

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1317 Creating Cabinet Office of Insurance Commissioner; Limiting Insurance Commissioner Candidate Campaign Contributions; Schedule

SPONSOR(S): Seiler and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	11 Y, 1 N	Cooper	Cooper
2) Governmental Operations Committee			
3) Ethics & Elections Committee			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

In November 1998, voters approved Constitutional Revision 8 that restructured the Florida Cabinet. The revision established a new Cabinet post of Chief Financial Officer and abolished the offices of Treasurer and Comptroller. Those changes applied to the November 2002, General Election and took effect January 7, 2003. Prior to that, the Treasurer also served as Insurance Commissioner and was agency head of the Department of Insurance.

The 2002 Legislature created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services, headed by the Chief Financial Officer, and the Financial Services Commission ("commission"), consisting of 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.

This joint resolution amends three articles of the Florida Constitution. Article IV, Section 4 is amended to create a new cabinet officer of an elected insurance commissioner. The insurance commissioner would have control and supervision of matters relating to the state fire marshal, risk management, insurance regulation, insurance fraud, rehabilitation and liquidation of insurers, insurance agents and agency services, consumer services, workers' compensation, insurance consumer advocacy, and funeral and cemetery services. Section 6 of Article VI is created to prohibit campaign contributions from insurers to candidates for Insurance Commissioner. The third article amended is Article XII. Section 26 is created to provide that the formation of the office of insurance commissioner and the limitations on campaign contributions will take effect January 6, 2009, with the office of insurance commissioner initially filled for a 2-year term at the 2008 general election .

Pursuant to Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

Both the Department of Financial Services and the Office of Insurance Regulation state that this house joint resolution will have no fiscal impact on their agencies. However, if the voters approve the amendment the Legislature will have to implement the provisions of the measure including making the necessary fiscal adjustments.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This house joint resolution reorganizes the cabinet and creates a new cabinet officer. It also place restrictions on the ability of specified individuals in the solicitation and contribution of campaign donations.

Safeguard individual liberty – The resolution places restrictions on the ability of specified individuals in the solicitation and contribution of campaign donations.

B. EFFECT OF PROPOSED CHANGES:

Currently the insurance industry in Florida operates under a bifurcated regulatory structure. Both the Financial Services Commission (the Commission) and the Department of Financial Services (DFS) are assigned the powers and duties of the former Department of Insurance related to the regulation of insurers and other similar entities. The Financial Services Commission consists of the Governor and the three Cabinet members [the Attorney General, Chief Financial Officer, and Commissioner of Agriculture]. Although the Commission is administratively housed within DFS, the law is clear that such placement is for administrative purposes only; the Commission is not subject to control or limitation by DFS.

The Financial Services Commission oversees the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR). 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 act as agency heads for other final agency actions under chapter 120, F.S., the Administrative Procedure Act, for all areas within the regulatory authority of their respective Offices. Under current law in s. 20.121, F.S., OIR is directed to license and regulate insurance companies, including the issuance of a certificate of authority which each insurer transacting business in the state must possess.

The Office of Insurance Regulation also is directed by law to conduct financial and market conduct examinations of insurers; regulate the financial status and solvency of insurers, including administrative supervision of insurers; license and regulate insurance administrators, service companies, and premium finance companies and agreements; approve eligible surplus lines insurers; approve policy forms and rates for insurers; approve plans of operation and regulate joint underwriting associations (not including appointment of board members); approve donor annuity agreements; receive reports of claims information from insurers; and approve local government self-insurance plans for health coverage.

Section 20.121, F.S. also specifies the duties and responsibilities of DFS. It states that the Department of Financial Services shall consist of the following divisions:

- (a) The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity
- (b) The Division of State Fire Marshal.
- (c) The Division of Risk Management.
- (d) The Division of Treasury, which includes the Bureau of Deferred Compensation

- (e) The Division of Insurance Fraud.
- (f) The Division of Rehabilitation and Liquidation.
- (g) The Division of Insurance Agents and Agency Services.
- (h) The Division of Consumer Services.
- (i) The Division of Workers' Compensation.
- (j) The Division of Administration.
- (k) The Division of Legal Services.
- (l) The Division of Information Systems.
- (m) The Office of Insurance Consumer Advocate.
- (n) The Division of Funeral, Cemetery, and Consumer Services.

This joint resolution amends three articles of the Florida Constitution. Article IV, Section 4 is amended to create a new elected cabinet officer of insurance commissioner. The insurance commissioner would have control and supervision of matters relating to the state fire marshal, risk management, insurance regulation, insurance fraud, rehabilitation and liquidation of insurers, insurance agents and agency services, consumer services, workers' compensation, insurance consumer advocacy, and funeral and cemetery services.

Section 6 of Article VI is created to place restrictions on contributions and solicitations regarding political campaigns for insurance commissioner. An insurance company, a company engaged in the business of funeral or cemetery service, or any other business or company that is under the control and supervision of the insurance commissioner, or any employee or agent of such a company or business, is prohibited from making or soliciting a contribution, for any election, to or on behalf of any candidate for the office of insurance commissioner. A candidate for the office of insurance commissioner, or any employee of the insurance commissioner or of any state agency under the control and supervision of the insurance commissioner, is forbidden from soliciting or accepting a campaign contribution from any such company, business, employee, or agent. The bill provides that the new restrictions do not prevent any candidate for the office of insurance commissioner or member of that candidate's immediate family from contributing to that candidate's campaign as otherwise permitted by law.

The third article amended is Article XII. Section 26 is created to provide that the formation of the office of insurance commissioner and the limitations on campaign contributions will take effect January 6, 2009, with the office of insurance commissioner initially filled for a 2-year term at the 2008 general election .

C. SECTION DIRECTORY:

This house joint resolution is not separated into separate sections. It amends the Constitution as described above and prescribes the specific language which will be placed on the ballot for the voters' consideration.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Not applicable
2. Expenditures:
Not applicable

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
Not applicable
2. Expenditures:
Not applicable

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not applicable

D. FISCAL COMMENTS:

Both the Department of Financial Services and the Office of Insurance Regulation state that this house joint resolution will have no fiscal impact on their agencies. However, if the voters approve the amendment the Legislature will have to implement the provisions of the measure including making the necessary fiscal adjustments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Pursuant to Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

B. RULE-MAKING AUTHORITY:

Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

If the voters approve the amendment the Legislature will have to implement the provisions of the measure including re-structuring the responsibilities of the Department of Financial Services and the Financial Services Commission (including the Office of Insurance Regulation).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES