

By Representatives Flanagan, Waters, Brummer and Alexander

1 A bill to be entitled
2 An act relating to governmental reorganization;
3 amending s. 20.04, F.S.; providing an exception
4 to departmental structure requirements;
5 deleting reference to the Department of Banking
6 and Finance and substituting the Department of
7 Insurance and Financial Services; creating s.
8 20.121, F.S.; creating the Office of Chief
9 Financial Officer; providing duties; providing
10 for a Division of Financial Investigations;
11 creating s. 20.131, F.S.; creating the
12 Department of Insurance and Financial Services;
13 providing for an executive director; providing
14 for departmental structure; creating the
15 Offices of Commissioner of Insurance and
16 Commissioner of Financial Services; providing
17 for subpoenas, sworn statements, and
18 enforcement proceedings; providing for
19 appointment and specifying qualifications for
20 each commissioner; providing jurisdiction for
21 each commissioner's office; transferring
22 certain powers, duties, functions, rules,
23 records, personnel, property, and unexpended
24 balances of appropriations, allocations, and
25 other funds to the Office of Chief Financial
26 Officer, the Department of Insurance and
27 Financial Services, the Department of Law
28 Enforcement, and the Department of Agriculture
29 and Consumer Services; specifying that rules of
30 the Department of Banking and Finance and the
31 Department of Insurance become rules of the

1 Department of Insurance and Financial Services;
2 specifying that such rules become rules of the
3 Office of Chief Financial Officer under certain
4 circumstances; specifying that certain rules of
5 the Department of Insurance become rules of the
6 Department of Law Enforcement and the
7 Department of Agriculture and Consumer
8 Services; providing for preservation of
9 validity of judicial or administrative actions
10 involving such departments; providing for
11 substitution of certain parties in interest in
12 such actions; creating the Office of Transition
13 Management; specifying powers and duties
14 thereof; requiring reports to the Governor and
15 the Legislature; providing duties of the
16 Division of Statutory Revision; repealing ss.
17 20.12 and 20.13, F.S., relating to the
18 Department of Banking and Finance and the
19 Department of Insurance, respectively;
20 providing an appropriation; providing effective
21 dates.

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23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Effective January 7, 2003, subsection (3)
26 of section 20.04, Florida Statutes, is amended to read:

27 20.04 Structure of executive branch.--The executive
28 branch of state government is structured as follows:

29 (3) For their internal structure, all departments,
30 except for the Department of Insurance and Financial Services
31 ~~Banking and Finance~~, the Department of Children and Family

1 Services, the Department of Corrections, the Department of
2 Management Services, the Department of Revenue, and the
3 Department of Transportation, must adhere to the following
4 standard terms:

5 (a) The principal unit of the department is the
6 "division." Each division is headed by a "director."

7 (b) The principal unit of the division is the
8 "bureau." Each bureau is headed by a "chief."

9 (c) The principal unit of the bureau is the "section."
10 Each section is headed by an "administrator."

11 (d) If further subdivision is necessary, sections may
12 be divided into "subsections," which are headed by
13 "supervisors."

14 Section 2. Section 20.121, Florida Statutes, is
15 created to read:

16 20.121 Office of Chief Financial Officer.--Effective
17 January 7, 2003, there is created the Office of Chief
18 Financial Officer. The head of the office is the Chief
19 Financial Officer. Pursuant to s. 4, Art. IV of the State
20 Constitution, the duties of the Chief Financial Officer are to
21 serve as the chief fiscal officer of the state, to settle and
22 approve accounts against the state, and to keep all state
23 funds and securities. The Chief Financial Officer is also the
24 administrator of the Government Employees Deferred
25 Compensation Plan and is responsible for carrying out laws
26 relating to unclaimed property and security for public
27 deposits. There is created as a subunit within the Office of
28 Chief Financial Officer the Division of Financial
29 Investigations. The Division of Financial Investigations shall
30 function as a criminal justice agency within the meaning of s.
31 943.045(10)(e) and shall have a separate budget.

1 Section 3. Section 20.131, Florida Statutes, is
2 created to read:

3 20.131 Department of Insurance and Financial
4 Services.--Effective January 7, 2003, there is created the
5 Department of Insurance and Financial Services. The Governor
6 and Cabinet shall serve as head of the department.

7 (1) EXECUTIVE DIRECTOR.--The executive director of the
8 Department of Insurance and Financial Services is the chief
9 administrator of the department and shall be appointed by the
10 Governor and Cabinet, subject to confirmation by the Senate.
11 The executive director serves at the pleasure of the Governor
12 and Cabinet. The functions of the executive director are
13 limited to personnel, administrative, and budgetary matters,
14 including administrative coordination of issues that affect
15 areas under the Offices of the Commissioner of Insurance and
16 the Commissioner of Financial Services, and coordination of
17 legislative activities.

18 (2) DEPARTMENTAL STRUCTURE.--The Governor and Cabinet,
19 as head of the Department of Insurance and Financial Services,
20 shall adopt rules establishing the organizational structure of
21 the department. It is the intent of the Legislature to provide
22 the Governor and Cabinet with the flexibility to organize the
23 department in any manner they determine appropriate to promote
24 both efficiency and accountability, subject to the following
25 requirements:

26 (a) The major structural unit of the department is the
27 "office." Each office is headed by a "commissioner." The
28 offices are established as follows:

29 1. Office of the Commissioner of Insurance.--The
30 Office of the Commissioner of Insurance is responsible for all
31 activities of the department relating to the regulation of

1 insurance and state government risk management. The head of
2 the office is the Commissioner of Insurance.

3 2. Office of the Commissioner of Financial
4 Services.--The Office of the Commissioner of Financial
5 Services is responsible for all activities of the department
6 relating to the regulation of banks, credit unions, other
7 financial institutions, finance companies, funeral and
8 cemetery services, and securities. The head of the office is
9 the Commissioner of Financial Services.

10 a. The office shall include a Division of
11 Investigations and Enforcement, which is headed by a director
12 who is appointed by and serves at the pleasure of the
13 commissioner. The division shall function as a criminal
14 justice agency for purposes of ss. 943.045-943.08 and shall
15 have a separate budget. The Division of Investigations and
16 Enforcement may conduct investigations within or outside this
17 state as the division deems necessary to aid in the
18 enforcement of this section. If during an investigation the
19 division has reason to believe that any criminal law of this
20 state has or may have been violated, the division shall refer
21 any records tending to show such violation to state or federal
22 law enforcement or prosecutorial agencies and shall provide
23 investigative assistance to those agencies as required.

24 b.(1) The Commissioner of Financial Services may
25 demand and require full answers on oath from any person or
26 party privy to any account, claim, or demand against or by the
27 state, such as it may be the commissioner's official duty to
28 examine, which answers the commissioner may require to be in
29 writing and to be sworn to before the commissioner or the
30 office or before any judicial officer or clerk of any court of
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1 the state so as to enable the commissioner to determine the
2 justice or legality of such account, claim, or demand.

3 (II) In exercising authority under this section, the
4 commissioner or his or her designee may:

5 i. Issue subpoenas, administer oaths, and examine
6 witnesses.

7 ii. Require or permit a person to file a statement in
8 writing, under oath or otherwise as the commissioner or his or
9 her designee requires, as to all the facts and circumstances
10 concerning the matter to be audited, examined, or
11 investigated.

12 (III) Subpoenas shall be issued by the commissioner or
13 his or her designee under seal commanding such witnesses to
14 appear before the commissioner, the commissioner's
15 representative, or the office at a specified time and place
16 and to bring books, records, and documents as specified or to
17 submit books, records, and documents for inspection. Such
18 subpoenas may be served by an authorized representative of the
19 commissioner or the office.

20 (IV) In the event of noncompliance with a subpoena
21 issued pursuant to this section, the commissioner or the
22 office may petition the circuit court of the county in which
23 the person subpoenaed resides or has his or her principal
24 place of business for an order requiring the subpoenaed person
25 to appear and testify and to produce books, records, and
26 documents as specified in the subpoena. The court may grant
27 legal, equitable, or injunctive relief, including, but not
28 limited to, issuance of a writ of ne exeat or the restraint by
29 injunction or appointment of a receiver of any transfer,
30 pledge, assignment, or other disposition of such person's
31 assets or any concealment, alteration, destruction, or other

1 disposition of subpoenaed books, records, or documents, as the
2 court deems appropriate, until such person has fully complied
3 with such subpoena and the commissioner or the office has
4 completed the audit, examination, or investigation. The
5 commissioner or the office is entitled to the summary
6 procedure provided in s. 51.011, and the court shall advance
7 the cause on its calendar. Costs incurred by the commissioner
8 or the office to obtain an order granting, in whole or in
9 part, such petition for enforcement of a subpoena shall be
10 charged against the subpoenaed person, and failure to comply
11 with such order shall be a contempt of court.

12 (b) For purposes of final orders under chapter 120,
13 each commissioner is the agency head for all areas within that
14 commissioner's jurisdiction and shall be responsible for, and
15 take final agency action related to, orders within the
16 regulatory authority delegated to that commissioner's office.

17 (3) APPOINTMENT AND QUALIFICATIONS OF
18 COMMISSIONERS.--Each commissioner shall be appointed by, and
19 shall serve at the pleasure of, the executive director.
20 Appointment of a commissioner is subject to the approval of
21 the Governor and Cabinet. The minimum qualifications of the
22 commissioners are as follows:

23 (a) Prior to appointment as commissioner, the
24 Commissioner of Insurance must have had, within the previous
25 10 years, at least 5 years of responsible private sector
26 experience working full-time in an area under the regulatory
27 jurisdiction of the Office of the Commissioner of Insurance or
28 at least 5 years of experience as a senior examiner or other
29 senior employee of a state or federal agency having regulatory
30 responsibility over insurers or insurance agencies.

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1 (b) Prior to appointment as commissioner, the
2 Commissioner of Financial Services must have had, within the
3 previous 10 years, at least 5 years of responsible private
4 sector experience working full-time in an area under the
5 regulatory jurisdiction of the Office of the Commissioner of
6 Financial Services or at least 5 years of experience as a
7 senior examiner or other senior employee of a state or federal
8 agency having regulatory responsibility over financial
9 institutions, finance companies, or securities companies.

10 Section 4. Transfers.--

11 (1) TRANSFERS TO THE OFFICE OF CHIEF FINANCIAL
12 OFFICER.--

13 (a) All powers, duties, functions, rules, records,
14 personnel, property, and unexpended balances of
15 appropriations, allocations, and other funds of the Office of
16 the Comptroller;

17 (b) All powers, duties, functions, rules, records,
18 personnel, property, and unexpended balances of
19 appropriations, allocations, and other funds of the Department
20 of Banking and Finance that relate to the constitutional
21 functions of the Comptroller or to duties relating to
22 unclaimed property;

23 (c) All powers, duties, functions, rules, records,
24 personnel, property, and unexpended balances of
25 appropriations, allocations, and other funds of the Office of
26 the Treasurer, including the Government Employees Deferred
27 Compensation Plan and duties relating to security for public
28 deposits; and

29 (d) All powers, duties, functions, rules, records,
30 personnel, property, and unexpended balances of
31 appropriations, allocations, and other funds of the Department

1 of Insurance that relate to the constitutional functions of
2 the Treasurer

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4 are transferred by a type two transfer, as defined in s.
5 20.06(2), Florida Statutes, to the Office of Chief Financial
6 Officer.

7 (2) TRANSFERS TO THE DEPARTMENT OF INSURANCE AND
8 FINANCIAL SERVICES.--

9 (a) All powers, duties, functions, rules, records,
10 personnel, property, and unexpended balances of
11 appropriations, allocations, and other funds of the Department
12 of Banking and Finance not otherwise transferred by this act;
13 and

14 (b) All powers, duties, functions, rules, records,
15 personnel, property, and unexpended balances of
16 appropriations, allocations, and other funds of the Department
17 of Insurance not otherwise transferred by this act

18
19 are transferred by a type two transfer, as defined in s.
20 20.06(2), Florida Statutes, to the Department of Insurance and
21 Financial Services.

22 (3) TRANSFERS TO THE DEPARTMENT OF LAW
23 ENFORCEMENT.--All powers, duties, functions, rules, records,
24 personnel, property, and unexpended balances of
25 appropriations, allocations, and other funds of the Division
26 of Insurance Fraud of the Department of Insurance are
27 transferred by a type two transfer, as defined in s. 20.06(2),
28 Florida Statutes, to the Department of Law Enforcement.

29 (4) TRANSFERS TO THE DEPARTMENT OF AGRICULTURE AND
30 CONSUMER SERVICES.--All powers, duties, functions, rules,
31 records, personnel, property, and unexpended balances of

1 appropriations, allocations, and other funds of the Division
2 of State Fire Marshal of the Department of Insurance are
3 transferred by a type two transfer, as defined in s. 20.06(2),
4 Florida Statutes, to the Department of Agriculture and
5 Consumer Services, and the Commissioner of Agriculture is
6 designated as the State Fire Marshal.

7 (5) This section shall take effect January 7, 2003.

8 Section 5. (1) Effective January 7, 2003, the rules
9 of the Department of Banking and Finance and of the Department
10 of Insurance that were in effect on January 6, 2003, shall
11 become rules of the Department of Insurance and Financial
12 Services and shall remain in effect until specifically amended
13 or repealed in the manner provided by law.

14 (2) Notwithstanding subsection (1):

15 (a) Any such rules that relate to the constitutional
16 functions of the Comptroller or the Treasurer shall instead
17 become rules of the Office of Chief Financial Officer and
18 shall remain in effect until amended or repealed in the manner
19 provided by law.

20 (b) Any such rules that relate to the functions of the
21 Division of Insurance Fraud of the Department of Insurance
22 shall instead become rules of the Department of Law
23 Enforcement and shall remain in effect until amended or
24 repealed in the manner provided by law.

25 (c) Any such rules that relate to the functions of the
26 Division of State Fire Marshal of the Department of Insurance
27 shall instead become rules of the Department of Agriculture
28 and Consumer Services and shall remain in effect until amended
29 or repealed in the manner provided by law.

30 Section 6. (1) This act shall not affect the validity
31 of any judicial or administrative action involving the

1 Department of Banking and Finance or the Department of
2 Insurance pending on January 7, 2003, and the Department of
3 Insurance and Financial Services shall be substituted as a
4 party in interest in any such action.

5 (2) Notwithstanding subsection (1),

6 (a) If the action involves the constitutional
7 functions of the Comptroller or Treasurer, the Office of Chief
8 Financial Officer shall instead be substituted as a party in
9 interest.

10 (b) If the action involves the functions of the
11 Division of Insurance Fraud of the Department of Insurance,
12 the Department of Law Enforcement shall instead be substituted
13 as a party in interest.

14 (c) If the action involves the functions of the State
15 Fire Marshal or of the Division of State Fire Marshal of the
16 Department of Insurance, the Department of Agriculture and
17 Consumer Services shall instead be substituted as a party in
18 interest.

19 Section 7. Transitional provisions.--

20 (1) The office of executive director of the Department
21 of Insurance and Financial Services is created effective July
22 1, 2002. By no later than August 1, 2002, the Governor and
23 Cabinet shall appoint a person, subject to confirmation by the
24 Senate, who will serve as the executive director of the
25 department. However, until the creation of the department
26 takes effect on January 7, 2003, that person shall serve as
27 the head of the Office of Transition Management under
28 subsection (2).

