

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB's 186 & 2528

SPONSOR: Governmental Oversight & Productivity Committee, Comprehensive Planning Committee, and Senators Geller and Webster

SUBJECT: Governmental Reorganization; Department of State and Department of Community Affairs

DATE: April 22, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/Combined CS
2.	Rhea	Wilson	GO	Fav/CS
3.			ATD	
4.			AP	
5.			RC	
6.				

**I. Summary:**

The committee substitute for the committee substitute for Senate Bills 186 and 2528 (CS/CS) creates the Department of State and Community Affairs and prescribes the responsibilities of the new department. The Secretary of State is designated as the department head, and is to be appointed by, and serve at the pleasure of the Governor, subject to Senate confirmation. Six divisions are created in the new department: (1) Community Assistance; (2) Community Planning and Growth Management; (3) Corporations; (4) Elections; (5) Historical and Cultural Resources; and (6) Library and Information Services. In addition, the Division of Emergency Management is placed in the department for administrative purposes, with the Governor appointing the director of that division, without Senate confirmation. The Florida Housing Finance Corporation also is placed in the department for administrative purposes. While the CS/CS establishes the structure of the new department, it also gives the secretary organizational flexibility pursuant to s. 20.04(7), F.S., which permits new bureaus, sections, and subsections to be initiated by a department if approved by the Department of Management Services and the Governor without statutory approval.

Several programs from the DCA and DOS are not placed in the new department, but are transferred to other agencies. Specifically:

- < The records management program, the Florida Administrative Weekly, and the Florida Administrative Code is transferred from the Department of State to the Department of Management Services.
- < The management of copyrights, patents, and trademarks held on behalf of the State is transferred from the Department of State to the DMS.

- < The “advocating international business partnerships” are transferred from the Department of State to the Executive Office of the Governor (EOG).
- < The issuance of apostilles is transferred from the Department of State to the EOG.
- < The international notaries function is transferred from the Department of State to the EOG.
- < The Affordable Housing Catalyst Program is transferred from the DCA to the Florida Housing Finance Corporation.
- < The Affordable Housing Study Commission is transferred from the DCA to the Florida Housing Finance Corporation.
- < The civil legal assistance program is transferred from the DCA to the Department of Legal Affairs.
- < The state energy program is transferred from the DCA to the DEP.

Certain programs currently assigned to other agencies are transferred to the newly-created department. Specifically:

- < The Florida Recreation Development Assistance Program is transferred from the DEP to the new department.
- < The federal recreational trails program is transferred from the DEP to the new department.
- < The Regional Rural Development Grants Program is transferred from the EOG to the new department.
- < The Rural Community Development Revolving Loan Fund Program is transferred from the EOG to the new department.
- < The Office of Urban Opportunity is transferred from the EOG to the new department.

In addition, the CS/CS requires the department, the Department of Environmental Protection, the Executive Office of the Governor, and the Department of Management Services (DMS) to evaluate the programs and functions transferred to those agencies and submit a joint report with recommended statutory changes to the Governor and the Legislature by Oct. 15, 2003. It requires these agencies to gather input from certain constituent groups, consider the input, and make it part of the final report.

Finally, the CS/CS requires the department to operate programs transferred to the department as directed by laws governing those programs in effect on the effective date of the act. The CS/CS further provides the department will not make any substantive programmatic changes by rule in advance of the conclusion of the 2004 Legislative Session. It also directs the Division of Statutory Revision to prepare a reviser’s bill for the 2004 Legislative Session to conform the Florida Statutes to the provisions of this act.

This CS/CS creates s. 20.101 of the Florida Statutes, amends s. 20.22 of the Florida Statutes, repeals sections 20.10 and 20.18 of the Florida Statutes, and creates unnumbered sections of the Florida Statutes.

## II. Present Situation:

### A. Organizational Structure of the Executive Branch

Chapter 20, F.S., provides for the organizational structure of the executive branch of government. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government.<sup>1</sup> Section 20.02, F.S., states:

. . . The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute.<sup>2</sup> A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties which the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.<sup>3</sup>

Section 20.02, F.S., requires agencies that compose the executive branch to be consolidated into no more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness.<sup>4</sup>

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<sup>1</sup> Article II, s. 3 of the State Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

<sup>2</sup> *Seaside Properties, Inc., v. State Road Department*, 190 So.2d 391 (3<sup>rd</sup> DCA 1966).

