

The Florida Senate
VETO MESSAGE BILL ANALYSIS

(This document is based on the enrolled bill, as presented to the Governor.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/HB 5611

INTRODUCER: Full Appropriations Council on Education & Economic Development, Government Operations Appropriations Committee, and Rep. Hays

SUBJECT: Review of the Department of Management Services

DATE: November 8, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pigott	DeLoach	WPSC	Withdrawn
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill includes the following provisions relating to the Department of Management Services (DMS).

- Reorganizes the governance structure of the DMS under the Governor and the Cabinet and authorizes the appointment of an executive director, subject to confirmation by the Senate.
- Provides a lump sum appropriation of positions and budget for distribution, pursuant to the provisions of chapter 216, by no later than July 15, 2010, and initially requires Senate confirmation of all positions by March 1, 2010.
- Requires electronic filing of information by parties represented by attorneys in hearings held under the Division of Administrative Hearings (DOAH) Adjudication of Disputes Program and in the Worker’s Compensation Appeals Program, and encourages parties not represented by attorneys to file documents electronically when possible.
- Repeals the Florida State Employee Wellness Council, which is obsolete. The council was originally created to advise the DMS on health care education for employees.
- Establishes statewide policy for agencies to use in determining the assignment of employee wireless communication devices and requires agencies to utilize the SUNCOM Network Service Program in order to reduce costs. The amendment requires state agencies to submit, as part of their legislative budget request, an inventory of all wireless devices and expenditures.
- Eliminates the Council on Efficient Government. Agency outsourcing proposals will continue to be submitted to the Governor and Legislature for review and approval.
- Directs the DMS to prepare a plan by November 1, 2010, to create, administer, and maintain a centralized fleet of all state-owned motor vehicles. In preparing the plan, the DMS is

directed to evaluate the costs and benefits of operating a centralized and outsourced motor vehicle fleet program.

- Extends the collection of a \$3 traffic and criminal traffic violation fee from July 1, 2012, to July 1, 2017, to continue funding for the Statewide Law Enforcement Radio System.
- Requires the DMS to coordinate with all state agencies, prior to submitting a plan to the Governor and Legislature by September 1, 2010, to centralize all real estate leasing and facilities operations and maintenance. The bill requires agencies to include, in their legislative budget request for the 2011-2012 fiscal year, a transfer of all real estate resources to the DMS.
- Provides for the transfer of funds from the DMS to the Department of Financial Services to support statewide purchasing operations.
- Authorizes the DMS to transfer \$320,000 from the Supervision Trust Fund to the Department of Environmental Protection for the creation of a comprehensive database of state-owned real property.

The bill provides an effective date of July 1, 2010.

The bill substantially amends the following sections of the Florida Statutes: 20.22, 57.111, 120.54, 120.56, 120.569, 120.57, 216.023, 287.05721, 287.0574, 318.18, 318.21, 440.192, 440.25, 440.29, 440.33, 440.45, 552.40, 553.73, 766.305, 766.309, 766.31, and 961.03

The bill repeals sections 110.123(13) and 287.0573, Florida Statutes.

The bill creates sections 120.585 and 282.712, Florida Statutes. The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Department of Management Services

The Department of Management Services (DMS) was created in 1992. The former Department of General Services was renamed DMS. The Department of Administration was abolished and its duties were distributed among other agencies, including the newly created DMS. Currently, the Secretary of the DMS is appointed by the Governor and confirmed by the Senate.¹

Electronic Filing and Service at Division of Administrative Hearings

The Division of Administrative Hearings (DOAH) is made up of the Office of Administrative Law Judges and the Office of the Judges of Compensation Claims. Administrative Law Judges (ALJs) hear administrative disputes under ss. 120.56 and 120.57, F.S. the Office of the Judges of Compensation Claims (JCCs) mediates workers compensation disputes pursuant to s. 440.192, F.S.

