



The Florida Senate

Issue Brief 2009-323

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Committee on Governmental Oversight and Accountability

AGENCY SUNSET REVIEW OF THE DEPARTMENT OF MANAGEMENT SERVICES

Statement of the Issue

Under the Florida Government Accountability Act, most state agencies are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished. During the 2010 Regular Session, the Legislature will review the Departments of Children and Families, Community Affairs, Management Services, and State. The Senate Governmental Operations Committee is the primary sunset review committee for review of the Department of Management Services, with assistance from the Senate General Government Appropriations Committee.

The objective of this Issue Brief is to provide background information to assist in the preliminary examination of the department. This research may be useful guiding the discussion in the 2009 Legislative Session and identifying areas for further research.

It is anticipated that a related Interim Project in 2009 will provide additional information, findings related to the department’s effectiveness and efficiency, and recommendations on the necessity of continuing the duties and responsibilities assigned to the department.

Discussion

Background

Sections 11.901-920, F.S., are known as the Florida Government Accountability Act. Under this act, most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- The agency complaint process;
- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;
- Compliance with statutory objectives for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;
- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;
- The process by which an agency actively measures quality and efficiency of services it provides to the public;
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and

- Other information requested by the Legislature.

Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees¹ must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submission, the OPPAGA studies and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees will:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

In addition, the House and Senate sunset review committees must propose legislation necessary to carry out the committees' recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The review process for the Departments of Children and Families, Community Affairs, Management Services, and State began in July, 2008, when the departments submitted their respective statutorily mandated agency reports.

The Senate Governmental Operations Committee is the primary sunset review committee for review of the Department of Management Services. The Senate General Government Appropriations Committee is assisting in this review.

Evaluation Method

Based upon statutory directives and a review of previous sunset reports, staff of the Senate has developed the following guidelines to be used in reviewing the agencies, their programs, and their advisory committees. Guidelines for agency and program review include:

- What is the mission of the agency?
- Why is the agency performing this mission?
- How are the programs of the agency funded?
- What would be the impact to public health, safety and welfare should the programs be eliminated or modified?²
- What duplication of programs exists within the agency or by other agencies or governments?
- Can these agency programs be provided more efficiently?³
- What initiatives has the agency undertaken to increase program efficiency?
- Are there management tools in place to appropriately measure program performance?

¹ Senate committees include: Children, Families, and Elder Affairs, Commerce; Community Affairs; Ethics and Elections, Governmental Operations and Military Affairs and Domestic Security, together with their respective Appropriations Committees.

² This issue will not be addressed in this Issue Brief, but rather in a subsequent report related to the Sunset Review, which may include findings and recommendations.

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Guidelines for review of Agency Advisory Councils and Committees include:

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency or the public if the advisory body were abolished?⁴
- Is the advisory body representative of the public and stakeholders impacted by its actions?

This Issue Brief will address the issues identified in the guidelines and provide an overview of the agency and its programs.

Agency Mission/Program Descriptions

Section 20.22, F.S., creates the Department of Management Services (DMS or department). The head of DMS is the Secretary of Management Services, who is appointed by the Governor, subject to confirmation by the Senate. DMS was fashioned from two other agencies. Following a 1968 constitutional revision, the Legislature enacted the “Reorganization Act of 1969,” which established the Department of Administration (DOA) and Department of General Services (DGS). The DOA consolidated budget, state planning, personnel, and retirement functions previously scattered among various ex-officio boards and agencies, most of which were under the Cabinet. The DGS centralized the following duties, to be provided to all state agencies: purchasing and contract negotiations; electronic data processing; the structure and sale of bond issues; building design, construction, and maintenance; maintenance of a state motor and executive aircraft pool; federal and state surplus property management; and the design and maintenance of a state communications network. The building construction and maintenance, purchasing, and surplus property functions all existed under Cabinet boards prior to the reorganization. The motor pool and communication functions were newly established as a result of the reorganization.⁵

The Department of Management Services was created effective July 1, 1992. The DOA was abolished and its duties were distributed among other agencies. DGS was renamed DMS. The redistribution of duties of the DOA was as follows⁶:

Entity	From	To
Division of Retirement	DOA	DMS
Personnel Management	DOA	DMS
Administrative Hearings	DOA	DMS
State Employees’ Insurance	DOA	DMS
Labor Relations	DOA	DMS
Human Resource Development	DOA	DMS
State Retirement Commission	DOA	DMS
Commission on Human Relations	DOA	Governor’s Office
Bond Finance	DOA	State Board of Administration
Executive Clemency	DOA	Florida Parole Commission

The Florida Commission on Human Relations was subsequently transferred back to DMS, where it currently exists as an independent entity associated with DMS. Other independent entities associated with DMS include the Public Employees Relations Commission (PERC), the Division of Administrative Hearings (DOAH), and the Governor’s Commission on Disabilities.

The department professes a Service Motto- “We Serve Those Who Serve Florida,” and a Service Mission- “Providing Smarter, Better, Faster Services.”

⁴ This issue will not be addressed in this Issue Brief, but rather in a subsequent report related to the Sunset Review, which may include findings and recommendations.

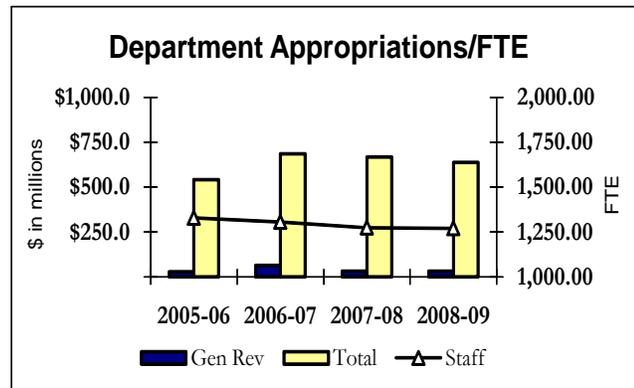
⁵ Interim Project Report 98-27, *Review of the Role of a Central Services Agency in a Decentralized Environment*, Committee on Governmental Reform and Oversight, October 1998.

⁶ *Id.*

Funding for the Department of Management Services and Independent Entities (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev	\$28.6	\$63.5	\$31.5	\$32.8
Fed TF's	\$1.9	\$1.5	\$1.5	\$1.4
Other TF's	\$511.9	\$620.1	\$635.2	\$604.0
Total	\$542.4	\$685.2	\$668.2	\$638.2
Staff	1,329.00	1,306.00	1,274.50	1,270.50



Programs

Pursuant to s. 20.22, F.S., the following divisions and programs are established in the department:

- (a) Facilities Program.
- (b) Technology Program.
- (c) Workforce Program.
- (d) 1. Support Program.
2. Federal Property Assistance Program.
- (e) Administration Program.
- (f) Division of Administrative Hearings.⁷
- (g) Division of Retirement.
- (h) Division of State Group Insurance.

According to the department, DMS has five program areas including seventeen divisions or bureaus, which do not match up exactly with the s. 20.22, F.S. organizational scheme,⁸ as follows:

- I. Administration
 - a. Executive Direction and Administration
 - b. State Employee Leasing Program
- II. Facilities
 - a. Real Estate Development and Management (Facilities Management)
 - b. Building Construction
- III. Support
 - a. Aircraft Management
 - b. Federal Property Assistance
 - c. Motor Vehicles /Watercraft Management
 - d. Purchasing Oversight
 - e. Office of Efficient Government
 - f. Private Prison Monitoring
 - g. Office of Supplier Diversity
- IV. Workforce
 - a. Human Resource Management
 - b. Insurance Benefits Administration
 - c. Retirement Benefits Administration

⁷ As discussed below, the Division of Administrative Hearings is an independent entity.

⁸ Pursuant to s. 20.04(3), F.S., DMS need not adhere to the standard terms for its internal structure that other agencies must use, but this section does not permit an agency to ignore the agency organization as specified in law.

V. Technology

- a. Telecommunications Services
- b. Wireless Services
- c. Information Services (Until July 1, 2008)

Advisory committees⁹ associated with DMS are included in their respective program areas below.

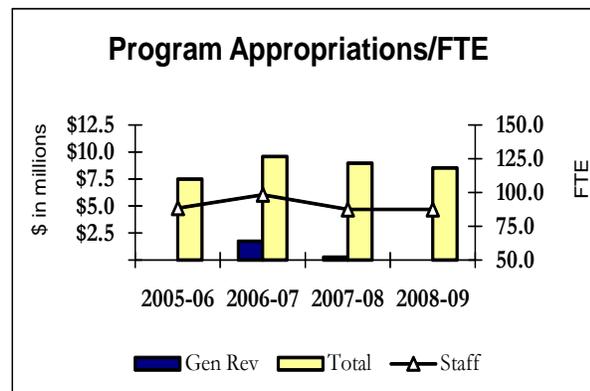
I. Administration

The Administration Program is created in s. 20.22(2)(e), F.S., and is made up of two services: Executive Direction and Support Services, and the State Employee Leasing Program. According to the department, the administration program functions largely as a support service for all agency programs, and operates at a 1.04 percent administration cost.¹⁰

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev		\$1.8	\$3	
Fed TF's				
Other TF's	\$7.5	\$7.8	\$8.7	\$8.5
Total	\$7.5	\$9.6	\$9.0	\$8.5
Staff	88.5	98.5	87.5	87.5



a. **Executive Direction and Support Services** provides administrative and support services to all areas of the agency. The Budget Entity’s legislatively approved activities include: Executive Direction, General Counsel/Legal, Legislative Affairs, Communications/Public Information, Inspector General, Director of Administration, Planning and Budgeting, Finance and Accounting, Human Resources, Mail Room (includes Mail Room, Print Shop, and Property Management), Purchasing, and Information Technology.

b. An independent entity, **State Employee Leasing**, leases seven state employees with economic development expertise to Enterprise Florida, Inc.¹¹, and the Black Business Investment Board (BBIB).¹² DMS only processes payroll and benefits for the employees leased to Enterprise Florida and the BBIB.¹³

II. Facilities

The facilities program primarily implements those provisions in the Florida Statutes related to the state’s facility needs. The program provides development and management oversight of state-owned buildings from development of facilities to management of existing buildings as well as leasing oversight of state agencies, including private sector leasing for

⁹ Section 11.902(2), F.S., defines “advisory committee” to include “any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees as defined in s. 20.03(3), (7), (8), (9), (10), or (12)...”

¹⁰ Department of Management Services’ Sunset Review Report, p. 46.

¹¹ Enterprise Florida is non-profit public-private corporation created by s. 287.901, F.S., as the principal economic development organization for the state. Presumably, substantive review of Enterprise Florida will occur during the agency sunset review of the Executive Office of the Governor by July 1, 2022, pursuant to s. 11.905(8)(a), F.S.

¹² The Black Business Investment Board is a non-profit public-private entity created by s. 288.707, F.S., to assist in the development and expansion of black business enterprises. The BBIB works closely with the Governor’s Office of Tourism, Trade and Economic Development. Presumably, substantive review of the BBIB will occur during the agency sunset review of the Executive Office of the Governor by July 1, 2022, pursuant to s. 11.905(8)(a), F.S.

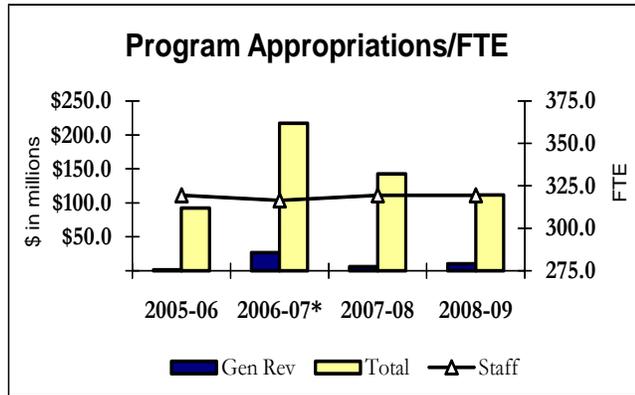
¹³ Department of Management Services’ Sunset Review Report, page 46.

economical use of state-owned space. The Facilities Program operates under two trust funded budget entities, the Architects Incidental Trust Fund supporting construction-related activities, and the Supervision Trust Fund supporting the operation and maintenance of state-owned buildings and statewide leasing of privately-owned space.

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07*	FY 2007-08	FY 2008-09
Gen Rev	\$1.3	\$26.9	\$6.0	\$10.3
Fed TF's				
Other TF's	\$91.0	\$190.4	\$136.6	\$101.3
Total	\$92.3	\$217.3	\$142.7	\$111.6
Staff	319.5	316.5	319.5	319.5



*The FY 2006-07 increase in non-recurring general revenue and trust fund authority was provided for the construction of new buildings for the Department of Revenue at the Capital Circle Office Complex (\$21.7 million non-recurring general revenue and \$96 million trust fund authority).

a. **Facilities Management** is responsible for the day-to-day oversight, operations, and management of over 7.8 million gross square feet in the Florida Facilities Pool. This includes 35 facilities in Tallahassee and 21 regional facilities statewide. State Facilities Inventory is responsible for developing and maintaining an automated inventory and assessment of the condition of these facilities, as well as all other state-owned facilities of the executive and judicial branches that are more than 3,000 square feet. The State Facilities Inventory database consists of 3,844 state-owned buildings in excess of 55.1 million square feet. Lease Management provides administration for 8.4 million square feet of space leased from private industry and other governmental entities, which totals more than \$149 million in lease payments annually. Lease Management also provides oversight for 5.9 million net square feet of leased space in the Florida Facilities Pool and oversees the allocation of 22,945 parking spaces statewide. The department contracts with private companies to provide security at most buildings in the Florida Facilities Pool.

In 2003, DMS undertook what it called the Workspace Management Initiative, which consisted of three components-Workspace Standards, Centralized Leasing, and Asset Management. The Centralized Leasing component relied upon an Executive Order¹⁴ for authority to require agencies to use DMS as the state’s central leasing agent. DMS signed a contract with a tenant broker in October of 2003, though there was no explicit statutory authority for using a tenant broker to negotiate leases on behalf of DMS or any other agency. In 2007, the Legislature explicitly gave the authority to agencies to use invitations to negotiate to obtain leased space, and to procure the services of a tenant broker, whose services may be used by an agency in conjunction with a competitive solicitation for leased space.¹⁵ DMS has subsequently implemented a strategic leasing plan for state agencies, and has procured the services of three tenant brokers for use by state agencies.

The **Governor’s Mansion Commission** was established in 1957 in s. 272.18, F.S., to keep the structure, style, and character of the mansion and grounds consistent with its original plan of design. It is responsible for preserving and protecting antiques, furniture, fixtures, and decorative objects, acceptance of gifts, contributions, bequests, or loans, and employing a full-time curator. The commission consists of eight members: five private citizens appointed by the Governor and confirmed by the Senate for staggered four-year terms; one member is the DMS Secretary or their designee; one member is the director of the Division of Recreation and Parks of the Department of Environmental Protection; and one member is a DMS employee. In FY 2006-07, the commission celebrated the mansion’s 50th anniversary, produced a commemorative book on the mansion’s history, and achieved the registration of the mansion on the National Register of Historical Places. DMS employs a full-time curator on behalf of the commission.

¹⁴ Executive Order Number 04-118

¹⁵ Chapter 2007-220, L.O.F.

b. **Building Construction** serves as the owner-representative on behalf of the state in fixed capital outlay appropriations management and project management oversight. This service acts solely in the public interest to ensure that the value received is equal to the funds expended on state construction projects. This service manages fixed capital outlay appropriations for both DMS’s and other state agencies’ construction projects by providing project management oversight for the construction, renovation, repair, modification, or demolition of buildings, utilities, parks, parking lots, and other facilities or improvements.

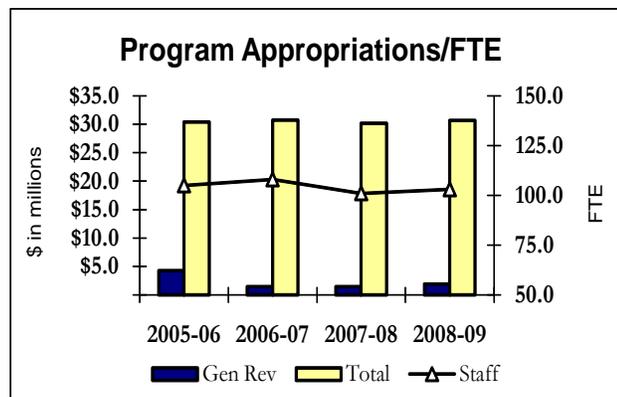
III. Support Program

The Support Program includes: Purchasing Oversight, Federal Property Assistance, Motor Vehicle and Watercraft Management, Aircraft Management, Private Prison Monitoring, and the Office of Supplier Diversity. Purchasing Oversight establishes and maintains acquisition processes and policies, and it procures contracts for use by other agencies and public entities in Florida. Federal Property Assistance acquires and distributes federally owned tangible personal property declared excess/surplus. Motor Vehicle and Watercraft Management establishes policies, rules, and procedures to guide agencies in acquiring, using, operating, and disposing of vehicles, watercraft, and aircraft. Aircraft Management operates and maintains the Executive Aircraft Pool used by state executives who must travel to distant and less accessible locations to fulfill their public duties. Private Prison Monitoring oversees the contract management of private prisons in Florida. The Office of Supplier Diversity provides leadership and guidance on certification and registration of minority vendors that do business with state agencies and universities. Also housed within the Support Program is the Council on Efficient Government. The mission of the council is to review, evaluate, and provide advice on agency outsourcing and best practices and to codify lessons learned, in order to improve government accountability.

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev	\$4.3	\$1.5	\$1.5	\$1.9
Fed TF's				
Other TF's	\$26.1	\$29.3	\$28.7	\$28.8
Total	\$30.4	\$30.7	\$30.2	\$30.7
Staff	105.0	108.0	101.0	103.0



a. The **Bureau of Aircraft Operations** serves the on-demand executive air travel needs of the Governor, Cabinet, and other state officials, as required by s. 287.161, F.S. The intent of the Legislature is that the aircraft pool be operated on a full cost recovery basis. The hourly rate for the Beech King Air 300 and Beech Super King Air 350 is \$3,076, and the hourly rate for the Cessna Citation Bravo is \$3,493. Charges for each flier are billed monthly to the agencies using the planes, calculated by multiplying the hourly rate of the plane by the actual flight time, then dividing by the number of passengers on the flight.¹⁶ The aircraft may be used by state officials for “official state business.”¹⁷ DMS has established by administrative rule¹⁸ that after Governor’s travel and state economic development purposes, use of the plane is on a first-call, first-served basis, with the following priorities in the event of insufficient aircraft availability:

¹⁶ Rule 60B-4.004, F.A.C., which specifies the methodology for charges for aircraft use, does not yet contain this formula for calculating charges. DMS started using the new methodology on July 1, 2008, and published its notice of development of rulemaking on September 19, 2008.

¹⁷ Section 287.17(1), F.S.

¹⁸ Rule 60B-4.006(3), F.A.C. DMS has indicated that in the version of this rule currently being developed, Priority Two fliers will include Commissioners of the Public Service Commission and the Chancellor of the Florida Board of Governors.

Priority One Fliers	Priority Two Fliers	Priority Three Fliers
Governor	Justices of the Supreme Court	Other authorized persons
Lt. Governor	Appointed secretaries and executive directors of the executive branch	
Cabinet members	Chairpersons of standing committees of the Legislature	
Senate President	Chairpersons of the Public Service Commission and the Parole Commission	
House Speaker		
Chief Justice of the Supreme Court		

OPPAGA recently released a report noting budget challenges faced by the bureau, and suggesting less costly operational alternatives.¹⁹

b. **Federal Property Assistance** serves the state by identifying, receiving, and distributing federal surplus property for the state's eligible political subdivisions, educational and health organizations. This includes providing the state's law enforcement agencies with access to excess military personal property. These activities require DMS to maintain compliance with federal regulations and procedures for both federal surplus as well as excess military personal property sources.

Federal Property Assistance reviews available assets physically on-site at military and Federal civilian agency holding depots. The program utilizes web-accessible surplus/excess databases of the U.S. General Services Administration (USGSA) and the U.S. Defense Logistics Agency. The program is entirely funded by the Surplus Property Revolving Trust Fund, which is funded by revenues from service charges assessed to eligible donees.

c. The **Fleet Management** Program manages the acquisition, tracking, and disposal of the state's fleet of motor vehicles and watercraft. The state's fleet includes approximately 25,000 units. It performs the following activities:

- Approval and disposal of state-purchased mobile equipment
- Provides specifications and updates on all mobile equipment contracts
- Provides data source to maintain information on vehicles in the state fleet
- Facilitates reduction in carbon emissions through state contracts and innovative practices
- Implements innovative practices in purchasing and disposal of vehicles such as online auctions and stakeholder meetings
- Provides guidance and assistance to all agencies on the Equipment Management Information System (EMIS) to closely track all mobile equipment and their associated costs

d. **Purchasing Oversight** provides executive direction, and establishes and administers state term contracts and negotiated agreements. The Division of State Purchasing effectuates coordination in the purchase of commodities and contractual services in the state,²⁰ and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;²¹ creating uniform agency procurement rules;²² implementing the online procurement program, MyFloridaMarketPlace;²³ and establishing state term contracts.²⁴

¹⁹ OPPAGA Report No. 08-57, *Less Costly Alternatives to the Executive Aircraft Pool Exist for State Officials and Employees*.

²⁰ Section 287.032(1), F.S.

²¹ Sections 287.032 and 287.042, F.S.

²² Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

²³ Section 287.057(23), F.S.

²⁴ Sections 287.042(2), 287.056, and 287.1345, F.S.

On March 5, 2001, DMS issued an invitation to negotiate soliciting innovative approaches for an electronic procurement system that would enable the State “and other government entities to efficiently purchase, receive, and pay for goods and services from the desktop.” The ITN sought a solution whereby an *eProcurement* system would be developed that promoted selection of goods and services at the lowest available cost, open competition, and leveraged buying power through volume discounts; performed on-line bidding, bid award, and posting; encouraged minority participation; and facilitated effective asset management. In October of 2002, the department entered into a contract with Accenture, LLP to outsource the development and operation of a Web-based electronic procurement system, called **MyFloridaMarketPlace** (MFMP). Originally costing \$92 million, the project is financed through one percent transaction fees paid by vendors doing business with the State.²⁵ Operational and technical issues with the implementation of MFMP have been well-documented in various reports and audits.²⁶ The contract has been renewed²⁷ until November 7, 2010. Proviso language in the FY 2008-09 General Appropriations Act²⁸ directs OPPAGA to conduct a study of MFMP to determine the ability of MFMP to meet the state’s needs, and alternative solutions for service delivery.

e. The **Council on Efficient Government** (council) was created in 2006 in s. 287.0573, F.S., to employ a standard process for reviewing agency business cases to outsource, review and issue advisory reports on such business cases, and develop standards for use by agencies in evaluating business cases to outsource in compliance with the “Florida Efficient Government Act.” The council was created in reaction to various audits and reports that raised legislative concerns about agency attempts to outsource or privatize state functions.²⁹ The council consists of seven members appointed by the Governor: the DMS secretary, who serves as chair; one cabinet member other than the Governor, or designee; two heads of executive branch agencies; and three members from the private sector subject to confirmation by the senate and who, collectively, have experience with purchasing, increasing operational efficiency, and implementing complex projects in the private-sector business environment. In FY 2006-07, the council developed business case standards for agencies as defined in statute; evaluated 27 agency business cases totaling \$62 million; drafted the 2007 CEG Annual Report; and established Project Management Professional training for state agency purchasing staff.³⁰

f. **Private Prison Monitoring** implements the process for and provides oversight of private prison operational contracts defined in the Correctional Privatization Act in Ch. 957, F.S. The Legislature transferred the duties and responsibilities of the private prison program to DMS in 2004, after the dismantling of the Correctional Privatization Commission.³¹ DMS’ duties include:

