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 1682

SPONSOR: Governmental Oversight and Productivity Committee

SUBJECT: Cabinet Reorganization/Chief Financial Officer

DATE: April 12, 2000 REVISED:

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

I. Summary:

The committee substitute creates the Department of Financial Institutions (DFS) effective January 7, 2003. The Chief Financial Officer is designated the head of the DFS. The Department of Banking and Finance and the Department of Insurance are transferred to the new department. Two divisions are created directly under the CFO: (1) the Division of Administration; and (2) the Division of Financial Investigations. Additionally, four offices, each with divisions underneath them, are created in the department: (1) the Office of the Commissioner of Insurance; (2) the Office of the Commissioner of Financial Institutions; (3) the Office of the Commissioner of Securities and Finance; and (4) the Office of the Commissioner of the Treasury. Each commissioner is appointed by, and serves at the pleasure of, the CFO.

The Division of Certified Public Accounting is transferred from the Department of Business and Professional Regulation to the Department of Financial Institutions.

Additionally, the committee substitute creates the Insurance Rating Commission effective January 1, 2001. The commission is composed of five commissioners appointed by the Governor and confirmed by the Senate. The Insurance Rating Commission is delegated all authority regarding insurance rates. The committee substitute repeals arbitration. Further, the committee substitute provides that the Public Counsel is to represent the public before the Insurance Rating Commission.

Finally, the bill creates a Financial Services Task Force whose duty it is to review the statutes and rules to identify problems and recommend solutions.

The bill amends ss. 350.061, 350.0611, 350.0613, 624.055, 624.377, 624.19, 624.307, 624.321, 624.322, 626.9541, 626.9926, 627.031, 627.0612, 627.0613, 627.0602, 627.0628, 627.0645, 627.06501, 627.0651, 627.0653, 627.06535, 627.0654, 627.072, 627.091, 627.0915, 627.0916, 627.096, 627.101, 627.111, 627.141, 627.151, 627.192, 627.211, 627.212, 627.215, 627.221, 627.231, 627.241, 627.281, 627.291, 627.301, 627.311, 627.314, 627.331, 627.411, 627. 6475,

627.678, 627.682, 627.727, 627.780, 627.782, 627.7825, 627.783, 627.793, 627.9407, 636.017, 641.19, 641.3903, 641.3922, 641.402, 641.42, 642.027, 648.33, and 442.0011, Florida Statutes.

The bill creates ss. 17.01, 20.121, 633.801, 633.802, 633.803, 633.804, 633.805, 633.806, 633.807, 633.808, 633.809, 633.810, 633.811, 633.812, 633.813, 633.814, 633.815, 633.817, 633.818, 633.819, 633.820, 633.821, 633.823, 633.825, Florida Statutes.

The bill repeals ss. 20.12 and 20.13, Florida Statutes.

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 State Constitution requires the Governor to share some executive powers with six elected cabinet officers:

- The Attorney General
- The Commissioner of Agriculture
- The Commissioner of Education
- The Comptroller
- The Secretary of State
- The Treasurer

In addition to constitutional responsibilities, the Legislature has designated each cabinet member as a department head with statutory duties. Cabinet officers also share powers and duties when sitting as the Governor and Cabinet. When in this form, the Governor and Cabinet may constitute a department head or a board. This collegial form of state government is unique to Florida.

The future configuration of the Cabinet was altered in November of 1998, by the adoption of Constitutional Amendment No. 8. The amendment, which passed by a margin of 55.5 percent to 44.5 percent, modifies the Cabinet in the year 2003. Among other changes, the amendment merges the offices of the Treasurer and the Comptroller will be merged into one Chief Financial Officer. As a result of these modifications, the new state Cabinet will consist of an Attorney General, a Commissioner of Agriculture, and a Chief Financial Officer. As the Comptroller heads the Department of Banking and Finance (DBF) and as the Treasurer heads the Department of Insurance (DOI), the status of these departments must be determined.

A. Comptroller and Department of Banking and Finance

Article IV, s. 4(d) of the State Constitution, provides that the Comptroller is the chief fiscal officer of the state, and that this officer settles and approves accounts against the state. The Comptroller ensures that all money paid into the State Treasury has been deposited correctly, that the expenditures of state agencies have been appropriated by the Legislature, and that the state’s general fiscal matters are in compliance with state laws and regulations.

Chapter 17, F.S., outlines the duties of the Comptroller. Section 17.011, F.S., authorizes the Comptroller to appoint an Assistant Comptroller.

Under s. 17.03, F.S., the Comptroller is to audit claims against the state. The Comptroller, using generally accepted auditing procedures for testing or sampling, is required to examine, audit, and settle all accounts, claims, and demands against the state that arise under any law or resolution of the Legislature, and to issue a warrant to the Treasurer to make payment out of the State Treasury. The section also authorizes the Comptroller to establish dollar thresholds applicable to each invoice amount, as well as to establish criteria for testing or sampling invoices on a preaudit and postaudit basis.

Further, the section authorizes the Comptroller to adopt procedural and documentation standards for payment requests and to provide training and technical assistance to agencies. Finally, the section places a legal duty on the Comptroller for delivering all state warrants and charges the Comptroller with the official responsibility of the protection and security of the state warrants held by the office.

In addition to the constitutional duties of the Comptroller, the Legislature appointed the Comptroller as head of the Department of Banking and Finance (DBF).[1] The former departmental divisions previously identified in statute are no longer specified. Nevertheless, at the time of this report, the DBF is still organized along division lines:

1. Division of Accounting and Auditing.[2]
2. Division of Banking.[3]
3. Division of Securities and Finance.[4]
4. Division of Information Systems.[5]

---

[1]The Department of Banking and Finance is created in s. 20.12, F.S.

[2]The Division of Accounting and Auditing ensures public funds are properly accounted for, provides information on how state funds are expended, and informs the public on the financial status of the state. The state's electronic fund transfer (EFT) is administered through this division, as well. Additionally, the division investigates allegations of fraud, waste, or abuse by state agencies or employees and operates an anonymous hotline service for persons to report unscrupulous activity.

[3]The Division of Banking charters, examines, and regulates state-chartered financial institutions to ensure that deposits are protected from loss. Applications for new banks, savings associations, foreign banks, credit unions and trust companies, as well as acquisitions, mergers, cross-industry conversions, changes of control, requests for trust powers and branches, are processed by the division. The division also examines each financial institution under its jurisdiction periodically and issues and monitors formal and informal enforcement actions.

[4]The Division of Securities and Finance protects consumers of the securities and finance industries from illegal financial activities. Applications for registration of non-exempt securities are reviewed prior to public offerings. Applications for registration of securities dealers, investment advisers, branch offices and associated persons are reviewed to ensure compliance with statutes and rules. The division also conducts examinations of affairs, books, and records of registrants. Further, the division reviews applications for licensure of money transmitters, motor vehicle installment sellers, retail installment sellers, sales finance companies, home improvement installment sellers, mortgage brokers and lenders, consumer finance companies, and consumer and commercial collection agencies. Cemetery companies are also regulated.