Both the OJCCs and the ALJs currently allow electronic filing and traditional paper and fax filing. The number of electronically filed documents has grown steadily since the

¹ See s. 20.22, F.S.

implementation of electronic filing. The ALJs received 18,230 electronically filed documents and the JCCs received 430,548 electronically filed documents in Fiscal Year 2008-2009.² All documents received by the DOAH are stored in an electronic database. Paper documents received by the DOAH are scanned by employees and uploaded to the database.³

Internal policy at the Adjudication of Disputes Program dictates that only parties who specifically have signed up for the electronic filing program will be served documents electronically. As a result, a relatively low number of documents (approximately 26 percent) are electronically served by the ALJs. Conversely, approximately 99 percent of documents are electronically served by the OJCC because this program electronically serves to any party who has provided an e-mail address to the judge's staff.

Under s. 120.53(1)(a)2.b., F.S., agencies must maintain and make available for the public an index of all final orders and agency rules. As an alternative, the statute allows agencies to electronically transmit those documents to the DOAH for indexing on its electronic database. The Department of Agriculture and Consumer Services and the Department of Environmental Protection currently use the DOAH to comply with mandates of s. 120.53(1)(a)2.b., F.S.

Florida State Employee Wellness Council

In 2006, the Florida State Employee Wellness Council was created to advise the DMS on health care education for employees and to assist in developing minimum benefits for all health care providers when providing age- and gender-based wellness benefits. The council is composed of nine members appointed by the Governor.

Statewide Wireless Communication Utilization

Chapter 2009-15, L.O.F., directed the Office of Program Policy Analysis and Government Accountability (OPPAGA), in consultation with the DMS, to develop recommendations regarding the prudent issuance of state-owned wireless communication devices, including telephones, personal digital assistants, and other electronic devices. The OPPAGA found that there was no single-source of information regarding state-owned wireless devices and, after interviewing executive agencies, found that agencies currently have more than 40,000 wireless devices and spend approximately \$17 million annually for their operation.⁴

The DMS established state term contracts for the purchase of wireless devices and services, as well as an alternative source contract with a different provider. The state term contract enables agencies to take advantage of free cellular phones and pay only for the minutes used. The alternative source contract provides an across the board discount of 25 percent for wireless services. The OPPAGA found that state agencies with the highest cellular telephone expenditures were making limited purchases using DMS cellular phone contracts.⁵

² Division of Administrative Hearings, *Thirty-Sixth Annual Report*, p.7 (Feb. 1, 2010).

³ *Ibid.*

⁴ Options for Reducing State Agency Costs for Cellular Telephones and Other Wireless Devices, Office of Program Policy Analysis and Government Accountability, March 3, 2009.

⁵ *Ibid.*

The OPPAGA made several recommendations to ensure prudent management of wireless communication devices including recommending that the Legislature:

- Establish statewide policies to limit the use of wires devices to employees with job responsibilities that match device capabilities.
- Require agencies to monitor employee use and obtain cost effective services plans.
- Ensure procurement practices use the most cost effective service.
- Direct agencies to report wireless device costs via agency legislative budget requests.

Council on Efficient Government

Under the Florida Government Accountability Act,⁶ state agencies are subject to a review process to determine whether the agency should be retained, modified, or abolished. The review includes an examination of agency advisory committees.⁷ During the 2010 Regular Session, the DMS was among the departments that were under review by the Legislature.⁸

The Council on Efficient Government was created within the DMS pursuant to s. 287.0573, F.S., for the purpose of reviewing, evaluating, and issuing advisory reports on business cases submitted to the council as specified by the requirements of ss. 287.0573 and 287.0574, F.S. The council consists of seven members appointed by the Governor: the Secretary of the Department of Management Services (serves as chair), a Cabinet member other than the Governor or an executive staff designee, two heads of executive branch agencies, and three members with relevant experience from the private sector who are subject to confirmation by the Senate.⁹

