



- Adds the Commissioner of Agriculture to the Financial Management Information Board and to the board's coordinating council.
- Extends the sunset date for the Enterprise Resource Planning Integration Task Force from July 1, 2004 to July 1, 2008.
- Allows for a centralized financing process under the CFO for the financing of Guaranteed Energy Performance Savings Contracts, similar to the process currently used in the Consolidated Equipment Financing Program.
- Clarifies the persons and entities that are not subject to the Florida Deceptive and Unfair Trade Practices Act. Provides an exemption to the act pertaining to commercial real property and provides an exemption for specific causes of action concerning the failure to maintain real property if the Florida Statutes require the owner to comply with specified building codes and provide a cause of action for failure to maintain property.
- Provides authority to the Department of Financial Services to contract with entities that receive state funds for accounting and payroll services. Requires all remuneration received to be deposited in the General Revenue Fund. The department is to request cost recovery of expenses from the Legislative Budget Commission.
- Changes incorrect references to the Department of Financial Services and the Office of Insurance Regulation.

This bill substantially amends the following sections of the Florida Statutes: 17.16, 17.57, 17.59, 17.61, 112.215, 215.31, 20.121, 110.1227, 408.05, 501.212, 516.35, 624.313, 624.317, 624.501, 626.016, 626.112, 626.161, 626.171, 616.181, 626.191, 626.211, 626.221, 626.231, 626.241, 626.251, 626.261, 626.266, 626.271, 626.281, 626.2817, 626.291, 626.301, 626.371, 626.381, 626.431, 626.461, 626.471, 626.521, 626.541, 626.551, 626.611, 626.621, 626.631, 626.641, 626.661, 626.681, 626.691, 626.692, 626.8582, 626.8584, 626.859, 626.863, 626.865, 626.866, 626.867, 626.869, 626.8695, 626.8696, 626.8697, 626.8698, 626.870, 626.871, 626.872, 626.873, 626.8732, 626.8734, 626.8736, 626.8738, 626.874, 626.878, 626.9543, 626.989, 627.0628, 627.6699, and transfers and renumbers section 627.7012 as section 626.879.

## II. Present Situation:

### **Organization of the Department of Financial Services, Financial Services Commission, Office of Insurance Regulation, and the Office of Financial Regulation**

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. The CFO serves as the chief fiscal officer of the state. The CFO is 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, as previously allowed for the Treasurer and Comptroller.

Legislation enacted in 2002 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>1</sup>

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<sup>1</sup> Ch. 2002-404, Laws of Florida

Two “offices” were created under the Financial Services Commission (commission), the Office of Insurance Regulation and the Office of Financial Regulation. Each office is headed by a director who is appointed by and serves at the pleasure of the commission. Both the Governor and the CFO must concur for the appointment or removal of a director. The commission acts as the agency head for purposes of rulemaking, while the director of each respective office acts as the agency head for final orders and other final agency actions.<sup>2</sup> The 2002 act prescribed, in general terms, the jurisdiction of the affected agencies, as set forth in s. 20.121, F.S. In 2003, conforming legislation made changes throughout the Florida Statutes to assign specific statutory duties consistent with s. 20.121, F.S., and the 2002 act.<sup>3</sup>

### **Insurance Regulation; Regulation of Insurance Adjusters**

The Office of Insurance Regulation (OIR) and the Department of Financial Services (department) each have distinct regulatory powers related to insurance. The OIR is responsible for all activities concerning insurers and other risk-bearing entities, such as licensing, solvency, rates, and policy forms.<sup>4</sup> The OIR is also authorized to regulate insurance adjusters.<sup>5</sup> The department among other duties is responsible for the regulation of insurance agents and other individuals who are licensed to sell insurance-type products.<sup>6</sup>

There are three types of licensed insurance adjusters in Florida: public adjusters,<sup>7</sup> independent adjusters,<sup>8</sup> and company employee adjusters.<sup>9</sup> A fourth type, catastrophe and emergency adjusters, are unlicensed and only used if a hurricane occurs or an emergency is declared. The OIR may assign such adjusters to the affected area and an insurer may use them, but cannot be required to do so.<sup>10</sup>

Delegation of the regulation of insurance adjusters to the OIR, instead of the department, was based on the argument that it was more closely linked to the regulation of insurers than to the regulation of agents. Most adjusters work for or represent insurance companies and directly affect the amount of the insurer’s claim payment. However, adjusters are the only individual persons who are regulated by the OIR, which otherwise regulates insurance entities. In actual practice, the department and the OIR have made an informal agreement to allow the

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<sup>2</sup> Section 20.121(3)(c), F.S.

<sup>3</sup> Ch. 2003-261, Laws of Florida

<sup>4</sup> Section 20.121(3)(a)1., F.S.

<sup>5</sup> Sections 20.121(3)(a)1. and 626.626.016(2), F.S.

<sup>6</sup> Sections 20.121(2)(g) and 626.016(1), F.S..

<sup>7</sup> Section 626.854, F.S. A public adjuster is a person who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant, or who, for compensation acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for, or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract.

<sup>8</sup> Section 626.855, F.S. An independent adjuster is any person who is self-employed or is associated with or employed by an independent adjusting firm or other independent adjusters, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.

<sup>9</sup> Section 626.856, F.S. A company employee adjuster is an adjuster who is employed by an insurer or insurer’s subsidiary, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.

<sup>10</sup> Section 626.859, F.S. Emergency adjusters are designated and certified by the Office of Insurance Regulation as qualified to adjust claims.

department's Division of Agents and Agency Services to perform the administrative functions related to the licensure and regulation of insurance adjusters as the functions are similar to those performed for insurance agents. Spokespersons state that the infrastructure and personnel dedicated to the licensure of individuals can not be efficiently split between the department and OIR. As informally agreed, the OIR director approves all final orders for any disciplinary action that is taken against an adjuster. Regulatory matters are handled by the department.

### **Appointments to Boards and Commissions**

The 2002 act provided that from January 7, 2003, until June 30, 2003, the CFO would make all appointments to boards and commissions that were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal.<sup>11</sup> The 2003 act delegated appointment authority for each of these boards and commissions. The CFO retained the appointment authority for most of these boards and commissions. The director of the OIR was provided appointment authority for certain boards that appeared to be more closely tied to the regulation of insurers.<sup>12</sup> Specific boards and commissions addressed by the bill are discussed in the section-by-section analysis, below.

### **Fiscal Duties of the Chief Financial Officer**

#### **Division of Treasury within the Department of Financial Services**

*Investment of State Funds and Funds of Statutorily-Created Entities* -- The Chief Financial Officer (CFO) invests all general revenue funds, all trust funds, and all agency funds, including the judicial branch, and may, upon request, invest funds of a statutorily created board, association or entity, with certain exceptions, as authorized by s. 17.61, F.S. The Division of Treasury operates an investment program for funds of "statutorily created entities" that maintain funds outside of the State Treasury. This program is called The Treasurer's Special Purpose Investment Account. For example, special districts are authorized to invest in this program because they are created in statute.

*Safekeeping of Deposits* -- The CFO is also authorized to accept deposits of cash, securities, and other documents or articles of value from any state agency or any county, city, or other public authority.<sup>13</sup> This typically includes statutorily required deposits of cash or securities imposed as a condition of state licensure for various professions on entities. According to the Division of Treasury, this service is performed at no charge to state agencies, even though the current law authorizes the CFO to establish a fee for processing, servicing, and safekeeping such deposits. The Division also reports that it has not yet performed these services for local governments, even though it has authority to do so. The Division anticipates it will implement this authority in the future and charge local governments a fee for this service.

*Deferred Compensation Program* -- The CFO is charged with the duty of establishing, with the approval of the State Board of Administration, the Government Employees' Deferred Compensation Plan under s. 112.215, F.S., including all investment vehicles or products as may

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<sup>11</sup> Section 8, ch.2002-404, Laws of Florida

<sup>12</sup> See, Senate Staff Analysis to CS/CS/SB 1712 (March 26, 2003), pp. 37-46.

<sup>13</sup> Section 17.59, F.S.

be offered to employees by qualified companies. The state enters into contracts with qualified investment providers and those providers then enter into separate contracts with the employees who chose their particular investment programs. The law allows the CFO, with the approval of the State Board of Administration, to delegate responsibility for administration of the plan to a qualified person, and through such person, contract with a private corporation or institution to provide any necessary or proper services for the plan.<sup>14</sup> Most administrative functions are performed by the Office of Deferred Compensation, under the department's Division of Treasury. Recordkeeping services are performed by a private entity. The state's contracts with the investment providers currently require a \$0.75 per month fee per account and require the providers to pay for these services. According to the Division, 5 of the 6 providers currently include these fees in the fees charged by the provider to participating employees. In 1999, a lawsuit was filed in the Circuit Court for Leon County challenging the authority of the state to require payment of the administrative fees. In the summary judgment order, the trial court rejected the claim for recovery of the fees. The trial court determined that the state's authority to impose the administrative fees against the providers was inherent in the statutory authority to contract for administrative services. The First District Court of Appeal affirmed the summary judgment on the ground that the appellants did not have standing to pursue the claim.<sup>15</sup>

