

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 Committee on Banking and Insurance

BILL: SB 908

INTRODUCER: Senator Lee

SUBJECT: Organization of the Department of Financial Services

DATE: January 11, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------------------|
| 1. | Billmeier | Knudson | BI | Pre-meeting |
| 2. | | | AGG | |
| 3. | | | AP | |

I. Summary:

SB 908 changes the organization of the Department of Financial Services (“DFS”). The bill gives the Chief Financial Officer (“CFO”) the authority to establish any division, bureau, or office of the department that the CFO deems necessary to promote the effective and efficient operation of the DFS. The bill does not change the review and approval process of the Department of Management Services and the Executive Office of the Governor.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The bill renames the Division of Insurance Fraud as the Division of Investigative and Forensic Services. The new division will perform the investigative functions currently performed by the Division of Insurance Fraud, the Office of Fiscal Integrity, and the Division of State Fire Marshal. The bill repeals the Strategic Markets Research and Assessment Unit, which is currently neither active nor funded.

This bill allows the DFS to use funds in the Anti-Fraud Reward Program, which provides rewards to persons who report insurance fraud, to provide rewards for the reporting of arson-related crimes and other crimes investigated by the State Fire Marshal.

The bill provides that the DFS rulemaking authority relating to unclaimed property includes property reported to the CFO pursuant statutes relating to unclaimed funds from certain judicial, probate, and guardianship proceedings.

II. Present Situation:

The CFO is a member of the Cabinet¹ and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.² The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services;
- The Division of Public Assistance Fraud.³

Section 20.04, F.S., provides for the establishment of divisions, bureaus, sections, or subsections within a state department. A department head may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the department.⁴ The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.⁵

Bureau of Unclaimed Property

Chapter 717, Florida Statutes, governs the disposition of unclaimed property and requires the DFS to administer the statute. Currently, the DFS holds unclaimed property accounts valued at more than \$1 billion from dormant accounts in financial institutions, insurance and utility companies, securities, trust holdings, and unclaimed safe deposit boxes. The Bureau of Unclaimed Property within the DFS is the division responsible for administering ch. 717, F.S.⁶

¹ See Art. IV, s. 4, Fla. Const.

² See s. 20.121(1), F.S.

³ See s. 20.121(2), F.S.

⁴ See s. 20.04(7)(b), F.S.

⁵ See s. 20.04(7)(c), F.S.

⁶ See <https://www.fltreasurehunt.org/> (discussing the Bureau of Unclaimed Property)(last accessed January 4, 2016).

The Office of Fiscal Integrity

The Office of Fiscal Integrity is a criminal justice agency within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The office 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.⁷ The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.⁸

Division of Insurance Fraud

The Division of Insurance Fraud investigates various types of insurance fraud including PIP fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud.⁹ The Division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,¹⁰ false and fraudulent insurance claims,¹¹ and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.¹² The Division employs sworn law enforcement officers to investigate insurance fraud. In fiscal year 2014/2015, the division received 17,392 referrals.¹³

Division of Consumer Services

The Division of Consumer Services within DFS is created by s. 20.121, F.S., and 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 appropriate division within DFS or the OIR, as appropriate.¹⁴

Strategic Markets Research and Assistance Unit

Section 20.121, F.S., creates the Strategic Markets Research and Assessment Unit within the DFS. It requires the CFO or his or her designee to report quarterly to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on the status of the state's financial services markets. The CFO must also provide findings and recommendations regarding

⁷ Section 17.04, F.S.

⁸ See <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE> (last accessed January 4, 2016).

⁹ See <http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eE> (last accessed January 4, 2016).

¹⁰ Section 626.9541, F.S.

¹¹ Section 817.234, F.S.

¹² Section 624.15, F.S.

¹³ See

Division of Insurance Fraud Annual Report Fiscal Year 2014-2015 at p. 4 (on file with Committee on Banking and Insurance).