[5]The Division of Information Services is responsible for the Florida Accounting Information Resource (FLAIR) and the internal regulatory and licensing system of the department. FLAIR is a unified accounting system used by all state agencies and the ten state universities to account for the state's budget. This task is accomplished by use of a mainframe computer at the State Comptroller's Data Center (SCDC). The state's $18 million yearly payments, the appropriations and budgeting system (LAS/PBS), and applications maintained by the State Treasurer are run at the SCDC. Additionally, the SCDC prints automobile titles for the Department of Highway Safety and Motor Vehicles.

There are also a number of offices in the DBF.[6] Offices with regulatory responsibility include the Office of Unclaimed Property[7] and the Office of Financial Investigations.[8]

The principal licensing, chartering, regulatory, and civil enforcement powers of the department are conferred by the following statutory provisions:

Chapter 494, F.S. - Mortgage Brokerage and Mortgage Lending
Chapter 497, F.S. - Florida Funeral and Cemetery Services Act
Chapter 516, F.S. - Florida Consumer Finance Act
Chapter 517, F.S. - Florida Securities and Investor Protection Act
Chapter 520, F.S. - Retail Installment Sales
Chapter 559, F.S. - Regulation of Trade, Commerce, and Investments
Chapter 560, F.S. - Money Transmitters Code
Chapters 655 through 665, F.S. - Financial Institutions Codes
Chapter 716, F.S. - Escheats
Chapter 717, F.S. - Florida Disposition of Unclaimed Property Act

The DBF has 898 FTEs and an appropriated budget of approximately $65.8 million for FY 1999-2000. There are six budget entities in the DBF: (1) Comptroller/Division of Administration; (2) Division of Information Systems; (3) Financial Accountability for Public Funds Program (Division of Accounting and Auditing); (4) Financial Institutions Regulatory Program (Division of Banking); (5) Unclaimed Property Program; and (6) Consumer Financial Protection and Industry Authorization Program (Division of Securities and Finance and Office of Financial Investigations).

Departmental functions are funded through both general revenue and trust funds. Fifty-five percent of the operating budget is from general revenue, with the remainder from seven trust funds:

[6]There are a number of offices in the department, including, the Office of Financial Investigations, the Office of the General Counsel, the Office of Training and Development, the Office of Legislative Affairs, the Office of Research and Planning, the Office of Public Information, the Office of Unclaimed Property, and the Office of Cabinet Affairs.

[7]The Office of Unclaimed Property holds unclaimed assets in protective custody for missing owners. Approximately $550 million in unclaimed assets is currently held by the office.

[8]The Office of Financial Investigations responds to consumer complaints alleging violations of individuals or companies regulated by the DBF. The Comptroller’s Hotline and the Funeral and Cemetery Services Hotline are operated in this office. The office also conducts investigations into allegations of suspected fraud against state government and white-collar criminal activities.

- Administrative Trust Fund[9]
- Working Capital Trust Fund[10]
- Consolidated Payment Trust Fund[11]
- Regulatory Trust Fund[12]
- Financial Institutions Regulatory Trust Fund[13]
- Anti-Fraud Trust Fund[14]
- Comptroller's Federal Equitable Sharing Trust Fund[15]

Additionally, federal funds going to Florida counties pass through the DBF.[16] As well, the DBF has a non-operating budget in a number of trust funds.[17]
The Comptroller also sits on various boards, commissions, and public-private organizations.[18] The Comptroller also makes appointments to various boards, councils, and commissions. Under s.

[9]This fund provides some operating funds for the Comptroller/Division of Administration and the Consumer Financial Protection and Industry Authorization Program. Receipts are primarily from non-operating transfers from other agency trust funds.

[10]The Working Capital Trust Fund is for the internal systems support provided other agency budget entities. Receipts are from operating transfers (data processing appropriations) from the other budget entities.

[11]The Consolidated Payment Trust Fund provides long term financing for equipment needs of state agencies. Investment earnings on the trust fund balance generate receipts for the fund.

[12]The Regulatory Trust Fund provides operating funds for the Consumer Financial Protection and Industry Authorization Program and for the Unclaimed Property Program. The primary source for receipts in this fund is from charges to regulated industries.

[13]The Financial Institutions Regulatory Trust Fund is an operating fund for the Financial Institutions Regulatory Program. Receipts are from charges paid by regulated industries.

[14]The Anti-Fraud Trust Fund provides funds for the Consumer Financial Protection and Industry Authorization Program. Fines and reimbursements for costs of investigations and prosecutions fund this account.

[15]The Comptroller's Federal Equitable Sharing Trust Fund provides resources for the Consumer Financial Protection and Industry Authorization Program. Receipts for the fund come primarily from shared revenue under Federal Asset Sharing Programs.

[16]Funds from the Federal Use of State Lands Trust Fund.

[17]Child Support Clearing Trust Fund, Collector/IR Clearing Trust Fund, Consolidated/Misc. Deductions Clearing Trust Fund, EFT Clearing Trust Fund, Employee/Refund Clearing Trust Fund, Federal Tax Levy Clearing Trust Fund, Florida Retirement Clearing Trust Fund, Hospital Insurance Tax Clearing Trust Fund, Restoration Trust Fund, Social Security Clearing Trust Fund, Trust Funds under s. 215.18, F.S., Working Capital Fund, Tobacco Settlement Clearing Trust Fund, Unclaimed Property Trust Fund, Mortgage Brokerage Guaranty Trust Fund, Preneed Funeral Contract Consumer Protection Trust Fund, and Securities Guaranty Trust Fund.

[18]The Comptroller sits on the following entities: State Board of Administration under Art. XII, s. 9 of the State Constitution; Governing Board Secretary of the Division of Bond Finance under s. 215.67, F.S.; State Board of Education under Art. XI, s. 2 of the State Constitution and s. 229.012, F.S.; Board of Directors of Export Finance Corporation under s. 288.776, F.S.; Financial Management Information Board under s. 215.95, F.S.; Chair of the Financial Management Information System Coordinating Council under s. 215.96, F.S.; Board of Directors of the Hurricane Catastrophe Fund Finance Corporation under s. 215.555, F.S.; Board of Directors of the Inland Protection Financing Corporation under s. 376.3075, F.S.; Innovation Committee under s. 216.235, F.S.; Board of Trustees of the Internal Improvement Trust Fund under s. 253.02, F.S.; Governor's Committee on Interstate Cooperation under s. 13.05, F.S.; Political Party State Executive Committee under s. 103.091, F.S.; Prepaid Postsecondary Education Expense Board under s. 240.551, F.S.; Special Disability Trust Fund Financing Corporation under s. 440.49, F.S.; Technology Council under s. 282.3091, F.S.; and the Uniform Chart of Accounts Development Committee under s. 281.325, F.S.

