

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1803 (PCB SA 03-19) CFO/Conforming Statutory Changes
SPONSOR(S): State Administration and Mack
TIED BILLS: HB 1337 **IDEN./SIM. BILLS:** SB 1488, SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>6 Y, 0 N</u>	<u>Cutchins</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill makes changes to the Florida Statutes to conform to the constitutional amendment that created the office of the Chief Financial Officer (CFO) and to Chapter 2002-404, Laws of Florida (the act) that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003. Although the jurisdictional requirements of the 2002 act are clear on most issues, certain areas are unclear, pose difficult problems in conforming the statutes, or raise policy issues. An additional bill (HB 1337) contains sections of the statutes identified as such during the statutory review by House and Senate staff and departmental representatives. Two separate bills contain conforming changes related to the restructuring of the Cabinet (HB 1627) and the order of succession to the Governor (HB 739) impacted by the constitutional amendment.

The key provision of the 2002 act is section 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services, headed by the CFO, and the Financial Services Commission, headed by the Governor and Cabinet. Two offices are created under the commission: the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation, each headed by a director appointed by the commission, except that the commission is agency head for all rulemaking of each office. The act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new department and commission. However, the act did not make conforming changes to the Florida Statutes, which this bill addresses.

The bill reassigns all statutory authority currently assigned to the Treasurer, Comptroller, Insurance Commissioner, Department of Insurance, and the Department of Banking and Finance, to the CFO, Department of Financial Services, Financial Services Commission, Office of Insurance Regulation, and the Office of Financial Institutions and Securities Regulation, consistent with the 2002 act. The bill also repeals or deletes outdated provisions of the statutes related to the regulation of banking and insurance and updates some references to the latest edition of publications that are cited in the Insurance Code for purposes of establishing accounting and actuarial standards for insurers and HMOs.

The Committee of Transition Management, as discussed in *Present Situation*, determined that for reasons of efficiency certain administrative functions related to licensure of securities dealers should be performed by the Division of Agent and Agency Licensing in DFS.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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A chart has been prepared which lists all of the revised sections of Florida Statutes in numerical order and provides the corresponding PCB section numbers. The page and line numbers on which the sections begin are given for each 10 statute sections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Constitutional Amendment Creating the Office of the Chief Financial Officer

In 1998, Florida voters approved an amendment to the State Constitution abolishing the offices of the Treasurer and the Comptroller and merging their duties into the office of the Chief Financial Officer, effective January 7, 2003.¹ The amendment provides that the Cabinet shall be composed of the Attorney General, the Chief Financial Officer (CFO), and the Commissioner of Agriculture. The CFO 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. The Legislature may, by law, prescribe additional powers and duties for the CFO and other Cabinet officers, as the State Constitution previously allowed for the Treasurer, Comptroller, and other Cabinet officers.

The Legislature, by general law, had designated the Comptroller as head of the Department of Banking and Finance, responsible for the regulation of banks, financial institutions, and the securities industry. General law designated the Treasurer as the Insurance Commissioner and head of the Department of Insurance, responsible for regulating all insurance matters. The Insurance Commissioner was also designated as the State Fire Marshal. By abolishing the offices of the Treasurer and Comptroller, the constitutional amendment effectively required the Legislature to reassign the statutory duties for the regulation of banking and insurance to the CFO or to other executive branch agencies or officials.

2002 Act Reorganizing the Regulation of Banking and Insurance

The act 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, 2003.² The key provision is section 20.121, F.S., created by the 2002 act, which prescribes the organizational structure and regulatory duties of the department and commission. The act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new

¹ Art. IV, Sec. 4, Fla. Const.

² Ch. 2002-404, L.O.F. (HB 3-E, passed in the 2002 Special Session "E," and signed by Governor Bush on June 12, 2002).

department and commission. However, the act did not make conforming changes to the Florida Statutes, which legislative staff and a transition committee were directed to address.

Department of Financial Services (headed by Chief Financial Officer)

The 2002 act created the Department of Financial Services (DFS) headed by the CFO, and specified that DFS consist of the following divisions³:

- Division of Accounting and Auditing (which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity)
- Division of State Fire Marshal
- Division of Risk Management
- Division of Treasury (which includes the Bureau of Deferred Compensation)
- Division of Insurance Fraud
- Division of Rehabilitation and Liquidation
- Division of Insurance Agents and Agency Services
- Division of Consumer Services (which includes the Bureau of Funeral and Cemetery Services)
- Division of Workers' Compensation
- Division of Administration
- Division of Legal Services
- Division of Information Systems
- Office of Insurance Consumer Advocate

Other than listing the above divisions within DFS, s. 20.121, F.S., does not specify the statutory powers or duties of DFS. But, these divisions were previously within the Department of Insurance or the Department of Banking and Finance and the 2002 act transferred these divisions or related programs to DFS (and renamed the Division of Insurance Consumer Services as the Division of Consumer Services).⁴

The major statutory jurisdiction which is reasonably included within each division that was assigned to the Department of Financial Services (headed by the CFO) is listed below (This does not include some other duties that may be included, but are discussed in the analysis of HB 1337 under *Areas Where Jurisdiction of DFS and OIR or OFIS is Unclear or Overlaps.*):

- Division of Accounting and Auditing:
 - Accounting, auditing, and approving payment of state funds (ch. 17, F.S.); general financial powers of Comptroller (chs. 215, 216, 287, F.S., et al.)
 - Administration of the unclaimed property program (ch. 717, F.S.)
- Division of State Fire Marshal:
 - Regulate installation of fire equipment, conduct safety inspections, investigate causes of fires, provide firefighter training and certification, adopt safety rules for firefighter employers and fire codes for specified buildings (ch. 633, F.S.); license and permit the manufacture and use of explosives (ch. 552, F.S.); regulate the sale of fireworks (ch. 791, F.S.) Does not include forest fighters which are under the authority of the Commissioner of Agriculture.

- Division of Risk Management:

³ S. 20.121(2)(a), F.S.

⁴ S. 3, ch. 2002-404, L.O.F. Each of the divisions and programs were transferred from the Department of Insurance, except the Division of Accounting and Auditing (including the Bureau of Unclaimed Property and the Office of Fiscal Integrity) and the Bureau of Funeral and Cemetery Services, which were transferred from the Department of Banking and Finance.)

