

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 987 Organization of Department of Financial Services

SPONSOR(S): Plakon

TIED BILLS: **IDEN./SIM. BILLS:** SB 1402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Gonzalez	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Department of Financial Services (DFS) consists of 14 divisions and several specialized offices. The bill eliminates three of those divisions: Administration, Legal Services, and Information Systems, which conduct administrative functions that are not required in statute. Also, the bill eliminates the Strategic Markets Research and Assessment Unit within DFS.

The bill also reorganizes DFS in several ways. It removes the Bureau of Unclaimed Property and the Office of Fiscal Integrity from the Division of Accounting and Auditing. The bureau will continue to exist, but will not be provided for in statute. The Office of Fiscal Integrity's functions will be taken up by the Division of Insurance Fraud, which is renamed the Division of Criminal Investigations. The bill authorizes the CFO to establish divisions, bureaus, and offices within DFS. It relocates the functions and duties of the Division of Consumer Services to section 624.307, F.S. The reorganization of DFS will not result in the loss of any filled employee positions, although, positions may be relocated to other divisions, bureaus, or offices.

The bill also removes the requirement of the Clerks of Court Operations Corporation (CCOC) to enter into a contract with DFS to audit court-related expenditures of individual clerks. According to DFS, the CFO has sufficient authority under ch. 17, F.S., to audit any state funds. The bill removes the fees to fund DFS's audits of individual clerks' court-related expenditures and clarifies that the clerk education funded by the Administrative Trust Fund will be provided by CCOC. The bill changes the trust fund account to which the \$15 service of process fee is paid from the Insurance Regulatory Trust Fund to the Administrative Trust Fund. The bill exempts audit and accounting positions within the Division of Accounting and Auditing from Career Service classification.

Local governments should see a minimal decrease in administrative costs associated with processing and sending fees to DFS to fund the audits of the Clerks of Court.

According to DFS, the department should see a decrease in revenue of approximately \$345,000 which would have been used to fund employee positions currently vacant and eliminated under this bill.

The bill provides for an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation – Divisions and Functions of the Department of Financial Services

The Chief Financial Officer (CFO) is an elected member of the Cabinet and serves as the chief fiscal officer of the State of Florida. The CFO is the head of the Department of Financial Services (DFS).¹ Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal and the Department of Banking and Finance merged into DFS. DFS consists of 14 divisions and several specialized offices.²

Currently, the divisions of DFS are established in section 20.121, F.S. The CFO does not have authority to establish divisions, bureaus, or offices of DFS. Among the 14 divisions of DFS, are Accounting and Auditing, Insurance Fraud, Administration, Legal Services, and Information Systems.

The Division of Accounting and Auditing includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity which functions as a criminal justice agency that investigates allegations of fraud, waste and abuse of state monies and resources.

The Strategic Markets Research and Assessment Unit is also within DFS. It is responsible for reporting on the status of the state's financial services markets, including issues, trends, and threats that impact the financial services industries, along with the effect on financial institutions, the securities industries, other financial entities, and the credit market.³ According to DFS, this unit has not functioned since before 2010, and funding for this unit was cut during the 2009 session.⁴

Effect of the Bill

The bill eliminates three divisions within DFS, the Division of Administration, the Division of Legal Services, and the Division of Information Systems. According to DFS, these divisions all conduct administrative functions that every state agency has and are not required to be provided for in statute.

The bill removes the Bureau of Unclaimed Property and the Office of Fiscal Integrity from the Division of Accounting and Auditing. The bureau will continue to exist, along with other bureaus in DFS, without being provided for in statute. The duties and functions of the Office of Fiscal Integrity will be performed by the Division of Insurance Fraud, renamed the Division of Criminal Investigations. According to DFS, renaming the Division of Insurance Fraud will give the CFO the ability to leverage criminal justice assets currently housed in two separate divisions within one division of DFS.

The bill eliminates the Strategic Markets Research and Assessment Unit within DFS.

The elimination and reorganization of divisions, bureaus and offices under this bill will not result in the loss of any filled employee positions, although, such positions may be relocated to other divisions, bureaus, or offices.

The bill authorizes the CFO to establish divisions, bureaus, and offices of DFS.

The bill removes the functions, powers, and duties of the Division of Consumer Services from section 20.121(2), F.S., which addresses the organizational structure of DFS and relocates them to section 624.307, F.S., - General Powers and Duties. All functions, powers, and duties will remain the same.

¹ s. 20.121(1), F.S.

² Id.

³ s. 20.121(6), F.S.

⁴ Department of Financial Services, HB 987 Bill Analysis, dated March 5, 2015.

Present Situation – Funding DFS, Clerk Audits and Education

Current law requires the Florida Clerks of Court Operations Corporation (CCOC) to enter into a contract with DFS for the department to audit the court related expenditures of individual clerks pursuant to section 17.03, F.S.

Currently, parties instituting any trial or appellate civil action, suit, or proceeding pay the clerk of that court a filing fee. Clerks of court remit \$1 of each filing fee collected under sections 28.241(1)(a)1.a. - b. and 28.241(1)(a)2.d. I - III, F.S., to the Department of Revenue for deposit into the Administrative Trust Fund within DFS to be used to fund audits by DFS of individual clerks' court-related expenditures.

The Administrative Trust Fund is also used to fund clerk education. Although, funding for such education is derived from other fees.

Additionally, in all instances in which service of process is authorized to be made upon the CFO or the director of the office, the plaintiff pays DFS or the office a \$15 fee for such service of process to be deposited into the Insurance Regulatory Trust Fund.

Effect of the Bill

The bill removes the requirement of CCOC to enter into a contract with DFS to audit court-related expenditures of individual clerks. According to DFS, the department has not been conducting these specific audits and the CFO has sufficient authority under ch. 17, F.S., to audit any state funds.

The bill also removes the fees to fund DFS's audits of individual clerks' court-related expenditures and clarifies that the clerk education funded by the Administrative Trust Fund will be provided by CCOC. The bill changes the trust fund account to which the \$15 service of process fee paid by the plaintiff to the department will be deposited. The \$15 fee will be deposited into the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund.

Present Situation – Career Service Exemptions

The Department of Management Services (DMS) establishes and maintains a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions within the state.⁵⁵ Auditing and Accounting positions within this division are not currently statutorily exempt from Career Service classification. In 2008, DMS authorized, by way of memorandum, that DFS investigators and auditors could remain classified as Selected Exempt status, but recommended that legislation exempt these positions from Career Service classification permanently. As the Select Exemption positions became vacant, they were reclassified to Career Service. According to DFS, this made recruitment and retention of qualified staff difficult.

Effect of the Bill

The bill exempts audit and accounting positions within the Division of Accounting and Auditing from Career Service classification. According to DFS, this bill will reclassify approximately 45 Career Service auditors and professional accountants.

⁵⁵ s. 110.2035(1), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.121, F.S., relating to the divisions and functions of DFS and the CFO's authority to create new divisions, bureaus, or offices within DFS.

Section 2: Amends s. 28.2401, F.S., relating to funding to the Florida Clerks of Court Operations Corporation for clerk education provided by the corporation.

Section 3: Amends s. 28.241, F.S. relating to the deposit of certain filing fees for trial and appellate proceedings into the Administrative Trust Fund within the Department.

Section 4: Amends s. 28.35, F.S., relating to the requirement that the Florida Clerks of Court Operations Corporation contract with the Department for certain audits.

Section 5: Amends s. 110.205, F.S., relating to exemption of audit and accounting positions of the Department from career services classification.

Section 6: Amends s. 624.26, F.S., relating to conforming cross-references to changes made by the bill.

Section 7: Amends s. 624.307, F.S., relating to the powers and duties of the Department's Division of Consumer Services.

Section 8: Amends s. 624.502, F.S., relating to the deposit of certain service of process fees into the Administrative Trust Fund within the Department.

Section 9: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Clerks of Court Audits: Fees sent by the counties to DFS are intended to fund the Article V staff and their travel costs. However, DFS does not currently audit the clerks of court, and these six positions are currently vacant. Based on the February Revenue Estimating Conference the fees estimated to be collected this year is \$345,000. This bill eliminates the Article V staff positions and the fees associated with the staff funding.

2. Expenditures:

Career Service Exemptions: Historically, audit and accounting positions have been treated as Select Exempt. The cost of funding these positions has been covered with DFS's existing budget and therefore the exemption will not have a fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments should see a minimal decrease in administrative costs associated with processing and sending fees to DFS to fund the audits of the Clerks of Court.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Article V Program within DFS was established in FY 2004-05 which dealt with the CCOC and DFS. In 2009, the fee deposited to the Administrative Trust Fund was changed to \$1.50 and generated \$600,000 a year in revenue, but, according to DFS, there were only \$300,000-\$425,000 per year in expenditures. In 2013, the fee deposited to the trust fund was reduced to \$1, per filing fee. Revenue from this fee was approximately \$550,000 in FY 2013-14 and the current year revenue is estimated to be under \$400k (about \$345k per the February Revenue Estimating Conference). However, DFS, has stopped making expenditures covered by this fee. The fee is deposited into a separate account within the DFS Administrative Trust Fund. The account is estimated to have a balance at the end of this fiscal year of about \$2 million. If the program was eliminated, under this bill, these funds could be transferred to General Revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES