and Employment Security (DLES) to facilitate the development of a marketing and promotional website for the state's IT industry that is designed to inform the public about the scope of the state's IT industry and to address the industry's workforce needs. The website must make available: information concerning the state's IT businesses, including links to the businesses; information concerning employment available at these businesses; and means by which job seekers may post a resume on the website.

In addition, the bill requires DLES to coordinate with the State Technology Office and the Workforce Development Board of Enterprise Florida, Inc., to link the website to state agency job-information websites, and to ensure that state IT positions are posted on the website.

Network Access Point

The bill creates section 282.102(29), Florida Statutes, to require the State Technology Office, to facilitate the development of a Network Access Point (NAP) in Florida as needed.

In addition, the bill recognizes the importance of a NAP to address the needs of small IT businesses, and expresses the state's support of efforts to enhance the IT industry in Florida, particularly broadband technology. Furthermore, the bill encourages private IT industry partnerships to develop a NAP in Florida.

Network Access Point Equipment Sales Tax Exemption

The bill amends section 212.08(5)(n), Florida Statutes to allow a sales tax refund to communications service providers¹ who, beginning July 1, 2000, purchase equipment² to deploy broadband technology³ in Florida as part of direct participation in the Network Access Point contemplated by the bill, or a carrier-neutral, public-private Internet traffic exchange point. A communications service provider may only receive a refund of taxes imposed by chapter 212, Florida Statutes, if the provider submits an application under oath within 6 months after purchase. The application must contain the name and address of the purchaser claiming the refund, a specific description of the property including its serial number or other permanent identification number, the location of the property, and the sales invoice or other proof of purchase of the property.

However, the bill does not expressly require certification or other documentation that the purchased equipment is to be used in the deployment of broadband technology for the purpose of private-peering. Additionally, the bill is silent as to whether the equipment for which the refund is sought is to be used *exclusively* in the manner prescribed. The Department of Revenue (DOR) points out that much of the equipment referenced in the bill could be used in an internal network as well as for providing Internet services.

Section 212.095, Florida Statutes, normally governs refunds made under the exemptions provided for in chapter 212, Florida Statutes. However, under the bill, a refund made pursuant to the broadband technology equipment exemption would not be subject to the operation of section 212.095, Florida Statutes. Instead, the bill delegates authority to DOR to adopt rules governing the manner and form of refund applications, and permits DOR establish guidelines concerning the requirement that a communications service provider must affirmatively show that it is qualified for the exemption. However, since the exemption takes effect July 1, 2000, DOR may not have sufficient time to promulgate rules under the general rulemaking authority granted in chapter 120, Florida Statutes

Underground Facilities

Section 556.108, Florida Statutes, is amended by the bill to provide an exemption to the "one call" notification requirements of section 556.108, Florida Statutes, if a member operator or agent is excavating, up to a depth of 10 inches, on behalf of a single-family property owner on his land, using due care, and with no encroachment of the right of way.

¹The bill defines "communications service provider" as a company that supports or provides individuals and other companies with access to the Internet and other related services.

²The bill defines "equipment" as Asynchronous Transfer Mode switches, Digital Subscriber Line Access Multiplexers, routers, servers, multiplexers, fiber optic connector equipment, database equipment, and other network equipment used to provide broadband technology and information services.

³The bill defines "broadband technology" as packetized technology that has the capability of supporting transmission speeds of at least 1.544 megabits per second in both directions.

Public Service Nominating Council

The bill provides that the members of the Florida Public Service Commission Nominating Council appointed by the President of the Senate or Speaker of the House shall serve at their pleasure. Members of the council may not be reappointed, except for legislative members serving a 2-year term or a person appointed to fill the remaining portion of an unexpired term.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Please see Fiscal Comments section.

2. Expenditures:

Please see Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Please see Fiscal Comments section.

2. Expenditures:

Please see Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Communication service providers would be able to benefit from the equipment sales tax exemption/refund provisions of this bill.

D. FISCAL COMMENTS:

The Estimating Impact Conference estimated a fiscal impact of the tax exemption/refund provisions of the bill to be \$2.6 million for Fiscal Year 2000-2001. The impact on state revenues is \$2.3 million and the impact on local government revenues is \$300,000. However, the bill provides that any refund is based on annual appropriations and that no refund will be made after the funds have been exhausted. The bill appropriates \$700,000 to the Department of Revenue for the exemption/refund program.

It is unclear whether there is an additional cost implication in the provision requiring that a first-time applicant for a notary commission complete a core curriculum through a public or private sector person or entity registered with the Executive Office of the Governor.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditures 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 percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

According to the Florida Association of Court Clerks and Comptrollers, only one county in Florida does not keep these lists in an electronic format.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Wendy G. Holt

Patrick L. "Booter" Imhof

STORAGE NAME: s1334s2z.uco

DATE: July 27, 2000

PAGE 22

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMITTEE ON UTILITIES & COMMUNICATIONS:

Prepared by:

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Patrick L. "Booter" Imhof

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