

# 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/SB 2142

SPONSOR: Governmental Oversight & Productivity Committee and Senator Webster

SUBJECT: Secretary of State

DATE: April 13, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute inserts a standard provision regarding the hours of operation of the Secretary of State's office. Additionally, the committee substitute transfers the Division of Licensing, minus one program, to the Department of Business and Professional Regulation. The games promotions program is transferred to the Department of Agriculture and Consumer Services.

This bill amends the following sections of the Florida Statutes: 15.01, 20.10, 493.6101, 790.06, and 849.094.

## II. Present Situation:

Article IV of the State Constitution establishes the executive branch of state government and provides that the ". . . supreme executive power shall be vested in a governor." Nevertheless, the constitution also provides that the governor must share certain executive powers with constitutionally-created cabinet officers.

Article IV, s. 4 of the State Constitution, establishes the cabinet, which consists of six elected officials. The cabinet officers are the Secretary of State, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Agriculture and the Commissioner of Education. The constitution specifically assigns independent responsibilities to each cabinet officer. In addition, the constitution provides that the Governor and Cabinet sit as various boards or as the head of various agencies to administer certain state policies. This collegial form of state government is unique to Florida.

According to historian Dr. Daisy Parker Flory, the proponents of Florida's statehood succeeded in 1838 in calling a constitutional convention at which ". . . the Jacksonians prevailed at the convention and the first constitution of Florida produced the pattern for executive-legislative distribution of powers followed to the present day." The 1838 charter included provisions that the

offices of attorney general, secretary of state, treasurer, and comptroller were to be elected by a joint vote of the houses of the general assembly, rather than appointed by the governor. In 1865, another constitutional convention adopted a constitution that called for a secretary of state, an attorney general, a comptroller, and a treasurer to be elected by the qualified voters for 4-year terms to coincide with that of the governor. Although the 1865 Constitution was never ratified by the electorate because of the incoming reconstruction government following the Civil War, it established the principle for popular election of these officers.

The Constitution of 1868 was the first state constitution to refer to the aforementioned officials as “a cabinet of administrative officers” to be appointed by the Governor and confirmed by the Senate. According to Dr. Flory, this constitution was thought to be a tool of Republican dominance in the reconstruction era. This constitution was ratified and served until 1885, when Florida replaced its reconstruction constitution with the one that served until 1968. The 1885 Constitution reestablished the provision of popular election for the “administrative officers,” which then included a superintendent of public instruction and a commissioner of agriculture. The revised Constitution of 1968 states that “. . . there shall be a cabinet . . .” comprised of the six elected officials which currently comprise the cabinet.

As originally established in Art. IX, s. 17 of the State Constitution (1885), and continued in Art. XII, s. 9 of the State Constitution (1968), the Governor and Cabinet serve as the State Board of Education, which administers the state educational system. The State Board of Administration was also created by Art. IX, s. 16 of the State Constitution (1998), and continued by Art. XII, s. 9, of the State Constitution (1968), and is composed of the Governor, who serves as chairman, the Comptroller, and the Treasurer. The State Board of Administration is the fiduciary body of the Florida Retirement Trust Fund, and manages the Local Government Retirement Trust Fund, and manages the Local Government Surplus Funds Trust Fund, the Lottery, and other funds. Consequently, the SBA is responsible for managing and investing state assets valued over \$100 billion.

In addition, general law provides that the Governor and Cabinet sit as various other collegial bodies to administer certain programs. Such boards include the Board of Trustees of the Internal Improvement Trust Fund, which purchases and holds title to the lands of the state; the Administration Commission, which reviews and approves numerous actions and policies of the executive branch; and the Board of Executive Clemency, which review petitions for clemency from inmates of the state prison system and others. The respective policies of the boards, commission, and other entities comprised of the Governor and cabinet are determined in public meetings by official actions.

Each cabinet officer serves as the head of a department as provided in general law. In 1968, the constitution was revised to provide that the administration of the executive departments, unless otherwise provided in the constitution, is to be placed under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, or a cabinet member. The Legislature, in enacting the Governmental Reorganization Act of 1969, determined that each cabinet officer should serve as the head of a department which manages programs and duties for which that cabinet officer is constitutionally charged. These departments, however, administer many other programs and functions, in addition to administering programs directly relevant to the constitutional duties and functions charged to their respective agency head.

