

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2410

SPONSOR: Fiscal Policy Committee, Governmental Oversight and Productivity Committee and Senator Webster

SUBJECT: The Department of Management Services

DATE: April 15, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	<u>Hendon</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill updates organizational structure changes to the Department of Management Services resulting from the implementation of performance-based program budgeting; provides for coverage in the state group health insurance plan for certain legislative members, makes technical changes to several state employment service programs overseen by the agency; makes internal nomenclature changes to existing organizational units; changes motor vehicle assignment and utilization reporting practices among state agencies; and changes dollar thresholds for certain budgetary terms for the purposes of inventory requirements and competitive bidding.

The bill directs the DMS to contract for the provision of alternative Social Security Act retirement coverage for OPS employees. The bill also provide for the development of a contractually managed tax-shielding program for the payment of sick and annual leave from terminating and retiring state employees. The plan will be funded from employer payments for such leave and must comply with applicable state and federal laws.

An unnumbered section of Florida law is created to provide that unobligated employer contributions attributable to the above programs shall be placed in administered funds in the state planning and budgeting system. These funds will be made available for the implementation of incentives authorized under s. 216.0166, F.S., in the execution of performance-based program budgeting. Allows for legislative members terminating elected service after July 1, 1999 that are vested in the state retirement system to purchase coverage in the state group health insurance plan and continue group term life insurance program at their own expense.

The bill authorizes the DMS to acquire and implement a statewide radio communications system to serve law enforcement. The bill revises reporting requirements for the Technology Review Workgroup and provides that the secretary of DMS serve as the chairperson of the State Technology Council.

This bill substantially amends the following sections of the Florida Statutes: 20.22, 110.109, 110.1099, 110.112, 110.123, 110.1245, 110.131, 110.1315, 110.1316, 110.151, 110.181, 110.201, 110.205, 110.209, 110.235, 110.503, 110.504, 110.605, 112.061, 112.3145, 215.196, 215.422, 216.011, 255.25, 255.249, 255.257, 267.075, 272.18, 272.185, 273.02, 273.055, 281.02, 281.03, 281.04, 281.05, 281.06, 281.07, 281.08, 282.105, 282.1095, 282.111, 282.322, 282.3091, 287.017, 287.042, 287.057, 287.151, 287.16, 287.17, 287.18, 365.171, 401.021, 401.027, 446.604, and 447.208.

The bill further repeals ss. 110.207(1)(g), 110.407 and 110.607, Florida Statutes, relating to personnel broad banding classification, the senior management service and the selected exempt service, respectively. The bill also repeals ch. 98-310, Laws of Florida, regarding the exemption from state airfare contract rates.

II. Present Situation:

The Department of Management Services (DMS) was created in 1991 as part of a general government reorganization undertaken that same year. It is the successor agency to the previously separate Department of Administration and Department of General Services. In its current capacity DMS provides overall administrative guidance in state agency personnel, telecommunications, and infrastructure services. Under its name are administered the Florida Retirement System, administrative hearing tribunals, and state employee group insurance, although these units operate somewhat autonomously from the parent department structure.

DMS was one of the first agencies to implement performance-based program budgeting. In the reformatting of its delivery structure the agency has replaced many of its previous line divisions with programs. Aside from retirement and state employee group insurance, all DMS-managed services fall under one of four distinct programs: Workforce, Support, Technology, and Facilities.

III. Effect of Proposed Changes:

Section 1. Section 20.22, F.S., is amended to provide nomenclature changes to properly retitle the Office of Labor Relations as the Chief Labor Negotiator.

Section 2. Section 110.109, F.S., is amended to delete separate statutory authorization requiring a departmental personnel audit of state agencies to be transmitted to the Governor, presiding legislative branch officers, and the Auditor General. The DMS will be responsible only for monitoring agency personnel activities.

Section 3. Section 110.1099, F.S., is amended to permit an executive or judicial branch agency to recover training fees in excess of \$1,000 from employees who voluntarily terminate employment within four years of the conclusion of the training. An exemption is provided when the training is required by the agency.