112.215(8)(a)4.d., F.S., the Comptroller appoints one member, who must be an employee of the Comptroller, to the Deferred Compensation Advisory Council. The Comptroller is also required to appoint two members to the Florida Commission on the Status of Women. Further, under s. 497.101(1), F.S., the Comptroller nominates members to the Board of Funeral and Cemetery Services, which is created within the DBF. The Comptroller is required to nominate three persons per vacancy. The Governor must make appointments from the nominees. Additionally, pursuant to s. 440.49, F.S., the Comptroller makes appointments to the Special Disability Trust Fund Privatization Commission. The Comptroller also selects a WAGES Program Employment Project Coordinator under s. 414.030, F.S.

B. Treasurer and the Department of Insurance

The cabinet post commonly referred to as the "Treasurer" actually encompasses the duties of the Treasurer, Fire Marshal, and Insurance Commissioner. Statute designates the Treasurer's title as the "Insurance Commissioner and Treasurer."[19]

Article IV, s. 4(e) of the State Constitution, provides:

> The treasurer shall keep all state funds and securities. He shall disburse state funds only upon the order of the comptroller. Such order may be in any form and may require the disbursement of state funds by electronic means or by means of a magnetic tape or any other transfer medium.

Chapter 18, F.S., establishes more specific requirements relating to the Treasurer's position. Section 18.02, F.S., provides that the Treasurer is to pay all warrants on the treasury drawn by the Comptroller and other orders by the Comptroller for the disbursement of state funds. No money is to be paid out of the treasury except on such warrants or other orders of the Comptroller.

The Treasurer maintains three demand accounts in Florida banks chosen on a bid basis. These accounts are used as depositories for state agencies, for payment of state warrants, and for making investment transactions. Sufficient cash is left in the accounts to cover daily disbursements and compensating balances; all other funds are invested. The Treasurer receives and disburses more than $38 billion annually in state collections from all sources.

The Treasurer's office is responsible for investing general funds and trust funds. The Treasurer is also the cash manager for Florida state government, performs consulting services and operates a statewide cash concentration account in this capacity.

The Treasurer's office is responsible for protecting and servicing funds and securities deposited as a prerequisite to doing business in the state. The Treasurer's office is currently providing this trust service to the Department of Banking and Finance, the Department of Management Services, the Department of Insurance, the Florida Lottery, the Department of Transportation, and the Board of Regents.

[19]Section 20.13(1), F.S.

As administrator of the Florida Security for Public Deposits Acts, the Treasurer oversees and monitors public funds in excess of $2.7 billion on deposit in 292 banks and savings associations. This is a centralized statewide collateralization program designed to ensure that public deposits of the state and its political subdivision maintained in Florida banks and savings associations are fully protected from loss.

The Treasurer is responsible for the overall administration of the State Employees Deferred Compensation Program. The Treasurer educates prospective and current participants, distributes informational materials, markets the program by conducting presentations and seminars throughout the state, monitors performance of all investment options available to participants, pays all benefit recipients, and manages many other functions.

In addition to the financial responsibilities of the Treasurer, the Legislature has designated the Treasurer as the head of the Department of Insurance (DOI).[20] The Insurance Commissioner and Treasurer is responsible for many types of insurance, including life, property, casualty, title, viatical, marine, fidelity, surety, surplus lines, and health insurance. He also regulates rates and approves all policy forms. The agency head is also required to determine that insurance companies seeking to do business in Florida are financially sound and continue to be sound once approved to do business in the state.

The DOI is required to conduct a financial examination of each domestic insurer at least once every 3 years.[21] The DOI may accept an independent certified public accountant's audit report in lieu of making its own examination and may conduct an examination every 5 years, rather than every 3 years, for an insurer that has held a certificate of authority without a change in ownership for more than 15 years. Under the DOI's current practice, neither of these exceptions to the 3-year mandatory examination is exercised. For a foreign insurer, the DOI may conduct an examination as often as it deems advisable but, in practice, the DOI relies upon the examination by the regulatory authority in the insurer's state of domicile, except in rare circumstances.

The DOI also may conduct a market conduct examination of each authorized insurer as often as it deems necessary.[22] Under current practice, the DOI exercises its discretion to determine which insurers to examine and how often. The DOI has increased its use of contracts with independent professional examiners for market conduct examinations, as expressly authorized by statute.

The insurance commissioner tests and licenses insurance agents, adjusters, and bail bond agents. He enforces laws relating to health maintenance organizations, prepaid limited health service organizations, continuing care contracts, automobile and home warranty associations, premium finance companies, title insurance, fraternal benefit societies, and donor annuities.

The insurance commissioner is charged with investigating fraud in all lines of insurance, plus violations of the Insurance Code. Additionally, the insurance commissioner administers the funds

[20] Section 20.13, F.S.

[21] Section 624.316, F.S.

[22] Section 624.3161, F.S.

for retirement of police officers and firefighters. These funds are derived from certain premium taxes on insurance written in cities meeting requirements to use these State funds.

Pursuant to s. 20.13(3)(a), F.S., the DOI must have an assistant insurance commissioner and treasurer, three deputies, and a general counsel. A deputy may also serve as a general counsel. The statute creates 10 divisions within the DOI:

1. Division of Insurer Services.[23]
2. Division of Insurance Consumer Services.[24]
3. Division of Agents and Agencies Services.[25]
4. Division of Rehabilitation and Liquidation.[26]
5. Division of Risk Management.[27]
6. Division of State Fire Marshal.[28]
7. Division of Insurance Fraud.[29]
8. Division of Administration.
9. Division of Treasury.[30]

[23]This division ensures that Florida citizens are protected by properly regulating insurance companies. The division monitors the financial condition of insurance companies and approves insurance rates.

[24]The Division of Insurance Consumer Services assists, informs, and protects Floridians by helping them make better buying decisions and by helping them understand the available products. A toll-free consumer hotline is maintained to answer questions and take complaints. Ten service offices throughout Florida are maintained by the division.

[25]The Division of Agents and Agencies Services is responsible for licensing, regulating and investigating the professional activities of insurance agents and agencies. Both the licensing and investigations sections of this division assure the public of a reliable service.

[26]The Division of Rehabilitation and Liquidation supervises, under court order, insurance companies that are in financial trouble. Depending on the financial situation of a company, it is either placed into rehabilitative supervision to help restore it to a stable condition or liquidated.

[27]The Division of Risk Management administers the state's property and casualty self-insurance trust funds, including state employees' workers' compensation, state liability claims, and state property insurance claims. Safety and loss prevention are also housed in this division to educate and inform all state employees of the importance of safety awareness.

[28]The Division of Fire Marshal investigates fires and suppresses arson. The division inspects state-owned and state leased property to determine compliance with fire safety codes. It also enforces laws governing explosives, fireworks, fire extinguishers, and sprinkler systems, as well as establishes rules for safe use of these items. The investigative staff of this division are sworn law enforcement officers. Additionally, the division operates a Fire and Arson Laboratory in Quincy, Florida which provides fire debris analyses and film development for the investigations. Further, the Florida State Fire College (FSFC) is a part of the division, though its campus is located in Ocala, Florida.

[29]The Division of Insurance Fraud investigates all forms of insurance fraud, including illegal and unscrupulous activities by agents, companies and consumers. Such investigations may lead to criminal prosecutions. All enforcement personnel are sworn law enforcement officers.

[30]The Division of Treasury receives and disburses state funds from all sources, approximately $38 billion per year. Additionally, it invests state general funds and trust funds. The division acts as the cash manager for state government, performs consulting services and operates a statewide concentration account. The division also is statutorily assigned responsibility for protecting and servicing funds and securities deposited as a prerequisite to doing business in Florida. It also provides trust services to a number of departments, including the Florida Lottery and the Board of Regents. Additionally, the division administers the Florida Security for Public Deposits Acts, which oversees public funds on deposit in financial institutions. The division is also responsible for the State Employees Deferred Compensation Program.

10. Division of Legal Services.[31]

Additionally, a number of offices have been established in the DOI which provide legal, legislative, accounting, and administrative support.

The department has 1,536 FTEs and an annual operating budget of $115.6 million for FY 1999-2000. The DOI has 11 budget entities, which are the ten divisions plus the Office of Information Services. Department activities are totally funded through six trust funds:

- Treasurer's Administrative and Investment Trust Fund[32]
- Florida Casualty Insurance Risk Management Trust Fund[33]
- State Property Insurance Trust Fund[34]
- Agents and Solicitors County Tax Trust Fund[35]
- Fire College Trust Fund[36]
- Insurance Commissioner's Regulatory Trust Fund.[37]

The Legislature has also designated the Insurance Commissioner and Treasurer as the State Fire Marshal.[38] In this capacity, the Treasurer is responsible for investigating and suppressing arson, educating firefighters and ensuring that state-owned buildings are in conformance with fire codes.

---

[31]The Division of Legal Services provides legal representation for the DOI in administrative and judicial proceedings. It also provides legal opinions to the public and the DOI concerning the interpretation and administration of the Insurance Code and related laws.

[32]The Treasurer's Administrative and Investment Trust Fund is the operating fund for the Division of Treasury. It covers expenses incurred by the Treasurer in the performance of his duties, as well as supports the program costs associated with the State Employees Deferred Compensation Program. Receipts from an assessment against the average daily balance of funds invested on behalf of state agencies, fees assessed for safekeeping assets, and deferred compensation participant fees fund the account.

[33]The Florida Casualty Insurance Risk Management Trust Fund is the state's self-insurance fund for payment of workers' compensation, general liability, automotive liability, federal civil rights claims, and court awarded attorney's fees. The primary source of income to the trust fund is from premiums and assessments imposed on state agencies and are provided through the appropriations process.

[34]The State Property Insurance Trust Fund is a self-insurance fund for payment for damages to state buildings and contents resulting from fire, lightning, sinkholes, and other hazards. Receipts are from premiums and assessments to state agencies.

[35]The Agents and Solicitors County Tax Trust Fund is a depository for the county tax portion of the agency/solicitor license and appointment fees and biennial renewal. The primary source of receipts is from the county tax on agency appointments.

[36]The Fire College Trust Fund provides funding for the Florida State Fire College and the Bureau of Fire Standards and Training. Funding is through a surcharge on direct premiums written on commercial property for fire, allied lines, or multiperil insurance, admission fees, dorm rental fees, and the sale of books. This fund will be eliminated on July 1, 2000, and funds transferred to the Insurance Commissioner's Regulatory Trust Fund.

[37]The Insurance Commissioner's Regulatory Trust Fund provides monies for the regulation of the insurance and fire protection industries. Revenue from fines, taxes, licenses, examinations and other fees support the fund. Nine of the eleven budget entities of the department are funded from this trust fund. The two divisions that do not operate from this fund are the Divisions of Treasury and Risk Management.

[38]Section 633.01, F.S.

The Treasurer also sits on various boards, commissions and public-private entities.[39] Under s. 112.215(8)(a)4.b., F.S., the Treasurer appoints one member, who must be an employee of the Treasurer, to the Deferred Compensation Advisory Council. Additionally, the Treasurer makes appointments to various statutory boards, councils, and commissions.[40]

C. Comptroller and Insurance Commissioner Working Group on Cabinet Reorganization

In May 1999, the Comptroller and Insurance Commissioner and Treasurer appointed an internal working group on cabinet reorganization. The assigned task of the working group was to explore a narrow range of feasible alternatives for the reorganization of constitutional and statutory duties exercised by the Treasurer and Comptroller. The members of the working group were staff of the

---

[39]State Board of Administration under Art. XII, s. 9 of the State Constitution and s. 215.44, F.S.; Governing Board Treasurer, Division of Bond Finance under s. 215.62, F.S.; Chair, Board of Directors, Comprehensive Health Association under s. 627.6488, F.S.; State Board of Education under Art. IX, s. 2 of the State Constitution and s. 20.15, F.S.; Education Technology Foundation under s. 239.251, F.S.; Financial Management Information Board under s. 215.95, F.S.; Financial Management Information System Coordinating Council under s. 215.96, F.S.; Health Information Systems Council under s. 381.90, F.S.; Health Insurance Standardized Claim Form Development Committee under s. 408.7071, F.S.; Chair, Board of Directors, Healthy Kids Corporation under s. 624.91, F.S.; Board of Directors, Hurricane Catastrophe Fund Finance Corporation under s. 215.555, F.S.; Board of Directors, Inland Protection Financing Corporation under s. 376.3075, F.S.; Board of Trustees of the Internal Improvement Trust Fund under s. 253.02, F.S.; Governor's Committee on Interstate Cooperation under s. 13.05, F.S.; Board of Directors, Motor Vehicle Theft Prevention Authority under s. 860.154, F.S.; Ex Officio Treasurer, Pensacola Historic Preservation Board under s. 266.0015, F.S.; Political Party State Executive Committee under s. 103.091, F.S.; Prepaid College Board under s. 240.551, F.S.; Board of Directors, Small Employer Health Reinsurance Program under s. 627.6699, F.S.; Special Disability Trust Fund Financing Corporation under s. 440.49, F.S.; and Workers' Compensation Oversight Board under s. 440.4416, F.S.

[40]Birth-Related Neurological Injury Compensation Association under s. 766.315, F.S.; Birth-Related Neurological Injury Compensation Plan medical advisory panel under s. 766.308, F.S.; Boiler inspector under s. 554.105, F.S.; Board of Directors Comprehensive Health Association under s. 627.6488, F.S.; Comprehensive Health Information System Advisory Council under s. 408.05, F.S.; Consumer Advocate under s. 627.0613, F.S.; Continuing Education Advisory Board under s. 626.2815, F.S.; Deferred Compensation Advisory Council under s. 112.215, F.S.; Board of Directors, Florida Employee Long-Term Care Plan under s. 110.1227, F.S.; Firefighters Standards and Training Council under s. 633.31, F.S.; Healthy Kids Corporation Board of Directors under s. 624.91, F.S.; Commission on Hurricane Loss Projection Methodology under s. 627.0628, F.S.; Constitution Committee and Board of Governors of Insurance Exchange under s. 629.401, F.S.; Board of Governors of Joint Insurance Underwriting Associations under s. 627.311, F.S.; Long-Term Care Interagency Advisory Council under s. 430.710, F.S.; Board of Governors of Patient's Compensation Fund under s. 766.103, F.S.; Public Depository Advisory Committee under s. 280.05, F.S.; Board of Governors of Residential Property and Casualty Joint Underwriting Association under s. 627.351, F.S.; Risk Underwriting Committee under s. 627.351, F.S.; Small Employer Health Benefit Plan Committee under s. 627.6699, F.S.; Small Employer Health Reinsurance Program Board of Directors under s. 627.6699, F.S.; Special Disability Trust Fund Privatization Commission under s. 440.49, F.S.; Surplus Lines Service Office Board of Governors under s. 626.921, F.S.; Windstorm Underwriting Association Board of Governors under s. 627.351, F.S.; Commission on the Status of Women under s. 14.24, F.S.; Workers' Compensation Insurance Guaranty Association Board of Directors under s. 631.912, F.S.; Workers' Compensation Insurance Joint Underwriting Plan, Chair, Board of Governors under s. 627.311, F.S.; and the Workers' Compensation Insurance Purchasing Alliance Board under s. 627.992, F.S.

Department of Insurance and the Department of Banking and Finance.[41] The working group held workshops in Tallahassee, Orlando and Miami-Dade County.

The working group agreed to five guidelines that would guide the development of organizational structures:

- One "umbrella agency" for the regulation of banking, insurance, securities, and finance.
- Reduce administrative overhead.
- Continue current organizational structures, processes and activities.
- Leadership responsibility and organizational flexibility.
- Expansion of the consumer advocate.

The final report of the working group identified three organizational structures that could be considered for reorganizing the constitutional and statutory duties of the Comptroller and Treasurer:

COMPTROLLER AND TREASURER WORKING GROUP IDENTIFIED OPTIONS	
OPTION	**DESCRIPTION**
One Department ("Two into One")	This alternative combines all the constitutional and statutory duties of the Comptroller and the Treasurer in a single agency headed by the Chief Financial Officer.
Two Departments ("Two into Two")	The Constitutional and related functions of the Comptroller and Treasurer are consolidated in a department headed by the Chief Financial Officer. The regulatory and related functions presently assigned to the Comptroller and the Treasurer are combined into a new department. The regulatory department could be headed by a person appointed by the Governor, the Governor and Cabinet, or the members of the State Board of Administration.
Three Departments ("Two into Three")	The constitutional and related functions of the Comptroller and Treasurer are consolidated into one department headed by the Chief Financial Officer. The regulatory and related functions presently assigned to the Comptroller and the Treasurer remain in separate departments.

The report of the working group also identified a number of policy issues relating to alternative organizational structures. These issues were: (1) Umbrella Regulation - whether the regulation of banking, finance, securities and insurance should be combined in one agency; (2) Elected vs. Appointed - whether an elected official should continue to regulate the banking, finance, securities and insurance industries; (3) Stand-alone CFO - whether the Chief Financial Officer should be

[41]Staff of the Department of Insurance that were assigned to the working group were: Peter Mitchell, Chief of Staff; Jose A. Diez-Arguelles, Director of Policy Analysis and Intergovernmental Relations; David Rodriguez, Assistant to the Chief of Staff; and Jean Whitten, Budget and Strategic Planning Director. Staff of the Department of Banking and Finance that were assigned to the working group were: Art Simon, former State Representative and Director, Division of Banking; Bruce Berger, Director, Division of Administrative Services; Linda Charity, Bureau Chief, Division of Banking; Alisa Goldberg, Financial Control Analyst, Division of Securities/Finance; and Rene Lewis, Senior Cabinet Aide.

charged with regulatory responsibilities. The issues that were identified are summarized in the following charts:

UMBRELLA REGULATION	
PROS	**CONS**
Financial markets no longer recognize insurance, banking, finance and securities as insular industries.	While there is some commingling of issues and products, regulatory activities related to each industry will remain distinct and separate in the foreseeable future.
More effective and efficient consumer protection if DOI and DBF consumer protection activities are merged.	A regulator who is solely responsible for one industry can better regulate each industry.
Businesses that engage in multiple regulated activities would benefit because consistent policies would develop more rapidly.	Individual chosen to lead an umbrella agency would be more knowledgeable of one industry to the detriment of the other industries.

ELECTED VERSUS APPOINTED	
ELECTED	**APPOINTED**
Citizens wanted to merge all duties, both constitutional and statutory, of the Comptroller and Treasurer, to streamline government.	Citizens wanted the Governor's role to be expanded. The Governor has more power and is made more accountable with appointee.
Maintaining an elected regulator is consisted with Florida's history of having an elected official directly responsible and accountable for regulating financial industries.	No other state has an elected banking regulator and only 12 states elect the insurance regulator.

STAND-ALONE CFO	
PROS	**CONS**
CFO can focus on constitutional matters, especially as the state moves toward an integrated financial management system for state government.	Regulating financial services industry would interfere with the Chief Financial Officer's ability to perform constitutional duties.

The report of the working group also identified some administrative issues associated with reorganization:

ADMINISTRATIVE ISSUES	
Facilities	DBF and DOI occupy 753,433 square feet of office space. Most space is leased privately or through DMS. Because of the number of outstanding lease agreements, it may take several years after reorganization before employees can be integrated and housed in the same headquarters, if agencies are combined.

Information Technology	The computer staffs of the DBF and DOI have shared electronic financial data for many years. The DOI is now completely dependent on the DBF for its mainframe support, a service that is critical to the Division of Consumer Services, the Bureau of Licensing, and the Bureau of Finance and Support Services. Other small applications in the departments are also supported on the mainframe. Network operating systems, databases, development products, and electronic mail applications used by the DBF and DOI are different, exchange of data is compatible. It will not be necessary to make any major changes to the technical environments in either department in order to accomplish any combination or split in functions. As long as the mainframe applications are supported on one computer, there are no major technical obstacles that would make any combination or split any more technically feasible or affordable than any other option.

The report of the working group also identified a number of other issues related to organizational structure and governance: (1) Minimum qualifications for functional regulators; (2) Delegation of decision-making responsibility; (3) Organizational Flexibility; and (4) Limitations on Campaign Contributions. These issues are identified in the chart below.

ORGANIZATIONAL AND GOVERNANCE ISSUES	
Minimum Qualifications for Functional Regulator	The working group suggested that minimum education and experience qualifications for persons who hold key regulatory positions with respect to insurance, banking, securities and finance, is particularly apt, if final agency action on regulatory matters is exercised by appointed officials.
Delegation of Decision-Making Responsibility	In a proposed umbrella agency, the Legislature could provide for statutory delegation of decision-making responsibility from the agency head to industry-specific regulators in the different functional areas. This decision envisions separate statutory positions of “Insurance Commissioner,” “Securities Commissioner,” and “Banking Superintendent” in a single department under the cognizance of a Secretary or Executive Director who is responsible for overall coordination and administration of the agency. In addition, the Governor and Cabinet, or State Board of Education, could function as an agency head and take final agency action on significant issues, such as approving insurance rates, approving new financial institutions, and taking final enforcement actions.
Organizational Flexibility	For any new agencies created by the Legislature, the working group suggests that the department head should be accorded the same organizational flexibility that is currently granted to the Comptroller.
Limitations on Campaign Contributions	In the event that the Legislature opts for one department, statutory provisions restricting campaign contributions to the Comptroller and Treasurer should be conformed to restrict campaign contributions to the CFO. If the Legislature opts for a separate DOI headed by an elected official other than the CFO, then s. 627.0623, F.S., should be amended accordingly. If the Legislature opts for a “stand-alone” CFO without regulatory responsibilities over the affected industries, then the statutory restrictions on campaign contributions should be repealed.

D. Senate Interim Project #2000-52

During the 1999-2000 interim, staff of the Committee on Governmental Oversight and Productivity reviewed issues relating to cabinet reorganization and issued a report on the subject. Interim Project #2000-52 identified a number of issues and options related to the creation of the Chief Financial Officer in the State Constitution. Specifically, the report noted that the Legislature must decide whether to: (1) merge the Department of Banking and Finance with the Department of Insurance or keep separate departments; (2) decide upon the type of department head or heads; and (3) determine whether the new CFO should have combined constitutional and statutory functions or only constitutional functions.[42] At least four options were identified for legislative consideration.

CHIEF FINANCIAL OFFICER OPTIONS	
Option Number	**Description of Option**
Option 1.A.	Merging the Department of Banking and Finance with the Department of Insurance and designating the Chief Financial Officer as the head of a merged department.
Option 1.B.	Merging the Department of Banking and Finance with the Department of Insurance and designating an officer or board *other than* the Chief Financial Officer as the agency head. Assigning no statutory duties to the Chief Financial Officer.
Option 2.A.	Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating an officer or board *other than* the Chief Financial Officer as the head of each department. Assigning no statutory duties to the Chief Financial Officer.
Option 2.B.	Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating the Chief Financial Officer as the head of one department. Designating another officer or board as agency head for the remaining department.

Additionally, the report noted that for each of these options, the Legislature may wish to separate regulatory duties. For example, one or more independent commissions could be created to conduct rate making or other hearings. Other functions, such as enforcement, could be housed in one or more departments.

Combined or Multiple Departments - At least 13 states place regulatory responsibility for banking, securities, and insurance in a single department. Eight states have departments that regulate banking and securities. Three states delegate banking and insurance regulation to a single department.

One consideration affecting this decision of whether to create a combined department or retain separate departments that was noted in the interim project report was how a merged department would compare with other departments. The report noted that a review of existing departments shows that if the DBF and DOI were merged, without changing the number of employees or amounts appropriated, 15 departments would have larger appropriations and 10 would have a larger number of employees. As a result, a merged DBF and DOI would be in the mid-range of departments based upon size.

Another issue for legislative review noted in the report was the compatibility of regulation in the two departments. Banking is regulated primarily at the federal level and insurance is regulated at the state level. Problems that might arise due to a difference in type of regulation probably can be

[42]While stated somewhat differently, the issues identified by Insurance Commissioner and Treasurer Bill Nelson in testimony before the Senate Committee on Governmental Oversight and Productivity on February 3, 1999, are much the same: “We have, Milligan and I, have identified these four key issues, and let me repeat them, and then let me answer them for you. Should reorganization be addressed in the current, 1999-2000 legislative biennium? That’s question one. Question two: Should the regulatory functions of banking, insurance, finance and securities be assigned to an appointed or elected official? Number three: Should Florida establish a consolidated department under an umbrella regulation of insurance, banking, finance, and securities? And the fourth question is, should the regulatory agency or agencies be placed under the Governor, the Governor and the Cabinet, or the Chief Financial Officer?” Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

resolved by organizational structure. Typically, departments have distinct divisions, each with primary responsibility over specific regulatory functions. If additional protections are considered necessary, the Legislature could create separate, independent commissions with responsibility over limited regulatory functions. For example, an insurance commission could be created and given responsibility for rate hearings, licensure hearings, or rulemaking. Enforcement responsibility could be maintained in a division of a department.

As noted in the interim project report, both the Comptroller and Treasurer testified before the Senate Committee on Governmental Oversight and Productivity in February of 1999, in favor of merger. The primary basis for this recommendation was that the traditional legal walls separating insurance, banking, securities, and other financial services were being eliminated and that an agency with jurisdiction over all these services would be more effective and efficient. This testimony is supported by legislation passed during the 1999 session, as well as current events. Chapter 99-388, Laws of Florida, repealed the anti-affiliation law which prohibited licensed insurance agents from engaging in insurance agency activities through a financial institution except in the case of a bank located in a city with a population of less than 5,000. Further, the Gramm-Leach Bliley Act of 1999, authorizes banks, brokerages, and insurers to merge and to override state laws that conflict with federal affiliation provisions. As a result, the report noted that merger of these regulatory functions in one department was logical.

Type of Department Head - The interim project report also noted that the Legislature must determine what type of department head or heads it prefers. The report records testimony before the Senate Committee on Governmental Oversight and Productivity, in which the Comptroller recommended that the head of a combined department should be an officer or board appointed by the Governor, but in which the Treasurer recommended that the department head be elected. Currently, 12 states have elected insurance commissioners and 38 have appointed insurance commissioners.

As noted in the report, the State Constitution limits the available choices of department heads. Under Amendment No. 8, there will be fewer options in 2003:

AUTHORIZED DEPARTMENT HEADS IN 2003			
Constitutional		**Statutory**	
Officer	**Collegial Body**	**Officer**	**Collegial Body**
- Governor - Lt. Governor - Attorney General - Chief Financial Officer - Commissioner of Agriculture	The Governor and Cabinet	Secretary appointed by the Governor	Board whose members are appointed by the Governor

The report notes that designating an appointed officer or board as a department head would consolidate more authority, as well as accountability, in the Governor. It would also permit the Legislature to establish qualifications for appointees. In the case of a board, the Legislature could ensure that at least one board member was knowledgeable about an industry regulated by a merged department.

One reason for the Comptroller's testimony in favor of an appointed head is that an appointee may be less susceptible to influence by regulated industries because they do not need campaign contributions. Campaign contributions for the election of the Comptroller and Treasurer, however, are regulated by Florida law. A financial institution or insurer, officer or affiliate, or committee of continuous existence representing their interests, may not make a contribution in excess of $100 for any election for the Comptroller or Treasurer. The report notes that while the Treasurer did not dispute that an elected official could be influenced by industry through campaign contributions, he emphasized that an elected official has the mandate of the electorate and, as a result, can protect the public in ways that a mere appointee might not. The report also reports that the Treasurer also indicated that appointees are not immune from influence by regulated industries because they often come from, and return to, the industries they regulate.