- Administer the state's risk management program for property, auto, liability, and workers' compensation (ch. 284, F.S.; ss. 265.53-265.55, 393.002, 393.075, 409.175, 766.28, F.S.)
- Division of Treasury:
 - Coordinate and direct the keeping of all state funds and securities, disburse payment of state funds, and invest surplus state funds collected by state agencies (ch. 18, F.S., et al.)
 - Approve financial institutions as public depositories (ch. 280, F.S.)
 - Administer the deferred compensation program for state employees (s. 112.215)
- Division of Insurance Fraud:
 - Investigation and arrest of insurance fraud crimes (ss. 626.989, 626.9892, F.S.)
- Division of Rehabilitation and Liquidation:
 - Acting as court-appointed receiver, liquidator, or rehabilitator of an insurer, HMO, or other entity regulated by OIR to which the provisions of ch. 631 apply; approval of plans of operation and oversight of insurance guaranty associations (relevant sections of ch. 631, F.S., et al.)
- Division of Insurance Agents and Agency Services:
 - License and regulate insurance agents and agencies, customer representatives, service representatives, reinsurance intermediaries, and bail bond agents (applicable provisions of chs. 626 and 648, F.S.)
- Division of Consumer Services:
 - Receive inquiries and complaints from consumers, provide assistance for consumers, and prepare and disseminate information about regulated products and services (no specific statutory authority, other than for publications)
 - Bureau of Funeral and Cemetery Services - licensure and regulation of cemeteries and pre-need funeral and burial contracts (ch. 497, F.S.)
- Division of Workers' Compensation:
 - Administer the workers' compensation act: enforce employer compliance, monitor carrier compliance; and assist employees with obtaining compensation (ch. 440, F.S.)
- Office of Insurance Consumer Advocate:
 - Represent the general public in any insurance matter or hearing (s. 627.0613, F.S.)
- Division of Administration (no specific statutes)
- Division of Legal Services (no specific statutes)

Statutes Implementing Constitutional Duties of Chief Financial Officer - Currently, ch. 17, F.S., prescribes the duties of the Comptroller regarding the accounting and auditing of state funds, and ch. 18, F.S., prescribes the duties of the Treasurer regarding the holding, investing, and payment of state funds. These two chapters address the core constitutional duties of the two offices, which have not yet been consolidated or revised to apply to the CFO, even though the CFO has constitutionally assumed these duties. This was further implemented by the 2002 act by assigning the Division of Treasury (formerly under the Treasurer) and the Division of Accounting and Auditing (formerly under the Comptroller) to DFS, headed by the CFO.

The current statutes provide that the Comptroller approves the expenditure of funds, which triggers the duty of the Treasurer to issue payment, both of which functions are now done solely by the CFO. A certain degree of inter-agency accountability is necessarily lost by virtue of the merger of the two offices, but the statutory requirement for DFS to have both a Division of Treasury and a Division of Accounting and Auditing provides a means for intra-agency accountability. For example, section 18.08, F.S., currently requires that the Treasurer turn over to the Comptroller all warrants drawn by the Comptroller and paid by the Treasurer. One option is to repeal this section, but another option is to amend the law to require the Division of Treasury to turn over to the Division of Accounting and Auditing all warrants drawn by the CFO and paid by the Division of Treasury. (See, *Impact of Bill Changes*, for more information on current fiscal duties affected by this bill.)

Financial Services Commission (Governor and Cabinet); Office of Insurance Regulation; Office of Financial Institutions and Securities Regulation

The 2002 act created the Financial Services Commission (“commission”) within DFS. The commission consists of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, i.e., the Governor and Cabinet, as constituted on January 7, 2003. Three votes are required for any commission action. The act provides:

*The commission shall be a separate budget entity and shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.*⁵

Two “Offices” are created under the commission:

- The Office of Insurance Regulation (OIR)
- The Office of Financial Institutions and Securities Regulation (OFISR)

Each office is headed by a director who is appointed by, and serves at the pleasure of, the commission, with a requirement that both the Governor and the CFO must concur in appointment and removal. On January 9, 2003, the commission appointed directors for each of these two offices. (The director for OIR was appointed on an interim basis for a 90-day period.) The commission and the directors of each office share responsibility for final agency action. The commission acts as agency head for purposes of *rulemaking* under ss. 120.536-120.565, F.S., while the directors are each agency head for other final agency actions under chapter 120 for all areas within the regulatory authority of their office.⁶

Statutory Jurisdiction of the Office of Insurance Regulation

The 2002 act provides that the Office of Insurance Regulation:

*... shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision of insurers, as provided in the Florida Insurance Code or ch. 636, F.S.*⁷

The powers and duties of OIR, quoted above, encompass insurance regulatory powers that were *not* assigned to DFS (by virtue of the divisions assigned to DFS). The 2002 act also transferred the Division of Insurer Services from the Department of Insurance to OIR, which division administered almost all of the activities quoted above. The act also transferred to OIR those portions of the Division of Agents and Agency Services that implement functions assigned to OIR, which primarily refers to activities concerning *adjusters*, who were licensed by that division. Also, the act transferred to OIR those positions within the DOI’s Division of Legal Services whose responsibilities involve the functions assigned to OIR.

The act provides that OIR is responsible for all activities concerning insurers and other risk bearing entities. There is no statutory definition of *risk bearing entities*, but the Florida Insurance Code requires licensure or certification of various entities which provide a type of *insurance* as that term is defined in s. 624.02, F.S. In addition, outside of the Insurance Code various provisions authorize the Department of Insurance to approve certain plans of self-insurance. The major statutory jurisdiction and duties of OIR would reasonably include the following, as formerly delegated to the Department of Insurance (This does not include some other duties that may be included, but are discussed in the analysis of HB 1337 under *Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*):

⁵ S. 20.121(3), F.S.

⁶ S. 20.121(3)(c), F.S.

⁷ S. 20.121(3)(a)1., F.S.

- Issuance of certificates of authority or licenses to, and regulation of:
 - Authorized insurers (ss. 624.401-430, F.S.), including domestic insurers, assessable mutual insurers, and captive insurers, duties related to insurance holding companies (ch. 628, F.S.), and reciprocal insurers (ch. 629, F.S.)
 - Multiple-employer welfare arrangements (ss. 624.436-624.446, F.S.)
 - Commercial self-insurance funds, including workers' compensation group self-insurance funds (ss. 624.460-624.488, F.S.)
 - Viatical settlement providers and contracts (ss. 626.991-626.99295, F.S.)
 - Purchasing groups and risk retention groups (ss. 627.941-627.955, F.S.)
 - Fraternal benefit societies (ch. 632, F.S.)
 - Warranty associations (motor vehicle, home, and service) (ch. 634, F.S.)
 - Prepaid limited health service organizations (ch. 636, F.S.)
 - Health maintenance organizations (ch. 641, part I., F.S.)
 - Prepaid health clinics (ch. 641, part II, F.S.)
 - Legal expense corporations (ch. 642, F.S.)
 - Continuing care facilities (ch. 651, F.S.)
- Financial and market conduct examinations of insurers (ss. 624.316, 624.3161, 627.4238, F.S.)
- Administrative supervision of insurers (ss. 624.80-624.915, F.S.)
- Powers regarding accounting, investments, and deposits of insurers (ch. 625, F.S.)
- Licensure and regulation of insurance adjusters (ch. 626, part VI, F.S.)
- Approval of eligible surplus lines insurers (ss. 626.913-.9201, F.S.)
- Regulation of rates for property and casualty insurance, approval of rating organizations, and ordering returns of excess profits (ch. 627, part I, F.S.)
- Approval of plans of operation and regulation of joint underwriting associations (not including appointment of board members previously appointed by the Insurance Commissioner), including Citizens Property Insurance Corporation, the Florida Patient's Compensation Fund, and the Florida Birth-Related Neurological Injury Compensation Association, and other JUAs, and adoption of a market assistance plan (ss. 627.311, 627.351, 627.3515, 766.105, and 766.314, F.S.)
- Approval of insurance policy forms and health insurance rates (ss. 627.410-627.4234, F.S.)
- Regulation of donor annuity agreements (s. 627.481, F.S.)
- Licensure and regulation of premium finance companies and agreements (ch. 627, part XV, F.S.)
- Receiving reports of claims information from insurers (ch. 627, part XVII, F.S.)
- Approval of local government self-insurance plans for health coverage (s. 110.08, F.S.)

Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps

In the area of *General Powers* - The law provides certain general powers to the former Department of Insurance, most of which are in part I of ch. 624, F.S., such as the authority to have an official seal (s. 624.303, F.S.), to publish and disseminate information (s. 624.307(4), F.S.), duties with respect to maintenance and destruction of records (s. 624.312, F.S.), the authority to employ actuaries as at-will employees, (s. 624.307(6), F.S.), and others. More importantly, there are general enforcement powers, such as s. 624.310, F.S., which provide powers to DOI to issue cease and desist orders against persons who violate the Insurance Code and to order the removal of affiliated parties, and to impose administrative fines under certain circumstances. Such enforcement powers are needed (and currently assumed) by both DFS and OIR, but limited to the persons they each regulate, which conforming legislation must clarify.

Even though the 2002 act is clear on most jurisdictional issues, certain areas may be unclear, pose difficult problems in conforming the statutes, or raise policy concerns. Those sections have been identified and are addressed in HB 1337 and listed below.

Receivership proceedings; guaranty funds

Service of Process

General Powers

Administrators and Service Companies

Viatical settlement brokers

General powers related to agents and adjusters (and other licensees under ch. 626, F.S)

Unfair Insurance Trade Practice Violations Division of Consumer Services

Statewide Provider and Subscriber Assistance Program

Monitoring of Workers' Compensation Insurers

Authorization of employers to self-insure for workers' compensation

Administration of deposits of cash or securities; surety bonds

Statutory Jurisdiction of the Office of Financial Institutions and Securities Regulation

The 2002 act provides that the Office of Financial Institutions and Securities Regulation:

....shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.⁸

The responsibilities of OFISR, quoted above, generally encompass all of the statutory duties previously delegated to the Department of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all specifically assigned to the Department of Financial Services. Listed below are the subject areas and statutory jurisdiction that were previously delegated to the Department of Banking and Finance, and are now reasonably within the jurisdiction of OFISR (This does not include some other duties that may be included, but are discussed in the analysis of HB1337 under *Areas Where Jurisdiction of DFS and OFISR is Unclear or Overlaps.*):

- Mortgage Brokers, Lenders and Mortgage Companies (ch. 494, F.S.)
- Consumer Finance Companies (ch. 516, F.S.)
- Securities Registration and Securities Dealers, Investment Advisers, and Associated Persons (ch. 517, F.S.)
- Retail Installment Sales Providers (motor vehicle installment sellers, retail installment sellers, sales finance companies and home improvement finance sellers; ch. 520, F.S.)
- Title Loans (ch. 537, F.S.)
- Collection Agencies (ch. 559, parts V and VI, F.S.)
- Money Transmitters (including check cashers, foreign currency exchanges, and deferred presentment provider; ch. 560, F.S.)
- Financial Institutions (ch. 655, F.S.)
- Credit Unions (ch. 657, F.S.)
- Bank and Trust Companies (ch. 658, F.S.)
- Trust Business (ch. 660, F.S.)
- International Banking (ch. 663, F.S.)
- Associations (ch. 665, F.S.)
- Savings Banks (ch. 667, F.S.)
- Interest and Usury; Lending Practices (ch. 687, F.S.)
- Certified Capital Companies (s. 288.99, F.S.)

⁸ S. 20.121(3)(a)2., F.S.

Areas Where Jurisdiction of DFS and OFISR is Unclear or Overlaps

In the financial institutions and securities regulatory areas the 2002 act is clear on most jurisdictional issues, certain areas may be unclear, pose difficult problems in conforming the statutes, or raise policy concerns. Those areas are discussed in the analysis for HB 1337 and include:

Division of Consumer Services
Service of Process
Securities Regulation/licensing

Membership and Appointment to Boards and Commissions

The 2002 act provides legislative intent that from January 7, 2003, until June 30, 2003, the statutory responsibility for appointments to commissions, boards, associations, councils, committees, or other collegial bodies, that were vested in the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal, shall become the responsibility of the CFO.⁹ Conforming bills must delegate continuing appointment authority for each of these boards and commissions. Issues to consider are whether the CFO should appoint only 1 member in those cases where the Treasurer and Comptroller each appointed a member, and whether any appointments should be made by a different officer that may have a closer jurisdictional tie to a particular commission than the CFO. Currently, employees of the Department of Insurance are designated as members of certain boards or councils, which may be considered an "appointment," which raises the issue of whether an employee of DFS or OIR should be a member, regardless of whether the CFO continues to make the appointment. (See, *Impact of Bill Changes*, below, for more detail on each board and commission addressed by this bill.)

Committee of Transition Management; Draft Legislation; Interim Project

The 2002 act created the Committee of Transition Management (Transition Committee), with 1 member each appointed by the Governor, the Comptroller, the Treasurer, the chair of the Senate Appropriations Committee, and the chair of the House Fiscal Responsibility Council. The committee was charged with overseeing the transition of the affected agencies and to provide a written report specifying the placement of those positions that are transferred, submit to the commission a proposed organization plan, and provide written recommendations by February 1, 2003, as to statutory changes to facilitate the operations of the department. The act further directed the relevant substantive committees of the Senate and the House to prepare draft legislation to conform the Florida Statutes to the act.¹⁰

The Transition Committee met during the interim, devoting its efforts to determining a proposed organizational plan for DFS, the commission, OIR, and OFISR, and the assignment of specific positions from DOI and DBF to the affected agencies. The committee held its last meeting in December 2002, having generally agreed on all organizational and personnel issues, but it did not submit a final report and certain organizational issues remain under discussion. The commission has not exercised its authority to adopt rules for the department's organization. Questions remain on the degree of organizational autonomy that should be provided to the commission and its two offices, independent from DFS, given the 2002 act's provision that *the commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters*. But, the act also provides that the commission is within the department, and that the department shall provide administrative and information systems support to the offices, and that the commission has the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability. This raises issues of whether the commission or its offices should organizationally control its own administrative functions, such as budgeting, personnel management, financial and support services, communications, and legislative affairs.

⁹ S. 8, ch. 2002-404, L.O.F.

¹⁰ S. 6, ch. 2002-404, L.O.F.

The General Appropriations Act will specify the budget and positions for DFS and the commission, which requires workload analysis for divisions split between DFS and OIR, such as the attorney positions in DOI's Division of Legal Services and positions in the Division of Agent and Agency Services responsible for licensure of adjusters transferred to OIR. The Transition Committee also debated licensure of securities dealers, formerly in DBF. The 2002 act delegated authority to OFISR for all activities related to the securities industry, but the Transition Committee determined that for reasons of efficiency, certain administrative and data processing functions related to licensure of securities dealers should be performed by the Division of Agent and Agency Licensing in DFS, subject to a legal opinion that this is consistent with the 2002 act.

Staff members of the Banking Committee and Competitive Commerce Council were assigned to monitor the transfer of the affected agencies and to prepare draft legislation to conform to the 2002 act. This bill (and HB 749, relating to the succession to the Governor, HB __ addressing Cabinet-related issues, and HB 1337 relating to the areas where jurisdiction of DFS, FSC and its offices is unclear or overlaps) are the proposed bills to conform to the 2002 act. The proposed legislation was developed in meetings with legislative staff of the Senate and the affected agencies, with the objective of being consistent with the 2002 act and to attempt to reach consensus on as many issues as possible, which was substantially achieved, recognizing that certain jurisdictional areas are unclear.

Impact of Legislation

The bill makes changes to the Florida Statutes to conform to the constitutional amendment that established the office of the Chief Financial Officer and to the 2002 act that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003.

The bill reassigns all statutory authority currently assigned to the Treasurer, Comptroller, Insurance Commissioner, Department of Insurance, and the Department of Banking and Finance, to the CFO, Department of Financial Services, Financial Services Commission, Office of Insurance Regulation, and the Office of Financial Institutions and Securities Regulation, consistent with the 2002 act. The bill also repeals or deletes outdated provisions of the statutes related to the regulation of banking and insurance and updates some references to the latest edition of publications that are cited in the Insurance Code for purposes of establishing accounting and actuarial standards for insurers and HMOs (other reference updates are included in HB 1337). Two separate bills contain conforming changes related to the restructuring of the Cabinet and (HB _) and the order of succession to the Governor (HB 739) impacted by the constitutional amendment. An additional bill (HB 1337) contains sections of the statutes also related to the creation of the Department of Financial Services and the Financial Services Commission and its offices, in which areas where jurisdiction of the department, the commission, and the offices overlap or are unclear, pose difficult problems in conforming the statutes, or raise policy issues.

Organizational Structure; Key Terms and Definitions

The bill maintains the current statutory organization of the Florida Insurance Code and the financial codes and other laws. The only major reorganization is the merger of chapter 17, F.S., (Comptroller) and chapter 18, F.S., (Treasurer) into a single, amended chapter 17 to apply to the Chief Financial Officer.

The key terms used in the bill are:

- *Chief Financial Officer* (no definition needed)
- *department* (defined as Department of Financial Services)
- *commission* (defined as Financial Services Commission)
- *office* (defined as either the Office of Insurance Regulation or the Office of Financial Institutions and Securities Regulation, depending on its statutory location).

The bill uses the term, **Chief Financial Officer**, primarily for those duties that are directly related to constitutional state fiscal powers of the CFO, for which the current law typically uses *Treasurer* or *Comptroller*, or duties that are clearly personal in nature, such as appointment powers.

The bill defines the term **department** to mean the Department of Financial Services in various places in the Florida Statutes where the term is currently defined as either the Department of Insurance or the Department of Banking and Finance. This is done for those matters that are now within the jurisdiction of DFS (headed by the CFO). Since the CFO is the agency head for DFS, the terms *department* and *Chief Financial Officer* generally have the same meaning.

Note there are many provisions of the Florida Statutes, including entire sections, using the term **department** that are **not amended** by this bill, primarily within the Florida Insurance Code, where the term would now be defined as the Department of Financial Services. Each of those statutes were reviewed during the preparation of this bill, reflecting a decision that such statutes do not need to be amended because the power granted to the *department* is within the jurisdiction of the DFS. This analysis does not identify those specific sections, but the powers and duties in those sections are all consistent with, and directly related to, the powers and duties of DFS as described in this analysis.

The term **office**, defined as either the Office of Insurance Regulation (OIR), or the Office of Financial Institutions and Securities Regulation (OFISR), is used for all matters within the jurisdiction of each office, to conform to the provision that the director of each office is agency head for all final agency action, other than rulemaking. The two definitions of *office* in with the broadest application are:

- s. 624.05, F.S., (included in HB 1337) which defines *office* as the Office of Insurance Regulation, for purposes of the Florida Insurance Code, consisting of chapters 624 through 632, and 634 through 651, F.S. (s. 624.01, F.S., specifies the Insurance Code).
- s. 655.005, F.S., (included in this bill) which defines *office* as the Office of Financial Institutions and Securities Regulation, for purposes of the financial institution codes, consisting of chapters 655 through 667, F.S. (s. 655.005(1)(j), F.S., specifies the financial codes)

The bill uses the term **commission**, meaning Financial Services Commission, in those provisions that expressly or clearly provide **rulemaking authority** to matters within the jurisdiction of either office (OIR or OFISR), to conform to the provision of the 2002 act that the commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.

A particular statute may not expressly require rulemaking, but may authorize agency action for which a rule is effectively required under ch. 120, F.S. In such cases, the bill generally uses the term *office* rather than *commission*, but the use of the term is not intended to impact the requirements of ch. 120, F.S., as to when a rule is required, or the requirement of s. 20.121, F.S., that the commission acts as agency head for all rulemaking for each office. Some sections indicate that agency action could apply uniquely to an individual or have general application to a class of persons, for which the bill uses the term *commission or office*. For example, various sections currently require applicants for licensure to submit such additional information as the department (DOI or DBF) requires. Recognizing that certain information may be required of all applicants for which a rule would be required, but that certain information may be required of an individual applicant, the bill generally refers to additional information as the *office or commission* requires, unless the context indicates otherwise.

The bill designates the CFO as the State Fire Marshal in s. 633.01, F.S. Therefore, all current statutory references to the **State Fire Marshal** (or *Division of State Fire Marshal*) do not need to be amended, since the CFO will assume those duties.

Statutes Implementing Constitutional Duties of the Chief Financial Officer

Chapter 17, F.S.; Chief Financial Officer. - The State Administration Committee PCB merges chapter 17, F.S. (Comptroller) and ch. 18, F.S. (Treasurer) into a revised ch. 17 (Chief Financial Officer), which contains the statutory duties that are most directly related to the constitutional duties of the CFO. All powers currently provided to the Treasurer or Comptroller are deleted and assigned to the CFO. The statutes are amended to conform to the fact that one officer, rather than two, approves the expenditure of funds and issues payment. But in certain sections, as described, the bill attempts to maintain intra-agency accountability in this regard, by requiring certain functions to be performed by the Division of Accounting and Auditing (formerly in DBF), and the Division of Treasury (formerly in DOI). The bill does not add or delete powers or duties, except for the deletion of certain archaic or outdated requirements, cited below.

The bill changes all references from *Treasurer, Comptroller, and Department of Banking and Finance* (and *department*) to the *Chief Financial Officer* or *department* (defined as DFS in s.17.002, F.S.). Some provisions of chapter 17, F.S., currently refer to powers and duties of the *Department of Banking and Finance*, while others refer to the *Comptroller*. Since the Comptroller was the agency head for that department, the terms were basically inter-changeable, as are the current terms *Chief Financial Officer* and *department* (DFS) for the same reason. The bill uses both terms, but more consistently uses *Chief Financial Officer*, because the duties are directly related to the constitutional duties of the office itself.

The bill also makes the following changes in chapters 17 and 18, F.S.:

Newly created s. 17.001, F.S., restates the provisions of the State Constitution, that the CFO is the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.

Section 17.03, F.S., is amended to delete reference to the current procedure for the Comptroller to issue a warrant to the Treasurer directing the Treasurer to pay a specified amount out of the State Treasury. As amended, the CFO would issue a warrant directing the payment out of the State Treasury of such amount as he or she allows. But, for accounting purposes, the bill amends s. 17.56 (currently s.18.08, F.S.), to require the Division of Treasury to turn over to the Division of Accounting and Auditing all warrants drawn by the CFO and paid by the Division of Treasury.

Section 17.10, F.S., currently requires the Comptroller to maintain a record of all warrants issued, which the bill applies to the CFO and adds the requirement that the CFO account for all state funds and securities. The latter requirement currently applies to the Treasurer in s. 18.08, which also requires the Treasurer to keep a record of warrants which the Treasurer pays. The bill also applies these requirements specifically to the Division of Treasury (in renumbered s. 17.555, F.S.).

Section 17.04, F.S., is amended to assign to the Division of Accounting and Auditing in DFS, the authority of the former Division of Financial Investigations in the DBF to conduct investigations within or outside the state to aid in the enforcement of its duties relative to auditing state accounts, to refer any records tending to show any criminal violations to state or federal law enforcement or prosecutorial agencies, and to provide investigative assistance to those agencies. This is consistent with the 2002 act which requires the Division of Accounting and Auditing to include the Office of Fiscal Integrity which functions as a criminal justice agency and has the same duties as specified in s. 17.04, F.S.¹¹

Similarly, s. 17.0401, F.S., which currently provides for confidentiality of information relating to financial investigations, is amended to apply to an investigation conducted by the Division of Accounting and Auditing, rather than the Division of Financial Investigations.

¹¹ s. 20.121(2)(a)2., F.S.

The bill deletes a reference in s. 17.61, F.S. (currently s. 18.125, F.S.) to a requirement for approval of the State Board of Administration (SBA) for investments made by the Treasurer (changed to CFO). According to the Division of Treasury, the requirement for SBA approval is an outdated reference because such approval has not been required since a 1996 act deleted this requirement in s. 18.10, F.S., but failed to make the conforming change to s. 18.125, F.S.¹²

The current requirement for the Treasurer (changed to CFO) to submit a copy to the Senate and the House of Representatives of the annual report to the Governor is moved to s. 17.54, F.S., from s. 18.09, F.S., which is repealed.

The bill amends s.17.62, F.S. (currently s. 18.15, F.S), regarding payment of interest to the Treasurer (changed to CFO) on state funds deposited in qualified public depositories, to delete authorization for semiannual payments, rather than quarterly payments, to conform to long-standing practice of the Treasurer requiring semiannual payments.

Sections 17.51 and 17.64, F.S. (currently ss. 18.01 and 18.20, F.S.), are amended to delete certain obsolete procedures dealing with vouchers and reproduction of records. Also, see *Repealed Statutes*, below, for s. 17.06, F.S., related to disallowed items and accounts.

State Fiscal Duties of CFO in other Florida Statutes; Trust Funds - The bill changes *Treasurer and Comptroller to Chief Financial Officer*, and changes *Department of Banking and Finance to Department of Financial Services*, for all duties related to state fiscal matters (as compared to insurance or banking regulatory matters). This affects numerous sections that affect virtually all state and local agencies, but simply makes the name change to conform to the constitutional provision that designates the CFO as the state fiscal officer. A main example is ch. 215, F.S. (Financial Matters: General Provisions), which addresses paying money into the State Treasury, delinquent accounts to the state, and other general financial matters, all amended to apply to the CFO and DFS. This chapter also refers to trust funds that were transferred by the 2002 act, which are amended to conform to the act.

Similarly, ch. 280, F.S., which specifies the duties of the Treasurer to approve financial institutions as public depositories eligible to hold public funds, is amended to apply to the CFO. Other examples of state fiscal powers are ss. 68.083-68.092, F.S., relating to the Florida False Claims Act, amended to change Department of Banking and Finance to DFS (and Comptroller to CFO), regarding the authority to bring a civil action arising from investigations of persons who cause state government to pay false claims. Also, ss.112.3144 and 112.3145, F.S., are amended to change DBF to DFS regarding unpaid fines that must be submitted to the department that constitute a claim or debt owed to the state. Many other sections relating to state fiscal powers of the Comptroller and Treasurer are similarly changed, which are not individually identified in this analysis, except for the chapters listed in the *Summary*.

Statutory Duties Assigned to the Department of Financial Services (headed by CFO)

The major statutory duties and responsibilities that the bill assigns to the Department of Financial Services (headed by the CFO), are listed below (not including other powers and duties that are separately addressed in HB 1337 under *How the PCB Addresses Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*):

- Accounting and auditing of state funds, keeping and investing state funds and securities, disbursing payment of state funds, and all other state fiscal powers of the former Treasurer and Comptroller (chs. 17, 215, 216, 287, et al. F.S.)
- Approval of financial institutions as public depositories (ch. 280, F.S.)
- Administration of the unclaimed property program (ch. 717, F.S.)

¹² ch. 96-177, L.O.F.

- Duties of the State Fire Marshal to regulate installation of fire equipment, conduct safety inspections, investigate causes of fires, provide firefighter training and certification, adopt safety rules for firefighter employers and fire codes for specified buildings (ch. 633, F.S.); license and permit the manufacture and use of explosives (ch. 552, F.S.); regulate the sale of fireworks (ch. 791, F.S.)
- Administration of the state's risk management program for property, auto, liability, and workers' compensation (ch. 284, F.S.; ss. 265.53-265.55, 393.002, 393.075, 409.175, 766.28, F.S.)
- Licensure and regulation of bail bond agents (applicable provisions of ch. 648, F.S.);
- Licensure and regulation of cemeteries and pre-need funeral and burial contracts (ch. 497, F.S.)
- Administration of the workers' compensation act, including enforcement of employer compliance, monitoring carrier compliance, and assisting employees with obtaining compensation (ch. 440, F.S.)
- Authority of the Office of Insurance Consumer Advocate to represent the general public in any insurance matter or hearing (s. 627.0613, F.S.)
- Authority to receive inquiries and complaints related to insurance or financial institutions from consumers, provide assistance for consumers, and prepare and disseminate information about regulated products and services.

Statutory Duties Assigned to the Office of Insurance Regulation

The bill assigns the statutory powers and duties listed below to the Office of Insurance Regulation (and to the commission, for rulemaking), which the current statutes assign to the Department of Insurance. (However, the list below does not include other powers and duties separately discussed in HB 1337 under *How the PCB Addresses Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps.*)

- Issuance of certificates of authority or licenses to, and regulation of:
 - Authorized insurers (ss. 624.401-.430, F.S.), including domestic insurers, assessable mutual insurers, and captive insurers, and duties related to insurance holding companies (ch. 628, F.S.), and reciprocal insurers (ch. 629, F.S.)
 - Multiple-employer welfare arrangements (ss. 624.436-624.446, F.S.)
 - Commercial self-insurance funds, including workers' compensation group self-insurance funds (ss. 624.460-624.488, F.S.)
 - Purchasing groups and risk retention groups (ss. 627.941-627.955, F.S.)
 - Fraternal benefit societies (ch. 632, F.S.)
 - Warranty associations (motor vehicle, home, and service) (ch. 634, F.S.)
 - Prepaid limited health service organizations (ch. 636, F.S.)
 - Legal expense corporations (ch. 642, F.S.)
 - Continuing care facilities (ch. 651, F.S.; related provisions in ch. 400, F.S.)
- Financial and market conduct examinations of insurers (ss.624.3161, 627.4238, F.S.)
- Administrative supervision of insurers (ss. 624.80-624.915, F.S.)
- Powers regarding accounting, investments, and deposits of insurers (ch. 625, F.S.)
- Regulation of rates for property and casualty insurance, approval of rating organizations, and ordering returns of excess profits (ch. 627, part I, F.S.)
- Approval of plans of operation and regulation of joint underwriting associations (not including appointment of board members), the Florida Patient's Compensation Fund, and the Florida Birth-Related Neurological Injury Compensation Association, at other JUAs, (ss. 766.105, and 766.314, F.S.)
- Approval of insurance policy forms and health insurance rates (ss. 627.410-627.4234, F.S.)
- Regulation of donor annuity agreements (s. 627.481, F.S.)
- Licensure and regulation of premium finance companies and agreements (ch. 627, part XV, F.S.)
- Receiving reports of claims information from insurers (ch. 627, part XVII, F.S.)

- Approval of duties of former DOI related to approval of governmental self-insurance plans of self-insurance (ss. 154.209, 163.01, F.S.)
- Duties of the former Department of Insurance relative to:
 - approval of self-insurance plans to satisfy motor vehicle financial responsibility requirements (ss. 324.032, 324.171, F.S.);
 - providing assistance to the Dept. of Environmental Protection to implement the Florida Petroleum Liability and Restoration Insurance Program (s. 376.3072, F.S.) and to implement financial responsibility requirements for hazardous waste facilities (s. 403.724, F.S.);
 - the required purchase of insurance by dry-cleaning facilities (ss. 376.3078, 376.3079, F.S.);
 - approval of self-insurance plans for life support services licensed by the Dept. of Health (s. 401.25, F.S.);
 - approval of health flex plans in conjunction with the Agency for Health Care Administration (s. 408.909, F.S.);
 - certification of health insurance coverage to qualify for premium assistance for an eligible child under the Florida KidCare Act and related duties (ss. 409.817-409.912, F.S.)

How the PCB Addresses Areas Where Jurisdiction of DFS and OIR Overlaps

General Powers - The bill and HB 1337 delegate certain general powers of the former Department of Insurance to both DFS and OIR, most of which are in part I of ch. 624, F.S., such as the authority to have an official seal (s. 624.303, F.S., in HB 1337), to publish and disseminate information (s. 624.307(4), F.S.), and duties with respect to maintenance and destruction of records (s. 624.312, F.S.). The bill also authorizes both DFS and OIR to employ actuaries as at-will employees, based on the possible need for DFS to hire an actuary for the Office of the Insurance Consumer Advocate or the Division of Risk Management (s. 624.307(6), F.S.).

Other general powers are similarly delegated to both DFS and OIR, but due to their regulatory nature, the bill more clearly expresses that such powers are limited to the regulatory jurisdiction of the department or the office, respectively, as done in s. 624.307, F.S., regarding the general power to enforce the provisions of the Insurance Code and to conduct investigations. A key example is s. 624.310, F.S., which currently authorizes DOI to issue cease and desist orders against licensees, to order the removal of affiliated parties of a licensee, and to impose administrative fines against any person who violates the Insurance Code. The bill, in subsection (2), authorizes both DFS and OIR to exercise these powers, but only with regard to the licensees that they each regulate, affiliated parties of such licensees, and unlicensed persons within the regulatory jurisdiction of either OIR or DFS, respectively. This subsection operates to limit the authority provided to *the department or office* in other provisions of this section. The reference to *unlicensed persons* is added due to the authority in the current section for administrative fines against *any person* found to have violated any provision of the Insurance Code, such as a person selling insurance without being properly licensed.

Statutory Duties Assigned to the Office of Financial Institutions and Securities Regulation

The bill assigns to OFISR (and to the commission, for rulemaking) all of the statutory duties previously delegated to the Department of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all specifically assigned to the Department of Financial Services. Listed below are the subject areas and statutory jurisdiction that are assigned to OFISR, to the extent that such jurisdiction was previously delegated to DBF (However, the list below does not include other powers and duties separately discussed in HB 1337 under *How the PCB Addresses Areas Where Jurisdiction of DFS and OFISR is Unclear or Overlaps.*):

- Mortgage Brokers, Lenders and Mortgage Companies, including enforcement of the Florida Fair Lending Act (ch. 494, F.S.)
- Consumer Finance Companies (ch. 516, F.S.)
- Retail Installment Sales Providers, including motor vehicle installment sellers, retail installment sellers, sales finance companies and home improvement finance sellers (ch. 520, F.S.)
- Title Loans (ch. 537, F.S.)
- Collection Agencies (ch. 559, parts V and VI, F.S.)
- Money Transmitters, including check cashers, foreign currency exchanges, and deferred presentment providers (ch. 560, F.S.)
- Financial Institutions (ch. 655, F.S.)
- Credit Unions (ch. 657, F.S.)
- Bank and Trust Companies (ch. 658, F.S.; see, s.120.80, F.S.)
- Trust Business (ch. 660, F.S.)
- International Banking (ch. 663, F.S.)
- Associations (ch. 665, F.S.)
- Savings Banks (ch. 667, F.S.)
- Interest and Usury; Lending Practices (ch. 687, F.S.)
- Examination or review of the:
 - Florida Commercial Space Financing Corporation (s. 331.419, F.S.)
 - Housing Development Corporation of Florida (s. 420.141, F.S.)

Membership and Appointment to Boards and Commissions

The 2002 act provides legislative intent that from January 7, 2003, until June 30, 2003, the CFO is to make all appointments to boards, commissions, (etc.), that were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal. The bill delegates continuing appointment authority for each of these boards and commissions (except for those boards and commission more closely related to Cabinet-related functions, which are addressed in HB1337). The boards affected by the bill are in the following sections (some of which do not need to be amended because *department* would be defined as Department of Financial Services, rather than Department of Insurance):

s. 215.56005, F.S. - Board of the Tobacco Settlement Financing Corporation

Purpose: To govern the corporation, established for the purpose of purchasing the state's interest in the tobacco settlement agreement and issuing bonds to fund the Lawton Chiles Endowment Fund.

Current Statute: Effective January 7, 2003, the CFO or the CFO's designee became a member in place of the Treasurer and Comptroller or their designees.

Bill: Technical changes delete outdated language.

s. 216.235, F.S. - State Innovation Committee

Purpose: To approve innovative investment projects submitted by state agencies.

Current Statute: The Comptroller is a member.

Bill: Changes Comptroller to CFO.

s. 218.325, F.S. - Uniform Chart of Accounts Development Committee

Purpose: To help implement a uniform financial reporting system for court and justice-related agency expenditures and revenues.

Current Statute: The Comptroller or his designee is a member.

Bill: Changes Comptroller to CFO.

s. 280.071, F.S. - Qualified Public Depository Oversight Board

Purpose: To safeguard the integrity of the public deposits program (financial institutions holding public deposits) by establishing standards for financial institutions; to recommend to the Treasurer (now CFO) approval or rejection for exceptions and alternative participation agreements; and to review program violations and recommend penalties to the Treasurer (CFO).

Current Statute: The Treasurer must approve the 6 members who are selected by public depositories pursuant to statutory criteria.

Bill: Changes Treasurer to CFO.

s. 282.1095, F.S. - Joint Task Force on State Agency Law Enforcement Communications

Purpose: To advise the State Technology Office of member-agency needs for the establishment of a statewide radio communications system to serve law enforcement agencies.

Current Statute: The State Fire Marshal (Treasurer) appoints a representative of the Division of State Fire Marshal of the Department of Insurance.

Bill: The State Fire Marshal (CFO) appoints a representative of the Division of State Fire Marshal of the Department of Financial Services. (The CFO is designated as the State Fire Marshal in s. 633.01, F.S.)

s. 288.776, F.S. - Board of directors of the Florida Export Finance Corporation

Purpose: To govern the corporation, established for the purpose of expanding employment and income opportunities for Florida residents through increased exports of goods and services, by providing Florida businesses with technical and financial assistance on export opportunities.

Current Statute: The Comptroller or his designee is a member.

Bill: Changes Comptroller to CFO.

s. 376.3075, F.S. - Board of the Inland Protection Finance Corporation

Purpose: To govern the corporation, established for the purpose of financing the rehabilitation of petroleum contamination sites and the payment of related reimbursement obligations of the Department of Environmental Protection.

Current Statute: The Treasurer and Comptroller, or their designees are members.

Bill: Replaces Treasurer and Comptroller with CFO or his designee, who is a member (i.e., reduces membership by 1).

s. 381.90, F.S. - Health Information Systems Council

Purpose: A council consisting of executive-level managers for the state's health-related entities, to facilitate the sharing and coordination of health-related data.

Current Statute: The Treasurer or his senior executive-level designee is a member.

Bill: Changes Treasurer to CFO.

s. 497.101, F.S. - Board of Funeral and Cemetery Services

Purpose: To adopt rules and implement duties imposed on the board by chapter 497, for the regulation of cemeteries and the sale of preneed burial rights and preneed funeral or burial merchandise.

Current Statute: The board is created within the Department of Banking and Finance and consists of 7 members appointed by the Governor, from nominations made by the Comptroller and confirmed by the Senate.

Bill: The board is created within the Department of Financial Services and consists of 7 members appointed by the Governor, from nominations made by the CFO and confirmed by the Senate.

s. 627.0613, F.S. - Insurance Consumer Advocate

Purpose: To represent the general public in any insurance matter or hearing.

Current Statute: The Insurance Commissioner appoints the consumer advocate, who reports directly to the Insurance Commissioner but is not otherwise under the authority of the Department of Insurance.

Bill: The CFO appoints the consumer advocate, who reports directly to the CFO but is not otherwise under the authority of the Department of Financial Services.

s. 633.31, F.S. - Firefighters Employment, Standards, and Training Council

Purpose: To recommend to the Division of State Fire Marshal uniform minimum standards for the employment and training of firefighters, minimum curriculum requirements for schools that train firefighters, matters relating to the operation of the Florida State Fire College, and to consult with employing agencies and educational institutions concerning the employment and safety of firefighters.

Current Statute: State Fire Marshal (Insurance Commissioner) appoints 4 of 13 members.

Bill: The CFO is designated as the State Fire Marshal in s. 633.01, F.S.

s. 633.511, F.S. - Florida Fire Safety Board

Purpose: To advise the State Fire Marshal regarding complaints and disputed administrative actions and to make recommendations for disciplinary actions at the request of the license holder, and to advise the Division of State Fire Marshal regarding rules, codes, standards, interpretations, and training.

Current Statute: State Fire Marshal (Insurance Commissioner) appoints all 7 members.

Bill: The CFO is designated as the State Fire Marshal in s. 633.01, F.S.

s. 633.72, F.S. - Florida Fire Code Advisory Council

Purpose: To recommend to the State Fire Marshal changes to and interpretation of the uniform fire safety standards, the Florida Fire Prevention Code, and those portions of the code that conflict with building construction standards.

Current Statute: State Fire Marshal (Insurance Commissioner) appoints all 11 members, from lists of persons submitted by various associations.

Bill: The CFO is designated as the State Fire Marshal in s. 633.01, F.S.

s. 768.105, F.S. - Board of Florida Patient's Compensation Fund (FPCF)

Purpose: To supervise the operation of the FPCF, which provides excess medical malpractice insurance to health care providers. (The FPCF is prohibited from issuing coverage unless the total premiums, based on applications, exceed a specified threshold, but it continues to operate to administer past claims.)

Current Statute: Insurance Commissioner appoints 7 of 11 members.

Bill: Changes Insurance Commissioner to CFO.

s. 766.315, F.S. - Board of Directors of the Florida Birth-Related Neurological Injury Compensation Association (NICA)

Purpose: To supervise the operation of NICA, which provides a type no-fault insurance coverage to hospitals and physicians for infants who suffer certain birth-related neurological injuries.

Current Statute: Insurance Commissioner appoints all 5 members.

Bill: Changes Insurance Commissioner to CFO.

s. 860.154, F.S. - Board of Motor Vehicle Theft Prevention Authority (within the Department of Legal Affairs)

Purpose: To apply for funds and to make grants related to the prevention of motor vehicle theft, to implement statewide plans and coordinate public efforts to combat auto theft, to adopt rules to ensure that public and private organizations are included in the development and implementation of plans adopted pursuant to the Florida Motor Vehicle Theft Prevention Act.

Current Statute: Insurance Commissioner or his designee is 1 of 9 members.

Bill: Changes Insurance Commissioner to CFO.

s. 943.031, F.S. - Florida Violent Crime and Drug Control Council

Purpose: To advise the Department of Law Enforcement on the development and implementation of a statewide strategy to address violent criminal activity and drug control efforts by state and local law enforcement agencies, including illicit money laundering.

Current Statute: The Comptroller or a designee is 1 of 14 members.

Bill: Changes Comptroller to CFO.

Updating References to Publications Cited for Regulatory Standards

The bill updates the publication date and, in some cases, the names of various publications of the National Association of Insurance Commissioners (NAIC) and the Actuarial Standards Board which are cited in the Florida Insurance Code for standards which insurance companies, HMOs, and the Department of Insurance (now, OIR and the commission) are required or authorized to use for various

regulatory matters. The bill amends ss. 624.404, 625.141, F.S., requiring insurers and OIR to value securities in accordance with the *Purposes and Procedures Manual of the NAIC Securities Valuation Office* (July 1, 2002).

Certified Capital Companies (CAPCO)

Under the Certified Capital Company Act¹³ capital investment companies certified by OFISR may apply for insurance premium tax credits under Program One or Program Two. Paragraph (7) of s. 288.99, F.S., establishes the annual tax credit amounts and allocation process for the two programs to be administered by OFISR. The total amount of tax credits which may be allocated by the office for each program is \$150 million and the total allowed annually for the tax credits is \$15 million, dependent on the legislative appropriation per program. Under s. 288.99(17), F.S., OFISR may allocate insurance premium tax credits to capital investment companies certified under "Program Two"¹⁴ in accordance with the provisions of this section and the application rules established by OFISR. This section further specifies that the tax credits authorized by Program Two may not be used until the annual return due of March 1, 2004. This bill revises s. 288.99, F.S., to provide that certified capital companies cannot submit applications for more than the amount set forth in the statutes and delays the use date for Program Two to March 1, 2006.

Validity of regulatory actions by the former Departments of Insurance and Banking and Finance

The bill provides that the changes made by the bill to conform references from the Department of Insurance and the Department of Banking and Finance to DFS, FSC, OIR or OFISR will not affect the validity of any action, order, or regulatory authorization or approval made by the former departments.