Section 4. Section 110.112, F.S., is amended to repeal a separate statutory requirement for an annual affirmative action report. This requirement will continue as a part of the agency's annual workforce report.

Section 5. Section 110.1245, F.S., is amended to change the report submission time for meritorious service awards from April 1 of each year to annually and to raise the maximum amount of the award threshold from \$50 to \$75, in the case of executive branch agencies, and from \$75 to \$100 in the case of judicial branch agencies for plaques, and from \$10 to \$50 for pins and certificates.

Section 6. Section 110.123, F.S., is amended to allow for legislative members terminating elected service after July 1, 1999 that are vested in the state retirement system to purchase coverage in the state group health insurance plan and continue group term life insurance program at their own expense.

Section 7. Section 110.131, F.S., is amended to permit the respective agency head or designee to extend Other Personal Service limitations on maximum employment hours for designated health care practitioners.

Section 8. Section 110.1315 is amended to direct the DMS to contract for the provision of alternative Social Security Act retirement coverage for OPS employees. The selection of a provider company is to be completed by January 1, 2000, for plan commencement on July 1, 2000. The plan must be in compliance with state and federal law governing such arrangements. The plan must not charge any withdrawal or surrender fees to the participants and must provide for immediate and full vesting of all contributions. Employers and employees must be held harmless from any consequences should the Internal Revenue Service find the plan to be in violation of the federal tax code.

Section 9. Section 110.1316, F.S., is amended to provide for the development of a contractually managed tax-shielding program for the payment of sick and annual leave from terminating and retiring state employees. The plan will be funded from employer payments for such leave and must comply with applicable state and federal laws.

Section 10. An unnumbered section of Florida law is created to provide that unobligated employer contributions attributable to the above programs shall be placed in administered funds in the state planning and budgeting system. These funds will be made available for the implementation of incentives authorized under s. 216.0166, F.S., in the execution of performance-based program budgeting. The size of the fund will be determined annually by the Legislature.

Section 11. The bill requires that any contracted private company be subject to due diligence review, have proven functional systems which are date calculation compliant, and maintain internal quality assurance systems.

Section 12. Section 181, F.S., is amended to not require the fiscal agent for the state employee annual charitable campaign to reimburse the DMS for fiscal services when the Legislature appropriates such costs in full. Such fiscal agent costs shall not exceed one percent of gross pledges.

Section 13. Section 110.201, F.S., is amended to require agencies to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., prescribing penalties for various types of employee misconduct, copies of which must be given to the affected Career Service employees. The DMS is also directed to develop an annual workforce report containing information useful for planning and improving management of human resources.

Section 14. Section 110.205, F.S., is amended to permit each agency to designate one additional position in the Senior Management Service, provided that position reports to the agency head or another position also in that service and that the costs are assumed within existing funds.

Section 15. Section 110.207(1)(g), F.S., relating to the authorization of a broad banding personnel classification system, is repealed.

Section 16. Section 110.209, F.S., is amended to permit the DMS to establish guidelines, by rule, on the use of critical market pay by state agencies in addition to the 10 other existing special pay additives.

Section 17. Section 110.235, F.S., is amended to delete the specific requirements that all agencies report training accomplishments to the DMS. It deletes the specific requirement that state agencies develop quality management programs and that DMS submit an annual consolidated agency report on training progress to the Governor and the Legislature.

Sections 18 and 19. Sections 110.503 and 110.504, F.S., are amended to permit agency expenditures up to \$100 for commemorative recognition of the work of volunteers.

Section 20. Section 110.605, F.S., is amended to rephrase the existing requirement for a uniform appraisal system for employees in the Selected Exempt Service System by transferring it to the affected agencies and having its application extend to all such employees, regardless of whether they are covered by a collective bargaining agreement.

Section 21. Section 112.061, F.S., is amended to permit the designees of an agency head to approve travel and reimbursement.

Section 22. Section 112.3145, F.S., is amended to substitute a Category One purchasing threshold, raised in the bill from \$1000 to \$5,000, for the fixed \$1,000 threshold requiring financial disclosure by public purchasing agents.

Section 23. Section 215.196, F.S., is amended to provide proper organizational reference to the Architects Incidental Trust Fund within the DMS.

Section 24. Section 215.422, F.S., is amended to delete a requirement that each employee responsible for the processing of vendor payments annually sign a statement indicating personal acknowledgment of interest penalty sanctions for failure to timely process such invoices.

Section 25. Section 216.011, F.S. is amended to raise from \$500 to \$1,000 and from \$100 to \$250, respectively, the threshold for tangible, nonconsumable personal property and books which are defined as *operating capital outlay* in the state budgeting system.

Sections 26, 27, and 28. Sections 255.249, 255.25, and 255.257, F.S., are amended, respectively, to increase from 3,000 to 5,000 square feet the threshold beyond which DMS shall review state agency leases, obtain prior approval, or require the submission of data on energy consumption and cost.

Sections 29, 30, and 31. Nomenclature changes from “Division” to “Department” or “Secretary or designee” are provided for the Grove Advisory Council under s. 267.075, F.S.; the Governor’s Mansion Commission under s. 272.18, F.S.; and the maintenance of the Governor’s mansion under s. 272.185, F.S. Existing law in the latter statute requiring the Governor’s Mansion budget to be submitted by DMS is deleted.

Section 32. Section 273.02, F.S., is amended to raise from \$500 to \$1,000 for tangible personal property, and from \$100 to \$250 in the case of books, a requirement that such items below these levels be subject to inventory.

Section 33. Monies derived under s. 273.055, F.S., from the sale of state-owned tangible personal property shall be retained to defray necessary operating expenses rather than being deposited in the General Revenue Fund.

Sections 34, 35, 36, 37, 38, 39, and 40. Nomenclature changes from “Division” to “Facilities Program” are provided, respectively, for the Capitol Police under ss. 281.02, 281.03, 281.04, 281.05, 281.06, 281.07, and 281.08, F.S.

Section 41. Section 282.105, F.S., is amended to permit the use of the state SUNCOM telecommunications network by private, nonprofit elementary and secondary schools with endowments less than \$50 million.

Section 42. Section 282.111, F.S., is amended to designate the Secretary of DMS as the head of the statewide law enforcement communications network.

Section 43. Section 287.017, F.S., is amended to increase the dollar thresholds on state purchasing categories, as follows: CATEGORY ONE: from \$5,000 to \$15,000; CATEGORY TWO: from \$15,000 to \$25,000; CATEGORY THREE: from 20,000 to \$50,000; CATEGORY FOUR: from \$60,000 to \$150,000; and CATEGORY FIVE: from \$120,000 to \$250,000.

Section 44. Section 287.042, F.S., is amended to revise procedures for the dissemination of information on bids, competitive acquisitions, and requests for proposals.

Section 45. Chapter 98-310, L.O.F., relating to state airfare contracts, is repealed. In its place, the DMS is directed to undertake negotiations exempt from ch. 287, F.S., to secure the most effective and efficient airfare services between Tallahassee and other city pairs.

Section 46. Section 287.057, F.S., is amended to provide the appropriate agency head nomenclature changes resulting from reconfiguration of the agency under performance-based program budgeting.

Section 47. Section 287.151, F.S., is amended to delete the exception from subcompact vehicle class requirements for state attorneys and public defenders.

Section 48. Section 287.16, F.S., is amended to add the State Fire Marshal to the list of law enforcement agencies which may maintain ownership and control of their motor vehicles, to make DMS nomenclature changes, and to calculate break-even mileage requirements for the assignment of state vehicles consistent with that provided in s. 20.055, F.S. (Section 1) of the bill.

Section 49. Section 287.17, F.S., is amended to provide special requirements for the assignment of state vehicles: the projected mileage is a minimum of 10,000 miles annually; priority assignment to those employees traveling in excess of 15,000 miles a year; and the assignment of pursuit vehicles only for officers with such responsibilities. Each state agency shall conduct a motor vehicle utilization study to determine whether personal vehicle assignment is further warranted. The study shall use criteria developed by the DMS on break-even mileage.