The report notes that designation of an appointee would bifurcate the constitutional duties of the CFO from the statutory duties of the current Comptroller and Treasurer. As a result, there would be one cabinet member who would not be designated as head of a department with related statutory duties. This would conflict not only with historical precedent which designates cabinet officers as department heads, but with constitutional and legislative policy to merge state functions into a limited number of departments to promote efficiency.

Instead of an appointed officer or board, the report notes that the Legislature could designate the Governor and Cabinet, the Governor, the Lieutenant Governor, or an elected cabinet officer as a department head. Such a designation would affect the ability of the Legislature to specify the qualifications for the statutory office because the State Constitution, not the Legislature, establishes the qualifications for these officers. The only cabinet officer required by the State Constitution to have professional qualifications is the Attorney General. As a result, the report concludes that it does not appear that the Legislature could require one of these officers to have a particular license or level of professional experience. The report provides that the Legislature has not established qualifications for most statutory officers who head departments.

The report identifies designation of the Governor and Cabinet as department head as one method for governing the large number of regulated entities in a merged department, but notes that it could be argued that it would disperse accountability. Additionally, designating the Governor and Cabinet as head of a merged agency would bifurcate constitutional and statutory duties as the constitutional duties of the CFO cannot be reassigned by the Legislature. Further, assigning the Governor and Cabinet as agency head of a merged department would leave only one member of the Cabinet, the CFO, without a department with statutory duties related to his or her functions.

The elected officials specified in the State Constitution that may be designated as department heads are limited. The Governor has not been designated the head of an entity called a *department*, but has been designated the head of a statutorily-created office that arguably may be a department. Given this assignment, as well as other constitutional duties, naming the Governor as department head might be too burdensome. The Lieutenant Governor, historically, has not been designated by the Legislature as a department head, though a few Lieutenant Governors have been temporarily assigned this responsibility. It could be argued that the Lieutenant Governor might have more flexibility for such an assignment, and that the designation would fix as much accountability in the Governor as would an appointed secretary. The Attorney General and the Commissioner of Agriculture already head departments closely-aligned with their constitutional duties. Thus, they do not appear to be strong choices to designate as head of a new department relating to financial affairs and insurance.

As a result, under the limited options available under the State Constitution, the report notes that the remaining elected officer for consideration of a combined department is the CFO. The report concludes that given that the constitutional duties of the Comptroller and Treasurer are merged by the State Constitution, the merger of their statutory duties and responsibilities would be consistent, especially in light of changes that are occurring in the industry.

Separation of Jurisdiction - In addition to the issues reviewed above, the interim project noted that the Legislature could also separate some portion of the regulatory responsibilities currently assigned to the DBF and DOI. For example, the Legislature could separate policy-making, rate making, and rule adoption from licensing and enforcement. The Legislature could create one or more independent commissions with limited authority over specific industries, while leaving licensing, enforcement, and other duties in a department. Alternatively, the Legislature could separate jurisdiction by type of insurance.

By way of comparison, two states, Louisiana and Virginia, have commissions that are assigned some or all regulatory responsibility for insurance, banking, securities, and other financial institutions. The Louisiana Insurance Rating Commission was created by the Louisiana Legislature as a seven member commission.[43] Six of the members are appointed by the Governor of Louisiana and confirmed by the state senate. The seventh member of the commission is the Insurance Commissioner who is elected to the position. The Louisiana Insurance Commissioner serves as ex officio chairman of the commission. According to representatives of the commission, by practice, the commissioner does not vote except in the event of a tie vote on the commission.

The Louisiana Insurance Rating Commission has authority over only certain types of insurance in the state. The commission approves rates and adopts rules relating to fire, certain types of marine and transportation (inland marine), title insurance and casualty insurance risks. The commissioner has responsibility for forms in these areas. The commission also writes rules for workers compensation insurance and longshoremen and harbor workers compensation insurance. Health, accident, reinsurance, aircraft, casualty, and surety are not regulated by the commission. The Casualty and Surety Insurance Division of the Department of Insurance determines rates, territorial definitions and classification plans for all casualty insurance coverages. Title insurance rates are promulgated by title insurance rating bureaus and approved by the Casualty and Surety Insurance Division. The Louisiana Attorney General has the right to represent the interests of the people of the state.

Virginia has a body called the *State Corporation Commission* which is created in Article IX of the Virginia Constitution. The commission has responsibility for securities, insurance, and financial institutions, among other businesses. The commission consists of three members who are elected by the joint vote of the General Assembly for staggered six-year terms. One member must have the qualifications of a circuit court judge. Typically, according to a representative of the commission, all members are attorneys.

[43]Part XXX, s. 1401, Louisiana Insurance Code.

The commissioners, called judges, employ individuals called *commissioners* to head bureaus or divisions under the commission. For example, the employee who is placed by the commission at the head of the division which administers banking laws is called the *Commissioner of Financial Institutions*. The head of the insurance division is the Commissioner of Insurance. These employees serve at the pleasure of the commission.

The Virginia commission approves rates, adopts rules and regulations, and has powers of a court of records. Hearing officers of the commission make recommended orders that are forwarded to the commission for final order. Appeals are directly to the Virginia Supreme Court.

Florida law currently permits the establishment of commissions and there are a number of existing commissions in state government. A commission, unless otherwise required by the State Constitution, is defined by s. 20.03(10), F.S., to mean

> a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, *independently* of the head of the department or the Governor *[emphasis added*].

The report notes that, if the Legislature wished, it could create an *independent* commission or commissions and assign them to a merged department or in separate departments, for administrative purposes. The quasi-legislative and quasi-judicial powers could be extensive or they could be limited to particular jurisdictional areas, as is the case in Louisiana where the commission approves rates and adopts rules relating to fire, certain types of marine and transportation, title insurance and casualty insurance risks but not for health, accident, reinsurance, aircraft, casualty, and surety. For example, rate making for all types of insurance could be placed in a Florida insurance commission or only health and life insurance responsibilities could be placed under an insurance commission. Instead of separating responsibilities by the type of insurance, responsibilities could be separated functionally. Determinations of fiscal responsibility and soundness could be delegated to the commissioner, while rate making could be delegated to the commission. A separation of jurisdiction would require extensive research into the types of powers that must be delegated and the appropriate placement of those powers. Additionally, under this scenario, the status of the insurance commissioner or the banking commissioner to the particular commission must be resolved.

III. Effect of Proposed Changes:

A. The Department of Financial Services

The committee substitute creates the Department of Financial Services (DFS), effective January 7, 2003. The head of the DFS is designated as the Chief Financial Officer (CFO). Further, the committee substitute transfers the Department of Banking and Finance and the Department of Insurance into the DFS.

The committee substitute creates two divisions directly under the CFO: (1) the Division of Administration, including the Bureau of Financial and Support Services; and (2) the Division of

Financial Investigations, which includes insurance fraud. Each division is headed by a director who is appointed by, and serves at the pleasure of, the CFO.