Repealed Statutes

The bill repeals the following sections of the Florida Statutes:

s. 17.06, F.S.; Disallowed items and accounts. -- Requires the Comptroller to erase from any original account all items disallowed by him or her, and to write "disallowed" on the face of any account rejected in whole. Repealed as an outdated procedure no longer followed.

s. 18.03, F.S.; Residence and office. -- Requires the Treasurer to reside at the seat of government and to keep his or her office in the capitol. The bill applies these requirements to the CFO in s. 17. 02, F.S.

s. 18.09, F.S.; Delivery to Legislature -- Requires the Treasurer to submit a copy to the Senate and the House of Representatives the annual report to the Governor. The bill moves this requirement to s. 17.54, F.S., to apply to the CFO.

s. 20.12, F.S.; Department of Banking and Finance. -- Creates the Department of Banking and Finance. The 2002 act transferred the programs, employees, and trust funds of the Department of Banking and Finance to the Department of Financial Services and to the Financial Services Commission, which are created in s. 21.121, F.S. However, the 2002 act failed to repeal s. 20.12, F.S.

s. 20.13, F.S.; Department of Insurance -- Creates the Department of Insurance. The 2002 act transferred the programs, employees, and trust funds of the Department of Insurance to the Department of Financial Services and to the Financial Services Commission, which are created in s. 21.121, F.S. However, the 2002 act failed to repeal s. 20.13, F.S.

s. 440.135, F.S.; Pilot programs for medical and remedial care in workers' compensation. -- Authorizes the establishment of one or more pilot programs to be administered by the Department of Insurance

¹³ s. 288.99, F.S.

¹⁴ s. 288.99(3)(p), F.S.

related to monitoring medical care and 24-hour health insurance coverage, which terminate 2 years after operation, unless extended by the Legislature.

Enacted in 1990 and amended in 1991 and 1993, the pilot projects have either been completed or were not implemented due to lack of insurer participation.

s. 624.4071, F.S.; Special purpose homeowner insurance company. -- Authorizes formation of a special purpose homeowner insurance company to accelerate the restoration of the Florida homeowner insurance marketplace and to depopulate the RPJCUA. Prohibits issuance of a certificate of authority to any such company after December 31, 1998. Repealed because there is no such company currently licensed and no new companies may be approved.

s. 627.463, F.S. (Conversion of self-insurance fund). The section is still published but was repealed on October 1, 2001, by operation of a prior law.¹⁵ It allows a self-insurance fund to become a domestic mutual insurer under a plan approved by the Department of Insurance, but even if repealed, approval (by OIR) is required pursuant to ch. 628, F.S.

s. 627.3516, F.S.; Residential property insurance market coordination council. -- Requires the FWUA and the RPCJUA to create a coordinating council to assure that each association is informed by the activities and plans of the other. Repealed due to Citizens Property Insurance Corporation having assumed the operations of the FWUA and RPCJUA.

s. 627.7825, F.S.; Alternative rate adoption. -- Establishes the premium rates that title insurers must charge from July 1, 1999, through June 30, 2002. Repealed because the rates are no longer in effect. (Beginning July 1, 2002, rates were established by rule of the Department of Insurance, which the PCB changes to the commission.)

s. 657.067, F.S.; Conversion from federal to state charter; requirements for application approval. -- Prohibits the Department of Banking and Finance from approving an application for conversion from a federally chartered credit union to a state charter for a specified period, which terminated July 1, 1999. Repealed because the prohibition has terminated.

ss. 657.25-657.269 (part II of ch. 657), F.S; Florida Credit Union Guaranty Corporation, Inc.-- Creates the Florida Credit Union Guaranty Corporation, Inc. Repealed because such corporation no longer exists, due to operation of s. 657.269, F.S., which provides for dissolution of the corporation 6 months after all member credit unions receive certificates of insurance through the National Credit Union Administration, which has occurred.

Public Records

The bill amends various sections that provide exceptions to the public records and open meetings requirements of the Open Government Act. The changes substitute references to the DFS, OIR, OFISR, or commission, as appropriate, for current references to the Department of Insurance or the Department of Banking and Finance, consistent with the jurisdiction of each agency. Since the current exemptions are not expanded, separate bills are not constitutionally required.

Validity of regulatory actions by the former Departments of Insurance and Banking and Finance

The bill provides that the changes made by the bill to conform references from the Department of Insurance and the Department of Banking and Finance to DFS, FSC, OIR or OFISR will not affect the validity of any action, order, or regulatory authorization or approval made by the former departments.

Precedence over other legislation

¹⁵ Repealed October 1, 2001, by s. 188, ch. 91-108, L.O.F.

This bill includes a provision that in the event other legislation passes that also includes the sections covered by this bill, the changes made by this bill will take precedence. However, new legislation referencing the regulatory entities needs to accurately reflect the provisions of Amendment 8 and Chapter 2002-404, LOF.

The bill provides that unless otherwise provided, the act will take effect upon becoming law and will operate retroactively to January 7, 2003.

C. SECTION DIRECTORY:

This bill substantially amends the following chapters of the Florida Statutes: 11, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 28, 30, 40, 43, 48, 55, 57, 68, 77, 92, 99, 107, 110, 112, 116, 120, 121, 122, 125, 129, 131, 137, 145, 154, 163, 166, 175, 185, 189, 190, 191, 192, 193, 195, 198, 199, 203, 206, 210, 211, 212, 213, 215, 216, 217, 218, 220, 238, 250, 252, 253, 255, 257, 258, 259, 265, 267, 272, 280, 282, 284, 287, 288, 292, 313, 314, 316, 320, 322, 324, 326, 331, 336, 337, 339, 344, 350, 354, 365, 370, 373, 374, 376, 377, 378, 381, 388, 391, 392, 393, 394, 400, 401, 402, 403, 404, 406, 408, 409, 411, 413, 414, 420, 430, 440, 443, 447, 450, 468, 473, 475, 489, 494, 497, 498, 499, 501, 507, 513, 516, 518, 519, 520, 526, 537, 548, 550, 552, 553, 554, 559, 560, 561, 562, 567, 569, 570, 574, 589, 597, 601, 607, 617, 624, 625, 627, 628, 629, 630, 632, 633, 634, 635, 636, 642, 648, 650, 651, 655, 657, 658, 660, 663, 665, 667, 687, 713, 716, 717, 718, 719, 721, 723, 732, 733, 744, 766, 768, 790, 791, 817, 839, 849, 860, 896, 903, 925, 932, 938, 939, 943, 944, 946, 947, 950, 957, 985, 1000, 1001, 1002, 1003, 1004, 1006, 1008, 1009, 1010, 1011, and 1012.

The bill creates the following sections of the Florida Statutes: 17.001, and 17.002,

The bill repeals the following sections of the Florida Statutes: 17.06, 18.03, 18.09, 18.22, 20.12, 20.13, 440.135, 624.4071, 624.463, 627.3516, 627.7825, 657.067, 657.25, and 657.251 through 657.269.

A chart has been prepared which lists all of the revised sections of Florida Statutes in numerical order and provides the corresponding PCB section numbers. The page and line numbers on which the sections begin are given for each 10 statute sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The specific duties assigned to DFS, the commission, OIR, and OFISR may affect the appropriation and allocation of positions to each of these agencies in the General Appropriations Act.

By making the allocation of insurance premium tax credits mandatory and not subject to legislative appropriation, the long range fiscal impact of this bill will be to reduce recurring revenue by \$15 M annually. However, because this bill delays the implementation date of Program Two until July 1, 2006, the provisions of this bill will not begin to reduce the state's cash receipts until FY 2005-2006.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES