**HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS**

**BILL #:** CS/CS/CS/HB 1391 Technology Innovation
**SPONSOR(S):** State Affairs Committee, Government Operations & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Grant, J. and others
**TIED BILLS:** CS/CS/HB 1393, CS/HB 1395 **IDEN./SIM. BILLS:** CS/CS/CS/SB 1870

**FINAL HOUSE FLOOR ACTION:** 118 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

**SUMMARY ANALYSIS**

CS/CS/CS/HB 1391 passed the House on March 9, 2020, and subsequently passed the Senate on March 10, 2020.

The Division of State Technology (DST) within the Department of Management Services (DMS) oversees information technology (IT) governance and security for the executive branch of state government. The bill:

- Abolishes DST, establishes the Florida Digital Service (FDS) in its place, and creates the Division of Telecommunications within DMS.
- Places new duties and responsibilities under the newly created FDS and expands the duties and responsibilities currently assigned to DMS and DST, including the development and implementation of standards for the enterprise with a focus on interoperability and enforcement of the state's cloud-first policy.
- Requires FDS to create and maintain a comprehensive data catalog that lists the data elements housed within each state agency, as well as directs FDS to create a data dictionary.
- Allows cabinet agencies to adopt alternative IT architecture, project management, and reporting standards than those developed by FDS.
- Requires FDS to conduct a market analysis at least every three years to determine whether IT resources within each state agency are used in the most cost-effective manner, whether agencies are complying with the state's cloud first policy, and whether agencies are using best practices with respect to IT.
- Removes DST as the head of the E911 system in Florida, and places the Division of Telecommunications as its new head.

The bill also creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR) to allow a sandbox licensee to make an innovative financial product or service available to consumers as a money transmitter, payment instrument seller, or lender of consumer finance loans during a sandbox period that is initially 24 months but can be extended one time for an additional 12 months. Upon approval of an application, a sandbox licensee is exempt from specified provisions of general law and the corresponding rule requirements during the sandbox period. OFR may initially authorize a sandbox licensee to provide the financial product or service to a maximum of 15,000 consumers but may authorize up to 25,000 consumers if the sandbox licensee demonstrates adequate financial capitalization, risk management processes, and management oversight.

The bill has no fiscal impact on local governments, a negative fiscal impact on state government, and an indeterminate impact on the private sector.

The bill was approved by the Governor on June 30, 2020, ch. 2020-160, L.O.F., and will become effective on July 1, 2020, except as otherwise provided.

# I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

**Background**

Department of Management Services

*Information Technology Management*

The Department of Management Services (DMS)[1] oversees information technology (IT)[2] governance and security for the executive branch of state government. The Division of State Technology (DST) within DMS, established in 2019 through the merger of the former Agency for State Technology (AST) and the Division of Telecommunications,[3] implements DMS' duties and policies in this area.[4]

The head of DST is appointed by the Secretary of Management Services[5] and serves as the state chief information officer (CIO).[6] The CIO must be a proven effective administrator with at least 10 years of executive level experience in the public or private sector.[7] DST "provides the State with guidance and strategic direction on a variety of transformational technologies, such as cybersecurity and data analytics, while also providing the following critical services: voice, data, software, and much more."[8]

The duties and responsibilities of DMS and DST include:

- Developing IT policy for the management of the state's IT resources;
- Establishing IT architecture standards and assisting state agencies[9] in complying with those standards;
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects. The standards must include:
    - Performance measurements and metrics that reflect the status of an IT project based on a defined and documented project scope, cost, and schedule;
    - Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an IT project; and
    - Reporting requirements;
- Performing project oversight of all state agency IT projects that have a total cost of $10 million or more, as well as cabinet agency IT projects that have a total cost of $25 million or more, and are funded in the General Appropriations Act or any other law;
- Recommending potential methods for standardizing data across state agencies, which will promote interoperability and reduce the collection of duplicative data;
- Recommending open data[10] technical standards and terminologies for use by state agencies;

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[1] *See* s. 20.22, F.S.
[2] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(14), F.S.
[3] Ch. 2019-118, L.O.F.
[4] S. 20.22(2)(a), F.S.
[5] The Secretary of Management Services serves as the head of DMS and is appointed by the Governor, subject to confirmation by the Senate. S. 20.22(1), F.S.
[6] S. 20.22(2)(b), F.S.
[7] *Id.*
[8] *State Technology*, DMS, https://www.dms.myflorida.com/business_operations/state_technology (last visited Jan. 27, 2020).
[9] *See* s. 282.0041(27), F.S.
[10] The term "open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution. S. 282.0041(18), F.S.