### **Florida Unfair and Deceptive Trade Practices Act**

Part II of ch. 501, F.S., is the Florida Deceptive and Unfair Trade Practices Act (FDUPTA). This act declares as unlawful, unfair or deceptive acts or practices in the conduct of any trade or commerce and other violations of this part, as defined.<sup>16</sup> The act authorizes state attorneys and the Department of Legal Affairs (Attorney General) to enforce the act, as well as private causes of action by persons who have suffered a loss as a result of a violation.<sup>17</sup>

Prior to the 2003 act that made conforming changes to the reorganization of the Department of Financial Services, s. 501.212, F.S., provided an exemption from FDUPTA for "any person or activity regulated under laws administered by the Department of Insurance or banks and savings and loan associations regulated by the Department of Banking and Finance."<sup>18</sup> The 2003 act made conforming changes to this section to provide that the Act did not apply to "any person or activity regulated under laws administered by the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission or banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission."<sup>19</sup> No substantive change was intended, as the reference to "persons or activities regulated under the laws administered by the Department of Financial Services or the Office of Insurance Regulation" was meant to encompass the same entities that were formerly regulated by the Department of Insurance. However, the Department of Financial Services now regulates cemeteries, which was not previously regulated by the Department of Insurance. Also, the reference to the Department of Financial Services might be incorrectly interpreted to include

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<sup>14</sup> Section 112.215(4)(c), F.S.

<sup>15</sup> Nedeau v. Gallagher, 851 So.2d 214 (Fla. 1st DCA, 2003)

<sup>16</sup> Sections 501.204 and 501.203, F.S.

<sup>17</sup> Sections 501.203(2), 501.207, and 501.211, F. S.

<sup>18</sup> Section 501.212, F.S. (2002)

<sup>19</sup> Section 565, ch. 2003-261, Laws of Florida

entities regulated by the Office of Financial Regulation, such as consumer finance companies and other entities other than banks and savings and loans formerly regulated by the Department of Banking and Finance, which were not exempt under this section.

### III. Effect of Proposed Changes:

**Section 1** creates s. 17.0416, F.S., to provide authority to the Department of Financial Services to contract with entities that receive state funds for accounting and payroll services. Requires all remuneration received to be deposited in the General Revenue Fund. The department is to request cost recovery of expenses from the Legislative Budget Commission.

**Section 2** amends s. 17.16, F.S., to allow the office of the Chief Financial Officer to have an official seal, which would no longer must be the same seal as previously used by the Comptroller.

**Section 3** amends s. 17.57, F.S., to clarify that the Chief Financial Officer (Division of Treasury of the Department) may use reverse repurchase agreements in investment transactions, as well as repurchase agreements. This would provide the same language as provided for the State Board of Administration in s. 215.47(8), F.S. Repurchase agreements involve the purchase of a security under an agreement to sell it back to the seller at a specified date in the future. The interest rate to be earned by the investor is determined at the time of the agreement. A reverse repurchase agreement is the same transaction from the other side of the transaction. Currently, the Division of Treasury reports that it is not using reverse repurchase agreements for their internally managed accounts, but that outside managers under contract with the department are using such agreements.

**Section 4** amends s. 17.59, F.S., to require the CFO to administer a collateral management service (rather than allowing the CFO to accept deposits for safekeeping) for state agencies, counties and cities. The bill specifies that this service is for any deposit or pledge of collateral required by statute, rule, or contract. The bill clarifies the ways such collateral may be deposited or pledged to the CFO, provides rulemaking authority to the CFO, and allows for the CFO to specify fees in the service-level agreement. The bill deletes the specific \$5.00 fee for the CFO certifying or authenticating any document and the \$0.50 per page fee for copies of documents.

**Section 5** amends s. 17.61, F.S., to expand the authority of the CFO to invest funds, upon request, of funds of boards, associations, or entities to include those that are “created by the State Constitution or by law” rather than those that are “statutorily created.” This would include municipalities, which are created by special act, rather than by statute, and such constitutional officers as clerks of the courts and sheriffs.

**Section 6** amends s. 20.121, F.S., to delete the authority for the Office of Insurance Regulation to regulate adjusters.

