

STORAGE NAME: h0739.go

DATE: February 29, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 739

RELATING TO: Governmental Reorganization

SPONSOR(S): Representatives Bainter, Crow, and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 12 NAYS 0
 - (2) FINANCIAL SERVICES YEAS 8 NAYS 0
 - (3) GOVERNMENTAL OPERATIONS
 - (4) FINANCE & TAXATION
 - (5) GENERAL GOVERNMENT APPROPRIATIONS
-

I. SUMMARY:

In the November 1998 General Election, Florida voters approved Constitutional Revision 8 to the Florida Constitution, which makes changes to the structure of the Cabinet. Included in these changes is the creation of the Chief Financial Officer as a Cabinet officer, abolition of the offices of Treasurer and Comptroller, and transfer of the constitutional duties of the Treasurer and Comptroller to the Chief Financial Officer. These changes apply to the November 2002 General Election and take effect January 7, 2003.

Revision 8 does not address the organizational alignment of the regulatory functions assigned to the Treasurer and the Comptroller by statute. HB 739 implements Revision 8 by creating the Office of the Chief Financial Officer for the newly created Cabinet officer. HB 739 also addresses the functional realignment of the Department of Insurance and the Department of Banking and Finance. HB 739 does the following:

- All powers, duties, functions, rules, personnel, property and unexpended balances that relate to the constitutional duties of the Treasurer and the Comptroller are transferred to the Office of Chief Financial Officer effective January 7, 2003.
- Effective January 7, 2003, the statutory duties of the Comptroller and the Treasurer are transferred to the new Department of Insurance and Financial Services, a statutorily-created agency, which is headed by the Governor and Cabinet who appoints an Executive Director to serve as chief administrator.
- The new department is divided into six separate divisions.
- All current regulatory powers, existing rules, and pending administrative and judicial actions of the current Department of Banking and Finance and the Department of Insurance that exist on January 7, 2003, are preserved.
- By July 1, 2001, the Department of Banking and Finance and the Department of Insurance are required to submit reports to the Governor and the Legislature which will specify on a position-by-position basis, those positions which will be subject to transfer to the Office of Chief Financial Officer.

This bill will not have a fiscal impact on state or local government. See section 3.D. of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Constitutional Revision 8

In the November 1998 General Election, Florida voters approved Constitutional Revision 8 to the Florida Constitution. Constitutional Revision 8 merges the elected cabinet offices of Treasurer and Comptroller into one Chief Financial Officer. The Cabinet is reduced from 7 to 4 members, consisting of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The Secretary of State and the Education Commissioner are eliminated from the elected Cabinet. In addition, the membership of the State Board of Administration is changed to the Governor, Chief Financial Officer, and Attorney General, rather than the Governor, Comptroller, and Treasurer. These changes apply to the November 2002 General Election and take effect January 7, 2003.

Constitutional Revision 8 does not address the organizational alignment of the regulatory functions assigned to the Treasurer and the Comptroller by statute.

TREASURER / DEPARTMENT OF INSURANCE

Constitutional Duties

The Treasurer is an elected position created by the state constitution as part of the Cabinet. The constitutional duties of the Treasurer, under Article IV, section 4, Florida Constitution, are to "keep all state funds and securities." The Treasurer is also a member of the State Board of Administration.

Statutory Duties

The Treasurer is designated by statute to be the head of the Department of Insurance (DOI) and is also known as the Insurance Commissioner. The DOI regulates all aspects of insurance in Florida, as well as investigating insurance fraud and violations of the Insurance Code. The other statutory duties of the Treasurer include investing the state's general revenue fund and trust funds, administering the Florida Security for Public Deposits Act and the State Employees Deferred Compensation Program, and serving as State Fire Marshal, whose primary duties are to minimize the loss of life and property in this state due to fire.

Organization of the Department of Insurance

The DOI is divided into 10 divisions. These divisions are:

- Administration, which performs facilities management, personnel management, training, and purchasing;
- Agents and Agencies Services, which is responsible for licensing, regulating, and investigating the professional activities of insurance agents;
- Insurance Consumer Services, which handles all consumer inquiries and complaints, provides educational materials, and maintains a toll-free hotline for consumers;
- Insurance Fraud, which investigates all forms of insurance fraud;
- Insurer Services, which regulates insurance companies by monitoring the financial condition and regulatory compliance of insurance companies and approves insurance rates and forms;
- Legal Services, which represents the DOI in administrative hearings and court proceedings and provides legal opinions to the public and the DOI;
- Rehabilitation and Liquidation, which oversees financially unstable insurance companies;
- Risk Management, which administers the state's property and casualty self-insurance funds;
- State Fire Marshal, which investigates fires and suppresses arson, inspects state owned and leased buildings, enforces laws governing explosives, fireworks, fire suppression equipment, and sprinkler systems, establishes standards for firefighters, licenses and permits fire equipment dealers, and operates the Fire College; and
- Treasury, which carries out the constitutional duties of the treasurer and oversees the State Employees Deferred Compensation Program.

The Insurance Commissioner has two deputies: a deputy of legal affairs, who oversees the divisions of Risk Management, Rehabilitation and Liquidation, and Legal Services; and a deputy insurance commissioner, who oversees the divisions of Insurer Services, Agents and Agencies Services, Insurance Fraud, and Insurance Consumer Services.

Insurance Consumer Advocate

The Insurance Commissioner is required by s. 627.0613, F.S., to appoint a consumer advocate to represent the general public before the DOI. The consumer advocate reports directly to the Insurance Commissioner, but is not directly under the authority of the DOI. The Insurance Consumer Advocate is authorized to recommend the commencement of proceedings by the DOI; appear in actions before the DOI and in administrative hearings concerning matters within the jurisdiction of the DOI; have access to the records and files of the DOI; hire consultants; examine rate and form filings and make recommendations; and prepare an annual budget for presentation to the Legislature by the DOI.

The Insurance Consumer Advocate also sits on many boards, including the Florida Surplus Lines Office, Florida Commission on Hurricane Loss Projection Methodology, Florida

Windstorm Underwriting Association, Residential Property & Casualty Joint Underwriting Association, Residual Market Property Insurance Marketing Council, and Florida Workers' Compensation Insurance Guaranty Association.

Staffing and Funding

The DOI has 1,536 full-time positions and an annual operating budget of \$115.6 million for FY 1999-2000. The activities of the DOI are funded through six different operating trust funds: Treasurer's Administrative and Investment Trust Fund, Florida Casualty Insurance Risk Management Trust Fund, State Property Insurance Trust Fund, Agents and Solicitors County Tax Trust Fund, Fire College Trust Fund, and Insurance Commissioner's Regulatory Trust Fund. The Fire College Trust Fund was repealed by the Legislature during the 1999 session. By July 1, 2000, it is to be combined into the Insurance Commissioner's Regulatory Trust Fund.

Field Offices

The DOI maintains 17 field offices which are located in Bartow, Daytona Beach, Ft. Lauderdale, Ft. Myers, Ft. Walton Beach, Jacksonville, Lake City, Largo, Marianna, Miami, Ocala, Orlando, Pensacola, Plantation, Quincy, Tampa, and West Palm Beach.

COMPTROLLER / DEPARTMENT OF BANKING AND FINANCE

Constitutional Duties

The Comptroller is an elected position created by the state constitution as part of the Cabinet. The constitutional duties of the Comptroller, under Article IV, section 4, Florida Constitution, are to serve as chief financial officer of the state and to settle and approve all accounts against the state. The Comptroller is also a member of the State Board of Administration.

Statutory Duties

The statutory duties of the Comptroller include examining, auditing and settling claims and demands against the state and serving as the head of the Department of Banking and Finance (DBF), which is responsible for regulating financial institutions and those conducting securities related business, providing for consumer financial protection, and administering the Unclaimed Property Act.

Organization of the Department of Banking and Finance

Under s. 20.12, F.S., the Comptroller is charged with executing the programs and policies adopted by the Legislature. This section does not prescribe the organization of the department into specific divisions, but does create within the department the Office of Financial Investigations to function as a criminal justice agency. This office was created to participate in federal programs and receive federal funding. The functions and activities of the DBF have been organized into the following divisions:

- Accounting and Auditing, which provides financial accountability for public funds;
- Banking, which regulates state-chartered financial institutions;
- Information Services, which maintains the Florida Accounting Information Resource and the regulatory and licensing programs within the department; and
- Securities and Finance, which regulates the securities industry and the financial industry.

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The Comptroller also oversees the Office of Unclaimed Property, which receives, accounts for, and disperses tangible and intangible property from unclaimed savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy proceeds, refunds, security and utility deposits, and contents of safety deposit boxes.

The Comptroller has an assistant comptroller and two deputy comptrollers. One deputy comptroller oversees the Division of Accounting and Auditing, as well as the Division of Information Services and the Office of Unclaimed Property. The other deputy comptroller oversees the Division of Banking, as well as the Division of Securities and Finance and the Office of Financial Investigations.

Staffing and Funding

The DBF has 898 full-time positions and an annual operating budget of \$66.6 million for FY 1999-2000. Fifty-five percent of the operating budget of the DBF is from the general revenue fund, with the remainder from the following trust funds: Administrative Trust Fund, Working Capital Trust Fund, Consolidated Payment Trust Fund, Regulatory Trust Fund, Financial Institutions Regulatory Trust Fund, Anti-Fraud Trust Fund, and Comptroller's Federal Equitable Sharing Trust Fund.

Field Offices

The DBF maintains ten field offices which are located in Boca Raton, Ft. Lauderdale (satellite office in Ft. Myers), Gainesville, Jacksonville, Miami, Orlando, Pensacola, Tampa, and West Palm Beach.

TYPE TWO TRANSFER

Under a type two transfer, which is defined in s. 20.06, F.S., an agency, department, program, activity, function, unit, or subunit is merged into another agency or department. The merging agency or department retains all its statutory powers, duties, and functions. Its records, personnel, property and balance of appropriations, allocations, or other funds are transferred to the agency with which it is merged. The administrative rules that were in effect before the transfer remain so.

C. EFFECT OF PROPOSED CHANGES:

HB 739 implements the Constitutional Revision 8 by creating the Office of the Chief Financial Officer for the newly created Cabinet officer. HB 739 addresses the functional realignment of the Department of Insurance and the Department of Banking and Finance. In addition to creating the Office of the Chief Financial Officer, HB 739 does the following:

- All powers, duties, functions, rules, personnel, property and unexpended balances that relate to the constitutional duties of the Treasurer and the Comptroller are transferred to the Office of Chief Financial Officer effective January 7, 2003.
- Effective January 7, 2003, the statutory duties of the Comptroller (as banking regulator) and the Treasurer (as insurance regulator) are transferred to the new Department of Insurance and Financial Services, a statutorily-created agency.
- The Governor and Cabinet serve as the head of the new Department of Insurance and Financial Services and appoint an Executive Director (also known as "Commissioner") to serve as chief administrator of the new department.

- The department is divided into separate Divisions of Administration, Banking and Finance, Criminal Investigations and Enforcement, Insurance, Risk Management, and State Fire Marshal.
- The Governor and Cabinet, as department head, are authorized to delegate any executive authority other than rulemaking to the Executive Director.
- Existing rules and pending administrative and judicial actions are preserved.
- All current regulatory powers of the current Department of Banking and Finance and the Department of Insurance are preserved.
- By July 1, 2001, the Department of Banking and Finance and the Department of Insurance are required to submit reports to the Governor and the Legislature which will specify on a position-by-position basis, those positions which will be subject to transfer to the Office of Chief Financial Officer. These reports will be used to determine which employees of the DBF and the DOI will be transferred to the Office of the Chief Financial Officer.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 creates, under s. 20.121, F.S., the Office of Chief Financial Officer (CFO). The CFO will serve as the state chief fiscal officer, settle and approve accounts against the state, and keep all state funds and securities (specified in Article IV, Section 4 of the State Constitution). The CFO also will be responsible for the State Employees' Deferred Compensation program, currently under the Treasurer.

The Department of Insurance and Financial Services is created by s. 20.131, F.S. The Governor and Cabinet serves as the department head and appoints an Executive Director ("Commissioner") to serve as the chief administrator of the department.

The divisions of the new department are Banking and Finance, Insurance, Criminal Investigation and Enforcement, State Fire Marshal, Risk Management, and Administration. The powers, personnel, and property are assigned to these divisions unaltered.

The Governor and Cabinet are authorized to delegate their executive authority to the Executive Director, except for delegating the power to adopt rules. Actions taken by the Executive Director under this authority will constitute final action of the department for Administrative Procedure Act purposes.

This section will take effect January 7, 2003.

Section 2 transfers the Office of Comptroller, the Office of Treasurer, and other portions of the DBF or the DOI that relate to the functions of the Comptroller or Treasurer to the new CFO. The remainder of the DBF and the DOI, other than the State Employees Deferred Compensation Program, are transferred to the new Department of Insurance and Financial Services. These transfers will take effect January 7, 2003.

Section 3 transfers the rules of the DBF and the DOI to the new Department of Insurance and Financial Services on January 7, 2003. All rules that are in effect on January 7, 2003, are preserved.

Section 4 preserves pending judicial and administrative actions involving the DBF and the DOI that are pending on January 7, 2003. The Department of Insurance and Financial Services will be substituted for the DBF or the DOI as a party of interest.

Section 5 requires the DBF and the DOI to provide, no later than July 1, 2001, a report to the Legislature and Governor specifying, on a position-by-position basis, those positions to be transferred to the CFO. This report, together with modifications specified in the General Appropriations Act, will be used to determine which employees to transfer to the CFO and which employees to transfer to the new Department of Insurance and Financial Services.

Section 6 directs the Division of Statutory Revision to prepare legislation by January 31, 2002, to conform the Florida Statutes to the creation of the CFO and the Department of Insurance and Financial Services, and the abolition of the offices of Comptroller and Treasurer and the DBF and the DOI.

Section 7 repeals s. 20.12, F.S., which created the DBF, and s. 20.13, F.S., which created the DOI, effective January 7, 2003.

Section 8 provides this bill will take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

HB 739 makes no decisions regarding the budgeting of the Office of the Chief Financial Officer or the Department of Insurance and Financial Services. Presumably, that will occur after July 1, 2001, when the Department of Insurance and the Department of Banking and

Finance will be required to submit reports to the Governor and the Legislature regarding which employees will be transferred to the Office of the Chief Financial Officer.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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