SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1258

SPONSOR: Appropriations Subcommittee on General Government and Governmental Oversight & Productivity Committee and Senator Bennett

SUBJECT: Department of Management Services/Governmental Reorganization

DATE: April 24, 2003 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/CS
2.	McVaney	Hayes	AGG	Fav/CS
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

The committee substitute transfers the Division of Retirement in the Department of Management Services to the State Board of Administration by a type one transfer. The bill makes numerous reference changes to reflect the transfer of authority from the Department of Management Services to the Division of Retirement in the State Board of Administration.

This bill amends the following sections of the Florida Statutes: 20.22, 20.28, 110.205, 112.05, 112.3173, 112.363, 112.63, 112.64, 112.658, 112.661, 112.665, 121.021, 121.025, 121.031, 121.051, 121.0511, 121.0515, 121.052, 121.055, 121.085, 121.091, 121.095, 121.111, 121.133, 121.135, 121.136, 121.1905, 121.192, 121.22, 121.23, 121.24, 121.30, 121.35, 121.40, 121.45, 121.4501, 121.4503, 121.591, 121.5911, 121.72, 121.73, 121.74, 175.032, 175.1215, 185.105, 185.23, 215.28, 215.44, 215.50, 215.52, 238.01, 238.05, 238.06, 650.02, and 650.06.

The bill has an effective date of July 1, 2003.

II. Present Situation:

A. Organizational Structure of the Executive Branch

Chapter 20, F.S., provides for the organizational structure of the executive branch of government. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government.[1] Section 20.02, F.S., states:

> . . . The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute.[2] A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties which the department is authorized to execute are delegated by the Legislature:

> An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.[3]

Section 20.04, F.S., provides the structure of the executive branch of state government. The department is the principal administrative unit of the executive branch.[4] The principal unit of the department is the division, which may be further subdivided into bureaus.[5] A bureau may be further divided into "sections" and "subsections." Section 20.04, F.S., specifically authorizes departments to combine these various office subdivisions for field operations.

Subsection 20.04(7)(a), F.S., explicitly forbids department heads from reallocating duties and functions specifically assigned by law to a specific unit of a department, unless otherwise authorized by law. Functions or agencies assigned generally to a department without specific designation to a unit of a department may be allocated and reallocated to a unit at the discretion of the agency head.

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[1] Article II, s. 3 of the State Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."
[2] *Seaside Properties, Inc., v. State Road Department*, 190 So.2d 391 (3rd DCA 1966).
[3] Lee v. Division of Florida Land Sales and Condominiums, 474 So.2d 282 (5th DCA 1985).
[4] Section 20.04(1), F.S.
[5] Section 20.04(3), F.S.

B. Reorganization and Methods of Transfer

Section 20.02(3), F.S., contemplates the regular review of agency organizational structures to maintain agency efficiency:

> Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Management and coordination of state services is to be improved and overlapping activities eliminated.[6] Further, s. 20.02(4), F.S., requires departments to be organized along functional or program lines.

Section 20.06, F.S., establishes two "shorthand" methods of facilitating the reorganization of the executive branch. These methods of transferring departments, units of departments and programs are specifically stated not to affect the validity of any judicial or administrative proceeding pending on the day of the transfer. Furthermore, the agency which receives the powers, duties, and functions relating to the pending proceeding must be substituted as the party in interest.

1. Type One Transfer

Section 20.06(1), F.S., defines a type one transfer as the *transferring intact* of an *existing agency or department* so that the agency or department *becomes a unit* of another agency or 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.

2. Type Two Transfer

Section 20.06(2), F.S., defines a type two transfer as 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.

Unless otherwise provided by law, in a type two transfer, the head of the agency or department to which an existing agency, department, activity, or function 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 to the extent authorized by ch. 20, F.S.

3. Similarities Between Type One and Type Two

[6] Section 20.02(6), F.S.

In both a type one and type two transfer, any agency or department, program, activity or function transferred 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. The transfer of segregated funds must be made in such manner that the relation between program and revenue source as provided by law is retained.

Additionally, in both a type one and type two transfer, 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.

C. The Division of Retirement, Department of Management Services

Section 20.22, F.S., creates the Department of Management Services (DMS). The head of the DMS is the Secretary of Management Services. The secretary is appointed by the Governor, subject to Senate confirmation, and serves at the pleasure of the Governor.

The following divisions and programs are established within the DMS:

(a) Facilities Program;
(b) State Technology Office;
(c) Workforce Program;
(d) 1. Support Program;
   2. Federal Property Assistance Program;
(e) Administration Program;
(f) Division of Administrative Hearings;
(g) Division of Retirement;
(h) Division of State Group Insurance.

Pursuant to ss. 121.021(5) and 121.025, F.S., the secretary of DMS is the administrator of the retirement and pension systems and has authority to sign contracts necessary to carry out the duties and responsibilities assigned the department.

The Division of Retirement (division) is also created in s. 121.1905, F.S. The mission of the division is to provide quality and cost-effective retirement services as measured by member satisfaction and by comparison with administrative costs of comparable retirement systems. The division is responsible for administering the Florida Retirement System (FRS). The FRS is a multi-employer, non-participatory defined benefit pension plan providing a monthly annuity pension benefit for employees of 800 state, county, municipal, school board, and special district employers. The division is currently responsible for the State University System Optional Retirement Program pursuant to s. 121.35, F.S., and the Senior Management Service Optional Annuity Program, pursuant to s. 121.055(6), F.S.

Annually, the Legislature appropriates budget authority to the Division of Retirement to carry out its statutory responsibilities. For FY 2002-03, the Legislature authorized 202 full-time equivalent positions and $26.9 million ($9.7 million from the General Revenue Fund and $17.1 million from trust funds). The budget authority to make benefit payments to retirees is a continuing appropriation not contained in the annual General Appropriations Act.

D. The State Board of Administration

The State Board of Administration (SBA) is created in Article IV, s. 4(e) of the State Constitution. That provision states:

> The governor as chair, the chief financial officer, and the attorney general shall constitute the state board of administration, which shall succeed to all the power, control, and authority of the state board of administration established pursuant to Article IX, Section 16 of the Constitution of 1885, and which shall continue as a body at least for the life of Article XII, section 9(c).

Article XII, s. 9(c) of the State Constitution, regulates motor vehicle fuel taxes and the allocating of proceeds among the counties. Funds allocated under the section are administered by the state board of administration.

Section 215.441, F.S., provides that the appointment of the executive director of the SBA is subject to a majority vote of the Board of Trustees of the SBA and the Governor must vote on the prevailing side. The appointment is required to be reaffirmed in the same manner on an annual basis.

The Legislature also has placed responsibility for managing financial funds and instruments on the SBA. The SBA's primary responsibilities are in investment and debt management. For example, the Division of Bond Finance is located within the SBA.[7] Pursuant to Part II of ch. 121, F.S., the SBA is currently responsible for the Public Employee Optional Retirement Plan.

The Florida Retirement System's assets are managed by the SBA. The SBA also manages assets for the Local Government Surplus Funds Trust Fund, the Florida Division of Bond Finance, the Florida Hurricane Catastrophe Fund, the Lawton Chiles Endowment Fund, and other small non-qualified governmental entities.

The SBA provides administrative support to the Florida Prepaid College Program and the Division of Bond Finance, and operates the Inland Protection Financing Corporation, the Florida Water Pollution Control Financing Corporation, and the Investment Fraud Restoration Financing Corporation.

The operating budget for the SBA is approved by the trustees of the SBA, with notice provided to the Legislature. Traditionally, the General Appropriations Act has not contained any appropriations to the SBA for operations.

E. Report of the SBA/Division of Retirement Joint Team on Merger

The SBA and the Division of Retirement (Division) were asked by the Governor to evaluate the impact of a merger of the two entities.[8] The specific charge was to develop a business case on the costs and benefits of merging the Division and the SBA. A team of members from each entity

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[7] Section 288.15, F.S.
[8] Page 1, *Report of the SBA/DOR Joint Team on Merger*, March 3, 2003.

was created.[9] The team held three meetings and developed a written report that was issued March 3, 2003.

The report notes that the core missions of the two entities are fundamentally different: institutional investment at the SBA and benefit administration at the Division.[10] There are, however, a number of circumstances under which the two organizations must work together in order to perform most effectively. These include:

< Monitoring, accounting for and anticipating cash inflows and outflows of the Florida Retirement System Trust Fund (FRSTF).
< Directing actuarial analysis and working with actuarial information in order to meet FRS system objectives.
< Insuring that recordkeeping for member enrollment for the FRS Pension Plan and FRS Investment Plan is consistent, accurate and processed timely.
< Insuring that members and employers receive adequate and coordinated support under the two FRS retirement plans, both administratively and educationally.
< Insuring that the various defined contribution plans authorized under Florida law are well formulated and effectively implemented.[11]

The report notes that, due to the difference in core missions of each organization, some inconsistencies have arisen in the following areas:

< Educational materials for FRS members
< Service philosophies for FRS members
< Policy development and oversight for defined contribution programs
< Preferred drivers for the actuarial valuation model
< Levels of access to the state actuarial firm
< Measured levels of FRSTF cash flows.

