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HOUSE OF REPRESENTATIVES
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS

BILL #: CS/CS/HB 577

RELATING TO: Governmental Reorganization

SPONSOR(S): Committee on Banking, Representatives Flanagan, Waters, Brummer and Alexander

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BANKING YEAS 7 NAYS 0
 - (2) INSURANCE YEAS 13 NAYS 0
 - (3) STATE ADMINISTRATION YEAS 4 NAYS 0
 - (4) FISCAL RESPONSIBILITY COUNCIL YEAS 23 NAYS 0
 - (5) COUNCIL FOR COMPETITIVE COMMERCE YEAS 10 NAYS 0
-

I. SUMMARY:

In November 1998, voters approved Constitutional Revision 8 that restructures the Cabinet. The revision establishes a new Cabinet post of Chief Financial Officer and abolishes the offices of Treasurer and Comptroller. These changes apply to the November 2002, General Election and take effect January 7, 2003. To implement Constitutional Revision 8, CS/HB 577:

- Creates the Office of Chief Financial Officer. The Chief Financial Officer administers the Government Employees Deferred Compensation Plan and the Florida Security for Public Deposits Act, and implements laws relating to unclaimed property;
- Creates the Department of Insurance and Financial Services. The Governor and Cabinet serve as the head of the department, with responsibility for rulemaking. An Executive Director appointed by the Governor and Cabinet, subject to Senate confirmation, conducts administration and personnel activities. The functional regulation of insurance and financial services entities are under the direction of commissioners appointed by the Executive Director, subject to approval of the Governor and Cabinet. The Commissioner of Insurance is responsible for regulation of insurance and serves as State Fire Marshal. The Commissioner of Financial Services is responsible for regulation of banks, credit unions, other financial institutions, finance companies, funeral and cemetery services, and the securities industry. Each commissioner has authority to take "final agency action" for purposes of the Administrative Procedure Act;
- Transfers the functions relating to the Division of Insurance Fraud of the Department of Insurance to the Florida Department of Law Enforcement; and
- Creates an Office of Transition Management to implement the logistics of restructuring the Cabinet, integrate the regulatory functions of the combining agencies, and administer the functional transfers. This bill appropriates \$227,984 to fund the Office for the 2002-2003 fiscal year.

This bill does not appear to have a fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Constitutional Revision 8

In the 1998 General Election, Florida voters approved Constitutional Revision 8 to the Florida Constitution. Constitutional Revision 8 significantly restructured the Cabinet, creating the Cabinet post of Chief Financial Officer and abolishing the Cabinet offices of Treasurer, Comptroller, Secretary of State and Commissioner of Education. The result is the Cabinet is reduced from seven to four members, consisting of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. In addition, the membership of the State Board of Administration changes to the Governor, Chief Financial Officer, and Attorney General from the Governor, Comptroller, and Treasurer. These changes govern with respect to the qualifying for and the holding of primary elections leading to the November 2002 General Election. The changes take effect January 7, 2003.

Constitutional Revision 8 did not address the organizational alignment of the regulatory functions assigned by statute to the Treasurer and the Comptroller.

Treasurer / Department of Insurance

Constitutional Duties

The Treasurer is an elected position created by the state constitution as part of the Cabinet. The constitutional duties of the Treasurer, under Article IV, section 4, Florida Constitution, are to "keep all state funds and securities." The Treasurer is also a member of the State Board of Administration.

Statutory Duties

The Treasurer is designated by statute as the head of the Department of Insurance and also is known as the Insurance Commissioner. The Department of Insurance regulates all aspects of insurance in Florida, as well as investigates insurance fraud and violations of the Insurance Code. Statutory duties of the Treasurer include investing the state's general revenue fund and trust funds, and administering the Florida Security for Public Deposits Act and the Government Employees Deferred Compensation Plan. The Treasurer serves as State Fire Marshal, whose primary duties are to minimize the loss of life and property in this state due to fire.

Organization of the Department of Insurance

The Department of Insurance is divided into 10 divisions. These divisions are:

- *Administration*, which performs facilities management, personnel management, training, and purchasing;
- *Agents and Agency Services*, which is responsible for licensing, regulating, and investigating the professional activities of insurance agents;
- *Insurance Consumer Services*, which handles all consumer inquiries and complaints, provides educational materials, and maintains a toll-free hotline for consumers;
- *Insurance Fraud*, which investigates all forms of insurance fraud;
- *Insurer Services*, which regulates insurance companies by monitoring the financial condition and regulatory compliance of insurance companies and approves insurance rates and forms;
- *Legal Services*, which represents the Department of Insurance in administrative hearings and court proceedings and provides legal opinions to the public and the Department of Insurance;
- *Rehabilitation and Liquidation*, which oversees financially unstable insurance companies;
- *Risk Management*, which administers the state's property and casualty self-insurance funds;
- *State Fire Marshal*, which investigates fires and suppresses arson; inspects state owned and leased buildings; enforces laws governing explosives fireworks, fire suppression equipment, and sprinkler systems; establishes standards for firefighters; licenses and permits fire equipment dealers; and operates the Fire College; and
- *Treasury*, which carries out the constitutional duties of the Treasurer and oversees the State Employees Deferred Compensation Plan.

Staffing and Funding

The Department of Insurance has 1,486.5 full-time positions and an annual operating budget of \$118.0 million for FY 2001-02. The activities of the Department of Insurance are funded through four operating trust funds: Treasurer's Administrative and Investment Trust Fund, Florida Risk Management Trust Fund, Agents and Solicitors County Tax Trust Fund, and Insurance Commissioner's Regulatory Trust Fund.

Field Offices

The Department of Insurance maintains seventeen field offices that are located in Bartow, Daytona, Ft. Lauderdale, Ft. Myers, Ft. Walton Beach, Jacksonville, Lake City, Largo, Marianna, Miami, Ocala, Orlando, Pensacola, Plantation, Quincy, Tampa, and West Palm Beach.

Comptroller / Department of Banking and Finance

Constitutional Duties

The Comptroller is an elected position created by the state constitution as part of the Cabinet. The constitutional duties of the Comptroller, under Article IV, section 4, Florida Constitution, are to serve as chief financial officer of the state and to settle and approve all accounts against the state. The Comptroller also is a member of the State Board of Administration.

Statutory Duties

The Comptroller is designated by statute to serve as the head of the Department of Banking and Finance. The department's statutory responsibilities include regulating financial institutions and securities-related businesses, providing consumer financial protections, and administering the Unclaimed Property Act. The Comptroller also has statutory authority to examine, audit, and settle claims and demands against the state.

Organization of the Department of Banking and Finance

The Department of Banking and Finance is one of six departments exempted in s. 20.04(3), Florida Statutes, from the normal naming conventions used in designating an agency's organizational structure. The functions of the Department of Banking and Finance have been organized into the following divisions:

- *Accounting and Auditing*, which provides financial accountability for public funds;
- *Banking*, which regulates state-chartered financial institutions;
- *Financial Investigations*, which examines consumer complaints, investigates allegations or suspected wrongdoing, and educates consumers.
- *Information Services*, which maintains the Florida Accounting Information Resource and the regulatory and licensing programs within the department; and
- *Securities and Finance*, which regulates the securities industry and the financial industry.

The Comptroller also oversees the Office of Unclaimed Property, which receives, accounts for, and disperses tangible and intangible property from unclaimed savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashier's checks, stocks, bonds, other securities, insurance policy proceeds, refunds, security and utility deposits, and contents of safety deposit boxes.

Staffing and Funding

The Department of Banking and Finance has 900 full-time equivalent positions and an annual operating budget of \$70.6 million for FY 2001-02. Fifty-five percent of the operating budget of the Department of Banking and Finance is from the General Revenue Fund, with the remainder from the following eight trust funds: Administrative Trust Fund, Working Capital Trust Fund, Consolidated Payment Trust Fund, Regulatory Trust Fund, Financial Institutions Regulatory Trust Fund, Anti-Fraud Trust Fund, Federal Use of State Lands Trust Fund, and Comptroller's Federal Equitable Sharing Trust Fund.

Regional/Field Offices

The Department of Banking and Finance maintains eight regional offices. These offices are located in Ft. Lauderdale, Ft. Myers, Jacksonville, Miami, Orlando, Pensacola, Tampa, and West Palm Beach.

Florida Department of Law Enforcement

The Department of Law Enforcement is created under s. 20.201, Florida Statutes. The head of the department is the Governor and Cabinet. The Governor, with the approval of three members of the Cabinet, appoints an executive director subject to confirmation by the Senate. Section 943.04, Florida Statutes, authorizes the department to operate the Criminal Justice Investigations and Forensic Science Program and gives the department's agents the authority to investigate violations of criminal laws, bear arms, make arrests, and serve and execute search warrants and arrest warrants.

The Department of Law Enforcement has 1,814 full-time employees and an annual operating budget of \$251.5 million for fiscal year 2001-2002. Approximately 40 percent of the operating budget of the department is funded through general revenue funds. The remaining 60 percent is funded through federal funds and from state trust funds.

Merging Departments — Type Two Transfer

A type two transfer, defined in s. 20.06, Florida Statutes, controls in the situation where an agency, department, program, activity, function, unit, or subunit (entity) is merged into another agency or department. Under this type of agency transfer, the records, personnel, property and balance of appropriations, allocations, or other funds of the transferred entity are transferred intact to the recipient agency. The recipient agency may reorganize the transferred entity within the limitations prescribed by Chapter 20, Florida Statutes. Section 20.06, Florida Statutes, specifically provides that the administrative rules of the transferred entity remain in effect until specifically amended or repealed in the manner provided by law and that the recipient agency be substituted as the party of record in judicial or administrative proceedings.

C. EFFECT OF PROPOSED CHANGES:

To implement Constitutional Revision 8, CS/HB 577:

- Creates the Office of Chief Financial Officer. The Chief Financial Officer administers the Government Employees Deferred Compensation Plan and the Florida Security for Public Deposits Act and implement laws relating to unclaimed property.
- Creates the Department of Insurance and Financial Services. The new department administers the regulatory duties of the current Department of Insurance and Department of Banking and Finance. The Governor and Cabinet serves as the head of the new department, with responsibility for all rulemaking. Administrative and personnel action is conducted by an Executive Director appointed by the Governor and Cabinet, subject to Senate confirmation. The functional regulation of insurance and financial services entities are under the direction of commissioners appointed by the Executive Director, subject to approval of the Governor and Cabinet. The Commissioner of Insurance is responsible for regulation of insurance and operates as the state Fire Marshal. The Commissioner of

Financial Services is responsible for regulation of banks, credit unions, other financial institutions, finance companies, funeral and cemetery services, and the securities industry. Each commissioner has authority to take "final agency action" for purposes of the Administrative Procedure Act. Final agency action means that the decision of the agency head that leads the agency to take some action with regard to a party or compels some action of a party is challengeable in an adversarial administrative setting. "Agency action" is defined in s. 120.52(2), Florida Statutes, as "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(7) [petition to initiate rulemaking]."

- Transfers the powers, duties, personnel, property, and funds of the Division of Insurance Fraud of the Department of Insurance to the Department of Law Enforcement.

Effective July 1, 2002, the Office of Transition Management is created to implement the logistics of the cabinet restructuring and integrating the regulatory functions of the combining agencies, as well as the functional transfers. The Office of the Executive Director of the Department of Insurance and Financial Services is also established on that date. By no later than August 1, 2002, an executive director is to be appointed by the Governor and the Cabinet, subject to Senate confirmation. The Executive Director will serve as the head of the Office of Transitional Management until January 7, 2003, the date the new department is established.

The bill provides for an appropriation of \$227,984 from the Grants and Donations Trust Fund in the Executive Office of the Governor (funded by \$113,992 from the Administrative Trust Fund of the Department of Banking and Finance, and \$113,992 from the Insurance Commissioner's Regulatory Trust Fund of the Department of Insurance) to fund two full time equivalent positions to run the transitional office. If funding for the Office of Transition Management is provided in the 2002-2003 General Appropriations Act, this appropriation shall not take effect.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 Amends s. 20.04(3), Florida Statutes, relating to structure of the Executive Branch. Effective January 7, 2003, the Department of Insurance and Financial Services is exempt from the requirement that departments be organized into divisions, bureaus, and sections.

Currently, this provision exempts the Department of Banking and Finance, as well as the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from the organizational requirements found in this section. The Department of Insurance is not currently exempt from the requirements of this section.

Section 2 Creates s. 20.121, Florida Statutes, establishing the Office of Chief Financial Officer, effective January 7, 2003. The head of the office is the Chief Financial Officer (an elected, state-wide officer), and the duties of the office are as specified in the State Constitution, i.e., to serve as chief fiscal officer of the state, to settle and approve accounts against the state, and to keep all state funds and securities.

This section also makes the Chief Financial Officer responsible for laws concerning unclaimed property (currently under the Comptroller), laws implementing security for public deposits (currently under the Treasurer), and the Government Employees Deferred Compensation Plan (currently under the Treasurer).

This section also creates the Division of Financial Investigations within the Office of Chief Financial Officer, which functions as a criminal justice agency within the meaning of s. 943.045(10)(e), Florida Statutes. That section defines criminal justice agency for purposes of participating in the Criminal Justice Information Program. That program, operated by the Department of Law Enforcement, provides for the collection and dissemination of state and federal criminal intelligence and investigative information among qualified agencies. The Division also will have a separate budget, which is a prerequisite for a state agency to share in federal assistance for certain law enforcement activities.

Section 3 provides authority to the Chief Financial Officer to process all warrants created by the Comptroller prior to January 7, 2003.

Section 4 Creates s. 20.131, Florida Statutes, establishing the Department of Insurance and Financial Services and specifying that the head of the department is the Governor and Cabinet. The Governor and Cabinet are limited to adopting rules "establishing the organizational structure of the Cabinet." This limitation, coupled with the explicit designation of the commissioners as the agency head for final agency action in all other events, would appear to unnecessarily limit the ability of the Governor and Cabinet to set the policy of the department.

The section also describes the position requirements and duties for:

Executive Director—Provides that the chief administrator of the department is the Executive Director, appointed by the Governor and Cabinet, subject to Senate confirmation, and who serves at the pleasure of the Governor and Cabinet. The functions of the Executive Director are limited to personnel, administrative, and budgetary matters (including administrative coordination of issues that affect more than one commissioner and coordination of legislative activities); and

Commissioners—Each commissioner is appointed by, and serves at the pleasure of, the Executive Director, but appointment is subject to the approval by the Governor and Cabinet.

The minimum qualification for the Commissioner of Insurance is 5 years of responsible private sector experience (within the preceding 10 years) working full time in an area under the regulatory jurisdiction of the Office of the Commissioner of Insurance, or as a senior examiner or other senior employee of an insurance regulatory agency.

The minimum qualification for Commissioner of Financial Services is 5 years of responsible private sector experience (within the preceding 10 years) working full time in an area under the regulatory jurisdiction of the Office of the Commissioner of Financial Services, or as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over financial institutions, finance companies, or securities companies.

This section also describes the general organizational structure of the department:

Departmental Structure—The regulatory functions of the department are divided into two offices headed by commissioners. Each commissioner is designated the agency head for purposes of taking agency action under the Administrative Procedure Act. Final agency action would include the issuance of orders compelling compliance of a party with the law, and adoption of rules that implement specific powers or duties authorized under law.

The Office of the Commissioner of Insurance is responsible for all insurance regulation activities, state government risk management activities, and those activities of the State Fire Marshall.

The Office of the Commissioner of Financial Services handles regulatory functions relating to banks, credit unions, other financial institutions, finance companies, funeral and cemetery services, and securities. The Commissioner of Financial Services is given subpoena powers, is authorized to demand sworn statements, and is authorized to petition a circuit court to enforce compliance thereto. These authorizations of power mirror those currently granted to the Comptroller pursuant to s. 17.05, Florida Statutes.

The Office of the Commissioner of Financial Services will include a Division of Investigations and Enforcement, headed by a director who is appointed by and serves at the pleasure of the Commissioner of Financial Services. The Division of Investigations and Enforcement functions as a criminal justice agency (within the meaning of s. 943.045(10)(e), Florida Statutes) and may conduct investigations inside or outside the state to enforce the regulations of the Office. Like the Division of Financial Investigations within the Office of Chief Financial Officer, the Division of Investigations and Enforcement will have a separate budget, which is a prerequisite for a state agency to share in federal assistance for certain law enforcement activities.

The new department is authorized to archive documents in the same fashion as existing departments, to disseminate information regarding the department's official duties, and to create and utilize an official departmental seal.

Section 5 Effective January 7, 2003, pursuant to the authority found in s. 20.06, Florida Statutes, provides for the type-two transfer of the powers, duties, functions, rules, records, personnel, property, and funds from the Department of Banking and Finance and the Department of Insurance to the Office of Chief Financial Officer, the Department of Insurance and Financial Services, and the Department of Law Enforcement as follows:

Office of Chief Financial Officer— This Office receives the powers, duties, personnel, property, and funds relating to constitutional duties of the Comptroller and the Treasurer. These powers and duties include those necessary to act as the fiscal officer of the state, to settle and approve accounts against the state (derived from the constitutional responsibilities of the Comptroller), and keep the state's funds and securities (derived from the constitutional responsibilities of the Treasurer). The transfers will also include those necessary to administer the duties relating to unclaimed property, the Florida Security for Public Deposits Act, and the Government Employees Deferred Compensation Plan.

Department of Law Enforcement— The department receives the powers, duties, personnel, property, and funds necessary to operate the Division of Insurance Fraud of the Department of Insurance. The Division of Insurance Fraud of the Department of Insurance has 167 full-time employees and an operating budget of \$10.9 million for fiscal year 2001-2002.

Department of Insurance and Financial Services— The new department receives the powers, duties, personnel, property, and funds that constitute the remainder of the Department of Banking and Finance and the Department of Insurance. This would be the activities relating to the regulation of, notably, the banking, security and financial, and insurance industries,

professional and corporate licensure programs, and consumer information and complaint resolution programs.

Personnel transferred under this act will not be subjected to a new employee probationary period. Current departmental personnel, duties, equipment, and trust funds have been identified by associated current budget entities and transferred by a type two transfer to the CFO for constitutional functions and to the new department for regulatory functions.

Section 6 Provides that rules of the Department of Banking and Finance and the Department of Insurance become rules of the Department of Insurance and Financial Services. Rules relating to constitutional functions (of both the Comptroller and Treasurer), become rules of the Office of the Chief Financial Officer. Finally, rules relating to the functions of the Division of Insurance Fraud of the Department of Insurance become rules of the Department of Law Enforcement. In all cases, the rules that are in effect on January 6, 2003, remain in effect after January 7, 2003, until amended or repealed in the manner provided by law.

The section makes clear that current rules in effect remain in effect upon the transfer of the underlying authority to the three entities. This reiterates what is already provided for in s. 20.06, Florida Statutes. That section provides that for any transfer of authority between agencies, the rules in effect of the sending agency immediately prior to the transfer remain effective after transfers to the recipient agency, until amended or repealed.

Section 7 Preserves judicial and administrative actions involving the Department of Banking and Finance and the Department of Insurance pending on January 7, 2003, and substitutes the Department of Insurance and Financial Services or the Chief Financial Officer as a party, where appropriate. If the action involves the Division of Insurance Fraud, the Department of Law Enforcement is substituted as the party in interest.

As with the previous bill section, s. 20.06, Florida Statutes, provides for this situation. It would appear that both section 6 and 7 of this bill are created to put all parties on notice of the legal effect of the transfers and to make clear which recipient entity will be responsible after January 7, 2003.

Section 8 Creates the Office of Transition Management to manage the transition to the Office of Chief Financial Officer and Department of Insurance and Financial Services. The section provides the authority to implement the bill. This authority includes:

Appointment of Executive Director—The Governor and Cabinet are to appoint an Executive Director of the Department of Insurance and Financial Services by no later than August 1, 2002. Until the creation of the new department takes effect January 7, 2003, the Executive Director serves as head of the Office of Transition Management.

Creation of the Office of Transition Management—The Office of Transition Management is established as an independent office housed within the Executive Office of the Governor. The office's purpose is to manage the transition to the Office of Chief Financial Officer and Department of Insurance and Financial Services, including:

- Assuring that the employees of the offices of Commissioner of Insurance and Commissioner of Financial Services, including all senior management positions, are occupied by qualified personnel by January 7, 2003;
- Submitting written recommendations to the Legislature for statutory changes by February 1, 2003. This submission must include recommendations regarding streamlined rulemaking

procedures and procedures to allow adoption of emergency rules without action of the Governor and Cabinet;

- Providing a report that specifies which positions are attached to Chief Financial Officer functions and which positions are attached to insurance or financial services regulatory functions;
- Taking action in advance on personnel, purchasing, and administrative matters;
- Submitting to the Governor and Cabinet a proposed organizational plan for the new department; and
- Providing monthly status reports and other information, as requested by the Legislature.

The Department of Insurance and Department of Banking and Finance and the Offices of Treasurer and Comptroller are required to cooperate with the Office of Transition Management and provide any requested information.

Funding of the office will be provided for in the 2002-2003 General Appropriations Act.

Section 9 Creates s. 216.349, F.S., provides for state agencies and the Chief Financial Officer to report, on a monthly basis through electronic means, trust fund information to the Legislative Budget Commission.

Section 10 Effective January 7, 2003, the Chief Financial Officer shall provide in a monthly report, through electronic means, the financial status of trust funds in the state treasury, to the chair and vice chair of the Legislative Budget Commission and the Governor.

Section 11 Amends s. 218.36, F.S., specifically requiring the county tax collector, the sheriff, the supervisor of elections, and the property appraiser to pay into the county general fund all money in excess of the sum he or she is entitled under the provisions of Chapter 145, F.S., effective October 1, 2002.

Section 12 Amends s. 624.523, F.S., providing for an annual transfer of \$10.74 million from the Insurance Commissioner's Regulatory Trust Fund to the General Revenue Fund, to offset the cost to the Florida Department of Law Enforcement to operate the Divisions of Insurance Fraud.

Sections 13 through 835 Provides comprehensive statutory revision, conforming those sections of the statutes affected by the substantive governmental reorganization provisions in the bill

Section 836 Repeals, effective January 7, 2003, s. 20.12, Florida Statutes, relating to the Department of Banking and Finance, and s. 20.13, Florida Statutes, relating to the Department of Insurance.

Section 837 Repeals, effective January 7, 2003, sections 17.011, 18.03, 18.08, 215.29, 627.0623, 655.019, and 657.067, F.S.

Section 838 Specifies that current references in the Florida Statutes affected by passage of this act shall be conformed to reflect the provisions of this act and included in the edition of the Florida Statutes prepared by the division of statutory Revision for 2003.

Section 839 Provides a transfer of \$5,372,514 from the Insurance Commissioner’s Regulatory Trust Fund to the Operating Trust Fund of the Florida Department of Law Enforcement. This section is effective January 7, 2003.

Section 840 Provides an appropriation of \$5,372,514 from the Operating Trust Fund of the Florida Department of Law Enforcement for the purpose of operating the Division of Insurance Fraud for the period from January 7, 2003 through June 30, 2003. This section is effective January 7, 2003.

Section 841 Provides an appropriation in the amount of \$227,984 from the Grants and Donations Trust Fund in the Executive Office of the Governor to fund the activities of the Office of Transition Management within the Executive Office of the Governor. The source of the appropriation is transfers of \$113,992 from both the Administrative Trust Fund of the Department of Banking and Finance and the Insurance Commissioner’s Regulatory Trust Fund of the Department of Insurance. If funding for the Office of Transition Management is provided in the 2002-2003 General Appropriations Act, this appropriation shall not take effect.

Section 842 Provides that the bill will take effect upon becoming a law, except as otherwise provided therein.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Non-recurring

	<u>FY2002-03</u>	<u>FY2003-04</u>
Insurance Commissioner’s Regulatory Trust Fund	\$4,582	N/A
Administrative Trust Fund	<u>\$4,582</u>	N/A
Total non-recurring	<u>\$9,164</u>	

Recurring

Insurance Commissioner’s Regulatory Trust Fund	\$109,410	\$112,145
Administrative Trust Fund	<u>\$109,410</u>	<u>\$112,145</u>
Total recurring	<u>\$218,820</u>	<u>\$224,290</u>

See III.D., Fiscal Comments, for type of expenses and assumptions used.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Comments by the Committee on State Administration:

The information requested by the Committee on Banking has not yet been received.

