

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Florez Analyst: Darrine Distefano Bill Number: SB 403

Related Bills: See Legislative History Telephone: 845-6458 Amended Date: June 23, 2003

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Information Technology Act of 2003

SUMMARY

This bill would:

- Create the Information Technology Act of 2003, the Office of the State Chief Information Officer, and the Information Technology Board, and
- Make various changes to the current responsibilities of a director of a state agency for information technology.

SUMMARY OF AMENDMENTS

The June 23, 2003, amendments repeal a section of the Public Contract Code, make technical changes to the Public Contract Code, and add terms under the Financial Integrity and State Manager's Accountability Act of 1983.

The June 10, 2003, amendments deleted the provisions relating to transportation costs for Fresno County and added the provisions discussed in this analysis.

The March 24, 2003, amendments disallowed a reimbursement to a local agency or school district for costs incurred for a program requested through a legislative authority.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to establish an information technology board that would assist the state chief information officer on the efficient use of information technology by state government.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2004.

POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Will Bush for Gerald H. Goldberg 7/30/03

ANALYSIS

STATE LAW

Previous state law provided for the Department of Information Technology (DOIT). Its duties were to provide leadership, guidance, and oversight of information technology (IT) in state government. DOIT ceased operations on July 1, 2002.

State law also allowed the Governor to appoint the Director of Information Technology (director). The director's duties included some of the following:

- Develop plans and policies to support and promote IT,
- Oversee the management of IT projects,
- Prepare annual reports,
- Provide recommendations regarding IT to the Governor and the Legislature,
- Identify which applications of IT should be statewide in scope, and
- Establish policies and procedures for scheduling and funding major IT projects.

When DOIT ceased operations, the interim director of DOIT was reappointed as the State Chief Information Officer (officer). The Governor, under an executive order, directed the officer to prepare a proposal for the procurement, management, and operation of the state's information technology system. The preliminary report was submitted to the Governor in July 2002. In February 2003, the officer presented a final recommendation on the governance for California's IT programs and resources that resulted in this bill.

Current state law provides the Financial Integrity and State Manager's Accountability Act (FISMA) of 1983. FISMA requires a state agency to maintain effective systems of internal accounting controls and administrative controls. A director of a state agency is responsible for the establishment and maintenance of a system of the same controls. The act has established elements of a satisfactory system that include, but are not limited to, a plan of organization for proper safeguarding of an agency's assets; procedures to provide effective accounting control over assets, liabilities, revenues, and expenditures; and an effective system of internal review. FISMA also requires a director of a state agency to prepare and submit a report to the agency secretary or Director of Finance on the adequacy of the agency's system on internal accounting controls and administrative controls by December 31 of each odd-numbered fiscal year.

THIS BILL

This bill would create the Information Technology Act of 2003 that would provide a governance structure for IT in state government.

This bill would create the Office of State Chief Information Officer (officer) who will advise the Governor on the strategic management and direction of the state's IT resources.

This bill would also create the Information Technology Board (board). The board would consist of the officer, Director of Finance (DOF), Director of General Services (DGS), two members with expertise in IT appointed by the officer, and members from various agencies in the state. The board would have several responsibilities, including but not limited to:

- Reviewing strategic plans and policy analyses submitted by the officer,
- Periodic review of project initiation, oversight, and security programs administered by DOF,
- Establishing criteria for review of selected IT projects, conducting IT project oversight hearings, and
- Reporting a summary of actions, finding, and reports to the Legislature.

This bill would provide the board certain powers that include but are not limited to:

- Adopting or rejecting a strategic plan submitted by the officer that is based on issues related to practical implementation,
- Establishing criteria for IT projects to be selected for review,
- Requiring state departments or agencies administering IT projects to provide a list of all pertinent information,
- Establishing project findings and recommendations,
- Suspending, reinstating, or terminating any IT projects, and
- Interpreting and clarifying any definitions in this act.

This bill adds several additional responsibilities to DOF relating to IT project approval, management, and oversight programs.

This bill would require state agencies to notify DOF, or its designee, of all incidents involving the intentional unauthorized access or damage to, theft of, modification or destruction of, electronic information, data processing equipment, or information processing facilities. Any information received by DOF regarding these incidents would be considered confidential and would not be disclosed to the public if the disclosure poses a threat or potential threat to the safety and security of building, personnel, or equipment that contains electronic data.

This bill requires the chief executive officer of each state agency to designate an information security officer. The information security officer would be responsible for implementing state policies and procedures regarding the confidentiality and security of information pertaining to his or her agency. The policies and procedures would include, but are not limited to, strict controls to prevent the unauthorized access to data.

Under FISMA, this bill adds:

- the term “information security controls.”
- to the list of elements of a satisfactory system, “information security risk management policies, procedures, and practices that ensures the reliability of information systems and the protection of information assets.”

This bill would require each agency to submit a report on the adequacy of the agency’s systems of internal accounting, administrative controls, and information security controls by January 31, 2004, and by December 31 of every odd-numbered calendar year thereafter. Any weakness or inadequacy of an agency’s system of information security controls would be identified and a plan and schedule for correcting any inadequacy would be described in detail. Any information submitted to the DOF would remain confidential and not disclosed to the public.

