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 Governmental Operations Committee

BILL:	SPB 7034
INTRODUCER:	For consideration by the Governmental Operations Committee
SUBJECT:	Information Technology and Public Records
DATE:	January 28, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This Senate Proposed Bill is the result of an interim project on improving access to public records. Under Florida law, computer records are public records. Access to electronic records can be impacted negatively when public records requirements, including redaction, records retention and archiving, are not given adequate consideration prior to the purchase of information technology. As such, Interim Report 2008-130 recommends improving links between agencies with responsibility for public records requirements and those with responsibility for information technology.

The proposed bill provides for review of information technology needs identified in agency long-range program plans for consistency with information technology policy and the state comprehensive plan; requires the Agency for Enterprise Information Technology (AEIT) to assist the Department of Management Services (DMS) in assessing technological needs and evaluating IT contracts; delegates rulemaking authority to the AEIT; creates the Office of Open Government in statute; establishes minimum requirements for Chief Information Officers; redesignates the "Agency Chief Information Officers Council" as the "Information Technology Coordinating Council" and expands its membership to include the director of the AEIT, the director of the Division of Library and Information Services, and the director of the Office of Open Government. The bill also creates a new Part IV of ch. 282, F.S., into which duties of the DMS that are currently contained in Part I of that chapter are transferred. Numerous references to the former STO are stricken in the bill and cross-reference changes are made.

This bill amends the following sections of the Florida Statutes: 11.90, 14.204, 110.205, 216.0446, 216.235, 282.003, 282.0041, 282.0055, 282.0056, 282.3055, 282.315, 282.322, 282.20, 282.21, 282.22, 282.042, 282.057, 445.011, 445.045, 668.50, 943.08, and 1004.52.

This bill creates the following sections of the Florida Statutes: 14.40, 282.801, 282.802, 282.103, 282.104, 282.105, 282.107, 282.109, 282.1095, and 282.111.

II. Present Situation:

Interim Project Report No. 2008-130 - This Senate Proposed Bill is the result of an interim project assigned to the Committee on Governmental Operations. The Senate President assigned staff to review how to improve access to public records. In order to ensure adequate consideration of public records access and retention standards prior to the creation of enterprise information technology standards, the report recommends: (1) creating links in statute for the Agency for Enterprise Information Technology (AEIT), the Office of Open Government, and the Division of Library and Information Services; (2) establishing in law the Office of Open Government and defining its duties; (3) determining whether the AEIT or the Department of Management Services is responsible for implementing responsibilities of the former State Technology Office.

Access Requirements - Florida has some of the broadest requirements for access to records and meetings in the nation. Under the State Constitution[1] as well as statutes that preceded it,[2] meetings of a collegial body of an agency[3] must be reasonably noticed and open to the public and a person who has custody of a public record must permit it to be inspected and copied. A "public record" is defined to include traditional paper documents as well as "tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission . . . ."[4] Given the breadth of this definition, information stored on a computer is considered as much a public record as the written page in a book or a tabulation stored in a filing cabinet.[5]

Public Records Act Electronic Requirements - Historically, the Legislature has been aware that technology may have both positive and negative impacts on public records access. Legislative concerns about preserving access were expressed in statutory standards encouraging agencies to adopt new technologies while requiring them to consider negative impacts on access and to limit those impacts. For example, the Public Records Law requires agencies:

- To ensure that automation of public records does not erode access to those records.[6]

---

[1] *See*, s. 24, Art. I of the State Constitution.
[2] Sections 119.07(1)(a) and 286.011, F.S.
[3] "Agency" is defined by s. 119.011(2), F.S., to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law . . . and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Article I, s. 24 of the State Constitution expressly applies open records requirements to the Legislature and the judicial branch though the requirements of ch. 119, F.S., do not apply.
[4] Section 119.011(11), F.S., further provides that these are records that are ". . . made or received pursuant to law or ordinance or in connection with the transaction of official business. . . ."
[5] *Siegle v. Barry*, 422 So.2d 63 (4th DCA), petition for review denied, 431 So.2d 988. *See, however,* Op. Atty. Gen. 85-87 which finds that machine-readable intermediate files which are mere precursors of governmental records are not in themselves intended as final evidence of knowledge to be recorded but rather are utilized by data processing computer equipment to prepare further records which are intended to perpetuate, communicate, or formalize knowledge of some type.
[6] Section 119.01(2)(a), F.S.

- To provide reasonable public access to electronic records and to ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.[7]
- To consider whether an electronic recordkeeping system they are designing or acquiring is capable of providing data in a common format, such as the American Standard Code for Information Interchange (ASCII).[8]
- Not to contract for the creation or maintenance of a public records database that impairs the ability of the public to inspect or copy the public records of the agency, including public records that are on-line or stored in an electronic recordkeeping system.[9]
- To ensure that their use of proprietary software does not diminish the right of the public to inspect and copy a public record.[10]
- To provide a requestor with a copy of an electronic record upon request, redacting any exempt portions, and to provide that copy in the medium requested if the record is maintained in that medium.[11]

Rule 1B-26.003(6)(g)3., F.A.C., requires agencies to ensure that current and proposed electronic recordkeeping systems adequately allow the public to access public records. While access to electronic records is required, proprietary rights of software developers are still protected. Section 119.071(f), F.S., provides that data processing software obtained by an agency under a licensing agreement which prohibits its disclosure and which is a trade secret, and agency-produced data processing software which is sensitive, are exempt. The term "sensitive" is defined to mean only those portions of data processing software, including the specifications and documentation, used to:

- collect, process, store, and retrieve information which is exempt;
- collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
- control and direct access authorizations and security measures for automated systems.[12]

Uniform Electronic Transaction Act - Additionally, under the Uniform Electronic Transaction Act (UETA),[13] each governmental agency[14] must determine whether, and the extent to which, it

[7] *Ibid.*
[8] Section 119.01(2)(b), F.S.
[9] Section 119.01(2)(c), F.S. Additionally, s. 287.058(1)(c), F.S., requires that every procurement for contracted services by a state agency in excess of the Category Two threshold be evidenced by a written agreement containing a provision allowing unilateral cancellation by the agency for the contractor's refusal to allow public access to public records, unless those records are exempt. The exceptions that are authorized relate to the health and mental health services. Section 287.017, F.S., provides that Category Two purchases are $25,000 to $49,999.99.
[10] Section 119.01(2)(d), F.S. Also, it should be noted that s. 119.084, F.S., expressly authorizes agencies to copyright and sell data processing software they develop. If that software is necessary solely for application to information maintained or generated by the agency that created the information, then the standard public record fee applies, not the sale price for the copyrighted software.
[11] Section 119.01(2)(f), F.S. Thus, if asked for a copy of a software disk used by the agency, a copy of the disk must be provided; a typed copy would not suffice. However, an agency is not generally required to reformat its records to meet a requestor's needs. *See*, AGO 91-61.
[12] Section 119.011(13), F.S.
[13] Section 668.50, F.S., was enacted by ch. 2000-164, L.O.F. While the CS for CS for SB 1334 was the bill that passed both houses, that part of the bill creating the UETA was added on the Senate floor to reflect the contents of the House bill. The House bill analysis for HB 1891 contains an analysis of the UETA.
[14] Section 668.50(2)(i), F.S., defines "governmental agency" to include an executive, legislative, or judicial agency,

will create and retain electronic records[15] and convert written records to electronic records.[16] Each governmental agency also is required to determine whether, and the extent to which, it will send and accept electronic records and signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.[17] To the extent that the agency uses electronic records and signatures, the State Technology Office (STO),[18] in consultation with the governmental agency, may specify: (a) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes; (b) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.[19]

Under s. 668.50(19), F.S., the STO may encourage and promote consistency and interoperability with similar requirements adopted by other government agencies in Florida, other states, the Federal Government, and nongovernmental persons. Those standards may specify differing levels of standards from which governmental agencies may choose in implementing the most appropriate standards for a particular application.

Internet Access - The Legislature has encouraged Internet access to public records by establishing the following policy:

Providing access to public records by remote electronic means is an *additional* method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information *[emphasis added]*.[20]

This additional means is authorized so long as the custodian provides safeguards to protect the records from unauthorized electronic access or alteration and to prevent the disclosure or modification of those portions of the records that are exempt from disclosure.[21] Further, a custodian is authorized to charge a fee for remote electronic access granted under a contractual arrangement with a user which includes the direct and indirect costs of providing remote access. Fees for remote electronic access provided to the general public, however, must meet the standard fees authorized in s. 119.07(4), F.S.

---

department, board, commission, authority, institution, or instrumentality of the state, including a county, municipality, or other political subdivision of this state and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

[15] Section 668.50(g), F.S., defines “electronic record” to mean a record created, generated, sent, communicated, received, or stored by electronic means.

[16] Section 668.50(17), F.S.

[17] Section 668.50(18), F.S.

[18] The STO was eliminated by ch. 2007-105, L.O.F.

