

Tab 1	SB 158 by Latvala (CO-INTRODUCERS) Artiles ; (Identical to H 0143) Firefighters
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Tab 2	SB 174 by Artiles ; Enterprise Information Technology Services Management Act
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Baxley, Chair
Senator Artiles, Vice Chair

MEETING DATE: Tuesday, January 24, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Baxley, Chair; Senator Artiles, Vice Chair; Senators Galvano, Grimsley, Rader, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 158 Latvala (Identical H 143)	Firefighters; Establishing a presumption as to a firefighter's condition or impairment of health caused by certain types of cancer he or she contracts in the line of duty, etc. GO 01/24/2017 Favorable CA AGG AP	Favorable Yeas 7 Nays 0
2	SB 174 Artiles	Enterprise Information Technology Services Management Act; Revising certain powers, duties, and functions of the Agency for State Technology in collaboration with the Department of Management Services; authorizing certain service-level agreements entered into by the state data center to be extended for a specified duration, etc. GO 01/24/2017 Favorable AGG AP	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 158
 INTRODUCER: Senators Latvala and Artiles
 SUBJECT: Firefighters
 DATE: January 23, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ferrin	Ferrin	GO	Favorable
2.			CA	
3.			AGG	
4.			AP	

I. Summary:

SB 158 provides that any condition or impairment of the health of a firefighter employed full-time by a state or local government which is caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or testicular cancer and results in total or partial disability or death is presumed to have been accidental and to have been suffered "in the line of duty" unless the contrary is shown by competent evidence. In the line of duty retirement compensates an employee whose disability or death arises out of and in the actual performance of employment. In the line of duty retirement provides greater compensation to the firefighter or his or her dependents than would otherwise be available.

In order to be entitled to the presumption, a firefighter must have:

- Successfully passed a pre-employment physical examination that did not reveal any evidence of a health condition.
- Been employed as a firefighter with the current employer for at least 5 continuous years before becoming disabled or before the employee's death.
- Not used tobacco products for at least 5 years before becoming disabled or before the employee's death; and
- Not been employed during the preceding 5 years in any other position that is proven to create a higher risk for the named diseases.

A firefighter employed on July 1, 2017, is not required to meet the physical examination requirement in order to be entitled to the presumption.

The proposed changes result in an additional cost to the Florida Retirement System (FRS). A special actuarial study conducted in February 2016 projected the increased cost to the FRS to be

offset by a 0.01 percent increase in the employer contribution rate for the Special Risk class¹, resulting in an approximate \$432,000 annual increase. To account for recent changes made to death benefits for Special Risk class members killed in the line of duty², plan experience, and updated actuarial assumptions, a new special actuarial study has been requested.³

The additional costs to other public sector retirement plans has not been determined.

The fiscal impact of this legislation as it relates to workers' compensation benefits has not been determined.

II. Present Situation:

The Florida Retirement System (FRS)

The FRS is the fourth largest state retirement system in the United States.⁴ It is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S., and administered by the Department of Management Services (DMS).⁵ The FRS was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the Pension Plan. In 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.⁶

As of June 30, 2016, the FRS had 630,350 active members, 394,907 annuitants, 16,248 disabled retirees, and 29,602 active participants of the Deferred Retirement Option Program (DROP).⁷ As of June 30, 2016, the FRS consisted of 1,029 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 193 cities and 270 special districts that have elected to join the system.⁸ Members of the FRS are required to make employee contributions of 3 percent of their salary.⁹

The membership of the FRS is divided into five membership classes:

¹ Letter to Ms. Elizabeth Stevens, *Re: Blended Proposed Statutory Rates for the 2017-2018 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 2, 2016 (on file with the Senate Committee on Governmental Accountability and Oversight).

² See Ch. 2016-213, Laws of Florida.

³ Letter to Chad Poppell *Re: Special Actuarial Study*, dated January 12, 2017 (on file with the Committee on Governmental Oversight and Accountability).

⁴ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at p. 6. Available online at: https://www.rol.frs.state.fl.us/forms/2015-16_CAFR.pdf.

⁵ Section 121.021(5), F.S.

⁶ The Florida Retirement System Annual Financial Report, July 1, 2015 – June 30, 2016, at 29.

⁷ *Id.*, at 120.

⁸ *Id.*, at 154.

⁹ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011.

- The Regular Class¹⁰ consists of 545,680 active members, plus 3,709 in renewed membership;
- The Special Risk Class¹¹ includes 70,695 active members;
- The Special Risk Administrative Support Class¹² has 76 active members;
- The Elected Officers' Class¹³ has 2,026 active members, plus 115 in renewed membership; and
- The Senior Management Service Class¹⁴ has 7,876 members, plus 143 in renewed membership.¹⁵

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

The Special Risk Class of the FRS

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

In originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

are required to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.¹⁶

¹⁰ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

¹¹ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

¹² The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

¹³ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

¹⁴ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁵ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2016, at 123.

¹⁶ Section 121.0515(1), F.S.

A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members.

Disability Retirement Benefits for Special Risk Members of the FRS

There are two types of disability retirement available under the Florida Retirement System: in the line of duty disability retirement and regular disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work. An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.¹⁷ To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.¹⁸

Under the FRS pension plan, the minimum benefit under regular disability retirement is 25 percent of the employee's average final compensation.¹⁹ In contrast, in the line of duty disability benefits are available to members on their first day of employment. There is no vesting period. Special Risk Class members receive a minimum in the line of duty disability benefit of 65 percent of their average final compensation.²⁰

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).²¹ Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.²²

Death Benefits for Special Risk Members of the FRS

Section 121.091(7), F.S., provides death benefits for active members of the FRS pension plan who die before retirement. If an employee dies before vesting, the employee's spouse receives only the accumulated FRS contributions that were made on the employee's behalf. For vested employees, the employee will be assumed to have retired on the date of death, and the spouse may elect one of the annuity options that provide payment to survivors. Because those annuity options are based on the number of years of service and are discounted based on the age of the annuity recipient, the beneficiary of younger employees with few years of service receive a relatively small monthly amount.

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan. Death benefits may be paid for an active member of the FRS pension plan who dies before retirement.²³ Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered

¹⁷ Florida Retirement System Employer Handbook, Disability Retirement, Ch. 10-3, available at https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf (last visited Jan. 19, 2017).

¹⁸ Sections 121.091(4)(a) and 121.591(2)(b), F.S.

¹⁹ Section 121.091(4)(f), F.S.

