

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 150

SPONSOR: Governmental Oversight and Productivity Committee, Banking and Insurance Committee, Senator Horne, and others

SUBJECT: State Financial Matters

DATE: February 17, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute makes various changes that relate to state financial matters. The bill exempts the Department of Banking and Finance from the requirement of s. 20.04, F.S., to be organized along division, bureau, and section lines. The divisions within the Department of Banking and Finance, designated by statute, would be eliminated, thereby providing greater flexibility to the department to revise its organizational structure. The Office of Financial Investigations is created, as a separate subunit within the department, to operate as a criminal justice agency within the meaning of s. 943.045(10)(d), F.S.

The bill generally requires new retirees participating in the Florida Retirement System to receive their retirement payments through direct deposit, effective July 1, 2000.

The dollar threshold for classifying state property as tangible personal property, or "Other Capital Outlay," is increased from \$500 to \$1,000, for which agencies are required to maintain property records and take physical inventory.

The Comptroller's authority to issue subpoenas, administer oaths, and examine witnesses is clarified.

The statute of limitations for seeking recovery in all disputes over compensation for work performed by a state officer or employee is clarified and limited to 2 years from the date of the alleged error in payment.

The Comptroller is authorized to provide financial statements and the Comprehensive Annual Financial Report through an electronic format.

Statutory references to the State Automated Management Accounting Subsystem are eliminated and replaced by the term, "Florida Accounting Information Resource Subsystem," since the state accounting system was renamed in 1997.

The bill also authorizes the head of an agency to delegate approval of all travel expenses to his or her designee.

For state contracts in excess of \$15,000, the committee substitute eliminates a provision in the original bill which would have extended to subcontractors and other contractual parties the requirement that the contract contain a provision allowing for cancellation for failure to provide access to documents in connection with the contract.

This bill substantially amends the following sections of the Florida Statutes: 17.05, 17.076, 17.11, 20.04, 20.12, 110.1165, 112.061, 215.3206, 215.3208, 215.422, 216.011, 216.102, 216.183, 216.212, 216.237, 273.02, 280.08, 288.778, 494.0011, 494.0017, 494.0041, 494.00421, 494.061, 494.061, 494.062, 494.072, 497.407, 497.435, 516.03, 520.998, 655.90, and 655.942.

II. Present Situation:

Organizational Structure of State Agencies

Chapter 20, F.S., establishes the organizational structure for state agencies and creates specific divisions within agencies, generally. Section 20.04, F.S., delineates the types of organizational units to be implemented by the executive branch. For example, each department is required to establish divisions with bureaus, sections, and subsections, if applicable, within each division. However, the Departments of Children and Family Services, Corrections, Management Services, Revenue, and Transportation are specifically exempted from this requirement.

New bureaus, sections, and subsections may be initiated by a department and established, as recommended by the Department of Management Services and approved by the Governor, or may be established by specific statutory enactment, under the provisions of s. 20.04, F.S.

Pursuant to s. 216.151, F.S., the Executive Office of the Governor is authorized to evaluate the organizational structures of state agencies to determine whether the operations and activities of different agencies or within the same agencies should be combined, consolidated, or integrated or should be regrouped and rearranged to achieve greater efficiency and effectiveness of the operations.

Department of Banking and Finance/Comptroller's Responsibilities

The Comptroller, as the head of the Department of Banking and Finance (department), is statutorily assigned the responsibility for administering various consumer protection programs and enforcement actions. Section 20.12, F.S., establishes the Comptroller as the head of the Department of Banking and Finance and creates the following divisions within the department: Accounting and Auditing, Administration, Banking, Finance, Information Systems, Securities and Investor Protection, and Financial Investigations. The consumer protection efforts include the areas of banking, securities, mortgage brokers, cemeteries, retail installment, and consumer finance.

Article IV, Section 4 of the Florida Constitution states that “the Comptroller shall serve as the chief fiscal officer of the state, and settle and approve accounts against the state.” Under the provisions of s. 17.05, F.S., the Comptroller is authorized to demand answers on oath from any person or party “privy to any account, claim, or demand against or by the state,” related to the Comptroller’s duties. These duties generally relate to audits and examinations of persons for the purpose of settling claims against the state.

Direct Deposit Program

Section 17.076, F.S., authorizes the Department of Banking and Finance to provide for the direct deposit of funds to the account of the beneficiary of such payment. As a condition of employment, a person appointed to a position in state government on or after July 1, 1996, is required to participate in the direct deposit program. As of December 31, 1998, approximately 83 percent of state employees participated in the direct deposit programs. Section 110.113, F.S., provides exceptions for hardship cases or other-personal-services positions. Presently, approximately 75 percent of all retirees receiving benefits through the Florida Retirement System are paid via electronic fund transfer. These individuals include retired state employees and employees of local governments participating in the Florida Retirement System.

Statute of Limitations for the Recovery of Salary, Wages, or Benefits

Section 110.1165, F.S., authorizes the establishment of procedures for the receipt, consideration, and disposition of a claim regarding pay or benefits brought by a state employee when an employee is damaged as a result of being provided erroneous written information by the employing agency regarding his or her pay or benefits, and the employee detrimentally relies upon such written information. The section also provides that the statute of limitations for filing any action to recover salary, wages, overtime, benefits, or related damages by or on behalf a state employee is within 2 years, as provided in s. 95.11(4), F.S. Section 95.11(4), F.S., provides for a 2-year statute of limitations for an action to recover wages or overtime or damages or penalties concerning payment of wages and overtime.

This section was amended in 1997 to apply the 2-year statute of limitations in cases in which the employee is damaged as a result of relying upon erroneous written information provided by the employing agency regarding his payment or benefits. For all other cases involving salary overpayments and underpayments, there is confusion as to whether a 2-year, 4-year, or 5-year statute of limitations applies. In *Nealon v. Right Human Resource Consultants, Inc.*, 669 So.2d 1120 (Fla. 3d DCA 1996) the court held that the 2-year statute of limitations for recovery of unpaid wages or overtime did not apply in an action for unpaid bonus. An unpaid bonus was deemed to be an unpaid salary, thereby subject to a 5-year statute of limitations.

For years the department has applied a Department of Management Services rule which provides that adjustments to correct salary overpayments and underpayment are governed by a 2-year statute of limitations, but court rulings have applied a 5-year statute of limitations for salary overpayment if the claim is based on a contract founded on a written instrument and 4 years if there was not written documentation.

Per Diem and Travel Expenses of Public Officers and State Employees

All travel must be authorized and approved by the head of the agency, or his or her designated representative from whose funds the traveler is paid, pursuant to s. 112.061(3), F.S. Currently,

the agency head is specifically required to approve certain actions, such as approval for payment of subsistence to an employee who becomes sick or injured during travel; designating the most economical method of travel for each trip; and granting monthly fixed allowances for privately owned automobiles used on official business in lieu of the mileage rate.

State Purchasing

Each employee or officer responsible for the approval or processing of vendors' invoices or distribution of warrants to vendors is required to sign a statement, on an annual basis, that he or she has been provided a copy of this section of the statutes and the rules adopted by the Comptroller, under the provisions of s. 215.422, F.S. Each agency and the judicial branch is also required to certify its compliance with this provision to the Comptroller on or before February 1 of each year.

Accountability for State-Owned Property

Under the provisions s. 273.03, F.S., a custodian for an elected or appointed board, commission, authority, or agency is responsible for the supervision, control, and disposition of the property in his or her custody. Property is defined to mean all tangible personal property owned by the state.