[19] *Ibid.*

[20] Section 119.01(2)(d), F.S.

[21] Section 119.07(2), F.S.

Access and Costs - While computer technology has the ability to transform the way government business is conducted and government services are provided, the transition from labor-intensive, paper-driven systems to electronic systems has not been uniform within state or local governments. Some entities are more highly mechanized than others and, within those entities that are more computerized, some systems are better than others. Further, some older systems have limited capabilities and not all newer systems have been designed with a level of public access that is most effective or efficient. As a result, the means of providing access to public records may differ depending on the type and format of the record held, as well as by the particular agency holding the record.

There are times when these contingencies might have an impact on authorized costs under a special service charge provision where extensive technology resources or clerical or supervisory assistance are required to fulfill a request.[22] Whether the nature or volume of the records requested is such as to require extensive clerical or supervisory assistance or extensive use of the information technology resources is a determination that must be made on a case-by-case basis.[23]

Some agencies are better than others at attempting to help limit costs and preserve access. For example, one state agency attempted to require a records requestor to pay for a systems programmer to retrieve and review older agency e-mail messages under the extensive use provision. [24] In that case, the circuit court determined that the decision to archive older e-mail messages on tapes so that they could not be retrieved or printed without a systems programmer was an internal policy decision made with full knowledge that the agency might have to retrieve the records pursuant to a records request. Further, this policy decision was determined to be analogous to a decision to store records off-premises and, as such, the agency, not the requestor, was held responsible for bearing the costs. In another case, the agency found a creative way to respond to a request for a substantial number of records about its mayor by setting up a static web page so the requestor could view the documents. The cost of collecting and posting the documents was $360, which was substantially less than the cost of producing and copying the requested documents on paper. The requesting party was provided an access code to the static web page after paying the $360. The requesting party had no objection to having access to the records provided in this manner and the Attorney General noted that the method complied with the spirit and intent of the law on access.[25]

Open Source - One technological development that has received a great deal of attention recently is "open source" software. There does not appear to be a single authoritative definition of the term but most definitions share the idea that the "source code"[26] is open and comprehensible by a programmer and governed by a license under which it can be freely modified, permitting users to create software content incrementally or through collaboration. Open source software typically has relaxed or non-existent intellectual property restrictions.

[22] Section 119.07(4)(d), F.S., permits a special service charge where the nature or volume of the public records requested requires an extensive use of information technology resources or extensive clerical or supervisory assistance, or both. This charge is in addition to the actual cost of duplication. This charge may not be routinely imposed. *See*, AGO 92-38.
[23] AGO 90-7.
[24] *Cone & Graham, Inc. v. State*, No. 97-4047 (Fla. 2d Cir. Ct. October 7, 1997).
[25] AGO 2006-30.
[26] Source code is any sequence of statements and/or declarations written in some human-readable computer programming language.

Open source software is contrasted with "proprietary software" where the source code is not available for study, modification, and redistribution. Proprietary software is licensed for use under the conditions set by the owner.

The open source model is becoming increasingly important. One study of open source notes:

The Internet itself runs on open-source software, and a growing number of large commercial firms are supporting open-source software as part of their commercial strategies. Just as the Internet has facilitated the development of global open standards, it has also made global collaboration on open software development possible.[27]

As will be discussed *infra*, a substantial percentage of state agencies and local governments in Florida report that they currently use some open source software.

Proponents of open source software emphasize that it can be freely modified for the particular user's needs and argue that it would save government funds and reduce reliance on software firms. Opponents of open source software typically raise concerns about the lack of support for such software and some question its security.[28]

While the various benefits and deficiencies of open source versus proprietary software can be debated, it appears that for public records access purposes, interoperability of software and hardware is the most important issue when choosing technology, not whether a system is proprietary or open source.[29] "Interoperability" is

> . . . the capability of different programs to exchange data via a common set of business procedures, and to read and write the same file formats and use the same protocols.[30]

Essentially, interoperability is the ability of software and hardware on different machines from different vendors to share data.[31]

Without interoperability, technology can, at best, make it more difficult for individuals to access records or services and, at worst, limit or deny access to records or services. As was noted supra, s. 668.50(19), F.S., currently encourages and promotes interoperability.

Coordination of Agencies with Public Records and Retention Responsibilities - There is no single entity created in law to assist agencies in applying open government requirements, but responsibilities related to public records have been assigned to a number of entities. A public

[27] Open Standards, Open Source, and Open Innovation: Harnessing the Benefits of Openness, A Report by the Digital Connections Council of the Committee for Economic Development, p. 3, April 2006. Report on file or available at www.ced.org.
[28] *Ibid* at 38. It has been noted that the very openness of the Internet, which has created a worldwide means of communication, also has facilitated the creation of spam, phishing, and malware.
[29] The State of Massachusetts, which originally decided to use only nonproprietary document formats in state-affiliated offices beginning January 1, 2007, has since determined to move toward open, XML-based document formats without reflecting a vendor or commercial bias. *See*, Statement on ETRM v4.0 Public Review Comments - August 1, 2007.
[30] http://en.wikipedia.org/wiki/Interoperability.
[31] http://www.webopedia.com/TERM/i/interoperability.

records mediation program is created in the Office of the Attorney General to help resolve disputes.[32] The office also produces the "Government-in-the-Sunshine Manual" which provides guidance on open government requirements. Additionally, given the large number of records that are generated by agencies, the Department of State, Division of Library and Information Services,[33] is responsible for records information and management,[34] including the development of rules for records retention.[35] Further, the State Archives of Florida is the central repository for the archives of Florida's state government. It is mandated to collect, preserve, and make available for research the historically significant records of the state, as well as private manuscripts, local government records, photographs, and other materials that complement the official state records.

Also, the STO,[36] which was housed in the Department of Management Services (DMS), was assigned certain responsibilities for electronic records under the Uniform Electronic Transaction Act.[37] The scope of the UETA covers "transactions," which is defined as ". . . an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, insurance, or governmental affairs."[38] It does not appear that the STO developed the standards authorized by the act and, as the STO was eliminated in 2007,[39] it cannot do so in the future. Further, the UETA was not amended to reflect the repeal of the STO, and it is unclear who is responsible for implementation.

On January 2, 2007, a non-statutory entity was created to assist agencies and individuals with open government questions and issues. The Governor established the Office of Open Government within the Executive Office of the Governor[40] by Executive Order.[41] The purpose of the office is to: (a) assure full and expeditious compliance with the open government and public records laws; and (b) to provide training on transparency and accountability.[42] The order states in part:

> Each agency secretary is further directed to designate a person at his or her agency who will act as the agency's public records/open government contact person. That individual will be responsible for complying with public records/open government requests and compliance at their respective agency

[32] Section 16.60, F.S.
[33] Section 20.10(2), F.S.
[34] Section 257.36, F.S.
[35] *See*, Rules 1B-24 and 1B-26.003, F.A.C.
[36] The STO was housed in the Department of Management Services but it was eliminated by CS/CS/SB 1974 during the 2007 session and replaced by a "Technology Program." Other responsibilities of the former STO were transferred to the new Agency for Enterprise Information Technology. It is not clear whether the program at DMS or the new agency is responsible for s. 668.50, F.S.
[37] Section 668.50, F.S.
[38] Section 668.50(2)(p), F.S.
[39] Ch. 2007-105, L.O.F.
[40] The Executive Office of the Governor (EOG) is created by s. 14.201, F.S., which designates the Governor as the agency head. The EOG houses statutorily-created entities and statutorily-delegated functions assigned by the Legislature and should not be confused with the Office of the Governor which is created in s. 1, Art. IV of the State Constitution and is the office in which the constitutional powers of the Governor reside.
[41] *See*, Executive Order 07-01.
[42] Additionally, the Governor has created a "Commission on Open Government" to review a number of issues impacting access to public records and meetings.

and will also be the primary liaison between that agency and the Office of Open Government for purposes of training and compliance.

Just as there is no single entity responsible for all aspects of public records, historically, there has not been a single entity responsible for information technology (IT) for the state. It has been estimated that the cumulative annual investment of state funds in technology infrastructure for state agencies is in excess of $2.14 billion.[43] During the past 40 years at the state level, more than 10 different IT-governance and organizational structures were established in law, but none proved to be particularly effective or ultimately sustainable.[44] One of the reasons cited for the historic ineffectiveness of IT in state government was that ". . . governance structures lack clear authority and unambiguous policy necessary for successful implementation and operation of the enterprise systems under their jurisdiction."[45] The Office of Program, Policy Analysis and Government Accountability (OPPAGA) has documented a number of problems related to IT at the state level.[46]

In an attempt to resolve state level IT deficiencies in the executive branch, legislation was enacted[47] and signed into law[48] that created a new entity with clear authority for enterprise IT issues.[49] The Agency for Enterprise Information Technology (AEIT) is headed by the Governor and Cabinet and is directed by an executive director who is appointed by the agency head and confirmed by the Senate. The executive director also is designated as the chief information officer of the state. [50]