<sup>3</sup> *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5<sup>th</sup> DCA 1985).

<sup>4</sup> Article IV, s. 6 of the State Constitution states: All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by serving at the pleasure of the governor, except: (a) when provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office; (b) boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

Section 20.04, F.S., provides the structure of the executive branch of state government. The department is the principal administrative unit of the executive branch.<sup>5</sup> The principal unit of the department is the division, which may be further subdivided into bureaus.<sup>6</sup> A bureau may be further divided into “sections” and “subsections.” Section 20.04, F.S., specifically authorizes departments to combine these various office subdivisions for field operations.

Section 20.04(3), F.S., specifically exempts the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from the standard organizational structure for executive branch departments that is established in that subsection.

Subsection 20.04(7)(a), F.S., explicitly forbids department heads from reallocating duties and functions specifically assigned by law to a specific unit of a department, unless otherwise authorized by law. Functions or agencies assigned generally to a department without specific designation to a unit of a department may be allocated and reallocated to a unit at the discretion of the agency head.

Further, an agency head is authorized to recommend the establishment of additional divisions, bureaus, sections, and subsections, within the limitations of the organizational structure provided in ch. 20, F.S., to promote efficient and effective operation of a department.

Section 20.04(7), F.S., permits new bureaus, sections, and subsections to be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor or as established by specific statutory enactment. The subsection explicitly limits initiation of new divisions and sub-units for the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation except by specific statutory enactment.

## B. Reorganization and Methods of Transfer

Section 20.02(3), F.S., contemplates the regular review of agency organizational structures to maintain agency efficiency:

Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Management and coordination of state services is to be improved and overlapping activities eliminated.<sup>7</sup> Further, s. 20.02(4), F.S., requires departments to be organized along functional or program lines.

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<sup>5</sup> Section 20.04(1), F.S.

<sup>6</sup> Section 20.04(3), F.S.

<sup>7</sup> Section 20.02(6), F.S.

Section 20.06, F.S., establishes two “shorthand” methods of facilitating the reorganization of the executive branch. These methods of transferring departments, units of departments and programs are specifically stated not to affect the validity of any judicial or administrative proceeding pending on the day of the transfer. Furthermore, the agency which receives the powers, duties, and functions relating to the pending proceeding must be substituted as the party in interest.

### 1. Type One Transfer

Section 20.06(1), F.S., defines a type one transfer as the *transferring intact* of an *existing agency or department* so that the agency or department *becomes a unit* of another agency or department. Any agency or department transferred to another agency or department by a type one transfer will exercise its powers, duties, and functions as prescribed by law, subject to review and approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made.

### 2. Type Two Transfer

Section 20.06(2), F.S., defines a type two transfer as the *merging* into another agency or department of an *existing agency or department or a program, activity, or function* thereof, or if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

Unless otherwise provided by law, in a type two transfer, the head of the agency or department to which an existing agency, department, activity, or function is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions to the extent authorized by ch. 20, F.S.

### 3. Similarities Between Type One and Type Two

In both a type one and type two transfer, any agency or department, program, activity or function transferred has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred to the agency or department to which it is transferred. The transfer of segregated funds must be made in such manner that the relation between program and revenue source as provided by law is retained.

Additionally, in both a type one and type two transfer, unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed.

## C. The Florida Department of Community Affairs

The Florida Department of Community Affairs (the “DCA”) , which is created in s. 20.18, F.S., is comprised of the Divisions of Emergency Management, Housing and Community Development, and Community Planning. The DCA’s mission is to “. . . help Florida preserve

resources, prepare for the challenges of growth, reduce effects of disasters and invest in community revitalization”.<sup>8</sup> In FY 2002-03, DCA had 351 positions and an appropriation of \$740,414,052 (\$13,588,435 in general revenue and \$726,825,617 in trust funds).

### 1. The Division of Community Planning

The DCA assists Florida's 476 municipal and county areas with their comprehensive planning efforts and local land-use decision making to improve quality of life. The Division of Community Planning, governed by part II of ch. 163, F.S., and part I of ch. 380, F.S., and Rules 9J-2, 9J-5 and 9J-33, Fla. Admin. Code, implements core regulatory responsibilities for: the local government comprehensive planning process, developments of regional impact, programs relating to areas of critical state concern, local government comprehensive planning certification, water supply planning, and school facilities planning. The focus of this division includes ensuring that local comprehensive plan amendments are in compliance with the Growth Management Act and providing technical assistance to local governments that promote innovative planning and optional planning provisions.<sup>9</sup> This division employs 68 FTEs and had an appropriation of \$7,497,058 for FY 2002-03.

The Florida Communities Trust Program, part III of ch. 380, F.S., and Rules 9K-7 and 8, Fla. Admin. Code, provides grants to local governments and eligible nonprofit environmental organizations for the acquisition of parks, open space and greenways. This program is directly related to the implementation of a local government's comprehensive plan and is unique in that the grant recipients actually hold title to and manage lands purchased with the grants. Presently, this program awards \$66 million dollars annually to eligible applicants through an annual competitive cycle.<sup>10</sup> In FY 2002-03, this program employed 17 FTEs and an appropriation of \$67,156,548.

### 2. The Division of Emergency Management

The Division of Emergency Management, under ch. 252, F.S., and 40 C.F.R. parts 300, 355, 370, and 372, covers all aspects of emergency management for natural and man-made disasters in Florida. The Division of Emergency Management assists communities with emergency preparedness, response, recovery and mitigation. This division also coordinates state agency support for local governments in emergencies and supports the Governor by acting as the Chief Emergency Management Official.<sup>11</sup> This division has 116 FTEs and was appropriated \$260,353,807 for FY 2002-03.

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<sup>8</sup> See Department of Community Affairs, *Long-Range Program Plan FY 2003-2008* at 1 (Jan. 3, 2003).

<sup>9</sup> See *id.* at 13-19.

<sup>10</sup> See *id.* at 9-11.

<sup>11</sup> See *id.* at 19-27.

### 3. Housing and Community Development

The Division of Housing and Community Development, as governed by chapters 290, 420, and 553, F.S., and Rule 9B-43, Fla. Admin. Code, addresses local community and economic development issues, promotes energy conservation, and implements the unified statewide building codes. This division also serves as the lead agency for several financial assistance programs including the Community Services Block Grant Program, State Energy Program, Community Development Block Grant Program, and the Florida Building Code and Affordable Housing Study Commission.<sup>12</sup> This division employs 69 FTEs and had an appropriation of \$152,644,653 for FY 2002-03.

### D. The Florida Department of State

The Department of State, created in s. 20.10, F.S., consists of the following seven divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, International Affairs, and Administration. As the result of Revision No. 8 to the State Constitution, adopted by the voters on November 3, 1998, the Secretary of State ceased to be an elected constitutional officer or a member of the Cabinet after January 7, 2003. A Constitutional Transition Task Force was created and assigned the responsibility of analyzing various statutory functions of the Department of State and to recommend which functions it should continue to perform. Currently, the law maintains the Department of State with the Secretary of State as its head, the existing division structure, and the responsibility as the official custodian of records remains with the Secretary of State.<sup>13</sup> In FY 2002-03, DOS had 539 positions and a budget of \$158,379,638 (\$98,934,806 in general revenue and \$59,444,832 in trust funds).

#### 1. The Division of Elections

The Division of Elections oversees several different functions including voting systems certification, election records, and the Florida Administrative Code and Florida Administrative Weekly. In addition, this division oversees the Florida Voter Registration Act; issues commissions to all elected and appointed officials; maintains financial disclosures for all constitutional and state officers and specified employees; and qualifies all federal and state candidates.

#### 2. Corporations

The Division of Corporations is a ministerial filing agency, serving as the statewide central repository for business entity filings and Uniform Business Reports or annual reports. The division is also the statewide central filing office for judgment lien filings, as well as being the statewide central registration office for fictitious names, trademarks and service marks. The public may also contact the division for information contained in these records. The division has 193 FTEs and division funding of almost \$13 million in FY 2002-03 from the Corporations Trust Fund. The total funds collected by the division and deposited into the Corporations Trust Fund pay for the division and for many cultural and historical grants funded by the Department of

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<sup>12</sup> See *id.* at 27-31.

<sup>13</sup> Ch. 2000-258, L.O.F.

State while the bulk of the money is deposited into the General Revenue Fund (more than \$142 million annually).