Pursuant to s. 216.011, F.S., operating capital outlay (OCO) is defined to mean equipment, fixtures, and other tangible personal property the value or cost of which is \$500 or more and the normal expected life of which is 1 year or more and includes hardback-covered bound books the value or cost is \$100 or more. If an item does not meet this monetary and expected life threshold, it is classified as an expense. If an expenditure is deemed to be an operating capital outlay, the item is subject to stringent record keeping and inventory requirements, under the provisions of s. 273.02, F.S. The last increase in the dollar amount for the OCO category occurred in 1989, when tangible personal property was increased from \$200 to \$500 and the hardback-book threshold was raised from \$25 to \$100.

Annual Financial Statements for the State of Florida

Section 216.102, F.S., requires the Comptroller to prepare and publish annual financial statements for the State of Florida on or before December 31 and to furnish copies of the annual financial statements to the Governor, the President of the Senate, and the Speaker of the House of Representatives. In addition, the Department of Banking and Finance prepares and publishes the Comprehensive Annual Financial Report (CAFR) which includes the financial statements, the Auditor General's Independent Report on the General Purpose Financial Statements, and statistical and economic data regarding the State of Florida. Various bond rating agencies and other users rely upon information contained in the CAFR for the purpose of evaluating the financial condition of the State of Florida. The department states that the publication of the financial statements alone serve no useful purpose and the requirement to publish them by December 31 only imposes additional workload, which would be better utilized on compiling the CAFR.

III. Effect of Proposed Changes:

Section 1. Amends s. 17.05, F.S., relating to examinations under oath and claims against the state, to make these powers more specific, including the power of the Comptroller to issue subpoenas, administer oaths, examine witnesses, require persons to file sworn statements, to

require the production of records, and to petition a circuit court to enforce a subpoena (with costs assessed against the subpoenaed person).

Section 2. Amends s. 17.076, F.S., relating to direct deposits, to require mandatory payment by electronic fund transfer to new retirees, effective July 1, 2000, with authority to grant hardship exemptions.

Section 3. Amends s. 20.04, F.S., relating to the structure of the executive branch, to authorize the Department of Banking and Finance to be exempt from the requirement to use division, bureau, and section within the department's organizational structure.

Section 4. Amends s. 20.12, F.S., relating to the Department of Banking and Insurance, to delete all of the divisions specified by law for the Department of Banking and Finance and creates the Office of Financial Investigations as a separate organizational subunit. The department states that these divisional lines no longer reflect the fundamental purpose of their operations and restrict the agency's ability to manage resources to accomplish its mission. The Division of Financial Investigations is reorganized as a separate organizational subunit in order to retain its status as a criminal justice agency which allows the division to access criminal intelligence information and to be eligible to receive forfeitures and seizure proceeds.

Section 5. This section does not apply to the Office of Chief Fiscal Officer, as created by the Florida Constitution, effective January 7, 2003.

Section 6. Amends s. 110.1165, F.S., relating to personnel errors, to specify a 2-year statute of limitations (from the date of the alleged error in payment) for the recovery of compensation, including, but not limited to salaries, wages, overtime pay, fringe benefits, or damages or penalties relating to errors in such compensation from, by, or on behalf of a state officer or an employee.

Section 7. Amends s. 112.061, F.S., relating to per diem and travel expense of public officers, employees, and authorized persons, to authorize agency heads to delegate approval of all actions under the travel law, including approval for payment of subsistence to an employee who becomes sick or injured during travel; designating the most economical method of travel for each trip; and granting monthly fixed allowances for privately owned automobiles used on official business in lieu of the mileage rate.

Section 8. Amends s. 215.422, F.S., to eliminate the requirement that each employee who is responsible for the approval or processing of vendor invoices or distribution of warrants to vendors, to annually sign a statement evidencing that he or she has been provided a copy of the requirements related to purchase orders issued by state agencies. The department states that this is unnecessary and that the inclusion of the requirements in the employee position descriptions is adequate to ensure compliance. The annual certification of compliance required to be submitted by each agency and the judicial branch to the Comptroller is also eliminated. The section also makes a conforming change to replace the term, "State Automated Management Accounting Subsystem, (SAMAS)" with the term, "Florida Accounting Information Resource Subsystem." Numerous changes were made to SAMAS and the system was subsequently renamed in legislation enacted in 1997 (ch. 97-286, L.O.F.).

