

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 1402 (801726)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Lee

SUBJECT: Organization of the Department of Financial Services

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

PCS/CS/SB 1402 changes the organization of the Department of Financial Services (DFS or department). The bill gives the Chief Financial Officer (CFO) the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote effective and efficient operations. The bill does not change the review and approval process by the Department of Management Services and the Executive Office of the Governor.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The Strategic Markets Research and Assessment Unit, which is currently not active nor funded, is repealed.

The bill provides that Division of Accounting and Auditing positions directly responsible for performing investigations, audits, or management studies for the purpose of making recommendations for corrective action within the DFS are exempt from the career service requirements.

The \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund.

The department has indicated the cost of changing the 66 accountants and auditors to the select exempt service classification from career service is estimated to be \$75,000 from the General Revenue Fund and \$12,000 from the Administrative Trust Fund. The department has indicated that it has sufficient current appropriations to cover these increased costs.

The effective date of the bill is July 1, 2015.

## II. Present Situation:

The CFO is a member of the Cabinet<sup>1</sup> and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.<sup>2</sup> The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>3</sup>

Section 20.04, F.S., provides for the establishment of divisions, bureaus, sections, or subsections within a state department. A department head may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the

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<sup>1</sup> See Art. IV, s. 4, Fla. Const.

<sup>2</sup> See s. 20.121(1), F.S.

<sup>3</sup> See s. 20.121(2), F.S.

department.<sup>4</sup> The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.<sup>5</sup>

### **Bureau of Unclaimed Property**

Chapter 717, Florida Statutes, governs the disposition of unclaimed property and requires the DFS to administer the statute. Currently, the DFS holds unclaimed property accounts valued at more than \$1 billion from dormant accounts in financial institutions, insurance and utility companies, securities, trust holdings, and unclaimed safe deposit boxes. The Bureau of Unclaimed Property within the DFS is the bureau responsible for administering chapter 717, F.S.<sup>6</sup>

### **The Office of Fiscal Integrity**

The Office of Fiscal Integrity is a criminal justice entity within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The office performs functions related to the duty of the CFO to examine, audit, adjust, and settle the accounts of all state officers and any other person who has received state funds or moneys.<sup>7</sup> The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.<sup>8</sup>

### **Division of Insurance Fraud**

The Division of Insurance Fraud investigates various types of insurance fraud including Personal Injury Protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's fraud, and healthcare fraud.<sup>9</sup> The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,<sup>10</sup> false and fraudulent insurance claims,<sup>11</sup> and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.<sup>12</sup> The division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2012-2013, the division received over 15,440 referrals.

### **Division of Consumer Services**

The Division of Consumer Services within the DFS is created by s. 20.121, F.S., and handles consumer issues and complaints related to the jurisdiction of the DFS and the Office of Insurance Regulation ("OIR"). The division:

- Receives inquiries and complaints from consumers;

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<sup>4</sup> See s. 20.04(7)(b), F.S.

<sup>5</sup> See s. 20.04(7)(c), F.S.

<sup>6</sup> See <https://www.fltreasurehunt.org/> (discussing the Bureau of Unclaimed Property)(last accessed March 11, 2015).

<sup>7</sup> Section 17.04, F.S.

<sup>8</sup> See <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE> (last accessed March 11, 2015).

<sup>9</sup> See <http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eF> (last accessed March 11, 2015).

<sup>10</sup> Section 626.9541, F.S.

<sup>11</sup> Section 817.234, F.S.

<sup>12</sup> Section 624.15, F.S.

- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to appropriate division within DFS or the OIR, as appropriate.<sup>13</sup>

### **Strategic Markets Research and Assistance Unit**

Section 20.121, F.S., creates the Strategic Markets Research and Assessment Unit within the DFS. It requires the CFO or his or her designee to report quarterly to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on the status of the state's financial services markets. The CFO must also provide findings and recommendations regarding regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. According to the DFS, the unit has not functioned since before 2010 and funding was discontinued in 2009.<sup>14</sup>

### **Audit and Accounting Positions in the Department of Financial Services**

Article III, s. 14, Florida Constitution, requires the Legislature to create a civil service system for state employees, except for those employees specifically exempted. Employees in the civil service system are "career service" employees<sup>15</sup> while employees exempted from the career service system are called "select exempt"<sup>16</sup> or "senior management."<sup>17</sup> In general, career service employees are subject to dismissal for cause while senior management and select exempt employees serve at the pleasure of the agency head.<sup>18</sup> The various classes also have different pay scales, different leave rules, and different levels of insurance subsidies. Section 110.205, F.S., provides a number of classes of employees that are exempt from the career service and serve in the senior management or select exempt classifications.

According to the DFS, in 2008 the Department of Management Services authorized that DFS "investigators and auditors" could remain in the select exempt class but suggested that the department should seek a legislative change to make the authorization permanent. Positions reverted to career service as they became vacant. There are currently 66 accounting and auditing positions which the DFS seeks to change from career service to select exempt.

### **Service of Process**

Section 624.502, F.S., requires that in all instances as provided in any section of the insurance code and s. 48.151(3), F.S.,<sup>19</sup> in which service of process is authorized to be made upon the CFO

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<sup>13</sup> See s. 20.121(2)(h), F.S.

<sup>14</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015)(on file with the Senate Committee on Banking and Insurance).

<sup>15</sup> See s. 110.205, F.S.

<sup>16</sup> See Part V, ch. 110, F.S.

<sup>17</sup> See Part III, ch. 110, F.S.

<sup>18</sup> See ss. 110.227, 110.402, and 110.604, F.S.

<sup>19</sup> Section 48.151(3), provides that the CFO or his or her designee is the agent for service of process on all insurers applying for authority to transact insurance, all licensed nonresident insurance agents, all nonresident disability insurance agents,

or the director of the OIR, the plaintiff shall pay \$15 to the DFS or the OIR for service of process. The fee is deposited into the Insurance Regulatory Trust Fund. Chapter 2014-53, Laws of Florida, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

### **III. Effect of Proposed Changes:**

#### **Organization of the DFS**

**Section 1** makes various changes to the organization of the DFS. The bill gives the CFO the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote the effective and efficient operation of the DFS pursuant to s. 20.04, F.S. The bill does not change the review and approval process of s. 20.04, F.S.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions, but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The division will retain the same powers and duties as the Division of Insurance Fraud.

**Sections 6 through 27** amend various statutory provisions to reflect the name change of the Division of Insurance Fraud to the Division of Criminal Investigation.

The Strategic Markets Research and Assessment Unit, which is not currently active nor funded, is repealed.

#### **Relocation of the Division of Consumer Services Statute**

**Sections 1, 3, and 4** relocate statutory references to the duties of the Division of Consumer Services from s. 20.121, F.S., to the Insurance Code at s. 624.307, F.S., and provide conforming changes.

#### **Audit and Accounting Positions in the Department of Financial Services**

**Section 2** amends s. 110.205, F.S., to provide that all auditing and accounting positions in the DFS are exempt from the career services provisions of law.

**Service of Process Fees**

**Section 5** of this bill amends s. 624.502, F.S., to provide that the \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund. The Insurance Regulatory Trust Fund, created by s. 624.523, F.S., is appropriated for use by the DFS and the OIR to defray the expenses in the discharge of administrative and regulatory powers. Chapter 2014-53, Laws of Florida, implementing the 2014-2015 General Appropriations Act, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

**Effective Date**

**Section 28** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The DFS reports that PCS/CS/SB 1402 would result in an additional cost of \$75,000 to the General Revenue Fund and \$12,000 from the Administrative Trust Fund, to reclassify 66 positions from the career service to the select exempt service. These additional costs can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 20.121, 110.205, 624.26, 624.307, 624.502, 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9891, 626.9892, 626.9893, 626.9894, 626.9895, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, and 932.7055.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The proposed committee substitute restores all the filing fee deposits into the Administrative Trust Fund and the requirements for the Department of Financial Services to enter into an agreement with the Florida Clerks of Court Operations Corporation to audit court-related expenditures of individual clerks. The proposed committee substitute also narrows the positions which are exempt from career service within the Division of Accounting and Auditing.

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment to change the name of the “Division of Insurance Fraud” to the “Division of Criminal Investigations” in various sections of law.

**B. Amendments:**

None.