SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 13, 1998 Revised:

Subject: Department of Management Services

	Analyst	Staff Director	Reference	Action
1.	Wilson	Wilson	GO	Favorable/CS
2.			WM	
3.				
4.				
5.				

I. Summary:

The bill updates organizational structure changes to the Department of Management Services resulting from the implementation of Performance-Based Program Budgeting; makes technical changes to several state employment service programs overseen by the agency; makes internal nomenclature changes to the state group health insurance program; and updates prescription drug payment levels and benefit recovery terms for that employee benefit plan.

This bill substantially amends the following sections of the Florida Statutes: 20.22, 110.109, 110.112, 110.1165, 110.123, 110.12315, 110.1232, 110.1234, 110.1238, 110.1245, 110.131, 110.161, 110.181, 110.201, 110.205, 110.235, 110.503, 110.504, 121.025, 215.196, 215.94, 255.249, 255.25, 255.257, 255.503, 267.075, 272.18, 272.185, 281.07, 282.111, 287.042, 287.057, 287.16, 287.18, 365.171, 401.021, 401.027, 446.604, 447.208, and 768.76.

The CS further repeals sections 110.407 and 110.607, Florida Statutes, relating to the Senior Management Service and the Select Exempt Service, respectively.

II. Present Situation:

The Department of Management Services (DMS) was created in 1991 as part of a general government reorganization that year. It is the successor agency to the previously separate Department of Administration and Department of General Services. In its current capacity DMS provides overall administrative guidance in state agency personnel, telecommunications, and infrastructure services. Under its name are administered the Florida Retirement System, administrative hearings tribunals, and state employee group insurance, although actual operational authority is conferred upon separate autonomous divisions in these jurisdictional areas.

DMS was one of the first agencies to be affected by the advent of Performance-Based Program Budgeting enacted by the 1994 Legislature. In the reformatting of its delivery structure the agency has replaced many of its previous line divisions with programs. All DMS-managed services fall under one of these distinct program categories: Workforce, Support, Technology, and Facilities.

The 1997 Legislature gave independent status to the previous Division of State Employee Health Insurance, now Division of State Group Insurance, within the DMS in partial response to documented disruptions in the quality and costs of administration of state employee health benefit programs. The more autonomous division now has a separate policy advisory council which provides advice on the conduct of its operations but cannot assert any authority over day-to-day administration.

III. Effect of Proposed Changes:

Section 1. Section 20.22, F.S., is amended to provide nomenclature changes to properly record the Division of State Group Insurance as the successor to the Division of State Employee Insurance; to retitle the Office of Labor Relations as the Chief Labor Negotiator; to remove the designation of the state employee health insurance director as an ex-officio member of the State Group Insurance council; and to continue the provision of general, but not dedicated, staff assistance to the council.

Section 2. Section 110.109, F.S., is amended to delete separate statutory authorization requiring a departmental personnel audit of state agencies to be transmitted to the Governor, Presiding Legislative Branch Officers, and the Auditor General.

Section 3. Section 110.1099, F.S., is amended to permit an executive or judicial branch agency to recover training fees in excess of $1000 from employees who voluntarily terminate employment within 4 years of the conclusion of the training. An exemption is provided when the training is required by the agency.

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

Section 5. Existing law, s. 110.1165, F.S., gives employees redress for damages resulting from the reliance upon erroneous agency personnel information which detrimentally affected salary or benefits. This section is amended to reinstate the current two-year statute of limitations for the purpose of seeking relief. Also, the section reinstates the distinction made between salary and wages in construing the effect of this section.

Section 6. The bill amends s. 110.123, F.S., relating to state employee health insurance coverage to provide definitions of “enrollees” as inclusive of both active, retired, and continuously covered employees; “health plan member” as inclusive of enrollees and dependents in both managed care and indemnity plans; and “state-contracted HMO” as referring to a managed care organization participating in the state group health insurance program.

The Division of State Group Insurance is given the authority, identical to that enjoyed by departmental heads to designate up to ten managerial positions as exempt from Career Service.

Several nomenclature changes are made to take note of the title change of the division and to refer to the insurance”plan” as an insurance “program.”

An existing provision, s. 112.19, F.S., which requires the employer to pay insurance premiums on behalf of surviving family members for designated public safety officers who suffer catastrophic injuries or are killed in the line of duty are extended to firefighters.

Grammatical and syntactical changes to a public records exemption governing the confidentiality of state group insurance records is further provided in subsection (9) of this section. There is no expansion of the exemption relative to the provisions contained in Art. I, s. 24(c), State Constitution.

Section 7. Section 110.12315, F.S., relating to the state group prescription drug program, is substantially amended to make the following changes: existing statutory language specifying employee drug co-payments is deleted. That authority is transferred to the General Appropriations Act or relevant implementing legislation; the section continues the current dispensing fee for retail pharmacies; continues to provide for a mail-order drug program for program participants; and provides for a uniform reimbursement rate for participating retail pharmacies. Additionally, participating pharmacies must maintain an on-line computer system to verify participant eligibility and must agree to make their records available for utilization review actions undertaken by the program.

Section 8. Section 110.1232, F.S., is amended to provide technical nomenclature changes only to retirees participating under the program.

Section 9. Section 110.1234, F.S., is amended for technical cross-reference changes for retirees participating under the Medicare supplement.

Section 10. A per-admission cap on employee overcharges provided by s. 110.1238, F.S., is changed to a flat 50 percent refund on a maximum of $1,000.

Section 11. Section 110.1245, F.S., is amended to change the report submission time for meritorious service awards from April 1 of each year to annually and to raise the maximum dollar amount of the award threshold from $50 to $75, in the case of Executive Branch agencies, and from $75 to $100 in the case of Judicial Branch agencies for plaques, and from $10 to $50 for pins and certificates.

Section 12. Section 110.161, F.S., relating to the pre-tax benefits program has changes adopted which indicate the program is no longer developmental but is a continuing and operational part of the state employee benefit program.

Section 13. Section 110.181, F.S., is amended to provide that fiscal agent costs for the annual United Way Campaign need not be reimbursed to the DMS if such costs are otherwise appropriated by the Legislature.

Section 14. Section 110.201, F.S., is amended to add a requirement to DMS that it publish and distribute an annual workforce report which describes overall conditions and trends affecting the state employee workforce.

Section 15. Section 110.205, F.S., is amended to permit each department head the ability to designate an additional position as eligible for participation in the senior management service, provided the position reports directly to the agency head and funds are absorbed within the agency's appropriated budget. Additionally, each assistant director in the Division of Retirement and the Division of State group Insurance is made exempt.

Section 16. The amendment to s. 110.235, F.S., deletes an annual report submission on state agency personnel training activities.

Section 17. Section 110.503, F.S., is amended to provide a $75 threshold for personnel recognition awards when they involve volunteers.

Section 18. Section 110.504, F.S., is amended to add that same $75 award as part of the volunteer benefit package.

Section 19. Section 112.061, F.S., is amended to permit the designee of an agency head to approve subsistence payments when injury or illness prevents a traveler from the performance of official duties.

Section 20. Section 121.025, F.S., is amended to give exempt personnel status to the director and assistant director of the Division of Retirement and to permit the designation of up to ten positions as exempt from the Career Service within the division.

Section 21. Section 215.196, F.S., is amended to substitute the phrase "facilities development activities" for Division in reference to the approved purposes of the Architects' Incidental Trust Fund.

Section 22. Section 215.422, F.S., is amended to delete a requirement that each employee responsible for the processing of vendor payments annually sign a statement indicating personal acknowledgment of the interest penalty sanctions for failure to timely process such invoices.

Additionally, the identification of the name of the vendor ombudsman in the Department of Banking and Finance is deleted; the office and its telephone number remains.

Section 23. A cross-reference to the new title of the state group insurance division is made to s. 215.94, F.S., as it affects the state personnel system.

