

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1337 Governmental Reorganization  
**SPONSOR(S):** Representative Allen  
**TIED BILLS:** HB 1627, PCB SA 03-19 **IDEN./SIM. BILLS:** SB 1712

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Banking &amp; Securities (Sub)</u>	<u>6 Y, 0 N</u>	<u>Cutchins</u>	<u>Whitfield</u>
2) <u>Insurance Regulation (Sub)</u>	<u>18 Y, 0 N w/CS</u>	<u>Cutchins</u>	<u>Whitfield</u>
3) <u>Insurance</u>	<u></u>	<u>Cheek</u>	<u>Schulte</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill makes changes to the Florida Statutes to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to Chapter 2002-404, Laws of Florida, (the act) that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003. Although the jurisdictional requirements of the 2002 act are clear on most issues, certain areas are unclear, pose difficult problems in conforming the statutes, or raise policy issues. This bill concentrates on those areas identified as such during the statutory review by House and Senate staff and departmental representatives. The majority of the remaining technical conforming changes to the statutes, impacted by the reorganization of government in response to the constitutional amendment, are contained in Proposed Committee Bill 19 by the State Administration Committee. References to that PCB are included in this analysis for reference. Additionally, two bills contain conforming changes related to the restructuring of the Cabinet (HB 1627), and relating to the order of succession to the Governor (HB 739).

The key provision of the 2002 act is section 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services, headed by the CFO, and the Financial Services Commission, headed by the Governor and Cabinet. Two offices are created under the commission: the Office of Insurance Regulation (OIR) and the Office of Financial Institutions and Securities Regulation (OFISR)<sup>1</sup>, each headed by a director appointed by the commission, except that the commission is agency head for all rulemaking of each office. The act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new department and commission. However, the act did not make conforming changes to the Florida Statutes, which this and the other aforementioned bills address.

In an effort to keep certain sections together for reference purposes, there are also a significant number of the changes included in this bill that simply conform to the reassignment of all statutory authority currently assigned to the Treasurer, Comptroller, Insurance Commissioner, Department of Insurance, and the Department of Banking and Finance, to the CFO, Department of Financial Services, Financial Services Commission, Office of Insurance Regulation, and the Office of Financial Institutions and Securities Regulation, consistent with the 2002 act. In some instances, the bill repeals or deletes outdated provisions of the statutes related to the regulation of banking and insurance; changes references from the Florida Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association, to the Citizens Property

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<sup>1</sup> This bill authorizes the Office of Financial Institutions and Securities Regulation to be known as the Office of Financial Regulation.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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Insurance Corporation (Citizens) to conform to the act creating Citizens (ch. 2002-404, L.O.F.); and updates references to the latest edition of publications that are cited in the Insurance Code for purposes of establishing accounting and actuarial standards for insurers and HMOs.

This bill amends the following chapters of the Florida Statutes: 20, 103, 112, 215, 252, 288, 289, 391, 401, 408, 420, 440, 494, 517, 520, 537, 553, 559, 560, 609, 624, 625, 626, 627, 628, 631, 634, 641, 642, 651, and 655. The bill creates s. 626.016, F.S.

A chart has been prepared which lists all of the sections affected by the four governmental reorganization bills. Each section is accompanied by a reference number, page number, line number and color code:  
HB 739 relating to succession – Dark Gray;  
HB 1627 relating to Governmental Reorganization of cabinet duties – Light Gray;  
PCB SA 03-19 – relating to Governmental Reorganization technical conforming/consensus issues – White; and  
HB 1337 relating to Governmental Reorganization of insurance and financial institution issues – Blue (insurance) and Pink (financial institutions).

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

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|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

The provisions of this bill do not mandate any expansion or reduction of government regulation or administration. This bill merely conforms statutory references to the present regulatory and administrative with the dictates of the 2002 act and the Constitutional amendment.

#### B. EFFECT OF PROPOSED CHANGES:

#### Current Situation

#### **Constitutional Amendment Creating the Office of the Chief Financial Officer**

In 1998, Florida voters approved an amendment to the State Constitution abolishing the offices of the Treasurer and the Comptroller and merging their duties into the office of the Chief Financial Officer (CFO), effective January 7, 2003.<sup>2</sup> The amendment provides that the Cabinet shall be composed of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The CFO serves as the chief fiscal officer of the state, responsible for settling and approving all accounts against the state and keeping all state funds and securities. The Legislature may, by law, prescribe additional powers and duties for the CFO and other Cabinet officers, as the State Constitution previously allowed for the Treasurer, Comptroller, and other Cabinet officers.

The Legislature, by general law, had designated the Comptroller as head of the Department of Banking and Finance, responsible for the regulation of banks, financial institutions, and the securities industry.

<sup>2</sup> Art. IV, Sec. 4, Fla. Const.

General law designated the Treasurer as the Insurance Commissioner and head of the Department of Insurance, responsible for regulating all insurance matters. The Insurance Commissioner was also designated as the State Fire Marshal. By abolishing the offices of the Treasurer and Comptroller, the constitutional amendment effectively required the Legislature to reassign the statutory duties for the regulation of banking and insurance to the CFO or to other executive branch agencies or officials.

## **2002 Act Reorganizing the Regulation of Banking and Insurance**

The act reassigned the statutory duties of the Comptroller and Treasurer to the newly created Department of Financial Services, headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet, effective January 7, 2003.<sup>3</sup> The key provision is s. 20.121, F.S., created by the 2002 act, which prescribes the organizational structure and regulatory duties of the department and commission. The act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new department and commission. However, the act did not make conforming changes to the Florida Statutes, which legislative staff and a transition committee were directed to address.

### **Department of Financial Services (headed by Chief Financial Officer)**

The 2002 act created the Department of Financial Services (DFS) headed by the CFO, and specified that DFS consist of the following divisions<sup>4</sup>:

- Division of Accounting and Auditing (which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity)
- Division of State Fire Marshal
- Division of Risk Management
- Division of Treasury (which includes the Bureau of Deferred Compensation)
- Division of Insurance Fraud
- Division of Rehabilitation and Liquidation
- Division of Insurance Agents and Agency Services
- Division of Consumer Services (which includes the Bureau of Funeral and Cemetery Services)
- Division of Workers' Compensation
- Division of Administration
- Division of Legal Services
- Division of Information Systems
- Office of Insurance Consumer Advocate

Other than listing the above divisions within DFS, s. 20.121, F.S., does not specify the statutory powers or duties of DFS. But, these divisions were previously within the Department of Insurance or the Department of Banking and Finance and the 2002 act transferred these divisions or related programs to DFS. The Division of Insurance Consumer Services was statutorily renamed the Division of Consumer Services.<sup>5</sup>

The major statutory jurisdiction which is included within each division that was assigned to the Department of Financial Services (headed by the CFO) is listed below for reference (not including other duties that may be included, discussed in *Areas Where Jurisdiction of DFS and the OIR or OFISR is Unclear or Overlaps*, below):

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<sup>3</sup> Ch. 2002-404, L.O.F. (HB 3-E, passed in the 2002 Special Session "E," and signed by Governor Bush on June 12, 2002).

<sup>4</sup> S. 20.121(2)(a), F.S.

<sup>5</sup> S. 3, ch. 2002-404, L.O.F. Each of the divisions and programs were transferred from the Department of Insurance, except the Division of Accounting and Auditing (including the Bureau of Unclaimed Property and the Office of Fiscal Integrity) and the Bureau of Funeral and Cemetery Services, which were transferred from the Department of Banking and Finance.)

- Division of Accounting and Auditing:
  - Accounting, auditing, and approving payment of state funds (ch. 17, F.S.); general financial powers of Comptroller (chs. 215, 216, 287, F.S., and other sections throughout the statutes.)
  - Administration of the unclaimed property program (ch. 717, F.S.)
- Division of State Fire Marshal:
  - Regulate installation of fire equipment, conduct safety inspections, investigate causes of fires, provide firefighter training and certification, adopt safety rules for firefighter employers and fire codes for specified buildings (ch. 633, F.S.); license and permit the manufacture and use of explosives (ch. 552, F.S.); regulate the sale of fireworks (ch. 791, F.S.)
- Division of Risk Management:
  - Administer the state's risk management program for property, auto, liability, and workers' compensation (ch. 284, F.S.; ss. 265.53-265.55, 393.002, 393.075, 409.175, 766.28, F.S.)
- Division of Treasury:
  - Coordinate and direct the keeping of all state funds and securities, disburse payment of state funds, and invest surplus state funds collected by state agencies (ch. 18, F.S., and other sections throughout the statutes.)
  - Approve financial institutions as public depositories (ch. 280, F.S.)
  - Administer the deferred compensation program for state employees (s. 112.215)
- Division of Insurance Fraud:
  - Investigation and arrest of insurance fraud crimes (ss. 626.989, 626.9892, F.S.)
- Division of Rehabilitation and Liquidation:
  - Acting as court-appointed receiver, liquidator, or rehabilitator of an insurer, HMO, or other entity regulated by OIR to which the provisions of ch. 631 apply; approval of plans of operation and oversight of insurance guaranty associations (relevant sections of ch. 631, F.S., and other sections throughout the statutes.)
- Division of Insurance Agents and Agency Services:
  - License and regulate insurance agents and agencies, customer representatives, service representatives, reinsurance intermediaries, and bail bond agents (applicable provisions of chs. 626 and 648, F.S.)
- Division of Consumer Services:
  - Receive inquiries and complaints from consumers, provide assistance for consumers, and prepare and disseminate information about regulated products and services (no specific statutory authority, other than for publications)
  - Bureau of Funeral and Cemetery Services - licensure and regulation of cemeteries and pre-need funeral and burial contracts (ch. 497, F.S.)
- Division of Workers' Compensation:
  - Administer the workers' compensation act: enforce employer compliance, monitor carrier compliance; and assist employees with obtaining compensation (ch. 440, F.S.)
- Office of Insurance Consumer Advocate:
  - Represent the general public in any insurance matter or hearing (s. 627.0613, F.S.)
- Division of Administration (no specific statutes)
- Division of Legal Services (no specific statutes)

*Statutes Implementing Constitutional Duties of Chief Financial Officer* - Currently, ch. 17, F.S., prescribes the duties of the Comptroller regarding the accounting and auditing of state funds, and ch. 18, F.S., prescribes the duties of the Treasurer regarding the holding, investing, and payment of state funds. These two chapters address the core constitutional duties of the two offices, which have not yet been consolidated or revised to apply to the CFO, even though the CFO has constitutionally assumed these duties. This was further implemented by the 2002 act by assigning the Division of Treasury (formerly under the Treasurer) and the Division of Accounting and Auditing (formerly under the Comptroller) to DFS, headed by the CFO.

