



popularly known as the “millennium bug.” A computer application that relies on a two-digit year field cannot determine whether a year represented by “00” is 1900 or 2000. Later, as technology improved and storage devices and memory media became relatively less expensive, most applications continued to rely on the tradition of two-digit years because the cost and time required to rewrite applications were determined to be too high to justify the end result.

Although good business and technical decisions have been made throughout the history of computer technology, most businesses and industries did not anticipate the endurance of older technology and applications into the 21st century. Thus, such older applications will begin to fail or to yield erroneous results if the date information is not corrected.

Florida’s agencies have been addressing the millennium bug throughout the 1990s with varying degrees of effectiveness. As the end of the century approaches, however, the Governor and the Legislature have provided for a coordinated effort to ensure that all agencies properly identify their respective information technology resources that must be addressed. Toward that end, the Legislature, through proviso in Specific Appropriation #1495 of the FY 1997-98 General Appropriations Act, authorized funds for use by agencies in their remediation activities relating to year 2000 computer problems, and for the creation of a Year 2000 Project Office within the Governor’s Office of Planning and Budgeting. A portion of these funds also were used to hire a consultant to aid the state and the project office in identifying those agencies and those computer systems that represent the greatest risk to the state if they are not prepared to properly handle date-sensitive functions.

The use of remediation funds, the initial creation of the Year 2000 Project Office, and the allocation of funds to specific agencies for remediation all have taken place under the auspices of the Year 2000 Task Force. The Task Force also was created by proviso in the 1997-98 General Appropriations Act. The Task Force consists of three state agency managers and three members of the Legislature. The Legislative Information Technology Resource Committee provided initial staffing and support to the Task Force until its staff was hired October 1, 1997. The statutes do not currently recognize the year 2000 computer problem, nor are there currently specific provisions in law to alleviate a situation that may occur related to a year 2000 computer failure.

### **III. Effect of Proposed Changes:**

**Section 1:** Section 14.025, F.S., is created to authorize the Governor to reassign resources, including personnel, among agencies under the control of the Governor, including those agencies who are affected by the reassignment of resources, provided the transfer is necessitated by projected or actual year 2000 computer system failure. In the event the resource reassignment is from an agency under the control of the Governor but transferred to an agency headed by the Governor and Cabinet and vice versa, then approval of the Administration Commission<sup>1</sup> is necessary. Approval by the commission would also be necessary for resource transfers

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<sup>1</sup>Section 14.202, F.S., creates as part of the Executive Office of the Governor an Administration Commission composed of the Governor and Cabinet. Unless otherwise provided by law, affirmative action by the commission requires the approval of the Governor and at least three other members of the commission or a simple majority vote. (see also title 28-38.011, Florida Administrative Code)

recommended by the Governor, between agencies of the Governor and the Cabinet combined, or an agency exclusively under the control of a Cabinet officer.

Financial resource reassignments to address projected or actual computer failure must be made within the framework for budget transfers outlined in s. 216.177, F.S.<sup>2</sup> Reassignments of personnel will be made in accordance with part II of ch. 112, F.S.<sup>3</sup> The Governor and Cabinet are authorized to reassign resources among agencies only for a period not to exceed 90 days. Reassignments extending beyond 90 days are subject to the approval of the Senate President, the Speaker of the House of Representatives, and a majority of the members of each of the budget committees of the two houses of the Legislature. The Legislature is authorized further to terminate any reassignment of state resources by concurrent resolution.

Section 14.025, F.S., that would be created by the bill, would repeal July 1, 2003.

**Section 2:** Section 112.24, F.S., is amended to include other state agencies in the “intergovernmental transfer and interchange of public employees.”

**Section 3:** Section 112.27, F.S., is amended to include that departments, agencies, or instrumentalities<sup>4</sup> of the state may engage in interchange with any other department, agency, or instrumentality of the state.

