

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 740

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Financial Services Commission

DATE: March 18, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Snider	Burgess	BI	Fav/CS
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

This bill requires the Financial Services Commission to reconfirm the appointment of the Director of the Office of Insurance Regulation and the Director of the Office of Financial Regulation every two years. At present, the directors are appointed by the Governor and Cabinet acting as the Financial Services Commission for an indefinite term and serve at the pleasure of the Governor and Cabinet. Additionally, the bill removes the requirement that both the Governor and Chief Financial Officer vote on the prevailing side to appoint or dismiss the directors.

This bill substantially amends the following section of the Florida Statutes: 20.121.

II. Present Situation:

In November 1998, the voters of Florida 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 (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

Because of the amendment's passage, the Legislature was charged with the responsibility of reassigning the regulation of financial services formerly under the Comptroller, as head of the Department of Banking and Finance, and the regulation of insurance formerly under the Treasurer, as head of the Department of Insurance. The 2002 Legislature created the Department of Financial Services, headed by the CFO, and the Financial Services Commission

¹ Article IV, s. 1 of the Florida Constitution.

(commission), headed by the governor and cabinet.² The Office of Insurance Regulation (OIR) and the Officer of Financial Regulation (OFR) are under the commission. The OIR is responsible for regulating insurance companies and other risk-bearing entities licensed in Florida, and the commission is responsible for administrative rulemaking. The OFR is responsible for regulating state-chartered financial institutions and other financial service entities.

Presently, the Director of the Office of Insurance Regulation and the Director of the Office of Financial Regulation are appointed by the Financial Services Commission.³ The appointment of the directors requires a majority vote of the cabinet, and both the Governor and the Chief Financial Officer must be on the prevailing side.⁴ The director is required to have had at least five years of experience within the past ten years within the subject matter of the office.⁵ The term of the director is not specifically addressed in statute, and the director serves at the pleasure of the commission. The director is not subject to Senate confirmation.

Florida has various methods for appointing state officials. The Director of the Office of Financial Regulation is appointed in the same method as the Director of the Office of Insurance Regulation. Members of the State Board of Education are appointed by the Governor for four year terms subject to Senate confirmation.⁶ The members of the statewide Board of Governors for the state university system are appointed by the Governor for seven year terms subject to the Senate confirmation.⁷ Each state university maintains a local Board of Trustees. Six of the trustees are appointed by the Governor and five by the Board of Governors; all eleven are subject to Senate confirmation.⁸ Likewise, the members of the Fish and Wildlife Conservation Commission are appointed by the Governor for five year terms subject to Senate confirmation.⁹ Justices of the Supreme Court and Judges of the District Courts of Appeal and the Circuit Courts are nominated by separate judicial nominating commissions¹⁰ that provide the Governor with three to six persons qualified for the judgeship; there is no Senate confirmation of these judicial appointments.¹¹ Similarly, the Attorney General appoints the statewide prosecutor from a list of nominations by the judicial nominating commission.¹² The Governor and cabinet act jointly as

² Ch. 2002-404, L.O.F. This act transferred the programs, employees, and funding of the Department of Insurance and the Department of Banking and Finance to the DFS and the Commission. These changes became effective Jan. 7, 2003.

³ The Financial Services Commission (FSC) is an independent agency housed within the Department of Financial Services and consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. *See generally* Senate Interim Report 2009-103, *Options for Reorganizing the Department of Financial Services and the Financial Services Commission*.

⁴ S. 20.121(3)(d), F.S.

⁵ If this experience is in the public sector, it must have been as a senior examiner or other senior employee of a state or federal regulatory agency in the subject matter.

⁶ Art. IX, Sec. 2, Fla. Const.

⁷ Art. IX, Sec. 7(d), Fla. Const. Additionally, the Commissioner of Education, the Chair of the Advisory Council of the Faculty Senates, and the President of the Florida Students Association serve as *ex officio* members of the board.

⁸ Art. IX, Sec. 7(c), Fla. Const.

⁹ Art. IV, Sec. 9, Fla. Const.

¹⁰ Each judicial nominating commission is composed of three members appointed by the Board of Governors of the Florida Bar, three electors who reside in the court's territorial jurisdiction appointed by the Governor, and three additional members, who may not be members of the Florida Bar, appointed by the first six members, all for four year terms. Art. V, Sec. 20(c), Fla. Const.

¹¹ Art. V, Sec. 11, Fla. Const.

¹² Art. IV, Sec. 4(b), Fla. Const.

the agency head of the Department of Law Enforcement.¹³ Other executive departments may be headed by the Governor, the Lieutenant Governor, the Governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the Governor.¹⁴

Nationwide, the appointment of insurance regulators varies from state to state. The insurance regulator is elected in twelve states and appointed in the remainder.¹⁵ The terms vary from serving at the pleasure of the governor to four or five year terms.¹⁶ In contrast, all banking regulators are appointed; sixteen are appointed for specific terms while thirty-eight serve at the pleasure of the appointer.¹⁷

III. Effect of Proposed Changes:

Section 1. The Director of the Office of Insurance Regulation and the Director of the Office of Financial Regulation must be reconfirmed by the Financial Services Commission every two years. At present, the director is appointed for an indefinite term and serves at the pleasure of the commission. Additionally, the “supervote” that requires the concurrence of the Governor and the CFO to appoint or dismiss the directors is deleted. Instead only a simple majority vote of the Cabinet is required.

Section 2. The bill will take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Art. IV, Sec. 4(g), Fla. Const.

¹⁴ Art. IV, Sec. 6, Fla. Const. This provision includes the ability of general law to provide for a confirmation process or require the majority vote of the cabinet for a department head appointment. Additionally, the provision requires boards that grant or revoke licenses in regulated occupations to have fixed terms for office, subject to removal only for cause.

¹⁵ The appointment is generally made by the state governor, but a few states have appointment by cabinet members or a state commission. Only a few states appear to require confirmation by their state senates.

¹⁶ Only New Mexico and Oregon are reported as having “indefinite” terms for their insurance regulator.

¹⁷ Thirty-nine of the regulators are appointed by the Governor of the state, four by boards (Florida’s Financial Services Commission is included as a board), seven are appointed by cabinet members, and three are appointed by other methods. However, some of those serving at the pleasure of the appointer are still appointed for terms but may be removed for certain reasons.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Art. IV, Sec. 6(a) of the State Constitution provides for Cabinet “approval” for appointment to statutory offices. This is opposed to the language that provides for Senate “confirmation.” This bill uses the term “confirmation” in relation to the Cabinet, and thus it may be more appropriate to change the language to conform to the language used in the State Constitution.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 17, 2010:

The committee substitute added a requirement that the Director of the Office of Financial Regulation be reconfirmed every two years by the Financial Services Commission. Additionally, the requirement for a “supervote” concurrence of both the Governor and the CFO on appointing or dismissing the directors was deleted.

B. Amendments:

None.