The bill allows the Chief Financial Officer to also be known as the “Treasurer.”

The bill allows the Director of the Office of Insurance Regulation to also be known as the “Commissioner of Insurance Regulation.” This is the more common title used in other states and would help clarify the role of the Director to such bodies as the National Association of Insurance Commissioners.

The bill allows the Director of the Office of Financial Regulation to also be known as the “Commissioner of Financial Regulation.”

**Section 7** amends s. 110.1227, F.S., to provide that the Director of OIR, rather than the CFO, appoints an actuary to the board of directors for the Florida Employee Long-Term Care Plan Act. The purpose of this board is 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. Prior to 2003, this appointment was made by the Insurance Commissioner.

**Section 8** amends s. 112.215, F.S., to clarify that the Government Employees’ Deferred Compensation Program is funded in whole or in part from fees charged by investment providers and may be recouped from their respective plan participants. Such fees must be deposited in the Deferred Compensation Trust Fund. These fees have been charged since the program’s inception, but an unsuccessful lawsuit challenged the legal authority for such fees, as explained above in Present Situation. Continues current law and clarifies that State University System employees are eligible to continue participation in the State Deferred Compensation Program.

**Sections 9 and 10** amend ss. 215.95 and 215.96, F.S. to add the Commissioner of Agriculture to the Financial Management Information Board and to the board’s coordinating council. Currently, the Commissioner of Agriculture is the only member of the Cabinet who is not on the board or the coordinating council, which jointly plan and implement the integration and coordination of the state’s administrative and financial management information systems. The bill also extends the sunset date for the Enterprise Resource Planning Integration Task Force from July 1, 2004 to July 1, 2008, since the task force is expected to be needed for several more years and, according to the department, is important to the success of coordinating the state’s financial and accounting information systems.

**Section 11** amends s. 287.064, F.S., related to consolidated financing of deferred-payment purchases. The bill allows for a centralized financing process under the CFO for the financing of Guaranteed Energy Performance Savings Contracts, similar to the process currently used in the Consolidated Equipment Financing Program. The bill provides for a maximum term of 10 years for repayment and prohibits financing the costs of training, operation, and maintenance. (See Economic Impact for the advantages of this process.)

**Section 12** amends s. 408.05, F.S., to provide that an employee of OIR appointed by the Director of OIR, rather than an employee of the Department appointed by the CFO, is a member of the State Comprehensive Health Information System Advisory Council. The purpose of the council is 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).

**Section 13** amends s. 501.212, F.S., to clarify the entities that are not subject to the Deceptive and Unfair Trade Practices Act (FDUPTA), part II of ch. 501, F.S. The bill more clearly matches the substance of this section as it existed prior to 2003. (See Present Situation, above, for discussion of the changes to this section in 2003 that were intended to conform to the reorganization of the Department of Financial Services.) Instead of exempting persons or activities regulated under laws administered by the Department of Financial Services, the bill exempts “any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services.” The bill also provides an exemption to the act pertaining to commercial real property and provides an exemption for specific causes of action concerning the failure to maintain real property if the Florida Statutes require the owner to comply with specified building codes and provide a cause of action for failure to maintain property.

**Section 14** amends s. 516.35, F.S., to change a reference from OIR to the Department to refer to the correct agency that licenses persons as agents to sell credit insurance.

**Sections 15 -74** amend ss. 624.313-627.7012, F.S., (all sections are listed on page 2 of this analysis) to make conforming changes to authorize the Department of Financial Services, rather than the Office of Insurance Regulation, to regulate insurance adjusters.

Many of these sections are in part I of ch. 626, which currently delegate powers and duties to the “department or office” (or “department or commission” for rulemaking) because they are general powers related to the licensure of both insurance agents and adjusters. Section 626.016, F.S., specifies how these sections are to be interpreted, by providing that the powers and duties of the department, OIR, and the commission specified in part I are limited to the licensees that they each regulate, which are specified. The bill deletes references to the “office” in those sections in part I that apply to agents and adjusters and other individual licenses that would now be solely within the jurisdiction of the department. (Other sections of ch. 626, F.S., will still authorize the OIR to license and regulate service companies, administrators, and viatical settlement providers.)