Sections 50, 51, 52, and 53. Nomenclature changes to ss. 287.18, 365.171, 401.021, and 401.027, F.S., make the performance-based program budgeting changes from “Division” to “Department” or “Program” as appropriate. The respective sections deal with motor pool management maintenance and repair, and the statewide emergency “911” telephone system.

Section 54. Section 446.604, F.S., is amended to substitute the term “Government Services Direct” in place of “Florida Communities Network” for the purposes of electronic posting of one-stop career employment centers.

Section 55. Section 447.208, F.S., is amended to provide that the computation of attorney’s fees in pending and future public sector labor law cases on demotions, suspensions, and dismissals shall be governed by the standard of reasonableness in comparison to an hourly rate charged for similar Career Service System appeals in the same geographic area.

Section 56. A requirement for quadrennial performance audits by the Auditor General of the Senior Management Service provided under s. 110.407, F.S., and for the Selected Exempt Service under s. 110.607, F.S., is repealed.

Section 57. Section 110.151, F.S., is amended to provide that the sponsoring state agency of a child care center may be responsible for the general operating costs of the center.

Section 58. Section 282.1095, F.S., 1998 Supplement, is amended to authorize the DMS to acquire and implement a statewide radio communications system to serve law enforcement.

Section 59. Section 282.322, F.S., 1998 Supplement, is amended to revised reporting requirements for the Technology Review Workgroup.

Section 60. Section 282.3091, F.S., 1998 Supplement, is amended to provide that the secretary of DMS serve as the chairperson of the State Technology Council.

Section 61. The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

There may be a marginal erosion of taxes otherwise collected from customers of commercial telecommunication providers. The decline in state employee air travel is a dual function of the cost of air travel itself following airline fare deregulation and the limited service provided non-hub cities such as Tallahassee. To the extent that air passenger traffic attributable to state employee passengers increases, there will be additional landing fees paid through the fares to the City of Tallahassee for the operation of its regional airport.

B. Private Sector Impact:

Private schools may benefit from the services provided through SUNCOM should the rate structure prove advantageous with local providers.

As air passenger ridership increases, airlines may be induced to supplant turboprop aircraft with pure jet engine aircraft. This substitution will be a function also of the overall economies associated with passenger loadings on each flight, acquisition and depreciation costs of newer aircraft, the cost of fuel, trip lengths which cannot optimize efficient operating altitudes, general aviation market conditions affecting non-hub cities, and legislative policy on funding travel through the expense budget.

C. Government Sector Impact:

The bill allows for the tax shelter income on both the employer and employee's behalf. As a result, it acts as a tax expenditure to the United States Treasury since neither employer payroll taxes nor employee taxable income would accrue to the federal government.

There will be additional, unknown costs to the DMS in the establishment of a procurement program and the performance of the due diligence requirements.

Funds otherwise payable to the federal government will be retained by the State of Florida for the funding of performance goals achieved or exceeded. Whether these funds will supplant or support existing funding levels will be determined by subsequent Legislatures. The bill in its present form does not place these amounts in any protected account.

The Legislative Appropriations System/Planning and Budgeting System reports that 6.2 percent of the OPS appropriation category for the present fiscal year is about \$9.1 million. The data base management system maintained by the Comptroller's Department of Banking and Finance reports different figures as it recognizes such items differently. That system reported OPS expenditures for the prior fiscal and calendar 1998 years, respectively, to be \$465 million and \$491 million. A range of savings, assuming full implementation and universal enrollment, would extend from \$9.1 million to some \$30 million on an expenditure basis in unobligated employer payroll taxes.

The Department of Banking and Finance also reported that some \$63 million was paid in all forms of leave during the prior calendar year. Applying the 6.2 percent factor to this amount would yield another \$4 million in employer payroll tax savings.

Cumulative employer-based savings for State of Florida agencies could exceed \$34 million on an annual basis and be made available for performance-based program budgeting.