Article IV, s. 4(b) of the State Constitution, provides that the secretary of state must keep the records of the official acts of the legislative and executive departments. Other provisions of the State Constitution require the Secretary of State to receive a variety of specific state records. For example:

- Article II, s. 8(1) of the State Constitution, requires that financial disclosure statements must be filed with the Secretary of State.
- Article III, s. 8(b) of the State Constitution requires that signed objections to vetoed bills be filed with the secretary when the Legislature is not in session.
- Article III, s. 16(b) of the State Constitution, which deals with failure of the Legislature to apportion, requires the Supreme Court of Florida to file an apportionment order with the secretary.
- Article IV, s. 3(b) of the State Constitution, requires that a certificate of the Governor's incapacity to serve be filed with the Secretary of State.
- Orders of suspension are filed with the secretary pursuant to Art. IV, s.7(a) of the State Constitution.
- Orders suspending fines, granting reprieves less than 60 days, and granting pardons are filed with the secretary pursuant to Art. IV, s.8 of the State Constitution.
- Article XI, s. 2(c) of the State Constitution requires the constitution revision commission to file its proposals with the secretary.
- Article XI, s. 4(a) of the State Constitution requires that calls for constitutional conventions be filed with the secretary.
- Article XI, s.5 of the State Constitution requires proposed constitutional amendments by petition to be filed with the secretary.
- Article XI, s. 6 of the State Constitution requires the taxation and budget reform commission to file its proposal with the secretary.

The duties of the Secretary of State are, however, far broader than just those of a custodian of state records. Pursuant to s. 20.10(1), F.S., the secretary of state is the head of the Department of State.<sup>1</sup> Section 20.10(2), F.S., establishes seven divisions within the department:

- (1) Division of Elections;<sup>2</sup>
- (2) Division of Historical Resources;<sup>3</sup>
- (3) Division of Corporations;<sup>4</sup>

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<sup>1</sup>Chapter 15, F.S., which is entitled "Secretary of State," contains residence requirements, the location of the secretary's office, and the duties of the secretary. Additionally, the chapter lists the state tree, state beverage, state bird, and the like.

<sup>2</sup>The Division of Elections by nature is diverse and oversees many different functions. The division is comprised of the Director's office and four bureaus: Election Records, Notaries Public, Administrative Code and Weekly, and Information Management and Voting Systems.

<sup>3</sup>The Division of Historical Resources includes: The Bureau of Archeological Research; Bureau of Historic Preservation; Museum of Florida History; and four Regional Preservation Offices.

<sup>4</sup>The Division of Corporations is the State's central location for the filing of business entities, Uniform Commercial Code financing statements, trade and service marks, and fictitious name registrations. In essence, the Division provides a statewide registry and information resource for almost all business activity in Florida. The bureaus within the Division that provide filing and informational services are: Bureau of Commercial Recording and the Bureau of Commercial Information Services. The Division has an internal operating budget of \$8.9 million and 195 employees. Its programs and activities earn approximately

- (4) Division of Library and Information Services;<sup>5</sup>
- (5) Division of Licensing;<sup>6</sup>
- (6) Division of Cultural Affairs;<sup>7</sup> and the
- (7) Division of Administration.<sup>8</sup>

As head of a department with seven divisions that are assigned a wide variety of duties, the secretary is responsible for the operation of a large department.

In addition to the administrative duties assumed by the secretary as the head of the department, the Secretary of State has numerous other duties, some that are constitutional in nature and some that are not. For example, the Secretary of State, in addition to sitting as a member of the state cabinet, also sits on a variety of the commissions that some of the cabinet members make up. The index to the *Florida Statutes* lists the following entities on which the Secretary of State currently sits:

- (1) State Board of Education;
- (2) Elections Canvassing Commission;
- (3) the Board of Directors of Enterprise Florida, Inc.;
- (4) Enterprise Zone Interagency Coordinating Council;
- (5) the Board of Directors of Export Finance Corporation;
- (6) the Board of Trustees of the Internal Improvement Trust Fund;
- (7) the Board of Directors of the International Trade and Economic Development Board;
- (8) the Governor's Committee on Interstate Cooperation;
- (9) Political party state executive committee;
- (10) Presidential Candidate Selection Committee; and the
- (11) Technology Council.

The Secretary of State also makes appointments to various councils, commissions, boards, foundations, review panels, and grant review panels:

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\$132 million annually, of which over \$123 million are earmarked for the general revenue fund and a variety of trust funds.

<sup>5</sup>The Division of Library and Information Services in the Florida Department of State provides library, records management, and archival services at the state and local level. The Division provides direct library services to state government; management services, technical assistance, education, financial aid, and cooperative services.

<sup>6</sup>The Division of Licensing consists of the Bureau of License Issuance; the Bureau of Regulation and Enforcement; and the Bureau of Support Services. The division consists of 132 positions with an annual budget of \$9.1 million that is totally funded by licensing fees and assessments. It is the responsibility of the Division to protect the public from unethical business practices on the part of persons providing private security, private investigative and recovery services to the public through licensure and regulation of the industries pursuant to ch. 493, F.S. In addition, the division is responsible for the issuance of concealed weapon or firearm licenses.

<sup>7</sup>The Bureau of Cultural Affairs is made up of the Office of the Director and the Bureau of Grants Services. The Division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The Division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida.

<sup>8</sup>The Division of Administrative Services is responsible for planning, organizing, directing, coordinating and evaluating the provisions of administrative and management support services for the department. The Division consists of three bureaus: the Bureau of Human Resources; the Bureau of General Services; and Bureau of Planning, Budget and Financial Services.

- (1) Artists Hall of Fame;
- (2) the Arts Council;
- (3) the Capitol curator;
- (4) the Folklife Council;
- (5) the Governor's Mansion Commission;
- (6) the Grove Advisory Council;
- (7) the Historic Preservation Advisory Council;
- (8) the board of directors of the Historic Pensacola Preservation Board Citizen Support Organization;
- (9) the Historical Marker Council;
- (10) the Inspector General;
- (11) the Board of Directors of the Intergovernmental Relations Foundation;
- (12) international notaries;
- (13) Private Investigation, Recovery, and Security Advisory Council;
- (14) Science museum grant review panels;
- (15) the State Librarian;
- (16) the State Library Council;
- (17) the Commission on the Status of Women;
- (18) Youth and Children's Museum grant review panels; and
- (19) Great Floridian designations selection.

The Secretary of State is also designated in ch. 15, F.S., as the chief protocol officer for the state.

The Secretary of State issues commissions of public officers. Additionally, under s. 112.45, F.S., the secretary has duties related to suspension, removal, or reinstatement of public officers.

Sections 922.12 and 922.15, F.S., provide that after an execution is carried out by a warrant of the Governor, the superintendent of the state prison sends the death warrant and a signed statement of the execution to the Secretary of State. Further, after a death sentence has been executed pursuant to a warrant issued by the Supreme Court, the superintendent must send the warrant and a signed statement of the execution to the Secretary of State.

The secretary also functions as the statutory service agent for service of process issues certifications.

The Secretary of State also functions as the Chief Cultural Officer of the state.

Section 15.01, F.S., requires the Secretary of State to reside at the seat of government and provides that he or she will have an office in the state capitol.

In November of 1998, the voters adopted numerous amendments to the State Constitution. One of these amendments, Constitutional Amendment No. 8, restructures the state cabinet by merging the office of the treasurer and comptroller into one chief financial officer. Additionally, the amendment reduces the size of the cabinet by eliminating two positions, the secretary of state and the commissioner of education. The new cabinet consists of a chief financial officer, the attorney general, and the commissioner of agriculture. The changes made by this amendment are not

effective until January 7, 2003, except that they govern for qualifying for and holding of primary elections in 2002.

While Amendment No. 8 eliminated the Cabinet position of the Secretary of State, the amendment still provides for a “custodian of state records.” The term “custodian of the state records,” however, is not defined in the constitution.

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

The committee substitute provides that the Secretary of State’s office is to be open Monday through Friday of every week from 8 a.m. to 5 p.m., except on legal holidays.

The committee substitute transfers by a type two transfer the Division of Licensing of the Department of State (DOS), minus one program, to the Department of Business and Professional Regulation. The Division of Licensing consists of three Bureaus: (a) Bureau of License Issuance; (b) Bureau of Regulation and Enforcement; and (c) Bureau of Support Services. This division contains the following programs: concealed weapons and firearms licensing, game promotions, private investigators, recovery, and security. Responsibility for game promotions is transferred to the Department of Agriculture and Consumer Services.

### **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:**

Indeterminate.

**C. Government Sector Impact:**

There will be initial costs involved in the transfer, but better alignment of functions may improve efficiency and effectiveness of the programs. Additionally, there may be issues relating to computer systems compatibility between the various departments that will have to be resolved to ensure an effective, efficient transfer of these functions.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The agency mission statement of the Department of Business and Professional Regulation is

[t]o protect the public's health, safety, and welfare through the regulation of those professions or occupational groups and businesses prescribed in Florida Statutes.

Private investigators, repossession services, and security programs, are professional or occupational groups or business and, as a result, fit within the mission of the Department of Business and Professional Regulation.

Game promotions (sweepstakes) regulation is a consumer program that is compatible with programs currently housed in the Division of Consumer Services, Department of Agriculture and Consumer Services.

**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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