**Section 75** amends s. 626.9543, F.S., related to Holocaust victims, to delete the provision that defines “department” as the Department of Insurance, which the 2003 act failed to delete. The intent of the 2003 act was to authorize the Department of Financial Services to administer this program. As stated in the Senate Staff Analysis for the 2003 legislation:

*The bill does not amend s. 626.9643, F.S., related to Holocaust victims, which has the effect of authorizing the “department” (DFS) to administer this section, which is consistent with the role of the Division of Consumer Services, as it administered this section under the former DOI. As such, the bill would provide that the proof of claim that insurers must allow claimants to use, must meet standards established by the department (DFS). The department would have 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. Insurers would be required to annually report to the department information relating to the results of efforts to locate and pay claims of insured Holocaust victims and their beneficiaries. [Senate Staff Analysis for CS/CS/SB 1712, March 26, 2003 ( p. 34)]*



**Section 76** amends s. 626.989, F.S., related to the Division of Insurance Fraud in the Department of Financial Services. This division and the related duties of investigation and arrest of persons committing insurance fraud were delegated to the Department. However, subsection (9), which requires an annual report related to workers' compensation fraud activities, incorrectly refers to the "office" as conducting fraud investigations and presenting cases for prosecution. The bill changes these references to the Bureau of Workers' Compensation Fraud, a bureau under the Division of Insurance Fraud of the Department. The bill also corrects the reference to the Division of Workers' Compensation Insurance Bureau of Compliance (also in the Department) related to the activities of that bureau in enforcing the requirement that employers maintain workers' compensation coverage.

**Section 77** amends s. 627.0628, F.S., to provide that the Director of OIR, rather than the CFO, would appoint an actuary employed by OIR to the Florida Commission on Hurricane Loss Projection Methodology. As provided in current law, this person must be an employee of OIR who is the actuary responsible for property insurance rate filings. This commission adopts findings as to the accuracy or reliability of 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 OIR or in any arbitration or administrative or judicial review.

As amended, the CFO would appoint 5, rather than 6, of the 11 members of the commission. But this does not include 2 other members who the CFO effectively selects: the insurance consumer advocate who is employed by the CFO and the Executive Director of the Citizens Property Insurance Corporation, for which the CFO is the board chairman.

**Section 78** amends s. 627.6699, F.S., to provide that the Director of OIR or his or her designee, rather than the CFO or his or her designee, would be the chairperson of the Small Employer Health Reinsurance Program, and would appoint all 13 additional members of the board. This board supervises 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.

**Section 79** provides that the transfer of the regulation of adjusters from OIR to the Department shall not affect any administrative or judicial action before or pending on the effective date and the Department shall be substituted as a party in interest on any such pending action.

**Section 80** provides that any license, form, or action that was approved or authorized by the commission or OIR which was otherwise lawfully in use before the effective date of this act may continue to be used or be effective as originally authorized or permitted, until the Department otherwise prescribes.

**Section 81** provides that the rule of the commission which governs the regulation of insurance adjusters shall become rules of the Department.

**Section 82** provides that the act shall take effect July 1, 2004.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

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

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

Regulation of Insurance Adjusters: None. The bill does not transfer positions or funding from Office of Insurance Regulation to the Department of Financial Services for the regulation of insurance adjusters since the Department is currently performing the administrative tasks related to licensure and regulation of insurance adjusters pursuant to agreement between OIR and the Department.

Section 4. Allowing the Chief Financial Officer (Division of Treasury) to invest funds of boards and entities created by the constitution or by law would allow municipalities, clerks of court, sheriffs, and other entities that are not created by statute to have access to the Treasury's Special Purpose Investment Account (SPIA). Currently, participants wire funds for investment into SPIA from their bank account. Withdrawals are wired on a same day basis if the request is made to Treasury staff by 11:00 am. SPIA funds are invested in the same portfolio as Treasury funds and therefore receive an advantage because a large portion of the Treasury portfolio is in higher earning medium term instruments such as investment grade corporate bonds and mortgage backed securities. Earnings are posted monthly based on a pro-rata share of total Treasury earnings. The rates averaged 5.221 percent in FY 01-02, 5.144 percent in FY 02-03, and 3.547 percent through the end of March for FY 03-04A. These rates are net of the 0.12 percent investment fee charged in accordance with the authorizing statute.

Section 10. Allowing for a centralized financing process under the Chief Financial Officer (CFO) for the financing of Guaranteed Energy Performance Savings Contracts, similar to the process currently used in the Consolidated Equipment Financing Program,

would be a more efficient way of financing energy savings contracts. It would take advantage of economies of scale since a lender is likely to provide a better interest rate if it believes it would be financing \$100 million of purchases, rather than \$2 million. It would allow for all of the financing negotiations to be done at one time, so that the terms would be standardized across all agencies and eliminate the negotiation skills variance among agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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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