As the user base for SUNCOM increases it places the system in a more cost-competitive situation with its proprietary telecommunication peers. SUNCOM is primarily a data transmission network although it originated some years ago as a dedicated state agency telephone system.

There will be marginal cost savings to the DMS in the consolidation of the several separate reports. These cost avoidances will produce lower printing and distribution costs but will not have any appreciable effect on salaries and benefits since only the volume of information transmittal has changed.

The motor vehicle utilization reporting requirement will not apply to state attorneys and public defenders as the bill provides they are not agencies subject to that requirement.

The bill provides an increase in the nominal stipend paid to employees or volunteers for the performance of faithful service. These amounts will be paid from funds otherwise appropriated to the agency and will not necessarily impose additional financial burdens. In the 1996 calendar year, 7,830 employees were recognized for superior accomplishment and shared \$1,184,218 in awards. During that same period state agencies spent an additional \$61,163 to recognize 117 employees whose adopted productivity and performance suggestions produced \$338,385 in savings. Raising the upper award limit will permit agencies to increase award amounts, provided their budgets permit it.

The bill raises the respective thresholds for inventory records of tangible personal property from \$500 to \$1000 and for books from \$100 to \$250. There will be an accompanying reduction in workload requirements for the lesser inventory requirements. The effect will vary with each agency and cannot be estimated at this time.

The bill provides for an increase in membership in the Senior Management Class. This separate managerial class is accompanied by an enhanced salary range and benefit provisions which provide: full employer payment of insurance premiums; an increased accrual rate for retirement benefits from 1.6 percent to 2 percent per year of service, with a choice of a separate optional annuity program in lieu of FRS membership; and more generous accruals of sick and annual leave which are precrossed at the beginning of service and annually thereafter. While there will be an increased employee benefit derived from this designation, any cost will be a function of the agency's salary lapse and salary rate experience.

It may be possible for the affected agencies to assume these costs within their existing budget authority. Since the designation is discretionary with the agency it is not possible to determine exactly how many individuals will, in fact, receive this status. The greater likelihood is that individuals at mid- to upper salary levels within their current Career Service or Selected Exempt classes will accede to this new title. There will be additional non-recurring costs to an agency for designees who request full or partial payment for accrued leave from the departing personnel system. Average salaries for the three principal personnel classes in state government at the end of 1997 are as follows:

Senior Management Service: \$82,073
Selected Exempt Service: \$60,125
Career Service: \$26,078

To these dollar amounts should be added another 37 percent for the SMS class, representing the cash equivalent of employer provided benefits. There are slightly more than 500 SMS positions in state government; the maximum amount is governed by a statutory formula which caps this complement at no more than .5 percent of the entire workforce, *excluding* individually designated positions.

The bill reduces the scale of DMS review of state agency leases by increasing the threshold of review from 3,000 to 5,000 square feet. While there is a workload reduction involved, the agency reports that it cannot predict how its future actions will be affected by other state agency leasing practices which rise above or fall below this new review level.

The bill establishes a new standard for the computation of attorney's fees in Career Service cases. The direction of impact would suggest a lower award per case. There is, however, a high degree of variability which makes estimation of the precise effect problematic. This section has the effect of repealing decisional law applied by the Fourth District Court of Appeal in *Quinn v. Department of Health and Rehabilitative Services*, 624 So.2d 1145 (1993). In *Quinn* the appellate court held that a disciplined Career Service employee was entitled to a fee multiplier for bringing a successful challenge to the personnel action and for fees for the challenge of the attorney's award. Also, in *Greseth v. Department of Health and Rehabilitative Services*, 604 So.2d 530 (1992), the same appellate court held that attorney

fee multipliers are appropriate in Career Service claims since it found the employment to be based upon a contract.

Additional Comment by Fiscal Policy Committee Staff

The bill requires that agencies pay for the cost of adding one employee to the senior management service class within existing funds. Future year budgets that are based on the cost to continue the operations of the agency would be increased.

The bill allows agencies to retain funds generated from the sale of state owned tangible personal property rather than forward such proceeds to the state General Revenue Fund. The fiscal impact of this change is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.