IMPLEMENTATION CONSIDERATIONS

This bill requires an agency to submit a report on its internal accounting and administrative controls by January 31, 2004. Since 2003 is the odd-numbered fiscal year, Franchise Tax Board (FTB) is currently conducting an audit of these controls, as required under FISMA. The results of this audit will be reported by December 31 of this year, as also required. Due to the close proximity of the due dates between the current law and this bill, FTB would submit the same report.

This bill also requires the report on the information security controls system to be submitted on January 31, 2004. The operative date of this bill is January 1, 2004. This would allow FTB (and other agencies) only 30 days to conduct an audit of this additional control system and prepare the report. The timeframe would make it difficult for the department to conduct an adequate audit of its information security controls system. The author may wish to delay the initial due date for this report to allow agencies to perform a complete audit and submit a full report.

DOF has issued guidelines for the internal accounting and administrative controls report. It is unclear if DOF would issue new guidelines or if agencies would apply the current guidelines to the information security control report. A delayed due date would also allow DOF to issue new guidelines, if necessary.

Current state law (AB 700, Ch. 1054, Stat. 2000) requires agencies to notify California residents if there has been a security breach in an agency's system and of the possibility that their unencrypted personal information may have been acquired. This requirement appears to conflict with this bill's provision that would prohibit DOF from disclosing an authorized access to the public if the disclosure poses a threat or potential threat. State law does allow notification to be delayed if law enforcement determines it will hinder the investigation. It is not clear if an agency would still be permitted to notify the affected person(s) or if notification would be delayed until the threat has been removed.

TECHNICAL CONSIDERATIONS

On page 15, lines 14 and 21, and on page 16, line 7; separate the words "administrative controls." On page 15, line 30, and on page 17, line 10, add a comma between "accounting controls" and "administrative controls".

LEGISLATIVE HISTORY

AB 1624 (Zettel, 2001/2002) would have required the development and implementation of a single Internet portal to access all California government Internet services and changed the name of DOIT to the Information Technology Agency (ITA) and the title of the director of DOIT to Secretary of ITA. This bill failed to pass out of the first house by January 31 of the second year of the two-year session.

AB 2163 (Cunneen, 1999/2000), which failed to pass out of the Assembly Committee on Information Technology, was identical to AB 1624.

SB 843 (Polanco, 1999/2000) would have enacted the Information Technology Management Act of 1999. This bill would have established specific policies for state agencies to follow and would have provided for the establishment of a Chief Information Officer's Council as the principal interagency forum to improve state agency practices relating to the use of information technology. This bill failed to pass out of the Senate.

PROGRAM BACKGROUND

FTB has created an IT Governance Structure that provides the department with a more formalized structure and process for making IT decisions. This framework will ensure that FTB's IT resources are targeted to deliver maximum business value for the department. In addition to this framework, the following bodies were created: an IT Governance Council (ITGC), four advisory committees to assist ITGC with decision-making, and the Office of the Chief Information Officer.

FTB has an Office of Privacy and Information Security that is directed by the Chief Information Security Officer (CISO). The office develops information security policies and procedures to ensure the confidentiality, integrity, and availability of FTB's information systems and the information they contain. The CISO, who was appointed by FTB's executive officer, promotes awareness of information security issues among management and staff ensuring sound security principles are reflected throughout the organization's vision and goals. The CISO also represents FTB on all matters relating to privacy and information security to State and Consumer Services Agency, state and federal control agencies, and other state departments.

Since FTB has created its own IT Governance Structure and appointed a CISO, the department is prepared to implement any new requirements and procedures that the officer, board, and IT Act may require FTB to adopt.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida has established a State Technology Office (STO) that is overseen by the State Chief Information Officer (CIO). There is a CIO Council that facilitates communication between state employees. The STO has prepared an action plan that reflects the request of the Governor and Legislature for more efficient models to lower the cost and sharpen the focus of state IT services.

Illinois has established the Illinois Technology Office (ITO) under the Office of the Governor. ITO is responsible for managing technological innovation in state government, improving public services with the use of technology, and coordinating technology initiatives in various areas such as education and research. ITO has a chief technology officer. ITO works with multiple teams in state agencies to collaboratively define for strategic directions. There does not appear to be a board or council that assists the chief technology officer.

Massachusetts has established an Information Technology Division (ITD) within the Executive Office of Administration & Finance. The ITD Director is also the CIO for the state. The mission of ITD is to enable the success of their customers by providing effective technology and services through cooperative leadership. There does not appear to be a board or council that assists the ITD Director or CIO.

Michigan has established a Department of Information Technology (DIT) that provides professional management of the IT resources for the State of Michigan. The E-Michigan Advisory Council duties were reassigned to DIT. Each state agency has an IT Officer that assists the Deputy Director of DIT. It does not appear that the advisory council continues to assist the deputy director.

Minnesota has established an Office of Technology that offers statewide leadership and direction for information and communication technology policy to Minnesota government. The Office of Technology provides for IT and business alignment through the use of Enterprise Strategic Planning. The Enterprise Technology Board advises public officials in the use of IT and telecommunications.

New York has established an Office for Technology (OFT) that provides guidance on the state's technological future. The Governor appoints the CIO, who provides guidance to OFT. The CIO Council serves as liaisons to their respective state agencies and the Office of the CIO. The CIO Council is comprised of senior IT leadership in state agencies, authorities, local government, and public benefit corporations.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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