The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/CS/SB 1870
INTRODUCER:	Banking and Insurance Committee; Innovation, Industry, and Technology Committee; and Senators Hutson and Cruz
SUBJECT:	Technological Development
DATE:	February 21, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle/Baird	Imhof	IT	**Fav/CS**
2.	Johnson	Knudson	BI	**Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1870 abolishes the Division of State Technology within the Department of Management Services (DMS), and replaces it with the Florida Digital Service, which is charged with creating innovative solutions that securely modernize state government, achieving value through digital transformation and interoperability, and supporting the cloud-first policy. The bill requires the Florida Digital Service to develop a comprehensive enterprise architecture and addresses how information technology infrastructure may be modernized to achieve cloud-first objectives. "Enterprise" means state agencies, including the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

The bill provides, that if a Cabinet agency adopts alternative standards in lieu of the enterprise architecture standards, the agency must affirmatively opt-out and notify the Governor, the President of the Senate, and the Speaker of the House of Representatives in writing before adoption of the alternative standards and annually thereafter, until such agency adopts the enterprise architecture standards in s. 282.0051, F.S. The notice must include the following:

- A detailed plan of how such agency will comply with the interoperability requirements.
- The estimated cost and time difference between adhering to the enterprise architecture or choosing alternative standards.
- A detailed security risk assessment of adopting alternative standards versus adopting the enterprise architecture.

Further, the bill creates the Financial Technology Sandbox, within the Office of Financial Regulation (OFR), to license financial technology innovators to test new products and services within the areas of a regulatory sandbox using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions in the consumer finance, payment instruments sellers, and money transmitter programs.

The bill appropriates $50,000 in nonrecurring funds for FY 2020-2021 from the Administrative Trust Fund to the OFR to implement the provisions of s. 559.592, F.S., the Financial Technology Sandbox.

The fiscal impact on the Department of Management Services is indeterminate at this time.

Except as otherwise provided (the sandbox provisions), the bill takes effect July 1, 2020.

II. Present Situation:

Department of Management Services (DMS)

Information Technology (IT) Management

The DMS[1] oversees IT[2] governance and security for the executive branch of state government. The Division of State Technology (DST), within the DMS, implements duties and policies of the DMS in this area.[3] The head of DST is appointed by the Secretary of Management Services[4] and serves as the state chief information officer (CIO).[5] The CIO must have at least 10 years of executive level experience in the public or private sector.[6] The 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."[7] The duties 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[8] in complying with those standards;
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects;

[1] Section 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] Section 20.22(2)(a), F.S.
[4] The Secretary of Management Services serves as the head of DMS. The Secretary is appointed by the Governor, subject to confirmation by the Senate. s. 20.22(1), F.S.
[5] Section 20.22(2)(b), F.S.
[6] *Id.*
[7] *State Technology*, FLORIDA DEPARTMENT OF MANAGEMENT SERVICES, https://www.dms.myflorida.com/business_operations/state_technology (last visited Jan. 27, 2020).
[8] *See* s. 282.0041(27), F.S.

- 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;
- Recommending open data[9] technical standards and terminologies for use by state agencies;
- 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.[10]

State Data Center and the Cloud-First Policy

In 2008, the Legislature created the State Data Center (SDC) system, established two primary data centers,[11] and required consolidation of agency data centers into the primary data centers by 2019,[12] which was completed in FY 2013-14. In 2014, the two primary data centers were merged to create the SDC within then-existing Agency for State Technology.[13] The SDC is established within the DMS and the DMS is required to provide operational management and oversight of the SDC.[14]

The SDC relies heavily on the use of state-owned equipment installed at the SDC facility located at the Capital Circle Office Center in Tallahassee for the provision of data center services. The SDC is required to do the following:

- Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities;[15]
- 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

[9] 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. Section 282.0041(18), F.S.
[10] Section 282.0051, F.S.
[11] The Northwood Shared Resource Center and the Southwood Shared Resource Center. Ss. 282.204-282.205, F.S. (2008).
[12] Ch. 2008-116, L.O.F.
[13] Ch. 2014-221, L.O.F.
[14] Section 282.201, F.S.
[15] A "customer entity" means an entity that obtains services from DMS. s. 282.0041(7), F.S.

needs of customer agencies, 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 state data center services to third-party cloud-computing services procured by a customer entity.

