

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: SJR 262

INTRODUCER: Senator Geller

SUBJECT: Proposing an amendment to the State Constitution to create the position of an elected Insurance Commissioner

DATE: March 16, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Pre-meeting
2.	_____	_____	EE	_____
3.	_____	_____	GO	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Joint Resolution places before the voters at the next general election proposed changes to two sections of the State Constitution. Section 4 of Article IV of the State Constitution pertains to the Cabinet and it is amended to:

- Create an elected, cabinet level position of Insurance Commissioner;
- Authorize the Insurance Commissioner to have control and supervision of matters relating to:
 - 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 8 of Article VI of the State Constitution relating to Suffrage and Elections is created to prohibit certain campaign contributions to or solicitation of campaign contributions by or on behalf of candidates for the Office of Insurance Commissioner.

The bill provides for a statement to be placed on the ballot which states that the Florida Constitution is being amended to create the office of Insurance Commissioner, who will be an elected member of the Cabinet and responsible for the control and supervision of specified functions. The statement also provides that the amendment prohibits campaign contributions to candidates for such office. If approved by the electors of this state, the position of the Insurance Commissioner will take effect January 6, 2009, with the office filled initially for a 2-year term at the 2008 general election.

II. Present Situation:

Constitutional Amendment Reorganizing the Florida Cabinet

In November 1998, the voters of Florida approved the amendment to the State Constitution abolishing the Cabinet offices of the Treasurer and the Comptroller and merging their duties into the Cabinet office of the Chief Financial Officer (CFO), effective January 7, 2003. Under the Constitution, 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.¹

Prior to the passage of this amendment, the Treasurer and Comptroller were elected Cabinet officers under the Constitution. In addition to their constitutional duties, the Legislature had statutorily designed the Comptroller as head of the Department of Banking and Finance and had designated the Treasurer as head of the Department of Insurance, as well as State Fire Marshal. The statutory duties of the Comptroller and Treasurer needed to be reassigned after the passage of the constitutional amendment and legislation enacted in 2002 delegated these duties to the newly created Department of Financial Services (DFS), headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet.² The act created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the DFS and commission.

Department of Financial Services

The following divisions were created by the 2002 legislation within the Department of Financial Services (DFS) which is headed by the CFO:

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

¹ Section 4, Article IV of the State Constitution.

² Chapter 2002-404, F.S. This act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the DFS and commission. These changes became effective January 7, 2003. In 2003, legislation passed which provided all state fiscal powers to the CFO or DFS which were previously assigned to the Treasurer and Comptroller. Ch. 2003-261, L.O.F.

- Administration
- Legal Services
- Information Systems
- Office of Insurance Consumer Advocate
- Funeral, Cemetery, and Consumer Services.³

Financial Services Commission

The 2002 legislation also 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 commission is a separate budget entity and is not subject to the control of the DFS. There are two “offices” created under the commission:

- The Office of Insurance Regulation
- The Office of Financial Regulation

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. The Office of Insurance Regulation (OIR) is 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. 636.⁴

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.⁵

The commission and the directors of each office (OIR and OFR) 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 ch. 120, F.S., for all areas within the regulatory authority of their office.

State Constitution

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, Article IV requires the Governor to share specified executive powers with three elected Cabinet officers: the Attorney General, Commissioner of Agriculture and the Chief Financial Officer.

³ The Division of Funeral, Cemetery, and Consumer Services was placed within the DFS in 2004 (Ch. 2004-301, L.O.F.)

⁴ Section 20.121(3)(a)1, F.S.

⁵ Section 20.121(3)(a)2, F.S. The OFR duties encompass all of the statutory responsibilities 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 assigned to the Department of Financial Services.

Article IV also provides that the Governor as chair, the CFO, and the Attorney General constitute the State Board of Administration. It further provides that the Governor as chair, CFO, Attorney General and Commissioner of Agriculture constitute the trustees for the internal improvement trust fund and land acquisition trust fund and constitute the agency head of the Department of Law Enforcement.⁶ The Legislature has statutorily created other commissions and boards for which the Governor and Cabinet members serve as members or for which appointments are made by such officers.

III. Effect of Proposed Changes:

The Joint Resolution places before the voters at the next general election proposed changes to two sections of the State Constitution. Section 4 of Article IV of the State Constitution pertains to the Cabinet and it is amended to:

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- Authorize the Insurance Commissioner to have control and supervision of matters relating to:
 - State Fire Marshal
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 - Insurance Agents and Agency Services
 - Consumer Services
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 - Funeral and Cemetery Services

Section 8 of Article VI of the State Constitution relating to Suffrage and Elections is created to prohibit certain campaign contributions to or solicitation of campaign contributions by or on behalf of candidates for the Office of Insurance Commissioner.

The Resolution provides for a statement to be placed on the ballot which provides that the Florida Constitution is being amended to create the office of Insurance Commissioner, who will be an elected member of the Cabinet and responsible for the control and supervision of specified functions. The statement also provides that the amendment prohibits campaign contributions to candidates for such office. If approved by the electors of this state, the position of the Insurance Commissioner will take effect January 6, 2009, with the office filled initially for a 2-year term at the 2008 general election.

Under current law, all of the above referenced divisions or functions, but Insurance Regulation, which is within the Office of Insurance Regulation under the Financial Services Commission, are located within the Department of Financial Services which is headed by the Chief Financial Officer.⁷

⁶ Section 4, Article IV of the State Constitution

⁷ Section 20.121(2), F.S.

The effect of placing a specific list of insurance, funeral and cemetery functions within the Constitution as powers of the elected Insurance Commissioner, would be to prohibit the Legislature from placing these functions under any other executive branch officer. This bill is linked to SB 264 which creates a Department of Insurance headed by the elected Insurance Commissioner and which assigns to that department all of the powers listed in the Resolution. However, SB 264 does not make all of the necessary conforming changes to eliminate many of these functions now under the Department of Financial Services, eliminating all functions within the Office of Insurance Regulation, and transferring such functions to the new Department of Insurance.

The proposed constitutional amendment does not add the Insurance Commissioner to the bodies currently listed in Article IV, Section 4, of the State Constitution, for which the Governor and certain members of the Cabinet serve as members, namely, the State Board of Administration, the Internal Improvement Trust Fund, and the Department of Law Enforcement. The Legislature would need to consider adding the Insurance Commissioner to the various statutory boards and commissions for which the Governor and specified Cabinet members currently serve as members or appoint members.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All aspects of insurance regulation (notably, licensure of insurance companies and approval of insurance rates and policy forms) will be under an elected Insurance Commissioner, subject to the approval by the voters. Currently, this regulation is provided by a director appointed by the Governor and Cabinet sitting as the Financial Services Commission. Opinions differ as to what impact, if any, such a change would have on the regulatory decisions that are made. Proponents of an elected Insurance Commissioner argue that the regulator is more closely accountable to the voters and will

make regulatory decisions that are more beneficial to the general public. Opponents of an elected Insurance Commissioner argue that regulatory decisions by an appointed official are more likely to be guided by professional analysis rather than political considerations, which is more beneficial to the general public.

C. Government Sector Impact:

The election of an Insurance Commissioner would have the effect of eliminating many of the functions now under the Department of Financial Services, eliminating all functions within the Office of Insurance Regulation, and transferring such functions to an agency under the Insurance Commissioner, including all personnel and related funding. The linked bill, SB 264, creates the Department of Insurance and assigns the functions listed in this Resolution to the new department, but does not make any of the necessary transfers of statutory duties, personnel, or funding. The constitutional duties assigned to the CFO related to accounting, auditing, and investment of state funds would remain under the Department of Financial Services. (The Resolution does not affect the functions of the Office of Financial Regulation, which regulates banking and securities.).

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs for advertising vary depending upon the length of the amendment; however, the cost per amendment is estimated to be approximately \$35,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This joint resolution is linked to Senate Bill 264.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