The council is supported by the Office of Efficient Government, organizationally housed within the DMS's Purchasing Oversight entity. Section 287.0573(10), F.S., authorizes the department to employ an adequate number of staff who collectively possess significant expertise and experience as required to carry out the responsibilities of the council. When initially created, the office was authorized 10 positions with an operating budget of \$1.75 million in recurring general revenue. Currently, the office has four positions with an annual operating budget of \$447,038, funded by the transaction fees from vendors in connection with the statewide electronic procurement and information services system.¹⁰ The director position and one staff position are currently vacant.¹¹

In light of such factors as the state's economic condition and budgetary constraints, there has been a decline in the number of large outsourcing initiatives by state government. Council staff did not review any outsourcing proposals in either Fiscal Year 2007-2008 or Fiscal Year 2008-2009 that met the \$10 million annual cost threshold for review by the full council, nor was there need for the council to submit an advisory report to an agency, the Governor, and the

⁶ See ss. 11.901-11.920, F.S.

⁷ See s. 11.906, F.S.

⁸ See s. 11.905, F.S.

⁹ See s. 287.0573, F.S.

¹⁰ See pg. 340-341, Fiscal Year 2009-10 General Appropriations Act.

¹¹ State Personnel Vacancy Report dated February 17, 2010, on file with the Government Operations Appropriations Committee.

Legislature.¹² The council has not met in 2010. The council met two times during 2008 and 2009, respectfully, and four times during 2007.¹³

In October 2009, the Secretary of the DMS recommended that the Legislature abolish the council due to lack of outsourcing activity by state government.¹⁴ According to the council's most recent annual report, it has developed standards and best practice procedures for agencies to use when developing business cases, as well as a standardized process for reviewing business cases if the council were abolished.¹⁵

The Joint Legislative Sunset Committee recommended abolishing the council, but to maintain the business model requirements for agencies that are considering an outsourcing initiative.¹⁶

E-procurement System Transaction Fees

Pursuant to ss. 287.042 and 287.057, F.S., the DMS has the authority to collect transaction fees from private sector vendors for the use of its electronic procurement and information services system. These transaction fees are deposited into the Operating Trust Fund within DMS.

The transaction fee revenue source supports appropriations in the General Appropriations Act for the vendor payment associated with the statewide electronic procurement and information services system, and the administrative costs for most functions and services within the DMS's Support Program. The Office of Supplier Diversity, Fleet Management, staff support for the Council on Efficient Government, and the Division of State Purchasing are within the DMS's Support Program and are funded by the transaction fees.¹⁷

Centralized Fleet of State-owned Motor Vehicles

Each state agency operates an individual pool of state-owned motor vehicles. The majority of these vehicles remain in an agency pool that is available for general use by agency employees. Section 287.17, F.S., provides for agency heads to assign state-owned vehicles to employees who are projected to drive a minimum of 10,000 miles annually for official business.

Data from the DMS's Equipment Management Information System for calendar year 2009 shows that agencies own approximately 18,237 cars and light trucks. Of these, approximately 30 percent were used for law enforcement purposes, leaving 12,687 vehicles operated for general agency use. A review of these vehicles by the OPPAGA showed that 63 percent of these vehicles were driven less than 10,000 miles during the year. In addition, 2,939 of these vehicles were assigned to an individual, but nearly 45 percent of assigned vehicles were not driven the

¹² Letter dated October 16, 2009 from DMS Secretary South to the Joint Legislative Sunset Committee.

¹³ DMS website: Council on Efficient Government/Council Meetings.

¹⁴ Letter dated October 16, 2009 from DMS Secretary South to the Joint Legislative Sunset Committee.

¹⁵ Letter dated October 16, 2009 from DMS Secretary South to the Joint Legislative Sunset Committee & DMS website: Council on Efficient Government/Reports/Annual Reports/Annual Report 2009.

¹⁶ Joint Legislative Sunset Committee Meeting Packet dated March 8, 2010.