Section 14.204(2), F.S., requires the AEIT to:

- Develop and implement strategies for the design, delivery, and management of the enterprise information technology services established in law.
- Monitor the delivery and management of the enterprise information technology services as established in law.
- Make recommendations concerning other information technology services that should be designed, delivered, and managed at the enterprise level.[51]
- Plan and establish policies for managing proposed statutorily authorized enterprise information technology services; establish and coordinate project-management teams;

[43] *Enterprise Information Technology, Senate Review and Study*, Report No. 2007-140, by the Senate Committee on Governmental Operations, p. 4 (January 2007).
[44] *Ibid*, p. 6.
[45] *Ibid*, p. 7.
[46] For examples of some of the problems that have arisen in this transition, *see* OPPAGA Report No. 05-60, *DBPR Re-Engineering Has Achieved Cost-Savings But More Can Be Done to Centralize Functions and Improve Services*; OPPAGA Report No. 06-39, *While Improving, People First Still Lacks Intended Functionality, Limitations Increase State Agency Workload and Costs*; OPPAGA Report No. 07-06, *State Agency Electronic Records Management Could Be Improved*.
[47] The CS for CS for SB 1974 by the Senate Governmental Operations Committee.
[48] June 12, 2007.
[49] Ch. 2007-105, L.O.F.
[50] Section 14.204(1), F.S.
[51] Section 282.0041, F.S., defines "enterprise level" to mean all executive branch agencies created or authorized in statute to perform legislatively delegated functions.

establish formal risk-assessment and mitigation processes; and provide for independent monitoring of projects for recommended corrective actions.
- Define the architecture standards for enterprise information technology and develop implementation approaches for statewide migration to those standards.
- Develop and publish a strategic enterprise information technology plan that identifies and recommends strategies for how enterprise information technology will deliver effective and efficient government services to state residents and improve the operations of state agencies.
- Assess and recommend minimum operating procedures for ensuring an adequate level of security for all data and information technology resources for executive branch agencies.[52]

Section 282.3055(2)(e), F.S., requires each agency chief information officer to assist the AEIT in the development of strategies for implementing enterprise information technology services and for developing recommendations for enterprise information technology policy. The Agency Chief Information Officers Council also is required to assist the AEIT in its endeavors.[53]

Historically, the Legislature has not attempted to minimize potential negative technological impacts on records access by requiring agencies to use specific types of technology or by permitting agencies only to use non-proprietary systems. Instead, the Legislature has emphasized that the use of any technology may not limit or erode access to public records.

Further, the Florida Statutes contain a number of standards that guarantee access to public records regardless of the format of those records. Among the methods of ensuring access to records stored in or manipulated by proprietary software reported by agencies are built-in functionalities to convert to a common format, or routines that permit conversion to a common format; making translators or conversion tools available on the agency website to ensure access to a record; providing records in multiple forms;[54] and purchase of licenses that permit public access. Further, a number of agencies reported that proprietary software, such as a database management system, might be used to process and store data but such proprietary software would not prevent access to the data required to be available to the public.

While statutory standards, built-in functionalities, and translators or converters, allow for public access to electronic records, inadvertent limitations on access may occur by the use of aging legacy systems, non-standard or outdated formats, and new systems that are not designed with public access requirements built in their architecture. While there are ways to work around such limitations to provide access in these situations, working around these systems can result in slower response rates, may affect the format of the record provided, or possibly result in the assessment of higher charges depending upon the circumstances. Any of these could effectively result in an erosion of access to public records over time. These issues could be alleviated by encouraging the interoperability of technological systems, as provided in s. 668.50(19), F.S. Further, coordination of the entities responsible for implementing public records standards, electronic records standards, and retention standards also could help to mitigate these problems.

[52] Section 282.318(2)(a), F.S.
[53] Section 282.315(1), F.S.
[54] Such as Microsoft Office or Adobe PDF.

Current law does not require or prohibit the use of open source software. Based upon the results of a survey of agencies conducted during the interim, 69 percent of state agency respondents currently use some open source software. Of the counties responding, 60 percent indicated they currently use some open source software. Only 16 percent of city respondents indicated they used open source software. Agencies who responded that they do not use open source software typically raised concerns regarding the availability of support for the software and questioned the security of such software.

When asked whether agencies should be required to use a common format, 52 percent of state agencies surveyed answered "no," 31 percent of state agencies were unsure and only 17 percent answered "yes." County respondents were equally divided between those who think use of a common format should be required and those that do not (40 percent each), while 20 percent of county respondents were unsure. Thirty-three percent of city respondents responded positively toward required use of a common format, but 50 percent were unsure and 17 percent were opposed.

While the various benefits and deficiencies of open source versus proprietary software can be debated, it appears that the most important issue for agencies choosing technology is not whether that system is proprietary or open source but whether that system is interoperable, that is, whether the software and hardware on different machines from different vendors share data with other systems. Section 668.50(19), F.S., currently promotes interoperability.

Florida law already provides for records retention and archiving. Responsibility for these functions is housed in the Department of State. Further, authority to develop certain standards for electronic records, including interoperability, is provided in the Uniform Electronic Transaction Act. That authority, however, is assigned to the State Technology Office, which no longer exists, and responsibilities under the act have not been transferred.

While not created in law, the Office of Open Government, in the Executive Office of the Governor, helps to ensure compliance with open government requirements by agencies headed by gubernatorial appointees. Additionally, a mediation process for access disputes is created in law in the Office of the Attorney General.

Further, the State of Florida now has an enterprise level IT agency, the Agency for Enterprise Information Technology, which has been assigned the responsibility to define the architecture standards for enterprise information technology and develop implementation approaches for statewide migration to those standards, among other duties. As currently provided in law, however, there is no express requirement that the AEIT consider or apply the requirements of open government in the development of those standards. Further, there is no requirement that the AEIT coordinate and consult with agencies with specific expertise and statutory responsibility for public records access in the development of IT architecture standards.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 11.90(7), F.S., which currently requires the Legislative Budget Commission to review information resources management needs identified in agency long-range program plans with the state Annual Report on Enterprise Resource Planning and Management

and statewide policies adopted by the State Technology Office (STO). The STO no longer exists in law.[55] The bill amends s. 11.90, F.S., to require review of information technology needs identified in agency long-range program plans for consistency with information technology policy as defined in s. 282.0041, F.S., and the state comprehensive plan as provided in s. 187.201(2), F.S.

Section 2. The bill amends s. 14.204, F.S., which creates the Agency for Enterprise Information Technology (AEIT). The bill reorganizes the section to clarify it. Additionally, the bill creates a link between the AEIT and Department of Management Services (DMS), by providing that the AEIT is to assist the DMS, as provided in s. 287.042, F.S., in:

- Assessing the technological needs of a particular agency;
- Determining whether to enter into a written agreement with the letting federal, state, or political subdivision body to provide information technology for a particular agency; and
- Evaluating information technology contracts.

Additionally, the bill requires the AEIT to provide administrative support to the Information Technology Coordinating Council (currently, the Chief Information Officers' Council). Also, the AEIT is required to report to the Legislature, not less than annually, any recommended statutory changes that would improve the effectiveness or efficiency of the delivery and management of enterprise information technology services.

The bill also delegates rulemaking authority to the AEIT.

Current law required the development of a one-stop development permitting system by 2001. The one-stop permitting system, however, has not been fully implemented. The bill requires the AEIT to study and recommend to the Legislature options for the implementation of the system, as the system would be at the enterprise level. The report is due to the Governor and Cabinet, the Senate President and the Speaker of the House by December 15, 2008. This subsection expires July 1, 2009.

Section 3. The Governor created the Office of Open Government by Executive Order in January, 2007.[56] The order charges the office with responsibility for providing the Office of the Governor and each executive agency under the purview of the Governor ". . . with guidance and tools to serve Florida with integrity and transparency." The order states that the primary functions of the office are: (1) to assure full and expeditious compliance with Florida's open government and public records laws, and (2) to provide training on transparency and accountability. The bill creates the Office of Open Government within the Executive Office of the Governor and assigns public records-related duties to it. As the office is currently funded, no additional appropriation for this office is required.

Section 4. Section 110.205, F.S., contains exemptions from career service positions. Currently, this section contains exemptions for the STO, which no longer exists. The bill substitutes the

[55] See, ch. 2007-105, L.O.F.
[56] Office of the Governor, Executive Order 07-01, January 2, 2007.

AEIT for the STO. Further, the bill amends s. 110.205, F.S., to include general counsel and assistant general counsels as exempt positions at the AEIT.

Section 5. Section 282.322(1), F.S., currently provides that the Technology Review Workgroup is responsible for contracting with the project monitor for each information resources management project which is designated for special monitoring in the General Appropriations Act if proviso requires a contract with a project monitor. Prior to FY 2001-02, IT projects that the Legislature identified for special project monitoring were specifically listed in the GAA. Projects identified in the FY 2001-02 GAA for special project monitoring, pursuant to s. 282.322, F.S., were vetoed by the Governor. Since FY 2001-02, no projects have been identified in the GAA for special project monitoring pursuant to s. 282.322(1), F.S. Any projects "monitored" by the TRW since FY 2001-02 have been authorized by proviso accompanying the appropriation. TRW's website states that since FY 2003-04, the TRW has performed project monitoring primarily with existing staff, occasionally supplemented with contractor assistance; however, the monitoring process identified in s. 282.322(1), F.S., has not been utilized for these projects (or since FY 2000-01). This subsection is transferred to become subsection (3) of s. 216.0446, F.S. Furthermore, the section is reorganized for clarity.

Section 6. Section 216.235, F.S., creates the State Innovation Committee and appoints membership to the committee. Currently, this statute includes the chief information officer of the STO on the committee. The bill amends s. 216.232(4) and (6), F.S., to eliminate references to the former STO and replace those references with the AEIT.

Section 7. Section 282.003, F.S., creates a short title for Part I, of ch. 282, F.S., which is the “Information Resources Management Act of 1997.” The bill changes the short title to the “Information Technology Resources Management Act.”

Section 8. Section 282.0041, F.S., currently contains definitions for Part I of ch. 282, F.S. The bill modifies definitions in the section to reflect other changes made in the section. Specifically, the bill eliminates a reference to the Agency Chief Information Officers Council because the council is reconstituted as the Information Technology Coordinating Council. The new council is included in the definitions. Additionally, definitions in the section are renumbered.

Section 9. Section 282.0055, F.S., is amended to reflect cross-reference changes made by other parts of the bill.

Section 10. Section 282.0056, F.S., is amended to reflect cross-reference changes made by other parts of the bill.

Section 11. Section 282.3055, F.S., provides for the appointment of agency chief information officers (CIOs). The bill establishes minimum educational standards for CIOs that are not currently required. Under this section, in addition to existing requirements, the CIO must have a certificate or a degree from an accredited postsecondary institution and at least 5 years of experience managing an information technology operation and planning and implementing information technology projects and services.

Section 12. Section 282.315, F.S., creates the "Agency Chief Information Officers Council." The bill amends this section to re-create the council as the "Information Technology Coordinating Council (ITCC)." Section 20.03(9), F.S., defines a "coordinating council" to mean ". . . an interdepartmental advisory body created by law to coordinate programs and activities for which one department has primary responsibility but in which one or more other departments have an interest." Further, s. 20.052, F.S., establishes requirements for all advisory bodies, commissions and boards. The bill increases membership of the council to expressly include the executive director of the AEIT, the director of the Division of Library and Information Services, the director of the Office of Open Government. Further, the bill provides that the Attorney General will appoint an attorney to provide legal counsel to the ITCC regarding standards for public records and meetings, records-retention standards, and archiving standards.

Additional advisory duties are assigned to the ITCC. The ITCC is required to provide assistance to the AEIT in: defining architecture standards for enterprise information technology and developing implementation approaches for statewide migration to those standards; developing strategies for ensuring that enterprise IT services established in law are successfully implemented; and developing recommendations for enterprise IT policy. Further, the ITCC is required to annually recommend to the AEIT critical issues concerning enterprise IT which the agency should consider for inclusion in its work plan; to assist agencies in complying with access standards for public records; to assist agencies in complying with record-retention and archiving standards; to annually report to the Governor, the President of the Senate and the Speaker of the House of Representatives on opportunities for interagency collaboration in providing government services where such collaboration would improve efficiency and effectiveness. Additionally, the ITCC is required to assist the DMS in: prescribing procedures for procuring information technology and information technology consultant services; reviewing joint agreements with governmental agencies for the purpose of pooling funds for the purchase of IT that can be used by multiple agencies; developing standards to be used by an agency when procuring IT and contractual services to ensure compliance with access requirements for public records and records-retention and archiving requirements. The ITCC is also required to recommend a project-management methodology for use by agencies by no later than December 15, 2008, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 13. Section 282.322(1), F.S., currently provides that the Technology Review Workgroup is responsible for contracting with the project monitor for each information resources management project which is designated for special monitoring in the General Appropriations Act if proviso requires a contract with a project monitor. This section is moved to ch. 216, F.S. *See*, Section 5., supra, for more information.

Section 14. The bill removes from Part I of ch. 282, F.S., functions that are assigned to the DMS and leaves in Part I of ch. 282, F.S., functions that are delegated to the AEIT. This section designates a new Part IV of ch. 282, F.S., which contains all of the functions of DMS currently in Part I. The bill creates ss. 282.801 through 282.8096, F.S., as Part IV of the chapter.

Section 15. This section creates a short title for Part IV of ch. 282, F.S. The part may be cited as the "Communication Information Technology Services Act."

Section 16. Section 282.802, F.S., is created. This section contains definitions for Part IV of ch. 282, F.S. "Department" is defined as the Department of Management Services. Definitions for "information technology," "standards," and "total cost," are linked to definitions for the same terms found in Part I of the chapter.

Section 17. Section 282.102, F.S., contains powers and duties of the DMS under Part I of ch. 282, F.S. The description of these powers and duties is transferred to Part IV and renumbered as s. 282.804, F.S.

Section 18. Section 282.103, F.S., creates the SUNCOM network within DMS. This section is transferred from Part I of ch. 282, F.S., to Part IV and renumbered as s. 282.805, F.S.

Section 19. Section 282.104, F.S., regulates use of SUNCOM by municipalities. This section is transferred from Part I of ch. 282, F.S., to Part IV and renumbered as s. 282.806, F.S. Further, a reference to the former STO is replaced with DMS.

Section 20. Section 282.105, F.S., relates to use of SUNCOM by nonprofit corporations. A reference to the former STO is deleted and the DMS is substituted.

Section 21. Section 282.107, F.S., provides the criteria for use of the SUNCOM network and currently is in Part I of ch. 282, F.S. The bill transfers this section to Part IV of the chapter and renumbers it as s. 282.808, F.S.

Section 22. Section 282.109, F.S., relates to emergency assumption of control over the state communications system, and currently is in Part I of ch. 282, F.S. The bill transfers the section to Part IV and renumbers it as s. 282.809, F.S.

Section 23. Section 282.1095, F.S., provides for the state agency law enforcement radio system and interoperability network. The bill transfers this section from Part I to Part IV and renumbers it as s. 282.8095, F.S.

Section 24. Section 282.111, F.S., provides for the statewide system of regional law enforcement communications. The bill transfers this section from Part I to Part IV of the chapter and renumbers it as s. 282.8096, F.S.

Section 25. Section 282.20, F.S., requires the DMS to operate and manage the Technology Resource Center. The bill transfers this section from Part I to Part IV of the chapter and renumbers it as s. 282.901, F.S.

Section 26. Section 282.21, F.S., provides for the STO's electronic access services. The bill strikes the reference to the former STO and substitutes the DMS. The bill also transfers the section from Part I to Part IV of the chapter and renumbers the section as s. 282.902, F.S.

Section 27. Section 282.22, F.S., relates to production, dissemination and ownership of materials and products of the former STO. The bill strikes the reference to the STO and substitutes the DMS, transfers the section to Part IV of the chapter, and renumbers it as s. 282.903, F.S.

Section 28. Section 287.042, F.S., provides for powers, duties and functions of the DMS. The bill links responsibilities of the DMS related to the establishment of agency procedures for IT procurement with the ITCC. Additionally, the bill strikes references to the former STO and substitutes the DMS.

Section 29. Section 287.057, F.S., which relates to procurement of commodities or contractual services, is amended to strike references to the former STO and substitute references to the AEIT.

Section 30. Section 445.011, F.S., which relates to workforce information systems, is amended to strike a reference to the former STO and substitute a reference to the AEIT.

Section 31. Section 445.045, F.S., provides that Workforce Florida, Inc., is to coordinate with the STO in the development of an Internet-based system for IT industry promotion. This section is amended to strike the reference to the STO and substitute the AEIT.

Section 32. Section 445.049, F.S., provides for the Digital Divide Council in the Department of Education. The bill amends the council's membership by adding the executive director of the AEIT.

Section 33. Section 668.50, F.S., creates the Uniform Electronic Transaction Act. The bill strikes a reference to the former STO and substitutes the AEIT.

Section 34. Section 943.08, F.S., establishes duties for the Criminal and Juvenile Justice Information Systems Council. The council is currently required to develop and approve a long-range program plan pursuant to s. 186.021, F.S. The bill amends this section by requiring the council to develop and approve a strategic plan.

Section 35. Section 1004.52, F.S., provides for a community computer access grant program. The bill amends the section to strike a reference to the STO and the state's chief information officer and substitutes the Digital Divide Council and the DMS.

Section 36. The effective date of the bill is July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.