¹⁴ See s. 20.121(2)(h), F.S.

regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. According to the DFS, the unit has not functioned since before 2010 and funding was discontinued in 2009.¹⁵

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS. The program is funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud.¹⁶ The program was established in 1999 and has paid over \$365,000 in rewards.¹⁷

Division of the State Fire Marshal

State law on fire prevention and control is provided in Chapter 633, F.S. Section 633.104, F.S., designates the CFO as the State Fire Marshal, operating through the Division of the State Fire Marshal. Pursuant to this authority, the State Fire Marshal 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.

III. Effect of Proposed Changes:

Reorganization of the DFS

Sections 1 and 2 of this bill allow the CFO, rather than the Division of Accounting and Auditing, to conduct investigations and refer information that shows a potential violation of statute to appropriate enforcement agencies and allows the CFO to keep information related to an investigation confidential.¹⁸ These changes are being made because investigation functions currently in the Division of Accounting and Auditing are being transferred to the Division of Investigative and Forensic Services.¹⁹

Section 3 makes various changes to the organization of the DFS. The bill gives the CFO the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote the effective and efficient operation of the DFS pursuant to s. 20.04, F.S. The bill does not change the review and approval process of s. 20.04, F.S.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;

¹⁵ See Department of Financial Services, *SB 908 Analysis* (December 8, 2015)(on file with the Senate Committee on Banking and Insurance).

¹⁶ Crimes include workers compensation fraud, violations of the Florida Insurance Code, and insurance fraud.

¹⁷ See <http://www.myfloridacfo.com/sitePages/agency/dfs.aspx> (last accessed on January 5, 2016).

¹⁸ The bill does not create a new public records exemption.

¹⁹ See Department of Financial Services, *SB 908 Analysis* (December 8, 2015).

- The Division of Information Systems;
- The Division of Insurance Fraud;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions currently performed by the Divisions of Administration, Legal Services, and Information Services. The CFO will have the authority to determine the organizational placement of those functions within the DFS.

The bill requires the creation of two new divisions. The bill requires the DFS to create a Division of Investigative and Forensic Services and Division of Unclaimed Property. The Division of Investigative and Forensic Services is created, replacing the Division of Insurance Fraud. The new division will perform the investigative functions currently performed by the Division of Insurance Fraud, the Office of Fiscal Integrity, and the Division of State Fire Marshal. The Division of Unclaimed Property will perform the functions currently performed by the Bureau of Unclaimed Property.

Sections 6 through 24 and 44 amend various statutes to reflect the name change from the Division of Insurance Fraud to the Division of Investigative and Forensic Services.

Sections 37-42 amend various statutes to replace references to the Bureau of Unclaimed Property with the Division of Unclaimed Property.

Section 26-36 transfer many investigatory, enforcement, and rulemaking functions currently performed by the State Fire Marshal to the Division of Investigative and Forensic Services.

The Strategic Markets Research and Assessment Unit, which is currently neither active nor funded, is repealed.

Division of Consumer Services Statute

Sections 4 and 5 of this bill move statutory references to the duties of the Division of Consumer Services from s. 20.121, F.S., to the Insurance Code at s. 624.307, F.S., and provide conforming changes.

State Fire Marshal

Section 15 of this bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a “hoax” bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Currently, section 282.709, F.S., creates the Joint Task Force on State Agency Law Enforcement Communications (task force) to advise the Department of Management Services of member

agency needs relating to the planning, designing, and establishment of the statewide communication system.²⁰ One of the members of the task force is a representative of the State Fire Marshal appointed by the State Fire Marshal.

Section 25 of the bill provides that the representative will be a representative of the Division of the Investigative and Forensic Services and will be appointed by the CFO.

Rulemaking

Section 43 provides that the DFS rulemaking authority relating to unclaimed property includes property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court, s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale, s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings, s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings, and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date

Section 45 of this bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

²⁰ See s. 282.709(2), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.04, 17.0401, 20.121, 624.26, 624.307, 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9892, 626.9893, 626.9894, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, 282.709, 552.113, 552.21, 633.112, 633.114, 633.122, 633.126, 633.422, 633.508, 633.512, 633.518, 791.013, 538.32, 717.1241, 717.1323, 717.135, 717.1351, 717.1400, 717.138, and 932.7055.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.