- Establishing best practices for the procurement of IT products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services; and
- Establishing a policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services.[11]

*State Data Center and the Cloud-First Policy*

In 2008, the Legislature created the State Data Center (SDC) system, established two primary data centers,[12] and required that agency data centers be consolidated into the two primary data centers.[13] Data center consolidation was completed in fiscal year (FY) 2013-14. In 2014, the two primary data centers were merged to create the SDC.[14] The SDC is established within DMS and DMS provides operational management and oversight of the SDC.[15]

The SDC relies heavily on the use of state-owned equipment installed at the SDC facility located in the state's Capital Circle Office Center in Tallahassee for the provision of data center services. The SDC is led by the director of the SDC.[16] The SDC must:

- Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities;[17]
- Maintain performance of the state data center by ensuring proper data backup, data backup recovery, disaster recovery, and appropriate security, power, cooling, fire suppression, and capacity;
- Develop and implement business continuity and disaster recovery plans, and annually conduct a live exercise of each plan;
- Enter into a service-level agreement with each customer entity to provide the required type and level of service or services;
- Assume administrative access rights to resources and equipment, including servers, network components, and other devices, consolidated into the SDC;
- Show preference, in its procurement process, for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of SDC infrastructure, and that meet the needs of customer agencies, that reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for IT security; and
- Assist customer entities in transitioning from SDC services to third-party cloud-computing services procured by a customer entity.

A state agency is prohibited, unless exempted[18] elsewhere in law, from:

- Creating a new agency computing facility or data center;
- Expanding the capability to support additional computer equipment in an existing agency computing facility or data center; or
- Terminating services with the SDC without giving written notice of intent to terminate 180 days before termination.[19]

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[11] S. 282.0051, F.S.
[12] The Northwood Shared Resource Center and the Southwood Shared Resource Center. Ss. 282.204-282.205, F.S. (2008).
[13] Ch. 2008-116, L.O.F.
[14] Ch. 2014-221, L.O.F.
[15] *See* s. 282.201, F.S.
[16] S. 282.201, F.S.
[17] The term "customer entity" means an entity that obtains services from DMS. S. 282.0041(7), F.S.
[18] The following entities are exempt from the use of the SDC: the Department of Law Enforcement, the Department of the Lottery's Gaming Systems Design and Development in the Office of Policy and Budget, regional traffic management centers, the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation. S. 282.201(2), F.S.
[19] S. 282.201(3), F.S.

Cloud computing is "a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction."[20] In 2019, the Legislature mandated that each agency adopt a cloud-first policy that first considers cloud computing solutions in its technology sourcing strategy for technology initiatives or upgrades whenever possible or feasible.[21] Each agency must, just like the SDC, show a preference for cloud-computing solutions in its procurement process and adopt formal procedures for the evaluation of cloud-computing options for existing applications, technology initiatives, or upgrades.[22]

*IT Security*

The IT Security Act[23] establishes requirements for the security of state data and IT resources.[24] DMS must designate a state chief information security officer (CISO) to oversee state IT security.[25] The CISO must have expertise in security and risk management for communications and IT resources.[26] DMS is tasked with the following duties regarding IT security:

- Establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity.
- Adopting rules that safeguard an agency's data, information, and IT resources to ensure availability, confidentiality, and integrity and to mitigate risks.
- Developing, and annually updating, a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, incident management, and disaster recovery planning including:
    - Identifying protection procedures to manage the protection of an agency's information, data, and IT resources;
    - Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes; and
    - Recovering information and data in response to an IT security incident.
- Developing and publishing for use by state agencies an IT security framework.
- Reviewing the strategic and operational IT security plans of executive branch agencies annually.[27]

The IT Security Act requires the heads of state agencies to designate an information security manager to administer the IT security program of the state agency.[28] In part, the heads of state agencies must annually submit to DMS the state agency's strategic and operational IT security plans; conduct and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency; develop, and periodically update, written internal policies and procedures; and ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the state agency are conducted.[29]

*Enhanced 911 (E911) System*

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[20] *Special Publication 800-145*, National Institute of Standards and Technology, https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf (last visited Jan. 27, 2020). The term "cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology (NIST). S. 282.0041(5), F.S.
[21] S. 282.206(1), F.S.
[22] S. 282.206(2) and (3), F.S.
[23] S. 282.318, F.S., is cited as the "Information Technology Security Act."
[24] S. 282.318, F.S.
[25] S. 282.318(3), F.S.
[26] *Id.*
[27] *Id.*
[28] S. 282.318(4)(a), F.S.
[29] S. 282.318(4), F.S.

DST oversees the E911 system in Florida.[30] DST must develop, maintain, and implement the statewide emergency communications E911 system plan.[31] The plan must provide for:

- The public agency emergency communications requirements for each entity of local government[32] in the state.
- A system to meet specific local government requirements, which must include law enforcement, firefighting, and emergency medical services, and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost to implement the E911 system.[33]

DST is responsible for implementing and coordinating the plan, and must adopt any necessary rules and schedules related to public agencies[34] implementing and coordinating the plan.[35]

The Secretary of Management Services, or his or her designee, is the director of the E911 system and serves as chair of the E911 Board.[36] The director of the E911 system is authorized to coordinate the activities of the system with state, county, local, and private agencies.[37] The director must consult, cooperate, and coordinate with local law enforcement agencies.[38] An "E911 Board," composed of 11 members, administers funds derived from fees imposed on each user of voice communications service with a Florida billing address (place of primary use).[39] The Governor appoints five members who are county 911 coordinators and five members from the telecommunications industry.[40] The E911 Board makes disbursements from the Emergency Communications Number E911 System Trust Fund to county governments and wireless providers.[41]

United States Digital Service

In 2014, President Obama created the United States Digital Service (USDS) to help federal agencies improve the digital services they provide to the public.[42] The USDS has two primary responsibilities, distributing guidance related to IT development and procurement to other federal agencies, and actively helping federal agencies develop digital services by embedding teams within the agencies' in-house technology divisions. USDS has created two guidebooks to help federal agencies improve and develop better digital services: the digital services playbook and the TechFAR handbook. The digital services playbook is designed to help government agencies build effective digital services that work well for users by utilizing private and public sector best practices.[43] The TechFAR handbook explains to federal agencies how they can execute the digital services playbook in ways consistent with federal procurement policy.[44]

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[30] S. 365.171, F.S. Prior to 2019, the Division of Telecommunications, established in statute as the Technology Program within DMS, was the entity with oversight over E911. *See* ch. 2019-118, L.O.F.
[31] S. 365.171(4), F.S.
[32] The term "local government" means any city, county, or political subdivision of the state and its agencies. S. 365.171(3)(b), F.S.
[33] S. 365.171(4), F.S.
[34] The term "public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. S. 365.171(3)(c), F.S.
[35] S. 365.171(4), F.S.
[36] S. 365.172(5)(a), F.S.
[37] S. 365.171(5), F.S.
[38] *Id.*
[39] S. 365.172(5), F.S.
[40] S. 365.172(5)(b), F.S.
[41] S. 365.172(5) and (6), F.S.
[42] White House, *Delivering a Customer-Focused Government Through Smarter IT*, https://obamawhitehouse.archives.gov/blog/2014/08/11/delivering-customer-focused-government-through-smarter-it (last visited Feb. 24, 2020).
[43] USDS, *Digital Services Playbook*, https://playbook.cio.gov/ (last visited Feb. 24, 2020).
[44] White House*, Delivering a Customer-Focused Government Through Smarter IT,* https://obamawhitehouse.archives.gov/blog/2014/08/11/delivering-customer-focused-government-through-smarter-it (last visited Feb. 24, 2020); *see also* USDS, *TechFAR Hub*, https://techfarhub.cio.gov/ (last visited Feb. 24, 2020).

Agency Procurements

Agency[45] procurements of commodities or contractual services exceeding $35,000 are governed by statute and rule and require use of one of the following three types of competitive solicitations,[46] unless otherwise authorized by law:[47]

- Invitation to bid (ITB): An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.[48]
- Request for proposals (RFP): An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.[49]
- Invitation to negotiate (ITN): An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.[50]

DMS is responsible for procuring state term contracts for commodities and contractual services from which state agencies must make purchases.[51]

Regulation of Money Transmitters and Payment Instrument Sellers

*State Regulation*

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[52] The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,[53] monetary value,[54] or payment instruments[55] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[56] A payment instrument seller sells, issues, provides, or

[45] The term "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges. S. 287.012(1), F.S.
[46] The term "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement. S. 287.012(6), F.S.
[47] *See* s. 287.057, F.S.
[48] S. 287.057(1)(a), F.S.
[49] S. 287.057(1)(b), F.S.
[50] S. 287.057(1)(c), F.S.
[51] Ss. 287.042(2)(a) and 287.056(1), F.S.
[52] S. 20.121(3)(a)2., F.S.
[53] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(11), F.S.
[54] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[55] The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[56] S. 560.103(23), F.S.

delivers a payment instrument.[57] State and federally chartered financial depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[58]

An applicant for an MSB license under ch. 560, F.S., must file an application with OFR and pay an application fee of $375.[59] The license must be renewed every two years by paying a renewal fee of $750.[60] Money transmitters and payment instrument sellers may operate through authorized vendors by providing OFR with specified information about the authorized vendor and by paying a fee of $38 per authorized vendor location at the time of application and renewal.[61] A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers[62] and foreign currency exchangers[63] without paying additional licensing fees.[64]

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least $100,000 and an additional net worth of $10,000 per location in this state, up to a maximum of $2 million.[65]
- Have a corporate surety bond in an amount between $50,000 and $2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.[66] In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.[67]
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.[68] OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.[69]

While MSBs are generally subject to federal anti-money laundering laws,[70] Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.[71]

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.[72] An MSB must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.[73] OFR may take administrative action against an

[57] S. 560.103(30) and (34), F.S.; *supra* note 62.
[58] S. 560.104, F.S.
[59] Ss. 560.141 and 560.143, F.S.
[60] *Id.*; s. 560.142, F.S.
[61] *Id.*; ss. 560.203, 560.205, and 560.208, F.S.
[62] The term "check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. S. 560.103(6), F.S.
[63] The term "foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. S. 560.103(17), F.S.
[64] S. 560.204(2), F.S.
[65] S. 560.209, F.S.
[66] *Id.*
[67] *Id.*
[68] S. 560.210, F.S.
[69] *Id.*
[70] 31 C.F.R. pt. 1022.
[71] S. 560.1401, F.S.
[72] S. 560.123, F.S.
[73] *Id.*

MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[74] OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.[75]

A money transmitter or payment instrument seller must maintain specified records for at least five years, including the following:[76]

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.
- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

*Federal Regulation*

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[77] The basic concept underlying FinCEN's core activities is "follow the money" because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.[78] To that end, FinCEN administers the Bank Secrecy Act (BSA).[79] BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.[80] BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.[81]

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than $1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing, or exchange.[82] However, an MSB must register with FinCEN if it provides money transfer services in any amount.[83]

BSA regulations define "money transmission services" as "the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means."[84] Depending on the

[74] S. 560.114, F.S.
[75] *Id.*
[76] Ss. 560.1105 and 560.211, F.S.
[77] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Feb. 20, 2020).
[78] *Id.*
[79] Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.
[80] *Supra* note 87.
[81] *Id.*
[82] 31 C.F.R. §§ 1010.100 and 1022.380.
[83] *Id.*
[84] 31 C.F.R. § 1010.100.

facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.[85]

Federal law criminalizes money transmission if the money transmitting business:[86]

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

Consumer Finance Loans

In addition to regulating MSBs, the Division of Consumer Finance within OFR licenses and regulates businesses that offer loans under the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which are "loan[s] of money, credit, goods, or choses in action,[87] including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[88] Consumer finance loans may be secured or unsecured, though the Act prohibits lenders from taking a security interest in certain types of collateral.[89]

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.[90] Installments may be due every two weeks, semimonthly, or monthly.[91] There is no minimum or maximum loan term under the Act. Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000 of principal.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.[92]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[93] and TILA's federal implementing regulations.[94] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[95] In the event that two or more interest rates are applied to the principal amount of a loan,[96] a lender may

[85] FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001* (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (last visited Jan. 31, 2020).
[86] 31 U.S.C. § 1960.
[87] "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).
[88] S. 516.01(2), F.S.
[89] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for the payment of, wages given to secure a loan).
[90] S. 516.36, F.S. However, this section does not apply to lines of credit. *Id.*
[91] *Id.*
[92] S. 516.031(1), F.S.
[93] Codified at 15 U.S.C. § 1601 *et seq.*
[94] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).
[95] *Id.*
[96] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.

charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[97] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its implementing regulations.[98] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[99]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[100]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following permissible fees:

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- If agreed upon in writing before the charge is imposed, a delinquency charge between $5 and $15, depending on the number of payments due within a calendar month, for each payment in default for at least 10 days; and
- A bad check charge of up to $20.[101]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[102]

Licenses granted under the Act are for a single place of business[103] and must be renewed every two years.[104] An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of $625 and a nonrefundable investigation fee of $200.[105] A licensee must pay a nonrefundable biennial license fee of $625.[106] Each location of a consumer finance lender must be separately licensed.[107]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[108]

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[97] S. 516.031(1), F.S.
[98] S. 516.031(2), F.S.
[99] S. 516.031(4), F.S.
[100] S. 516.031(5), F.S.
[101] S. 516.031(3), F.S.
[102] S. 516.35(2), F.S.
[103] S. 516.05(3), F.S.
[104] Ss. 516.03(1) and 516.05(1)-(2), F.S.
[105] S. 516.03(1), F.S.
[106] *Id.*; s. 516.05(1), F.S.
[107] S. 516.05(3), F.S.
[108] S. 516.02(4), F.S.

Financial Technology

Financial technology, often referred to as "FinTech", encompasses a wide array of innovation in the financial services space. FinTech is technology-enabled innovation in financial services that could result in new business models, applications, processes, or products with an associated material effect on the provision of financial services.[109] Technological innovation holds great promise for the provision of financial services, with the potential to increase market access, the range of product offerings, and convenience while also lowering costs to clients.[110] Greater competition and diversity in lending, payments, insurance, trading, and other areas of financial services can create a more efficient and resilient financial system.[111] Drivers of FinTech innovations include technology, regulation, and evolving consumer preferences, including customization.[112]

FinTech innovation is often thought to be synonymous with disruption of the traditional financial services market structure and its providers, such as banks. However, to date, the relationship between incumbent financial institutions and FinTech firms appears to be largely complementary and cooperative in nature.[113] FinTech firms have generally not had sufficient access to the low-cost funding or the customer base necessary to pose a serious competitive threat to established financial institutions in mature financial market segments.[114] Partnering allows FinTech firms to viably operate while still being relatively small and, depending on the jurisdiction and the business model, unburdened by some financial regulation while still benefitting from access to incumbents' client base.[115] At the same time, incumbents benefit from access to innovative technologies that provide a competitive edge.[116] Yet there are exceptions to this trend, as some FinTech firms have established inroads in credit provision and payments.[117]

**Effect of the Bill**

State Information Technology

The bill abolishes DST and establishes the Florida Digital Service (FDS) in its place as a subdivision of DMS. The bill provides that the mission of FDS is to "propose innovative solutions that securely modernize state government, including technology and information services, and achieve value through digital transformation and interoperability, and to fully support the cloud-first policy."

The bill expands the duties and responsibilities currently assigned to DMS and DST and assigns new duties and responsibilities to FDS. The bill provides that FDS is tasked with the following new duties and responsibilities:

- Develop an enterprise architecture (EA) that acknowledges the unique needs of those entities within the enterprise in the development and publication of standards and terminologies to facilitate digital interoperability; supports the state's cloud-first policy; and addresses how IT infrastructures may be modernized to achieve cloud-first objectives.
- After adoption of the EA standards, develop a process to receive written notice from entities within the enterprise of any planned or existing procurement of an IT project that is subject to

[109] Financial Stability Board, *FinTech and market structure in financial services: Market developments and potential financial stability implications* (Feb. 14, 2019), https://www.fsb.org/2019/02/fintech-and-market-structure-in-financial-services-market-developments-and-potential-financial-stability-implications/ (last visited Jan. 31, 2020).
[110] *Id*.
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*

governance by the EA[118] and participate in the development of specifications and recommend modifications to any planned procurement by state agencies so that it complies with the EA.
- Ensure that enterprise IT solutions are capable of using an electronic credential[119] and that such solutions comply with EA standards.

The bill makes the following changes to the duties and responsibilities of FDS currently in law:
- Requires FDS to identify opportunities for standardization and consolidation of IT services that support interoperability and the state's cloud-first policy;
- Allows FDS to recommend other payment mechanisms to the Executive Office of the Governor and the Legislature to recover the cost of SDC services through charges to the applicable customer entities; and
- Requires FDS to submit its recommendations for standardization and consolidation of IT services that support interoperability and the cloud-first policy to the Executive Office of the Governor and the Legislature by January 1 of each even-numbered year, instead of April 1.

The bill requires FDS to undertake the following specific actions from funds appropriated by the Legislature:
- Create a comprehensive indexed data catalog, in collaboration with the enterprise, by October 1, 2021.
- Develop and publish a data dictionary for each agency by October 1, 2021.
- Develop solutions for authorized, mandated, or encouraged use cases in collaboration with the enterprise.
- Adopt, by rule, standards that support the creation and deployment application programming interface to facilitate integration throughout the enterprise and standards necessary to facilitate a secure system of data interoperability compliant with the EA.
- Assist agenices, after submission of documented use cases developed in conjuction with the affected agencies, with the deployment of new interoperable applications and solutions, including applications and solutions to support military members and their families and for the following agencies:
    - Department of Health;
    - Agency for Health Care Administration;
    - Agency for Persons with Disabilities;
    - Department of Education;
    - Department of Elderly Affairs; and
    - Department of Children and Families.

FDS may not retrieve or disclose any data without a data-sharing agreement between itself and the enterprise entity housing the data.

The bill removes the requirement that FDS conduct an annual market analysis to determine whether the state's approach to SDC services is effective or cost efficient and, instead, requires FDS to conduct a market analysis, at least every three years beginning in 2021, to determine whether:
- The IT resources within the enterprises are utilized in the most cost-effective and cost-efficient manner, while recognizing that the replacement of certain legacy IT systems within the enterprise may be cost prohibitive or cost inefficient due to the remaining useful life of those resources;
- The enterprise is complying with the state's cloud-first policy; and
- The enterprise is utilizing best practices with respect to IT, information services, and the acquisition of emerging technologies and information services.

[118] The bill defines "enterprise architecture" as a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.
[119] The bill defines "electronic credential" as an electronic representation of the identity of a person, an organization, an application, or a device.

The market analysis must be used to prepare a strategic plan for continued and future IT and information services for the enterprise, including proposed acquisition of new services or technologies and approaches to the implementation of any new services or technologies. The market analysis must be submitted to the Executive Office of the Governor and the Legislature by December 31 of each year such analysis is conducted.

The bill requires the Secretary of Management Services to designate, rather than appoint, the state CIO and revises the qualifications for the state CIO. The state CIO must have at least five years of experience in the development of information system strategic planning and development or IT policy and, preferably, have leadership-level experience in the design, development, and deployment of interoperable software and data solutions. The bill requires the state CIO, in consultation with the Secretary of Management Services, to designate a chief data officer (CDO). The CDO must be a proven and an effective administrator with significant experience in data management, data governance,[120] interoperability, and security. The bill provides that the CIO, CDO, and CISO are selected exempt service positions and requires DMS to set the salary and benefits of those positions in accordance with the rules of the Senior Management Service Class of the Florida Retirement System.

The bill requires the Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services (cabinet agencies) to either adopt the interoperability requirements of the EA standards or adopt alternative standards that allow for open data interoperability. If a cabinet agency chooses the latter, the agency must provide written notification to the Governor, the President of the Senate, and the Speaker of the House of Representatives of the adoption of alternative standards and provide justification for adoption of the alternative standards and explain how the agency will achieve open data interoperability. The bill allows the cabinet agencies to contract with DMS to provide or perform certain services and functions.

The bill further specifies that cabinet agencies are not required to integrate with IT resources outside of their own departments or with FDS. Additionally, FDS may not retrieve or disclose data without a shared-data agreement in place between DMS and the cabinet agency.

The bill re-establishes the Division of Telecommunications within DMS and places the Division of Telecommunications as the new head of the E911 system in Florida.

Financial Technology Sandbox

The bill creates the Financial Technology Sandbox (sandbox) within OFR to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.

The sandbox allows a licensee[121] to make an innovative financial product or service available to consumers during a period that is initially 24 months but which can be extended one time for an additional 12 months. A “financial product or service” is a product or service related to a consumer finance loan, money transmitter, or payment instrument seller, including mediums of exchange that are in electronic or digital form, which is subject to the general laws enumerated in the bill and corresponding rule requirements. “Innovative” means new or emerging technology, or new uses of existing technology, which provide a product, service, business model, or delivery mechanism to the public and which are not known to have a comparable offering in this state outside the Financial Technology Sandbox.

[120] The bill defines “data governance” to mean the practice of organizing, classifying, securing, and implementing policies, procedures, and standards for the effective use of an organization’s data.
[121] The bill defines "licensee" to mean a business entity that has been approved by OFR to participate in the Financial Technology Sandbox.

A sandbox licensee must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in Florida.

Upon approval of a sandbox application, the following provisions and corresponding rule requirements are not applicable to the sandbox licensee during the sandbox period:

- Subsection 516.03(1), F.S., relating to an application for a license. However, the following portions of the statute are not waived: the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000, and OFR's authority to investigate the applicant's background. OFR may prorate the license renewal fee for an extension granted under the sandbox.
- Subsections 516.05(1) and (2), F.S., relating to licensure periods, inactive status of a license, reactivation of a license, and license expiration. However, the directive for OFR to investigate the applicant's background is not waived.
- Section 560.109, F.S., relating to examinations and investigations, but only to the extent that the section requires OFR to examine a licensee at least once every 5 years.
- Subsection 560.118(2), F.S., requiring the filing of quarterly reports.
- Subsection 560.125(1), F.S., prohibiting unlicensed activity, but only to the extent that subsection would prohibit a sandbox licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.
- Subsection 560.125(2), F.S., permitting only an MSB licensed under part II of ch. 560, F.S., to appoint an authorized vendor. However, s. 560.125(2), F.S., is waived only to the extent that subsection would prohibit a sandbox licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a sandbox licensee during the sandbox period remains liable to the holder or remitter.
- Section 560.128, F.S., relating to customer contacts and license display.
- Portions of s. 560.141, F.S., relating to license application. The following application information is not required: date of applicant’s formation and the state in which it was formed, if applicable; description of the applicant's organizational structure; applicant’s history of operations in other states if applicable and a description of the money services business activities proposed to be conducted by the applicant in this state; if the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the U.S. Securities and Exchange Commission, within the preceding year; the name of the registered agent in this state for service of process; any other information specified in ch. 560, F.S., or by rule; and within the time allotted by rule, any information needed to resolve any deficiencies found in the application. Additionally, s. 560.141(2), F.S., is waived. That subsection specifies that the length of the license is two years and specifies the expiration dates for licenses under parts II and III of ch. 560, F.S.
- Subsections 560.142(1) and (2), F.S., relating to license renewal. However, OFR may prorate, but may not entirely eliminate, the license renewal fees for an extension granted under the sandbox.
- Subsection 560.143(2), F.S., relating to license renewal fees, but only to the extent necessary for proration of the renewal fees.
- Subsection 560.204(1), F.S., requiring a license in order to engage in activities under part II of the chapter, but only to the extent that subsection would prohibit a sandbox licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.
- Subsection 560.205(2), F.S., requiring an applicant to provide OFR with a sample form of payment instrument, if applicable.
- Subsection 560.208(2), F.S., expressly permitting a licensee to charge a different price for a money transmitter service based on the mode of transmission used in the transaction as long as the price charged for a service paid for with a credit card is not more than the price charged when the service is paid for with currency or other similar means accepted within the same mode of transmission.

