



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill introduces a broad new set of technical requirements for internal and external governmental activities provided electronically; increases rulemaking authority for the Department of Management Services (DMS); creates annual reporting requirements; and creates two new divisions within DMS.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Section 508 of the Rehabilitation Act of 1973<sup>1</sup> is part of the larger Americans with Disabilities Act. Section 508 requires federal agencies to ensure that their procurement of information technology takes into account the needs of all end users, including disabled persons, by providing detailed requirements for websites and computer programs.<sup>2</sup> Providing such requirements enhances the ability of federal employees with disabilities to have access to and use of information and data that is comparable to that provided to others. Under Section 508, "comparable access" is not required if it would impose an "undue burden" on the agency.<sup>3</sup>

On its MyFlorida.com portal, the State of Florida has adopted a formal statement on website accessibility for persons with disabilities (the "Accessibility Statement"). The statement reads in part:

Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency.

Section 508 now establishes requirements for electronic and information technology developed, maintained, procured, or used by the Federal government. Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public. [...] While these standards currently apply to federal government, it is the direct responsibility of Florida state government agencies and their web designers and developers to become familiar with these accessibility guidelines and to apply these principles in designing and creating any official State of Florida web site.<sup>4</sup>

Although it does not carry the weight of law, the Accessibility Statement indicates that agencies aspire to comply with the technical requirements of Section 508.

##### Proposed Changes

The bill creates a new regulatory scheme that mimics the federal Section 508 requirements. The bill provides detailed technical requirements and performance standards for all software, hardware, web-based information systems, audio-visual equipment, telecommunications equipment, and stand-alone

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<sup>1</sup> Section 508 is codified at 29 U.S.C. s. 794d. See generally <http://www.section508.gov>.

<sup>2</sup> The technical standards are contained in Subpart B of Section 508, available online here: <http://www.section508.gov/index.cfm?FuseAction=Content&ID=12>.

<sup>3</sup> 29 U.S.C. s. 794d(a)(1)(A).

<sup>4</sup> Available online here: <http://www.myflorida.com/myflorida/accessibility.html>.

information technology products. The legislation mandates that all “governmental units”<sup>5</sup> comply with the requirements at all times by developing, using, maintaining, and procuring compliant technology. The bill requires contractors to comply with the standards as well.

The governmental unit may deviate from the standard if it presents an “undue burden” on the unit. An “undue burden” is defined as:

[A] significant difficulty or expense. In determining whether an action would result in an undue burden, a governmental unit shall consider all resources available to the program or component for which the product is being developed, procured, maintained, or used.

A governmental unit must document an undue burden and explain why and to what extent compliance with a particular standard creates an undue burden. The undue burden test is present in the federal Section 508 law, and the bill expressly states that the body of law already developed by federal judicial interpretation is applicable to the state law.

Military and criminal intelligence systems are exempt from the requirements, generally, although typical administrative systems within criminal agencies are not exempt. Information technology systems acquired by a contractor, incidental to the performance of the contract, also are exempt.

In order to implement fully the standards, the bill creates within the Department of Management Services (DMS) two new divisions: the Information Technology Services Program and the Florida Accessible Electronic and Information Technology Office (the “AEIT Office”). The AEIT Office is granted broad rulemaking authority to establish procedures for compliance by governmental units, to coordinate with all governmental units, to randomly test governmental units for compliance, to develop and disseminate training materials and technical assistance, to develop complaint and resolution mechanisms, and to “establish a framework and criteria for prioritizing and phasing actions to promote compliance.”

The bill addresses four specific existing technology projects:

- The MyFloridaMarketPlace e-procurement project, which must be assessed by DMS and the AEIT Office by November 1, 2006, must be compliant by July 1, 2008.
- The PeopleFirst human resources project must be compliant by July 1, 2008.
- The MyFlorida.com web portal project must be compliant by July 1, 2007.
- The ASPIRE financial system project must be compliant by July 1, 2008.

The bill creates reporting requirement for all governmental units. Each unit must complete an annual report containing a description of:

- Compliance testing results and any plans to achieve greater compliance;
- Compliance with procurement requirements;
- Education and training activities;
- In-house development activities and practices;
- Complaints received;
- Needed compliance actions and anticipated budget requirements necessary to achieve such compliance; and
- All instances in which the governmental unit used the “undue burden” exemption.