²⁰ *Id.*

²¹ Section 121.591(2), F.S.

²² Section 121.591(2)(g), F.S.

²³ Section 121.091(7), F.S.

in the line of duty.²⁴ If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in the line of duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for his or her lifetime equal to one-half the member's monthly salary at death.²⁵ If an active FRS member in the Special Risk class is killed in the line of duty on or after July 1, 2013, the surviving spouse receives an additional monthly benefit equal to one-half of the member's monthly salary; making the monthly benefit equal to the member's entire monthly salary at death²⁶.

If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.²⁷ If the child is unmarried and enrolled as a full time student, the benefit continues until he or she turns 25.²⁸ If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.²⁹

For instances relating to in the line of duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of the member's death.³⁰ If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or service eligible for purchase, to purchase enough service credit to vest the member posthumously.³¹

Under most employee classes in the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member's account are payable to the designated beneficiary.³²

When killed in the line of duty, the surviving spouse or children of an investment plan member in the Special Risk Class may opt into the FRS investment plan survivor benefits program in lieu of receiving normal retirement benefits under the FRS investment plan.³³ By participating in the survivor benefits program, the surviving spouse and children are eligible to receive annuitized benefits much like the survivor benefits afforded to Special Risk Class members of the FRS pension plan. The investment plan survivor benefits program is funded by additional employer-paid contributions to the survivor benefits account of the FRS Trust Fund.³⁴

²⁴ Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

²⁵ Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

²⁶ Section 121.091(7)(i), F.S.

²⁷ Section 121.091(7)(d) and (i), F.S.

²⁸ *Id.*

²⁹ Section 121.091(7)(b) and (d), F.S.

³⁰ Section 121.091(7)(e), F.S.

³¹ Section 121.091(7)(f), F.S.

³² Section 121.591(3), F.S.

³³ Section 121.591(4), F.S.

³⁴ *Id.*

Retirement Plans for Municipalities and Special Districts

Chapters 175 and 185, F.S., provide funding mechanisms for municipal firefighters' and police officers' pension plans. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers participate in these plans. Two types of plans are governed by each of these chapters—charter plans and local law plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer.³⁵ Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S., respectively.

Workers' Compensation under Chapter 440, F.S.

The employer must pay compensation or furnish benefits if the employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.³⁶ The injury, its occupational cause, and any resulting disability must be established to a reasonable degree of medical certainty, and the accidental compensable injury must be the major contributing cause of any resulting injuries.³⁷

Compensation for permanent total disability is equal to two-thirds of the employee's average weekly wages payable to the employee during the continuance of the total disability.³⁸

Compensation for temporary total disability is equal to two-thirds of the employee's average weekly wages payable to the employee during the continuance of the total disability but not to exceed 104 weeks. At the earlier of the 104th week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.³⁹

Where the disability or death of an employee results from an "occupational disease," it will be treated as an injury by accident.⁴⁰ The employee or his survivors will be entitled to compensation. "Occupational disease" is defined to be "only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee."⁴¹

³⁵ Sections 175.191 and 185.18, F.S.

³⁶ Section 440.09(1), F.S.

³⁷ *Id.*

³⁸ Section 440.15(1)(a), F.S.

³⁹ Section 440.15(2)(a), F.S.

⁴⁰ Section 440.151(1)(a), F.S.

⁴¹ Section 440.151(2), F.S.

Presumptions and Burdens of Proof Relating to “in the line of duty” Disability and Death

Existing In the Line of Duty Presumptions for Firefighters

Section 112.18, F.S., provides a presumption applicable to any state, municipal, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer that any such employee qualifies for in the line of duty disability or death benefits if such disability or death is the result of tuberculosis, heart disease, or hypertension.

Section 175.231, F.S., provides a similar presumption for the firefighters in any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under ch. 175, F.S., whose death or disability is the result of tuberculosis, heart disease, or hypertension.

Section 112.181, F.S., provides a presumption applicable to any emergency rescue or public safety worker, including a firefighter, that such employee qualifies for in the line of duty disability or death if such disability or death is due to hepatitis, meningococcal meningitis, or tuberculosis.

Successful passage of a pre-employment physical examination is required for these presumptions.

Burden of Proof for In the Line of Duty Benefits

Absent one of the existing presumptions, the FRS member employee has the burden of proof when claiming in the line of duty disability or death benefits. The employee must show by competent evidence that the death or disability occurred in the line of duty in order to receive the higher benefits.⁴² If the employee or the employee’s survivors cannot meet the burden of proof, the employee or the employee’s survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Under existing law, a firefighter that is disabled or dies as a result of cancer must show that the cancer was contracted due to some factor directly related to the employment as a firefighter. Due to latency periods,⁴³ it may be difficult for an employee to meet this burden.

Studies on the Incidence of Cancer in Firefighters

The 2015-2016 General Appropriations Act contained a \$965,000 appropriation funding a cancer study by the University of Miami-Sylvester Comprehensive Cancer Center through the Division of the State Fire Marshal. The study’s goals are to provide firefighters access to cancer screenings, enable prevention and earlier detection of the disease, identify exposures that account

⁴² Sections 121.091(4)(c) and (7)(d), F.S.

⁴³ “The time between first exposure to a cancer-causing agent and clinical recognition of the disease is called the latency period. Latency periods vary by cancer type, but usually are 15 to 20 years, or longer. Because of this, past exposures are more relevant than current exposures as potential causes of cancers occurring in workers today. Often, these exposures are hard to document.” The National Institute for Occupational Safety and Health (NIOSH), *available at* <http://www.cdc.gov/niosh/topics/cancer/clusters.html> (last visited January 20, 2017).

for increased cancer risk, and develop new technology and methods to test and measure exposure in the field. A progress report⁴⁴ was submitted to the President of the Senate, Speaker of the House of Representatives, the Chief Financial Officer, and the Governor on June 15, 2016. Additionally, the 2016-2017 General Appropriations Act contained a \$1.5 million appropriation to continue the study. Another report will be submitted to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Governor by June 15, 2017.

A National Institute for Occupation Safety and Health (NIOSH) study of cancer among U.S. firefighters has shown higher rates of certain types of cancer among firefighters than the general U.S. population.⁴⁵ These types of cancer were mostly digestive, oral, respiratory, and urinary cancers, although there were about twice as many firefighters with malignant mesothelioma, which is a rare type of cancer caused by exposure to asbestos.⁴⁶

Special Actuarial Study of Firefighter in line of duty Cancer Presumption

On February 11, 2016, a special study⁴⁷ was completed to determine the contribution rates necessary to fund the FRS benefits that may be paid based on the presumptions proposed under Senate Bill 456 as filed during the 2016 Regular Session.⁴⁸ The results of this study determined that the contribution rates for the Special Risk Class (for both the pension plan and the investment plan) needed to be increased by 1 basis points (0.01 percent) to fund associated costs.

Chapter 2016-213, Laws of Florida, made changes to death benefits for FRS members in the Special Risk class. Survivor benefits available to the spouses and children of Special Risk members in the pension plan killed in the line of duty were increased from 50 percent of the member's monthly salary at the time of death to 100 percent of the member's monthly salary at the time of death. Surviving spouses and children of Special Risk members in the investment plan killed in the line of duty were permitted to opt into the FRS investment plan survivor benefits program, which provides annuitized benefits, in lieu of receiving normal retirement benefits under the FRS investment plan.

On January 13, 2107, a new or updated special actuarial study was requested to determine if the changes to death benefits for Special Risk members of the FRS made in 2016 will change the contribution rates necessary to fund benefits that may be paid under the provisions in this bill.

III. Effect of Proposed Changes:

Section 1 creates s. 112.1816, F.S., to provide a presumption that any condition or impairment of the health of a firefighter employed full time by the state, a municipality, county, port authority, special taxing district, or fire control district which is caused by multiple myeloma, non-

⁴⁴ Sylvester Comprehensive Cancer Center, *Fiscal Year 2015-2016 Progress Report of Firefighters Cancer Initiative (FCI)*, dated June 15, 2016 (on file with the Committee on Governmental Oversight and Accountability).

⁴⁵ National Institute for Occupation Safety and Health (NIOSH) study summary *available at* <https://www.cdc.gov/niosh/firefighters/ffcancerstudy.html> (last visited January 20, 2017).

⁴⁶ *Id.*

⁴⁷ Milliman, *Re: Special Actuarial Study of Firefighter ILOD Cancer Presumption*, dated February 11, 2016 (on file with the Committee on Governmental Oversight and Accountability).

⁴⁸ The cancers included in the study are multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, and testicular cancer.

Hodgkin's lymphoma, prostate cancer, or testicular cancer and results in total or partial disability or death was accidental and was suffered in the line of duty. The presumption can be overcome by competent evidence to the contrary. This presumption shifts the burden of proof from the employee or their survivors to the employer.

The bill provides that in order to be entitled to the presumption, a new employee must have:

- Successfully passed a pre-employment physical examination that did not reveal any evidence of such a health condition.
- Been employed as a firefighter with the current employer for at least 5 continuous years before becoming disabled or before the employee's death.
- Not used tobacco products for at least 5 years before becoming disabled or before the employee's death; and
- Not been employed during the preceding 5 years in any other position that is proven to create a higher risk for the named diseases.

If the employing agency fails to provide a physical examination prior to employment or immediately thereafter, the firefighter is entitled to the presumption if the firefighter otherwise meets the criteria noted above. This physical examination requirement does not apply to firefighters employed on July 1, 2017. In addition, the presumption does not apply to benefits payable under or granted in a life insurance or disability insurance policy unless the insurer and insured have negotiated for the additional benefits to be included in the policy contract.

Section 2 states that the Legislature will review the current status of research programs, funded by state monies, which study the incidence of cancer in firefighters prior to the 2018 Regular Session of the Legislature.

Section 3 increases the employer-paid contribution rate for the Special Risk Class of the FRS by 0.01 percentage point⁴⁹. This is intended to offset the additional costs to the FRS resulting from the legislation's establishment of the presumption that firefighters with certain cancers qualify for in the line of duty disability and death benefits.

Section 4 provides a legislative determination that the act fulfills an important state interest.

Section 5 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution provides in pertinent part that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

⁴⁹ 0.01 percentage point increase is based on Milliman, *Re: Special Actuarial Study of Firefighter ILOD Cancer Presumption*, dated February 11, 2016 (on file with the Committee on Governmental Oversight and Accountability).

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated.”

The bill contains a finding that the bill fulfills an important state interest (section 4). The bill appears to apply to all persons similarly situated (those employers employing firefighters), including state agencies, school boards, community colleges, counties, municipalities and special districts. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities participating in the FRS.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Section 3 of the bill increases the employer-paid contributions to the FRS necessary to offset the costs to the FRS resulting from this legislation. Actuarial impact statements for local government pension plans are also required.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Based on the study conducted in February 2016⁵⁰ and projected contribution rates for fiscal year 2017-2018⁵¹, the costs associated with the FRS will increase by at least \$432,000 annually. This includes \$93,000 paid by state agencies and about \$309,000 paid by counties.

The presumption could have a significant impact on worker's compensation because the threshold eligibility test for workers' compensation is whether the disability arose "out of and in the course of employment." If the disability did not arise "out of and in the course of employment," the employee is not eligible to receive workers' compensation benefits. There is no provision under ch. 440, F.S., for a non-duty related disability as may be found in many retirement plans.

Additional workers' compensation claims costs for firefighters contracting the cancers listed in this bill are difficult to predict. The frequency, severity, and cost estimates vary widely due to factors such as age, gender, type of treatment, and recovery period⁵². The Department of Financial Services estimates average costs for 58 months of treatment (not until final resolution) at⁵³:

- \$28,988.27 for testicular cancer;
- \$115,378.06 for non-Hodgkin's lymphoma;
- \$53,357.66 for prostate cancer; and
- Between \$126,000-\$256,000 for multiple myeloma.

If successful workers' compensation claims increase due to the presumption afforded by the bill, assessments paid by carriers and employers of the Special Disability Trust Fund may increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 112.1816.

⁵⁰ Milliman, *supra* at p. 2 of Table 2.

⁵¹ Letter to Ms. Elizabeth Stevens, *Re: Blended Proposed Statutory Rates for the 2017-2018 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 2, 2016 (on file with the Senate Committee on Governmental Accountability and Oversight).

⁵² Department of Financial Services, *Senate Bill 158 Legislative Bill Analysis*, 4 (Jan. 5, 2017)

⁵³ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Latvala

16-00185-17

2017158__

1 A bill to be entitled
 2 An act relating to firefighters; creating s. 112.1816,
 3 F.S.; defining the term "firefighter"; establishing a
 4 presumption as to a firefighter's condition or
 5 impairment of health caused by certain types of cancer
 6 he or she contracts in the line of duty; specifying
 7 criteria a firefighter must meet to be entitled to the
 8 presumption; requiring an employing agency to provide
 9 a physical examination for a firefighter; specifying
 10 circumstances under which the presumption does not
 11 apply; providing for applicability; requiring the
 12 Legislature to review specified cancer research
 13 programs by a certain date; providing for an employer
 14 contribution rate increase to fund changes made by the
 15 act; providing a directive to the Division of Law
 16 Revision and Information; providing a declaration of
 17 important state interest; providing an effective date.

18 Be It Enacted by the Legislature of the State of Florida:

19 Section 1. Section 112.1816, Florida Statutes, is created
 20 to read:

21 112.1816 Firefighter disability or death from cancer
 22 presumed contracted in the line of duty.-

23 (1) DEFINITION.-As used in this section, the term
 24 "firefighter" has the same meaning as in s. 112.81.

25 (2) PRESUMPTION; ELIGIBILITY CONDITIONS.-

26 (a) Any condition or impairment of the health of a
 27 firefighter employed full time by the state or any municipality,
 28 county, port authority, special tax district, or fire control
 29 district which is caused by multiple myeloma, non-Hodgkin's
 30 lymphoma, prostate cancer, or testicular cancer and results in
 31
 32

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33 total or partial disability or death is presumed to have been
 34 accidental and to have been contracted in the line of duty
 35 unless the contrary is shown by competent evidence. In order to
 36 be entitled to this presumption, the firefighter:

37 1. Must have successfully passed a physical examination
 38 administered before the individual began service as a
 39 firefighter and which failed to reveal any evidence of such a
 40 health condition;

41 2. Must have been employed as a firefighter with his or her
 42 current employer for at least 5 continuous years before becoming
 43 totally or partially disabled or before his or her death;

44 3. Must not have used tobacco products for at least 5 years
 45 before becoming totally or partially disabled or before his or
 46 her death; and

47 4. Must not have been employed during the preceding 5 years
 48 in any other position that is proven to create a higher risk for
 49 multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or
 50 testicular cancer. This includes any other employment as a
 51 firefighter at another employing agency within the preceding 5
 52 years.

53 (b) An employing agency must provide a physical examination
 54 for a firefighter before he or she begins service or immediately
 55 thereafter. Notwithstanding subparagraph (a)1., if the employing
 56 agency fails to provide a physical examination before the
 57 firefighter begins service, or immediately thereafter, the
 58 firefighter is entitled to the presumption, provided that he or
 59 she meets the criteria specified in subparagraphs (a)2., (a)3.,
 60 and (a)4.

61 (c) The presumption does not apply to benefits payable

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62 under or granted in a life insurance or disability insurance
63 policy unless the insurer and insured have negotiated for the
64 additional benefits to be included in the policy contract.

65 (3) APPLICABILITY.—A firefighter employed on July 1, 2017,
66 is not required to meet the physical examination requirement in
67 subsection (2) in order to be entitled to the presumption set
68 forth in this section.

69 Section 2. The Legislature shall review the current status
70 of research programs, funded wholly or in part by the General
71 Appropriations Act, which study the incidence of cancer in
72 firefighters. This review must be conducted before the convening
73 of the 2018 Regular Session of the Legislature to determine
74 whether any further statutory changes to this act are necessary.

75 Section 3. (1) In order to fund the benefit changes
76 provided in this act, the required employer contribution rate
77 for members of the Florida Retirement System established in s.
78 121.71(4), Florida Statutes, for the Special Risk Class is
79 increased by 0.01 percentage point.

80 (2) The adjustment provided in subsection (1) is in
81 addition to any other changes to such contribution rates which
82 may be enacted into law to take effect on July 1, 2017. The
83 Division of Law Revision and Information is directed to adjust
84 accordingly the contribution rates provided in s. 121.71,
85 Florida Statutes.

86 Section 4. The Legislature determines and declares that
87 this act fulfills an important state interest.

88 Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/24/17
Meeting Date

158
Bill Number (if applicable)

Topic Firefighters

Amendment Barcode (if applicable)

Name Diana Arteaga

Job Title Director Govt Affairs

Address 444 SW 2nd Ave, 10th floor

Phone 786-469-1644

Miami FL 33130
City State Zip

Email dararteaga@miamigov.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing City of Miami

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD



1/24/2017

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

158

Bill Number (if applicable)

Topic Fire fighters

Amendment Barcode (if applicable)

Name Eric Prutsman

Job Title _____

Address P.O. Box 10444

Phone 850-260-2575

Street

Tallahassee, FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Fire Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/24/17
Meeting Date

158
Bill Number (if applicable)

Topic Free Digital Cancer

Amendment Barcode (if applicable)

Name Karen Pietrafesa

Job Title _____

Address Protected
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/24/17
Meeting Date

SB 158
Bill Number (if applicable)

Topic Firefighter Cancer

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President FPF

Address 343 West Madison St.
Street

Phone 850 224 7333

Tallahassee FL 32301
City State Zip

Email JimT@FPF.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Prof Firefighters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/24/17
Meeting Date

SB 158
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title _____

Address 301 S. Bronough
Street
Tall FL 32302
City State Zip

Phone 222 9684

Email Kconn@flcities.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE
APPEARANCE RECORD

01/24/2017

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

158

Meeting Date

Bill Number (if applicable)

Topic Firefighters Cancer

Amendment Barcode (if applicable)

Name Brian Powell

Job Title President

Address 304 NE 1st Street

Phone 954-783-1250

Street
Pompano Beach

State
FL

Zip
33060

Email president@3080fire.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Metro Broward Professional Fire Fighters

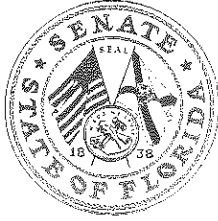
Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Commerce and Tourism
Environmental Preservation and Conservation
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR JACK LATVALA

16th District

January 12, 2017

The Honorable Dennis Baxley
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Baxley,

I respectfully request you place Senate Bill 158, relating to Firefighters, on your Governmental Oversight and Accountability agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
Senator, 16th District

cc: Jay Ferrin, Staff Director

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 174

INTRODUCER: Senator Artiles

SUBJECT: Enterprise Information Technology Services Management Act

DATE: January 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 174 revises definitions of specified terms contained in the Enterprise Information Technology Services Management Act and revises certain powers, duties, and functions of the Agency for State Technology to provide for collaboration with the Department of Management Services.

The bill authorizes the Agency for State Technology’s State Data Center to extend a service-level agreement with an existing customer for up to 6 months. The State Data Center must file a report with the Executive Office of the Governor within specified time frames of the signing of an extension or the scheduled expiration of the service-level agreement with the customer. The report must outline issues preventing execution of new agreement and a schedule for resolving such issues.

The bill authorizes the Agency for State Technology to plan, design, and conduct testing with information technology resources to implement services that are within the scope of the services provided by the state data center, if cost-effective.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Enterprise Information Technology Services Management Act

Chapter 282, F.S., is known as the Enterprise Information Technology Services Management Act.¹

¹ Section 282.003, F.S.

The State Technology Office (STO) was established in the Department of Management Services (DMS) in 1997.² During the 2000 and 2001 legislative sessions,³ the Legislature significantly amended statutes allowing for the consolidation and centralization of information technology (IT) assets and resources for executive branch agencies. While other sections of statute were amended to accomplish this policy direction, the primary chapter amended was Part I of Chapter 282, F.S., to either take existing powers and duties assigned to the DMS and transfer these powers and duties to the STO, or prescribe additional powers and duties to the STO to accomplish the policy direction of consolidating and centralizing IT. One of STO's new duties included developing and implementing service level agreements with each agency that the STO provided IT services.

In 2007, the Legislature created the Agency for Enterprise Information Technology (AEIT) to oversee policies for the design, planning, project management, and implementation of enterprise IT services, to include IT security.⁴ The State Data Center was created by the Legislature in 2008.⁵

In 2014, the Legislature abolished the AEIT and transferred its duties to the then newly created Agency for State Technology.⁶

Section 282.0041(2), F.S., defines the term "breach" as "a confirmed event that compromises the confidentiality, integrity, or availability of information or data."

Section 282.0041(10), F.S., defines the term "incident" as "a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology security policies, acceptable use policies, or standard security practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur."

The Florida Information Protection Act of 2014

The Florida Information Protection Act of 2014⁷ requires businesses and governmental entities to provide notice to affected customers and the Department of Legal Affairs (DLA) when a breach of security of personal information occurs.⁸ This act provides enforcement authority to the DLA under the Florida Deceptive and Unfair Trade Practices Act⁹ to civilly prosecute violations and to impose civil penalties for failure to report data breaches within specified time frames.¹⁰ Civil penalties under the Florida Deceptive and Unfair Trade Practices Act include \$1,000 per day for the first 30 days, \$50,000 for each subsequent 30-day period up to 180 days, and \$500,000 maximum penalty for violations continuing more than 180 days.¹¹ State governmental entities

² Chapter 97-286, Laws of Florida.

³ Chapter 2000-164, Laws of Florida; Chapter 2001-261, Laws of Florida.

⁴ Chapter 2007-105, Laws of Florida.

⁵ Chapter 2008-116, Laws of Florida.

⁶ Chapter 2014-221, Laws of Florida.

⁷ Chapter 2014-189, Laws of Florida.

⁸ Section 501.171(3) and (4), F.S.

⁹ Section 501.201, F.S.

¹⁰ Section 501.171(9)(a), F.S.

¹¹ Section 501.171(9)(b), F.S.

are not liable for civil penalties for failure to timely report security data breaches.¹² The Florida Information Protection Act requires the DLA to submit an annual report to the Legislature, by February 1 of each year, detailing any reported breaches of security by governmental entities or their third-party agents for the preceding year, along with any recommendations for security improvements.¹³ The report must also identify any governmental entity that has violated the breach notification provisions.¹⁴

Section 501.171(1)(a), F.S., defines the term “breach of security” or “breach” as “unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.”

Section 501.171(1)(g)1., F.S., provides that “personal information” means either of the following:

- a. An individual’s first name or first initial and last name in combination with any one or more of the following data elements for that individual:
 - (I) A social security number;
 - (II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
 - (III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account;
 - (IV) Any information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
 - (V) An individual’s health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
- b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

Section 501.171(1)(g)2., F.S., provides that the term (personal information) “does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.”

Agency for State Technology

The Agency for State Technology (AST) was created on July 1, 2014.¹⁵ The executive director of AST is appointed by the Governor and confirmed by the Senate. The duties and responsibilities of AST include:¹⁶

¹² Section 501.171(1)(b), F.S.

¹³ Section 501.171(7), F.S.

¹⁴ *Id.*

¹⁵ Chapter 2014-221, Laws of Florida.

¹⁶ Section 282.0051, F.S.

- Developing and publishing information technology (IT) policy for management of the state's IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects.
- Performing project oversight on all state IT projects with total costs of \$10 million or more.
- Identifying opportunities for standardization and consolidation of IT services that support common business functions and operations.
- Establishing best practices for procurement of IT products in collaboration with DMS.
- Participating with the DMS in evaluating, conducting and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Collaborating with DMS in IT resource acquisition planning.
- Developing standards for IT reports and updates.
- Upon request, assisting state agencies in development of IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine compliance with IT standards and guidelines developed by AST.
- Providing operational management and oversight of the state data center.
- Recommending other IT services that should be designed, delivered, and managed as enterprise IT services.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- In consultation with state agencies, proposing methodology for identifying and collecting current and planned IT expenditure data at the state agency level.
- Performing project oversight on any cabinet agency IT project that has a total project cost of \$25 million or more and impacts one or more other agencies.
- Consulting with departments regarding risks and other effects for IT projects implemented by an agency that must be connected to or accommodated by an IT system administered by a cabinet agency.
- Reporting annually to the Governor, the President of the Senate and the Speaker of the House regarding state IT standards or policies that conflict with federal regulations or requirements.
- Establishing policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services in collaboration with DMS.¹⁷ The IT policy must include:
 - Identification of the IT product and service categories to be included in state term contracts.
 - Requirements to be included in solicitations for state term contracts.
 - Evaluation criteria for the award of IT-related state term contracts.
 - The term of each IT-related state term contract.
 - The maximum number of vendors authorized on each state term contract.
- In collaboration with DMS, evaluating vendor responses for state term contract solicitations and invitations to negotiate, answering vendor questions on state term contract solicitations,

¹⁷ Chapter 2016-138, Laws of Florida.

and ensuring that IT policy is included in all solicitations and contracts that are administratively executed by DMS.¹⁸

State Data Center Service-Level Agreements

The State Data Center is established within AST and provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.¹⁹ The State Data Center must enter into a service-level agreement with each customer entity to provide required type and level of service or services. If a customer fails to execute an agreement within 60 days after commencement of service, the State Data Center may cease service.

Below is a table listing the customers of AST’s State Data Center. The customers include state agencies, a water management district, a county, local agencies and non-profit organizations.

AST Agency Customers	
Agency for Health Care Administration	Department of Veterans' Affairs
Agency for Persons with Disabilities	Executive Office of the Governor
Department of Citrus	Department of Emergency Management
Department of Business & Professional Regulation	Fish & Wildlife Conservation Commission
Department of Corrections	Florida Commission on Human Relations
Department of Children & Families	Department of Highway Safety & Motor Vehicles
Department of Economic Opportunity	Justice Administrative Commission
Department of Environmental Protection	Auditor General
Department of Juvenile Justice	Public Employees Relations Commission
Department of Military Affairs	Public Service Commission
Department of Management Services	Northwest Florida Water Management District
Department of Education	Santa Rosa County
Department of Elder Affairs	Miami-Dade Expressway Authority
Department of Health	Greater Orlando Aviation Authority
Department of Lottery	Children Home Society - Jacksonville
Department of Revenue	Chautauqua Offices of Psychotherapy and Evaluation
Department of State	Department of Transportation

From 2008 until removed in 2014, s. 282.203, F.S., contained a provision providing for an existing customer’s service-level agreement with AST to continue under the terms of the previous fiscal year’s agreement, if a customer did not execute a new service-level agreement within 60 days of the agreement’s expiration.

¹⁸ *Id.*

¹⁹ Section 282.201, F.S.

Funding Methodology

The Department of Financial Services (DFS) has responsibility for the preparation of the annual Statewide Cost Allocation Plan (SWCAP) required under the provisions of the U.S. Management and Budget (OMB) Circular A-87.²⁰ The circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state, local, and federally recognized Indian tribal governments. The SWCAP is the mechanism by which the state identifies, summarizes, and allocates statewide indirect costs. The SWCAP also includes financial and billing information for central services directly charged to agencies or programs. DFS must ensure that the SWCAP represents the most favorable allocation of central services cost allowable to the state by the Federal government.²¹

Appendix C of OMB Circular A-87, defines “billed central services” as central services that are billed to benefited agencies and/or programs on an individual fee-for-service or similar basis. Typical expenditures of billed central services include computer services, transportation services, insurance, and fringe benefits.²²

The services provided by the State Data Center to state agencies are an example of “billed central services.” The State Data Center must adhere to the SWCAP in accounting for agency resources utilized.

Pilot Projects

From 2008 until removed in 2014, s. 282.203, F.S., contained a provision providing for the data center to plan, design, and establish pilot projects and conduct experiments with IT resources.

Cybercrime Office within the Florida Department of Law Enforcement

In 2011, the Cybercrime Office (Office) was established within the Florida Department of Law Enforcement (FDLE)²³ when the Department of Legal Affairs’ Cybercrime Office was transferred to FDLE.²⁴ The Office is tasked with:

- Investigating violations of state law pertaining to the sexual exploitation of children, which are facilitated by or connected to the use of any device capable of storing electronic data;²⁵
- Monitoring state IT resources and providing analysis on IT security, incidents, threats, and breaches;²⁶
- Investigating violations of state law pertaining to IT security incidents²⁷ and assisting in incident response and recovery;²⁸
- Providing security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and security risks, and the responsibility

²⁰ Section 215.195(1), F.S. Also, see 2 CFR Part 225, Appendix C, Appendix D, and Appendix E.

²¹ *Id.*

²² 2 CFR Part 225, Appendix C.

²³ Section 943.0415, F.S.

²⁴ Chapter 2011-132, Laws of Florida.

²⁵ Section 943.0415(1), F.S.

²⁶ Section 943.0415(2), F.S.

²⁷ In accordance with s. 282.0041, F.S.

²⁸ Section 943.0415(3), F.S.

of employees to comply with policies, standards, guidelines, and operating procedures adopted by AST;²⁹ and

- Consulting with AST in the adoption of rules relating to the IT security provisions in s. 282.318, F.S.³⁰

The Office may collaborate with state agencies to provide IT security awareness training to state agency employees.³¹ State agencies are required to report IT security incidents and breaches to the Office.³²

III. Effect of Proposed Changes:

Section 1 amends the definition of the term “breach” contained in s. 282.0041(2), F.S. This term will have the same meaning of the term “breach” defined in s. 501.701(1)(a), F.S.

The term “incident” contained in s. 282.0041(10), F.S., is amended. The amended definition of “incident” means “a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.”

Section 2 amends s. 282.0051(18)(b), F.S., to provide that in collaboration with DMS, AST shall only evaluate vendor responses state term contract solicitations and invitations to negotiate that are specifically related to IT. This amendment removes ambiguity of whether the AST had a duty to evaluate state term contract solicitations and invitation to bids that were not IT related.

Section 282.0051(18)(c), F.S., is amended to provide that that in collaboration with DMS, AST shall answer vendor questions on IT-related state term contract solicitations. This amendment removes the ambiguity of whether the AST had a duty to answer vendor questions on state term contract solicitations that were not IT-related.

Section 282.0051(18)(d), F.S., is amended to provide that that in collaboration with DMS, AST shall ensure that all IT-related solicitations by DMS are procured and state contracts are managed in accordance with existing policy established under s. 282.0051(18)(a). This amendment clarifies that the AST’s duty does not apply to non-IT solicitations and state term contracts.

Section 3 amends s. 282.201(2)(d), F.S., to provide that a State Data Center service-level agreement may be extended for up to 6 months. If the State Data Center and an existing customer execute a service-level agreement extension or fail to execute a new service-level agreement, the State Data Center must submit a report to the Executive Office of the Governor within 5 days after the date of the executed extension, or 15 days before the scheduled expiration date of the service-level agreement. Such report must explain the specific issues preventing execution of a new service-level agreement and describing the plan and schedule for resolving those issues.

²⁹ Section 943.0415(4), F.S.

³⁰ Section 931.0415(5), F.S.

³¹ Section 282.318(4)(i), F.S.

³² Section 282.318(4)(j), F.S.

Also, this section deletes requirement within a service-level agreement to provide certain termination notice to AST.

The section additionally authorizes AST to plan, design, and conduct testing with IT resources to implement services that are within the scope of services provided by the state data center, if cost effective.

Further, this section deletes obsolete provisions related to the schedule for consolidations of agency data centers, which has already been accomplished.

Section 4 reenacts s. 943.0415(2) and (3), F.S., related to the Cybercrime Office within the Department of Law Enforcement, to incorporate the amended definitions of “breach” and “incident” made in s. 282.0041, F.S.

Section 5 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the sections 282.0041, 282.0051 and 282.201 of the Florida Statutes.

This bill reenacts section 943.0415 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Artiles

40-00297-17

2017174__

A bill to be entitled

An act relating to the Enterprise Information Technology Services Management Act; amending s. 282.0041, F.S.; revising definitions; amending s. 282.0051, F.S.; revising certain powers, duties, and functions of the Agency for State Technology in collaboration with the Department of Management Services; amending s. 282.201, F.S.; authorizing certain service-level agreements entered into by the state data center to be extended for a specified duration; requiring the state data center to submit a specified report to the Executive Office of the Governor under certain circumstances; deleting a requirement within a service-level agreement to provide a certain termination notice to the Agency for State Technology; requiring the state data center to plan, design, and conduct certain testing if cost-effective; deleting obsolete provisions relating to the schedule for consolidations of agency data centers; conforming provisions to changes made by the act; reenacting s. 943.0415(2) and (3), F.S., relating to the Cybercrime Office within the Department of Law Enforcement, to incorporate the amendment made to s. 282.0041, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (10) of section 282.0041, Florida Statutes, are amended to read:

282.0041 Definitions.—As used in this chapter, the term:
(2) "Breach" has the same meaning as defined in s. 501.171

Page 1 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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~~means a confirmed event that compromises the confidentiality, integrity, or availability of information or data.~~

(10) "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security ~~policies~~, ~~acceptable-use~~ policies, or ~~standard-security~~ practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.

Section 2. Subsection (18) of section 282.0051, Florida Statutes, is amended to read:

282.0051 Agency for State Technology; powers, duties, and functions.—The Agency for State Technology shall have the following powers, duties, and functions:

(18) In collaboration with the Department of Management Services:

- (a) Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:
1. Identification of the information technology product and service categories to be included in state term contracts.
 2. Requirements to be included in solicitations for state term contracts.
 3. Evaluation criteria for the award of information technology-related state term contracts.
 4. The term of each information technology-related state term contract.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2017174__

62 5. The maximum number of vendors authorized on each state
63 term contract.

64 (b) Evaluate vendor responses for information technology-
65 related state term contract solicitations and invitations to
66 negotiate.

67 (c) Answer vendor questions on information technology-
68 related state term contract solicitations.

69 (d) Ensure that all information technology-related
70 solicitations by the department are procured and state contracts
71 are managed in accordance with the information technology policy
72 established under pursuant to paragraph (a) is included in all
73 solicitations and contracts which are administratively executed
74 by the department.

75 Section 3. Paragraph (d) of subsection (2) of section
76 282.201, Florida Statutes, is amended, paragraph (g) is added to
77 that subsection, and subsection (4) of that section is amended,
78 to read:

79 282.201 State data center.—The state data center is
80 established within the Agency for State Technology and shall
81 provide data center services that are hosted on premises or
82 externally through a third-party provider as an enterprise
83 information technology service. The provision of services must
84 comply with applicable state and federal laws, regulations, and
85 policies, including all applicable security, privacy, and
86 auditing requirements.

87 (2) STATE DATA CENTER DUTIES.—The state data center shall:

88 (d) Enter into a service-level agreement with each customer
89 entity to provide the required type and level of service or
90 services. If a customer entity fails to execute an agreement

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91 within 60 days after commencement of a service, the state data
92 center may cease service. A service-level agreement may not have
93 an original a term exceeding 3 years, but the service-level
94 agreement may be extended for up to 6 months. If the state data
95 center and an existing customer entity either execute an
96 extension or fail to execute a new service-level agreement
97 before the expiration of an existing service-level agreement,
98 the state data center must submit a report to the Executive
99 Office of the Governor within 5 days after the date of the
100 executed extension or 15 days before the scheduled expiration
101 date of the service-level agreement, as applicable, to explain
102 the specific issues preventing execution of a new service-level
103 agreement and to describe the plan and schedule for resolving
104 those issues. A service-level agreement, and at a minimum, must:

105 1. Identify the parties and their roles, duties, and
106 responsibilities under the agreement.

107 2. State the duration of the contract term and specify the
108 conditions for renewal.

109 3. Identify the scope of work.

110 4. Identify the products or services to be delivered with
111 sufficient specificity to permit an external financial or
112 performance audit.

113 5. Establish the services to be provided, the business
114 standards that must be met for each service, the cost of each
115 service, and the metrics and processes by which the business
116 standards for each service are to be objectively measured and
117 reported.

118 6. Provide a timely billing methodology to recover the cost
119 of services provided to the customer entity pursuant to s.

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 120 215.422.
 121 7. Provide a procedure for modifying the service-level
 122 agreement based on changes in the type, level, and cost of a
 123 service.
 124 8. Include a right-to-audit clause to ensure that the
 125 parties to the agreement have access to records for audit
 126 purposes during the term of the service-level agreement.
 127 9. Provide that a service-level agreement may be terminated
 128 by either party for cause only after giving the other party ~~and~~
 129 ~~the Agency for State Technology~~ notice in writing of the cause
 130 for termination and an opportunity for the other party to
 131 resolve the identified cause within a reasonable period.
 132 10. Provide for mediation of disputes by the Division of
 133 Administrative Hearings pursuant to s. 120.573.
 134 (g) Plan, design, and conduct testing with information
 135 technology resources to implement services within the scope of
 136 the services provided by the state data center, if cost-
 137 effective.
 138 (4) ~~SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.-~~
 139 ~~(a) Consolidations of agency data centers and computing~~
 140 ~~facilities into the state data center shall be made by the dates~~
 141 ~~specified in this section and in accordance with budget~~
 142 ~~adjustments contained in the General Appropriations Act.~~
 143 ~~(b) During the 2013-2014 fiscal year, the following state~~
 144 ~~agencies shall be consolidated by the specified date:~~
 145 ~~1. By October 31, 2013, the Department of Economic~~
 146 ~~Opportunity.~~
 147 ~~2. By December 31, 2013, the Executive Office of the~~
 148 ~~Governor, to include the Division of Emergency Management except~~

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 149 ~~for the Emergency Operation Center's management system in~~
 150 ~~Tallahassee and the Camp Blanding Emergency Operations Center in~~
 151 ~~Starke.~~
 152 ~~3. By March 31, 2014, the Department of Elderly Affairs.~~
 153 ~~4. By October 30, 2013, the Fish and Wildlife Conservation~~
 154 ~~Commission, except for the commission's Fish and Wildlife~~
 155 ~~Research Institute in St. Petersburg.~~
 156 (a)(e) The following agency data centers are exempt from
 157 state data center consolidation under this section: the
 158 Department of Law Enforcement, the Department of the Lottery's
 159 Gaming System, Systems Design and Development in the Office of
 160 Policy and Budget, the regional traffic management centers as
 161 described in s. 335.14(2) and the Office of Toll Operations of
 162 the Department of Transportation, the State Board of
 163 Administration, state attorneys, public defenders, criminal
 164 conflict and civil regional counsel, capital collateral regional
 165 counsel, and the Florida Housing Finance Corporation.
 166 (b)(d) A state agency that is consolidating its agency data
 167 center or computing facility into the state data center must
 168 execute a new or update an existing service-level agreement
 169 within 60 days after the commencement of the service. If a state
 170 agency and the state data center are unable to execute a
 171 service-level agreement by that date, the agency shall submit a
 172 report to the Executive Office of the Governor within 5 working
 173 days after that date which explains the specific issues
 174 preventing execution and describing the plan and schedule for
 175 resolving those issues.
 176 (c)(e) Each state agency consolidating ~~scheduled for~~
 177 ~~consolidation~~ into the state data center shall submit a

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178 transition plan to the Agency for State Technology by July 1 of
 179 the fiscal year before the fiscal year in which the ~~scheduled~~
 180 consolidation will occur. Transition plans shall be developed in
 181 consultation with the state data center and must include:

182 1. An inventory of the agency data center's resources being
 183 consolidated, including all hardware and its associated life
 184 cycle replacement schedule, software, staff, contracted
 185 services, and facility resources performing data center
 186 management and operations, security, backup and recovery,
 187 disaster recovery, system administration, database
 188 administration, system programming, job control, production
 189 control, print, storage, technical support, help desk, and
 190 managed services, but excluding application development, and the
 191 agency's costs supporting these resources.

192 2. A list of contracts in effect, including, but not
 193 limited to, contracts for hardware, software, and maintenance,
 194 which identifies the expiration date, the contract parties, and
 195 the cost of each contract.

196 3. A detailed description of the level of services needed
 197 to meet the technical and operational requirements of the
 198 platforms being consolidated.

199 4. A timetable with significant milestones for the
 200 completion of the consolidation.

201 (d) ~~(f)~~ Each state agency consolidating ~~scheduled for~~
 202 ~~consolidation~~ into the state data center shall submit with its
 203 respective legislative budget request the specific recurring and
 204 nonrecurring budget adjustments of resources by appropriation
 205 category into the appropriate data processing category pursuant
 206 to the legislative budget request instructions in s. 216.023.

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207 Section 4. For the purpose of incorporating the amendment
 208 made by this act to section 282.0041, Florida Statutes, in
 209 references thereto, subsections (2) and (3) of section 943.0415,
 210 Florida Statutes, are reenacted to read:

211 943.0415 Cybercrime Office.—There is created within the
 212 Department of Law Enforcement the Cybercrime Office. The office
 213 may:

214 (2) Monitor state information technology resources and
 215 provide analysis on information technology security incidents,
 216 threats, and breaches as defined in s. 282.0041.

217 (3) Investigate violations of state law pertaining to
 218 information technology security incidents pursuant to s.
 219 282.0041 and assist in incident response and recovery.

220 Section 5. This act shall take effect July 1, 2017.

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Tallahassee Office
308 Senate Office Building
402 South Monroe Street
Tallahassee, FL 32399
850-487-5040

**Florida Senate
Office of Senator Frank Artiles- District 40**

Tuesday, January 10th, 2017

The Honorable Dennis Baxley
Chairman, Committee on Government Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: SB 174 – Enterprise Information Technology Services Management Act

Dear Chairman Baxley,

I hope this correspondence finds you well.

Please have this letter serve as my formal request to have **SB 174: Enterprise Information Technology Services Management Act**, be heard during the next Government Oversight and Accountability Committee Meeting.

The purpose of this legislation is to revise certain powers, duties and functions of the Agency for State Technology in collaboration with the Department of Management Services as well as authorizing certain service-level agreements entered into by the state data center to be extended for a specified duration.

Should you have any questions or concerns, please feel free to reach out to my office at any time.

Respectfully,

A handwritten signature in cursive script, appearing to read "Frank Artiles".

Senator Frank Artiles, District 40

CourtSmart Tag Report

Room: SB 401
Caption: Governmental Oversight and Accountability Committee

Case No.:

Type:
Judge:

Started: 1/24/2017 10:00:38 AM
Ends: 1/24/2017 10:31:18 AM Length: 00:30:41

10:00:38 AM Meeting Called to Order by Chair Baxley
10:00:40 AM Roll Call
10:01:08 AM Opening remarks by Chair Baxley
10:01:38 AM Tab1 SB158 By Senator Latvala
10:04:38 AM Senator Stewart
10:05:08 AM Response by Latvala
10:06:13 AM Diana Arteaga, City of Miami waives in support
10:06:28 AM Brian Powell, Metro Broward Professional Fire Fighters waives in support
10:06:40 AM Eric Prutsman, Florida Fire Chiefs Association waives in support
10:07:00 AM Karen Pietrafesa, Self
10:10:22 AM Chair Baxley
10:11:22 AM Jim Tolley, Florida Professional Firefighters Waive in support
10:14:13 AM Senator Artiles
10:15:13 AM Senator Artiles
10:15:15 AM response
10:15:19 AM Kraig Conn, Florida League of Cities
10:21:44 AM Chair Baxley
10:22:45 AM Senator Galvano
10:23:16 AM Senator Artiles
10:23:59 AM Senator Rader
10:25:12 AM Senator Latvala
10:26:30 AM Chair Baxley
10:26:45 AM Roll Call
10:26:54 AM Senate Bill 158 Favorable
10:27:04 AM Tab 2 SB174 By Artiles
10:27:30 AM Chair Baxley
10:28:30 AM Roll Call
10:28:52 AM Senate Bill 174 Favorable
10:29:05 AM Chair Baxley
10:29:07 AM Senator Artiles
10:30:03 AM Chair Baxley
10:30:29 AM Closing Remarks
10:30:55 AM Meeting Adjourned