3. The Division of Cultural Affairs

The Division of Cultural Affairs facilitates cultural development and services for Florida's citizens and visitors through the development of public/private partnerships. The broad goal of the division is to bring more art and culture to a greater number of people and places in Florida. To accomplish this goal, the division offers a number of programs including the Art in State Buildings Program, the Capitol Complex Exhibition Program, Florida Arts License Plate Program, International Cultural Exchanges and Information Services. The division also provides grants in the categories of General Program Support, Cultural Projects and Capital Projects. This division employs 19 FTEs and funding for FY 2002-03 was \$28.1 million.

4. The Division of Historical Resources

The Division of Historical Resources is responsible for the promotion of historical, archaeological, museum, and folk culture resources in Florida. The division director also serves as Florida's State Historic Preservation Officer and is a liaison with the national historic preservation program which is administered by the National Park Service. There are three bureaus within the division: Historic Preservation, Archaeological Research and Historical Museums. The division has 94 FTEs and division funding in FY 2002-03 was \$29.3 million.

The Division of Historical Resources' responsibilities include providing public information programs and the statewide historic preservation plan, operating historic sites and properties, and administering state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida's state historic museums, promotion and administration of the Florida Folklife Program, and administration of various archaeological research and preservation programs, including a historic marker program. In addition to the R.A. Gray Building, which houses the Florida Museum of History and the division offices, the division is responsible for 63 other properties that are assigned (leased) to the division to manage on behalf of the state. Only 5 of those 63 sites are directly managed by the division and the division has responsibility for maintaining exhibits at two other sites, with the remainder subleased to other entities.

5. Library and Information Services

The Division of Library and Information Services is responsible for direct library services to state government; developing library services statewide; and providing archival and records management services, as well as technical assistance, education, financial aid, and cooperative services. The division's goal is to assure access to materials and information of past, present, and future value to assist local libraries in providing effective information services to the public. This division's budget includes 120 FTEs with an appropriation of \$55.5 million, approximately \$9 million being for staff with \$3 million of that from records management fees or federal funds.



## 6. International Affairs

The mission of the Office of International Affairs is to enhance and coordinate foreign affairs and diplomacy. The office promotes Florida's international activities; international cultural and educational exchanges, and international economic development. The responsibilities of the office include the Consular and Diplomatic programs, Sister City / Sister State programs, and to serve as an International Liaison that enables every region of the state to be involved in new international challenges. Finally, the office serves as Florida's international contact for both the congressional delegation and federal agencies. The activities and use of funds by the office is governed by the OTTED under a 2002 Memorandum of Agreement. However, the office's 10-person staff is housed within DOS and the \$3 million budget is also within DOS.

## E. Department of Environmental Protection

### 1. Florida Recreation Development Assistance Program (FRDAP)

This program is a statutorily created competitive grant program, administered by DEP, which provides grants for acquisition or development of land for public outdoor recreation use or to construct or renovate recreational trails. Currently, the Grant Section within DEP's Division of Recreation and Parks is responsible for administering FRDAP. In FY 2002-03, \$27 million was appropriated for FRDAP and there were 218 grant awards.

### 2. Federal Recreational Trails Program

This is a federally funded competitive program which provides grants for projects to construct, renovate or maintain recreational trails, trailhead and trailside facilities or trail education projects. Funds awarded under this program require matching funding from the local government, state or federal agency or non-profit sponsor. DEP coordinates the administration of this program with the U.S. Department of Transportation and the Federal Highway Administration. The amount of money received is based on an allocation of off-road vehicle fuel taxes collected by the federal government. In 2003, Florida received \$1,656,895.

## F. Office of Tourism, Trade, and Economic Development (OTTED) (Executive Office of the Governor)

OTTED serves as the executive branch agency charged with promoting economic development, tourism, and international trade. OTTED has a direct staff of 13 with a staff budget of \$1,526,485 in FY 02-03. Other staff associated with OTTED are the Office of Film and Entertainment (4 FTE) with a staff budget of \$290,034 in FY 02-03, and the Office of Urban Opportunities (2 FTE) with a staff budget of \$134,588 in FY 02-03.

### 1. Regional Rural Development Grants Program

This program was created to assist regional economic development organizations serving rural communities. OTTED contracts with Enterprise Florida, Inc. for application review and contract administration and OTTED determines grant award. In FY 2002-03, \$400,000 was appropriated to fund this program.

## 2. Rural Community Development Revolving Loan Program

This program was created to promote the economic viability of rural communities and create jobs for residents of Florida's rural areas by leveraging the use of existing federal, state, and local financial resources. To accomplish this goal, the program provides local governments with access to financial assistance through low-interest long-term loans. OTTED contracts with Enterprise Florida, Inc. for application review. Since its inception in 1996, \$5.6 million has been appropriated for this loan program with twelve loans closing for \$3,379,227.

## 3. Office of Urban Opportunity (Front Porch)

The Office of Urban Opportunity directs the Front Porch Florida initiative which is to improve the economic viability of distressed urban neighborhoods through promoting bottoms-up, community-based planning and problem-solving which will lead to the creation of economic opportunities for citizens of these communities. Under this initiative, twenty "front porch communities" have been established in Florida.

## G. Review by the Executive Office of the Governor

In 2002, staff of the Executive Office of the Governor undertook a review of the Department of State's mission, programs, activities, and functions. According to presentations by the staff, the review team formed recommendations that promote efficient government, maintenance of essential government functions, and elimination of duplication and overlap within and across agencies, consolidating community service functions, fostering partnerships with communities, facilitating structural opportunities for local governments to strengthen their communities, and cost savings in administrative and management costs. Constituent groups were involved in this process. The review team recommended merging the Departments of State and Community Affairs, transferring some functions or activities to other state agencies, including other activities and functions from other agencies in the new agency's structure, and changes or reductions in funding levels and staffing.

### III. Effect of Proposed Changes:

**Section 1** creates s. 20.101, F.S., and establishes the Department of State and Community Affairs (department) and provides a mission statement for this combined agency. The CS/CS states this new department will do the following:

- Improve the quality of life by promoting historic, cultural and artistic programs that have an economic impact on the state;
- Encourage identification and preservation of Florida's historic sites, properties, and objects, and provide public access to information on these resources;
- Assist in developing library services in local communities, ensure access to materials, and provide effective information services to the public;
- Promote economic and efficient management of state archives;
- Assist local communities to provide fair, credible, and accessible elections;
- Maintain an efficient and effective business registration activity;
- Plan for and mitigate against hazards by maintaining effective and rapid response and recovery capabilities;

- Provide assistance and grant funding to local governments for individual and neighborhood improvements;
- Promote economic development through providing assistance to communities for growth management to protect natural resources and improve their quality of life;
- Provide consistent direction regarding local and state roles in protecting critical state resources;
- Accomplish effective comprehensive planning and growth management to protect significant state assets and promote diverse land uses to insure efficient utilization of public and private investments in infrastructure; and
- Maintain and uphold citizen participation in all programs of the new agency.

In addition, this CS/CS provides that the Secretary of State shall head the department, and is appointed by the Governor, subject to Senate confirmation.

This CS/CS creates the following divisions within the department:

- < Division of Community Assistance
- < Division of Community Planning and Growth Management
- < Division of Corporations, Division of Elections
- < Division of Historical and Cultural Resources, and the
- < Division of Library and Information Services.

Also, the CS/CS authorizes the secretary of the department to appoint division directors and deputy and assistant secretaries as necessary. The secretary may also establish bureaus, sections, and subsections within the department. Further, the CS/CS allows the secretary to appoint the directors or executive directors of any commission or council assigned to the department unless otherwise provided by law.

The CS/CS places the Florida Housing Finance Corporation and the Division of Emergency Management under the new department for administrative purposes. The CS/CS also provides that the director of the Division of Emergency Management shall be appointed by and serve at the pleasure of the Governor.

**Section 2** amends s. 20.22, F.S., to designate the Secretary of Management Services as the official custodian of state records, and conferring all associated constitutional and statutory powers, duties, and functions.

**Section 3** repeals ss. 20.10 and 20.18, F.S.

**Section 4** transfers all powers, duties, functions, rules, records, personnel, property, and unexpended funds from the DCA and the DOS to the newly-created department by a type two transfer, as defined in s. 20.06(2), F.S., except as otherwise provided in the act. This CS/CS also transfers the Florida Recreation Development Assistance Program<sup>14</sup> and the federal recreational trails program from DEP to the department. In addition, the CS/CS transfers the Regional Rural

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<sup>14</sup> Sections 375.075 and 259.103, F.S.