**Section 4:** Section 282.4045, F.S., also would be created by the bill to provide immunity to the state, its agencies, instrumentalities, and units of local government from civil and administrative legal actions for alleged damages resulting from a Year 2000 computer date calculation failure. Legislative findings also would be provided outlining the diligence and care taken by the state in identifying and remedying potential Year 2000 computer problems.

The act would take effect upon becoming a law.

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<sup>2</sup> Whenever notice of action is to be taken by the Governor, the notice must be given and delivered to both chairs of the legislative appropriations committees in writing, at least 14 consecutive days prior to taking the action, unless it is specified and approved in writing by both chairs that a shorter period is acceptable.

<sup>3</sup> Section 112.24, F.S., is intended to encourage economical and effective utilization of public employees in the state through the temporary assignment of employees among agencies of government, both state and local. State agencies are also authorized to enter into employee interchange agreements with private institutions of higher education and other nonprofit organizations. The Governor or the Governor and the Cabinet may also enter into employee interchange agreements with the Federal Government, with another state, with public institutions of higher learning, and with other local governments. Interchange program agreements must be noticed to the Department of Management Services and any modifications thereof. The remaining part of the statute is a declaration of policy and procedures with regard to: details of the employee interchange program; salary, leave, travel and transportation, and reimbursements for an employee of a sending party; and compensation with regard to employees of sending parties who may be given appointments by the receiving parties.

<sup>4</sup> Corporations acting primarily as instruments or agencies of the state.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Units of local government would be protected from civil and administrative legal actions resulting from Year 2000 computer date calculation failures, as would state agencies.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article X, s. 13, State Constitution, makes it possible by general law to remove “sovereign immunity”<sup>5</sup> and authorizes the Legislature, through general law, to provide for citizens to bring suit against the state. The following substantive case law indicates that the Legislature can indeed claim immunity prospectively.

Power to waive state’s immunity is vested exclusively in Legislature and city may not waive sovereign immunity by local law. *Donisi v. Trout*, 415 So.2d 730, (4th DCA 1981) and *Davis v. Watson*, 318 So.2d 169, (4th DCA 1975).

Doctrine of sovereign immunity rests on two public policy considerations: the protection of the public against profligate encroachment on the public treasury, and the need for orderly administration of government which in the absence of immunity would be disrupted if state could be sued at the instance of every citizen. *Berek v. Metropolitan Dade County*, 396 So.2d 756, (3rd DCA)

However, it is questionable as to whether the Legislature may claim immunity retrospectively as to impair an existing contract.

Department of Corrections, which improperly rescinded express executory contract with private vendor who suffered loss of profit as a consequence, could not invoke its sovereign immunity as bar to action on breach of the contract. *Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So.2d 4, (1984).

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<sup>5</sup> Doctrine precludes litigant from asserting an otherwise meritorious cause of action against a sovereign or a party with sovereign attributes unless sovereign consents to suit.

Chapter 768, F.S., relates to negligence and damages. The state waives its sovereign immunity in tort actions, under circumstances specified in s. 768.28, F.S. The statutes have many other provisions protecting the state, its agencies, and political subdivisions from specified legal and administrative actions. In some laws, the state and subdivisions thereof are protected entirely from legal actions, and in some laws, such as in tort actions, the liability of the state is limited to a specific dollar amount.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

Indeterminable. Citizens would be prohibited by the bill from filing civil or administrative actions against the state and units of local government for Year 2000 computer date calculation failures.

### **C. Government Sector Impact:**

Andersen Consulting LLP was hired by the Year 2000 Task Force and the Governor's Office of Planning and Budgeting in the Fall of 1997 partly to assess the potential exposure to the state associated with agency computer applications and the upcoming Year 2000 date change. Andersen reported to the Task Force in October and November 1997 on agency readiness and needs for Year 2000 remediation. The consultants estimated that executive agencies will spend between \$75 and \$90 million in remedying computer applications so that miscalculations due to the millennium change are averted. The cost estimate includes redirection of existing agency resources and additional appropriations made by the Legislature specifically to address Year 2000 issues identified by agencies. These costs likely will be incurred by the state irrespective of the provisions of this bill.

The Year 2000 Task Force has established a progress reporting plan to monitor remediation in all agencies. Emphasis has been placed on top priority systems and agencies have been categorized within a Tier 1, Tier 2, or Tier 3 structure, depending upon fiscal exposure. Tier 1 represents agencies with potential exposure in excess of \$2 million, Tier 2 represents agencies with potential exposure between \$500 thousand and \$2 million, and Tier 3 represents agencies with exposure less than \$500 thousand. The following table summarizes the latest results of the statewide aggregate progress plan for Tier 1 and 2 agencies as of February 28, 1998:

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**Statewide Aggregate Progress Plan (as of 2/28/98)**


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<b>Tier Ranking</b>	<b>Agency</b>	<b>Progress toward Milestone</b>	<b>Projected Completion Date</b>
2	Agriculture	79%	June 98
1	Bus. & Prof. Regulation	34%	Dec 98
1	Children & Families	38%	Mar 99
2	Health	29%	Dec 98
1	Labor	28%	Dec 98
2	Dept. Mgt. Services	59%	Nov 98
1	Revenue	52%	Dec 98
2	Dept. Transportation	33%	Nov 98

Source: Florida Year 2000 Task Force Report, March 20, 1998

The following table summarizes the latest results of the statewide aggregate progress plan for Tier 3 agencies as of February 28, 1998:

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**Statewide Aggregate Progress Plan (as of 2/28/98)**


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<b>Agency</b>	<b>Progress toward Milestone</b>	<b>Projected Completion Date</b>
Banking and Finance	37%	Jan 99
Citrus	73%	June 98
Community Affairs	56%	Dec 98
Corrections	94%	June 99
Education	40%	Dec 98
Elderly Affairs	100%	Complete
Environmental Protection	74%	Dec 98
Game and Fish	20%	Nov 98
Governor's Office	100%	Complete
Health Care Administration	9%	June 99
Highway Safety and Motor Vehicle	47%	Mar 99
Insurance	73%	Dec 98
Justice Administration Commission	42%	Dec 98
Juvenile Justice	67%	Dec 98
Law Enforcement	44%	Dec 98

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**Statewide Aggregate Progress Plan (as of 2/28/98)**

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Legal Affairs	0%	Aug 98
Lottery	5%	Dec 98
Military Affairs	44%	Dec 98
Parole Commission	95%	Apr 98
Retirement	40%	June 99
Department of State	97%	June 98
Veteran's Affairs	100%	Complete

Source: Florida Year 2000 Task Force Report, March 20, 1998

On May 15, 1997, the Comptroller issued Memorandum No. 10 regarding payments for purchases of information technology. In that memorandum the Comptroller stated:

. . . agencies should require the vendors to certify that the products will operate properly upon the arrival of year 2000. This certification may be included in the terms and conditions of the contract or purchase order for the acquisition of the products. Future requests for payments for the acquisition of information technology products will not be approved by this office unless the supplier has provided a written certification to the agency.

Florida is now in the process of inventorying vendor supplied products and services and coordinating the identification of vendor compliance through a central focal point, with the assistance of the Attorney General's Office and the Department of Management Services. The creation of s. 282.4045, F.S., is intended to protect the state and units of local government from civil and administrative legal actions resulting from Year 2000 computer date calculation failures. However, the protection may not apply retroactively to products and services for information technology products contracted and purchased prior to the date of the Comptroller's memorandum.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In 1997, the Nevada Legislature enacted a law prohibiting any civil action or action for declaratory or injunctive relief against the state, its agencies, and political subdivisions, on the basis that a computer or other information system calculates or generates an incorrect date, regardless of the cause of the error.

On November 19, 1997, the *West Virginia Gazette* reported that the West Virginia Legislature will consider a bill to “give the state immunity from potential lawsuits stemming from the Year 2000 problem.”

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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