

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAAC 10-05 Sunset Review, Department of Management Services
SPONSOR(S): Government Accountability Act Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Government Accountability Act Council	11 Y, 0 N	Zeiler	Mahler
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
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SUMMARY ANALYSIS

The Government Accountability Act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action, the agency will continue to be subject to an annual sunset review each year until the Legislature enacts legislation that continues, modifies, or terminates the agency. The Department of Management Services (DMS) is scheduled to be reviewed by July 1, 2010 and included in this review is the Florida Division of Administrative Hearings (DOAH) and Florida Commission on Human Relations (FCHR).

PCB GAAC 10-05 (bill) makes a number of changes based upon the review and recommendations that occurred during the sunset review process. The bill:

- Reenacts the DMS, DOAH, and FCHR.
- Establishing a standard pay period (monthly) for public officer, state officers, employees and other personal services.
- Requires the electronic filing of certain documents with the DOAH’s Adjudication of Disputes *and Worker Compensation Appeals* programs.
- Extends the FCHR timeframe for completing investigation and making cause or no cause determinations by 60 days (from 180 to 240-days) for three years (until July 1, 2013).
- Authorizes the assessment of a \$200 filing fee by the FCHR to those complainants determined to have no cause by the FCHR who request an administrative hearing, and provides the FCHR discretion to waive the filing fee in cases of indigency, or allow the recovery of the filing fee if the complainant prevails.
- Revises appointment of members to the Florida Advisory Council of Small and Minority Business Development and revises the council’s advisement responsibilities.
- Eliminates the Council on Efficient Government.
- Eliminates the Minority Business Certification Task Force.
- Eliminates the Florida State Employee Wellness Council.

The bill has undetermined fiscal impact on state government. The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Sections 11.901-11.920, F.S., the "Florida Government Accountability Act," creates an agency sunset review process to determine if a public need exists for the continuation of a state agency, its advisory committees, or its programs. The act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action before the review date to reenact the agency or its advisory committees, the agency will continue to be subject to an annual sunset review until the Legislature enacts legislation relating to the agency's abolition, continuation, or reorganization.

Sunset Review Process

The act requires the appointment of a Joint Legislative Sunset Committee to oversee the review process, obtain public input, and make recommendations to abolish, continue, or reorganize the agency under review.

Two reports are required prior to an agency's review date:

- No later than two years preceding the year in which an agency and its advisory committees are scheduled to be reviewed, the agency must provide the Legislature with a preliminary report detailing its programs and activities. Upon receipt of the agency's report, the sunset review committees of the Senate and House of Representatives are required to conduct independent reviews of the agency and its advisory committees. The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General are required to assist the Senate and House of Representatives in the review process.
- No later than March 1 of the year in which an agency is scheduled to be reviewed, the sunset committees of the Senate and House of Representatives are required to provide the President of the Senate and Speaker of the House of Representatives with 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.

Recommendations

The Joint Legislative Sunset Committee, Senate Committee on Government Operations and OPPAGA have prepared various reports and memorandums regarding the sunset review of DMS, DOAH and the FCHR.

OPPAGA–December 2008 (DMS - Overview)

- No recommendations.

OPPAGA–December 2008 (DMS – Advisory Committees Assessment)

- OPPAGA identified entities in its review an advisory committees and made the following recommendations:
 - State Retirement Commission (ss. 121.22 - 121.24, F.S.), continue.
 - Governor’s Mansion Commission (s. 272.18, F.S.), abolish with DMS assuming the commission’s duties.
 - Florida State Employee Wellness Council (s. 100.123(13)F.S.), abolish with DMS, the Department of Health, and the Governor’s Council on Physical Fitness coordinating and disseminating health education information to state employees and developing health care benefits for all health providers.
 - Minority Business Certification Task Force (s. 287.0943(2), F.S.), abolish.
 - Florida Advisory Council on Small and Minority Business Development (s.287.0947, F.S.), continue with modifications. The council should advise and assist the Office of Supplier Diversity. The annual reporting requirement should be eliminated. Council responsibilities related to small business should be assigned to the Small Business Regulatory Advisory Committee 9S.288.7001, F.S.
 - Joint Task Force on State Agency Law Enforcement Communications (S. 282.1095, F.S.), continue.
 - E911 Board (s. 365.172(5), F.S.), continue.
 - Council of Efficient Government (s. 287.0573, F.S.), continue with modifications. The council responsibilities should include reviewing business cases the propose insourcing.

Senate Committee on Governmental Oversight and Accountability–December October 2008

- No specific recommendations offered.

Senate Committee on Committee Affairs–October 2009

The Legislature could consider whether the current governance structure for DMS is adequate. In order to elevate issues that affect all state agencies, DMS could be placed under the Governor and Cabinet.

Some of the duties that DMS undertakes are parts of specific processes for which other agencies also have responsibilities, such as:

- DFS releasing funds to pay vendors on state term contracts procured by DMS;
- SBA investing funds used to pay state retiree benefits administered by DMS; and
- The Division of State Lands in DEP buying and selling state real property, some of which DMS has custody and control over.

Some of the entities attached to DMS provide services similar to services provided by other agencies, such as:

- The Governor's Commission on Disabilities; and
- The Bureau of Private Prison Monitoring.

The Legislature could transfer some DMS duties to other state agencies, since DMS in its current form represents a combination of services that were performed by other entities, prior to their consolidation into DMS when DMS was created in 1992.

The Joint Legislative Sunset Committee made the following recommendations:

- Make the Department of Management Services a Cabinet Agency.
- Continue the Florida Advisory Council on Small and Minority Business Development with modification, to include directing the council to advise and assist the department's Office of Supplier Diversity rather than the department secretary.
- Abolish the Council on Efficient Government.
- Abolish the Florida State Employee Wellness Council.
- Abolish the Minority Business Certification Task Force.

PCB GAAC 10-05

Overview of the DMS

Current situation

Department of Management Services is headed by a Secretary, who is appointed by the Governor, subject to confirmation by the Senate. DMS was created in 1992 from the functions of two former agencies, the Department of Administration (DOA) and Department of General Services (DGS). The DOA provided consolidated budget, state planning, personnel, and retirement for various ex-officio boards and agencies, most of which were under the Cabinet and included the Division of Retirement, Personnel Management, Administrative Hearings, State Employees' Insurance, Labor Relations, Human Resource Development, State Retirement Commission, Commission on Human Relations, Bond Finance, and Executive Clemency. The DGS provided centralized: 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 State Board of Administration was assigned the Bond Finance function, and the Florida Parole Commission was assigned the Executive Clemency function.

Section 20.22, F.S., establishes the following divisions and programs 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.
- (g) Division of Retirement.
- (h) Division of State Group Insurance.

However, the DMS' current organizational structure does not agree with the organizational statute. DMS has elevated certain programs to the status of divisions. DMS has two Deputy Secretaries whose reporting functions are divided into:

- Human Resource Support and Communications Services
 - Division of Retirement - administers the Florida Retirement System.
 - Division of Human Resource Management – develops and administers core human resource policies, practices, and strategies, and includes Workforce Strategic Planning and Research, Workforce Design and Compensation, Workforce Development and Benefits.
 - Division of State Group Insurance (DSGI) - administers the state’s comprehensive package of health and welfare insurance benefits, and includes Bureau of Policy Analysis and Program Development, and Bureau of Accounting and Financial Management.
 - People First Administrator - People First is the State of Florida's self-service, secure, web-based personnel system that automates the state's human resource functions, such as payroll, benefits, hiring and personnel management.
 - Division of Telecommunication - provides all methods of communication signals (including voice, data, video and radio) to all state agencies, universities and political subdivisions, and includes the Bureau of Enterprise Resource Management and the Bureau of Operations.
- Business Operations
 - Division of Administration - provides administrative support for the entire agency.
 - Division of Specialized Services - includes the bureaus of Aircraft Management, Motor Vehicle and Watercraft, Federal Property Assistance, and Private Prison Monitoring.
 - Division of State Purchasing - includes the bureaus of Purchasing Operations, Purchasing Commodities - Transportation, and Purchasing Commodities - Technology.
 - Division of Real Estate Development and Management - includes the bureaus of Real Property Administration and Operation and Maintenance.
 - Office of Supplier Diversity (OSD) - assist minority business enterprises in becoming suppliers of commodities, services, and construction to state government.