## **Financial Services Commission (Governor and Cabinet); Office of Insurance Regulation; Office of Financial Institutions and Securities Regulation**

The 2002 act created the Financial Services Commission (commission) within DFS. The commission consists of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, i.e., the Governor and Cabinet, as constituted on January 7, 2003. Three votes are required for any commission action. The act provides:

*The commission shall be a separate budget entity and shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.*<sup>6</sup>

Two "Offices" are created under the commission:

- The Office of Insurance Regulation (OIR)
- The Office of Financial Institutions and Securities Regulation (OFISR)

Each office is headed by a director who is appointed by, and serves at the pleasure of, the commission, with a requirement that both the Governor and the CFO must concur in appointment and removal. On January 9, 2003, the commission appointed directors for each of these two offices. (The director for OIR was appointed on an interim basis for a 90-day period.) The commission and the directors of each office share responsibility for final agency action. The commission acts as agency head for purposes of *rulemaking* under ss. 120.536-120.565, F.S., while each director is an agency head for other final agency actions under ch. 120, F.S., for all areas within the regulatory authority of their respective offices.<sup>7</sup>

### **Statutory Jurisdiction of the Office of Insurance Regulation**

The 2002 act provides that the Office of Insurance Regulation:

*... shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision of insurers, as provided in the Florida Insurance Code or ch. 636.*<sup>8</sup>

The powers and duties of OIR, quoted above, encompass insurance regulatory powers that were *not* assigned to DFS (by virtue of the divisions assigned to DFS). The 2002 act also transferred the Division of Insurer Services from the Department of Insurance to OIR, which division administered almost all of the activities quoted above. The act also transferred to OIR those portions of the Division of Agents and Agency Services that implement functions assigned to OIR, which primarily refers to activities concerning *adjusters*, who were licensed by that division. Also, the act transferred to OIR those positions within the DOI's Division of Legal Services whose responsibilities involve the functions assigned to OIR.

The act provides that OIR is responsible for all activities concerning insurers and other risk bearing entities. There is no statutory definition of *risk bearing entities*, but the Florida Insurance Code requires licensure or certification of various entities which provide a type of *insurance* as that term is defined in s. 624.02, F.S. In addition, outside of the Insurance Code, various provisions authorize the Department of Insurance to approve certain plans of self-insurance. The major statutory jurisdiction and duties of

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<sup>6</sup> S. 20.121(3), F.S.

<sup>7</sup> S. 20.121(3)(c), F.S.

<sup>8</sup> S. 20.121(3)(a)1., F.S.

OIR would reasonably include the following, as formerly delegated to the Department of Insurance (not including other duties that may be included, discussed in *Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*, below):

- Issuance of certificates of authority or licenses to, and regulation of:
  - Authorized insurers (ss. 624.401-430, F.S.), including domestic insurers, assessable mutual insurers, and captive insurers, duties related to insurance holding companies (ch. 628, F.S.), and reciprocal insurers (ch. 629, F.S.)
  - Multiple-employer welfare arrangements (ss. 624.436-624.446, F.S.)
  - Commercial self-insurance funds, including workers' compensation group self-insurance funds (ss. 624.460-624.488, F.S.)
  - Viatical settlement providers and contracts (ss. 626.991-626.99295, F.S.)
  - Purchasing groups and risk retention groups (ss. 627.941-627.955)
  - Fraternal benefit societies (ch. 632, F.S.)
  - Warranty associations (motor vehicle, home, and service) (ch. 634, F.S.)
  - Prepaid limited health service organizations (ch. 636, F.S.)
  - Health maintenance organizations (ch. 641, part I., F.S.)
  - Prepaid health clinics (ch. 641, part II, F.S.)
  - Legal expense corporations (ch. 642, F.S.)
  - Continuing care facilities (ch. 651, F.S.)
- Financial and market conduct examinations of insurers (ss. 624.316, 624.3161, 627.4238, F.S.)
- Administrative supervision of insurers (ss. 624.80-624.915, F.S.)
- Powers regarding accounting, investments, and deposits of insurers (ch. 625, F.S.)
- Licensure and regulation of insurance adjusters (ch. 626, part VI, F.S.)
- Approval of eligible surplus lines insurers (ss. 626.913-.9201, F.S.)
- Regulation of rates for property and casualty insurance, approval of rating organizations, and ordering returns of excess profits (ch. 627, part I, F.S.)
- Approval of plans of operation and regulation of joint underwriting associations (not including appointment of board members previously appointed by the Insurance Commissioner), including Citizens Property Insurance Corporation, the Florida Patient's Compensation Fund, and the Florida Birth-Related Neurological Injury Compensation Association, and other JUAs, and adoption of a market assistance plan (ss. 627.311, 627.351, 627.3515, 766.105, and 766.314, F.S.)
- Approval of insurance policy forms and health insurance rates (ss. 627.410-627.4234, F.S.)
- Regulation of donor annuity agreements (s. 627.481, F.S.)
- Licensure and regulation of premium finance companies and agreements (ch. 627, part XV, F.S.)
- Receiving reports of claims information from insurers (ch. 627, part XVII, F.S.)
- Approval of local government self-insurance plans for health coverage (s. 110.08, F.S.)

### **Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps**

Even though the 2002 act is clear on most jurisdictional issues, certain areas may be unclear, pose difficult problems in conforming the statutes, or raise policy concerns, as discussed below.

### **Office of Insurance Regulation**

*Receivership proceedings; guaranty funds* - The act delegates to OIR the responsibility for all Insurance Code activities concerning insurers, including solvency and administrative supervision. But, DFS is assigned the Division of Insurer Rehabilitation and Liquidation. This indicates the Legislature's intent that OIR make the determination that a carrier has been rendered insolvent and to petition a court for an order to appoint a receiver to liquidate the insurer's assets, but that DFS be appointed as the receiver and handle the receivership from that point forward. The related powers of the former Department of Insurance in ch. 631, F.S., must be carefully reviewed and amended accordingly. A

related management decision is whether attorneys employed by DFS or OIR go to court to seek the receivership order. Another issue is the oversight of the various insurance guaranty associations which pay claims of insolvent insurers. Given their central role in the rehabilitation and liquidation process, authorizing DFS to approve plans of operation and oversee the various insurance guaranty associations appears consistent with its jurisdiction.

*Service of Process* - The Insurance Commissioner is the statutorily designated agent for service of process for various persons in the insurance arena. A distinction could be made to make the Director of OIR and the CFO each agents for service of process for persons related to each one's jurisdiction; however, it may be preferable to have one office for service of process, given its ministerial nature and for reasons of efficiency and minimizing confusion to the public.

*General Powers* - The law provides certain general powers to the former Department of Insurance, most of which are in part I of ch. 624, F.S., such as the authority to have an official seal (s. 624.303, F.S.), to publish and disseminate information (s. 624.307(4), F.S.), duties with respect to maintenance and destruction of records (s. 624.312, F.S.), the authority to employ actuaries as at-will employees, (s. 624.307(6), F.S.), and others. More importantly, there are general enforcement powers, such as s. 624.310, F.S., which provide powers to DOI to issue cease and desist orders against persons who violate the Insurance Code and to order the removal of affiliated parties, and to impose administrative fines under certain circumstances. Such enforcement powers are needed (and currently assumed) by both DFS and OIR, but limited to the persons they each regulate, which conforming legislation must clarify.

*Administrators and Service Companies* - The act provides for OIR to regulate risk-bearing entities and insurance adjusters and for DFS to regulate insurance agents (by being assigned the Division of Agent and Agency Services). However, the regulation of administrators and service companies (ss. 626.88-626.899, F.S.) is not clearly in either category. An administrator is a person who solicits or effects coverage, collects premiums, or adjusts or settles claims, in connection with insured or self-insured programs which provide life or health coverage. A service company performs these same functions but does not control funds.<sup>9</sup> Neither appears to be a "risk-bearing entity" and both perform functions similar to an agent, which may argue for regulation by DFS. Both are currently licensed under DOI's Division of Insurer Services and perform functions similar to an insurance adjuster, which argues for regulation by OIR.

*Viatical settlement brokers*: Unlike viatical settlement providers who are risk assuming entities, viatical settlement brokers are similar to insurance agents. The 2002 act assigned regulation of insurance agents to DFS which may include regulation of viatical settlement brokers. But, the act also assigned regulation of *viatical settlements* to OIR, which could be interpreted to include both brokers and providers.

*General powers related to agents and adjusters (and other licensees under ch. 626, F.S.)* - The authority for OIR to regulate insurance adjusters, distinct from the authority for DFS to regulate insurance agents, affects a number of provisions in ch. 626, F.S., which currently authorize the Department of Insurance to regulate both. Since many of the current statutes apply to both agents and adjusters, DFS and OIR are apparently provided authority that is limited to the licensure category that they each regulate, which needs to be clarified in conforming legislation. This also affects other licensure categories in this chapter for which jurisdiction may be unclear, such as administrators, service companies, and viatical settlement brokers, as discussed above.

*Unfair Insurance Trade Practice Violations* - Section 626.9541, F.S., lists various prohibited acts, commonly known as unfair insurance trade practices. In some cases, this law applies to persons who are not licensed by the Department of Insurance, but the department is authorized to take enforcement actions relative to such persons. For example, it is unlawful for any person to offer free insurance as an

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<sup>9</sup> Section 626.88(1), F.S., defines *administrator*, and s. 626.895, F.S., defines *service company*.

inducement to the purchase of property or services. Also, physicians are prohibited from filing false claims with insurers. With insurance jurisdiction split between DFS and OIR, it may not be clear where the authority lies to pursue a given violation.

*Division of Consumer Services* - The act assigned the Division of Insurance Consumer Services to DFS from the Department of Insurance and renamed it the Division of Consumer Services without the reference to insurance. The Committee on Transition Management (discussed below) assumed that the Legislature's intent was for the division to handle consumer complaints related to financial institutions and securities, as well as insurance. Except for s. 21.121, F.S., there is no statute that cites this division (by either name). In practice, this division receives inquiries and complaints from consumers, requests insurers to submit a written response, and attempts to resolve the complaint, which is not addressed in statute. The division also prepares and disseminates information as to insurance products or services, which the statutes do address. But, any sanctions against insurers that arise from consumer complaints or otherwise were handled by other divisions in DOI, and now appear to be within the authority of OIR.

*Statewide Provider and Subscriber Assistance Program* - Current law (s. 408.7056, F.S.) establishes a panel to assist subscribers who have unresolved grievances with managed care entities. The panel includes employees of the Department of Insurance (DOI) and the Agency for Health Care Administration (AHCA), among others. The panel holds hearings and makes recommendations to DOI or ACHA for imposing any sanctions against the managed care entity. It may be unclear whether employees of OIR, which assumes DOI's duties of regulating HMOs, or employees of DFS, which are assigned the Office of Insurance Consumer Advocate, or both, should be on the panel. Until further addressed by the Legislature, this may be an "appointment" by the Insurance Commissioner that the CFO is authorized to make until June 30, 2003. (See, *Membership and Appointments to Boards and Commissions*, below.)

*Monitoring of Workers' Compensation Insurers* - The 2002 act transferred the Division of Workers' Compensation to DFS, but made OIR responsible for *market conduct examinations* and *all activities concerning* insurers, effective January 7, 2003. Prior to that transfer, a different 2002 act transferred the same division from the Department of Labor and Employment Security (DLES) to the Department of Insurance, effective July 1, 2002.<sup>10</sup> That act also amended ss. 440.13 and 440.20, F.S., to require that monitoring or market conduct examinations of workers' compensation insurers be conducted pursuant to s. 624.3161, F.S., which provides the requirements for market conduct examinations of insurers by DOI. However, certain provisions in ss. 440.13 and 440.20, F.S., authorize DOI (and previously authorized DLES) to monitor carrier payments, to establish standards for compliance, to determine non-compliance, and to fine insurers for late payments, without making specific reference to the market conduct examination statute. Although the role of OIR to conduct market conduct examinations of insurers is clear, it is less clear to what extent DFS also has powers to monitor, examine, establish standards, or sanction carriers for late payments and other matters of non-compliance under chapter 440, F.S.