A state agency is prohibited, unless exempted[16] 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.[17]

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."[18] 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.[19] 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.[20]

IT Security

The IT Security Act[21] establishes requirements for the security of state data and IT resources. The DMS must designate a state chief information security officer (CISO) to oversee state IT security.[22] The CISO must have expertise in security and risk management for communications and IT resources.[23] The DMS is charged 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;

[16] 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.
[17] Section 282.201(3), F.S.
[18] *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.
[19] Section 282.206(1), F.S.
[20] Section 282.206(2) and (3), F.S.
[21] Section 282.318, F.S., is cited as the "Information Technology Security Act."
[22] Section 282.318(3), F.S.
[23] *Id.*

- 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.[24]

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.[25] In part, the heads of state agencies are also required to annually submit to DMS the state agency's strategic and operational IT security plans; conduct, and update every 3 years, a comprehensive risk assessment; 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.[26]

Enhanced 911 (E911) System

The DST, which oversees the E911 system in Florida, is required to develop, maintain, and implement the statewide emergency communications E911 system plan, including schedules related to public agencies implementation and coordination of the plan.[27] The plan must provide for:

- The public agency emergency communications requirements for each entity of local government[28] 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.

Agency Procurements

The DMS is responsible for procuring state term contracts for commodities and contractual services from which state agencies must make purchases.[29] Agency[30] procurement 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,[31] unless otherwise authorized by law:[32]

- 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

[24] Section 282.318(3), F.S.
[25] Section 282.318(4)(a), F.S.
[26] Section 282.318(4), F.S.
[27] Section 365.171(4), F.S.
[28] "Local government" means any city, county, or political subdivision of the state and its agencies. s. 365.171(3)(b), F.S.
[29] Sections 287.042(2)(a) and 287.056(1), F.S.
[30] Section 287.012(1), F.S., defines "agency" as 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.
[31] Section 287.012(6), F.S., defines "competitive solicitation" as 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.
[32] *See* s. 287.057, F.S.

the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.[33]

- 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.[34]
- 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.[35]

Digital Driver License

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license.[36] Further, the DHSMV may contract with one or more private entities to develop a digital proof of driver license system.[37] The digital proof of driver license developed by the DHSMV, or by an entity contracted by the DHSMV, must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license.[38] A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.[39]

Current law also establishes penalties for a person who manufacturers or possesses a false digital proof of driver license.[40] Specifically, a person who:

- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to 5 years in prison[41] and a fine not to exceed $5,000,[42] or punishable under the habitual felony offender statute.[43]
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison[44] and a fine not to exceed $500.[45]

Financial Technology

Financial technology, often referred to as "FinTech," encompasses a wide array of innovation in the financial services industry. FinTech is technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated

[33] Section 287.057(1)(a), F.S.
[34] Section 287.057(1)(b), F.S.
[35] Section 287.057(1)(c), F.S.
[36] Section 322.032(1), F.S.
[37] Section 322.032(2), F.S.
[38] *Id.*
[39] Section 322.032(3), F.S.
[40] Section 322.032(4), F.S.
[41] Section 775.082, F.S.
[42] Section 775.083(1)(c), F.S.
[43] Section 775.084, F.S.
[44] Section 775.082, F.S.
[45] Section 775.083(1)(e), F.S.

material effect on the provision of financial services.[46] 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.[47] Greater competition and diversity in lending, payments, insurance, trading, and other areas of financial services can create a more efficient and resilient financial system.[48] Catalysts of FinTech innovations include technology, regulation, and evolving consumer preferences, including customization.[49]

FinTech innovation is often thought to be synonymous with disruption of the traditional financial services market structure and its providers, such as financial institutions. However, to date, the relationship between incumbent financial institutions and FinTech firms appears to be largely complementary and cooperative in nature.[50] 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.[51] Partnering allows FinTech firms to 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.[52] At the same time, incumbents benefit from access to innovative technologies that provide a competitive edge.[53] Yet there are exceptions to this trend, as some FinTech firms have established inroads in credit provision and payments.[54]

Regulatory Sandboxes

Rapid Fintech development has brought with it regulatory uncertainty. Some suggest that regulatory relief and testing can be important when it comes to bringing innovative products to market.[55] A well-designed and executed sandbox can facilitate innovation, protect consumers, and safeguard the financial systems.[56] When approving pilots or issuing regulatory relief, some have suggested agencies adopt a data-driven approach, which incorporates information sharing and the ability to monitor experiments, to ensure the regulators can draw lessons from the sandbox.[57] Further, regulatory sandboxes can provide a Fintech business with valuable market

[46] 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 Feb. 14, 2020).
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] Quan, Dan, *A Few Thoughts on Regulatory Sandboxes*, Center for Monetary and Financial Alternatives, Cato Institute, at https://pacscenter.stanford.edu/a-few-thoughts-on-regulatory-sandboxes/ (last viewed Feb. 14, 2020).
[56] *Id.*
[57] *Id.*

insights while maintaining compliance, as well as greater knowledge of the laws surrounding its product or service, and the opportunity to begin building a relationship with a regulator.[58]

Arizona Regulatory Sandbox

Arizona was the first state to enact[59] and launch a regulatory sandbox (sandbox) program.[60] The program is established under the Attorney General's Office to foster innovation by enabling a business to obtain limited access to the Arizona market to test innovative financial products or services.[61] Some of the products or services approved for Arizona's sandbox include:

- A financial services "club" using money transmission services in connection with the sale of digital assets aimed at providing a cash management solution for licensed medical marijuana providers.
- A business model for income-sharing agreements that provide qualified consumers with a fixed amount of money in exchange for a percentage of the consumer's future income over a scheduled period of time, subject to contingencies involving periods of unemployment or lowered income.
- A consumer-lending platform that enables small business partners to provide lending options at the point of sale for consumers seeking to finance household related projects.[62]

Office of Financial Regulation

The Office of Financial Regulation (OFR) regulates financial institutions, finance companies, money services businesses, and the securities industry.[63] The Financial Services Commission (commission), composed of the Governor, Chief Financial Officer, Attorney General, and the Commissioner of Agriculture and Consumer Services, serves as the agency head of the OFR for purposes of rulemaking under ss. 120.536-120.565, F.S..[64]

Money Services Businesses

Money services businesses include payment instrument sellers, money transmitters, check cashers, foreign currency exchangers, and deferred presentment providers, pursuant to ch. 560, F.S., the Money Services Business Act. Money services businesses (MSBs) are regulated under two license categories.[65] Money transmitters and payment instrument issuers[66] are regulated

[58] Virtual Currency Report, *Fintech Regulatory Sandboxes: Update on Arizona's Sandbox and Other Developments*, (Feb. 11, 2019), JDSUPRA, at https://www.jdsupra.com/legalnews/fintech-regulatory-sandboxes-update-on-85915/ (last viewed Feb. 14, 2020).
[59] House Bill 2434, 2018 Second Regular Session, approved by the Governor March 22, 2018.
[60] Press, Daniel, *Arizona Becomes First State to Establish FinTech Sandbox* (Mar. 24, 2018) at https://cei.org/blog/arizona-becomes-first-state-establish-fintech-sandbox (last viewed Feb. 15, 2020).
[61] Arizona Attorney General, Mark Brnovich, Arizona's Fintech Sandbox, Frequently Asked Questions at https://www.azag.gov/fintech/faq (last viewed Feb. 10, 2020).
[62] Arizona Attorney General, Mark Brnovich, Sandbox participants at https://www.azag.gov/fintech/participants (last viewed Feb. 15, 2020).
[63] Section 20.121(3)(a)2., F.S.
[64] *Id.*
[65] Section 560.104, F.S., provides that banks, credit unions, trust companies, offices of an international banking corporation, or other financial depository institutions organized under the laws of any state of the United States are exempt from the provisions of ch. 560, F.S.
[66] A person licensed as a money transmitter or payment instrument seller may also engage in the activities authorized for check cashers and foreign currency exchangers without paying additional licensing fees. See s. 560.204(2), F.S.

under part II of ch. 560, F.S., while check cashers[67] and foreign currency exchangers[68] are regulated under part III. An applicant for licensure as a money services business must:

- Demonstrate the character and general fitness to command the confidence of the public and warrant the belief that the money services business shall operate lawfully and fairly;
- Be legally authorized to do business in this state;
- Be registered as a money services business with the federal Financial Crimes Enforcement Network;[69] and,
- Have an anti-money laundering program, which meets the requirements of 31 C.F.R. 1022.210.[70]

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, a MSB must maintain certain records of each transaction involving currency or payments 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.[71] A MSB must keep records of each transaction occurring in this state which 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.[72] The OFR may take administrative action against a MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[73] The 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.[74]

A money transmitter "receives currency,[75] monetary value,[76] or payment instruments[77] 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."[78] A payment instrument

[67] "Check casher" means a person who sells currency in exchange for payment instruments received, except for travelers checks. Section 560.103(6), F.S.
[68] "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.
[69] See 31 C.F.R. 1010.100 and 31 C.F.R. 1022.380. These provisions define money service businesses subject to registration with the Financial Crimes Enforcement Network (FinCEN)..
[70] Section 560.1401, F.S.
[71] Section 560.123, F.S.
[72] *Id.*
[73] Section 560.114, F.S.
[74] *Id.*
[75] "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. Section 560.103(11), F.S.
[76] "Monetary value" means a medium of exchange, whether or not redeemable in currency. s. 560.103(21), F.S.
[77] "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.
[78] Section 560.103(23), F.S.

seller sells, issues, provides, or delivers a payment instrument.[79] A money transmitter or payment instrument seller must:

- 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.[80]
- 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.[81] 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.[82]
- 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 with exceptions.[83]
- Maintain specified records for at least 5 years.[84]