Effects of the bill

The bill reenacts the DMS, DOAH and FCHR. Section 20.22, F.S, creates the Department of Management Services, s. 20.22(d), F.S., establishes the Division of Administrative Hearings and s. 760.03(1), F.S., establishes the FCHR.

Single Pay Cycle

Current situation

Currently, the state functions under a number of timekeeping and payroll cycles managed by the DMS (timekeeping) and Department of Financial Services (payroll). Most significantly are the monthly and biweekly pay cycles which are further bifurcated into monthly and monthly (15 to 14), and biweekly and biweekly (7 days back), respectively. The maintenance of these multiple pay cycles present a host of challenges which include:

- Employees must adjust their benefits, deferred compensation, W-4 taxation records and miscellaneous deductions to ensure the correct amounts are deducted when moving to a different pay cycle.
- Agency personnel office staff and the Bureau of State Payrolls must manually process employee adjustments when transferring employees between agencies under differing pay cycles.

- Agency personnel office and Service Center staff must be trained on the differences between the pay cycles, which requires additional training and a more complex personnel has the potential for more errors.
- Systems must be programmed to handle multiple pay cycles, which increases contract and maintenance costs.

In a series of inquiries with the DMS and the Department of Financial Services (DFS), the Government Accountability Act Council explored the benefits and costs of implementation of a standardized pay cycle. Two conversion options were proposed, implementing either the biweekly or the monthly pay cycle as the state's single pay cycle. These inquiries provided the council general information, but lacked a complete representation of the costs and impacts of standardized pay cycle.

In summary, the systems costs (People First) that would have saved by establishing a standardized pay cycle have already been incurred by the state. Only when the state seeks a new contract for such information technology services would the potential savings be realized. These future savings could not be estimated. However, savings are projected based on more providers being interested in bidding on a less complex standardized system and fewer customizations required of an existing off-the-shelf product. Currently, 15 agencies are processing approximately 94,000 state employee timesheets biweekly. A conversion to a standard monthly pay cycle would result in annually processing 1.3 million fewer timesheets and payroll transactions; leading to an uncorroborated conclusion that fewer personnel would be required at some of the 15 state agencies utilizing the biweekly pay cycle. However DMS, an agency on a biweekly pay cycle, indicated that no FTE savings in its Human Resource Office would be realized because of the size of its office, and the remaining personnel function would still be performed. DFS did estimate that it would save approximately \$28,000 on processing fewer payroll transactions. And finally the impact on individual employees, DFS suggested April 1, 2011, as the implementation date with the least impact on state workers, and indicated an employee with a \$27,000 annual salary would receive approximately \$519 more in compensation in the conversion year due recouping payments in arrears from the biweekly pay cycle. In addition, DFS indicated that an employee converting from a monthly to biweekly cycle on March 4, 2011 would receive \$399 less in compensation, due to receiving pay in arrears.

Effects of the bill

The bill creates a standardized monthly payroll cycle.

DOAH Electronic Filing

Current situation

DOAH provides a uniform and impartial forum for the trial and resolution of disputes between private citizens and entities, and organizations and agencies of the state. DOAH's Office of Administrative Law Judges (ALJs) hears administrative disputes under s. 120.56 and s. 120.57, F.S. DOAH also maintains a statewide mediation and adjudication system for the resolution of disputed worker compensation claims through its' Office of the Judges of Compensation Claims (OJCCs) pursuant to s. 440.192, F.S. Both offices currently permit the electronic filing and traditional paper and fax filing of all pleadings and other legal documents. According to DOAH, the number of electronically filed documents has grown steadily since the implementation of electronic filing. All documents received by DOAH are stored in an electronic database; any paper documents received by DOAH are manually scanned by employees and uploaded to the database.