*Authorization of employers to self-insure for workers' compensation* - The authority for OIR to regulate risk assuming entities and for DFS to assume the responsibilities of the Division of Workers' Compensation raises the question of which office approves employers to be self-insured for workers' compensation coverage (including public utility self-insurance programs) under s. 440.38, F.S. This was formerly done by the Division of Workers' Compensation under DLES and DOI, which indicates that this task is assumed by the same division under DFS. Similarly, DFS would appear to assume the oversight responsibilities of the division with respect to the Florida Self-Insurers Guaranty Association, which guarantees payment of workers' compensation claims for insolvent self-insured employers, which was also the responsibility of the division under DLES.

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<sup>10</sup> Ch. 2002-194, L.O.F. The act abolished the Department of Labor and Employment Security and transferred its functions to multiple agencies.



*Administration of deposits of cash or securities; surety bonds* - Various provisions of the Insurance Code require insurers and other licensed entities to deposit cash or eligible securities with the Department of Insurance. In some cases, a surety bond is allowed as an alternative. Depending on the particular statute, the law may authorize the department to approve the amount and type of security used, specify the conditions for returning the deposit, and determine if the licensee has met such conditions. But, the statutes do not currently distinguish between the role, in practice, of the Division of Treasury to hold the deposit or make arrangements with qualified public depositories to hold the deposit, and the role of the Division of Insurer Services or other division that issued the license to determine whether the statutory requirements for the deposit are met. Surety bonds, on the other hand, have been administered solely by the division that issued the license, for which the Division of Treasury has had no role.

Under the 2002 act, these duties regarding deposit requirements appear to be split between DFS which was assigned the Division of Treasury, and OIR which was assigned the Division of Insurer Services and is responsible for regulating insurers and risk-bearing entities. This does not create significant practical problems, since these duties have been functionally split between divisions, but the statutes must now distinguish the duties of DFS and OIR because there are different agency heads for each.

### **Statutory Jurisdiction of the Office of Financial Institutions and Securities Regulation**

The 2002 act provides that the Office of Financial Institutions and Securities Regulation:

*....shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.*<sup>11</sup>

The responsibilities of OFISR, quoted above, generally encompass all of the statutory duties previously delegated to the Department of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all specifically assigned to the Department of Financial Services. Listed below for reference are the subject areas and statutory jurisdiction that were previously delegated to the Department of Banking and Finance, and are now within the jurisdiction of OFISR (not including other duties that may be included, discussed in *Areas Where Jurisdiction of DFS and the OFISR is Unclear or Overlaps*, below):

- Mortgage Brokers, Lenders and Mortgage Companies (ch. 494, F.S.)
- Consumer Finance Companies (ch. 516, F.S.)
- Securities Registration and Securities Dealers, Investment Advisers, and Associated Persons ( ch. 517, F.S.)
- Retail Installment Sales Providers (motor vehicle installment sellers, retail installment sellers, sales finance companies and home improvement finance sellers; ch. 520, F.S.)
- Title Loans (ch. 537, F.S.)
- Collection Agencies (ch. 559, parts V and VI, F.S.)
- Money Transmitters (including check cashers, foreign currency exchanges, and deferred presentment provider; ch. 560, F.S.)
- Financial Institutions (ch. 655, F.S.)
- Credit Unions (ch. 657, F.S.)
- Bank and Trust Companies (ch. 658, F.S.)
- Trust Business (ch. 660, F.S.)
- International Banking (ch. 663, F.S.)
- Associations (ch. 665, F.S.)
- Savings Banks (ch. 667, F.S.)

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<sup>11</sup> S. 20.121(3)(a)2., F.S.

- Interest and Usury; Lending Practices (ch. 687, F.S.)
- Certified Capital Companies (s. 288.99, F.S.)

## **Areas Where Jurisdiction of DFS and OFISR is Unclear or Overlaps**

*Division of Consumer Services* – As mentioned under the jurisdictional area of insurance, the Legislature assigned the Division of Insurance Consumer Services to DFS and renamed it the Division of Consumer Services, deleting the reference to insurance. The Committee on Transition Management (discussed below) assumed that this indicated a Legislative intent to have the division handle consumer complaints related to financial institutions and securities, as well as insurance. But, except for s. 21.121, F.S., there is no statute that cites this division (by either name).

As mentioned above, the division's practice under the Department of Insurance has been to have the initial attempt to resolve the complaint for all areas of insurance regulation handled by the division and any sanctions handled by the regulatory divisions. Conversely, under the former Department of Banking and Finance, the practice has been to have the complaint process integrated with the regulatory functions so that the path from complaint to investigation to sanction would be a seamless process.

*Service of Process* – Under the current statutes, the only statutory reference to service of process within the financial institutions and securities jurisdictional area is found in ch. 517, F.S., which regulates the securities industry. The current practice is to use such service as an imminent warning system to regulators that they may need to begin an investigation of the agent or company served.

*Securities Regulation* – Chapter 517, F.S., regulates securities dealers, investment advisers, and associated persons (ch. 517, F.S.). As a practice, the former Department of Banking and Finance handled the licensing of securities agents as part of its regulatory functions. The 2002 act delegated authority to OFISR for all activities related to the securities industry, but the Transition Committee determined that, for reasons of efficiency, certain administrative and data processing functions related to licensure of securities dealers should be performed by the Division of Agent and Agency Licensing in DFS, subject to a legal opinion that this is consistent with the 2002 act.

## **Membership and Appointment to Boards and Commissions**

The 2002 act provides legislative intent that, from January 7, 2003, until June 30, 2003, the statutory responsibility for appointments to commissions, boards, associations, councils, committees, or other collegial bodies, that were vested in the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal, shall become the responsibility of the CFO.<sup>12</sup> A conforming bill must delegate continuing appointment authority for each of these boards and commissions. Issues to consider are whether the CFO should appoint only 1 member in those cases where the Treasurer and Comptroller each appointed a member, and whether any appointments should be made by a different officer that may have a closer jurisdictional tie to a particular commission than the CFO. Currently, employees of the Department of Insurance are designated as members of certain boards or councils, which may be considered an "appointment," which raises the issue of whether an employee of DFS or OIR should be a member, regardless of whether the CFO continues to make the appointment. (See, *Impact of Proposed Legislation*, below, for more detail on each board and commission addressed by this bill.)

## **Prohibited Financial Interests**

*Prohibited financial interests* - Section 624.305, F.S., prohibits the Insurance Commissioner and Treasurer and any employee of the Department of Insurance from having any financial interest in any insurer or insurance agency, except as a policyholder or claimant, or from receiving any outside

<sup>12</sup> S. 8, ch. 2002-404, L.O.F.

compensation for services rendered as a department employee. The current status of this law is unclear, as is the appropriate conforming legislation. The issues to consider are whether to repeal the current restrictions, or whether to amend them to apply to the employees of DFS and/or OIR (but presumably not OFISR), and whether they should be applied to the CFO and/or the members of the commission (the Governor and Cabinet), given the commission's power to adopt rules and to appoint the director of OIR. If the restrictions are applied to all DFS and OIR employees, it may be also be considered whether to allow an extended time to comply for employees who were not previously subject to this law, such as employees of the Division of Accounting and Auditing transferred from the Department of Banking and Finance. No similar statute prohibiting financial interests in regulated entities applied to employees of DBF, most of whom were transferred to OFISR.

### **Citizens Property Insurance Corporation**

Legislation was enacted in 2002 which created the Citizens Property Insurance Corporation (Citizens), which assumed the operations of the former Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).<sup>13</sup> Citizens is now the only state-created, residual market insurer that provides residential property insurance or windstorm coverage to persons unable to obtain coverage from an authorized insurer. However, most statutory references to the RPCJUA and the FWUA were not changed by last year's act. It is assumed that the Legislature intended for such laws to apply to Citizens. (See, *Impact of Proposed Legislation*, below, for more detail on the current law and the changes made.)

### **Committee of Transition Management; Draft Legislation; Interim Project**

The 2002 act created the Committee of Transition Management (Transition Committee), with 1 member each appointed by the Governor, the Comptroller, the Treasurer, the chair of the Senate Appropriations Committee, and the chair of the House Fiscal Responsibility Council. The committee was charged with overseeing the transition of the affected agencies and to provide a written report specifying the placement of those positions that are transferred, submit to the commission a proposed organization plan, and provide written recommendations by February 1, 2003, as to statutory changes to facilitate the operations of the department. The act further directed the relevant substantive committees of the Senate and the House to prepare draft legislation to conform the Florida Statutes to the act.<sup>14</sup>

The Transition Committee met during the interim, devoting its efforts to determining a proposed organizational plan for DFS, the commission, OIR, and OFISR, and the assignment of specific positions from DOI and DBF to the affected agencies. The committee held its last meeting in December 2002, having generally agreed on all organizational and personnel issues, but it did not submit a final report and certain organizational issues remain under discussion. The commission has not exercised its authority to adopt rules for the department's organization. Questions remain on the degree of organizational autonomy that should be provided to the commission and its two offices, independent from DFS, given the 2002 act's provision that *the commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters*. But, the act also provides that the commission is within the department, and that the department shall provide administrative and information systems support to the offices, and that the commission has the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability. Issues regarding whether the commission or its offices should organizationally control its own administrative functions, such as budgeting, personnel management, financial and support services, communications, and legislative affairs, were raised during Transition Committee's meetings, but recommendations for legislative specificity on the subject were not put forward by the committee.

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<sup>13</sup> Ch. 2002-240, L.O.F. , amending s. 627.351, F.S.

<sup>14</sup> S. 6, ch. 2002-404, L.O.F.

The General Appropriations Act will specify the budget and positions for DFS and the commission, which requires workload analysis for divisions split between DFS and OIR, such as the attorney positions in DOI's Division of Legal Services and positions in the Division of Agent and Agency Services responsible for licensure of adjusters transferred to OIR. The Transition Committee also debated licensure of securities dealers, formerly in DBF. The 2002 act delegated authority to OFISR for all activities related to the securities industry, but the Transition Committee determined that for reasons of efficiency, certain administrative and data processing functions related to licensure of securities dealers should be performed by the Division of Agent and Agency Licensing in DFS, subject to a legal opinion that this is consistent with the 2002 act.

Staff members of the Banking Committee (now part of the Commerce Committee) and Competitive Commerce Council were assigned a joint interim project of monitoring the work of the Transition Committee and of preparing, in conjunction with Senate staff, draft legislation to conform to the 2002 act. This bill and the State Administration Committee PCB (and the member bills addressing Cabinet-related issues) are the proposed bills to conform to the 2002 act. The proposed legislation was developed in meetings with legislative staff of the Senate and the affected agencies, with the objective of being consistent with the 2002 act and to attempt to reach consensus on as many issues as possible, which was substantially achieved, recognizing that certain jurisdictional areas are unclear.

### **Effect of Proposed Legislation**

The bill makes changes to the Florida Statutes to conform to the constitutional amendment that established the office of the Chief Financial Officer and to the 2002 act that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003.

Although the jurisdictional requirements of the 2002 act are clear on most issues, certain areas are unclear, pose difficult problems in conforming the statutes, or raise policy issues. The sections included in this bill address the areas identified as such during the statutory review by House and Senate staff and departmental representatives. In an effort to keep certain sections together for reference purposes, there are also a significant number of the changes included in this bill that simply conform to the reassignment of all statutory authority currently assigned to the Treasurer, Comptroller, Insurance Commissioner, Department of Insurance, and the Department of Banking and Finance, to the Chief Financial Officer, Department of Financial Services, Financial Services Commission, Office of Insurance Regulation, and the Office of Financial Institutions and Securities Regulation, consistent with the 2002 act. In some instances, the bill repeals or deletes outdated provisions of the statutes related to the regulation of banking and insurance; changes references from the Florida Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association, to the Citizens Property Insurance Corporation (Citizens) to conform to the act creating Citizens (Chapter 2002-404, L.O.F.); and updates references to the latest edition of publications that are cited in the Insurance Code for purposes of establishing accounting and actuarial standards for insurers and HMOs. Two separate bills (HB 739 and HB 1627) make the majority of the conforming changes related to the restructuring of the Cabinet.

### **Organizational Structure; Key Terms and Definitions**

The bill maintains the current statutory organization of the Florida Insurance Code and the financial codes and other laws.

The key terms used in the bill are:

- *Chief Financial Officer* (no definition needed)
- *department* (defined as Department of Financial Services)
- *commission* (defined as Financial Services Commission)

- *office* (defined as either the Office of Insurance Regulation or the Office of Financial Institutions and Securities Regulation, depending on its statutory location).

The bill uses the term, **Chief Financial Officer**, primarily for those duties that are directly related to constitutional state fiscal powers of the CFO, for which the current law typically uses *Treasurer* or *Comptroller*, or duties that are clearly personal in nature, such as appointment powers.

The bill defines the term **department** to mean the Department of Financial Services in various places in the Florida Statutes where the term is currently defined as either the Department of Insurance or the Department of Banking and Finance. This is done for those matters that are now within the jurisdiction of DFS (headed by the CFO). Since the CFO is the agency head for DFS, the terms *department* and *Chief Financial Officer* generally have the same meaning.

**Note:** there are many provisions of the Florida Statutes, including entire sections, using the term **department** that are **not amended** by this bill or the State Administration Committee PCB, primarily within the Florida Insurance Code, where the term would now be defined as the Department of Financial Services. Each of those statutes were reviewed during the preparation of this bill, reflecting a decision that such statutes do not need to be amended because the power granted to the *department* is within the jurisdiction of the DFS. Neither this analysis nor the one prepared for the State Administration Committee PCB identifies those specific sections, but the powers and duties in those sections are all consistent with, and directly related to, the powers and duties of DFS as described in both analyses.

The term **office**, defined as either the Office of Insurance Regulation (OIR), or the Office of Financial Institutions and Securities Regulation (OFISR), is used for all matters within the jurisdiction of each office, to conform to the provision that the director of each office is agency head for all final agency action, other than rulemaking. The two definitions of *office* provided this bill for insurance in chapter 624, F.S., and by the State Administration Committee PCB for financial institutions in chapter 655, F.S., with the broadest application are:

- s. 624.05, F.S., which defines *office* as the Office of Insurance Regulation, for purposes of the Florida Insurance Code, consisting of chapters 624 through 632, and 634 through 651, F.S. (s. 624.01, F.S., specifies the Insurance Code).
- s. 655.005, F.S., (included in the State Administration Committee PCB) which defines *office* as the Office of Financial Institutions and Securities Regulation, for purposes of the financial institution codes, consisting of chapters 655 through 667, F.S. (s. 655.005(1)(j), F.S., specifies the financial codes).

The bill uses the term **commission**, meaning Financial Services Commission, in those provisions that expressly or clearly provide **rulemaking authority** to matters within the jurisdiction of either office (OIR or OFISR), to conform to the provision of the 2002 act that the commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.

A particular statute may not expressly require rulemaking, but may authorize agency action for which a rule is effectively required under ch. 120, F.S. In such cases, the bill generally uses the term *office* rather than *commission*, but the use of the term is not intended to impact the requirements of ch. 120, F.S., as to when a rule is required, or the requirement of s. 20.121, F.S., that the commission acts as agency head for all rulemaking for each office. Some sections indicate that agency action could apply uniquely to an individual or have general application to a class of persons, for which the bill uses the term *commission or office*. For example, various sections currently require applicants for licensure to submit such additional information as the department (DOI or DBF) requires. Recognizing that certain information may be required of all applicants for which a rule would be required, but that certain information may be required of an individual applicant, the bill generally refers to additional information as the *office or commission* requires, unless the context indicates otherwise.

## **Statutes Implementing Constitutional Duties of the Chief Financial Officer**

*Chapter 17, F.S.; Chief Financial Officer.* - The State Administration Committee PCB merges ch. 17, F.S. (Comptroller) and ch. 18, F.S. (Treasurer) into a revised ch. 17, F.S. (Chief Financial Officer), which contains the statutory duties that are most directly related to the constitutional duties of the CFO. All powers currently provided to the Treasurer or Comptroller are deleted and assigned to the CFO. Throughout the statutes relating to the regulation of insurance and financial institutions and securities there are instances where the terms Treasurer and Comptroller are used in reference to the regulatory heads of the Departments of Insurance and Banking and Finance and are also used in reference to the constitutional functions of these positions. Conforming to the revisions in ch. 17, F.S., this bill refers either to the CFO or to the new department in place of both the terms Treasurer and Comptroller when the function relates to constitutional duties or those other regulatory duties specifically assigned to the CFO.

## **Statutory Duties Assigned to the Department of Financial Services (headed by CFO)**

The major statutory duties and responsibilities that both this bill and the State Administration Committee PCB assign to the Department of Financial Services (headed by the CFO), are listed below for the purpose of reference (not including other powers and duties that are separately addressed in, *How the Bill Addresses Areas Where Jurisdiction of DFS and OIR or OFISR is Unclear or Overlaps*):

- Accounting and auditing of state funds, keeping and investing state funds and securities, disbursing payment of state funds, and all other state fiscal powers of the former Treasurer and Comptroller (chs. 17, 215, 216, 287, and other sections throughout the statutes.)
- Approval of financial institutions as public depositories (ch. 280, F.S.)
- Administration of the deferred compensation program for state employees (s. 112.215, F.S.)
- Administration of the unclaimed property program (ch. 717, F.S.)
- Duties of the State Fire Marshal to regulate installation of fire equipment, conduct safety inspections, investigate causes of fires, provide firefighter training and certification, adopt safety rules for firefighter employers and fire codes for specified buildings (ch. 633, F.S.); license and permit the manufacture and use of explosives (ch. 552, F.S.); regulate the sale of fireworks (ch. 791, F.S.)
- Administration of the state's risk management program for property, auto, liability, and workers' compensation (ch. 284, F.S.; ss. 265.53-265.55, 393.002, 393.075, 409.175, 766.28, F.S.)
- Investigation and arrest of insurance fraud crimes (ss. 626.989 and 626.9892, F.S.)
- Acting as court-appointed receiver, liquidator, or rehabilitator of an insurer, HMO, or other entity regulated by OIR to which the provisions of ch. 631 apply; approval of plans of operation and oversight of insurance guaranty associations (relevant sections of ch. 631, F.S., and other sections throughout the statutes.)
- Licensure and regulation of insurance agents and agencies, customer representatives, service representatives, reinsurance intermediaries, and bail bond agents (applicable provisions of chs. 626 and 648, F.S.);
- Licensure and regulation of cemeteries and pre-need funeral and burial contracts (ch. 497, F.S.)
- Administration of the workers' compensation act, including enforcement of employer compliance, monitoring carrier compliance, and assisting employees with obtaining compensation (ch. 440, F.S.)
- Authority of the Office of Insurance Consumer Advocate to represent the general public in any insurance matter or hearing (s. 627.0613, F.S.)
- Authority to receive inquiries and complaints related to insurance or financial institutions from consumers, provide assistance for consumers, and prepare and disseminate information about regulated products and services.

## **Statutory Duties Assigned to the Office of Insurance Regulation**

Both the State Administration PCB and this bill include sections which assign the statutory powers and duties listed below to the Office of Insurance Regulation (and to the commission, for rulemaking), which the current statutes assign to the Department of Insurance and are listed here for reference. (However, the list below does not include other powers and duties separately discussed in, *How the bill Addresses Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*, which follows this section of the analysis.)

- Issuance of certificates of authority or licenses to, and regulation of:
  - Authorized insurers (ss. 624.401-.430, F.S.), including domestic insurers, assessable mutual insurers, and captive insurers, and duties related to insurance holding companies (ch. 628, F.S.), and reciprocal insurers (ch. 629, F.S.)
  - Multiple-employer welfare arrangements (ss. 624.436-624.446, F.S.)
  - Commercial self-insurance funds, including workers' compensation group self-insurance funds (ss. 624.460-624.488, F.S.)
  - Viatical settlement providers and contracts (ss. 626.991-626.99295, F.S.)
  - Purchasing groups and risk retention groups (ss. 627.941-627.955, F.S.)
  - Fraternal benefit societies (ch. 632, F.S.)
  - Warranty associations (motor vehicle, home, and service) (ch. 634, F.S.)
  - Prepaid limited health service organizations (ch. 636, F.S.)
  - Health maintenance organizations (ch. 641, part I, F.S.)
  - Prepaid health clinics (ch. 641, part II, F.S.)
  - Legal expense corporations (ch. 642, F.S.)
  - Continuing care facilities (ch. 651, F.S.; related provisions in ch. 400, F.S.)
- Financial and market conduct examinations of insurers (ss. 624.316, 624.3161, 627.4238, F.S.)
- Administrative supervision of insurers (ss. 624.80-624.915, F.S.)
- Powers regarding accounting, investments, and deposits of insurers (ch. 625, F.S.)
- Licensure and regulation of insurance adjusters (ch. 626, part VI, F.S., and related general powers in ch. 626, F.S.)
- Approval of eligible surplus lines insurers (ss. 626.913-.9201, F.S.)
- Regulation of rates for property and casualty insurance, approval of rating organizations, and ordering returns of excess profits (ch. 627, part I, F.S.)
- Approval of plans of operation and regulation of joint underwriting associations (not including appointment of board members), including Citizens Property Insurance Corporation, the Florida Patient's Compensation Fund, the Florida Birth-Related Neurological Injury Compensation Association, at other JUAs, and adoption of a market assistance plan (ss. 627.311, 627.351, 627.3515, 766.105, and 766.314, F.S.)
- Approval of insurance policy forms and health insurance rates (ss. 627.410-627.4234, F.S.)
- Regulation of donor annuity agreements (s. 627.481, F.S.)
- Licensure and regulation of premium finance companies and agreements (ch. 627, part XV, F.S.)
- Receiving reports of claims information from insurers (ch. 627, part XVII, F.S.)
- Approval of local government self-insurance plans for health coverage (s. 110.08, F.S.) and other duties of former DOI related to approval of governmental self-insurance plans of self-insurance (ss. 154.209, 163.01, F.S.)
- Duties of the former Department of Insurance relative to:
  - approval of self-insurance plans to satisfy motor vehicle financial responsibility requirements (ss. 324.032, 324.171, F.S.);
  - providing assistance to the Dept. of Environmental Protection to implement the Florida Petroleum Liability and Restoration Insurance Program (s. 376.3072, F.S.) and to implement financial responsibility requirements for hazardous waste facilities (s. 403.724, F.S.);
  - the required purchase of insurance by dry-cleaning facilities (ss. 376.3078, 376.3079, F.S.);

- approval of self-insurance plans for life support services licensed by the Dept. of Health (s. 401.25, F.S.);
- approval of health flex plans in conjunction with the Agency for Health Care Administration (s. 408.909, F.S.);
- certification of health insurance coverage to qualify for premium assistance for an eligible child under the Florida KidCare Act and related duties (ss. 409.817-409.912, F.S.)

### **How the Bill Addresses Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps**

*Receivership proceedings; guaranty funds* - The bill amends ch. 631, F.S., to provide statutory authority to OIR to make the determination that an insurer or HMO has been rendered insolvent and to petition a court for an order to appoint a receiver to liquidate the insurer's assets. But, the bill provides that DFS is to be the court-appointed receiver, liquidator, or rehabilitator of the insurer, and has primary statutory authority for receivership matters from that point forward. The bill also assigns to DFS the statutory authority to oversee the various insurance guaranty associations which pay claims of insolvent insurers (as well as the power of the CFO to make appointments to the boards of the guaranty funds, discussed below).

*Service of Process* - The State Administration Committee PCB provides that the CFO is the agent for service of process in all instances where the current law provides that the Insurance Commissioner is the agent for service of process. A distinction could have been made to make the director of OIR and the CFO each agents for service of process for persons related to each one's jurisdiction, but the bill provides for one office to be agent for service of process, as it existed under DOI, given its ministerial nature and for reasons of efficiency and minimizing confusion to the public since the current practice is to have this service of process for all areas of insurance regulation housed in one office.

For this purpose, the State Administration Committee PCB amends s. 48.151, F.S., to provide that the CFO, rather than the Insurance Commissioner, would be the agent for service of process on insurers applying for a certificate of authority, licensed nonresident insurance agents, unauthorized insurers (in order to subject certain insurers and persons to the jurisdiction of courts in this state in suits by insureds), domestic reciprocal insurers, fraternal benefit societies, and persons required to file statements pursuant to s. 628.461, F.S., (who acquire 5 percent or more of the controlling stock of a domestic insurer or controlling company).

*General Powers* - The bill and the State Administration Committee PCB delegate certain general powers of the former Department of Insurance to both DFS and OIR, most of which are in part I of chapter 624, such as the authority to have an official seal (s. 624.303, F.S.), to publish and disseminate information (s. 624.307(4), F.S.), and duties with respect to maintenance and destruction of records (s. 624.312, F.S.). The State Administration Committee PCB also authorizes both DFS and OIR to employ actuaries as at-will employees, based on the possible need for DFS to hire an actuary for the Office of the Insurance Consumer Advocate or the Division of Risk Management (s. 624.307(6), F.S.).

Other general powers are similarly delegated to both DFS and OIR but, due to their regulatory nature, the bill conforms to the provisions in the State Administration PCB which more clearly express that such powers are limited to the regulatory jurisdiction of the department or the office, respectively, as done in s. 624.307, F.S., regarding the general power to enforce the provisions of the Insurance Code and to conduct investigations. A key example is s. 624.310, F.S., which currently authorizes DOI to issue cease and desist orders against licensees, to order the removal of affiliated parties of a licensee, and to impose administrative fines against any person who violates the Insurance Code. The State Administration PCB, in subsection (2), authorizes both DFS and OIR to exercise these powers, but only with regard to the licensees that they each regulate affiliated parties of such licensees, and unlicensed persons within the regulatory jurisdiction of either OIR or DFS, respectively. This subsection operates to limit the authority provided to *the department or office* in other provisions of this section. The reference to *unlicensed persons* is added due to the authority in the current section for administrative



fining against *any person* found to have violated any provision of the Insurance Code, such as a person selling insurance without being properly licensed.

*Administrators and Service Companies* - The bill provides for OIR to regulate administrators and service companies (ss. 626.88-626.899, F.S.), under the interpretation that such persons are within the jurisdiction of the office to regulate adjusters and the fact that the former Division of Insurer Services under DOI, transferred to OIR, exercised these functions. An administrator is a person who solicits or effects coverage, collects premiums, or adjusts or settles claims, in connection with insured or self-insured programs which provide life or health coverage. A service company performs these same functions but does not control funds.<sup>15</sup>

*Viatical settlement brokers* - The bill provides for the *department* (DFS) to license and regulate viatical settlement *brokers*, under the interpretation that such persons are within the jurisdiction of the department to regulate insurance agents, rather than being within the jurisdiction of OIR to regulate *viatical settlements* and to regulate viatical settlement providers as risk-bearing entities.

*General powers related to agents, adjusters, and other licensees under chapter 626; Unfair insurance trade practices* - The bill creates s. 626.016, F.S., which specifies how the powers and duties of ch. 626, F.S., are to be applied to the department (DFS) and the office (OIR), respectively. This is a key section which specifies how all other sections in the chapter which provide a power to the *department or office* (or to the *department or commission* for rulemaking) are to be interpreted and limited. This affects general power statutes applying to different licensure categories, some of which are regulated by DFS, and some by OIR and the commission.

Subsection (1) provides that the powers and duties of the CFO and DFS specified in ch. 626, F.S., apply only with respect to insurance agents, managing general agents, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, agencies, and unlicensed persons subject to the regulatory jurisdiction of the department.

Subsection (2) provides that the powers and duties of the commission and office apply only with respect to insurance adjusters, service companies, administrators, viatical settlement providers and contracts, and unlicensed persons subject to the regulatory jurisdiction of the commission and office. These two subsections are intended to reference all of the licenses issued pursuant to this chapter and are intended to apply to those statutory powers of the *department or office* that apply to multiple licensure categories. However, subsection (4) specifies that nothing in the section is intended to limit the authority of the department and its Division of Insurance Fraud, as specified in s. 626.989, F.S., which provides criminal investigation and arrest powers that apply to all persons.

Subsection (3) of new s. 626.016, F.S., is primarily intended to address the powers to enforce the provisions of Part IX that prohibit acts commonly known as unfair insurance trade practices. Section 626.9541, F.S., lists prohibited acts, most of which apply to insurers, agents, and other licensees of the department or office, and some of which apply to persons who are not licensed. For example, an unlicensed person may be illegally selling insurance as well as engaging in unlawful trade practices. Subsection (3) provides that the department (DFS) has jurisdiction to enforce the provisions of this chapter with respect to persons who engage in actions for which a license issued by the department is legally required, and the office (OIR) has jurisdiction to enforce the provisions of this chapter with respect to persons who engage in actions for which a license issued by the office is legally required. For persons who violate a provisions of this chapter for whom a license issued by either the department or office is not required, either the department or office may take administrative action pursuant to agreement between the office and the department.

Note, however, that subsections (1) and (2) may conflict with subsection (3) and may need further clarification. Subsection (3) limits powers and duties in this chapter to the department and office with

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<sup>15</sup> Section 626.88(1), F.S., defines *administrator*, and s. 626.895, F.S., defines *service company*.

respect to (all) licensees of the department and office, respectively (and to unlicensed persons pursuant to agreement between the department and office). But, subsections (1) and (2) limit the powers and duties of the department and office to specific licensure categories. The correction may be to provide more specific cross-references to the powers and duties in ch. 626, F.S.

*Division of Consumer Services* - The bill amends s. 20.121, F.S., to specify the functions of the Division of Consumer Services, formerly called the Division of Insurance Consumer Services, which the 2002 act renamed and transferred from DOI to DFS. This is intended to clarify the 2002 act, because no current statute other than this section cites this division, and its scope of duties may be subject to broader interpretation than other divisions. (This division is distinct from the Office of the Insurance Consumer Advocate, also assigned to DFS and appointed by the CFO, which is authorized to represent the general public in any insurance matter or hearing, as specified in s. 627.0613, F.S.)

The bill provides that the Division of Consumer Services shall perform the following functions concerning products or services regulated by DFS or by either office (OIR or OFISR) of the commission:

- Receive inquiries and complaints from consumers (and responses from licensees, as explained below);
- Prepare and disseminate such information as the department deems appropriate to inform or assist consumers;
- Provide direct assistance and advocacy for consumer who request such assistance or advocacy; and
- With respect to apparent or potential violations or laws or rules, report such violations to the appropriate division of the department or office of the commission, which may take such further action as it deems appropriate.

This bill specifically authorizes the division to request information relating to consumer inquiries or complaints and to levy administrative fines for noncompliance with this request. This language replaces the current more general authority codifying the current practice of the former Division of Insurance Consumer Services in relation to regulated insurance entities. The bill extends the response time to 20 days and specifies that for entities regulated by the Department of Financial Services, the division can impose an administrative penalty for failure to comply with the request for information in an amount up to \$2,500 per violation. For entities regulated by the Office of Insurance Regulation, the division may impose an administrative fine of \$250 for the first violation, \$500 for the second violation and up to \$1,000 per violation thereafter. The bill further exempts from these provisions any entity regulated by OFISR, however, the division will be able to act as the call center for complaints related to that office. The division also prepares and disseminates information as to insurance products or services, which the statutes address.

*Mediation of property insurance disputes* - In s. 627.7015, F.S., the bill authorizes DFS to administer the mediation program for disputed property insurance claims. This is considered a function of the Division of Consumer Services because the former Division of Insurance Consumer Services under DOI was responsible for administering this program. The department is authorized to adopt by rule the mediation program and to establish qualifications of mediators, who are deemed to be agents of the department. Subject to such rules, insurers must participate and pay for the mediation, if requested by an insured, but the decision of the mediator is non-binding on the parties; i.e., the insurer cannot be required by the department to abide by the decision of the mediator.

Note, however, that the changes described above appear to be inconsistent with s. 627.745, F.S., which is amended by the bill to provide that OIR is responsible for administering the mediation of motor vehicle insurance claims, which applies to claims for personal injury of \$10,000 or less or any claim for property damage. This program has also been traditionally administered by the Division of Insurance Consumer Services. The mediation is mandatory at the request of either party, costs must be borne equally by both parties, and the mediator's decision is non-binding. This section provides for OIR

(presently, DOI) to approve mediators meeting specified qualifications (which has traditionally been administered by the Division of Agent and Agency Services in DOI). These mediators have also been traditionally used by DOI for the property insurance mediation program under s. 627.7015, F.S.

*Holocaust victims* - Another section that arguably relates to the Division of Consumer Services, is s. 626.9543, F.S., related to Holocaust victims, but the specific powers listed in that section appear to more closely relate to the duties of the Office of Insurance Regulation for all activities concerning insurers, including claims, and the related authority of the commission to adopt rules for matters under the jurisdiction the office. For this reason, the bill provides that the proof of claim that insurers must allow claimants to use, which currently must meet standards established by the Department of Insurance, must now meet standards established by rule of the *commission*. Similarly, the commission would be provided the rulemaking authority for establishing procedures and related forms for facilitating, monitoring, and verifying compliance with this section and for establishing a restitution program for Holocaust victims, survivors, and their heirs and beneficiaries. The bill requires insurers to annually report to the *office* (OIR) the information formerly reported to DOI, relating to the results of efforts to locate and pay claims of insured Holocaust victims and their beneficiaries. Certain other references to the former Department of Insurance are similarly replaced with *office*.