The report made the following findings:

< Merger would lead to enhanced coordination and efficiency in FRS that cross areas of responsibility.
< Combining the SBA and the Division would provide a common focus on the FRS, leading to enhanced efficiencies and effectiveness.
< Combining the SBA and the Division would be partially consistent with a common business model for large retirement systems.

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[9] Members from the SBA were: James Francis (Chair), Senior Investment Policy Officer and Economist; Bill Beck, Deputy General Counsel; Chuck Bunker, Senior Operating Officer; Teresa Butler, Budget Manager; Eric Nelson, Senior Operating Officer; Ron Poppell, Director of Educational Services. Members from the Division were: Jerry Haynes, Administration/Budget; Pat Connolly, Bureau Chief Retired Payroll; Larry Hunicutt, Administrator Calculations; Mark Morton, Auditor; Sarabeth Snuggs, Bureau Chief Enrollment/Contributions.
[10] Page 6 of *Report of the SBA/DOR Joint Team on Merger*.
[11] The SBA is required to make recommendations on the investment options offered under the State University System Optional Retirement Program and the Senior Management Service Optional Annuity Program, both of which the Division has been delegated administrative responsibility to operate. The SBA and the Division are required to coordinate activities with respect to the Public Employees Optional Retirement Plan, for which the SBA is responsible.

< The investment management responsibilities of the SBA may be compromised as a result of merger.

< Combining the SBA and the Division would be inconsistent with the business model for investment boards that have diverse investment management responsibilities.

< The benefits of the merger will not accrue unless benefit administration responsibilities are managed under the same operational and financial flexibility as the SBA.

The report concludes:

> "In the team's judgment, the consequences of merger may be essentially neutral in the short term and positive in the long term. The direct financial costs that have been quantified combined with the upside risk on payroll expense are likely to be offset by savings with respect to information technology support. In the long run, however, we expect the net impact of merger to be positive based on indirect gains from post-merger re-engineering and from a singular executive focus on all aspects of the Florida Retirement System."

III. Effect of Proposed Changes:

Section 1 transfers the Division of Retirement in the Department of Management Services (DMS) to the State Board of Administration (SBA) by a type one transfer. The bill specifically states that the transfer does not alter or amend the powers, operations, or functioning of the SBA with respect to its duties, responsibilities, and authority existing prior to the enactment of the bill.

Section 2 amends s. 20.22, F.S., to remove the Division of Retirement from the organizational structure of the DMS.

Section 3 amends s. 20.28, F.S., to create the Division of Retirement in the State Board of Administration. The division is subject to direction by the executive director of the SBA ". . . who is the agency head of the division . . ." for purposes of ch. 120, F.S., the Administrative Procedure Act. The division is authorized to adopt rules necessary for the effective and efficient administration of the retirement system.

Section 4 amends s. 110.205, F.S., to exempt employees of the Division of Retirement in the SBA from Career Service. The SBA will set the salary and benefits of these employees.

Sections 5 through 57, 59 through 77, and 80 through 95 make numerous reference changes in the Florida Statutes to reflect the transfer of powers from the division in its current location at the DMS to the transferred location at the SBA.

Section 58 amends s. 215.44, F.S., to allow the SBA to purchase commodities or services related to the administration of pension benefits, exempt from the provisions of ch. 287, F.S, which establish bidding and other requirements for the procurement of personal property and services, commodities, insurance and contractual services.

The Department of Management Services will retain responsibility to administer the following retirement programs. However, the **section 78** permits the Department to contract with the SBA to administer those programs:

Section 112.05, F.S. – Retirement; cost-of-living adjustment; employment after retirement.
Section 112.1815, F.S. – Not in statute.
Sections 112.351-112.362, F.S. – Supplemental Retirement
Section 250.22, F.S. – Florida National Guard Retirement
Chapter 122, F.S. – State and County Retirement
Chapter 238, F.S. – Teacher's Retirement System

Section 79 provides that the SBA is a state agency for purpose of making retirement benefit payment and directs the Department of Financial Services to issue such payments.

The bill has an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Report of the SBA/DOR Joint Team on Merger notes that the division currently outsources its information technology support to a private sector firm. If the SBA were to provide this service instead, the report notes that it could provide it for ". . . significantly less than the current $3.5 million annual cost . . ." though that lesser cost is not identified. Nevertheless, it would result in a $3.5 million cost to the private sector firm that currently performs this activity.

C. Government Sector Impact:

According to the Report of the SBA/DOR Joint Team on Merger dated March 3, 2003, the following costs and savings may be realized by transferring the Division from the

Department of Management Services to the SBA (amounts are shown in current dollars (i.e., no adjustments for inflation or growth):[12]

Costs/Savings	FY 2003-04	FY 2004-05
Benefit increases to SBA levels	$375,000	$375,000
Combining DC responsibilities	(106,057)	(106,057)
Administrative & Executive Support	(414,905)	(414,905)
Transition costs for personnel checks	10,000	0
Total Costs/Savings to the FRS Trust Fund	($135,962)	($145,962)

Approximately 200 employees will be affected by the transfer and these positions will be moved from the operating to the non-operating budget. While this may result in the appearance of 200 fewer positions in the budget, these positions will exist in the SBA.

The bill provides that the Division's employees will be exempt from Career Service. Since current SBA employees enjoy greater benefits than the Division's employees, the costs noted above assume an increased agency cost to provide similar benefits to the Division's employees.

If a decision was made to physically move the Division of Retirement from its current location to a SBA-owned facility adjacent to the Hermitage Building, the costs to the FRS Trust Fund are estimated to be:

Costs	
Set up and Move	$1,762,200
Rental Costs	395,015
Total Costs to the FRS Trust Fund	$2,157,215

Future savings may be realized when: (a) the SBA Information Technology unit assumes full responsibility for the Division's operational support, document processing, and the Retirement Information Management (RIM) system maintenance and enhancement; (b) mailing and communication components are coordinated within the educational program; and (c) the seminars and phone support are coordinated within the educational program. The Division currently outsources its information technology support to a private sector firm. Potentially, the SBA could provide this service for less than the current $3.5 million annual cost.

[12] According to the *Report of the SBA/DOR Joint Team on Merger*, a number of qualifications and assumptions should be noted with respect to the estimates. First, they are in current dollars, meaning that future inflation, workload growth and other factors that influence the level of spending over time are not included. No estimate is included for how Division salaries might change. It is anticipated that the same competitive pay analyses that govern adjustments to SBA salary levels would apply to Division personnel. These adjustments could be significant. SBA's costs to expand its executive management and administrative services operations to include the Division fall into new positions and allocated costs for existing positions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 121.055(6)(a), F.S., which provides for the Senior Management Service Optional Annuity Program, currently provides that the DMS shall deduct an amount approved by the *Legislature* to provide for the administration of the program. The bill modifies this and provides that the SBA shall deduct an amount *approved by the SBA* pursuant to s. 215.44(4), F.S., to provide for the administration of the program. Section 215.44(4), F.S., states that the SBA ". . . shall prepare and approve an operating budget each fiscal year consistent with the provisions of chapter 216. The approved operating budget shall be submitted to the legislative appropriation committees and the Executive Office of the Governor prior to July 1 of each year." This same change from legislative approval to board approval is made in s. 121.35(4)(a), F.S.

Section 121.091(4)(j)2., F.S., is eliminated. That provision currently states:

> Should any justice or judge who is a member of the Florida Retirement System be retired for disability by order of the Supreme Court upon recommendation of the Judicial Qualifications Commission pursuant to the provisions of Art. V of the State Constitution, then all contributions to his or her account and all contributions made on his or her behalf by the employer shall be transferred to and deposited in the General Revenue Fund of the State, and there is hereby appropriated annually out of the General Revenue Fund, to be paid into the Florida Retirement System Fund, an amount necessary to pay the benefits of all justices and judges retired from the Florida Retirement System pursuant to Art. V of the State Constitution.

The bill amends s. 20.28, F.S., to create the Division of Retirement in the State Board of Administration. The division is subject to the executive director of the SBA ". . . who is the agency head of the division . . ." for purposes of ch. 120, F.S., the Administrative Procedure Act. As such, the executive director of the SBA will be authorized to approve division rules without SBA approval.

The DMS will have to engage in impact bargaining post-transfer as a result of the bill because the bill modifies the current status of DOR employees who are career service and makes them select exempt.

Use of a type one transfer instead of a type two transfer provides less flexibility to the agency that receives the transferred entity. Further, a type one transfer is, by its definition, the *transferring intact* of an *existing agency or department* so that the agency or department *becomes a unit* of another agency or department, whereas 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. As the Division of Retirement is a division within the Department of Management Services, its transfer as a division to another entity would usually be a type two transfer.

Retiree monthly checks are processed through the Bureau of State Payrolls in the Department of Financial Services. Because the SBA is an off-budget entity, its payroll is executed outside of the Bureau of State Payrolls. To provide minimal organizational disruption, including the disruption of electronic fund transfer, the bill defines the Division of Retirement of the State Board of Administration as a state agency and directs the Department of Financial Services to issue the benefit payments.

VIII. Amendments:

None.