- Qualifying contractors for private correctional services;
- Maximizing the cost saving of facilities in contracts to at least seven percent under public provision of similar facilities;

²⁵ Section 287.057(23)(c)1., F.S., allows DMS to impose and collect “all fees for the use of the online procurement systems.” Based on that section of law, DMS adopted Rule 60A-1.031, F.A.C., which requires that all payments for “transactions involving commodities and contractual services” must be assessed the MFMP one percent transaction fee, unless the transaction is exempt. Rule 60A-1.030, F.A.C., requires that each vendor desiring to sell commodities or contractual services to the State through the on-line procurement system must register in MFMP. In order to register in MFMP, a vendor must agree to terms of use imposing the one percent transaction fee on all transactions between the vendor and the State or any other customer using MFMP, unless exempted by rule. Therefore, because a vendor wishing to sell to the state must register in MFMP and agree to the MFMP transaction fee, the transaction fee is applied even to purchases from contracts that have not been originally procured using MFMP, such as alternate contract sources approved for use by DMS. In 2004, the purchasing card (p-card) contract, through which state agencies and other eligible users may use a Visa card for purchases, was amended to require the p-card vendor, Bank of America, to pay a 1% MFMP transaction fee based upon the net purchasing volume of all entities participating in the p-card contract. Therefore, p-card purchases made by non-state agencies, where such transactions do not originate or pass through MFMP, are subject to the MFMP transaction fee.

²⁶ See Auditor General Information Technology Audits 2006-015 and 2007-076, and Operational Audit 2005-116.

²⁷ Modification 4 to the contract between DMS and Accenture was signed October 18, 2005.

²⁸ Specific Appropriation 2853 in Ch. 2008-152, L.O.F.

²⁹ For background on audit reports on agency outsourcing efforts through 2005, see Senate Staff Analysis by the General Government Appropriations Committee on CS/CS/SB 1146 from the 2005 Regular Session.

³⁰ Department of Management Services’ Sunset Review Report, p. 14.

³¹ Ch. 2004-248, L.O.F.

- Granting or denying waiver of any rules, policy or procedure related to operations standards of the facilities
- Appointing and supervising contract monitors;
- Determining if lease-purchase agreements are needed; and
- Monitoring contract compliance and terminating contracts upon cause.

Private Prison Monitoring oversees the contracts for six correctional facilities operated by private vendors:

- Bay Correctional Facility
 - contracted to house minimum custody adult male inmates
 - 750-bed capacity
 - operated by Corrections Corporation of America
- Gadsden Correctional Facility
 - contracted to house minimum/medium custody adult female inmates
 - 1,136-bed capacity
 - operated by Corrections Corporation of America
- Graceville Correctional Facility
 - contracted to house medium/close custody adult male inmates
 - 1,500-bed capacity currently; 1884-bed capacity in early 2009
 - operated by The Geo Group, Inc.
- Lake City Youthful Offender Facility
 - contracted to house minimum, medium, and close custody youthful offenders ages 19-24
 - 893-bed capacity
 - operated by Corrections Corporation of America.
- Moore Haven Correctional Facility
 - contracted to house minimum/medium custody adult male inmates
 - 750-bed capacity
 - operated by The GEO Group, Inc.
- South Bay Correctional Facility
 - contracted to house minimum/close adult male inmates
 - 1,861-bed capacity
 - operated by The GEO Group, Inc.

Though s. 957.07(1), F.S., requires that DMS may not enter into a contract unless the department determines that the contract in total for a correctional facility will result in a cost savings to the state of at least 7 percent over the public provision of a similar facility, the DMS Office of Inspector General has concluded that the Department is unable to determine whether pricing structures meet statutory savings requirements, due to a number of issues regarding the availability of comparative data and the lack of a single, logical methodology for calculating comparative per diem rates.³²

g. The **Office of Supplier Diversity** (OSD) oversees certification and registration of minority vendors that would like to do business with state agencies and universities. The office manages all aspects of the Equity in Contracting Plan, commonly called “One Florida.” The office collects data, reports minority business spending by agency, conducts compliance audits of certified minority businesses, certifies minority businesses, and maintains an online directory of certified minority business enterprises. The office provides outreach to state agencies, organizations, and vendors to assist in providing access to state contracting opportunities. Each year the office conducts *MatchMaker* and regional *MatchMaker* workshops as matchmaking events. The office also reviews and approves Agency Utilization Plans that map out strategies for contracting with small business enterprises, including certified minority and women owned business enterprises.

³² Department of Management Services’ Sunset Review Report, p. 60, referencing *Contract Management of Private Correctional Facilities*, OIG Report No. 2005-61, published June 30, 2005.

The **Florida Small and Minority Business Advisory Council** was established in 1996. Currently, s. 287.0947, F.S., requires the council to advise DMS on minority business development issues and initiatives. The council consists of 19 members appointed by the DMS secretary: the chair of the Florida Black Business Investment Board or designee; four representatives of local/federal small/minority business assistance programs or community development programs; eight members of the minority private business sector, (at least two shall be women and at least four shall be minority persons); two representatives of local government, one large and one small local government; two representatives from the banking and insurance industry; and two members from the private business sector, representing the construction and commodities industries. The department reports that the council provided valuable input in the development of the Office of Supplier Diversity’s 2010 Plan, and provided guidance regarding the reinstatement of reciprocal agreements and insight and advice on other issues related to small/minority businesses.³³

The **Minority Business Certification Task Force** was established in 1996 in s. 287.0943, F.S., to propose uniform criteria and procedures so participating entities and organizations can qualify businesses to participate in purchasing or contracting programs as Certified Minority Business Enterprises (CMBE) in accordance with the certification criteria established by law. The task force consists of 19 members appointed by the DMS secretary: regionally balanced and comprised of officials representing DMS, counties, municipalities, school boards, special districts, and other political subdivisions of the state that administer programs to assist minority businesses in procurement or development in government-sponsored programs. The task force has not met in recent years, since the end of the use of reciprocal agreements in 2003. DMS has indicated that OSD has initiated discussions with some entities to reestablish reciprocal agreements, and is taking action to reconstitute the task force.³⁴

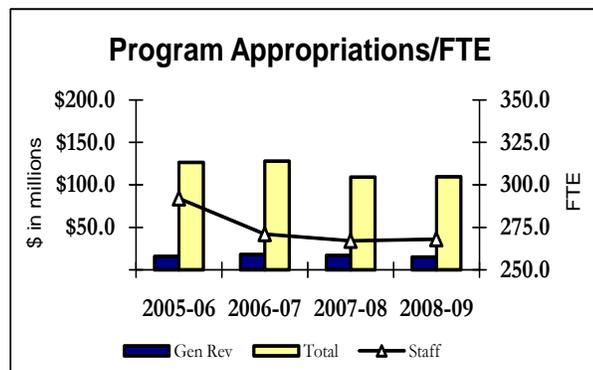
IV. Workforce Program

The Workforce Program provides three major services: Human Resource Management, Insurance Benefits Administration, and Retirement Benefits Administration. Human Resource Management focuses on developing and supporting a human resource infrastructure designed to recruit, retain, reward, and recognize a high performance workforce for the State of Florida. In accordance with Chapter 110, F.S., Insurance Benefits Administration offers and manages a comprehensive package of health and welfare insurance benefits, including flexible spending accounts. Retirement Benefits Administration administers the state’s retirement plans, including the Florida Retirement System Pension Plan, which is the fourth largest public pension plan in the nation, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, the Retiree Health Insurance Subsidy Program, and the Municipal Police Officers and Firefighters Retirement Trust Funds Program. Retirement Benefits Administration also provides oversight of local government pension plans for actuarial soundness.