29 (2)(a) There is created the Office of Transition
30 Management. The office shall function independently but shall
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1 for administrative purposes be treated as an office of the
2 Executive Office of the Governor.

3 (b) The head of the office is the executive director
4 appointed pursuant to subsection (1), who shall serve at the
5 pleasure of the Governor and Cabinet.

6 (c) The office shall manage the transition to the new
7 Department of Insurance and Financial Services and the new
8 Office of Chief Financial Officer. The management duties of
9 the office shall include, but not be limited to:

10 1. Ensuring that, by no later than January 7, 2003,
11 all positions within the Office of the Commissioner of
12 Insurance and the Office of the Commissioner of Financial
13 Services, including all senior management positions, are
14 occupied by qualified persons.

15 2. Providing written recommendations to the
16 Legislature by no later than February 1, 2003, as to statutory
17 changes that are necessary or desirable to facilitate the
18 operations of the department. These recommendations shall
19 include, but not be limited to, detailed legislative
20 recommendations regarding rulemaking procedures for the
21 Department of Insurance and Financial Services, including
22 proposals to streamline the rulemaking process and proposals
23 regarding adoption of emergency rules.

24 3. Providing a written report that specifies the
25 placement of those positions that are transferred to the
26 Office of Chief Financial Officer and transferred to the
27 Department of Insurance and Financial Services under this act.
28 The office shall provide the report to the Governor, the
29 President of the Senate, the Speaker of the House of
30 Representatives, and the chair of each fiscal committee or
31 council of the Senate and the House of Representatives.

1 4. Taking action in advance on personnel, purchasing,
2 and administrative matters.

3 5. Submitting to the Governor and Cabinet a proposed
4 organizational plan for the Department of Insurance and
5 Financial Services, which plan the Governor and Cabinet may
6 adopt by rule.

7 6. Providing monthly written transition status reports
8 to the President of the Senate and the Speaker of the House of
9 Representatives.

10 7. Providing such other information as may be
11 requested by members or staff of the Legislature.

12 (d) The Department of Banking and Finance, the
13 Department of Insurance, the Office of the Comptroller, and
14 the Office of the Treasurer shall fully cooperate with the
15 Office of Transition Management and shall promptly provide the
16 office with any requested information.

17 (e) Funding for the Office of Transition Management
18 shall be as provided in the General Appropriations Act.

19 Section 8. Current references in the Florida Statutes
20 affected by the passage of this act shall be conformed to
21 reflect the provisions of this act and included in the edition
22 of the Florida Statutes prepared by the Division of Statutory
23 Revision for 2003.

24 Section 9. Effective January 7, 2003, sections 20.12
25 and 20.13, Florida Statutes, are repealed.

26 Section 10. There is hereby appropriated \$227,984 from
27 the Grants and Donations Trust Fund in the Executive Office of
28 the Governor and two full-time equivalent (FTE) positions for
29 the purpose of funding the Office of Transition Management
30 within the Executive Office of the Governor. This shall be
31 funded by transfers of \$113,992 from the Administrative Trust

1 Fund of the Department of Banking and Finance and \$113,992
2 from the Insurance Commissioner's Regulatory Trust Fund of the
3 Department of Insurance to the Grants and Donations Trust Fund
4 in the Executive Office of the Governor. If funding for the
5 Office of Transition Management is provided in the 2002-2003
6 General Appropriations Act, this appropriation shall not take
7 effect.

8 Section 11. Except as otherwise provided herein, this
9 act shall take effect upon becoming a law.

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HOUSE SUMMARY

Creates the Department of Insurance and Financial Services and repeals the present Department of Banking and Finance and the Department of Insurance. Provides a phase-in period until January 7, 2003. See bill for details.