Additionally, notwithstanding the requirements of s. 20.04, F.S., the committee substitute creates four offices in the DFS that are headed by commissioners: (1) the Office of the Commissioner of Insurance; (2) the Office of the Commissioner of Financial Services; (3) the Office of the Commissioner of Securities and Finance; and (4) the Office of the Commissioner of the Treasury. Under the committee substitute, each commissioner is appointed by, and serves at the pleasure of, the CFO. Each commissioner is required to perform duties as assigned by law, as well as duties assigned by the CFO.

The Commissioner of Insurance, the Commissioner of Financial Institutions, and the Commissioner of Securities and Finance are each required to have had during the previous 10 years at least five years in upper management in either the industries which are regulated by the divisions within their offices or in a state or federal agency which regulates those industries.

The committee substitute establishes divisions, which are headed by directors, in each office in the DFS, as follows:

OFFICE OF THE COMMISSIONER OF INSURANCE	**OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS**	**OFFICE OF THE COMMISSIONER OF SECURITIES AND FINANCE**	**OFFICE OF THE COMMISSIONER OF THE TREASURY**
Division of Insurance Agents and Agencies	Division of Banking	Division of Securities and Finance	Division of Accounting and Auditing, which includes unclaimed property.
Division of Insurance Consumer Services	Division of Credit Unions	Division of Certified Public Accounting	Division of Information Services
Division of Insurer Services			Division of Treasury, which includes a section of Government Employee Deferred Compensation.
Division of Rehabilitation and Liquidation			
Division of Risk Management			
Division of State Fire Marshal			

The committee substitute also transfers the Division of Certified Public Accounting, as well as the Board of Accountancy, to the DFS.

The committee substitute also creates the Florida Firefighters Occupational Safety and Health Act in newly-created sections 633.801- 633.825, F.S., which has an effective date of July 1, 2000. Responsibility for this act is delegated to the Division of State Fire Marshal.

B. Insurance Rating Commission

Effective January 1, 2001, the committee substitute creates the Insurance Rating Commission. While the commission is housed in the DFS, it is independent of the CFO and department. Under the committee substitute, the Insurance Rating Commission is a separate budget entity funded by appropriations from the Insurance Commissioner's Regulatory Trust Fund. The committee substitute provides that it is the intent of the Legislature to authorize the commission to approve rates for insurance, effective January 1, 2001, and to have the powers and duties relating to insurance rates that are now delegated to the Department of Insurance, including rates for insurance policies and health maintenance organization contracts.

The Insurance Rating Commission is composed of five commissioners. These commissioners are appointed by the Governor and confirmed by the Senate. Commissioners are appointed for staggered, 4-year terms. Some of the initial appointments to the Insurance Rating Commission are shorter in order to provide for staggered terms.

The committee substitute establishes qualifications for commissioners, as well as, imposes ethical limitations upon them. Each member of the commission is required to be competent and knowledgeable, based on actual experience, in at least one subject area or discipline: insurance, accounting, actuarial science, law, or finance. A commissioner may not, at the time of appointment or during his or her term of office:

- Have any financial interest, other than ownership of shares in a mutual fund, or other than as a policyholder or contract holder of a stock or mutual insurer or health maintenance organization, in any business entity which, either directly or indirectly, owns or controls any person or entity regulated by the commission, in any person or entity regulated by the commission, or in any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person or entity regulated by the commission.
- Be employed by or engaged in any business activity with any business entity which, either directly or indirectly, owns or controls any person or entity regulated by the commission, or by any business entity which directly or indirectly, is an affiliate or subsidiary of any person or entity regulated by the commission.

The committee substitute also establishes standards of conduct for commissioners. The Commission on Ethics is permitted to accept and investigate any alleged violations of this section. Members of the Insurance Rating Commission are authorized to request advisory opinions from the Commission on Ethics regarding these standards of conduct or prohibitions.

The chair of the Insurance Rating Commission is required to be elected by a majority vote for a term of two years. A member is not authorized to serve two consecutive terms as chair. The primary duty of the chair is to serve as chief administrative officer of the Insurance Rating Commission. The chair is specifically authorized to participate in any proceeding pending before the commission.

The chair is permitted to assign hearings to two or more commissioners or to the commission's office of hearing examiners under the supervision of the office of the general counsel. Only commissioners assigned to a proceeding requiring hearings may participate in the final decision of the commission as to that proceeding. In a case where only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chair casts the deciding vote for final disposition of the proceeding. Where more than two commissioners are assigned a proceeding, a majority of the members assigned constitute a quorum and a majority vote of the members assigned is required for final commission disposition.

A majority of the commissioners may determine that the full commission must sit in any proceeding. The public counsel or a person or entity whose rates are regulated by the commission and substantially affected by a proceeding may file a petition that the proceeding be assigned to the full commission, as well.

While insurance ratemaking authority is delegated by the Legislature to the Insurance Rating Commission under the committee substitute, authority over forms is assigned to the DFS.

Additionally, the committee substitute extends the authority of the Public Counsel by authorizing the Public Counsel to represent the public before the Insurance Rating Commission.

C. Financial Services Task Force

The committee substitute establishes the Financial Services Transition Task Force. Members are comprised of:

- One consumer representative appointed by the Governor;
- Two members appointed by the President of the Senate;
- Two members appointed by the Speaker of the House of Representatives;
- Two members appointed by the Comptroller; and
- Two members appointed by the Insurance Commissioner and Treasurer.

Under the committee substitute, all members of the task force must be appointed prior to September 1, 2000, and the organizational meeting of the task force must be held no later than October 1, 2000.

The members of the task force elect a chair by majority vote. Members serve without compensation, but are authorized per diem and travel expenses as provided in s. 112.061, F.S.

The purpose of the task force is to review the *Florida Statutes* and rules and to

- Identify any organizational problems, including but not limited to, communication between divisions, technical assistance and other services, and to recommend solutions to the identified problems;
- Identify any issues related to technology, including coordination or incompatibility of technology systems, and to suggest solutions to identified problems;
- Recommend methods to improve departmental accountability, including, but not limited to, modification of performance measures; and
- Recommend amendments to statutes and rules to reflect the changes made by the act.

The task force is required to submit its initial report to the Governor, the Senate President, and the Speaker of the House of Representatives by no later than January 1, 2001. The final report is due no later than January 1, 2002, at which time the task force terminates.

The effective date of the committee substitute is January 7, 2003, for those provisions that create the new Department of Financial Services, abolish the Department of Banking and Insurance, abolish the Department of Insurance, and transfer the Division of Certified Public Accountants to the DFS. Provisions which transfer ratemaking are effective January 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

While the effective date of the amendment is January 7, 2003, the provisions of the amendment apply for qualifying and holding of elections.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

There will be costs associated with merging the Department of Banking and Finance with the Department of Insurance in the new Department of Financial Services. As there may be efficiencies that result from the merger of these departments, such as the merger of investigatory units, some costs may be offset.

There will be costs associated with the creation of an Insurance Rating Commission. The duties assigned to the Insurance Rating Commission by the committee substitute are, however, currently the responsibility of the Department of Insurance and, as a result, the employees, office space, and equipment of that department would be transferred to the commission. Salaries and benefits for the commissioners will need to be established, as well.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.