*Statewide Provider and Subscriber Assistance Program* - The bill amends s. 408.7056, F.S., to provide that employees of *both* the office (OIR) and the department (DFS), shall be substituted for the employees of the former Department of Insurance, as members of the panel that holds hearings and makes recommendations for imposing any sanctions against managed care entities, known as the Statewide Provider and Subscriber Assistance Program. The current panel must include employees of the Department of Insurance and the Agency for Health Care Administration, among others. The bill makes this change, based on the responsibility for OIR to regulate HMOs and health insurers, and the responsibility of DFS to represent the public and advocate for consumers, by having the Office of Insurance Consumer Advocate and the Division of Consumer Services. (This may also be an "appointment" by the former Insurance Commissioner that the CFO is authorized to make until June 30, 2003, pursuant to the 2002 act. See, *Membership and Appointments to Boards and Commissions*, below.)

*Monitoring and Audit of Workers' Compensation Insurers* - The bill attempts to distinguish the responsibility of DFS, under its Division of Workers' Compensation, to administer the Workers' Compensation Act, and the responsibility of OIR to conduct market conduct examinations of insurers and to otherwise regulate insurers.

Section 440.13(11)(b), F.S., currently provides for the Department of Insurance to monitor insurers as provided in s. 624.3161, F.S., which authorizes market conduct examinations of insurers, in order to determine if medical bills are paid in accordance with the law. The bill amends this provision to provide that the *department* (DFS) shall monitor carriers as provided in ch. 440, F.S., and that the *office* OIR shall audit insurers and group self-insurance funds as provided in s. 624.3161, F.S. (The definition of *carriers*, not amended, includes insurers, group self-insurance funds, and individual self-insured employers.) The bill provides authority to both DFS and OIR to assess the current law fine against any carrier found by DFS or OIR not to be within 90 percent compliance. Both DFS and the commission are provided related rulemaking authority.

The bill amends s. 440.20(8), F.S., to provide that OIR shall monitor the performance of carriers by conducting market conduct examinations, as provided in s. 624.3161, F.S., and conducting examinations as provided in s. 624.317, F.S. Subsection (15) is similarly amended to authorize OIR to examine claims files in accordance with the market conduct examination statute and to impose fines in order to identify questionable claims-handling or a pattern of unreasonably controverted claims. However, the bill provides in subsection (8) that the *department* (DFS) shall establish, by rule, minimum performance standards for carriers to ensure that a minimum 90 percent of all compensation benefits are timely paid. The DFS would also be authorized to fine a carrier pursuant to s. 440.13(11)(b), F.S., (discussed in the above paragraph). The DFS would also be authorized in subsection (10) to require

any employer to make a deposit with the CFO to secure the prompt payment of compensation. Both the DFS and OIR would be allowed to initiate investigations of questionable patterns or practices, or repeated unreasonably controverted claims. The commission may, by rule, establish forms and procedures for corrective action plans and for auditing carriers. The commission, in consultation with the DFS, shall adopt rules providing guidelines to carriers to indicate behavior that may be construed as questionable claims handling techniques.

*Authorization of employers to self-insure for workers' compensation* - The bill authorizes DFS to approve employers to be self-insured for workers' compensation coverage (including public utility self-insurance programs) under s. 440.38, F.S. This is based on the transfer of the Division of Workers' Compensation to the department, since this responsibility was formerly exercised by the division under the Department of Labor and Employment Security as well as under DOI. Similarly, the bill authorizes DFS to assume the oversight responsibilities of the division with respect to the Florida Self-Insurers Guaranty Association, which guarantees payment of workers' compensation claims for insolvent self-insured employers, which was also the responsibility of the division under DLES and DOI.

*Administration of deposits of cash or securities; surety bonds* – Both the bill and the State Administration Committee PCB attempt to distinguish between the role of the *department* (in its Division of Treasury) to hold deposits of cash or securities or to approve arrangements with qualified public depositories to do so, as required for various licensees of OIR, from the role of the *office* (OIR) to determine whether the statutory requirements for the deposit are met, such as specifying conditions for returning the deposit and determining whether such conditions have been met, to the extent that a statute provide such powers. These changes reflect the division of duties that were formerly exercised by the Division of Treasury and the Division of Insurer Services, respectively, when both were under DOI.

For those persons, like title insurance agents, who are regulated by the *department* and who are required to deposit cash or securities, the statutory distinction is unnecessary, because the department is responsible for all aspects of the deposit, even though different divisions would be involved in the administrative responsibilities.

In those sections where a surety bond is allowed as an alternative to a deposit, and for which the person is licensed by OIR, the State Administration Committee PCB provides that the *office* would be responsible for all duties related to the surety bond, since the Division of Treasury has not historically had any role in that regard.

### **Statutory Duties Assigned to the Office of Financial Institutions and Securities Regulation**

This bill and the State Administration Committee PCB assign to OFISR (and to the commission, for rulemaking) all of the statutory duties previously delegated to the Department of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all specifically assigned to the Department of Financial Services. This bill authorizes the Office of Financial Institutions and Securities Regulation to be known as the Office of Financial Regulation effectively authorizing a further name change for the sake of clarity and efficiency. Listed below for reference are the subject areas and statutory jurisdiction that are assigned to OFISR, to the extent that such jurisdiction was previously delegated to DBF not including other powers and duties that are separately addressed in, *How the Bill Addresses Areas Where Jurisdiction of DFS and OFISR is Unclear or Overlaps*):

- Mortgage Brokers, Lenders and Mortgage Companies, including enforcement of the Florida Fair Lending Act (ch. 494, F.S.)
- Consumer Finance Companies (ch. 516, F.S.)

- Securities Registration and Securities Dealers, Investment Advisers, and Associated Persons (ch. 517, F.S.)
- Retail Installment Sales Providers, including motor vehicle installment sellers, retail installment sellers, sales finance companies and home improvement finance sellers (ch. 520, F.S.)
- Title Loans (ch. 537, F.S.)
- Collection Agencies (ch. 559, parts V and VI, F.S.)
- Money Transmitters, including check cashers, foreign currency exchanges, and deferred presentment providers (ch. 560, F.S.)
- Financial Institutions (ch. 655, F.S.)
- Credit Unions (ch. 657, F.S.)
- Bank and Trust Companies (ch. 658, F.S.; and, s.120.80(3)(a)4., F.S.)
- Trust Business (ch. 660, F.S.)
- International Banking (ch. 663, F.S.)
- Associations (ch. 665, F.S.)
- Savings Banks (ch. 667, F.S.)
- Interest and Usury; Lending Practices (ch. 687, F.S.)
- Certified Capital Companies (s. 288.99, F.S.)<sup>16</sup>
- Examination or review of the:
  - Florida Export Finance Corporation (s. 288.778, F.S.)
  - Industrial Development Corporation (ss. 289.081-289.121, F.S.)
  - Florida Commercial Space Financing Corporation (s. 331.419, F.S.)
  - Housing Development Corporation of Florida (s. 420.141, F.S.)
- Issuance of permits to sell securities of an association doing business under a common law declaration of trust (s. 609.05, F.S.)

### **How the Bill Addresses Areas Where Jurisdiction of DFS and OFISR is Unclear or Overlaps**

*Division of Consumer Services* – The bill amends s. 20.121, F.S., to specify the functions of the Division of Consumer Services, formerly called the Division of Insurance Consumer Services, which the 2002 act renamed and transferred from DOI to DFS. This is intended to clarify the 2002 act, because no current statute other than this section cites this division, and its scope of duties may be subject to broader interpretation than other divisions.

The bill provides that the Division of Consumer Services shall perform the following functions concerning products or services regulated by DFS or by either office (OIR or OFISR) of the commission:

- Receive inquiries and complaints from consumers (and responses from licensees, as explained below);
- Prepare and disseminate such information as the department deems appropriate to inform or assist consumers;
- Provide direct assistance and advocacy for consumer who request such assistance or advocacy; and
- With respect to apparent or potential violations or laws or rules, report such violations to the appropriate division of the department or office of the commission, which may take such further action as it deems appropriate.

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<sup>16</sup> The bill provides the same authority to OFISR and the commission as previously provided to DBF relative to certified capital companies, but changes the definition of *office* in s. 288.99(3), F.S., from *Office of Tourism, Trade, and Economic Development* (OTTED), to *Office of Financial Institutions and Securities Regulation*. This requires conforming changes throughout s. 288.99, F.S., to maintain the current jurisdiction of OTTED. The bill also does not change certain references to the former DBF, relative to department actions required by dates that have passed. Finally, the bill amends s. 288.99(10)(b), F.S., to refer to audit authority for both the CFO and OFISR, where the current law refers to audit authority of the Comptroller.

The bill exempts entities regulated by OFISR from the specific provisions relating to failure to comply with requests for information, and the accompanying administrative penalties provided for entities regulated by DFS and entities regulated by OIR, in effect maintaining the current practice of OFISR to deal with such consumer complaints as part of the office's regulatory scheme. However, the division will be able to act as the call center for complaints related to that office. Specific reference to the involvement of the Division of Consumer Services is made in the areas of mortgage brokerage (ss. 494.00125 and 494.00421, F.S.), retail installment sales (ss. 520.996 and 520.99965, F.S.), title loans (ss. 537.008 – 537.017, F.S.), money transmitters (ss. 560.128 and 560.129, F.S.), and deferred presentment providers (s. 560.404, F.S.).

*Securities Regulation* – This bill assigns all of the regulatory functions, including licensing, to OFISR, and provides that the director of the office will be the agent for *service of process*. This preserves the present practice of the licensing procedure and the filing of notices being used within the office's regulatory scheme as a way of notifying the office of the potential need for investigative action. In its discussions, the Committee of Transition Management determined that, for reasons of efficiency, certain administrative functions related to licensure of securities dealers should be performed by the Division of Agent and Agency Licensing in DFS. The bill's amendments to ch. 517, F.S., do not reflect any such powers or duties for DFS. It is not clear if such powers or duties as may be contemplated would be authorized by s. 20.121(3)(b), F.S., which provides legislative intent to provide the commission with the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability.

### **Membership and Appointment to Boards and Commissions**

The 2002 act provides legislative intent that from January 7, 2003, until June 30, 2003, the CFO is to make all appointments to boards, commissions, etc., that were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal. The bill delegates continuing appointment authority for each of these boards and commissions (except for those boards and commission more closely related to Cabinet-related functions, which are addressed in HB 1627). The boards affected by the bill are in the following sections (some of which do not need to be amended because *department* would be defined as Department of Financial Services, rather than Department of Insurance):

Section 110.1227, F.S. - Board of Directors of the Florida Employee Long-Term-Care Plan  
Purpose: To assist the Department of Management Services and the Department of Elderly Affairs in implementing a self-funded or fully insured voluntary, long-term-care insurance plan for public employees.

Current Statute: The Insurance Commissioner appoints an actuary.

Bill: Changes Insurance Commissioner to CFO.

Section 112.215(8), F.S. - Deferred Compensation Advisory Council

Purpose: To provide assistance and recommendations to the Treasurer (now, CFO) relating to the Deferred Compensation plan for state employees, the insurance or investment options to be offered under the plan, and any other contracts or appointments deemed necessary by the council and Treasurer (CFO) to carry out the act.