Section 24. Section 216.011, F.S., is amended to raise from $500 to $1,000 and from $100 to $250, respectively, the threshold for tangible, nonconsumable personal property and books which are defined as *operating capital outlay* under definitions provided in the state budgeting system.

Sections 25, 26, and 27. Sections 255.249, 255.25, and 255.257, F.S., are amended, respectively, to increase from 3,000 to 5,000 square feet the threshold beyond which DMS shall review state agency leases, obtain prior approval, or require the submission of data on energy consumption and cost.

Section 28. Section 255.503, F.S., is amended to substitute the word “Department” for “Division” in the prescription of general powers and duties relating to facilities management. In addition, each agency head is charged with implementing any gubernatorial issued executive order which necessitates the closing of affected facilities. In other emergency situations the agency head is directed to make the decision on facility closing unless the duration is greater than two days in which DMS approval is required. In jointly occupied facilities operated by DMS the authority to initiate a closing rests with both the occupant and the DMS.

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

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

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

Sections 34, 35 and 36. Nomenclature changes from “Division” to “Facilities Program” are provided, respectively, for the Capitol Police under s. 281.07, F.S.; statewide regional law enforcement communications under s. 282.111. F.S.; and procedures governing term contract bids under s. 287.042, F.S. In the latter section, the title to the alternative electronic publication network is changed from “Florida Communities Network” to “Government Services Direct.”

Sections 37, 38 and 39. Nomenclature changes to ss. 287.057, 287.16, and 287.18, F.S., make the performance budgeting changes from “Division” to “Department” or “Program” as appropriate. The respective sections deal with purchasing through negotiation, motor pool management, and motor pool maintenance and repair.

Sections 40, 41, and 42. Various nomenclature changes to s. 365.171, F.S., relating to the emergency “911" telephone system; s. 401.021, F.S., relating to statewide telecommunication; and s. 401.027, F.S., relating to application for federal telecommunications financial assistance, are changed to substitute the term Secretary of DMS in place of division director.

Section 43. Section 446.604, F.S., is amended to substitute the term “Government Services Direct” in place of “Florida Communities Network” for the purposes of electronic posting of one-stop career employment centers.

Section 44. Section 447.208, F.S., is amended to provide that the computation of attorney’s fees in pending and future public sector labor law cases on demotions, suspensions, and dismissals shall be governed by the standard of reasonableness in comparison to an hourly rate charged for similar Career Service System appeals in the same geographic area.

Section 45. Section 768.76, F.S., is amended to add that the state group insurance program and a managed care organization participating under the state group insurance program for state employees, retirees, and their dependents shall not be considered collateral sources for recovery of benefits.

Section 46. A requirement for quadrennial performance audits by the Auditor General of the Senior Management Service provided under s. 110.407, F.S., and for the Select Exempt Service under s. 110.607, F.S., is repealed.

Section 47. The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There will be marginal cost savings to the DMS in the consolidation of the several separate reports repealed by **Sections 2 and 4**. These cost avoidances will produce lower printing and distribution costs but will not have any appreciable effect on salaries and benefits since only the means of information transmittal have changed.

Section 7 of the CS transfers from general law to the Appropriations Act the setting of employee co-payments for prescription drugs. The current levels, $5 for generic drug prescription and $15 per legend drug prescription, have not been changed for several years. Consultant reports from the William Mercer Company, under contract to the DSGI, have indicated that the effective freezing of these levels in statute has caused the plan to suffer progressively increasing financial losses. In a smaller sense this has contributed to the significant overall financial difficulties sustained in the entire benefit plan over the past 2 years. Also affecting this loss has been utilization of the benefit plan and disproportionate costs experienced in the mail-order drug component, the latter which has not yielded expected savings. The effect of this change will permit premium levels and co-payments to be set annually in the General Appropriations Act. Based upon recommendations provided in the Governor's *Recommended Budget* for the next fiscal year, employee share of premium costs are expected to rise for both prescription drugs and health insurance, in the latter instance in two separate 15 percent increments.

Sections 11, 17, and 18 of the CS provide an increase in the nominal stipend paid to employees or volunteers for the performance of faithful service. These amounts will be paid from funds otherwise appropriated to the agency and will not necessarily impose additional financial burdens. In the 1996 calendar year, 7,830 employees were recognized for superior accomplishment and shared $1,184,218 in awards. During that same period state agencies spent an additional $61,163 to recognize 117 employees whose adopted productivity and performance suggestions produced $338,385 in savings. Raising the upper award limit will permit agencies to increase award amounts, provided their budgets permit it.

Sections 24 and 32 raise the respective thresholds for inventory records of tangible personal property from $500 to $1000 and for books from $100 to $250. There will an accompanying reduction in workload requirements for the lesser inventory requirements. The effect will vary with each agency and cannot be more precisely estimated at this time.

Sections 26 provides that bid protest bonds are to be increased from the current **lesser** of one percent of the total rental amount or $5,000 to the **greater** of 1 percent or $5,000. There will be an effect on the premium charged for the bond although the amount is not believed to be consequential on a statewide basis.

Sections 15 and 20 provide authority to both the Division of Retirement and the Division of State Group Insurance for the designation of up to 10 positions each for inclusion in the Senior Management Service (SMS). This separate managerial class is accompanied by an enhanced salary range and benefit provisions which provide: full employer payment of insurance premiums; an increased accrual rate for retirement benefits from 1.6 precent to 2.0 percent per year of service, with a choice of a separate optional annuity program in lieu of FRS membership; and more generous accruals of sick and annual leave which are precredited at the beginning of service and annually thereafter. While there will be an increased employee benefit derived from this designation whether there is any cost to the agency is a function of its own salary lapse and salary rate experience. It may be possible for the affected agencies to assume these costs within their existing budget authority. Since the designation is discretionary with the agency it is not possible to determine exactly how many individuals will, in fact, receive this status. The greater likelihood is that individuals at mid- to upper salary levels within their current Career Service or Select Exempt classes will accede to this new title. There will be additional non-recurring costs to an agency for designees who request full or partial payment for accrued leave from the departing personnel system. Average salaries for the three principal personnel classes in state government at the end of 1996 are as follows:

Senior Management Service: $79,000
Select Exempt Service: $56,000
Career Service: $25,000

To these dollar amounts should be added another 37 percent for the SMS class, representing the cash equivalent of employer provided benefits. There are slightly more than 500 SMS positions in state government; the maximum amount is governed by a statutory formula which caps this complement at no more than 0.5 percent of the entire workforce, excluding individually designated positions.

Section 20 provides authority to each agency head to designate one additional position in the SMS. The financial impact is the same as mentioned above, reduced only by scale.

Sections 25, 26, and 27 reduce the scale of DMS review of state agency leases by increasing the threshold of review from 3,000 to 5,000 square feet. While there is a workload reduction involved, the agency reports that it cannot predict how its future actions will be affected by other state agency leasing practices which rise above or fall below this new review level.

Section 44 of the bill establishes a new standard for the computation of attorney's fees in Career Service cases. The direction of impact would suggest a lower award per case. There is, however, a high degree of variability which makes estimation of the precise effect problematic. This section has the effect of repealing decisional law applied by the Fourth District Court of Appeal in *Quinn v. Department of Health and Rehabilitative Services*, 624 So.2d 1145 (1993). In *Quinn* the appellate court held that a disciplined Career Service employee was entitled to a fee multiplier for bringing a successful challenge to the personnel action and for fees for the challenge of the attorney's award. Also, in *Greseth v. Department of Health and Rehabilitative Services*, 604 So.2d 530 (1992), the same appellate court held that attorney fee multipliers are appropriate in Career Service claims since it found the employment to be based upon a contract.

VI. Technical Deficiencies:

Authority is given twice for the designation of exempt personnel status of the Assistant Directors of the Division of Retirement and the Division of State Group Insurance. The repetition is not significant.

VII. Related Issues:

None.

VIII. Amendments:

None.