

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: SB 286

SPONSOR: Senator Bennett

SUBJECT: Governmental Reorganization/Transfer of Division of Retirement to State Board of Administration

DATE: December 11, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Favorable
2.	_____	_____	CP	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

The bill transfers the Division of Retirement of the Department of Management Services to the State Board of Administration by a type one transfer.

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, 121.111, 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, and 650.02.

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:

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."

. . . 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 20.02, F.S., requires agencies that compose the executive branch to be consolidated into no more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness.⁴

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.⁵ The principal unit of the department is the division, which may be further subdivided into bureaus.⁶ 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.

Section 20.04(3), F.S., specifically exempts the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from

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 Article IV, s. 6 of the State Constitution states: All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by serving at the pleasure of the governor, except: (a) when provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office; (b) boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

⁵ Section 20.04(1), F.S.

⁶ Section 20.04(3), F.S.

the standard organizational structure for executive branch departments that is established in that subsection.

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.

Further, an agency head is authorized to recommend the establishment of additional divisions, bureaus, sections, and subsections, within the limitations of the organizational structure provided in ch. 20, F.S., to promote efficient and effective operation of a department.

Section 20.04(7), F.S., permits new bureaus, sections, and subsections to be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor or as established by specific statutory enactment. The subsection explicitly limits initiation of new divisions and sub-units for the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation except by specific statutory enactment.

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.⁷ 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

⁷ Section 20.02(6), F.S.

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

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.

Furthermore, transfer under either type does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer. The agency which receives the powers, duties, and functions relating to the pending proceeding must be substituted as the party in interest.

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.

D. The State Board of Administration

The State Board of Administration 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 State Board of Administration is subject to a majority vote of the Board of Trustees of the State Board of Administration 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 State Board of Administration. The SBA's primary responsibilities are in investment and debt management. For example, the Division of Bond Finance is located within the State Board

of Administration.⁸ Pursuant to Part II of ch. 121, F.S., the SBA is currently responsible for the Public Employees Optional Retirement Plan.

E. Report of the SBA/DOR Joint Team on Merger

The State Board of Administration and the Division of Retirement were asked by the Governor to evaluate the impact of a merger of the two entities.⁹ The specific charge was to develop a business case on the costs and benefits of merging the DOR and the SBA. A team of members from each entity was created.¹⁰ 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 responsibilities: institutional investment at the SBA and benefit administration at the DOR.¹¹ 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.¹²

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.

⁸ Section 288.15, F.S.

⁹ Page 1, *Report of the SBA/DOR Joint Team on Merger*, March 3, 2003.

¹⁰ 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 DOR were: Jerry Haynes, Administration/Budget; Pat Connolly, Bureau Chief Retired Payroll; Larry Hunicutt, Administrator Calculations; Mark Morton, Auditor; Sarabeth Snuggs, Bureau Chief Enrollment/Contributions.

¹¹ Page 6 of *Report of the SBA/DOR Joint Team on Merger*.

¹² 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 DOR has been delegated administrative responsibility to operate. The SBA and the DOR are required to coordinate activities with respect to the Public Employees Optional Retirement Plan, which the SBA is responsible for.

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 DOR would provide a common focus on the FRS, leading to enhanced efficiencies and effectiveness.
- < Combining SBA and DOR would be partially consistent with a common business model for large retirement systems.
- < The investment management responsibilities of the SBA may be compromised as a result of merger.
- < Combining SBA and DOR 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. of the bill transfers the Division of Retirement (division) 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.

The bill removes the Division of Retirement from the organizational structure of the DMS established in s. 20.22, F.S.

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. The division is authorized to adopt rules necessary for the effective and efficient administration of the retirement system.

All officers and employees of the division are select exempt under s. 110.205(2), F.S.

The bill makes 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.

The bill amends s. 215.44(7), F.S., related to the powers and duties of the SBA regarding investment of trust funds. Subsection (7) is expanded to exempt the purchase of commodities or services related to the administration of pension benefits from ch. 287, F.S., which establishes bidding and other requirements for the procurement of personal property and services, commodities, insurance and contractual services.

Finally, the bill authorizes the Department of Management Services to contract with the SBA to administer the following sections of law:

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

The bill has an effective date of July 1, 2004.