Development Grants Program,<sup>15</sup> the Rural Community Development Revolving Loan Fund Program,<sup>16</sup> and the Office of Urban Opportunity<sup>17</sup> from the Executive Office of the Governor to the department.

Under the CS/CS, the following programs will not be transferred to the department:

- The state energy program<sup>18</sup> is transferred from DCA to DEP;
- The advocating international business partnerships service,<sup>19</sup> the issuance of apostilles,<sup>20</sup> and the international notaries' function,<sup>21</sup> is transferred from DOS to the Executive Office of the Governor, but these transfers do not include the statutory roles and responsibilities of the Secretary of State as Florida's Chief Cultural Officer;
- The Affordable Housing Catalyst Program<sup>22</sup> and the Affordable Housing Study Commission<sup>23</sup> are transferred from DCA to the Florida Housing Finance Corporation;
- The civil legal assistance program<sup>24</sup> is transferred from DCA to the Department of Legal Affairs; and
- The records management program,<sup>25</sup> the Florida Administrative Code and Florida Administrative Weekly,<sup>26</sup> and the management of copyrights, patents, and trademarks of or on behalf of the state<sup>27</sup> is transferred from DOS to DMS.

**Section 5** provides that the Secretary of State shall continue as secretary of the new department without further appointment or reconfirmation and shall be known as the Secretary of State.

**Section 6** gives the secretary flexibility for fiscal year 2003-04 to make any changes or reductions in staffing or funding necessary to achieve the greatest coordination and efficient operation.

**Section 7** requires the department, DEP, the Executive Office of the Governor, and the DMS to evaluate the programs and functions transferred to those agencies and submission of a joint report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by Oct. 15, 2003. The report shall include recommended statutory changes, as well as recommendations for achieving efficiencies in management and operations, and improving service delivery, and ensuring compliance with federal and state laws. In addition, the CS/CS requires the agencies to gather input from specific constituent groups, consider that input, and make it a part of the final report.

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<sup>15</sup> Sections 14.2015(2)(f) and 288.018, F.S.

<sup>16</sup> Sections 144.2015(2)(f) and 288.065, F.S.

<sup>17</sup> Sections 14.2015(9), F.S.

<sup>18</sup> Sections 377.701 and 377.703, F.S.

<sup>19</sup> Sections 288.809 and 288.816, F.S.

<sup>20</sup> Section 15.16(8), F.S.

<sup>21</sup> Chapter 118, F.S.

<sup>22</sup> Section 420.606, F.S.

<sup>23</sup> Section 420.609, F.S.

<sup>24</sup> Sections 68.094-.105, F.S.

<sup>25</sup> Section 257.36, F.S.

<sup>26</sup> Sections 120.53, 120.54, 120.542, and 120.55, F.S.

<sup>27</sup> Sections 286.021 and 286.031, F.S.

**Section 8** provides that the programs transferred to the new department shall be operated as directed by statutes in effect on the effective date of the act. Further, the CS/CS provides that the department shall not make any substantive programmatic changes by rule in advance of the conclusion of the 2004 session.

**Section 9** directs the Division of Statutory Revision to prepare a reviser's CS/CS for introduction at the 2004 Regular Session to conform the Florida Statutes to the provisions of this act.

**Section 10** provides the act shall take effect July 1, 2003.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The CS/CS requires the newly-created department to operate programs transferred to the department as directed by laws governing those programs in effect on the effective date of the act. The CS/CS further provides the department will not make any substantive programmatic changes by rule in advance of the conclusion of the 2004 Legislative Session. It also directs the Division of Statutory Revision to prepare a reviser's bill for the 2004 Legislative Session to conform the Florida Statutes to the provisions of this act. However, Article III, s. 6 of the State Constitution provides:

No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection.

The bill does not set out any of the amended acts, sections or subsections which are currently assigned to different agencies but which are being transferred in the bill to the new department, as well as to other agencies.

There are a number of constitutional powers and duties assigned to the custodian of state records:

- < Article III, s. 8(b) of the State Constitution, provides for the filing of vetoes with the custodian of state records.