¹⁷ See pg. 340-342, Fiscal Year 2009-10 General Appropriations Act.

statutorily required 10,000 miles.¹⁸ In contrast, 654 employees were reimbursed for driving personal vehicles more than 10,000 miles on state business during Fiscal Year 2008-2009.¹⁹

Statewide Law Enforcement Radio System

In 1988, the Legislature created the State Technology Office and directed it 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,” pursuant to s. 282.195, F.S.

In 2007, ch. 2007-196, L.O.F., established a surcharge of \$3 on any penalty imposed for:

- Noncriminal offenses listed in s. 318.14, F.S.
- Criminal offenses found in s. 318.17, F.S.
- Noncriminal moving traffic violations found in ch. 316, F.S.

The surcharge is authorized through 2012. The revenues from the surcharge are to be used to pay for the Statewide Law Enforcement Radio System (SLERS).

In 2009, ch. 2009-80, L.O.F., transferred responsibility for the SLERS to the DMS.

Real Estate Facilities

State agencies occupy state-owned facilities and lease private space to conduct their activities. The Division of Real Estate Development and Management within the DMS operates and maintains buildings in the State Facilities Pool; provides fixed capital outlay and project management oversight of state facility construction and renovation projects; provides for building security and fire safety; and administers facilities bonding and state employee parking programs. In addition, the department oversees private sector lease procurement oversight and review. As of November 2009, state agencies had 887 private sector leases comprising 8.1 million square feet. In Fiscal Year 2009-2010, state agencies paid \$149.4 million in annual lease payments for privately owned space.

Florida’s current process for leasing private sector space is partially decentralized, with state agencies responsible for identifying their space needs and negotiating with landlords, and the DMS responsible for overseeing the process and approving all lease agreements. Agencies must use standard forms provided by the DMS when calculating space needs and establishing lease agreements. These forms are intended to ensure that agencies are consistent in calculating space requirements and use lease terms that contain statutorily-required provisions. Agencies may not lease privately owned space when state-owned space is available in the same geographic area, unless the DMS approves the agency’s written statement explaining why the state-owned space does not suit its needs. For Fiscal Year 2009-2010, the DMS had eight staff managing the leasing process. Many state agencies also have leasing staff at their headquarters and field

¹⁸ Vehicle Use by State Agency, Office of Program Policy Analysis and Government Accountability, March 11, 2010.

¹⁹ Ibid.

offices. However, based on information provided from the agencies, many of the leasing staff has other responsibilities, such as procurement and facilities management.

III. Effect of Proposed Changes:

Department of Management Services

The bill places the Department of Managements Services under the Governor and Cabinet with the authority to appoint an executive director, upon confirmation by the Senate.

Electronic Filing and Service at Division of Administrative Hearings

The bill creates section 120.585, F.S., to require any document filed with the DOAH by an attorney to be submitted through electronic means. Any party not represented by an attorney is encouraged to file any document through the division's website. The bill amends ss. 57.111, 120.54, 120.56, 120.569, 120.57, 440.192, 440.25, 440.29, 440.45, 552.40, 553.73, and 961.03, F.S., to provide for electronic procedures in administrative proceedings. There is no charge to register for DOAH's electronic filing service. The bill also clarifies the authority of the Office of the Judges of Compensation Claims to adopt rules of practice.

Florida State Employee Wellness Council

The bill repeals the Florida State Employee Wellness Council as recommended by the Joint Legislative Sunset Committee. According to the committee report, the council does not appear to be meeting its statutory mission, and their duties have been assigned to other state entities. For example, the Department of Health is required to collaborate with other state agencies to promote healthy lifestyles of state employees. In addition, the Governor's Council on Physical Fitness was established in 2007 with the goal of developing a state plan of action to increase the physical activity of Floridians.

Statewide Wireless Communication Utilization

This bill requires agencies to limit assignment of wireless communication devices to only those employees who, as part of their job responsibility, must:

- Be immediately available to citizens, supervisors, or subordinates;
- Be available to respond to emergency situations;
- Be available to receive calls outside of regular working hours;
- Have access to the technology in order to productively perform job duties in the field; or
- Have limited or no access to a standard phone, or have no ability to use a personal cell phone if needed.

The bill provides that procurement for devices and services must be through SUNCOM Network Services, unless otherwise approved by the DMS. Agencies that wish to procure services through an alternative method must provide a cost benefit analysis and reason for deviating from the state term contract and submit the analysis to the DMS for approval.

The bill requires agencies to audit wireless communication devices for personal use and requires reimbursement from employees. It also requires agencies to submit, as part of the legislative budget request, an annual inventory of wireless communication devices and expenditures, a list of job classifications assigned a wireless device, and the steps the agency has taken to contain costs.

Council on Efficient Government

This bill repeals the statutes relating to the creation of the Council on Efficient Government. For any proposed outsourcing, a state agency will remain responsible for developing a business case that justifies the proposal to outsource. State agencies are required to submit the business case to the Governor and Legislature in the form and manner required by the budget instructions issued pursuant to ss. 216.023(1), (2), and (4)(a)7., F.S., augmented with additional information if necessary. All other statutory provisions pertaining to state agency outsourcing initiatives, and business case requirements governed by ss. 287.0572 and 287.0574, F.S., will remain in effect.

The council developed standards and best practice procedures for agencies to use when developing business cases as well as a standardized process for reviewing business cases. This information will remain available for agency use.

As a result of the repeal of the council, the FY 2010-11 General Appropriation Act eliminated the four support staff positions and \$447,038 from the Operating Trust Fund within the DMS.

Centralized Fleet of State-owned Motor Vehicles

In an effort to pursue opportunities for future cost savings through efficiencies and disposal of surplus vehicles, the bill directs the DMS to prepare a plan to create, administer, and maintain a centralized fleet of motor vehicles. The plan must include a method for: assigning and administering vehicles to state agencies and employees, managing a pool of vehicles for short-term use, charging state agencies for use, purchasing necessary vehicles, repairing and maintaining vehicles, monitoring the use of vehicles, maintaining records, and determining when it is cost-efficient to use a third party vehicle rather than a state-owned car. In developing the plan, the DMS is required to compare the costs and benefits of contracting with a third party vendor for the operation of a centralized fleet. The report is due to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet by November 1, 2010.

Statewide Law Enforcement Radio System

The bill extends the collection of a \$3 traffic and criminal traffic violation fee until July 1, 2017. The revenue source supports the administrative costs associated with managing the Statewide Law Enforcement Radio System and system enhancements. The fee was scheduled to expire on July 1, 2012.

Centralize Real Estate Leasing and Facilities Management

The bill directs the DMS to coordinate and develop a plan to centralize all real estate leasing and facilities operations and maintenance. This plan is due by September 1, 2010, to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet. State agencies are required to include a transfer of all real estate resources to the DMS in their FY 2011-2012 legislative budget request.

Appropriations and Revenue Transfers

The bill authorizes 18 positions and appropriates \$2,185,746 in trust funds to the Department of Management Services. These positions include: executive director; deputy executive director; chief of staff; general counsel; legislative affairs director; inspector general; director, deputy director, chief of operations and maintenance, chief of real property, projects management administrator, appraiser administrator, deputy chief of regional facilities, and deputy chief of Tallahassee facilities management in the Division of Facilities Management and Building Construction; director of state purchasing, public information administrator, director of specialized services, and the chief information officer. All positions authorized are initially required to be filled by majority approval of the Governor and Cabinet and subject to Senate confirmation.

The bill authorized the DMS to transfer revenue from the E-procurement System transaction fees within the Operating Trust Fund to the Administrative Trust Fund within Department of Financial Services (DFS). This transfer will support statewide purchasing operations within the DFS and was included in the FY 2010-11 General Appropriations Act.

The bill also authorized the DMS to transfer \$320,000 from the Supervision Trust Fund to the Department of Environmental Services to develop a comprehensive state-owned real property system. The authorization for the system was included in CS/SB 1516 which was vetoed by the Governor.

Reviser's Bill

The bill also directs the Division of Statutory Revision in the Office of Legislative Services to prepare a reviser's bill for consideration by the 2011 Regular Session of the Legislature to conform the Florida Statutes to the changes made by this act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill continues the \$3 traffic and criminal traffic violation fee that supports the Statewide Law Enforcement Radio System. The fee was scheduled to expire on July 1, 2012, and was extended until July 1, 2017.

B. Private Sector Impact:

The public would continue to pay the \$3 traffic and criminal traffic violation fee after July 1, 2012.

C. Government Sector Impact:

The bill implements several policies that have the potential of generating revenue savings for the state.

DOAH estimates it will save at least \$9,500 per year on electronic services of documents. DOAH also notes that electronic receipt and service of documents will save significant processing and filing time.

Statewide policies for the utilization of wireless communication devices may reduce individual agency costs associated with these services.

Centralization of state-owned vehicles and real estate leasing and facilities operations and maintenance will provide the opportunity for future cost savings resulting from more efficient use, as well as cost savings from the disposal of underutilized assets. Decreased agency administrative overhead costs could also be realized.

The FY 2010-2011 General Appropriations Act (GAA) eliminated the 18 positions and associated \$2,185,746 in funding included in this bill. The GAA provides \$320,000 in budget authority to the DEP to develop the real property system by utilizing the transfer of revenue from the Supervision Trust Fund within DMS authorized in this bill. Finally, the GAA fund shifted \$1 million from the General Revenue Fund to the Administrative Trust Fund within DFS by utilizing the E-procurement transaction fee revenue authorized to be transferred in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Veto:**A. Governor's Stated Reason for Veto:**

“This bill requires the Department of Management Services to report to the Governor and Cabinet, rather than the Governor alone, and requires the Governor and Cabinet to appoint an Executive Director, subject to confirmation by the Senate. The bill also requires the same appointment and confirmation process for 17 other specifically designated senior management services and senior executive services positions in the department.

Article II, Section 13 of the Florida Constitution addresses the separation of powers between the three branches of government and provides that ‘no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.’ While it is not uncommon for an agency head to be appointed and subject to Senate confirmation, requiring the appointment and confirmation of specified members of an agency’s leadership is unprecedented. I am concerned that this bill reflects an increasing encroachment of the legislative branch on the operations of the executive branch.”

B. Professional Staff Comments:

The bill passed the Senate with a vote of 37-0 and the House with a vote of 76-44.

The GAA eliminated 18 senior-level positions within the DMS, including the Secretary, Deputy Secretary, several division directors, and other managerial positions. The department implemented this reduction by realigning staff, utilizing vacant positions, and terminating select employees in order to recreate the 18 positions that the Legislature specifically terminated.

Additionally, the bill authorized the DMS to transfer revenue to the Department of Financial Services (DFS) to support a \$1 million fund shift included in the GAA. As a result of the veto, the DFS adjusted their internal administrative cost allocation methodology to compensate for the loss in revenue from the DMS. This resulted in an increase in administrative costs to all the DFS departmental trust funds.

Finally, the bill transferred \$320,000 from the DMS to the Department of Environmental Protection (DEP) to begin the planning and development of a comprehensive database of all state-owned real property. Due to the veto of this bill, the DEP was unable to incorporate the initial design and development of the comprehensive real estate data base with its current State Lands Information Technology System. In order for the state to streamline and consolidate multiple systems and provide strategic real estate information to the Legislature, the current DEP system will need to be modified. Providing strategic state real estate information to the Legislature for future policy decisions on managing

the state's real property assets is a major initiative that was also included in SB 1516.
That bill was also vetoed by the Governor.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