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev	\$15.7	\$18.0	\$17.0	\$15.0
Fed TF's	\$.6	\$.1	\$.0	\$.0
Other TF's	\$110.2	\$110.1	\$92.3	\$94.7
Total	\$126.5	\$128.1	\$109.3	\$109.6
Staff	292.0	271.0	267.0	268.0



a. **Human Resource Management (HRM)** administers the human resource policies and programs for State Personnel System agencies within the executive branch of government. This system consists of 30 state agencies whose employees are within the Career Service, Selected Exempt Service, and Senior Management Service pay plans. These

³³ Information provided by DMS to committee staff on September 26, 2008.

³⁴ Information provided by DMS to committee staff on September 26, 2008.

agencies operate under a single set of employment laws, policies, and practices. As a single employer, it is necessary for the State of Florida to provide this service to ensure an equitable and lawful system of employment and a uniform application of core policies among agencies. This service also helps ensure that the State of Florida remains a competitive employer capable of recruiting and retaining a highly competent workforce.

HRM helps agencies administer more efficient and effective human resource programs by providing technical assistance, training, and information on policies and procedures; developing personnel rules; and administering classification and compensation programs. HRM also administers performance management, workforce transition, and other human resource programs.

HRM is responsible for oversight and contract management of **People First**, the state's human resource personnel information system. This contract required the service provider to provide an electronic web-based HR solution for personnel transactions, including: hiring, promoting, transferring, and other human resource functions; staffing administration; timesheet processing; leave usage and accrual; payroll preparation; and benefits administration.

In August of 2002, DMS signed a seven-year, \$278.6 million contract with Convergys Customer Management Group, Inc., to provide a web-based enterprise suite of services to manage human capital to include the administration of payroll, benefits, human resources, and staffing. The project, called People First, is funded largely through a human resource assessment to state entities. Operational and technical problems with the implementation of People First have been well-documented in various reports and audits,³⁵ and the contract has been amended numerous times.³⁶ The contract expires in August of 2011. Proviso language in the FY 2008-09 General Appropriations Act³⁷ directs OPPAGA to conduct a study of People First to determine the ability of People First to meet the state's needs, and alternative solutions for service delivery.

Governor's Commission on Disabilities

The Governor's Commission on Disabilities is not established by the Legislature in law; it is established pursuant to Executive Order, most recently by Executive Order Number 08-193, which gives it the mission to advance public policy for Floridians with disabilities and to provide a forum for advocates representing Floridians with disabilities to develop and voice unified concerns and recommendations.³⁸ The Commission must yearly provide the Governor with a written report that addresses: recommendations for administrative and legislative change in the areas of employment, transportation, education, and independent living; recommendations for administrative and legislative change in the areas of developmental disabilities, healthcare, civil rights, and any other area the Commission, in consultation with the Governor, determines to be of imperative interest to the disabilities community; accomplishments in obtaining legislative and administrative change; and progress related to collaborative efforts with other agencies. The Commission consists of 21 members appointed by the Governor.

b. The **Division of State Group Insurance** (DSGI) offers and manages a comprehensive package of affordable health and welfare insurance benefits, including flexible spending and health saving accounts, which allow active and retired state employees and surviving spouses the option to choose pre-tax and post-tax benefit plans to suit their individual and family needs. It is the mission of the DSGI to continue to develop and offer a high-quality, competitive portfolio of employee benefits products and services to enable the state to attract and retain the finest workforce. The DSGI is responsible for all aspects of the purchase of health care for state employees and retirees. Responsibilities

³⁵ See the following reports by OPPAGA: 08-31, *DMS Has Improved People First, But Some System Components Are Still Not Fully Implemented*; 06-39, *While Improving, People First Still Lacks Intended Functionality, Limitations Increase State Agency Workload and Costs*; and Auditor General Operational Audits 2007-087 and 2005-047.

³⁶ The most recent amendment, Amendment 10, was signed May 28, 2008. Among other changes, the amendment gives the state a license to use and modify the People First system and related intellectual property after expiration of the contract, and the state releases Convergys from potential breach of contract actions relating to its past performance under the contract.

³⁷ Specific Appropriation 2874 in Ch. 2008-152, L.O.F.

³⁸ The original precursor to the commission, the Florida Coordinating Council for the Americans with Disabilities Act, was created by Executive Order 93-166. Executive Order 97-56 dissolved the Florida Coordinating Council and created the Americans with Disabilities Act Working Group, which was extended by Executive Orders 99-80, 03-137, 07-04, and 07-119. Executive Order 07-148 created the Governor's Commission on Disabilities.

include the development of requests for proposals, the determination of health care benefits to be provided, and the negotiation of contracts for health care and health care administrative services. DSGI provides administrative duties including: client relations, benefit plan analysis, product development and purchasing, contract management, compliance, fiscal control, and management. The DSGI enters into contracts with a Third Party Administrator and a Pharmacy Benefit Manager to administer the medical and drug components of the State Employees' Preferred Provider Organization (PPO) Plan. DSGI also contracts with Health Maintenance Organizations (HMO), insurance companies offering life and accidental death and disability benefits, dental benefits and miscellaneous supplemental benefit plans.

Established in 2006 pursuant to s. 110.123(13), F.S., the **Florida State Employee Wellness Council** was created as an advisory body to the department to provide health education information to employees and to assist the department in developing minimum benefits for all health care providers when providing age-based and gender-based wellness benefits. The council consists of nine members appointed by the Governor: all must be Florida residents who are knowledgeable leaders in the health/medical field; at least one must be a state employee. In FY 2006-07, the council developed a mission, goals, and objectives, and standards and criteria for wellness programs.

c. **Retirement Benefits Administration** administers the state's retirement system. Specifically, it administers the defined benefit programs of consolidated Florida Retirement System (FRS) of Ch. 121, F.S.; the State University System Optional Retirement Program³⁹ and Senior Management Service Optional Annuity Program;⁴⁰ and the Institute of Food and Agricultural Sciences Retirement Act.⁴¹ It enrolls new members and agencies into the FRS, collects and accounts for contributions and payroll data, maintains records throughout each member's career and retirement, calculates retirement benefits, balances members' accounts, and maintains the monthly retired payroll, including paying benefits and processing 262 different payroll deductions. It monitors local public retirement systems and early retirement programs covering school board employees;⁴² oversees municipal and special district firefighters' and municipal police officers' pension plans;⁴³ administers the Health Insurance Subsidy (HIS) Program for retirees of the FRS;⁴⁴ administers the Social Security Coverage Program for Florida public employees;⁴⁵ and ensures compliance with Article X, Section 14, of the Florida Constitution, which requires concurrent funding of benefit increases on a sound actuarial basis, and with section 112.61, F.S.

The FRS is funded by contributions paid by the employer, based on a percentage of the employees' salaries. The State Board of Administration invests these contributions. The rate of contributions required is determined by an actuarial consulting firm to assure compliance with the requirements of the State Constitution. On June 30, 2007, the actuarial value of the system's assets exceeded the system's actuarial liabilities by \$8.2 billion.⁴⁶

Established in 1975 pursuant to s. 121.22, F.S., the **State Retirement Commission** hears appeals for cases in which the Division of Retirement makes final written decisions denying applications for disability retirement and special risk membership. The commission consists of five members appointed by the Governor: two retired Florida Retirement System (FRS) members, two active FRS members and a fifth member who cannot be a member, retiree, or beneficiary of the FRS. In FY 2006-07, the commission heard 69 cases over 16 days of hearings; eight of these were appealed to the District Court of Appeals, where one was voluntarily dismissed, and seven were upheld.⁴⁷

V. *Technology Program*

The Technology Program, administered as DMS Communications and Information Technology Services (CITS), provides a wide range of telecommunications and managed services to state agencies, local governments, political

³⁹ Section 121.35, F.S.

⁴⁰ Section 121.055, F.S.

⁴¹ Section 121.40, F.S.

⁴² Pursuant to the "Florida Protection of Public Employee Retirement Benefits Act" in sections 112.60 – 112.67, F.S.

⁴³ Chapters 175 and 185, F.S.

⁴⁴ Section 112.363, F.S.

⁴⁵ Chapter 650, F.S. DMS not responsible for social security benefits.

⁴⁶ Division of Retirement Summary of Facts for Fiscal Year 2006–07.

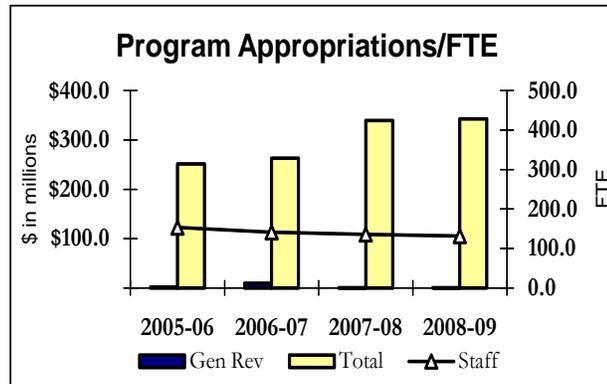
⁴⁷ Information provided by DMS to committee staff on September 26, 2008.

subdivisions, qualified nonprofits, educational institutions, and libraries. CITS-related statutory responsibilities are contained in Chapters 20, 252, 282, 318, 320, 328, 364, 365, 395, and 401, F.S.

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev	\$1.6	\$9.4	\$6	\$3
Fed TF's				
Other TF's	\$249.8	\$253.6	\$338.6	\$342.0
Total	\$251.4	\$263.1	\$339.2	\$342.3
Staff	153.0	141.0	135.5	131.5



a. **Telecommunications Services** provides delivery of communication services (voice, data, video, image, and radio). It provides all methods of communications signals, including voice, data, video, image, and radio services to state agencies, political subdivisions of the state, municipalities, state universities, and nonprofit corporations. It designs, engineers, implements, manages, and operates the facilities and equipment providing SUNCOM Network services, pursuant to s. 282.103, F.S. All state agencies and state universities are required to use the SUNCOM Network for their communications services; if DMS cannot meet an agency’s need, it may grant an exemption from the required use of SUNCOM.⁴⁸ SUNCOM is a cost recovery program- DMS collects fees from its customers to pay the contracted service providers and the DMS operational costs that support the services. Customers are therefore paying the direct costs to provide the services and DMS’ related administrative costs.

Additionally, s. 282.111, F.S., provides the authority for DMS to develop, maintain, and approve regional law enforcement communications systems.

b. **Wireless Services** includes funding for all radio services, such as Local Public Safety Radio Services, State Public Safety Radio Services, and Emergency Medical Services and the Florida Interoperability Network (FIN).

Pursuant to s. 282.1095, F.S., the department was authorized in 1988 to acquire and implement a statewide radio communications system to serve law enforcement units of state agencies, and to serve local law enforcement agencies through mutual aid channels. The **Statewide Law Enforcement Radio System (SLERS)** provides state law enforcement agencies with a communications system that uses a single series of frequencies, thereby allowing inter-agency communication. From 1988 to 2000, the Department of Management Services managed the project using Motorola as the radio equipment vendor. However, due to delays and cost overruns, the state decided to contract with a private company to take ownership of the radio system infrastructure, complete its construction, and supervise future maintenance. In 1999, management of the project was transferred to the State Technology Office (STO), which subsequently negotiated a contract with M/A-Com in September 2000, to exchange the state’s radio tower assets for \$25.5 million in radio equipment credits.⁴⁹ Subsequent to the dissolution of the STO, DMS is once again responsible for operation of the system.

Of the 27 state agencies that are users of SLERS, 68% are from FHP, FDLE, FWCC, and DOC. The contract is funded from the State Agency Law Enforcement Radio System Trust Fund by a \$1 surcharge on drivers’ licenses pursuant to s. 320.0802, F.S., and a \$1 surcharge on vehicle registrations pursuant to s. 328.72(9), F.S. In 2006, a \$3 surcharge was added to certain violations in s. 318.18(17), F.S., to “enhance and improve the radio system.” It is unclear how the

⁴⁸ Section 282.103(3), F.S.

⁴⁹ OPPAGA Report No. 04-64, Statewide Law Enforcement Radio System Nears Full Statewide Implementation; Additional State Funds Will Be Necessary, page 1.

department prioritizes projects paid for out of this “enhancement fund,” or whether the department has even determined use of these funds is the most efficient way of making enhancements to the system.

The **Florida Interoperability Network** (FIN) is an IP-based network connecting VHF, UHF, and 800MHz radio systems to provide interoperability between disparate radio systems for first responders, authorized by s. 282.1095(6), F.S., in 2003. Motorola is the contractor for the network component; M/A-Com is the contractor for the mutual aid component of the system.

The **Joint Task Force on State Agency Law Enforcement Communications** was established in 1988 in s. 282.1095, F.S., to support the planning, design, and implementation of joint radio systems serving law enforcement units of state and local law enforcement agencies, including SLERS, and FIN. The task force consists of eight members appointed by agency heads from: Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation; Division of Florida Highway Patrol, Department of Highway Safety and Motor Vehicles; Department of Law Enforcement; Fish and Wildlife Conservation Commission; Division of Law Enforcement, Department of Environmental Protection; Department of Corrections; Division of State Fire Marshal, Department of Financial Services; and Department of Transportation. In FY 2006-07, the task force maintained oversight of project status, progress, and system performance; advised DMS for project and system actions, rebanding radios, and enhancement/grant funding, and third-party subscribers; provided direction for the Technical Committee, Standard Operating Procedures Committee, and Security Manager; and provided input on new and expanded Regional Communications Centers and future technology for SLERS.⁵⁰

The **Wireless 911 Board** was established in 1999 in s. 365.172(5), F.S., to administer the E911 fee imposed under s. 365.172(8), F.S.,⁵¹ including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state. The board consists of nine members to include a permanent system director⁵² and eight others appointed by the Governor: four county 911 coordinators, two local exchange carrier members, and two members from the wireless industry. In FY 2006-07, the board approved monthly disbursements to counties and service providers; completed the 2006 Wireline and Wireless 911 Fee Evaluation Legislative Report; deployed E911 services through the Rural County Grant program; provided technical assistance to rural counties to expedite the deployment of Phase I and II wireless 911; and developed training curriculum to support the 911 community.

c. Until July 1, 2008, **Information Services** included funding for the Data Center/Data Center Services and Portal. The program operated the state portal and tools, and updated the MyFlorida.com web site. It provided information concerning development permits, guidance on what development permits were needed for particular projects, permit requirements, and who to contact for more information.

In December, 2007 the Florida Senate hired Gartner, Inc., to conduct a data center consolidation cost analysis and feasibility study to develop a current-state baseline assessment of the state’s data center operations and analyze alternatives for effective consolidation. Approximately forty-three agency data center facilities were included in the final study. A comparison of Florida’s computing facilities workload against a consolidated peer of comparable workload indicated minimum savings of \$17 million could potentially be achieved from consolidation representing approximately 16% savings from total computing services expenditures. Gartner categorized the twenty largest facilities by quality to determine what facilities were available as recipients for consolidation of other facilities. Three were determined suitable: The Shared Resource Center at the Department of Management Services, the Northwood Data Center at the Department of Children and Families, and the Northwest Florida Regional Data Center, an ancillary facility of Florida State University.

⁵⁰ Department of Management Services’ Sunset Review Report, pp. 12-13.

⁵¹ In FY 2006-07, the revenues for the Wireless Communications E911 Trust Fund were \$82,104,664, and expenses were \$68,259,764.

⁵² The system director is designated by s. 365.171(5), F.S., as the secretary of DMS or his or her designee.

The Legislature subsequently passed Senate Bill 1892, which establishes the policy groundwork for gradual consolidation of approximately 67 state data center facilities over an eleven year period. DMS operated the Shared Resource Center in the Southwood office complex until July 1, 2008, when the Southwood Shared Resource Center (SSRC) was created,⁵³ established in DMS for administrative purposes only, and not subject to the control or supervision of DMS. A subsequent budget amendment moved the remaining services the information services program provided into the DMS Administration Program. Consequently, the Information Services program no longer exists.

Independent Entities

A few state entities are administratively housed within DMS, but are not subject to control, supervision, or direction by the department. Review of the Agency for Workforce Innovation⁵⁴ will occur by July 1, 2012, pursuant to s. 11.905(3)(c), F.S.

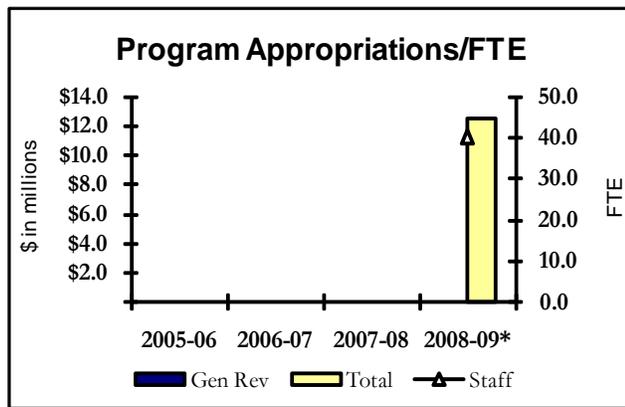
The Southwood Shared Resource Center

The Southwood Shared Resource Center (SSRC) was created by Ch. 2008-116, L.O.F.

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09*
Gen Rev				
Fed TF's				
Other TF's				\$12.6
Total				\$12.6
Staff				40.0



It was created to:

- Serve customer entities as an information-system utility;
- Cooperate with customer entities to offer, develop, and support the services and applications as defined and provided by the center's board of trustees and customer entities;
- Comply with rules adopted by the Agency for Enterprise Information Technology (AEIT), and coordinate with the agency in the consolidation of data centers.
- Provide transparent financial statements to customer entities and the AEIT;
- Maintain the performance of the facility;
- Develop a business continuity plan and conduct a live exercise of the plan at least annually;
- Enter into a service-level agreement with each customer entity to provide services as defined and approved by the board in compliance with rules of the Agency for Enterprise Information Technology;
- Plan, design, establish pilot projects for, and conduct experiments with, information technology resources, and implement enhancements in services if such implementation is cost-effective and approved by the board;
- Enter into a memorandum of understanding with the agency where the data center is administratively located which establishes the services to be provided by that agency to the data center and the cost of such services.⁵⁵

⁵³ Ch. 2008-116, L.O.F.

⁵⁴ Though AWI is created within DMS pursuant to s. 20.50, F.S, AWI is not subject to control, supervision, or direction by DMS in any manner.

⁵⁵ Section 282.203(1), F.S.

Each primary data center must be headed by a board of trustees; during the SSRC's first 2 operating years, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of Health, and the Department of Revenue must each have at least one trustee.⁵⁶

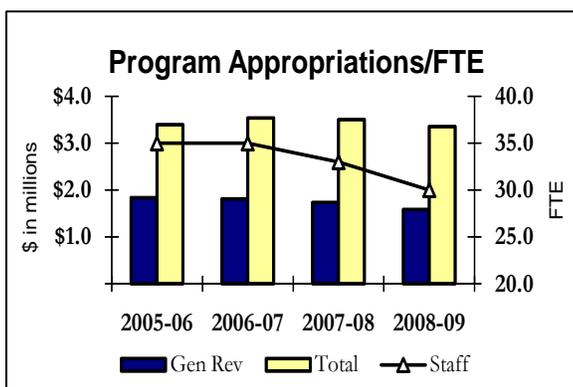
The Public Employees Relations Commission

The Public Employees Relations Commission (PERC) is created in s. 487.201, F.S., to assist in resolving disputes between public employees and public employers, and handles all cases involving public sector employment and labor law including certification and registration of unions, unfair labor practices, career service matters, drug-free workplace issues, and veterans preference cases.

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev	\$1.8	\$1.8	\$1.7	\$1.6
Fed TF's				
Other TF's	\$1.6	\$1.7	\$1.8	\$1.8
Total	\$3.4	\$3.5	\$3.5	\$3.4
Staff	35.0	35.0	33.0	30.0



PERC responsibilities are categorized into three types of cases:

- **Career service cases.** PERC conducts hearings to resolve employment disputes between state government employees in career service and their employers.
- **Employment cases.** PERC conducts hearings to resolve employment disputes between state agencies and their employees regarding disciplinary actions, drug testing, whistle-blowers, forced retirement, and veterans' preference. The commission also conducts hearings to resolve disputes between local agencies and their employees regarding veterans' preference.
- **Labor cases.** PERC conducts hearings to resolve labor disputes regarding bargaining unit configuration and modification and alleged unfair labor practices involving state and local governments. This includes monitoring disputes that have the potential to result in strikes, working to prevent strikes, imposing punishment on strikers if necessary, and issuing declaratory statements to avoid future labor disputes. Further, PERC defines collective bargaining units, registers labor unions, and ensures that public sector unions and officers provide required financial disclosure. It also conducts elections for state and local government employees voting for establishing or maintaining union representation.⁵⁷

For Fiscal Year 2007-08, the Legislature appropriated PERC \$3,572,487 and 35 full-time equivalent positions. Almost half of the appropriation (\$1.7 million) is derived from the Public Employees Relations Commission Trust Fund, which is funded by a distribution from the Local Government Half-cent Sales Tax.⁵⁸

Florida Commission on Human Relations

The Florida Commission on Human Relations (FCHR) was established in 1969 in s. 760.03, F.S., to promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, handicap, or marital status and mutual understanding and respect among all members of all economic, social,

⁵⁶ Section 282.203(2), F.S.

⁵⁷ Information from OPPAGA Report No. 02-66, *Alternative Fee Options Exist for the Public Employees Relations Commission*, pages 1-2.

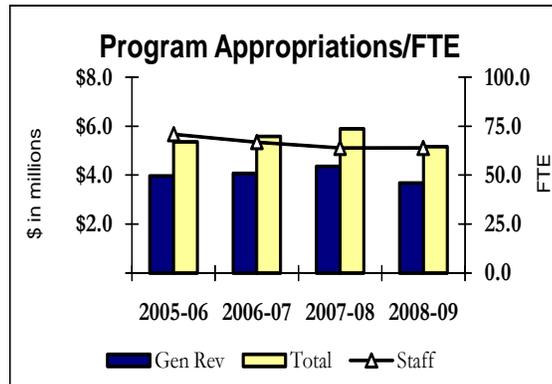
⁵⁸ OPPAGA's Florida Government Accountability Report on PERC, last updated 3/21/08.

racial, religious, and ethnic groups; and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members.⁵⁹ The commission has specific related duties under the Florida Civil Rights Act,⁶⁰ the Fair Housing Act,⁶¹ and the Whistle-blowers Act.⁶²

Funding (Operating and Fixed Capital Outlay) and Staff:

\$ in millions

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev	\$4.0	\$4.1	\$4.4	\$3.7
Fed TF's	\$1.3	\$1.5	\$1.5	\$1.4
Other TF's	\$.1	\$.0	\$.0	\$.0
Total	\$5.4	\$5.6	\$5.9	\$5.2
Staff	71.0	67.0	64.0	64.0



The commission accepts and investigates complaints from citizens who believe they have been discriminated against in the areas of housing, employment, and certain public accommodations, as well as those who believe they have been retaliated against for filing a whistle blower complaint. If FCHR has jurisdiction over an allegation and filing requirements are met, the complaint is docketed and accepted for investigation. If the investigator determines that both parties desire mediation, the case is forwarded to the commission’s mediation unit. If the parties in mediation cannot reach agreement, the case proceeds to investigation. Based on information obtained during an investigation, a recommendation is made to the executive director as to whether there is reasonable cause to believe that a discriminatory act has occurred. If the executive director issues a determination of reasonable cause, the complainant may either file a civil action with the court or request an administrative hearing with the Florida Division of Administrative Hearings (DOAH). If a determination of no reasonable cause is issued, the executive director dismisses the complaint and the complainant may request an administrative hearing, but by statute, may not proceed to civil court. After hearing a case, DOAH issues a recommended order to the commission. A panel of three of the 12 FCHR commissioners reviews each case and issues a final order based on the results of their vote. Final orders can be appealed to the District Court of Appeal. FCHR dismisses some complaints before making a determination. For example, complaints can be dismissed if FCHR does not have jurisdiction over the respondent or subject matter of the complaint, or if the complainant fails or refuses to cooperate or did not timely file the complaint. In some instances, the complainant negotiates a settlement or voluntarily dismisses or withdraws the complaint before the investigation is completed. Some complaints also are resolved through mediation or conciliation.⁶³

The commission consists of 12 members appointed by the Governor for four-year terms and subject to confirmation by the Florida Senate. Members of the commission broadly represent various racial, religious, ethnic, social, economic, political, and professional groups within the state, with at least one member age 60 or older. For Fiscal Year 2007-08, the Legislature appropriated the commission \$5,962,828, of which \$4,445,069 (75%) was from general revenue and \$1,517,759 (25%) was from trust funds. The trust fund revenue sources are Equal Employment Opportunity

⁵⁹ Section 760.05, F.S.