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 DOR 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 are associated with the transfer of the DOR to the SBA (amounts are shown in current dollars (i.e., no adjustments for inflation or growth):¹³

SBA/DOR Merger Cost Impact Summary			
	(1) Current DOR in DMS	(2) Estimated DOR in SBA	(3) Change in Costs
A. Recurring Costs			
1. Match SBA benefit levels for DOR employees	\$ 9,268,311	\$ 9,644,166	\$ 375,855
2. Impact from combining DC responsibilities	106,057	-	(106,057)
3. Administrative & Executive Support ¹⁴	712,217	297,312	(414,905)
Rental Costs ¹⁵	712,000	1,107,015	395,015
Total Recurring	\$ 10,798,585	\$ 11,048,493	\$ 249,908

¹³ 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. It is assumed that DOR employees would be treated no differently with respect to benefits than current SBA employees. However, no estimate is included for how DOR salaries might change. It is anticipated that the same competitive pay analyses that govern adjustments to SBA salary levels would apply to DOR personnel. These adjustments could be significant. SBA's costs to expand its executive management and administrative services operations to include DOR fall into new positions and allocated costs for existing positions. Rental and moving costs are based upon the assumption that DOR would be housed in facilities adjacent to the Hermitage Building. The non-recurring costs are allocated costs and will not translate into new positions. Also, the items in C. represent the most likely intermediate-term sources of operational efficiency and/or cost saving that will result from a merger. The DOR currently outsources its information technology support to a private sector firm. It is possible that the SBA could provide this service for less than the current \$3.5 million annual cost.

¹⁴ Assumes no impact on current level of DOR salaries.

¹⁵ Longer-term savings are expected from operational efficiencies and business process enhancements. However, the magnitude cannot be estimated at this time.

B. Non-Recurring Costs ¹⁶			
1. Transition costs for personnel checks – 1 year		\$ 10,000	
2. Cost of physical move & set-up		\$ 1,762,200	
Total Non-recurring (sum over 2 years)		\$ 1,772,200	
C. Potential Source of Future Cost Saving			
1. SBA Information Technology assumes responsibility for DOR: ¹⁷ <ul style="list-style-type: none"> a. Operational support b. Document Processing c. RIM Maintenance 			
2. RIM enhancement			
2. Educational program coordinated mailing/communication			
3. Educational program coordinated seminars/phone support			

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.

In the transfer of the DOR to the SBA, DOR employees that are currently career service will become select exempt. There could be additional costs as a result of this employee status modification due to differences in leave accrual rates, method of accrual, leave caps, and compensation for overtime. The potential costs for leave and compensation payouts could be significant.

¹⁶ There will be a non-recurring allocated (non-monetary) SBA staff cost of \$333,363 in year 1 and \$417,175 in year 2.

¹⁷ Current DOR cost is \$3,520,000.

In a related cost issue, the Office of Program Policy Analysis and Government Accountability (OPPAGA), in Report No. 03-61, reviewed the benefits and cost-effectiveness of outsourcing specific participant outreach functions currently performed by the Division of Retirement for the Florida Retirement System Pension (FRS) Plan. Among other activities, the division performs participant outreach by answering telephone calls and conducting educational seminars. These services have been outsourced for the FRS Investment Plan, which is administered by the SBA. The OPPAGA report concluded that outsourcing specific Pension Plan outreach services would not be cost-effective at this time, specifically noting that all vendors quoted prices that were higher than the division's costs, and most were significantly higher.¹⁸ The report, however, did not that a broader approach to outsourcing the full range of division activities might be feasible and should be explored in the future. The transfer of the Division of Retirement as a unit of the SBA could have an impact on the OPPAGA conclusion, though it should be noted that a type I transfer does provide less organizational flexibility than a type II, which could affect costs as well.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 121.055(6)(c)1., 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.

¹⁸ The report notes that the estimated annual costs to handle telephone calls by the division is \$714,000 annually; the lowest private sector estimate given was \$1,077,013 annually; the highest private sector estimate given was \$5,000,000. For educational costs, division costs were \$300 - \$369 per session; the lowest private sector cost estimate was \$1,600 per one session per day; the highest private sector cost estimate was \$3,500 flat fee for 1 to 4 sessions per day.

Section 120.54(3)(a)1., F.S., requires agency head approval prior to adopting, amending or repealing an administrative rule. 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, as opposed to the agency head – the actual board - 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.

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 board may contract with the Bureau of State Payrolls for the preservation of the current payment.

VIII. Amendments:

None.