

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1488

SPONSOR: Banking and Insurance Committee

SUBJECT: Governmental Reorganization

DATE: March 6, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>CP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

In November 1998, the voters of Florida approved an amendment to Article IV, s. 4 of the State Constitution which substantially restructured the Cabinet by merging two cabinet offices, the Comptroller and the Treasurer, into the newly created Chief Financial Officer and eliminating the Secretary of State and Commissioner of Education from the Cabinet. As a result, the new state Cabinet consists of the Attorney General, Chief Financial Officer, and the Commissioner of Agriculture. These provisions were effective January 7, 2003.

In response to the adoption of this amendment, the 2002 Legislature enacted HB 3-E that merged the Department of Banking and Finance and the Department of Insurance into the Department of Financial Services, headed by the Chief Financial Officer.<sup>1</sup> The legislation also created the Financial Services Commission (commission) as an independent entity within the Department of Financial Services. The commission members consist of the Governor and the Cabinet. The act creates two offices under the commission: the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation.

This bill provides conforming, statutory changes relating to the Governor, Cabinet, and the Governor and the Cabinet collectively, or the Governor and certain members of the Cabinet sitting as boards, commissions, or other collegial bodies, since these provisions were affected by the enactment of the amendment to the State Constitution: These provisions include:

- The order of succession to the Office of the Governor;
- The resolution of a tie vote of the Governor and Cabinet;
- Membership and voting for the Administration Commission;

<sup>1</sup> Ch. 2002-404, L.O.F.

- Appointment of members to the Florida Commission on the Status of Women;
- Prohibition against certain executive officers not absenting themselves from the capital without consent;
- Membership of the State Board of Administration;
- Membership of the governing board of the Division of Bond Finance;
- Membership of the Financial Management Information Board;
- Membership and voting requirements for the Board of Trustees of the Internal Improvement Trust Fund;
- Membership of the Governor’s Committee on Interstate Commerce;
- Voting requirements for the Governor and Cabinet for matters relating to executive clemency and probation for certain juvenile offenders; and
- Repeal of outdated provisions relating to the Public Employee Optional Retirement Program Advisory Committee.

This bill substantially amends the following sections of the Florida Statutes: 13.05, 14.055, 14.202, 14.24, 114.03, 121.0312, 121.055, 121.4501, 215.44, 215.62, 215.95, 215.96, 253.02, 253.034, 259.041, 940.01, 940.03, and 985.417.

The bill creates section 14.2001, Florida Statutes.

Sections 259.032 and 260.012, F.S., are reenacted to incorporate the amendment of a statute referenced in s. 259.041.

## II. Present Situation:

### **The Governor and the Cabinet**

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 elected cabinet officers.

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 operating 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.

In November 1998, voters approved Constitutional Amendment No. 8 which restructured the Cabinet by reducing the number of offices from six to three members, effective January 7, 2003. This revision merged the Comptroller and Treasurer into the newly created Chief Financial Officer, and removed the Secretary of State and the Commissioner of Education from the Cabinet. The new Cabinet is composed of the Attorney General, Chief Financial Officer, and the Commissioner of Agriculture.<sup>2</sup> Article IV, s. 4 of the State Constitution further provides that in the event of a tie vote of the Governor and Cabinet, the side on which the Governor voted shall prevail.

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<sup>2</sup> Article IV, s. 4, State Constitution

Article XII, s. 24 of the State Constitution provides that "...in the event the Secretary of State is removed as a cabinet office in the 1998 general election, the term, "custodian of state records" will be substituted throughout the constitution and the duties previously performed by the Secretary of State will be provided by law." The Secretary of State was removed from the Cabinet due to Constitutional Amendment No. 8. The Secretary of State still serves as the head of the Department of State.<sup>3</sup> Due to the passage of Constitutional Amendment No. 8, the Commissioner of Education is no longer a Cabinet officer. Instead, the State Board of Education, comprised of members appointed by the Governor, appoints the Commissioner of Education.<sup>4</sup>

### ***Succession to Office***

The State Constitution provides that in the event of a vacancy in the Office of the Governor, the Lieutenant Governor would succeed the Governor.<sup>5</sup> The statutes prescribe further succession to the Office of the Governor. Section 14.055, F.S., presently provides that upon a vacancy in the Office of the Governor and Lieutenant Governor, the vacancy in the Office of the Governor would first be filled by the Secretary of State, then, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Education, and lastly, the Commissioner of Agriculture. In the event a vacancy still exists, then, the President of the Senate and the Speaker of the House of Representatives would convene the Legislature, for a joint session, within 15 days for choosing a person, by a majority vote by both houses, to serve as Governor for the remainder of the term.

### **Governor and Cabinet Boards, Commissions, and Other Collegial Bodies**

In addition to sitting as the agency head of four departments, the Governor and Cabinet (or the Governor and certain members of the Cabinet) also sit as boards, commissions, or other collegial bodies, such as the:

- Administration Commission
- State Board of Administration
- Division of Bond Finance
- Board of Executive Clemency
- Board of Trustees of the Internal Improvement Trust Fund

### ***The Administration Commission***

The Governor and Cabinet sit as the Administration Commission<sup>6</sup> which reviews and approves numerous activities and policies of the executive branch. The Administration Commission is an office created within the Executive Office of the Governor.<sup>7</sup> The Governor serves as chair of the commission, though either the Governor or the Comptroller may call a meeting of the commission when the need arises. Unless otherwise provided, affirmative action by the commission requires approval of the Governor and at least three other members of the commission. Currently, s. 14.202, F.S., provides that affirmative action of the commission requires approval of the Governor and at least three other members of the commission.

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<sup>3</sup> Section 20.10, F.S.

<sup>4</sup> Article IX, s. 2, State Constitution

<sup>5</sup> Article IV, s. 3, State Constitution

<sup>6</sup> Section 14.202, F.S.

<sup>7</sup> Section 14.202, F.S.

In performing its various duties, the Administration Commission sits as other entities. For example, s. 14.203, F.S., provides for the creation of the State Council on Competitive Government and provides that the council is composed of the Governor and Cabinet "...sitting as the Administration Commission..." The purpose of the council is to ensure that state services be performed in the most effective and efficient manner. The Administration Commission also sits as the Florida Land and Water Adjudicatory Commission.<sup>8</sup> The Financial Management Information Board is part of the Administration Commission and is composed of the Governor, as the chair, the Comptroller, and the Treasurer.<sup>9</sup>

#### ***The Board of Trustees of the Internal Improvement Trust Fund***

Article IV, s. 4 of the State Constitution provides that the trustees of the Internal Land Improvement Trust Fund and the Land Acquisition Trust Fund consist of the Governor as chair, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture.

The Board of Trustees of the Internal Improvement Trust Fund of the state is responsible for the acquisition, administration, conservation, protection, and disposition of all lands owned by, or which may inure to, the state or any of its agencies. Presently, s. 253.02, F.S., provides that the Board of Trustees is comprised of the following seven members: the Governor, the Secretary of State, the Attorney General, the Comptroller, the State Treasurer, the Commissioner of Education, and the Commissioner of Agriculture. The Department of Environmental Protection performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund. Section 253.02, F.S., also authorizes the board to dispose of any land to which the title is vested to the Board of Trustees, if such disposition is approved by a vote of at least five of the seven trustees.

#### ***State Board of Administration***

Article XII, s. 9 of the State Constitution establishes the State Board of Administration.

Article IV, s. 4 of the State Constitution provides that the Governor, serving as chair, the Chief Financial Officer, and the Attorney General constitute the State Board of Administration. Membership on the State Board of Administration includes the Governor, who serves as chair, the Comptroller, and the Treasurer.<sup>10</sup> The board has fiduciary responsibility for the management and oversight of the State Board of Administration, which is the fourth largest pension fund in the country. The primary duties of the Board are the investment of certain assets; the administration of bonded debt of the State; and the distribution of the constitutional fuel tax.

The Division of Bond Finance is located within the State Board of Administration.

Section 215.58, F.S., provides that the governing board of the division is the Governor and Cabinet. The Governor serves as chair, the Comptroller is the secretary of the board, and the Treasurer serves as the treasurer of the board.<sup>11</sup> The division issues and sells state bonds to finance various state functions.

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<sup>8</sup> Section 380.07, F.S.

<sup>9</sup> Section 215.95, F.S.

<sup>10</sup> Section 215.44, F.S.

<sup>11</sup> Section 215.62, F.S.

***Board of Executive Clemency***

Executive clemency is a power vested in the Governor by Article IV, s. 8 of the State Constitution. The Governor, with the approval of two members of the Cabinet, is authorized to grant full or conditional pardons, restore civil rights, and commute punishment. The Governor and Cabinet sit as the Board of Executive Clemency and review petitions for clemency.<sup>12</sup> Chapter 940, F.S., contains notice requirements, the method for applying for executive clemency, and requires the Department of Corrections to inform and educate inmates about the restoration of rights.

***Florida Commission on the Status of Women***

The Governor's Commission on the Status of Women was originally created as a commission under the Governor in 1964. In 1991, the commission was statutorily created as the Florida Commission on the Status of Women to study the changing and developing roles of women in American society laws, and to make recommendations to the Legislature. The commission is composed of 22 members and is administratively located within the Office of the Attorney General. The Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives each appoint three members to 4-year terms. The Secretary of State, the Comptroller, the Insurance Commissioner, the Commissioner of Agriculture, and the Commissioner of Education each appoint two members for 4-year terms. No member may serve more than eight consecutive years on the commission.<sup>13</sup>

***Governor's Committee on Interstate Cooperation***

The Governor's Committee on Interstate Cooperation is comprised of the Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, and Commissioner of Agriculture. The Florida Commission on Interstate Cooperation is composed of the following 20 members: the members of the Governor's Committee on Interstate Cooperation, the members of the Senate Committee on Interstate Cooperation, the members of the House Committee on Interstate Cooperation, and the Chief Justice of the Supreme Court. One of the primary functions of this commission is to encourage and assist cooperation between Florida and other states through the adoption of compacts and the enactment of uniform or reciprocal statutes, rules, and regulations.

**2002 Special Session "E" Legislation**

The Legislature, by general law, designated the Comptroller as head of the Department of Banking and Finance, and designated the Treasurer as the Insurance Commissioner (head of the Department of Insurance) and as the State Fire Marshal. These statutory duties needed to be reassigned after passage of the constitutional amendment. In response to this amendment, the 2002 Legislature enacted HB 3-E that reassigned the statutory duties of the Comptroller and Treasurer to the newly created Department of Financial Services, headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet, effective January 7, 2003. The Chief Financial Officer serves as the chief fiscal officer of the state, responsible for settling and approving all accounts against the state and keeping all state funds and securities.

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<sup>12</sup> Section 14.28, F.S.,

<sup>13</sup> Section 14.24, F.S.

The Financial Services Commission (commission) is an independent entity housed within the Department of Financial Services. The commission is not subject to the control, supervision or direction by the Department of Financial Services in any manner, including purchasing, personnel, and budgetary matters. Any commission action requires a majority vote consisting of at least three affirmative votes. The Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation are created under the commission. The director of each office is appointed by, and serves at the pleasure of, the commission. The appointment or removal of a director requires a majority vote by the commission consisting of at least three affirmative votes, with both the Governor and the Chief Financial Officer on the prevailing side.

The 2002 act also requires legislative staff to prepare a bill to conform the statutes to the policy decisions reflected in the bill. (SB 1712 by Banking and Insurance Committee addresses these provisions.)

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

**Section 1.** Amends s. 13.05, F.S., to revise the composition of the Governor's Committee on Interstate Cooperation by eliminating the Comptroller, Treasurer, Secretary of State, and the Commissioner of Education and adding the Chief Financial Officer. As a result, the members of the Committee would consist of the Governor, Attorney General, Chief Financial Officer, and the Commissioner of Agriculture.

**Section 2.** Amends s. 14.055, F.S., to revise the provisions relating to the order of succession to the Office of the Governor by eliminating the Comptroller, the Treasurer, the Secretary of State, and the Commissioner of Education and adding the Chief Financial Officer. The order of succession would be the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and finally, the Commissioner of Agriculture.

**Section 3.** Creates s. 14.2001, F.S., to provide that, unless otherwise provided by law, in the event of a tie vote of the Governor and Cabinet acting in any capacity, the side on which the Governor voted would deem to prevail. The section also provides that, for purposes of any vote of the Governor and Cabinet acting in any capacity, an action taken pursuant to that side of a tie vote on which the Governor voted satisfies the requirement that action be taken by a "majority" vote or a "simple majority" vote. This change would clarify and implement Article IV, s. 4 of the State Constitution, which provides that in the event of a tie vote of the Governor and Cabinet, the side on which the Governor votes would deem to prevail.

**Section 4.** Amends s. 14.202, F.S., to revise the provisions relating to the meetings of, and voting by, the Administration Commission. The section is revised to authorize the Governor or the Chief Financial Officer, rather than the Comptroller, to call meetings of the commission. The section is also revised to provide that an affirmative action of the commission, unless otherwise provided, requires the approval of the Governor and at least two, rather than three, other members of the commission. Without this change, action by the commission would effectively require the unanimous vote of the Governor and Cabinet.

**Section 5.** Amends s. 14.24, F.S., to revise the provisions relating to the appointment of members to the Florida Commission on the Status of Women. The 22 members of the

commission are retained; however, the number of appointments by the Legislature, Governor, and Cabinet are increased, since the Insurance Commissioner, the Comptroller, the Secretary of State, and the Commissioner of Education would no longer appoint members. The President of the Senate, the Speaker of the House of Representatives, the Governor, and the Attorney General would appoint four, instead of three, members each. The Chief Financial Officer and the Commissioner of Agriculture would appoint three, instead of two, members each. There are no provisions to address who would be responsible for appointing certain new members, once the terms for the members previously appointed by the Insurance Commissioner, the Comptroller, the Secretary of State, and the Commissioner of Education expire.

**Section 6.** Amends s. 114.03, F.S., to provide conforming changes relating to certain executive officers not absenting themselves from the state for an extended period without the consent of the Governor and Cabinet. Presently, s. 114.03, F.S., provides that the Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Agriculture, and Commissioner of Education are required to reside at the capital and may not be absent from the state for a period of 60 consecutive days without the consent of the Governor and the majority of the Cabinet. The section eliminates references to the Secretary of State, Comptroller, Treasurer, Commissioner of Education and adds the Chief Financial Officer.

**Section 7.** Amends s. 121.0312, F.S., to provide conforming provisions relating to the meetings of, and voting by the State Board of Administration. The board is required to review the method used by the Florida Retirement System for determining contribution rates and recommend any comments regarding the process to the Legislature. The Comptroller and Treasurer would be deleted, and replaced by the Chief Financial Officer, and the Attorney General is added. The State Board of Administration would now consist of the Governor, Attorney General, and the Chief Financial Officer, as specified in the State Constitution.

**Section 8.** Amends s. 121.055, F.S., to provide conforming changes relating to the composition of the State Board of Administration. This particular provision relates to the board's role in determining participation in Senior Management Class for certain employees of the State Board of Administration. References to the Comptroller and Treasurer are deleted and the Chief Financial Officer and the Attorney General are added to the State Board of Administration to conform the provision to the constitutional amendment. The State Board of Administration would now consist of the Governor, Attorney General, and the Chief Financial Officer.

**Section 9.** Amends s. 121.4501, F.S., to eliminate outdated language relating to the Public Employee Optional Retirement Program Advisory Committee. The Public Employee Optional Retirement Program was established to assist in the implementation of the Optional Retirement Program. The advisory committee has met its statutory requirements to provide recommendations to the State Board of Administration in 2001 and the committee is no longer active or necessary since this retirement program has been implemented.

**Section 10.** Amends s. 215.44, F.S., to provide conforming changes relating to the investments of trust funds by the State Board of Administration. References to the Comptroller and Treasurer are deleted and the Chief Financial Officer and the Attorney General are added to conform the provision to the constitutional amendment. The State Board of Administration would consist of the Governor, the Chief Financial Officer, and the Attorney General.

**Section 11.** Amends s. 215.62, F.S., to provide conforming changes relating to the governing board of the Division of Bond Finance within the State Board of Administration. The Comptroller and Treasurer are eliminated and the Chief Financial Officer and the Attorney General are added. The governing board would now be comprised of the Governor, the Chief Financial Officer, and the Attorney General.

**Section 12.** Amends s. 215.95, F.S., to provide conforming changes relating to the Financial Management Information Board, since the Financial Management Information Board is part of the Administration Commission. The board is revised by eliminating the Comptroller and Treasurer and adding the Attorney General and Chief Financial Officer. The Financial Management Information Board would consist of the Governor, Chief Financial Officer, and the Attorney General. The Governor or the Chief Financial Officer, rather than the Comptroller, would be authorized to call a meeting of the board.

**Section 13.** Amends s. 215.96, F.S., to provide conforming changes relating to the members of the coordinating council of the Florida Financial Management Information System. The goal of the council is to ensure coordination between functional owners of the various information subsystems. The Comptroller and Treasurer would be eliminated from the council and the Chief Financial Officer and the Attorney General would be added to the council. The council would be comprised of the Chief Financial Officer, the Secretary of the Department of Management Services, the Attorney General, and the Director of Planning and Budgeting of the Executive Office of the Governor.

**Section 14.** Amends s. 253.02, F.S., to provide conforming changes relating to the Board of Trustees of the Internal Improvement Trust Fund. The number of board members is reduced from seven to four trustees. The Chief Financial Officer is added and the Secretary of State, the Comptroller, the Treasurer, and the Commissioner of Education are eliminated from the board. The Board of Trustees would now be composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The section also provides that the board may sell, transfer, or otherwise dispose of any lands to which the title is vested in the board of trustees if approved by a vote of at least three of the four trustees. Currently, such actions require a vote of five of the seven trustees. Due to the passage of the constitutional amendment, this provision needs revising to reflect the Board of Trustees prescribed by the State Constitution and the voting requirements for the Board of Trustees.

**Section 15.** Amends s. 253.034, F.S., to provide conforming changes relating to voting by the Board of Trustees of the Internal Improvement Trust Fund for the disposition of land. Due to the passage of the constitutional amendment, this section needs revising to reflect the board prescribed by the State Constitution and the voting requirements for the Board of Trustees.

For the disposition of conservation lands, such actions would require an affirmative vote of at least three the four trustees, rather than a two-thirds vote. For the disposition of all other lands, such actions would require an affirmative vote of at least three of the four trustees, rather than a majority vote. This change appears to be consistent with s. 253.02, F.S., described above, which currently requires a vote of at least five of the seven trustees, and the bill changes the voting requirement to three of the four trustees for the transfer of land.



**Section 16.** Reenacts s. 259.032(8), F.S., for the purpose of incorporating the amendment made by this act to s. 259.041, F.S., which references s. 259.032(8), F.S. This provision clarifies that the voting requirements for the Board of Trustees of the Internal Improvement Trust Fund in the amended section, s. 259.041, F.S., would apply to the acquisition of conservation and recreation lands, except as otherwise provided by law.

**Section 17.** Amends s. 259.041, F.S., to provide conforming changes relating to voting by the Board of Trustees of the Internal Improvement Trust Fund. The Board of Trustees, by an affirmative vote of at least three of its four members, would be authorized to direct the Department of Environmental Protection to purchase certain land for preservation, conservation, or recreation purposes. Presently, this section requires an affirmative vote of five of the seven members. Due to the passage of the constitutional amendment, this provision needs revising to reflect the board prescribed by the State Constitution and the voting requirements for the Board of Trustees.

**Section 18.** Reenacts s. 260.016(3)(b), F.S., for the purpose of incorporating the amendment made by this act to s. 259.041, F.S., which references s. 260.016(3), F.S. This provision clarifies that the voting requirements for the Board of Trustees of the Internal Improvement Trust Fund in the amended section, s. 259.041, F.S., would apply to the exchange of state-owned lands for which the title is vested in the Board of Trustees of the Internal Improvement Trust Fund.

**Section 19.** Amends s. 940.01, F.S., to provide conforming provisions relating to voting by the Governor and Cabinet on matters relating to pardons, restoration of civil rights, commuting punishment, and remittance of fines and forfeitures for offenses. With the approval of two members of the Cabinet, the Governor would be authorized to grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses. Presently, this section provides that the Governor would be authorized to take such action only with the concurrence of three members of the Cabinet. Without this statutory change, such action would require a unanimous approval of the Cabinet.

**Section 20.** Amends s. 940.03, F.S., to provide conforming provisions relating to the adoption of rules regarding application of executive clemency. Such rules would require the approval of the Governor and two, rather than three, members of the Cabinet. Presently, such rules regarding application for executive clemency require the approval of the Governor and three members of Cabinet. Without this statutory change, such action would require a unanimous approval of the Cabinet.

**Section 21.** Amends s. 985.417, F.S., to provide a conforming change relating to the probation for certain juvenile offenders. Any child who has been convicted of a capital felony while under the age of 18 years would not be released on probation without the consent of the Governor and two, rather than three, members of the Cabinet. Without this statutory change, such action would require a unanimous approval of the Cabinet.

**Section 22.** Provides that this act will take effect upon becoming a law.

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**IV. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By conforming the statutory requirements to the constitutional changes, the bill allows the Governor and Cabinet to perform its related statutory duties.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

There are no provisions to address who would be responsible for appointing new members to the Florida Commission on the Status of Women, once the terms for the members previously appointed by the Insurance Commissioner, the Comptroller, the Secretary of State, and the Commissioner of Education expire (Section 5 of the bill). However, this issue may be a matter that the commission and the appointing authorities can resolve.

**VII. Amendments:**

#1 by Governmental Oversight & Productivity:

Places a severability clause on the bill that provides that if any portion of the bill is found to be invalid, this does not invalidate the other portions of the bill.