The Florida Senate

Interim Report 2009-103 *October 2008*

Committee on Banking and Insurance

OPTIONS FOR REORGANIZING THE DEPARTMENT OF FINANCIAL SERVICES AND THE FINANCIAL SERVICES COMMISSION

Issue Description

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 (commission), headed by the governor and cabinet. [2] The Office of Financial Regulation (OFR) and the Office of Insurance Regulation (OIR) are under the commission.

The commission and the OFR are responsible for regulating state-chartered financial institutions and other financial service entities. The commission and the OIR are responsible for regulating insurance companies and other risk-bearing entities licensed in Florida.

However, the DFS also has statutory duties relating to the regulation of insurance, including regulation of insurance agents; court appointment as receiver or rehabilitator of insolvent insurers; administration of the workers' compensation insurance act; the appointment of the Insurance Consumer Advocate, and administration of the Division of Insurance Fraud. This bifurcation of insurance regulatory responsibility between the OIR and the DFS was a compromise resulting from competing views of having insurance regulated by an appointed official versus a statewide-elected official.

This report presents options for reorganizing the Department of Financial Services and the Financial Services Commission. The objectives of this report are twofold: to present options for merging all or most of the functions relating to the regulation of insurance under a single agency head and to transfer programs to agencies performing similar functions to increase the overall efficiency, effectiveness, and accountability of the programs.

Background

Organizational Structure of the Governor and the Cabinet

While the Constitution provides that the "…supreme executive power shall be vested in a governor…"[3] the effect of having a cabinet composed of elected officers in Florida is to disperse the executive power of the Governor. Florida's Governor does not select an agency head for a number of executive agencies. Instead, various cabinet officers head departments or the Governor and Cabinet sit as the head of various boards, commissions, and

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[1] Article IV, s. 1 of the State Constitution.

[2] Chapter 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 commission. These changes became effective January 7, 2003. In 2003, legislation passed which delegated all state fiscal powers to the CFO.

[3] Article IV, s.1 of the State Constitution.

departments. The cabinet is a comprised of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. As noted in a prior interim report, this collegial form of state government is unique to Florida.[4] In the event of a tie vote of the Governor and Cabinet, the side on which Governor voted prevails.[5]

The State Constitution requires that the administration of each executive department be under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a Cabinet member, or an officer or board appointed by the Governor. However, the Constitution provides an exception to this requirement if a law requires confirmation by the Senate or the approval of (all) three members of the Cabinet for the appointment or removal from any designated statutory office. [6]

Currently, the Department of Highway Safety and Motor Vehicles (DHSMV), the Florida Department of Law Enforcement (FDLE), the Department of Revenue (DOR), and the Department of Veterans' Affairs (DVA) are organized under the Governor and Cabinet. The Governor and Cabinet serve as agency head for purposes of rulemaking for these agencies. With regard to the issuance of final orders and other final agency action, the Governor and Cabinet have adopted rules to delegate this authority to the respective executive director.[7] The table below specifies the requirements for the appointment of each of these agency's executive directors regarding Cabinet approval, eligibility, term, and Senate confirmation.

Agency	Eligibility Requirements for Executive Director	Executive Director Approval Process	Term	Subject to Senate Confirmation
DHSMV[8] and DOR[9]	None	Governor and Cabinet appoint. If a tie vote occurs, the side on which Governor votes prevails.	Not expressly addressed; serves at the pleasure of the Governor and Cabinet.	No
FDLE[10]	At least 5 years prior experience as a police executive or possess training and experience in police affairs or public administration, and be a Florida resident.	Governor appoints and requires the approval of three Cabinet members.	Serves at the pleasure of the Governor and Cabinet.	Yes
DVA[11]	None	Governor appoints and requires the approval of three Cabinet members.	Not specifically addressed; serves at the pleasure of the Governor and Cabinet.	Yes

4 See Senate Interim Report 2000-52, entitled, *Cabinet Reorganization*, by the Committee on Governmental Oversight and Productivity, for a detailed discussion on Florida's form of state government and options for implementing Constitutional Amendment No. 8.
5 Art. IV, s. 4 of the State Constitution.
6 Art. IV, s. 6 of the State Constitution.
7 Rule 12-13.004, F.A.C. (DOR; designates maximum monetary thresholds for final tax settlements that may be entered by the Executive Director; settlements above threshold amounts and non-monetary orders must be entered by the Governor and Cabinet); Rule 15-1.012, F.A.C. (DHSMV); Rule 11-1.0042, F.A.C. (FDLE)
8 Sections 20.24 and 20.05(1)(g), F.S.; Art. IV, s. 4 of the State Constitution
9 Sections 20.21 and 20.05(1)(g), F.S.
10 Sections 20.201 and 943.03, F.S.
11 Section 20.37, F.S.

Organization of the Financial Services Commission

The Financial Services Commission (commission) is an independent agency housed within DFS. The commission consists of the Governor and the Cabinet. Although the commission is organized in the department, the commission is not subject to the control, supervision, or direction by the department in any matter, including purchasing, personnel, or budgetary matters. However, the department is required to provide administrative and information systems' support to the offices created within the commission, the OFR and the OIR.[12]

The commission is the agency head for purposes of rulemaking for each office. Each director is agency head for purposes of final agency action under chapter 120. This division of authority is similar to other Cabinet agencies described above. The respective directors of the OFR and the OIR would appear to be state officers, given their statutory designation as agency heads, except for rulemaking purposes. However, the directors of the offices are not subject to Senate confirmation or approval of all of the Cabinet members, which may be inconsistent with the State Constitution, as explained above. A unique feature for OIR and OFR is that both the Governor and the CFO must be on the prevailing side for appointment and removal of the director. The following table outlines the appointment requirements of OFR and OIR:

Office	Eligibility Requirements for Director	Director Approval Process	Term	Subject to Senate Confirmation
OFR and OIR[13]	Must have had within the previous 10 years, at least 5 years of private sector experience in areas within the scope of jurisdiction of the respective office, or at least 5 years of experience as a senior examiner or senior employee of a state or federal agency having responsibility over the industries regulated by the respective office.	Requires appointment and removal by at least three affirmative votes of the Governor and Cabinet, with the Governor and the CFO on the prevailing side	Not specifically addressed, but serves at the pleasure of the Governor and Cabinet.	No

The OFR is responsible for all activities of the commission relating to the regulation of specified financial service entities. These include state-chartered financial institutions (chs. 655-667, F.S.), mortgage brokers and mortgage lenders (ch. 494, F.S.), securities dealers and agents (ch. 517, F.S.), consumer finance loans (ch. 516, F.S.), retail installment sales (ch. 520, F.S.), money services businesses (ch. 560, F.S), and title loan companies (ch. 537, F.S.). The OFR has 479 positions.

The OIR regulates and licenses insurers and other risk-bearing entities.[14] Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, licensure of viatical settlement and premium finance companies, and oversight of joint underwriting associations (excluding appointment of board members), as provided in the Florida Insurance Code or ch. 636, F.S.[15] The OIR has 314 positions.

[12] Section 20.121(3)(e), F.S.
[13] Section 20.121(3), F.S
[14] Risk-bearing entities include, but are not limited to multiple-employer welfare arrangements, commercial self-insurance funds, warranty associations, health maintenance organizations, prepaid limited health service organizations, prepaid health clinics, and continuing care facilities.
[15] Section 20.121(3)(a)2., F.S.

Organization of the Department of Financial Services

Currently, the DFS has 2,103 positions. The department's Division of Treasury and the Division of Accounting and Auditing perform the CFO's constitutional duties of accounting for and investing state funds. The remaining divisions and programs perform statutorily assigned duties: Insurance Agents and Agency Services, Rehabilitation and Liquidation, Insurance Fraud, Consumer Services, Risk Management, State Fire Marshal, Office of Insurance Consumer Advocate, Funeral, Cemetery, and Consumer Services, and Administration. Those divisions that are the focus of this report are described below.

Agent and Agency Services

The division is responsible for the licensure and regulation of all insurance agents, customer representatives, adjusters, reinsurance intermediaries, service representative, insurance agencies, and certain field insurance representatives.[16] The division also administers the insurance laws and rules relating to license qualification, pre-licensing and continuing education. The division investigates and takes administrative actions against such licensees and unlicensed persons for violations of the Florida Insurance Code.

The Office of the Insurance Consumer Advocate

In 1990, the commissioner of the former Department of Insurance, which regulated insurance companies and agents at the time, established the Office of Insurance Consumer Advocate (office). The 1992 Legislature codified this office.[17] The office represents the public before the DFS and the OIR and before any forum in matters that relate to the jurisdiction of the DFS and the OIR. The insurance consumer advocate reports directly to the Chief Financial Officer, but is not otherwise under the authority of the department or of any employee of the department. The Insurance Consumer Advocate also represents the public by serving on task forces, boards, and working groups of the National Association of Insurance Commissioners. In recent years, the Consumer Advocate has testified at workers' compensation insurance rate hearings and property insurance rate hearings on behalf of policyholders. The office has 10 positions and an annual budget of $1.4 million.

The Division of Consumer Services

The Division of Consumer Services within the DFS is responsible for assisting consumers and answering general insurance and financial questions via its toll-free helpline, regional service centers, and website. In addition, the division provides consumer education and outreach assistance. The division has 197 positions. Pursuant to s. 20.121(2)(h), F.S., the division is responsible for performing the following functions concerning products or services regulated by the DFS, OFR, or OIR:

- Receive inquiries and complaints.
- Compile and distribute such information the DFS deems necessary to assist consumers.
- Provide direct assistance and advocacy for consumers who request such services.
- Report alleged violations of law by persons licensed by the DFS, OIR, or OFR to the appropriate regulator.

Division of Insurance Fraud

The Division of Insurance Fraud within the DFS is responsible for investigating alleged fraudulent insurance acts, violations of s. 626.9541, F.S., (unfair methods of competition and unfair or deceptive acts or practices), and acts punishable under s. 624.14, F.S. (willful violations of the Florida Insurance Code or rules). The division has 195 positions. Of those, 152 are sworn law enforcement officers.

[16] Activities of the division are authorized in Chapters 624, 626, 632, 634, 635, 642 and 648, F.S.
[17] Section 627.0613, F.S.

The Division of Rehabilitation and Liquidation

The Division of Rehabilitation and Liquidation of the DFS has the responsibility of performing the duties as receiver of any insurer placed into receivership in Florida. The division plans, coordinates, and directs the conservation, rehabilitation, and liquidation of insolvent insurance companies, unlicensed insurance companies, and unlicensed insurance entities. The basic responsibilities of the receiver include the collection of assets or debts due to the company, and evaluating all known claims against the company. The goal of the division as the liquidator is to maximize the value of the assets of the liquidated company and distribute the assets equitably as provided in Ch. 631, F.S.

Findings

Regulation of Insurance in Other States

Insurance regulators perform a variety of oversight tasks that work together to help protect consumers from unfair practices and to ensure that claims are paid when due. Regulators approve rates and forms, perform market conduct and financial examinations, and issue licenses to companies and agents. In recent years, regulators have increasingly relied upon the use of market data as a regulatory tool to identify issues, trends, and possible statutory violations.

Currently, the insurance regulator is appointed in 39 states. In the remaining 11 states, the insurance regulator is elected.[18] In the 10 most populous states, the jurisdiction of the insurance regulator includes rehabilitation and liquidation of insurers and the regulation of agents, except in Florida. In Florida, the DFS oversees the rehabilitation and liquidation of insurers and the regulation of agents.

If the regulation of insurance functions or activities is bifurcated between two or more agencies, the timely and effective monitoring of the market and the coordination and prioritization of regulatory efforts to address potential problems or trends can be weakened. This coordination is particularly crucial for regulators in detecting and enforcing s. 624.14, F.S., which addresses unfair methods of competition and unfair or deceptive practices.

Regulation of Insurance Agents

The regulation of agents and insurers under one agency may enhance the regulator's ability to protect consumers since one regulator would be examining and investigating the market conduct and practices. For example, there have been increasing problems noted in the marketing and sale of annuity products, particularly to senior citizens. In some cases, an insurer may have initiated or endorsed unfair or misleading marketing practices by its agents. However, in other instances, an agent may have unilaterally initiated such practices without the company's prior knowledge or approval. Investigations and sanctions for these and similar practices that involve conduct by both insurers and agents would be better coordinated if a single agency were responsible for regulation.

Rehabilitation and Liquidation of Insurers

Under the Insurance Code, the OIR is responsible for monitoring solvency, conducting periodic financial examination, and appropriate regulatory action of entities subject to OFR's regulation. Pursuant to s. 631.031, once the OIR makes the determination that grounds exist to initiate receivership proceedings, the director of the OIR is required to notify the DFS of such determination and provide all necessary documentation and evidence. Although the law provides that the DFS is required to initiate the receivership proceedings at this point, there appears to be disagreement between DFS and OIR regarding the role of DFS in petitioning the court to initiate a receivership proceeding. According to the OIR, there have been instances in which the DFS has questioned the determination made by the OIR and has delayed initiating receivership. Once the OIR makes the determination for receivership, prompt action by the DFS is required to prevent the further financial deterioration of the company and to reduce the risk of loss to policyholders. Delays in petitioning the court could further impair or jeopardize the insurer's ability to pay claims or remain solvent.

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[18] National Association of Insurance Commissioners, *2007 Insurance Department Resources Report. 2008*.

Insurance and Financial-Services Related Consumer Assistance

The Division of Consumer Services of the DFS provided staff with workload information for July 2008. During July, the division received 24,736 calls. Insurance coverage inquiries accounted for approximately 22 percent of the calls. In July, the division made 113 referrals relating to potential regulatory violations to the OIR. An additional 90 internal referrals were made to DFS related to potential violations by agents or agencies. The majority of consumer service requests in July related to claims problems (i.e., delay, denial, unsatisfactory settlement offer) and premium issues (i.e., rate increase, refunds, misquotes). The following division information depicts the estimated workload allocation of the division for the prior 6 months:

Regulatory Workload Percentages for the Division of Consumer Services March 1, 2008 through August 31, 2008				
Jurisdiction	**Calls Only**	**Service Request**	**Notice of Issue of Violation**	**Outreach Programs**
DFS	14%	6%	46%	68%
OIR	39%	88%	47%	30%
OFR	3%	0%	N/A	N/A
Unspecified	6%	6%	N/A	N/A

Pursuant to a request from the OFR, the Division of Consumer Services began directing consumer inquiries and complaints related to the OFR directly to the OFR for response and resolution in January 2008. The OFR also established a consumer toll-free number. The OFR also assists consumers at its regional offices. The division transferred 11 positions associated with this workload to the OFR Tallahassee office. However, the division continues to provide responses for consumer inquires and complaints related to programs under the DFS and the OIR. The OIR does not have any regional offices or staff dedicated to resolving consumer complaints.

In addition to the consumer outreach and education efforts of the division, the CFO has created task forces to make legislative recommendations to provide greater consumer protections. To assist the CFO in this financial services' advocacy role, the Legislature created the Financial Literacy Council within the DFS to study the financial problems that affect consumers, particularly young persons, seniors, working adults and small business owners, which arise from a lack of basic knowledge of financial issues. The council is responsible for developing recommendations to assist the DFS in developing programs and resources aimed at increasing financial literacy among Floridians.

Role of the Insurance Consumer Advocate

In recent years, legislation has been proposed to expand the authority of the Legislative Office of the Public Counsel to include representing the public in insurance rate cases and proceedings. Currently, the Public Counsel provides legal representation for Florida's citizens in utility related matters pending before the Public Service Commission.[19] As an alternative, legislation has been proposed to expand the powers of the Consumer Advocate within the DFS to allow him or her to intervene on behalf of consumers in insurance rate hearings with powers comparable to the Public Counsel, in order to provide a more meaningful and substantial role.

In 2003, the Legislature directed the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to evaluate the effectiveness of the current authority of the Insurance Consumer Advocate and to determine the feasibility of allowing the Office of Public Counsel to represent the public in any hearing related to medical malpractice insurance rate filings.[20] The report noted that the involvement of the Public Counsel in utility rate cases has caused a significant reduction in consumer costs and, suggested that with adequate statutory authority, the Public Counsel could represent Floridians in the process of reviewing medical malpractice rates. The Office of the Public Counsel reported that because of its interventions in utility rate proceedings, Florida

[19] Section 350.061, F.S.
[20] Ch. 2003-416, L.O.F.

utility customers saved over $1.1 billion in charges in 2002.[21] The report noted that entities in other states report consumer representation in the rate review process had mitigated rate increases.

Based on a limited survey, Senate professional staff identified the following seven states as authorizing intervention in the insurance rate review process by entities representing the public: California, Georgia, Maine, Maryland, Rhode Island, South Carolina, and Texas. In Texas, the Office of Public Insurance Counsel is a government entity, independent of the insurance regulatory process, dedicated to public representation in rate cases affecting personal lines, such as auto and homeowners' insurance. In California, Proposition 103 requires the Commissioner of the Department of Insurance to grant a hearing for any proposed medical malpractice insurance rate increase greater than 15 percent, if a consumer or advocacy group challenges the commissioner. The People's Insurance Counsel Division within the Maryland Attorney General's Office is responsible for advocating for homeowners and medical malpractice insurance policyholders.[22] The Insurance Advocacy Unit of Rhode Island is located in the Department of the Attorney General.

Investigation of Economic or Financial Crimes by State Agencies

In recent years, Florida has gained notoriety as having one of the highest mortgage fraud rates in the country, the highest foreclosure rate, and as a primary area for international drug trafficking and money laundering organizations. Some experts consider mortgage fraud the fastest growing white-collar crime.[23] Money laundering in check cashing stores is an enormous problem in Florida and involves hundreds of millions of dollars in illicit profits being laundered annually. This laundering facilitates hundreds of millions of dollars in Medicaid and Medicare fraud, workers' compensation insurance fraud, and many other types of criminal activity.[24]

In March 2008, the Chief Financial Officer issued a paper entitled, "*Proposal to Address Financial Crimes in Florida"* that recommended creating an investigative component within the department to address non-insurance fraud crimes victimizing Florida residents. The paper proposed that this entity could open investigations and follow-up on referrals initiating from regulatory actions of the Office of Financial Regulation. The proposal suggests that the jurisdiction of this entity could possibly include the investigation of mortgage fraud, foreclosure fraud, money laundering, identity theft, professional employer organization crimes, fraudulent surety bonds, state unemployment tax dumping, online escrow fraud, investment fraud, and other criminal violations. The proposal requested an initial funding of approximately $1 million for eight sworn law enforcement officer to create this unit.

Senate professional staff evaluated current enforcement efforts and intelligence assistance provided by the Division of Insurance Fraud and other agencies engaged in investigating economic crimes. These agencies include the Florida Department of Law Enforcement (FDLE), the Department of Legal Affairs (DLA), and the Bureau of Financial Investigations within the OFR. Economic crime investigations include a wide range of crimes. Unlike violent crimes, the variations of criminal activities that are committed for economic crimes are virtually limitless; therefore, it is not reasonable to expect investigators to be comprehensive experts in all such activities. These agencies rely on the experience of their investigators and partnerships with other federal, state, and local law enforcement agencies in investigating economic crimes.

Division of Insurance Fraud

In addition to investigating alleged insurance fraud, the division has the authority to make arrests for criminal violations established because of such investigations, which involve other activities, such as identity theft, banking, securities, or mortgage fraud. The following table depicts a snapshot of the division's activities during fiscal years 2006-2007 and 2007-2008:

[21] Office of Program Policy Analysis and Government Accountability Report, *Office of Public Counsel Involvement in Medical Malpractice Rate Review Process May Help Limit Rate Increase*. Report No. 04-09. January 2004.
[22] National Conference on State Legislatures and OPPAGA Report no. 04-09.
[23] *A Study on Mortgage Fraud and Impacts of a Changing Financial Climate,* BasePoint Analytics LLC, 2006.
[24] The Eighteenth Statewide Grand Jury, March 18, 2008.

DIF Activities

Fiscal Year	Complaints Received	Cases Opened	Cases Closed	Arrests	Convictions	Court Ordered Restitution	Forfeitures & Seizures
06-07	11,812	1,692	1,601	819	590	$847,467,525	$124,379
07-08	9,916	1,742	1,756	816	663	$94,159,111	$174,940

Department of Legal Affairs

The Economic Crimes Division (division) within the DLA is responsible for the investigation, enforcement, and prosecution of all multi-jurisdictional violations of the Florida Deceptive and Unfair Trade Practices Act.[25] The division protects consumers by initiating investigations against entities that employ unfair methods of competition or unconscionable, deceptive, and unfair practices in any trade or commerce. There are 63 positions in the division dedicated to civil enforcement. According to the division, 348 active investigations are ongoing and include, but are not limited to, the following areas:

- Internet related fraud
- Telecommunications, which includes prepaid calling cards, and cyber fraud cases against major carriers
- Debt management, debt collection, and credit repair
- Mortgage fraud
- Real estate related fraud
- Motor vehicle related cases (i.e., deceptive advertisement)
- Employment scams
- Deceptive marketing of prescriptions

In conjunction with its authority under the Unfair and Deceptive Trade Practices Act, the division is responsible for the enforcement of the civil provisions of the Racketeer Influenced and Corrupt Organizations Act.[26] The division has investigative and litigation responsibilities related to enterprises involved in continuing patterns of specified illegal activities, including fraud, theft, and misleading advertising. For fiscal year 2007-2008, the division was responsible for obtaining an estimated $157 million in judgments against entities. Of that amount, approximately $80 million represents court-ordered restitution for consumers.

The Medicaid Fraud Control Unit within the DLA investigates fraud committed by health care providers and the abuse, neglect and exploitation of the elderly and disabled residents of long-term care facilities, facilities for the mentally and physically disabled and assisted care living facilities. The unit has 127 sworn law enforcement positions.

The DLA also has enforcement authority under the Florida False Claims Act (act).[27] The intent of this act is to deter persons from knowingly causing state government to pay claims that are false or fraudulent, and to provide remedies for obtaining treble damages and civil penalties for the state when money is obtained from the state due to a false or fraudulent claim. The majority of these cases fall within the purview of the Medicaid Fraud Control Unit; however, the Economic Crimes Division investigates all other subject matters.

Florida Department of Law Enforcement (FDLE)

Economic crime is one of the five core areas of the FDLE investigative strategy. The current FDLE focus on economic crime integrates the unique competencies of the agency, focusing on organized, complex, and multi-jurisdictional crimes. Between July 2004 and July 2008, the FDLE opened 4,704 economic crime cases. These include major cases, investigative assists to other state and local agencies, and intelligence operations.

[25] Part II, ch. 501, F.S.
[26] Sections 895.01-895.06, F.S.
[27] Sections 68.081-68.09, F.S.

The Financial Crimes Analysis Center (FCAC) within FDLE collects and analyzes financial data in partnership with criminal justice agencies to target and combat money laundering, drug trafficking, terrorism, organized criminal enterprises, and other financial crimes. The FCAC is responsible for processing approximately 500 data requests per year, as well as proactive analysis of crime trends and patterns. In the past 3 years, FCAC investigated over 5,500 subjects as part of the assistance provided to federal, state, and local agencies. The Financial Crimes Analysis Center compiles information and data available from financial transaction reports, as well as other data, for integration into the FDLE Financial Transaction Database. In addition, the FDLE provides training to law enforcement agencies on emerging economic crimes concerns, such as schemes targeting at the elderly population.

The Bureau of Financial Investigations within the OFR

The Bureau of Financial Investigations within the OFR is responsible for conducting financial investigations of unlicensed entities and fraudulent activities within the scope of the OFR's jurisdiction. Pursuant to its authority under s. 20.121, F.S., the bureau may conduct investigations to aid in the enforcement of this section. However, if, during an investigation, the office has reason to believe that any criminal law of this state has or may have been violated, the office is required to refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and provide investigative assistance to those agencies, as required.

As of July 1, 2008, the Bureau of Financial Investigations has 65 authorized positions (8 positions in Tallahassee and 57 positions in eight field offices). The annual budget of the bureau for fiscal year 2007-08 was $4,488,513, which represented approximately 11 percent of the total budget of the OFR. For fiscal year 2006-07, the bureau closed 167 cases. Of those, 34 cases resulted in some type of criminal conviction. Court-ordered and voluntary restitution for those cases totaled approximately $90 million.

In 1999, the Legislature designated the investigative bureau in statute as a criminal justice agency for purposes of ss. 943.045-943.08, F.S., in order to allow it to access criminal intelligence information from FDLE. [28] For purposes of these statutory provisions, a criminal justice agency includes, but is not limited to, the courts, the FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, and "…any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice."[29]

Although the bureau provides investigative support to the regulatory programs under the OFR, the bureau reports directly to the director of the OFR, rather than the managers of the respective regulatory programs (financial institutions, finance, and securities). This type of organizational structure does not allow the regulatory programs within the OFR to use the bureau's staff in an effective and timely manner. If the investigative staff is not under the supervision of the regulatory programs, it may impair the ability of the regulator to prioritize or coordinate enforcement efforts and ultimately protect consumers. Recently, the governor's office released a report regarding the regulation of mortgage brokers by the OFR and noted the lack of coordination between investigations and the regulatory program.[30] The report documented instances in which the regulatory programs worked criminal cases without the involvement of the bureau.

Investigation of Insurance Fraud in Other States

According to the Coalition Against Insurance Fraud, 41 states have established a fraud unit that is responsible for detecting, investigating, and preventing insurance fraud. Most of the fraud units address all types of insurance fraud; however, some specialize in certain types, such as workers' compensation or automobile insurance. Generally, these fraud units are located within the insurance regulator's division or department, workers' compensation board or regulator. Eleven states house their fraud unit within the Attorney General's Office or a law enforcement agency.

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[28] Chapter 99-155, L.O.F.; s. 20.121(2)(a)2, F.S.
[29] Section 943.045(10), F.S.
[30] Executive Office of the Governor, Chief Inspector General's Office, *Office of Financial Regulation*, September 15, 2008.

Accountability and Efficiency Issues Related to Staffing Administrative Support Functions

The DFS is required to provide administrative and information technology support to the OFR and the OIR. Administrative support includes human resources-related functions, budgeting, and public records requests. Currently, the DFS staff handles budget and personnel-related functions for the OFR and the OIR. The DFS also processes public record requests for the OIR. When a public record request is made to the OIR, the OIR provides the original documents to the DFS for copying, billing, and distribution to the public. This process creates unnecessary delays in providing such documents and removes the original documents from the oversight of the custodian of records, the OIR. The OFR processes its own public record requests.

With regard to budgetary and personnel functions, the OIR and OFR cannot input or access certain budget and personnel records directly. Instead, the DFS must access, input, and provide such information. Personnel issues have been problematic, as the DFS attempts to guide each office on personnel disciplinary manners, but the OIR and OFR determine what action to take. Then DFS must defend any subsequent legal actions brought by the employee or former employee. Since the respective offices are ultimately accountable, the involvement of the DFS in these functions does not appear to assist them in managing their offices in the most effective manner.

The DFS is also required to provide information technology (IT) support to the offices, which prevents the offices from negotiating with other potential vendors for the most cost-effective services. The DFS must generally give priority to its own IT needs, resulting in OIR or OFR not obtaining fully satisfactory IT services from their perspective. This mandatory provision of IT services by the DFS undermines the accountability of the offices for the administration of their respective agencies. Given the lack of a competitive procurement process due to the current mandate on DFS to provide such services, it is unclear whether other public vendors or private vendors could provided IT services in a more-cost effective manner.

Options

The Legislature may want to consider the following options to increase the accountability and efficiency of the programs presently under the DFS, OFR, and OIR:

1. Revise the appointment process for the directors of the OIR and OFR, respectively, to require appointment and removal by the Governor and three votes of the Cabinet. Alternatively, retain the current requirement of an affirmative vote of at least three votes of the Governor and Cabinet, with the Governor and the CFO on the prevailing side, but add a requirement for Senate confirmation. Either change would be consistent with the constitutional provisions regarding the governance of executive agencies. The first option would be consistent with the current process used to appoint the statutory offices of the directors of FDLE and DVA.
2. Transfer insurance-related regulatory functions from the DFS to the OIR. This would include the Division of Agents and Agency Services and the Division of Rehabilitation and Liquidation. This would provide greater accountability for insurance regulation and coordination of resources under a single regulator. The DFS would retain risk management (state self-insurance fund), workers' compensation, and state fire Marshal program areas, which administer duties not directly affected by insurance regulation.
3. Transfer the Division of Insurance Fraud to the Department of Legal Affairs. This could provide greater coordination and effective use of law enforcement staffing for investigations, arrests, and prosecutions of economic crimes. Persons engaged in insurance fraud are often engaged in other types of fraud and criminal activities, such as mortgage fraud, Medicaid fraud, money laundering, and unfair and deceptive trade practices--areas that the Department of Legal Affairs currently investigates and prosecutes.
4. Expand the powers and duties of the Insurance Consumer Advocate within the DFS to include financial services related programs regulated by the OFR and provide the consumer advocate with powers comparable to the Office of Public Counsel for purposes of intervening in insurance rate hearings on behalf of consumers.
5. Retain the Division of Consumer Services in DFS and continue to use the DFS as the centralized consumer call center for the OFR and OIR for the intake of consumer complaints to minimize consumer confusion as prescribed by law. The current fragmented consumer call centers located in the DFS and the OFR do not

appear to serve consumers in the most cost effective manner. Transferring consumer services functions would require consideration of transferring regional service offices currently under DFS.

6. Place OFR's financial investigations components under the supervision of the regulatory programs to strengthen those programs. Given the significant amount of mortgage fraud and money laundering in Florida, the efficient coordination of enforcement resources by the OFR is critical. Authorize OFR's financial investigations component to access criminal intelligence information from FDLE.
7. Eliminate the current statutory mandate for the DFS to provide administrative support to the OFR and the OIR. As a result, the administrative support positions and funding within the DFS associated with those OFR and OIR functions would need to be transferred. This change would provide greater accountability for the OFR in administering its statutory duties.
8. Eliminate the current statutory mandate for the DFS to provide information technology support to the OFR and the OIR. This change would provide the Legislature with the option, as part of the budgetary and appropriations process, to determine the most cost-effective method for providing information technology support to OFR and OIR, including allowing these agencies to negotiate for the procurement of such services from multiple vendors, including DFS.