

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Governmental Operations Committee

BILL: CS/CS/SB 264

INTRODUCER: Governmental Operations Committee, Banking and Insurance Committee and Senator Geller

SUBJECT: Insurance Regulation (Transferring Insurance Regulation to the Department of Financial Services)

DATE: April 12, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.	Rhea	Wilson	GO	Fav/CS
3.			GA	
4.				
5.				
6.				

I. Summary:

The bill modifies the method by which the director of the Office of Insurance Regulation and the director of the Office of Financial Regulation are appointed. Under the bill, the Chief Financial Officer must nominate each director. The Financial Services Commission must act on each nomination by majority vote. In the event of a tie, the side on which the Chief Financial Officer voted prevails. To remove one of these directors, the Governor or the Chief Financial Officer must petition the commission. The commission must act on the petition by majority vote. In the event of a tie, the side on which the Chief Financial Officer voted prevails.

This bill amends the following section of the Florida Statutes: 20.121, F.S.

II. Present Situation:

Organizational Structure of the Executive Branch – 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.

Additionally, Article IV, s. 6 of the State Constitution provides:

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 and serving at the pleasure of the governor, except:

- (a) When provided by law, confirmation by the senate or 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.

The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers:

As the chief executive officer in whom the supreme executive power is vested, the Governor has direct supervision over all executive departments unless the legislature places that supervision in the hands of one of the following other executive officers: the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor. Inherent in that direct supervisory authority is the power to appoint executive officers to public office.¹

Chapter 20, F.S., provides for the organizational structure of the executive branch.² Section 20.04, F.S., provides that the department is the principal administrative unit of the executive branch³ and subdivides departments into divisions headed by division directors,⁴ bureaus headed by bureau chiefs,⁵ sections headed by administrators⁶ and subsections headed by supervisors.⁷

The internal structure of all departments must adhere to standard terms, except for 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.⁸ Pursuant to subsection (3) of the section, the principal unit of the department is the “division,” with each division headed by a “director.” The principal unit of the division is the “bureau,” with each bureau headed by a “chief.” No definition for “office” is provided in chapter 20, F.S.

¹ *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

² Section 20.04, F.S.

³ Section 20.04(1), F.S.

⁴ Section 20.04(3)(a), F.S.

⁵ Section 20.04(3)(b), F.S.

⁶ Section 20.04(3)(c), F.S.

⁷ Section 20.04(3)(d), F.S.

⁸ Section 20.04(3), F.S.

Section 20.06, F.S., provides that the executive branch must be reorganized by transferring the specified agencies, programs, and functions to other specified departments, commissions, or offices. Such transfer does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer, and any agency or department to which are transferred the powers, duties, and functions relating to the pending proceeding must be substituted as a party in interest for the proceeding. The transfers provided in that section are intended to supplement but not supplant the requirements of Art. III, s. 6 of the State Constitution. Section 20.06(1), F.S., provides that a type one transfer is the *transferring intact* of an existing agency or department so that *it becomes a unit* of another agency or department. A type two transfer is 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 with the certain identifiable units or subunits removed therefrom or abolished.

In November 1998, the voters of Florida approved the 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. Under the Constitution, 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.⁹

Prior to the passage of this amendment, the Treasurer and Comptroller were elected cabinet officers under the Constitution. In addition to their constitutional duties, the Legislature had statutorily designated the Comptroller as head of the Department of Banking and Finance and had designated the Treasurer as head of the Department of Insurance, as well as State Fire Marshal. The statutory duties of the Comptroller and Treasurer needed to be reassigned after the passage of the constitutional amendment and legislation enacted in 2002 delegated these duties to the newly created Department of Financial Services (DFS), headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet.¹⁰ The act created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the DFS and commission.

Department of Financial Services

The following divisions were created by the 2002 legislation within the Department of Financial Services (DFS) which is headed by the CFO:

- Accounting and Auditing (which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity)
- State Fire Marshal
- Risk Management
- Treasury (which includes the Bureau of Deferred Compensation)
- Insurance Fraud

⁹ Section 4, Article IV, of the State Constitution.

¹⁰ Chapter 2002-404, F.S. This act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the DFS and commission. These changes became effective January 7, 2003. In 2003, legislation passed which provided all state fiscal powers to the CFO or DFS which were previously assigned to the Treasurer and Comptroller. Ch. 2003-261, L.O.F.

- Rehabilitation and Liquidation
- Insurance Agents and Agency Services
- Consumer Services
- Workers' Compensation
- Administration
- Legal Services
- Information Systems
- Office of Insurance Consumer Advocate
- Funeral, Cemetery, and Consumer Services.¹¹

Financial Services Commission

The 2002 legislation also 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 commission is a separate budget entity and is not subject to the control of the DFS. There are two “offices” created under the commission:

- The Office of Insurance Regulation
- The Office of Financial Regulation

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. The Office of Insurance Regulation (OIR) is 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. 636.¹²

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.¹³

The commission and the directors of each office (OIR and OFR) 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 the directors are each agency head for (other) final agency actions under ch. 120, F.S., for all areas within the regulatory authority of their office.

¹¹ The Division of Funeral, Cemetery, and Consumer Services was placed within the DFS in 2004 (Ch. 2004-301, L.O.F.)

¹² Section 20.121(3)(a)1, F.S.

¹³ Section 20.121(3)(a)2, F.S. The OFR duties encompass all of the statutory responsibilities 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 assigned to the Department of Financial Services.

III. Effect of Proposed Changes:

The bill modifies the method by which the director of the Office of Insurance Regulation and the director of the Office of Financial Regulation are appointed. Under the bill, the Chief Financial Officer must nominate each director. The Financial Services Commission must act on each nomination by majority vote. In the event of a tie, the side on which the Chief Financial Officer voted prevails. To remove one of these directors, the Governor or the Chief Financial Officer must petition the commission. The commission must act on the petition by majority vote. In the event of a tie, the side on which the Chief Financial Officer voted prevails.

Section 2. Provides that the act shall take effect on July 1, 2007.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
