

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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 120

INTRODUCER: Governmental Oversight and Productivity Committee and Senator Wise

SUBJECT: Access to Contractual and Electronic Information by Persons with Disabilities

DATE: April 24, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Wilson	GO	Fav/CS
2.			GE	
3.			WM	
4.				
5.				
6.				

I. Summary:

The bill is designed to be an implementing vehicle for the recommendations of the Accessible Electronic and Information Technology Task Force, created via the June 24, 2005 Executive Order 05-133 issued by Governor Jeb Bush. The bill provides a statement of purpose on the integration of accessible technology harmonious with the provisions of federal law but that is cognizant of undue burdens it may impose on selected state operations.

This bill creates the following sections of the Florida Statutes: Part III of ch. 282, F.S., consisting of ss. 282.601; 282.602; 282.603; 282.604; 282.605; and 282.606.

II. Present Situation:

On January 31, 2006, Secretary Tom Lewis of the Department of Management Services (DMS) transmitted the final report and recommendations of Governor Jeb Bush's Accessible Electronic and Information Technology Task Force.¹ The Task Force was headed by Secretary Lewis and was created through the issuance of Executive Order 05-133 on June 24, 2005. The Task Force met a total of six times throughout the state in order to provide a statutory platform for the development of minimum levels of disability community access to publicly funded technology systems. Section 508 of the Workforce Rehabilitation Act of 1973, 29 U.S.C. 794(d), imposes compliance requirements on recipients of federal assistance.

The State of Florida operates four significant web-based technology systems, three of which have the Department of Management Services as the principal implementing agency. *People*

¹ Governor Bush's Accessible Electronic and Information Technology Task Force, Final Report. Tallahassee, FL: January 31, 2006.

First! Is the successor personnel and benefit management system to the state-owned Cooperative Personnel and Employment Subsystem (COPES) that is contractually managed by a vendor, Convergys, Inc. *MyFloridaMarketPlace* is an online purchasing exchange through which the some 70,000 registered vendors may order or bid on the many products and services offered for acquisition by its public agency users. It uses software developed by Accenture, Inc., as part of a shared savings indemnification contract. *MyFlorida.com* is an electronic gateway to more than 600,000 separate web pages maintained by the various governmental entities listed. It was originally developed without specific expense by Fusive.com, a small South Florida firm since acquired by another party. A fourth system, ASPIRE, will act as the next generation web-based successor to the state accounting system, Florida Accounting Information Resource Subsystem (FLAIR). ASPIRE will use commercially available software (PeopleSoft) and is being team-managed through the Office of the Chief Financial Officer, the functional agency owner of payroll-based systems.

The mission of the Task Force was to provide focus on means of eliminating accessibility barriers to the named web-based systems and to identify processes that expand the reach of access to the many state government-sponsored programs in health and human services, employment, commerce and education. The method chosen in this bill was to reference the applicable federal statutes and develop the methods of execution through rule-making initiated by the Department of Management Services. The DMS has a number of provisions in its rules that already alert agency and vendor parties to certain accessibility standards. Examples include:

Chapter 287, Florida Statutes, and Chapter 60A-1, Florida Administrative Code governs the contract. By way of further non-exhaustive example, the contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for contract termination.

The DMS Form PUR 1000 contains "General Contract Conditions" that must be included in formal solicitations issued by an agency.² Section 10 of the PUR 1000 contains the following provision regarding the Americans with Disabilities Act: "Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals." These standard terms and conditions apply to the contract that results from the solicitation event, unless the agency has attached "Special Conditions" to the solicitation. If a special condition conflicts with a term in the PUR 1000 Form, the special condition takes precedence, unless the conflicting term in the PUR 1000 Form is required by Florida Statute, in which case the term contained in PUR 1000 shall take precedence.³

Section 508 is a part of the Rehabilitation Act of 1973 which requires that electronic and information technology developed, procured, maintained, or used by the Federal government be accessible to people with disabilities. On August 7, 1998, the President signed into law the Workforce Investment Act of 1998, which includes the Rehabilitation Act Amendments of 1998.

² Rule 60A-1.002(7), F.A.C.

³ Rule 60A-1.002(7)(b), F.A.C.

Section 508 was originally added to the Rehabilitation Act in 1986; the 1998 amendments significantly expand and strengthen the technology access requirements in Section 508.

States which receive Federal funds under the Assistive Technology Act of 1998 are required by that Act to provide an assurance of compliance with Section 508. Currently all states and territories receive Assistive Technology Act dollars and all have some form of Section 508 assurance. These state Section 508 assurances most frequently take the form of a simple assurance statement with limited or no specifics regarding implementation.

There is no uniform definition of “state” for the assurance and thus there is no clear delineation of who is covered. Those most questionable include agencies that are closely related to state government but might not necessarily be considered the “state” such as colleges and universities, local government and municipalities, local school districts, and other entities that have significant state and local funding.

The Department of Education, the agency responsible for administering the Assistive Technology (AT) Act, issued guidance letters (June 1999 and April 2000) indicating that state assurances for Section 508 compliance require use of the final Access Board standards. However, a number of states already adopted other types of access standards such as the W3C Web Access Standards in policy or guidelines. Since these standards are similar, it is unclear what action will be taken to align state adopted standards with the Access Board’s standards. There are also questions regarding the use of the Access Board standards by educational entities to determine the accessibility of instructional technology. The Access Board standards were developed for information technology designed to provide access to federal government information and services by employees and members of the public. It is unclear if these standards are appropriate to use in the determination of accessibility of instructional technology, especially teaching and learning media used with young children. Alternative access guidelines, such as those developed by the National Center for Accessible Media, may be more appropriate for educational entities to use or use of a combination of standards may be the most comprehensive way of assuring accessibility of instructional media. Currently, there is no national consensus on access standards for the full range of instructional technology products.

