

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 879 Organization of the Department of Financial Services

SPONSOR(S): Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Renner

TIED BILLS: **IDEN./SIM. BILLS:** SB 908

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Current law establishes 14 divisions of the DFS. They are the Divisions of: Accounting and Auditing; Administration; Consumer Services; Funeral, Cemetery, and Consumer Services; Information Systems; Insurance Agent and Agency Services; Insurance Fraud; Legal Services; Public Assistance Fraud; Rehabilitation and Liquidation; Risk Management; State Fire Marshal; Treasury; and Workers' Compensation. The bill reorganizes the DFS, as follows:

- Eliminates the Divisions' of Legal Services and Information Systems;
- Renames the Division of Insurance Fraud as the Division of Investigative and Forensic Services (DIFS);
- Relocates the Office of Fiscal Integrity and shifts its powers, duties and functions to within the DIFS;
- Creates the Bureau of Fire and Arson Investigations and Bureau of Forensic Services within the DIFS; the bureaus' will perform powers, duties and functions that are transferred from the Division of State Fire Marshal to the State Fire Marshal or the DFS, generally, or to the DIFS, specifically;
- Changes an appointee to the Joint Task Force on State Agency Law Enforcement Communications from one representing the Division of State Fire Marshal to one representing the DIFS and shifts the appointing authority from the State Fire Marshal to the CFO;
- Renames the Bureau of Unclaimed Property as the Division of Unclaimed Property (retaining all of its current powers, duties and functions);
- Relocates the statutory reference to the powers, duties and functions of the Division of Consumer Services. However, the Division's powers, duties and functions remain the same;
- Revises relevant statutes to reflect the reorganization of the DFS as made by the substantive portions of the bill; and
- Revises requirements relating to the service of legal process on authorized and unauthorized insurers.

There are no powers, duties or functions that are created or deleted by the bill; rather, they are either reallocated to a successor unit or reassigned to the DFS, the CFO, or the State Fire Marshal, generally.

The bill has no fiscal impact on state or local government revenues or expenditures. The bill does not impact the private sector.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Statutory Divisions, Duties and Functions of the Department of Financial Services

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida¹ and is designated as the State Fire Marshal.² The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal and the Department of Banking and Finance merged into the DFS. The DFS consists of many divisions and several specialized offices.³

The various departments of the executive branch receive their statutory powers, duties and functions either in a general grant of authority to either the department head or the department by name or by a specific grant with reference to a particular named unit. The department head has discretion when allocating or reallocating those powers, duties and functions that are assigned to them or their department in a general manner. If the powers, duties and functions are specifically assigned to a particular unit by statute, they cannot be reallocated by the department head. Rather, they must be reallocated by subsequent legislative enactment. There are similar limitations regarding the allocation and reallocation of existing organizational units or the establishment of new ones, including a restriction on establishing new divisions.⁴

Section 20.121, F.S., establishes 14 divisions of the DFS. They are the Divisions of:

- Accounting and Auditing;⁵
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Information Systems;
- Insurance Agent and Agency Services;
- Insurance Fraud;
- Legal Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury; and
- Workers' Compensation.⁶

Division of Accounting and Auditing

The mission of the Division of Accounting and Auditing is to safeguard public assets, settle the state's financial obligations, report financial information, and improve accountability of the state.⁷ The Division

¹ FLA. CONST. art. IV, s. 4.

² s. 633.104(1), F.S. Where applicable, references to the CFO in this bill analysis include the CFO's role as State Fire Marshal.

³ s. 20.121, F.S.

⁴ s. 20.04, F.S. When initiating the creation or reorganization of business units for DMS approval, the DFS is not required to adhere to the conventional terminology of "divisions," "bureaus," "sections," and the like.

⁵ s. 20.121(2)(a), F.S. The Division of Accounting and Auditing includes the Bureau of Unclaimed Property, which receives reports and transfers of unclaimed property, and the Office of Fiscal Integrity, which functions as a criminal justice agency that investigates allegations of fraud, waste and abuse of state monies and resources.

⁶ s. 20.121(2), F.S. Other statutory units of the DFS include the Bureau of Deferred Compensation, Office of Insurance Consumer Advocate and the Strategic Markets Research and Assessment Unit.