- Section 560.209, F.S., relating to net worth, corporate surety bond and collateral deposit in lieu of bond. However, s. 560.209, F.S., is waived only to the extent that OFR may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that OFR determines to be commensurate with specified considerations regarding the sandbox application and commensurate with the maximum number of consumers authorized to receive the financial product or service under the sandbox.

OFR may approve a sandbox application if one or more of the general laws enumerated above currently prevent the innovative financial product or service from being made available to consumers and if all other requirements of the sandbox are met. A sandbox licensee may conduct business through electronic means, including through the Internet or a software application.

Before filing a sandbox application, a substantially affected person may seek a declaratory statement regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances. Additionally, a variance or waiver of a rule may be sought pursuant to s. 120.542, F.S.

In the sandbox application, the applicant must specify each general law on the list enumerated above which currently prevents the innovative financial product or service from being made available to consumers and the reasons why those provisions of general law prevent the innovative financial product or service from being made available to consumers. An application submitted on behalf of a business entity must include evidence that the business entity has authorized the person to submit the application on behalf of the business entity intending to make an innovative financial product or service available to consumers. The application must specify the maximum number of consumers to whom the applicant proposes to provide the innovative financial product or service. The application must include a proposed draft of the specified disclosures that will be provided to consumers. The application must also contain sufficient information for OFR to evaluate the following factors, which OFR must consider in deciding whether to approve or deny an application:

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details.
- The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.
- The business plan proposed by the applicant, including company information, market analysis, and financial projections or pro forma financial statements, and evidence of the financial viability of the applicant.
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.
- Whether any control person[122] of the applicant, regardless of adjudication, has pled no contest to, has been convicted or found guilty of, or is currently under investigation for fraud, a state or federal securities violation, a property-based offense, or a crime involving moral turpitude or dishonest dealing, in which case the sandbox application must be denied.
- A copy of specified disclosures that will be provided to consumers.
- The financial responsibility of the applicant and any control person, including whether the applicant or any control person has a history of unpaid liens, unpaid judgments, or other general history of nonpayment of legal debts, including, but not limited to, having been the subject of a petition for bankruptcy under the United States Bankruptcy Code within the past seven calendar years.
- Any other factor OFR determines to be relevant.

[122] The bill defines "control person" to mean an individual, a partnership, a corporation, a trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or through other means. A person is presumed to control a company if, with respect to a particular company, that person: 1. Is a director, a general partner, or an officer exercising executive responsibility or having similar status or functions; 2. Directly or indirectly may vote 10 percent or more of a class of a voting security or sell or direct the sale of 10 percent or more of a class of voting securities; or 3. In the case of a partnership, may receive upon dissolution or has contributed 10 percent or more of the capital.

The Financial Services Commission (commission)[123] must prescribe by rule the form and manner of the application and how OFR will evaluate and apply each of the factors specified above. A sandbox licensee has a continuing obligation to promptly inform OFR of any material change to the information provided in the sandbox application.

OFR may not approve an application if:

- The applicant had a prior sandbox application that was approved and that related to a substantially similar financial product or service;
- Any control person of the applicant was substantially involved in the development, operation, or management with another sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service; or
- The applicant or any control person has failed to affirmatively demonstrate financial responsibility.

OFR must approve or deny in writing an application within 60 days after receiving the completed application, though OFR and the applicant may jointly agree to extend the time beyond 60 days. OFR may impose conditions on any approval, consistent with the sandbox. Upon approval of an application, OFR must notify the sandbox licensee that the licensee is exempt from the provisions of general law enumerated in the bill and the corresponding rule requirements during the sandbox period. OFR must post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the licensee.

A business entity whose sandbox application is approved is licensed under ch. 516, F.S., or ch. 560, F.S., or both chs. 516 and 560, F.S., as applicable to the business entity's activities; however, the business entity may not engage in check-cashing. A business entity whose sandbox application is approved is subject to any provision of ch. 516, F.S., or ch. 560, F.S., not specifically excepted under the sandbox, as applicable to the business entity's activities, and must comply with such provisions.

OFR shall, on a case-by-case basis, specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the sandbox applicant. OFR may not authorize more than 15,000 consumers to receive the financial product or service until the sandbox licensee has filed the first report required under the sandbox. After the filing of the report, if the licensee demonstrates adequate financial capitalization, risk management processes, and management oversight, OFR may authorize up to 25,000 consumers to receive the financial product or service.

A sandbox licensee must provide a written statement to the consumer, which must contain an acknowledgement from the consumer, of all of the following information:

- The name and contact information of the sandbox licensee.
- That the financial product or service has been authorized to be made available to consumers for a temporary period by OFR, under the laws of Florida.
- That the state does not endorse the financial product or service.
- That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.
- That the sandbox licensee is not immune from civil liability for any losses or damages caused by the financial product or service.
- The expected end date of the sandbox period.
- The contact information for OFR and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to OFR.
- Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of the sandbox.

[123] The commission is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

OFR may enter into an agreement with a state, federal, or foreign regulatory agency to allow sandbox licensees to make their products or services available in other jurisdictions. The commission must adopt rules to implement this authority.

OFR may examine the records of a sandbox licensee at any time, with or without notice.

A sandbox licensee may apply for one extension of the initial 24-month sandbox period for 12 additional months. An application for an extension must cite one of the following reasons as the basis for the application and must provide all relevant supporting information:

- Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.
- An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with OFR and approval is pending.

A complete application for an extension must be filed at least 90 days before the conclusion of the initial sandbox period. OFR must approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In determining whether to approve or deny an application for extension of the sandbox period, OFR must, at a minimum, consider the current status of the factors previously considered at the time of application for the initial sandbox period.

At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, the sandbox licensee must provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the business entity formerly licensed under the sandbox may:

- Collect and receive money owed to the business entity or pay money owed by the business entity, based on agreements with consumers made before the conclusion of the sandbox period or the extension.
- Take necessary legal action.
- Take other actions authorized by commission rule, which are not inconsistent with the sandbox.

A sandbox licensee must submit a report to OFR twice a year as prescribed by rule. The report must, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

A sandbox licensee remains subject to:

- Civil damages for acts and omissions arising from or related to any innovative financial product or services provided or made available by the licensee or relating to the sandbox.
- All criminal and consumer protection laws and any other statute not specifically excepted under the sandbox.

OFR may, by order, revoke or suspend a licensee’s approval to participate in the sandbox if:

- The licensee has violated or refused to comply with the sandbox statute, any statute not specifically excepted under the sandbox, a rule of the commission that has not been waived, an order of OFR, or a condition placed by OFR on the approval of the licensee's sandbox application;
- A fact or condition exists that, if it had existed or become known at the time that the sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;
- A material error, false statement, misrepresentation, or material omission was made in the sandbox application; or

- After consultation with the licensee, OFR determines that continued testing of the innovative financial product or service would be likely to harm consumers or would no longer serve the purposes of the sandbox because of the financial or operational failure of the financial product or service.

Written notice of a revocation or suspension order must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the licensee must complete before OFR lifts the suspension. OFR may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions. If service of process on a sandbox licensee is not feasible, service on OFR is deemed service on the licensee.

The commission shall adopt rules to administer the sandbox before approving any application. OFR may issue all necessary orders to enforce the sandbox statute and may enforce these orders in accordance with ch. 120, F.S., or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

The bill provides an appropriation of $50,000 in nonrecurring funds from the Administrative Trust Fund to OFR for the purposes of implementing the sandbox. The sandbox statute will take effect on January 1, 2020, but only if CS/CS/HB 1393 or similar legislation takes effect and if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will have a negative, significant fiscal impact on state government expenditures, as it considerably expands the current duties of DMS and its subdivisions, relating to state IT management, and places new responsibilities on DMS. It is unclear what, if any, of the bill's requirements could be absorbed within DMS's current resources. The current DST has no resources or staffing for application development nor for the implementation and maintenance of procured systems. The current Office of the State CIO within DST has four staff for project oversight, a task that is considerably expanded in the bill. The bill also adds review of all planned state agency IT procurements subject to the EA, a significant workload that cannot be handled with the five current strategic planning coordinators within DST.

   The bill also requires FDS to conduct a market analysis at least every three years to determine whether IT resources within each state agency are used in the most cost-effective manner, whether agencies are complying with the state's cloud first policy, and whether agencies are using best practices with respect to IT. It is unclear whether the cost of conducting the analysis could be absorbed within DMS's current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact of the sandbox on the private sector is indeterminate, as it is unknown how many businesses may participate, what types of products or services such businesses would offer, and how many consumers in total would be offered the products or services.

D. FISCAL COMMENTS:

No funding has been requested by DMS nor has funding been provided in the bill for the new and expanded responsibilities identified in the bill, except for the establishment of a data catalog that was funded in the General Appropriations Act in the amount of $850,000. Most of the new FDS duties are subject to legislative appropriation.

The bill will have a negative fiscal impact on OFR. Under the sandbox, the fees will be the same as under the existing license in ch. 516, F.S., and part II of ch. 560, F.S., except that the renewal fee can be prorated because the sandbox can only be extended for one additional year, whereas the renewed license under ch. 516, F.S., and part II of ch. 560, F.S., is for a two-year period. Depending on the number of sandbox licensees and the complexity of oversight, OFR may need more staff. Additionally, OFR will need to make changes to its IT infrastructure in order to administer the program. According to OFR, such changes will cost an estimated $250,115.[124] The bill appropriates $50,000 in nonrecurring funds for FY 2020-2021 from the Administrative Trust Fund for the amount that cannot be funded out of existing appropriations within OFR.

[124] Email from Alex Anderson, Director of Governmental Relations for the OFR, RE: PCS for HB 1391 Fiscal Impact (Feb. 3, 2020).