Current Statute: The Treasurer appoints 1 member who is an employee of the Treasurer, and the Comptroller appoints 1 member who is an employee of the Comptroller, out of 7 total members.

Bill: The CFO (instead of the Treasurer) appoints 1 member who is an employee of the CFO and the Attorney General (instead of the Comptroller) appoints 1 member who is an employee of the Attorney General, out of 7 total members. Note: Adding the Attorney General may not be appropriate, which was done under the incorrect determination that this program relates to a State Board of Administration function. The Deferred Compensation Program is actually administered by the DFS (CFO).

Section 215.555, F.S. - Board of Directors of the Florida Hurricane Catastrophe Fund Finance Corporation

Purpose: To issue bonds and engage in other financial transactions necessary to provide sufficient funds to meet the obligations of the Florida Hurricane Catastrophe Fund ("Fund").

Current Statute: The Governor, Treasurer, and Comptroller, or their designees, the Director of the Division of Bond Finance of the State Board of Administration (SBA), and the chief operating officer of the Fund are members. (The SBA is the board of the Fund, itself.)

Bill: The CFO and Attorney General, or their designees, replace the Treasurer and Comptroller as members, due to the constitutional change in the composition of the SBA, now composed of the Governor, CFO, and Attorney General. The *chief operating officer* of the Fund is replaced with the *senior employee of the State Board of Administration responsible for operations* of the Fund, because the SBA no longer has a position by that title, but it is the equivalent position.

#### Section 215.559, F.S. - Advisory Council for the Hurricane Loss Mitigation Program

Purpose: To provide consultation to the Department of Community Affairs for its development of programs to improve the wind resistance of residences and mobile homes and to retrofit facilities used at public hurricane shelters, relative to the \$10 million annually appropriated from the Florida Hurricane Catastrophe Fund.

Current Statute: The Department of Insurance designates 1 member.

Bill: Changes Department of Insurance to CFO.

#### Section 391.221, F.S. - Statewide Children's Medical Services Network Advisory Council

Purpose: To make recommendations to the Department of Health regarding the selection of health care providers for the Children's Medical Services network and the financial status and operation of the program.

Current Statute: Must have one or more members representing the Department of Insurance.

Bill: Changes Department of Insurance to the Office of Insurance Regulation. (Duties appear to be more closely related to the duties of OIR in regulating health insurers, HMOs, and their policies and contracts, as compared to the jurisdiction of DFS.)

#### Section 401.245, F.S. - Emergency Medical Services Advisory Council

Purpose: To make recommendations to the Department of Health regarding the emergency medical services program.

Current Statute: A representative of the Department of Insurance is an ex-officio member.

Bill: Changes Department of Insurance to Office of Insurance Regulation. (Duties appear to be more closely related to the duties of OIR in regulating health insurers, HMOs, and their policies and contracts, as compared to the jurisdiction of DFS.)

#### Section 408.05, F.S. - State Comprehensive Health Information System Advisory Council

Purpose: To assist the State Center for Health Statistics in reviewing the comprehensive health information system and to recommend improvements to the system (which coordinates the activities of state agencies to assure the consistency and quality of health-care related data).

Current Statute: The Insurance Commissioner appoints an employee of the Department of Insurance.

Bill: The CFO appoints an employee of the Office of Insurance Regulation. (The bill provides for the CFO to make the appointment, but the person appointed would be an employee of OIR due to the closer jurisdictional tie of OIR related to regulation of health insurers, HMOs, and their policies and contracts.)

#### Section 408.7056, F.S. - Statewide Provider and Subscriber Assistance Program

Purpose: To assist subscribers who have unresolved grievances with managed care entities by holding hearings and making recommendations to either the Department of Insurance (now OIR) or the Agency for Health Care Administration (AHCA) for imposing any sanctions against the managed care entity.

Current Statute: The panel includes employees of the Department of Insurance, chosen by the department.

Bill: The panel includes employees of *both* OIR and DFS, chosen by their respective agencies. The bill makes this change, based on the responsibility for OIR to regulate HMOs and health insurers, and the

responsibility of DFS to represent the public and advocate for consumers, by having the Office of Insurance Consumer Advocate and the Division of Consumer Services.

Section 420.101, F.S. - Board of Directors of the Housing Development Corporation of Florida  
Purpose: To govern the corporation, established for the purpose of promoting and developing housing and advancing the prosperity and economic welfare of the state.

Current Statute: The head of the Department of Insurance (Insurance Commissioner) and the head of the Department of Banking and Finance (Comptroller), or their designees are members.

Bill: Instead, the head of the Department of Financial Services (CFO) or his designee who has insurance experience and his designee who has banking experience are members of the board.

Section 440.13(12), F.S. - Three-Member Panel (for Workers' Compensation)

Purpose: To determine statewide schedules of maximum reimbursement allowances under workers' compensation for medical care provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment.

Current Statute: The Insurance Commissioner or his designee is a member.

Bill: Changes Insurance Commissioner to CFO.

Section 440.385, F.S. - Board of directors of the Florida Self-Insurers Guaranty Association (for Workers' Compensation)

Purpose: To supervise the operation of the association, which guarantees payment of workers' compensation to employees of insolvent self-insured employer members. The board also recommends to the Department of Insurance (now, to DFS) the approval or disapproval of employers that apply to be self-insured, and makes recommendations for requirements of association membership and revocation of an employer's self-insurance privilege.

Current Statute: All 9 board members are appointed by the Department of Insurance upon recommendation of members of the association.

Bill: Changes Department of Insurance to Department of Financial Services.

Section 517.1204, F.S. -- Board of Directors of the Investment Fraud Restoration Financing Corporation  
Purpose: To govern the corporation, established for the purpose of financing remedial payments to investors who suffered monetary damages and received judgments against GIC Government Securities, Inc.

Current Statute: The assistant Comptroller is a member.

Bill: The director of the Office of Financial Institutions and Securities Regulation (OFISR) or his designee is a member. (Not assigned to the CFO because this is a regulatory matter previously administered by the Department of Banking and Finance.)

Section 553.74, F.S. - Florida Building Commission (administratively housed within Dept. of Community Affairs)

Purpose: To adopt rules to implement the provisions of the Florida Building Code and the provisions of chapter 553, F.S. (related to building construction standards, and related responsibilities).

Current Statute: A representative of the Department of Insurance is a member.

Bill: Changes Department of Insurance to Department of Financial Services.

Section 626.2815(6), F.S. - Continuing Education Advisory Board (for insurance agents)

Purpose: To advise the Department of Insurance (now, DFS) in determining standards by which continuing education courses for insurance agents may be evaluated and categorized as basic, intermediate, or advanced.

Current Statute: Insurance Commissioner appoints all 11 members.

Bill: Changes Insurance Commissioner to CFO.

Section 626.921, F.S. - Board of Governors of the Florida Surplus Lines Service Office (FSLSO)

Purpose: To supervise the operation of FSLSO, a self-regulating organization to permit better access by consumers to surplus lines insurers; to provide advice to consumers, surplus lines agents, insurers,



and government agencies concerning the operation of the surplus lines market; and to collect the surplus lines tax from surplus lines agents. All licensed surplus lines agents must be a member of the association.

Current Statute: Department of Insurance appoints all 9 members.

Bill: Changes Department of Insurance to Department of Financial Services.

Section 627.0628, F.S. - Florida Commission on Hurricane Loss Projection Methodology

Purpose: To adopt findings as to the accuracy or reliability of particular methods or models for hurricane loss projections used in residential property insurance rate filings. The findings of the commission are admissible and relevant in consideration of an insurer's rate filing by the Department of Insurance (now, OIR) or in any arbitration or administrative or judicial review.

Current Statute: The Insurance Commissioner appoints 6 of the 11 members (plus the Insurance Consumer Advocate).

Bill: Changes Insurance Commissioner to CFO.

Section 627.311(3), F.S. - Board of the Florida Automobile Joint Underwriting Association

Purpose: To supervise the operation of the association which provides motor vehicle insurance to persons unable to obtain coverage in the voluntary market.

Current Statute: The Insurance Commissioner appoints 5 of the 11 board members.

Bill: Changes Insurance Commissioner to CFO.

Note: Section 627.351(1), F.S., also authorizes an automobile insurance risk apportionment plan, but does not specify board membership. Under that section, the plan of operation is approved by the Department of Insurance, which the bill changes to OIR (due to its role to regulate risk bearing entities, such as JUAs).

Section 627.311(4), F.S. - Board of Governors of the Florida Workers' Compensation Joint Underwriting Association

Purpose: To supervise the operation of the association, which provides workers' compensation insurance to employers who are unable to obtain coverage in the voluntary market.

Current Statute: The Insurance Commissioner appoints 2 of the board members (including the Insurance Consumer Advocate).

Bill: Changes Insurance Commissioner to CFO.

Section 627.351(5), F.S. - Board of the Property and Casualty Insurance Risk Apportionment Plan

Purpose: To supervise the operation of the plan, which provides commercial property and casualty insurance to applicants who are unable to obtain such coverage in the voluntary market. (This plan is not currently in operation but would become active if certain lines of insurance are unavailable, as measured by a specified number of applications submitted to the Market Assistance Plan that cannot be placed with authorized insurers.)

Current Statute: The Insurance Commissioner appoints all 13 members of the board.

Bill: Changes Insurance Commissioner to CFO.

Section 627.351(6), F.S. - Board of Citizens Property Insurance Corporation (Citizens)

Purpose: To supervise the operation of Citizens, which provides residential property insurance statewide, and windstorm insurance in eligible coastal areas, to applicants who are unable to obtain such coverage in the voluntary market.

Current Statute: Effective January 7, 2003, the CFO (formerly, Treasurer) appoints all 7 members.

Bill: Technical changes delete outdated language.

Section 627.4236, F.S. - Advisory Council to the Agency for Health Care Administration for rules related to health insurance coverage for bone marrow transplant procedures.

Purpose: To make recommendations to AHCA (which must be followed), based on a review of scientific evidence, for rules specifying the bone marrow transplant procedures that are not experimental and, therefore, may not be excluded by insurers or HMOs as experimental or investigative.

Current Statute: The Secretary of AHCA appoints one consumer representative from a list of three names recommended by the Insurance Commissioner.

Bill: Changes Insurance Commissioner to CFO.

Section 627.6488, F.S. - Board of Directors of Florida Comprehensive Health Association (FCHA)

Purpose: To supervise the operation of the FCHA, which provides health insurance to individuals who are unable to obtain coverage in the private market, due to their health status. (Since July 1, 1991, the FCHA has been authorized only to renew coverage.)

Current Statute: The chair is the Insurance Commissioner or his designee, and the Insurance Commissioner appoints the other 2 members.

Bill: Changes Insurance Commissioner to CFO.

Section 627.6699(11), F.S. - Board of the Small Employer Health Reinsurance Program

Purpose: To supervise the operation of the program, which provides reinsurance to participating small employer carriers for a portion of claims paid to identified high-risk employers and employees.

Current Statute: The Insurance Commissioner or his designee is chair and the Insurance Commissioner appoints the 13 other members.

PCB: Changes Insurance Commissioner to CFO.

Section 627.6699(12), F.S. - Health Benefit Plan Committee

Purpose: To develop health benefit plans that must be sold by small group carriers, subject to approval by the Department of Insurance (now, OIR).