- < Article III, s. 8(i), of the State Constitution, requires filing of the annual financial disclosure with the custodian of state records.
- < Article III, s 16(b) and (f) of the State Constitution, provides for the filing of judicial apportionment orders.
- < Article IV, s. 3 of the State Constitution, authorizes the filing of a certificate regarding incapacity to serve to be filed with the custodian of state records.
- < Article IV, s 7(a) of the State Constitution, provides for filing the Governor's orders of suspension of officers to be filed with the custodian of state records.
- < Article IV, s. 8 of the State Constitution, permits the governor to suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days and, with approval of 2 cabinet members, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures; an executive order related to these functions must be filed with the custodian of state records.
- < Article V, s. 10(b) of the State Constitution, provides for the filing of judicial merit selection and retention petitions with the custodian of state records.
- < Article VIII, s. 1(j) of the State Constitution, requires county ordinances to be filed with the custodian of state records.
- < Article XI, s. 3 of the State Constitution, provides that constitutional revision and amendment initiatives must be filed with the custodian of state records. The petition must contain a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.
- < Article XI, s. 4 of the State Constitution, provides that the people may call a constitutional convention by filing with the custodian of state records a petition, containing a declaration that a constitutional convention is desired, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to fifteen percent of the votes cast in each such district respectively and in the state as a whole in the last preceding election of presidential electors. Further, that convention will file with the custodian of state records any revision of the constitution proposed by it.
- < Article XI, s. 6(e) of the State Constitution, provides for the filing of taxation and budget reform commission proposals with the custodian of state records.

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

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

None.

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

The CS/CS does not have any direct fiscal impact on local governments.

**C. Government Sector Impact:**

The total fiscal impact of the legislation is unknown at this time. In presentations at prior legislative committee meetings, the DCA indicated that there would be some savings through reduction in the size of the fiscal and other administrative offices when the two agencies are combined. In these presentations, DCA staff suggested total costs savings from the merger would be approximately \$21 million, assuming the reductions in staffing proposed for several programmatic areas as well as administration. However, there are also costs associated with the merger in the form of moving expenses, revisions to web pages, letterhead, etc., but these costs are indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The committee substitute provides that the Florida Housing Finance Corporation and the Division of Emergency Management are housed in the department “. . . for administrative purposes.” As a result, it does not appear that these two entities are subject to the control and supervision of the Secretary of State as the head of the new department. This is further evidenced by the fact that one of the entities that is housed “for administrative purposes” in the department is a corporation with a board of directors. The other, the Division of Emergency Management, has its director appointed by the Governor instead of the Secretary of State. In situations where an entity within a department is independent of the head of the agency in which it is housed, and where the Governor appoints the head of the independent entity, typically, Senate confirmation is provided to ensure Legislative oversight of an appointee who will exercise sovereign powers independently. *See*, for example, s. 120.65, F.S., which provides that the Division Director of the Division of Administrative Hearings, an independent division housed within the Department of Management Services, is appointed by the Administration Commission and confirmed by the Senate. It should also be noted that the Division of Administrative Hearings is still created within a department as a division, and not just housed in a department for “administrative purposes.” Further, due to DOAH’s independence, a number of issues, such as personnel and budget authority, are clarified in statute.

On page 5, lines 16-24, the committee substitute provides that the Secretary of State “. . . shall appoint the directors or executive directors of any commission or council assigned to the department.” This same language is presently contained in s. 20.18(3), F.S., for the Secretary of the Department of Community Affairs. It should be noted, however, that s. 20.03(10), F.S., currently provides that a commission exercises quasi-legislative or quasi-judicial powers, or both, “. . . *independently* of the head of the department or the governor.” Commission members, who are typically gubernatorial appointees confirmed by the Senate, thus exercise a high level of executive power and authority under the statutory schema established in chapter 20, F.S. As such, commissions are not advisory in nature like “councils.”<sup>28</sup> Placing general authority for

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<sup>28</sup> Section 20.03(7), F.S., defines a “council” or “advisory council” to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

hiring an executive director for a commission with the secretary of the department in which the commission is housed, but of which it is functionally independent, would appear to be inconsistent with the level of independence that a commission typically is created to exercise.

The committee substitute also transfers the Affordable Housing Study Commission from the DCA to the Florida Housing Finance Corporation. By definition in s. 20.04(10), F.S., a "commission" is created ". . . within a department, the office of the Governor, or the Executive Office of the Governor."

The bifurcation of records management duties and duties of the custodian of state records will require coordination between the new department and the DMS.

**VIII. Amendments:**

None.

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

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