An applicant for licensure under part II, of ch. 560, F.S., must submit a nonrefundable fee of $375 with the application form.[85] Applicants are subject to a background check and other specified requirements.[86]

Federal Regulation. The Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN) is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[87] To that end, the FinCEN administers the Bank Secrecy Act (BSA).[88] The BSA regulations requires financial institutions, which includes money services businesses, to establish an anti-money laundering program, verify customer identity, maintain certain records, and file 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.[89] 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.[90] However, if a

[79] Section 560.103(30) and (34).
[80] Section 560.209, F.S.
[81] *Id.*
[82] *Id.*
[83] Section 560.210, F.S.
[84] Sections 560.1105 and 560.211, F.S.
[85] Section 560.143, F.S.
[86] Sections 560.114, 560.141, and part II, ch. 560, F.S.
[87] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Jan. 31, 2020).
[88] The Currency and Foreign Transactions Reporting Act of 1970 (which legislative framework is commonly referred to as the "Bank Secrecy Act" or "BSA." These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311-5314 and 5316-5332 and notes thereto.
[89] .31 C.F.R. ss. 1010.100 and 1022.380.
[90] *Id.*

business provides money transfer services in any amount, the business is required to be registered.[91]

Consumer Finance Loans

The Florida Consumer Finance Act (act)[92] authorizes licensed lenders to make secured or unsecured consumer loans of money, credit, goods, or choses in action[93] in an amount or to a value of $25,000 with 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,
- 24 percent on principal above $3,000 and up to $4,000, and
- 18 percent on principal above $4,000 and up to $25,000.[94]

An applicant for licensure must pay a nonrefundable biennial license fee of $625, meet liquid asset standards, and other eligibility requirements.[95] Licenses granted under the act are for a single place of business and must be renewed every 2 years. The act provides grounds for disciplinary action by the OFR against an applicant or a licensee.[96]

III. Effect of Proposed Changes:

Florida Digital Service

Section 1 amends s. 20.22, F.S., to abolish the Division of State Technology and create the Division of Telecommunications and the Florida Digital Service.

Section 2 amends s. 282.0041, F.S., to create the following definitions:

- "Credential service provider" means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities;
- "Data-call" means an electronic transaction with the credential service provider that verifies the authenticity of a digital identity by querying enterprise data;
- "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- "Electronic credential" means a digital asset which verifies the identity of a person, organization, application, or device;
- "Enterprise" means the collection of state agencies. The term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services;

[91] *Id.*
[92] Ch. 516, F.S.
[93] 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).
[94] Section 516.031 (1), F.S. In addition, consumer finance lenders are permitted to charge other fees, as provided in s. 516.031(3), F.S.
[95] Section 516.03(1), F.S.
[96] Section 516.07, F.S.

- "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government;
- "Interoperability" means the technical ability to share and use data across and throughout the enterprise; and
- "Qualified entity" means a public or private entity or individual that enters into a binding agreement with the department, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

Section 3 amends s. 282.0051, F.S, to provide the powers and duties of the Florida Digital Service. The Florida Digital Service is created within the DMS to create solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206, F.S.

The bill revises provisions, which currently give DMS oversight and management authority over agency information technology projects, and instead gives the Florida Digital Service this authority over agency projects that have an information technology component. The Florida Digital Service will perform project oversight on all state agency information technology projects that have an information technology component with a total project cost of $10 million or more and that are funded in the General Appropriations Act or any other law. The Florida Digital Service is required to establish a process for state agencies to apply for an exception to these requirements. Further, notwithstanding any other law, the Florida Digital Service must provide project oversight on any project with an information technology component of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $25 million or more and which affects one or more other agencies. The Florida Digital Service is required to establish a process for these departments to apply for an exception for a specific project with an information technology component. The Secretary of the DMS is required to designate a state chief information officer to head the Florida Digital Service, and the state chief information officer must designate a chief data officer.

The Florida Digital Service must develop a comprehensive enterprise architecture for all state departments and agencies that:

- Acknowledges the unique needs of those included within the enterprise, resulting in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability;
- Supports the cloud-first policy as specified in s. 282.206, F.S.; and
- Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

The Florida Digital Service, pursuant to legislative appropriation must:

- Create and maintain a comprehensive indexed data catalog that lists what data elements are housed within the enterprise and in which legacy system or application these data elements are located;
- Develop and publish, in collaboration with the enterprise, a data dictionary for each agency that reflects the nomenclature in the comprehensive indexed data catalog;

- Review and document use cases across the enterprise architecture;
- Develop and publish standards that support the creation and deployment of application programming interfaces to facilitate integration throughout the enterprise;
- Publish standards necessary to facilitate a secure ecosystem of data interoperability that is compliant with the enterprise architecture and allows for a qualified entity to access enterprise's data under the terms of the agreements with the department; and
- Publish standards that facilitate the deployment of applications or solutions to existing enterprise obligations in a controlled and phased approach.