⁶⁰ The "Florida Civil Rights Act of 1992," sections 760.01-760.11, and 509.092, F.S., prohibits discrimination because of race, color, religion, gender, national origin, age, disability, familial status, or marital status in the areas of employment, housing, or certain public accommodations.

⁶¹ The "Fair Housing Act," sections 760.20-760.37, F.S., prohibits discrimination in housing based on race, color, national origin, sex, handicap, religion, and familial status.

⁶² The "Whistle-blower's Act," sections 112.3187-112.31895, F.S., aims to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare.

⁶³ This paragraph concerning the complaint resolution process comes in its entirety from OPPAGA Report No. 06-09, *Eliminating FCHR Would Limit Options and Increase Costs to Citizens Seeking Remedy for Discrimination*, page 2.

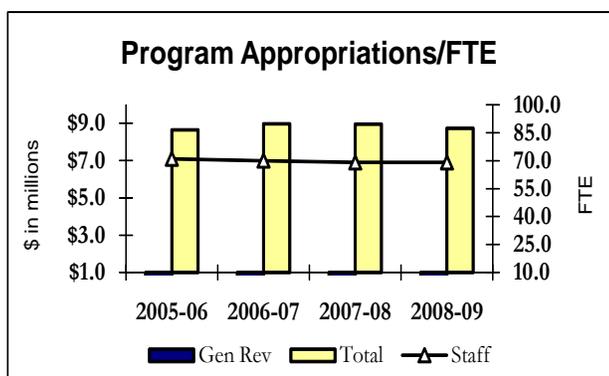
Commission, U.S. Department of Housing and Urban Development, and 55 Plus Housing Registration/Renewal payments. The Legislature also appropriated 67 full-time positions for Fiscal Year 2007-08 for the commission to carry out its statutory responsibilities.⁶⁴

The Division of Administrative Hearings

The Division of Administrative Hearings (DOAH) administers two programs- the **Adjudication of Disputes** program that operates pursuant to Chapter 120, F.S., and the **Workers' Compensation Appeals** program, Office of Judges of Compensation Claims (OJCC), which operates pursuant to Chapter 440, F.S. For the Adjudication of Disputes program, DOAH employs an independent group of administrative law judges to conduct hearings under ch. 120, F.S., when certain agency decisions, such as rules and determinations of a party's substantial interest, are challenged by substantially affected persons. DOAH proceedings are conducted like nonjury trials. During FY 2006-07, DOAH received 5,859 requests for assignment of administrative law judges, compared to 5,310 requests filed the previous fiscal year. Requests for assignment of administrative law judges from the following six agencies constituted 44 percent of the FY 2006-07 caseload: the Agency for Persons with Disabilities (625 cases), the Department of Revenue (1,278 cases), the Department of Community Affairs (114 cases), the Department of Health (152 cases), the Department of Environmental Protection (95 cases), and the Agency for Health Care Administration (337 cases).⁶⁵

Funding (Operating and Fixed Capital Outlay) and Staff:

	\$ in millions			
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Gen Rev				
Fed TF's				
Other TF's	\$8.7	\$9.0	\$9.0	\$8.7
Total	\$8.7	\$9.0	\$9.0	\$8.7
Staff	71.0	70.0	69.0	69.0



DOAH is 100 percent trust funded. For the Adjudication of Disputes program, each year DOAH reports to the Legislature and the Governor's Office the total number of hearing hours conducted by its judges for all agencies. Based on this data, DOAH's budget is prorated among the state agencies utilizing its services, and the Legislature appropriates fund transfers to DOAH from those agencies. Hence, the amount each agency transfers to DOAH is based on the amount of time the judges spend in prehearing conferences, motion hearings, and final hearings for each agency in a given year.⁶⁶ As of June 30, 2007, the Adjudication of Disputes program had 70 established positions, including 34 administrative law judges,⁶⁷ In FY 2006-07, each administrative law judge conducted an average of 113 hearings and wrote an average of 52 recommended or final orders of varying length and complexity. In addition, each administrative law judge closed an average of 60 cases, which were settled or otherwise dismissed without a final hearing.⁶⁸

The Workers' Compensation Appeals program is supported by cash transfers from the Workers' Compensation Administration Trust Fund, which is administered by the Department of Financial Services. This trust fund is funded through a workers' compensation premium tax assessment which supports the entire workers' compensation program, not just the appeals program administered by DOAH.⁶⁹ As of June 30, 2007, the Workers' Compensation Appeals program had 199 established positions, including 32 Judges of Compensation Claims and 32 General Masters

⁶⁴ OPPAGA's Florida Government Accountability Report on the Florida Commission on Human Relations, last updated 3/20/08.

⁶⁵ Division of Administrative Hearings' Thirty-Fourth Annual Report, page 4.

⁶⁶ *Id.*, at 8.

⁶⁷ *Id.*, at 4.

⁶⁸ *Id.*, at 6.

⁶⁹ *Id.*, at 10.

(mediators).⁷⁰ Workers' compensation disputes begin when an employer/carrier denies benefits to an injured worker. If the dispute is not resolved, formal litigation begins when the injured worker files a petition for benefits. The petition is assigned to a judge of compensation claims according to the county in which the accident occurred. The case must first go to mediation, where the parties attempt to resolve the dispute. If the case is resolved, a lump sum settlement or stipulation is approved by the judge of compensation claims. If the dispute is not resolved, the judge sets the case for pre-trial and final hearing. Once the judge has reviewed the evidence and testimony at the final hearing, he or she renders the decision and enters a final merit order. The final merit order must be entered within 30 days and is directly appealable to the First District Court of Appeals.

Recommendations for Further Research

Before its creation in 1992, many of the duties that DMS currently undertakes were performed by an agency under the direction of the Governor and Cabinet. Given that DMS serves other executive agencies, the Legislature may want to consider whether the Governor and Cabinet ought to be the agency head for DMS.

The Legislature may wish to consider whether programs within DMS might be transferred to other agencies, to achieve operational efficiencies.

The Legislature may wish to consider whether the Governor's Commission on Disabilities should be established in law.

The Legislature may wish to consider whether oversight of private prison operational contracts ought to be transferred to the Department of Corrections.

The Legislature may wish to consider whether to adopt a formal methodology for calculating whether private prisons operate at a 7% savings over comparable public prisons, as required by Ch. 957, F.S., or whether to abandon the requirement altogether.

The Legislature may wish to consider whether the state should still play a role in the provision of internet and telecommunications services, like SUNCOM, to state agencies, and if so, whether current statutory authority in Ch. 282, F.S., needs to be amended to reflect how DMS is currently providing those services.

The Legislature may wish to consider whether DMS should have a role in the development and approval of regional law enforcement communications systems pursuant to s. 282.111, F.S., and if so, whether the relationship between Sections 282.1095 and 282.111, F.S., needs to be clarified.

⁷⁰ *Id.*, at 5.