The Department of Education in their guidance letters indicates that the AT Act does not require compliance with the enforcement provisions of Section 508. This seems to indicate that there is no administrative complaint process, injunctive relief, or civil action available to individuals with disabilities for enforcement. The only enforcement of the state assurance seems to be withholding funds under the AT Act. However, it is important to note that AT Act state grant awards are fairly small, about \$400,000 on average, making this a limited enforcement option.

The Assistive Technology Act of 1998 may be becoming weaker in its ability to influence state compliance with Section 508. The AT Act has a sunset clause that effectively eliminates 23 states from the grant program before the Act is due for reauthorization.

The ADA and Section 504 of the Rehabilitation Act do not specifically require information technology accessibility as does Section 508. The ADA and Section 504 are general anti-discrimination laws that require program and architectural accessibility which could include the provision of accessible information technology as a reasonable accommodation or as an

auxiliary aid or service necessary for equal access. The effective communication requirement of the ADA could also require the delivery of accessible information technology products. However, all of these requirements might also be met in other ways such as the use of human assistance or other program modifications. The ADA and Section 504 information technology access decisions are made for individuals on a case by case basis; whereas Section 508 information technology access decisions are made by determining if products adhere to the Access Board standards. To date, the Department of Justice and the Office for Civil Rights have not adopted any part of the Access Board standards for IT access as standards for compliance with the ADA or Section 504.

In 1996, the Department of Justice responded to an inquiry regarding Web accessibility indicating that ADA covered entities who use the Internet for communications regarding their programs, goods, or services “must be prepared to offer those communications through accessible means.” Thus one could argue that the ADA does require accessible web sites. However, the Justice response went on to indicate that “instead of providing full accessibility through the Internet directly, covered entities may also offer other alternate accessible formats . . . to communicate the information contained in web pages”. There has not been subsequent formal clarification of the ADA requirements for web access since this letter and the Department of Justice has not adopted any standards for web accessibility as a requirement for compliance with the ADA.

The IDEA, similar to the ADA and Section 504, does not specifically require information or instructional technology to be accessible as does Section 508. IDEA is a law that requires the provision of a free, appropriate public education to all students with disabilities who need specialized instruction. The delivery of accessible technology and/or assistive technology could be required as part of a student’s individualized education program (IEP). However, a student’s IEP might also be implemented in other ways such as the use of paraprofessional assistance or program modifications rather than the delivery of accessible technology. IDEA technology access decisions are made for individual students on a case-by-case basis; whereas Section 508 access decisions are made by determining if technology products adhere to the Access Board standards.

A number of states and local agencies have adopted laws, policies, or executive orders that address one or more facets of information technology accessibility. A few states have statutes that require an access clause be included in all contracts for purchase of information technology products (hardware and software). Another handful of states have rules, policies or executive orders that require adherence to access standards for web development. Still other states have less formal guidance encouraging information technology accessibility without identification of specific access standards. Lastly, a few states have laws or policies that require electronic textbook procurement for specific educational entities.

Additional information on the specific requirements and the vagaries of compliance are available at <http://www.ataporg.org/itqa.asp>.

III. Effect of Proposed Changes:

Section 1. The bill creates Part III of ch. 282, F.S., consisting of ss. 282.601-282-606.

- 282.601 This section provides a statement of legislative purpose that state employees with disabilities and members of the public seeking information or services should have accessible technology similar to that provided employees or vendors without disabilities.
- 282.602 This section defines “accessible electronic information and information technology;” “alternate methods;” “electronic information and information technology;” “information technology;” “undue burden;” and “state agency.”
- 282.603 Each state agency is directed to procure information technology in such a fashion after July 1, 2006, as to effect compliance with section 508 of the Rehabilitation Act of 1973 and rules promulgated there under. When an undue burden is evidenced compliance may be obtained through an alternate method of access. Two disclaimers are provided: first an agency does not have to conform all of its access points where there are no employees with a disability; and second, there is no requirement to provide access beyond the location at which the service would be provided to the public.
- 282.604 The DMS is given the specific authority to engage in rule-making with input from affected stakeholders.
- 282.605 The part does not apply to information technology of the Department of Military Affairs or the Florida National Guard relating to intelligence, national security, or is weapons-specific, except for the provision of direct administrative support for routine business processes. This same disclaimer and restriction applies to criminal justice intelligence activities of civilian law enforcement agencies. The part also does not apply to information technology acquired by a contractor incidental to a contract.
- The part applies to competitive solicitations issued or new systems developed by state agencies after July 1, 2006.**
- 282.606 A statement of legislative intent is provided to permit judicial interpretations of this part to be consistent with decisional law interpreting the federal statutes on which it is based.

Section 2. The act takes effect July 1, 2006.

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:

It is stated that the provisions of this bill will operate prospectively to contracts executed after the effective date of the bill. Existing contracts may be affected by contract amendment or modification between the parties at which time the incidence of financial and compliance burden will be determined.

C. Government Sector Impact:

See “Private Sector Impact,” above. The DMS may address in rule-making how parties to non-compliant existing contracts may attain accessibility standards contemplated by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