⁷ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Accounting & Auditing*, <http://www.myfloridacfo.com/Division/AA/> (last visited Feb. 5, 2016).

includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity. It is also empowered by statute to “examine, audit, adjust, and settle the accounts of all the officers of this state, and any other person in anywise entrusted with, or who may have received any property, funds, or moneys of this state, or who may be in anywise indebted or accountable to this state for any property, funds, or moneys, and require such officer or persons to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this state, or to such officer or agent of the state as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such persons, according to law.”⁸ In executing this power, the Division has the authority to conduct investigations, as necessary inside and outside of the state, and refer any suspected criminal conduct to the appropriate law enforcement and prosecutorial agency.

Bureau of Unclaimed Property

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers’ checks, uncashed payroll or cashiers’ checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.⁹

In 1987, Florida adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., “the Act”).¹⁰ The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property, or the value of that property after liquidation as authorized by the Act, at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder’s business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.¹¹ Holders of unclaimed property (which typically include banks and insurance companies) of \$50 or more are required to use due diligence to locate and notify apparent owners of inactive accounts, at least 60 days but not more than 120 days prior to filing a report with the DFS.¹² If the owners cannot be located, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.¹³ The report must contain certain identifying information, such as the apparent owner’s name, social security number or federal employer identification number, and last known address of apparent owners.¹⁴ The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.¹⁵

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.¹⁶ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.¹⁷ The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the

⁸ s. 17.04, F.S.

⁹ ss. 717.104 – 717.116, F.S.

¹⁰ Ch. 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (last visited Feb. 5, 2016).

¹¹ s. 717.102(1), F.S.

¹² s. 717.117(4), F.S.

¹³ s. 717.117, F.S.

¹⁴ For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. s. 717.117(1)(b), F.S.

¹⁵ s. 717.119, F.S.

¹⁶ s. 717.1201, F.S. Like many other states’ unclaimed property acts, the Act is based on the common-law doctrine of escheat and is a “custody” statute, rather than a “title” statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.

¹⁷ ss. 717.117 and 717.124, F.S.

DFS is to deliver or pay over to the claimant the property or the amount the DFS actually received, or the proceeds, if it has been sold by the DFS.¹⁸

If the property remains unclaimed, it is liquidated and the proceeds are deposited into the Unclaimed Property Trust Fund.¹⁹ The DFS is authorized to retain up to \$15 million in the Unclaimed Property Trust Fund to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. Excess funds in the Unclaimed Property Trust Fund are paid into the State School Trust Fund for investment and generation of income to benefit education in the state.²⁰

Office of Fiscal Integrity

The Office of Fiscal Integrity (OFI) is a criminal justice agency within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The OFI performs functions related to the duty of the CFO to examine, audit, adjust, and settle the accounts of all state officers and any other person who has received state funds or moneys.²¹ The OFI has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.²²

Division of Insurance Fraud

The Division of Insurance Fraud investigates various types of insurance fraud including Personal Injury Protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud.²³ The Division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,²⁴ false and fraudulent insurance claims,²⁵ and willful violations of the Florida Insurance Code²⁶ and rules adopted pursuant to the code.²⁷ The Division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2014-2015, the division received 17,392 referrals.²⁸

Division of Consumer Services

The Division of Consumer Services deals with consumer issues and complaints related to the jurisdiction of the DFS and the Office of Insurance Regulation (OIR). The Division:

- Receives inquiries and complaints from consumers;
- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to the appropriate division within the DFS or the OIR, as appropriate.²⁹

¹⁸ s. 717.124, F.S.

¹⁹ s. 717.123, F.S.

²⁰ *Id.*

²¹ s. 17.04, F.S.

²² FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Accounting & Auditing*, <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm> (last visited Feb. 5, 2016).

²³ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Accounting & Auditing*, <http://www.myfloridacfo.com/division/fraud/> (last visited Feb. 5, 2016).

²⁴ s. 626.9541, F.S.

²⁵ s. 817.234, F.S.

²⁶ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

²⁷ s. 624.15, F.S.

²⁸ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Division of Insurance Fraud Annual Report Fiscal Year 2014-2015*, p. 4, http://www.myfloridacfo.com/division/fraud/documents/2014-15_Annual-Report.pdf (last visited Feb. 5, 2016).

²⁹ s. 20.121(2)(h), F.S.

Division of the State Fire Marshal

Chapter 633, F.S., governs fire prevention and control in the state. Section 633.104, F.S., designates the CFO as the State Fire Marshal. The CFO implements the duties of State Fire Marshal and ch. 633, F.S., through the Division of the State Fire Marshal. Pursuant to this authority, the Division regulates, trains, and certifies fire service personnel, investigates the causes of fires, enforces arson laws, regulates the installation of fire equipment, conducts firesafety inspections of state property, develops firesafety standards, provides facilities for the analysis of fire debris, and operates the Florida State Fire College.