Sections 9 and 11. Amends ss. 216.011 and 273.02, F.S., to increase the threshold for operating capital outlay from \$500 to \$1,000, with hardback-books raised from \$100 to \$250. These are the threshold amounts for agencies to record and maintain property records for an item and annually take a physical inventory of the property.

Section 10. Amends s. 216.102, F.S., relating to filing of financial information, to require the Comptroller to make available (hard copy or electronically) financial statements to the Auditor General by December 31, and adds a requirement to publish (electronically or hard copy) the Comprehensive Annual Financial Report (CAFR) on or before February 28. The section also makes a conforming change to replace the term, "State Automated Management Accounting Subsystem, (SAMAS)" with the term, "Florida Accounting Information Resource Subsystem." Numerous changes were made to SAMAS and the system was subsequently renamed in legislation enacted in 1997 (ch. 97-286, L.O.F.).

Sections 12 - 32. Amends ss. 17.11, 215.3206, 215.3208, 216.183, 216.212, 216.237, 280.08, 288.778, 494.0011, 494.0017, 494.0041, 494.00421, 494.0061, 494.0062, 494.0072, 497.407, 497.435, 516.03, 520.998, 655.90, and 655.942, to make conforming changes to delete references to division and insert department and to replace the term, "State Automated Management Accounting Subsystem, (SAMAS)" with the term, "Florida Accounting Information Resource Subsystem." Numerous changes were made to SAMAS and the system was subsequently renamed in legislation enacted in 1997 (ch. 97-286, L.O.F.).

Section 33. Provides that the amendments made to ch. 216, F.S., contain the necessary cross-reference to s. 216.351, F.S.

Section 34. Provides an effective date of October 1, 1999.

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:

Presently, the Department of Banking and Finance incurs a charge of 2.4 cents per electronic funds transaction (EFT). If EFT is generally mandated for the payment of new retirees, the preparation cost (indeterminate) and mailing cost (27.6 cents per mail item) associated with each warrant would be eliminated for individuals previously not participating in the direct deposit program. This would result in an estimated net savings of 25 cents per transaction. Approximately 13,000 new retirees are added to the retirement payroll during the course of each year.

The elimination of the majority of the divisions within the department could potentially result in savings as a result of consolidating management responsibilities for the programs. However, the department does not anticipate any net change in the budget as a result of the reorganization.

Increasing the dollar threshold, from \$500 to \$1,000, for classifying state property as tangible personal property will result in a decrease in administrative costs, since items less than \$1,000 would no longer be subject to tagging and labor-intensive inventory procedures. For example, the department reports that an analysis by the State University System last year indicated that 35 percent of the items were valued at less than \$1,000 and represented 7 percent of total cost of inventory.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On November 3, 1998, Constitutional Revision number 8, restructuring the State Cabinet, was approved by the voters of Florida. Effective, January 7, 2003, the cabinet offices of the treasurer and comptroller are merged into one chief financial officer and the cabinet membership for the treasurer and comptroller are reduced to the chief financial officer. At this time, it is unclear how the Legislature will implement this constitutional revision and reorganize the program areas and responsibilities within the two agencies (Department of Insurance and the Department of Banking and Finance).

Many of the provisions (authorizing the head of an agency to delegate authority to incur travel, increasing the monetary threshold for classifying tangible personal property as OCO and associated record keeping responsibilities, clarifying the statute of limitations for over and under payments of salary and wages, and clarifying state contract documents subject to public access) contained in this bill were passed by the Senate, but not into law, as part of CS/SB 1132, a bill relating to the Department of Management Services, during the 1998 legislative session.

The department reports that its inclusion in s. 943.045, F.S., as a named criminal justice agency, will not be accompanied by a reclassification of its personnel into law enforcement classes.

VIII. Amendments:

None.

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