Currently, the provisions of chapters 120 "Administrative Procedures Act" and 440 "Worker Compensations", Florida Statutes, regarding the resolutions of disputes do not specifically address the electronic filing of pleadings and other legal documents. Rather, electronic filing is addressed by DOAH's policies and procedures. Adjudication of Disputes Program's internal policies dictates that only parties who have specifically signed up for the electronic filing program will be served documents electronically. As a result, a relatively low number of documents are e-served by the ALJs. Conversely, most of the Worker's

Compensation Appeals Program documents are e-served because this program electronically serves to any party who has provided an e-mail address to the judge's staff.

Rulemaking Authority

Currently, s. 440.29, F.S., requires the practices and procedures before the judges of compensation claims be governed by rules adopted by the Supreme Court. In 2002, the Legislature deemed the Director of DOAH an "agency head" for the purposes of adopting administrative rules to effect the purposes of s.440.45, F.S., (OJCC), and in 2004, the Supreme Court ruled it does have jurisdiction to adopt rules of practice and procedure for an executive branch agency.

Neurological Injury Compensation

The Florida Birth-Related Neurological Injury Compensation Association (NICA) was created by the Florida Legislature in 1988. NICA is a statutory organization that manages the Florida Birth Related Neurological Injury Compensation Plan ("Plan") used to pay for the care of infants born with certain neurological injuries. This Plan is available to eligible families statewide without litigation. By eliminating costly legal proceedings, and through professional management of its disbursements, NICA ensures that birth-injured infants receive the care they need while reducing the financial burden on medical providers and families. Claims under the "Plan" are filed and determined by DOAH.

Wrongful Incarceration

When a party files a claim to be compensated for wrongful incarceration, the prosecuting authority has the option of contesting the petition and requesting a hearing before an administrative law judge who then reports findings of fact and recommendations to the court. The court makes the determination as to the person's status as a wrongfully incarcerated person and eligibility for compensation under the program.

Effects of the bill

The bill creates s.120.585, F.S., requiring the electronic filing of all documents filed with DOAH by any party represented by an attorney. Documents filed by a party not represented by an attorney *shall, whenever possible*, be submitted electronically. All electronic filing is to be conducted through the DOAH website. The bill amends ss. 120.54(5)(b), 120.56(1)(c), 120.56(1)(d), 120.569(2)(a), and 120.57(3)(d), F.S., clarifying the electronic filing requiring authorized under s. 120.585, F.S.

The bill amends s. 440.192(1) and (8), F.S., requiring the electronic filing of a petition for benefits (worker's compensation) when the employee is represented by an attorney. Employees who are not represented by an attorney maintain the current choice of filing by certified mail or by electronic means. All electronic filing is to be conducted by a means approved by the Deputy Chief Judge. The bill amends ss. 440.25(1)(a), 440.25(1)(c), 440.25(1)(d), and 440.25(4), F.S., clarifying the electronic filing requiring authorized under s. 440.192, F.S.

The bill amends s. 553.73(4)(b)8., F.S., requiring the Florida Building Commission to electronically file appeals that challenge the FBC's approval of local government's technical amendments to the Florida Building Code.

Rulemaking Authority

The bill amends s. 440.29(3), F.S., and clarifies OJCC's rulemaking authority to reflect current practice.

Neurological Injury Compensation

The bill amends ss. 766.305(2), 766.309(2) and 766.31(3), F.S., requiring the electronic filing of documents with DOAH regarding NICA.

Wrongful Incarceration

The bill amends s. 961.03, F.S., requiring the electronic filing of documents with DOAH regarding petitions challenging a wrongful incarceration claim.

Minority Business Certification Task Force

Current situation

The Minority Business Certification Task Force (Task Force) was created in s. 287.0943, F.S., to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises.^{1,2} The primary purpose of the Task Force is to propose a final list of the criteria and procedures for consideration by the Secretary of DMS. The Task Force is also authorized to seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

The 19-member Task Force appointed by the Secretary of DMS is intended to be regionally balanced, and comprised of officials representing governmental entities who administer programs to assist minority businesses to procure or develop government-sponsored programs. Six organizations (Florida League of Cities, Florida Association of Counties, Florida School Boards Association, Association of Special Districts, Florida Association of Minority Business Enterprise Officials, and the Florida Association of Government Purchasing Officials) are authorized to appoint up to two members to the Task Force. The Office of Supplier Diversity within DMS appoints seven members, consisting of three representatives of minority business enterprises, two office representatives, and two at-large members. The chairperson of the Legislative Committee on Intergovernmental Relations, or its designee, is to serve as an ex-officio member.

The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code 13 years ago.³ According to the Office of Supplier Diversity, the Task Force has not met in recent years primarily because the use of reciprocal agreements (agreements to accept a business' certified minority enterprise status issued by other entities) ended in 2003.⁴

Effects of the bill

The bill abolishes the Minority Business Certification Task Force and transfers any remaining authority to the DMS.

Florida Advisory on Small and Minority Business Development

Current situation

The council is comprised of 19 members appointed by the Secretary of the Department of Labor and Employment Security. Its membership is to include representatives of local and federal small and minority business assistance programs, certified minority business enterprises, the banking and insurance industry, local government, and private construction and commodities industries.

The council's primary duties include researching and reviewing the role of small and minority businesses in the state economy, reviewing issues and emerging topics related to small and minority economic development,

¹ See Chapter 94-322, L.O.F.

² Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, limited to no more than 3 years, appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem, and terminates upon the completion of its assignment."

³ Office of Program Policy Analysis & Government Accountability Sunset Review Report, p. 4, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11, published December 2008.

⁴ Information provided by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, Department of Management Services on January 26, 2010.

and advising the Governor, the secretary, and the Legislature on matters related to small and minority business development of importance to the state. The council is also required to produce an annual report detailing its business transactions and making recommendations to improve business opportunities for small and minority businesses.

According to OPPAGA, "The council does not appear to be fulfilling its statutory mission. Specifically, Department of Management Services staff report that they have been unable to find any record of council annual reports being submitted to the secretary; staff are currently in the process of drafting an annual report for the council. In addition, council records demonstrate that it has spent significant time reviewing and editing the department's Office of Supplier Diversity's 2006-2007 Annual Report, a duty not statutorily assigned to the council. In addition, the council did not advise the secretary or the Legislature on small and minority business developments as required by statute. Moreover, council recommendations provided to the Governor's office in September 2008 were proposed to increase minority and women business participation in state contracting but did not also focus on small business development, a core mission for the council. The recommendations sent to the Governor were not discussed and approved by the council as a whole. The value of the council appears to be in input given to the Office of Supplier Diversity (OSD). According to OSD officials, the council provides valuable input on office events such as the MatchMaker conferences and activities such as the Loan Mobilization and Mentor Protégé programs."

Effects of the bill

The bill amends s.287.0947, F.S., providing the Secretary of DMS appointment authority for council members and authorizes the council to provide guidance and assistance to the Office of Supplier Diversity relating to the efforts of that office related to reciprocal agreements.

Council of Efficient Government

Current situation

The Florida Efficient Government Act (the "Act") was created in 2006 to ensure that state agencies, including cabinet agencies, focus on core missions and contract with private-sector vendors, "whenever vendors can more effectively and efficiently provide services and reduce the cost of government." In order to ensure this efficiency, the Act requires agencies to create detailed business cases for all outsourcing projects. These projects are broken down into three levels: those under \$1 million in all years of the contract, those between \$1 million and \$10 million in any fiscal year, and those over \$10 million in any fiscal year. Each level has its own set of requirements.

The Act created the Council on Efficient Government (the "Council"), that is administratively supported by the Office of Efficient Government within DMS. The Council consists of seven members appointed by the Governor, with the Secretary of the Department of Management Services serving as Chair. The council shall:

- Employ a standard process for reviewing business cases.
- Review and evaluate business cases to outsource.
- For outsourcing solicitations of \$10 million or more, provide an advisory report to the Governor, President of the Senate, and Speaker of the House that includes an evaluation of the business case, along with any relevant recommendations and information to assist the agency in determining whether the proposal should be included in their legislative budget request.
- Develop and recommend standards, best-practice procedures and templates for state agency development and Council review of business cases.
- Incorporate lessons learned from outsourcing initiatives into Council standards, procedures and guidelines, and disseminate information about outsourcing best practices to agency partners.
- Develop, in consultation with the Agency of Workforce Innovation, guidelines for assisting state employees whose jobs are eliminated as a result of outsourcing.
- Report annually on 1) innovative methods of delivering government services which would improve the efficiency, effectiveness or competition in the delivery of government services, including, but not limited to, enterprise-wide proposals; 2) outsourcing efforts of each state agency including performance results.

The required business cases produced by an agency for each outsourcing project the agency wishes to undertake are to include:

- A description of the service to be provided;
- An analysis of the agency's current "in-house" performance of the service;
- The goals and rationale of the project;
- A citation of the legal authority underpinning the project;
- A description of available options for achieving the stated goals;
- An analysis of the advantages and disadvantages of each option;
- A description of the current marketplace for the services;
- A detailed cost-benefit analysis;
- A change management plan regarding the current and future processes involved, among all potentially affected agencies;
- A description of appropriate performance standards;
- Projected timeframes for key events;
- Public records compliance plans;
- Contingency plans for non-performance;
- A transition plan for affected state employees; and
- A description of legislative and budgetary actions necessary to accomplish the project.

Business cases to outsource having a projected cost exceeding \$10 million in any fiscal year require:

- An initial business case analysis conducted by the agency and submitted to the council, the Governor, and the Legislature at least 60 days prior to release of the solicitation.
- Evaluation of the agency business case by the council submitted to the agency, the Governor, and Legislature at least 30 days before solicitation is issued.
- A final business case analysis conducted by the agency after negotiation and before contract execution, submitted at least 30 days prior to execution of the contract to the council, the Governor, and the Legislature.

Business cases to outsource having a projected cost between \$1 million and \$10 million in any fiscal year require:

- An initial business case analysis conducted by the agency and submitted to the council, the Governor, and the Legislature at least 30 days prior to release of the solicitation.
- A final business case analysis conducted by the agency after negotiation and before contract execution, submitted at least 30 days prior to execution of the contract to the council, the Governor, and the Legislature.

Business cases to outsource having a projected cost under \$1 million in any fiscal year require a final business case analysis conducted by the agency after negotiation and before contract execution submitted to the council at least 30 days prior to execution of the contract. The council will include such business cases in its annual report to the Legislature and the Governor.

The Act also addresses contracts issued by agencies. In addition to current contract requirements,⁵ outsourcing contracts must contain:

- A detailed scope of work;
- A service level agreement describing all requirements and responsibilities of the contractor;
- A cost-schedule, payment terms, and other financial items;

⁵ See generally s. 287.058, F.S.

- A specific transition implementation schedule;
- Clear and specific identification of all required performance standards;
- Specific accounting requirements;
- Clear and specific access provisions regarding accounting records;
- A requirement that the contractor interview and consider for employment all affected state employees;
- A contingency plan in the event of nonperformance by the contractor;
- A requirement that the contractor abide by the state's public records law;
- A requirement that the parties address ownership of any intellectual property created under the contract;
- A provision allowing the agency to purchase depreciated assets from the contractor at the end of the contract term, if appropriate.

Effects of the bill

The bill amends ss. 287.05721 and 287.0574, F.S., and repeals s.287.0573, eliminating the Council on Efficient Government and its role in reviewing and evaluating business cases to outsource under the "Florida Efficient Government Act". The general thresholds, business case analysis requirements, reporting requirements and contract requirements remain intact.

Florida State Employee Wellness Council

Current situation

Subsection 110.123(13), F.S., creates the Florida State Employee Wellness Council. The council is composed of nine members appointed by the Governor for staggered 4-year terms. Its members must be state residents and must be active in the health and medical field. The council is an advisory body to the DMS to provide health education information to employees and to assist the DMS in developing minimum benefits for all health care providers when providing age-based and gender-based wellness benefits.

The council has two specific duties:

- Encourage state employee participation in wellness programs and prepare informational actions on this topic; and
- Develop standards for age-based and gender-based programs.

The council is directed to meet at least quarterly, and the DMS is directed to provide administrative support for the activities of the council.

Effects of the bill

The bill repeals 110.123(13), F.S., and abolishes the Florida State Employee Wellness Council.

Florida Commission on Human Relations

Current situation

The Florida Commission on Human Relations (FCHR) investigates allegations regarding discrimination based on sex, age, race, national origin, religion, disability, color, familial status, or marital status in the areas of employment, housing, public accommodations and certain private club memberships. The commission also investigates complaints of state employee whistle-blower retaliation. In addition, the commission provides training and technical assistance to businesses, individuals, and community groups regarding the laws and best practices in the areas of housing and employment discrimination, provides training on hate crimes and human trafficking, and facilitates community forums to promote open dialogue and foster tolerant communities. The commission provides these services by carrying out responsibilities under the following acts.

- Florida Civil Rights Act cases include violation of any Florida statute that makes it unlawful to discriminate 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.
- Fair Housing Act cases concern discrimination in the sale of rental or housing, brokerage services, financing of housing or residential real estate transactions, and land use decisions and permitting for development.
- Whistle-Blower Act cases pertain to retaliation against any employee who reports violations of the law on the part of a state agency or discloses information alleging improper use of a governmental office, gross waste of funds or other abuse or neglect of duty on the part of an agency, public officer, or employee.

The commission is comprised 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.

The FCHR 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 determines it has jurisdiction over an allegation and filing requirements are met, the complaint is docketed and accepted for investigation. Initially, an investigator will determine whether that both parties desire mediation. If so, the case is forwarded to the commission's mediation unit. Mediation provides for an exchange of concerns from both the complainant and the respondent to work toward a possible resolution acceptable to both parties, prior to the commission's full investigation. If the mediation process does not reach a resolution, the FCHR will continue its investigation by interviewing complainants, respondents, and witnesses having knowledge of the alleged violation, requesting relevant documents and other evidence, and researching case law. 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 at no cost, but by statute, may not proceed to civil court. After hearing a case, DOAH issues a recommended order to the commission. A panel of 3 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. The FCHR has 180-days to complete investigation and make a final determination of cause or no cause. If the FCHR fails to make a determination within the 180-day time frame, the compliant may proceed to circuit court or DOAH, as if reasonable cause had been determined.

Effects of the bill

The bill extends the FCHR timeframe for completing investigation and making cause or no cause determinations by 60 days (from 180 to 240-days) for three years (until July 1, 2013). The bill authorizes the assessment of a \$200 filing fee by the FCHR to those complainants determined to have no cause by the FCHR who request an administrative hearing. The FCHR is provided discretion to waive the filing in cases of indigent or allow the recovery of the filing fee if the complainant prevails.

B. SECTION DIRECTORY:

Section 1. Amends paragraph (a) of subsection (1) of s. 11.13, F.S., establishing a single pay period for state officers, employees, and other personal services staff.

- Section 2. Amends s. 17.28, F.S., establishing a single pay period for state officers, employees, and other personal services staff, requiring participation in direct deposit by such individuals, and authorizing the request for an exemption from direct deposit requirements.
- Section 3. Reenacts s. 20.22, F.S., relating to the creation of the DMS and the DOAH.
- Section 4. Amends s. 26.51, F.S., establishing a single pay period for state officers, employees, and other personal services staff, specifically circuit court judges.
- Section 5. Amends subsections (1) and (3) of s. 27.5301, F.S., establishing a single pay period for state officers, employees, and other personal services staff, specifically public defenders and staff.
- Section 6. Amends subsection (1) of s. 27.705, F.S., establishing a single pay period for state officers, employees, and other personal services staff, specifically capital collateral regional counsel and staff.
- Section 7. Amends paragraph (b) of subsection (4) of s. 57.111, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 8. Amends subsections (6) and (7) of s. 110.107, F.S., establishing a single pay period for state officers, employees, and other personal services staff, specifically capital collateral regional counsel and staff.
- Section 9. Repeals s. 110.113, F.S., eliminating the biweekly pay cycle option.
- Section 10. Repeals subsection (13) of s. 110.123, F.S., abolishing the Florida State Employee Wellness Council and its related duties.
- Section 11. Amends section 111.045, F.S., conforming statutes with the single pay period for state officers, employees, and other personal services staff.
- Section 12. Amends paragraph (b) of subsection (5) of s. 120.54, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 13. Amends paragraphs (c) and (d) of subsection (1) of s. 120.56, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 14. Amends paragraph (a) of subsection (2) of s. 120.569, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 15. Amends paragraph (d) of subsection (3) of s. 120.57, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 16. Creates s. 120.585, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 17. Amends s. 287.05721, F.S., eliminating the definition of the Council on Efficient Government.
- Section 18. Repeals s. 287.0573, F.S., abolishing the Council on Efficient Government and its related duties.
- Section 19. Amends s. 287.0574, F.S., removing the role of the Council on Efficient Government in the review and evaluation of outsourcing business cases.
- Section 20. Amends subsection (2) and paragraph (e) of subsection (3) of s. 287.0943, F.S., abolishing the Minority Business Certification Task Force and certain duties, and conferring certain duties to the DMS.
- Section 21. Amends subsection (1) of s. 287.0947, F.S., revising the membership of the Florida Advisory Council on Small and Minority Business Development and its reporting relationship with the DMS and OSD.
- Section 22. Amends subsections (1) and (8) of s. 440.192, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 23. Amends subsection (1) and paragraphs (a), (c), and (e) of subsection (4) of s. 440.25, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.
- Section 24. Amends subsection (3) of s. 440.29, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.

Section 25. Amends subsection (4) of s. 440.45, F.S., clarifying DOAH' rulemaking authority and establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.

Section 26. Amends paragraph (b) of subsection (4) of s. 553.73, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.

Section 27. Reenacts subsection (1) of s. 760.03, F.S., reenacting the FCHR.

Section 28. Amends subsection (3), (7), and (8) of s. 760.11, F.S., expanding FCHR investigation timeframe for a specified time period and establishing a filing fee for certain administrative hearing request.

Section 29. Amending subsection (2) of s. 766.305, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.

Section 30. Amending subsection (2) of s. 766.309, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.

Section 31. Amending subsection (3) of s. 766.31, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.

Section 32. Paragraph (b) of subsection (4) of s. 961.03, F.S., establishing electronic filing and transmission procedures with the DOAH for certain actions, proceedings, and petitions.

Section 33. This act shall take effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None, see fiscal comment below

2. Expenditures:

The bill has significant fiscal impact on state government. The bill establishes a standard monthly pay cycle for state employees. Based on information provided by DFS, 94,000 employees converted from a biweekly to a monthly pay cycle would receive an additional compensation amount at the time of conversion for recouping pay in arrears. In the DFS example, using April 1, 2011 conversion date and an employee with an annual salary rate of \$27,000, the fiscal impact would be \$519 per employee at the \$27,000 salary rate. This one-time cost shift would be fully realized at the effective date of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Aggrieved individuals whose complaint with the FCHR is determined to have no reasonable cause will be charged a \$200 filing fee by FCHR to have their case referred to an administrative hearing.

D. FISCAL COMMENTS:

In fiscal year 2008-2009, 202 cases were found to have no reasonable cause by the FCHR requested an administrative hearing.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable, the bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is granted by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides for the implementation of a single pay cycle and provides an effective date of July 1, 2010. The bill does not provide the DFS any discretion as to the implementation date for the single pay cycle.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Government Accountability Act Council adopted two amendments to the bill.

Amendment 1 removes the provisions of the bill that establish a standardized monthly pay cycle for state officers, employees, and other personal services.

Amendment 2 removes the FCHR as the administrator of the filing fee and authorizes the DOAH to assess a \$200 filing to those complainants determined to have no cause by the FCHR who request an administrative hearing. The amendment also provides for a waiver the filing fee for individual who can demonstrate indigency pursuant to s.57.081, F.S. and allows, at DOAH's discretion, the recovery of the filing fee if the complainant prevails.