Current Statute: The Insurance Commissioner appoints all 11 members.

Bill: Changes Insurance Commissioner to CFO.

Section 631.56, F.S. - Board of Directors of the Florida Insurance Guaranty Association (FIGA)

Purpose: To supervise the operation of FIGA, which guarantees the payment of claims of insolvent property and casualty insurers.

Current Statute: Department of Insurance appoints not less than 5 or more than 9 persons recommended by the member insurers.

Bill: Changes Department of Insurance to Department of Financial Services.

Section 631.716, F.S. - Board of Directors of the Florida Life and Health Insurance Guaranty Association (FLAHIGA)

Purpose: To supervise the operation of FLAHIGA, which guarantees the payment of insurance claims of insolvent life and health insurers.

Current Statute: Members of the board are elected by member insurers, subject to the approval of the Department of Insurance.

Bill: Changes Department of Insurance to Department of Financial Services.

Section 631.816, F.S. - Board of Directors of the Florida Health Maintenance Organization Consumer Assistance Plan (HMOCAP)

Purpose: To supervise the operation of HMOCAP, which guarantees the payment of claims to providers, and the continuation of HMO coverage for six additional months for insureds, for insolvent HMOs.

Current Statute: The Department of Insurance appoints not less than five or more than nine persons recommended by the member HMOs.

Bill: Changes Department of Insurance to Department of Financial Services

Section 631.912, F.S. - Board of Directors of the Florida Workers' Compensation Insurance Guaranty Association

Purpose: To supervise the operation of FWCIGA, which guarantees the payment of claims of insolvent workers' compensation insurers and group self-insurance funds.

Current Statute: Department of Insurance appoints all 11 members, but 9 of the members are "selected by" private carriers or self-insurance funds.

Bill: Changes Department of Insurance to Department of Financial Services.

### **Financial Interest Restrictions**

*Prohibited financial interests (amended)* - The bill amends s. 624.305, F.S., which currently prohibits the Insurance Commissioner and Treasurer and any employee of the Department of Insurance (DOI) from having any financial interest in any insurer or insurance agency, except as a policyholder or claimant, or from receiving any outside compensation for services rendered as a DOI employee. As amended, this law would apply to the employees of the Department of Financial Services and employees of the Office of Insurance Regulation, including the members of the commission (the Governor and Cabinet), but it would not apply to employees of the Office of Financial Institutions and Securities Regulation. (No similar law applied to the Comptroller or to employees of the former Department of Banking and Finance.) For those commission members and employees who were not covered by this section prior to the effective date of this act (such as employees of the former Department of Banking and Finance in the Division of Accounting and Auditing who were transferred to DFS), the bill allows an extended time to comply, until January 1, 2004.

### **Citizens Property Insurance Corporation**

In order to conform to the 2002 act that created Citizens Property Insurance Corporation (Citizens), the bill adds references to Citizens and deletes references to the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and to the Florida Windstorm Underwriting Association (FWUA). In certain sections, related conforming changes are necessary. The sections affected by these changes are as follows:

Section 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund (Fund), is amended to specify that the Fund covers wind policies removed from Citizens, as well as from the RPCJUA and FWUA.

Section 624.4072, F.S., currently provides for minority-owned property and casualty insurers meeting certain requirements to be exempt from regular assessments (but not emergency assessments) levied by the RPCJUA or FWUA, which the bill change to Citizens.

Section 626.752, F.S., currently requires insurers to report to DOI (changed to DFS) the name, address, and other information for each agent from whom the insurer received more than 24 personal lines risks during the calendar year under the exchange of business statute (i.e., agents who are not appointed by that insurer). An exception is currently provided for risks removed from the RPCJUA, which the bill changes to Citizens.

The bill amends. s. 627.0628, F.S., to provide that the Executive Director of Citizens, rather than the Executive Director of the RPCJUA, is a member of the Florida Commission on Hurricane Loss Projection Methodology. (See this section under *Membership and Appointment to Boards and Commissions*, above, for more information and other changes.)

Section 627.351(6), F.S., as amended in 2002, establishes and governs Citizens, which previously applied to the RPCJUA. But, due to another 2002 act<sup>17</sup> that amended this section, certain references remain to *association* (referring to the RPCJUA) rather than *corporation* (the correct term to refer to Citizens), which the bill corrects by changing all references from *association* to *corporation*. Also, subsection (2), which applies to the FWUA, remains in the statutes even though its operations have been assumed by Citizens. A provision is added to clarify that the reference to *department* in that subsection means the former Department of Insurance.

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<sup>17</sup> ch. 2002-221, L.O.F., the *Insurance Policy Holder and Protection Act*

The bill amends s. 627.3511, F.S., related to depopulation of the RPCJUA, to apply it to Citizens. This section specifies take-out bonuses that must be paid to insurers removing policies from the RPCJUA, under certain criteria, and bonuses that must be paid to agents, all of which are applied to Citizens. This section currently provides that the take-out policy is not required to provide wind coverage if the risk is located in an area where coverage is available through the FWUA. The bill changes the reference from the FWUA to the *high risk account* of Citizens, which is the name of the account for risks located in areas that were eligible for coverage in the FWUA.<sup>18</sup> Note, however, that the RPCJUA had relied upon broader authority provided in s. 627.351(6), F.S., to provide take-out bonuses under criteria that the board approved, which now expressly applies to Citizens.

Section 627.3513, F.S., provides standards for the sale of bonds by the RPCJUA and FWUA which the bill applies to Citizens.

Section 627.3515, F.S., requires the Department of Insurance (now, OIR) to establish a market assistance plan to assist in the placement of risks who are unable to obtain property or casualty insurance for authorized insurers and to assist in the removal of risk from the RPJCUA, which the bill changes to Citizens.

See, *Repealed Statutes*, in the State Administration Committee PCB, regarding s. 627.3516, F.S., related to the residual property insurance market coordinating council.

### **Updating References to Publications Cited for Regulatory Standards**

The bill updates the publication date and, in some cases, the names of various publications of the National Association of Insurance Commissioners (NAIC) and the Actuarial Standards Board which are cited in the Florida Insurance Code for standards which insurance companies, HMOs, and the Department of Insurance (now, OIR and the commission) are required or authorized to use for various regulatory matters. The bill makes these changes in the following statutes:

- s. 624.316, F.S., authorizing the commission to adopt, by rule, the NAIC's *Market Conduct Examiners Handbook and the Financial Condition Examiners Handbook* (2002), to facilitate uniformity in market conduct examinations;
- ss. 624.404, 625.141 (inadvertently included in State Administration Committee PCB), 625.151, and 625.325, F.S., requiring insurers and OIR to value securities in accordance with the *Purposes and Procedures Manual of the NAIC Securities Valuation Office* (July 1, 2002);
- ss. 624.413 and 624.424, F.S., authorizing the commission by rule to adopt the form for financial statements approved by the NAIC in 2002, and to require the commission to adopt rules in substantial conformity with the *1998 Model Rule Requiring Annual Audited Financial Reports* adopted by the NAIC ;
- s. 624.610, F.S., authorizing the commission to adopt rules to implement provisions related to accounting for reinsurance in substantial compliance with the NAIC *Accounting Practices and Procedures Manual* as of March 2002 and subsequent amendments thereto if the methodology remains substantially consistent (inadvertently included in State Administration Committee PCB);
- ss. 625.01115 and 641.19(16) F.S., defining the term *statutory accounting principles* as used in chapters 625 and 641, F.S., for insurers and HMOs, respectively, to mean accounting principles as defined in the NAIC *Accounting Practices and Procedures Manual* of March 2002 and subsequent amendments thereto if the methodology remains substantially consistent; and
- s. 625.121(3), F.S., authorizing the commission to adopt rules providing standards for actuarial opinions consistent with those adopted by the Actuarial Standards Board on December 31, 2002, and subsequent revisions thereto, provided that the standards remain substantially consistent.

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<sup>18</sup> S. 627.351(6)(b)2.(III), F.S.

## **Validity of regulatory actions by the former Departments of Insurance and Banking and Finance**

The bill provides that the changes made by the bill to conform references from the Department of Insurance and the Department of Banking and Finance to DFS, FSC, OIR or OFISR will not affect the validity of any action, order, or regulatory authorization or approval made by the former departments.

### **Precedence over other legislation**

This bill includes a provision that in the event other legislation passes that also includes the sections covered by the conforming legislation in this bill, the changes made by this bill will take precedence. However, new legislation referencing the regulatory entities needs to accurately reflect the provisions of Amendment 8 and ch. 2002-404, LOF.

#### **C. SECTION DIRECTORY:**

A chart has been prepared that lists all of the sections affected by the four governmental reorganization bills. Each section is accompanied by a reference number, page number, line number and color code:  
HB 739 relating to succession – Dark Gray;  
HB 1627 relating to Governmental Reorganization of cabinet duties – Light Gray;  
PCB SA 03-19 – relating to Governmental Reorganization technical conforming/consensus issues – White; and  
HB 1337 relating to Governmental Reorganization of insurance issues – Blue, and financial institution issues – Pink.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

None

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

None

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

N/A

#### **D. FISCAL COMMENTS:**

All changes in this bill are intended to be consistent with the 2002 act and, as such, have no fiscal impact. But, the specific duties assigned to DFS, the commission, OIR, and OFISR may affect the appropriation and allocation of positions to each of these agencies in the General Appropriations Act, particularly for those areas where the jurisdiction may be unclear.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue and does not reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

The bill amends various sections that provide exceptions to the public records and open meetings requirements of the Open Government Act. The changes substitute references to the DFS, OIR, OFISR, or commission, as appropriate, for current references to the Department of Insurance or the Department of Banking and Finance, consistent with the jurisdiction of each agency. Since the current exemptions are not expanded, separate bills are not constitutionally required.

#### B. RULE-MAKING AUTHORITY:

The bill reassigns rule-making authority for regulating the insurance and financial institutions and securities industries, as noted in the *Effect of Proposed Legislation* section of this analysis, to reflect as nearly as possible the authority assigned by the 2002 act.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Commerce adopted a Committee Substitute (CS) which changed the bill in three specific ways:

Section 20.121, F.S., was amended to provide specific authority for the Division of Consumer Services to request information relating to consumer inquiries or complaints and to levy administrative fines for noncompliance with this request. This language replaces the more general authority in this subsection and codifies the current practice of the former Division of Insurance Consumer Services in relation to regulated insurance entities. The CS also extends the response time to 20 days and specifies that for entities regulated by the Department of Financial Services, the division can impose an administrative penalty for failure to comply with the request for information in an amount up to \$2,500 per violation. For entities regulated by the Office of Insurance Regulation, the division may impose an administrative fine of \$250 for the first violation, \$500 for the second violation and up to \$1,000 per violation thereafter. The CS then exempts from these provisions any entity regulated by OFISR.

Section 20.121, F.S., was amended to provide in the clause creating the Office of Financial Institutions and Securities Regulation that this office will also be known as the Office of Financial Regulation. This was done to allow the office to use that appellation on its seal, official correspondence, and forms for the sake of simplicity.

Section 420.101, F.S., relating to the appointment of members to the Board of Directors of the Housing Development Corporation of Florida is amended by the CS to restore the full number of appointments to the board and insure that there are designees with both insurance and banking experience on the board.