Service of Process

Florida law may designate a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in Florida.³⁰ The Chief Financial Officer (CFO) is designated as the agent for service of process on insurers and other specific entities or persons licensed by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR).³¹ Service of process on the CFO is made by mail or personal service³² and plaintiffs are required to pay the DFS a \$15 fee which is deposited into the Administrative Trust Fund.³³ Once the service of process is received, the CFO retains a record copy in paper or electronic form and promptly forwards the process documents to the defendant's designated agent by registered or certified mail.³⁴ In lieu of sending the process by registered or certified mail, the CFO may send the process by "any other verifiable means."³⁵ The language "any other verifiable means" is not defined in statute but, Florida case law has interpreted it to include electronic delivery.³⁶

Effect of the Bill

The bill eliminates the Divisions' of Legal Services and Information Systems from statute. According to the DFS, these divisions all conduct administrative functions that every state agency has and are not required to be provided for in statute. These divisions do not have any specific statutory powers, duties and functions. They implement the general authority of the CFO.

The bill removes the Bureau of Unclaimed Property and the Office of Fiscal Integrity (OFI) from the Division of Accounting and Auditing. The Division of Auditing and Accounting continues to exist, without specific subunits or powers, duties and functions being provided for in statute. The Bureau of Unclaimed Property becomes the Division of Unclaimed Property and retains all of its current powers, duties and functions. The OFI's powers, duties and functions are transferred to the Division of Investigative and Forensic Services.

The Division of Insurance Fraud is renamed the Division of Investigative and Forensic Services (DIFS). The Office of Fiscal Integrity (OFI) is relocated to the DIFS and will retain the same powers, duties, and functions as it currently has within the Division of Accounting and Auditing. In addition, the Bureau of Fire and Arson Investigations and the Bureau of Forensic Services are created within the DIFS and although the two bureaus do not receive any specific powers, duties and functions under the bill, the DFS reports that they will perform the powers, duties and functions currently within ch. 633, F.S., which the bill transfers from the Division of State Fire Marshal to the State Fire Marshal or the DFS, generally, or to the DIFS, specifically. Those powers, duties and functions that are given to the State Fire Marshal

³⁰ s. 48.151, F.S.

³¹ The CFO also serves as the agent for service of process to all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., domestic reciprocal insurers, fraternal benefit societies under Ch. 632, F.S., warrant associations under Ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.

³² s. 48.151, F.S.

³³ s. 624.502, F.S.

³⁴ s. 624.423(1), F.S.

³⁵ s. 624.307, F.S.

³⁶ See *Campbell v. Metropolitan Life Ins. Co.*, No. 2:12-cv-616-Ftm-99SPC, 2013 WL 461872, at *1 (M.D. Fla.); *Dunn v. Prudential Ins. Co. of America*, No. 8:10-cv-1626-T-24-TGW, 2011 WL 52867, at *1-2 (M.D. Fla.); *Johnson v. USAA Cas. Ins. Co.*, 900 F. Supp.2d 1310, 1314 fn. 1 (M.D. Fla. 2012).

or the DFS as a general assignment can subsequently be reallocated at the discretion of the State Fire Marshal.³⁷ The DFS states that it will reallocate 131 full time equivalency positions from the Division of State Fire Marshal to the DIFS upon the bill becoming effective.³⁸ The establishment of the DIFS by the bill effectively consolidates all of the law enforcement and related support units in the DFS into a single division.

Currently, a representative of the Division of State Fire Marshal, appointed by the State Fire Marshal, serves on the Joint Task Force on State Agency Law Enforcement Communications. Since the DFS law enforcement personnel are consolidated within the DIFS, the bill changes the appointee from a representative of the Division of State Fire Marshal to one representing the DIFS and the appointing authority from the State Fire Marshal to the CFO.

The bill relocates the statutory reference to the powers, duties and functions of the Division of Consumer Services from s. 20.121(2), F.S., which addresses the organizational structure of the DFS to s. 624.307, F.S., which describes the general powers and the duties of the DFS. The Division's powers, duties and functions remain the same.

The bill also amends s. 624.502, F.S., to provide procedures for personal service of process on authorized and unauthorized insurers.