Pursuant to legislative authorization and subject to appropriation, the DMS may procure a credential service provider through a competitive process pursuant to s. 287.057, F.S. The terms of the contracts developed from such procurement must be based on the per-data-call or subscription charges and without cost to the enterprise or law enforcement for using the services provided by the credential service provider. The bill authorizes the DMS to enter into agreements with qualified entities that have technological capabilities necessary to integrate with the credential service provider and agree to terms, privacy policies, and uniform remittance terms relating to the consumption of enterprise data. However, the bill provides that enterprise data do not include data that are restricted from public disclosure based on federal or state privacy, confidentiality, or security laws. The bill provides that a credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.

All revenues generated from the agreements with the credential service provider and qualified entities must be remitted to the DMS, and the DMS must deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation, and DMS agreements with the credential service provider and qualified entities. Upon adoption of the enterprise architecture, the Florida Digital Service may develop a process to:

- Receive written notice from the enterprise of procurement of an information technology project that is subject to governance by the enterprise architecture; and
- Participate in the development of specifications and recommend modifications of any procurement by state agencies that the procurement complies with the enterprise architecture.

Section 4 amends s. 282.00515, F.S., to revise the current process which requires the Cabinet agencies to either adopt the IT architecture standards established in s. 282.0051, F.S., or adopt alternative standards based on best practices and industry standards. The bill provides that, if a Cabinet agency adopts an alternative standards in lieu of the enterprise architecture standards, such agency must affirmatively opt-out and notify the Governor, the President of the Senate, and the Speaker of the House of Representatives in writing before adoption of the alternative standards and annually thereafter, until such agency adopts the enterprise architecture standards in s. 282.0051, F.S. The notice must include the following:

- A detailed plan of how such agency will comply with the interoperability requirements.
- The estimated cost and time difference between adhering to the enterprise architecture or choosing alternative standards.
- A detailed security risk assessment of adopting alternative standards versus adopting the enterprise architecture.

Section 5 amends s. 282.318, F.S., to require the state chief information officer to report to the state chief information security officer of the Florida Digital Service.

Sections 6, 7, 8, 9, and 10 amend ss. 287.0591, 365.171, 365.172, 365.173, and 943.0415, F.S., respectively, to make technical, conforming changes.

Financial Technology Sandbox

Section 11 creates s. 559.952, F.S., the "Financial Technology Sandbox" ("sandbox") effective January 1, 2021, within the Office of Financial Regulation (OFR). Subsection (2) provides that the intent of the sandbox is to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox, using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions. Subsection (3) creates definitions of terms, including the following, as summarized below:

- "Consumer" means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.
- "Control person," is defined to have the same meaning as provided in s. 516.01, F.S.
- "Financial product or service" means a product or service related to a consumer finance loan, as defined in s. 516.01, F.S., or as a money transmitter or payment instrument seller, as defined in s. 560.103, F.S., including mediums of exchange that are in electronic or digital form, , which is subject to general law or corresponding rule requirements in the sections enumerated in paragraph (4)(a) and to general law or corresponding rule requirements in the sections enumerated in paragraph (4)(a) and which is under the jurisdiction of the office.
- "Financial Technology Sandbox" means the program which allows a licensee to make an innovative financial product or service available to consumers as a person who makes and collects consumer finance loans, as defined in s. 516.01, F.S., or as a money transmitter or payment instrument seller, as defined in s. 560.103, F.S., during a sandbox period through an exception to general laws or a waiver of rule requirements, or portions thereof, as specified in this section.
- "Innovative" means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public and which is not known to have a comparable offering in this state outside of the Financial Technology Sandbox.
- "Sandbox period" means the period, initially not longer than 24 months, in which the office has:
    - Authorized an innovative financial product or service to be made available to consumers; and
    - Granted the person who makes the innovative financial product or service available an exception to general law or a waiver of the corresponding rule requirements, as determined by the office, so that authorization is possible.

Sandbox Application; Standards for Approval (Subsection 5)

Before filing an application to enter the sandbox, 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.

Before making an innovative financial product or service available to consumers in the sandbox, a person must file an application for licensure with the OFR. A business entity filing an application 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 this state. Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

In the application, the person must specify the general law or rule requirements for which an exception or waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers. The application must also contain:

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox;
- 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;
- 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;
- If any control person involved in the development, operation, or management of the applicant's innovative financial product or service 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, any property-based offense, or any crime involving moral turpitude or dishonest dealing, the application to the sandbox will be denied. A plea of no contest, a conviction, or a finding of guilt must be reported regardless of adjudication;
- A copy of the disclosures that will be provided to consumers;
- The financial responsibility of any control person ; and
- Any other factor that the office determines to be relevant.

The 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 or if any control person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved with another sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

The OFR must approve or deny in writing a sandbox application within 60 days after receipt of the completed application. The OFR and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the OFR may impose conditions on any approval.

Upon approval of an application, the OFR must specify the general law or rule requirements, or portions thereof, for which an exception or rule waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The 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 making the financial product or service available.

Exceptions of General Law and Waivers of Rules (Subsection 4)

Notwithstanding any other law, upon approval of a sandbox, the OFR must grant an applicant a license and a waiver of a requirement, or a portion thereof, which is imposed by rule as authorized by any of the following provisions of general law, if all of the following conditions are met:

- The general law or corresponding law currently prevents the innovative product or service from being made available to consumers.;
- The exceptions or rule waivers are not broader than necessary to accomplish the purposes specified in this section.
- No provision relating to the liability of an incorporator, a director, or an officer of the applicant is eligible for a waiver.
- The other requirements of this section are met.

If the applicant is approved for a person who otherwise would be subject to ch. 516 or 560, F.S., the following provisions are not applicable to the licensee:

- Section 516.03, F.S., except for the license fee, investigation fee, evidence of liquid assets of at least $25,000, and the OFR's authority to investigate an applicant. The OFR may prorate the license renewal fees for an extension granted.
- Section 516.05, F.S., except for s. 516.05(4), (5), and (7)-(9), F.S.
- Section 560.109, F.S., to the extent that it requires the OFR to examine a licensee at least once every 5 years;
- Section 560.118, F.S., except for s. 560.118 (1), F.S.;
- Section 560.125, F.S., except for s. 560.125(1), F.S., to the extent that subsection would prohibit a licensee from engaging in the business of a money services business during the sandbox period; and s. 560.125(2), F.S., to the extent that subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period;
- Section 560.128, F.S.;
- Section 560.141, F.S., except for s. 560.141(1)(a) 3., 8., 9., and 10., and (1)(b), (c), and (d), F.S.;
- Section 560.142, F.S., except that the OFR may prorate, but not entirely waive, the license renewal fees provided in ss. 560.142 and 560.143, F.S., for an extension granted;
- Section 560.143(2), F.S., to the extent necessary for proration of the renewal fee;
- Section 560.204(1), F.S., to the extent that subsection would prohibit a licensee from engaging in, or advertising it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period;
- Section 560.205, F.S., except for s. 560.205(1) , (3), and (4) F.S.;
- Section 560.208, F.S., except for s. 560.208(3)-(6), F.S.; or
- Section 560.209, F.S., except that the OFR may modify, but not entirely waive, the net worth, corporate surety bond, and collateral deposit amounts required under this section. The modified amounts must be in such lower amounts that the OFR determines to be commensurate with the considerations under paragraph (5)(d) and the maximum number of consumers authorized to receive the financial product or service under this section.

Sandbox Operation (Subsection 6)

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

Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the sandbox, the licensee must provide a written statement to the consumer that includes the following disclosures:

- The name and contact information of the person making the financial product or service available to consumers;
- That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state;
- That this 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 person making the financial product or service available to consumers 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 the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office; and
- Any other statements or disclosures required by rule of the commission.

The written statement must contain an acknowledgment from the consumer, which must be retained for the duration of the sandbox period by the licensee making the financial product or service available.

The OFR may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons who make an innovative financial product or service available in this state through the sandbox to make their products or services available in other jurisdictions.

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

Sandbox Period Extension and Conclusion (Subsection 7)

A licensee may apply for an extension of the initial sandbox period for up to 12 additional months. A complete application for an extension must be filed with the OFR at least 90 days before the conclusion of the initial sandbox period. The OFR must approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the

office must at least consider the status of the factors previously considered in deciding to approve or deny an application to enter the sandbox. 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 that:

- Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently; or
- 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 the OFR, and approval is pending.

At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, a 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 person who makes the innovative financial product or service available may:

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

Reporting (Subsection 8)

A person authorized to make an innovative financial product or service available to consumers must submit a report to the office twice a year, as prescribed by commission rule. The report must include financial reports and the number of consumers who have received the financial product or service.

Construction (Subsection 9)

A person whose sandbox application is approved is deemed licensed under the applicable exceptions to general law or waiver of the rule requirements, specified under paragraph (4)(a), unless the person's authorization to make the financial product or service available to consumers under this section has been revoked or suspended.

Violations and Penalties (Subsection 10)

A licensee who makes an innovative financial product or service available to consumers in the sandbox is not immune from civil damages for acts and omissions relating to this section and is subject to all criminal statutes and any other statute not specifically excepted. The OFR may, by order, revoke or suspend authorization granted to a person to make an innovative financial product or service available to consumers if:

- The licensee has violated or refused to comply with this section, a rule of the commission, an order of the OFR, or a condition placed by the office on the approval of the person'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, continued testing of the innovative financial product or service would:
  - Be likely to harm consumers; or
  - No longer serve the purposes of this section 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 person must complete before the office lifts the suspension. The office 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 person making an innovative financial product or service available to consumers in the sandbox is not feasible, service on the OFR is deemed service on such person.

Rules and Orders (Subsection 11)

The commission must adopt rules to administer this section. The OFR may issue all necessary orders to enforce this section and may enforce the 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 because of an innovative financial product or service.

Appropriation for the Sandbox

Section 12 provides an appropriation of $50,000 in nonrecurring funds from the Administrative Trust Fund to the Office of Financial Regulation to implement s. 559.952, F.S., as created by this act.

Effective Date

Section 13 provides that, except as otherwise expressly provided, the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Application of General Laws

The bill *may* be interpreted to authorize executive branch employees, not the Legislature, to determine the application of general law, without guidance or limitation. See VII Related Issues. The cornerstone of American democracy known as separation of powers recognizes three separate branches of government—the executive, the legislative, and the judicial—each with its own powers and responsibilities. Florida courts have traditionally applied a strict separation of powers doctrine, stating that no branch may encroach on the powers of another and that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260, 264 (Fla.1991). This prohibition, known as the nondelegation doctrine, requires that "fundamental and primary policy decisions ... be made by members of the legislature who are elected to perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program." *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978). In other words, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion." *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55–56 (Fla.1976).

Entering into Reciprocal Agreements with Other States, Federal Agencies, or Foreign Regulatory Agencies

Statutory authorization to enter reciprocal agreements with other states may potentially implicate the "nondelegation doctrine." Article III, Section 1 of the Florida Constitution states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida." The Florida Supreme Court has held that this constitutional provision requires that "primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines…."[97]

[97] Askew v. Cross Key Waterways, 372 So.2d 913, 925 (Fla. 1978).

The Legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions."[98] However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law."[99] Further, the nondelegation doctrine precludes the Legislature from delegating its powers "absent ascertainable minimal standards and guidelines."[100] When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide in the execution of the powers delegated."[101]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Sections 1-10 of the Bill:

The bill will have an indeterminate impact on state government revenues.

The bill will have an indeterminate fiscal impact on state government expenditures.

Sections 11 and 12 of the Bill:

Office of Financial Regulation

The OFR estimates that they will need $50,000 in nonrecurring funds to make changes to their information technology infrastructure in order to administer the Financial Technology Sandbox program. [102]

VI. Technical Deficiencies:

None.

[98] *Microtel v. Fla. Pub. Serv. Comm'n,* 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin,* 239 So.2d 577 (Fla.1970)).
[99] *Sims v. State,* 754 So.2d 657, 668 (Fla. 2000).
[100] *Dep't of Bus. Reg., Div. of Alcoholic Beverages and Tobacco v. Jones,* 474 So.2d 359, 361 (Fla. 1st DCA 1985).
[101] *Martin, 916 So.2d at 770.*
[102] Email from Office of Financial Regulation, CS/SB 1870 Fiscal Impact (Feb. 14, 2020). On file with the Banking and Insurance Committee.

VII. Related Issues:

There is some uncertainty as to how some of the sandbox provisions on exceptions to general law will be interpreted and applied. The bill provides the following provisions.

- In the application [to enter the sandbox], the person must specify the general law or rule requirements for which an exception or waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers." (Lines 874-878)
- "If the application [to enter the sandbox] is approved for a person who otherwise would be subject to the provisions of chs. 516 or 560, the following provisions shall not be applicable to the approved sandbox participant" (Lines 804-807); and
- "During a sandbox period, the exceptions granted in paragraph (a) are applicable if all of the following conditions are met:

The general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers.

The exceptions or rule waivers are not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office." (Lines 847-857)

The exceptions to general law provisions appear to except application of *all* general laws listed to every sandbox participant, which would negate the provisions for specification of specific general law for which an exception is sought and for approval of an application and application of the exceptions only if *the* general law prevents making the product or service available and the exceptions are not broader than necessary to accomplish the purposes and standards. If, on the other hand, the latter provisions are given effect, in essence reading something like an "as appropriate, on a case by case basis" standard into the exception provision, this raises an unlawful delegation of legislative authority issue as the employee making the determinations of applicability and lack of overbreadth would be determining which statutes apply, not the Legislature. See IV E. Other Constitutional Issues.

The bill requires a person making a financial product or service available through the Financial Technology Sandbox to provide consumers a written notice containing a statement that the licensee making the product or service available "is not immune from civil liability for any losses or damages caused by the financial product or service." (Lines 973-976) It also provides that a licensee who makes an innovative product or service available in the sandbox is not immune from civil damages for acts and omissions relating to this section and is subject to all criminal statutes. (Lines 1054-1055) This seems to suggest an intent that the person retain the same level of liability for losses or damages as if they were operating outside the sandbox. Given the bill's provisions on exceptions of requirements imposed by general law or waiver of the corresponding rule requirements (797-861), however, this may not be the case as some potential liability and criminal acts may be based, at least in part, on these requirements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.22, 282.0051, 282.00515, 282.318, 287.0591, 365.171, 365.172, 365.173, and 943.0415.

This bill creates section 559.952 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Banking and Insurance on February 19, 2020:
The CS:

- Eliminates the Enterprise Architecture Advisory Council.
- Revises powers and duties of the Florida Digital Services.
- Revises the definition of the term, "enterprise," to exclude the judicial branch.
- Provides that a credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.
- Provides technical, conforming changes.
- Revises the Financial Regulatory Sandbox program to limit the scope to products or services relating to a consumer finance loan or a money transmitter and payment instrument seller.
- Creates additional definitions relating to the Financial Regulatory Sandbox program.
- Eliminates the authority of the Office of Financial Regulation to enter into reciprocity agreements with other states, federal agencies, or foreign regulatory agencies to allow persons operating in sandboxes in other jurisdictions to operate in this state.
- Revises requirements for the application for licensure under the Financial Regulatory Sandbox program.
- Removes additional recordkeeping requirements for sandbox licensees.
- Appropriates $50,000 in nonrecurring funds from the Administrative Trust Fund to the Office of Financial Regulation to implement the provisions of s. 559.952, F.S.

CS by Innovation, Industry, and Technology on February 10, 2020:
The committee substitute:

- Creates the definitions relating to the Florida Digital Service in s. 282.0041, F.S., instead of s. 282.0051, F.S.;
- Provides new definitions for "credential service provider," "data call," "electronic," electronic credential," and "electronic credential provider";
- Changes the definition of "enterprise" for purposes of the provisions on the Florida Digital Service's enterprise architecture to include all entities within the executive branch of state government, plus the Justice Administrative Commission and the Public Service Commission, and Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch;
- Expands the Florida Digital Service's oversight of and involvement in projects that have an information technology component and provides for exceptions;
- Deletes all qualifications for the state chief information officer, the state chief data officer, and the state chief information security officer;

- Deletes the provisions on the Florida Digital Service enforcing the enterprise architecture by intervening in any procurement of information technology and delaying the procurement until it complies with the enterprise architecture;
- Deletes the requirement that the enterprise architecture's comprehensive account for all of the needs and responsibilities of a department;
- Requires the terms of the contract with a credential service provider pay for that service on a per-data call or subscription basis, with the revenues from these charges deposited into DMS's operating trust find for distribution, with DMS to recover all costs for implementing and administering the electronic credential solution;
- Authorizes the Florida Digital Service to "report to the legislative branch on any project within the judicial branch which does not comply with the enterprise architecture, while understanding the separation of powers";
- Creates the Enterprise Architecture Advisory Council to meet semiannually to discuss implementation, management, and coordination of the enterprise architecture; identify potential issues and threats with specific use cases; and develop proactive solutions;
- Creates the Financial Technology Sandbox Act effective January 1, 2021;
- Provides authority for exceptions rather than waivers of certain statutory requirements;
- Deletes banking products and services from the definition of financial product or service and deletes references to blockchain technology;
- Deletes from the definition of "innovative" the requirement that the technology "has no substantially comparable, widely available analog in this state";
- Authorizes the Office of Financial Regulation, not the Commissioner of the Office of Financial Regulation to waive a requirement or a portion thereof which is imposed by a general law or rule, and lists individual statutes which may be waived instead of entire chapters;
- Provides for declaratory statement on applicability of statutes, rules, or orders;
- Provides that the Financial Services Commission is to prescribe by rule the form and manner of the application to enter the Financial Technology Sandbox, not the Commissioner of the Office of Financial Regulation;
- Deletes a requirement that the applicant submit fingerprints for each individual filing an application and each individual who is substantially involved in the development, operation, or management of the innovative financial product or service, together with all the provisions relating to this requirement;
- Deletes a requirement that a person whose Financial Technology Sandbox application is approved post a consumer protection bond with the commissioner as security for potential losses suffered by consumers;
- Adds a limitation of 15,000 consumers to receive the financial product or service prior to filing the first activity report, with the limit increased after such filing to 25,000; and
- Adds a requirement that these reports, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

B. Amendments:

None.