Comments by the Committee on Banking:

The fiscal impact estimates for state government were derived from last year's fiscal analysis of CS/CS/HB 681 (2001), which is substantially similar to CS/HB 577. Committee on Banking staff contacted estimating authorities and is waiting for estimates that may change the analysis above as a result of the functional transfer to the Department of Law Enforcement, given the fact that the budget of the Department of Insurance relies primarily on trust funds, and the investigative functions of the Department of Law Enforcement are largely funded from General Revenue.

Those anticipated estimates notwithstanding, fiscal comments from CS/CS/HB 681 (2001), with corrected Fiscal Year dates, are as follows:

[This bill] creates an Office of Transition Management to manage the transition to the new department. This involves hiring an Executive Director to direct the transition. The duties of the Executive Director will include developing a proposed organizational plan for the new department, preparing an analysis of staffing needs on a position-by-position basis, assuring all senior management positions are occupied no later than January 7, 2003, and submitting written recommendations to the Legislature for any additional statutory changes needed to ensure a smooth transition. In addition to salaries and benefits for the Executive Director and one support staff person, expenses will include office space and office equipment such as telephones, personal computers, supplies, file cabinets and a facsimile machine. In calculating the fiscal impact, staff used the standard expense and operating capital outlay package developed by the Office of Planning and Budgeting in conjunction with the Department of Management Services, and an average annual salary of \$113,000 for current department secretaries of executive branch departments and \$40,000 as mid-range salary for an Administrative Assistant III. Added to both of these salary amounts is a sum equal to 35 percent of salary for benefits. Recurring expenditures for FY 2003-04 reflect a 2.5 percent increase over FY 2002-03 expenditures.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article IV, section 6 of the State Constitution requires that the “functions of the executive branch of state government” be allotted to departments, and that the “administration” of each department be under the “direct supervision” of the Governor, Lieutenant Governor, the Governor and Cabinet, a Cabinet Member, or an officer or board appointed by and serving at the pleasure of the Governor. Confirmation of the Senate or of three members of the Cabinet may be, but need not be, required for appointment of an officer or board member. The bill complies with this constitutional requirement by placing the new department under the direct supervision of the Governor and Cabinet. The Governor and Cabinet will be the head of the department and will exercise the department’s rulemaking power under the relevant provisions of the Administrative Procedure Act (ss. 120.536-120.565, F.S.). The Governor and Cabinet will also appoint the Executive Director of the department, who will be subject to Senate confirmation and serve at the pleasure of the Governor and Cabinet.

While providing that the new department will be under the direct supervision of the Governor and Cabinet, the bill also allocates certain powers of an agency head, as defined in the relevant provision of the Administrative Procedure Act (s. 120.52(3), F.S.) to officers of the department, to be known as “commissioners.” The commissioners will be appointed by the department’s Executive Director subject to the approval of the Governor and Cabinet, and who will serve at the pleasure of the Executive Director. The bill allocates to the commissioners the power to issue final orders on any matters except rules. As a result, the actions of commissioners in individual cases will immediately be subject to judicial review as provided in s. 120.68, F.S.

B. RULE-MAKING AUTHORITY:

The bill provides no new authority. Existing authority for rules that relate to the functions of the Division of Insurance Fraud of the Department of Insurance in effect on January 6, 2003, become rules of the Department of Law Enforcement on January 7, 2003. Rules relating to constitutional powers and duties, unclaimed property, security for public deposits, and the Government Employees Deferred Compensation Plan become rules of the Office of the Chief Financial Officer on the same date. The remaining rules of the Department of Banking and Finance or of the Department of Insurance that were in effect on January 6, 2003, become rules of the Department of Insurance and Financial Services on January 7, 2003.

C. OTHER COMMENTS:

Comments by the Committee on State Administration

There are three Senate bills that are comparable to CS/HB 577. All three bills proposed that the Department of Insurance and Department of Banking and Finance be integrated into one department organized on divisional lines, with certain specific programs placed in sections under a particular division. The Chief Financial Officer is to be the head of the department. The bills propose that the Chief Financial Officer have significant regulatory responsibilities for industries that constitute a significant share of the state’s service economy. Although the three bills propose a similar department structure, notable differences include:

Senate Bill 232 -- transferring the Division of Workers’ Compensation from the Department of Labor and Employment Security to the Department of Financial Services.

Senate Bill 272 – limiting the ability of candidates for the office of Chief Financial Officer to raise campaign contributions from parties regulated by the department.

Organizationally, the bill specifically provides that the Divisions of Financial Institutions, Securities and Finance, and Insurer Services each are to be headed by a director, in whom authority for final agency action is vested. These directors are appointed by the Chief Financial Officer subject to confirmation by the trustees of the State Board of Administration, and serve at the pleasure of the trustees of the State Board of Administration.

Senate Bill 662 -- transferring of the Division of Workers' Compensation from the Department of Labor and Employment Security to the Department of Financial Services and the Bureau of Deferred Compensation of the Division of Treasury, Department of Insurance to the Department of Management Services.

Organizationally, the bill specifically provides that the Divisions of Financial Institutions, Securities and Finance, and Insurer Services each are to be headed by a director, in whom authority for final agency action is vested. These directors are appointed by the Chief Financial Officer subject to confirmation by the trustees of the State Board of Administration, and serve at the pleasure of the trustees of the State Board of Administration.

Comments by the Committee on Banking

This bill conceptually is similar to the Cabinet re-organization bills filed in 2000 (HB 739) and is similar substantially to HB 681 filed in 2001. One notable exception in the present bill includes reducing the number of regulatory commissioners from three to two. HB 681 from the 2001 session established the Commissioner of Insurance, Commissioner of Financial Services, and Commissioner of Securities. CS/HB 577 establishes offices for the first two only. Another difference is the functional transfer of the Division of Insurance Fraud of the Department of Insurance to the Department of Law Enforcement.

In 1998, House Speaker Webster asked House committees to examine state agency functions to identify candidates for realignment or functional transfers. The Committee on Financial Services identified the Division of Insurance Fraud of the Department of Insurance as a possible candidate for transfer to the Florida Department of Law Enforcement because the duties of the Division of Insurance Fraud include criminal investigations of various types of insurance fraud and violations of the unfair insurance trade practices law (which are second degree misdemeanors only by virtue of the general criminal penalty for violations of the Insurance Code).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On December 18, 2001, the Committee on Banking adopted four amendments and unanimously passed the bill, as amended, as a committee substitute. The committee substitute removed a proposed transfer of the State Fire Marshal to the Department of Agriculture and Consumer Services. The committee substitute provides that the Insurance Commissioner will remain the State Fire Marshal, and all functional issues related to that position would transfer to the new Department of Insurance and Financial Services.

On February 11, 2002, the Fiscal Responsibility Council adopted three amendments that are traveling with the bill. The first amendment provides for certain county employees to pay certain moneys into the

county general fund. The second amendment provides for state agencies and the Chief Financial Officer to report trust fund information to the Legislative Budget Commission. The third amendment provides for the transfer of funds and appropriation for the operation of the Division of Insurance Fraud, which the bill transfers to the Department of Law Enforcement.

On February 26, 2002, the Council for Competitive Commerce adopted two amendments and the bill was moved to a Council Substitute. The Council Substitute does not alter the basic structure of the bill, but incorporates several technical provisions necessary for a smooth statutory transition of those programs, duties, personnel, rulemaking, and funds the bill as assigned to the Chief Financial Officer's office and the new Department of Insurance and Financial Services. Specifically, the Chief Financial Officer is authorized to process all warrants created by the Comptroller prior to January 7, 2003. The new department is authorized to archive documents in the same fashion as existing departments, to disseminate information regarding the department's official duties, and to create and utilize an official departmental seal. Personnel transferred under this act will not be subjected to a new employee probationary period. Current departmental personnel, duties, equipment, and trust funds have been identified by associated current budget entities and transferred by a type two transfer to the CFO for constitutional functions and to the new department for regulatory functions. The Council Substitute also incorporates the amendments adopted by the Fiscal Responsibility Council, which provide for transitional funds and other fiscal ministerial duties. Finally, the Council Substitute conforms those sections of the statutes affected by the substantive governmental reorganization provisions in the bill.

VII. SIGNATURES:

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AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

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DATE: February 27, 2002

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