There are no powers, duties or functions that are created or deleted by the bill; rather, they are either reallocated to a successor unit or reassigned to the DFS, the CFO, or the State Fire Marshal, generally.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.04, F.S., relating to certain investigatory powers of the Division of Accounting and Auditing.

Section 2. Amends s. 17.0401, F.S., making the CFO responsible for maintaining the confidential and exempt nature of certain public records, rather than the Division of Accounting and Auditing.

Section 3. Amends s. 20.121, F.S., relating to the required business units of the DFS and certain powers, duties and functions of these units.

Section 4. Amends s. 624.26, F.S., eliminating a cross-reference.

Section 5. Amends s. 624.307, F.S., relating to the relocation of powers and duties of the Division of Consumer Services that were formerly found in s. 20.121(2)(h), F.S.

Section 6. Amends s. 624.502, F.S., specifying the applicable fees due by a party serving process to the CFO on authorized and unauthorized insurers.

Sections 7 through 26. Amend s. 16.59, F.S., s. 400.9935, F.S., s. 409.91212, F.S., s. 440.105, F.S., s. 440.1051, s. 440.12, F.S., s. 624.521, F.S., s. 626.016, F.S., s. 626.989, F.S., s. 626.9891, F.S., s. 626.9892, F.S., s. 626.9893, F.S., s. 626.9894, F.S., s. 626.99278, F.S., s. 627.351, F.S., s. 627.711, F.S., s. 627.736, F.S., s. 627.7401, F.S., s. 631.156, F.S., and s. 641.30, F.S., relating to the renaming of the Division of Insurance Fraud as the DIFS.

Sections 27 through 31. Amend s. 282.709, F.S., s. 552.113, F.S., s. 552.21, F.S., s. 633.112, F.S., and s. 633.114, F.S., relating to the transfer of certain powers, duties, and functions from the Division of State Fire Marshal to the DIFS, the DFS, the State Fire Marshal, or the CFO.

³⁷ s. 20.04(7)(a), F.S.

³⁸ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, Agency Analysis of 2016 HB 879, p. 2 (Feb. 5, 2016). The process of formalizing such a reallocation of positions involves filings with the Department of Management Services and the Legislative Budget Commission and would occur subsequent to the effective date of the bill, if passed.

Sections 32 through 38. Amend s. 633.122, F.S., s. 633.126, F.S., s. 633.422, F.S., s. 633.508, F.S., s. 633.512, F.S., s. 633.518, F.S., and s. 791.013, F.S., relating to the transfer of certain powers, duties, and functions from the Division of State Fire Marshal to the DIFS, the DFS, or the State Fire Marshal.

Sections 39 through 44. Amend s. 538.32, F.S., s. 717.1241, F.S., s. 717.1323, F.S., s. 717.135, F.S., s. 717.1351, F.S., and s. 717.1400, F.S., relating to the renaming of the Bureau of Unclaimed Property to the Division of Unclaimed Property.

Section 45. Amends s. 932.7055, F.S., relating to the transfer of certain powers, duties, and functions from the Division of State Fire Marshal to the DIFS.

Section 46. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill is not anticipated to have a fiscal impact on state government. However, the DFS will need to submit a budget amendment (pursuant to chapter 216, Florida Statutes) to the Executive Office of the Governor and the Legislature to properly align FY 2016-2017 appropriations and positions contained in the General Appropriations Act to the updated organizational structure contained in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Insurance & Banking Subcommittee considered a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The committee substitute reflects the deletion of several provisions of the bill that would have:

- Authorized the Chief Financial Officer to create organizational business units within the Department of Financial Services (DFS);
- Eliminated the Strategic Markets Research and Assessment Unit and a required report from the Department of Financial Services to the Cabinet, Senate President and Speaker of the House of Representatives;
- Created a statutory rewards program for information leading to a conviction of certain crimes;
- Established the crime of impersonating an agent of the new Division of Investigative and Forensic Services; and
- Expanded the application of rules adopted under ch. 717, F.S.

On February 16, 2016, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. Specifically, the amendment:

- Specified that the Bureau of Forensic Services, the Bureau of Fire and Arson Investigations, and the Office of Fiscal Integrity are included in the newly titled Division of Investigation and Forensic Services; and
- Amended s.624.502, F.S., specifying the applicable fees due by a party serving process to the CFO on authorized and unauthorized insurers.

The staff analysis is drafted to the bill as amended and passed by the Government Operations Appropriations Subcommittee.