The AEIT Office must compile each governmental unit’s report and submit a master report to the Governor, Speaker of the House of Representatives, and President of the Senate.

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<sup>5</sup> The bill defines “governmental unit” as “any agency of the executive, legislative, or judicial branches of state government and any divisions or subunits of such branches.”

C. SECTION DIRECTORY:

Section 1 amends 20.22, F.S., to create new divisions within DMS.

Section 2 creates Part III of chapter 282, F.S., "Accessible Electronic and Information Technology."

Section 3 creates s. 282.601, F.S., providing a title.

Section 4 creates s. 282.602, F.S., providing general state policy on technology accessibility.

Section 5 creates s. 282.603, F.S., providing definitions.

Section 6 creates s. 282.604, F.S., providing access requirements for governmental units.

Section 7 creates s. 282.605, F.S., providing technical standards.

Section 8 creates s. 282.606, F.S., establishing the Florida Accessible Electronic and Information Technology Office.

Section 9 creates s. 282.607, F.S., providing special requirements for existing technology projects.

Section 10 creates s. 282.608, F.S., requiring annual reports.

Section 11 creates s. 282.609, F.S., applying federal judicial interpretations to the act.

Section 12 creates s. 282.6095, F.S., providing exceptions to the technical requirements.

Section 13 appropriates \$1,050,068 in recurring funds and \$431,106 in non-recurring funds.

Section 14 provides an effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill appropriates from the General Revenue Fund to DMS \$1,050,068 in recurring funds and \$431,106 in nonrecurring funds. It authorizes six full-time-equivalent positions, in order to staff the AEIT Office and perform the services described. The Governor must place \$219,278 and two positions in reserve until DMS submits an expenditure plan to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have the effect of directing state dollars to private contractors offering computer consulting advice on ADA compliance issues, whether as a direct part of a new agency project, or as a third-party consultant on a project between an agency and a prime contractor.

D. FISCAL COMMENTS:

The overall fiscal impact is indeterminate, due to the potentially significant cost to comply with the technical standards contained in the bill. There are arguments that many state agencies already are

required to comply with identical federal standards contained in Section 508 of the federal Rehabilitation Act. To the extent that “governmental units” should be complying with the federal standards, it is not entirely clear whether this bill has its own identifiable fiscal impact. To the extent that “governmental units” are not currently complying with the federal standards, there will be an indeterminate fiscal impact on those units’ future activities.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill grants broad rulemaking authority. Since the 1996 Administrative Procedure Act amendments, the Legislature normally has drafted rulemaking grants, which avoid language that refers to “administering” or “enforcing” a chapter in favor of language that ties rulemaking to the implementation of specific powers and duties assigned to the agency in the chapter.<sup>6</sup> It may be advisable to change the rulemaking grant as follows: “(h) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part conferring powers and duties upon it.”<sup>7</sup>

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Deviations from federal Section 508

The federal Section 508 does not apply to federal agencies making “micropurchases,” defined under federal law as purchases under \$2,500.<sup>8</sup> It may be advisable to create a similar small-purchase-threshold in the state law, as well, for minor purchasing decisions.

##### Other state projects

The legislation specifically identifies four large state projects (e-procurement, PeopleFirst, the myflorida.com portal, and ASPIRE), but does not mention whether any other large state agency projects should be addressed.

##### “Governmental Units”

The definition of “governmental units” is broad, encompassing “any agency of the executive, legislative, or judicial branches of state government and any divisions or subunits of such branches.” There might be a potential constitutional issue involved, in that the bill appears to grant DMS authority to “manage and oversee . . . governmental units” located outside of the executive branch.<sup>9</sup>

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted a strike-all amendment that significantly rewrites the legislation. As originally filed, the legislation attempted to ‘piggyback’ the federal Section 508 standards. The strike-all amendment, instead, creates standards in the Florida Statutes and creates an office within DMS to oversee compliance and coordination.

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<sup>6</sup> Email from Joint Administrative Procedures Committee (JAPC), April 5, 2006.

<sup>7</sup> *Id.*

<sup>8</sup> Codified in the Office of Federal Procurement Policy Act, 41 U.S.C. s. 428(f).

<sup>9</sup> Email from JAPC, April 5, 2006.