



The Florida Senate

Interim Project Report 2000-52

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Committee on Governmental Oversight and Productivity

Senator Jack Latvala, Chairman

CABINET REORGANIZATION

SUMMARY

The future configuration of the Cabinet was altered in November of 1998, by the adoption of Constitutional Amendment No. 8. The amendment modifies the Cabinet in the year 2003 by merging two cabinet positions and by eliminating two others. Specifically, the offices of the Treasurer and the Comptroller will be merged into one Chief Financial Officer. The amendment also removes the Secretary of State and the Commissioner of Education from the Cabinet. The membership of the State Board of Education is modified under the amendment, as well. Future board members will be appointees of the Governor, subject to Senate confirmation. The new state Cabinet will consist of an Attorney General, a Commissioner of Agriculture, and a Chief Financial Officer.

As a result of these changes, the Legislature must consider the future of the Departments of Banking and Finance, Education, Insurance and State. The report reviews issues which affect these changes and presents options for legislative consideration.

BACKGROUND

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, the Governor is required to share some executive powers with an Attorney General, Commissioner of Agriculture, Commissioner of Education, Comptroller, Secretary of State, and Treasurer. In addition to assigned constitutional responsibilities, the Legislature has designated each cabinet member as a department head with statutory duties. Cabinet officers also share powers and duties when sitting as the Governor and Cabinet. When in this form, the Governor and Cabinet may constitute a department head or a board. This collegial form of state government is unique to Florida.

The future configuration of the Cabinet was altered in November of 1998, by the adoption of Constitutional Amendment No. 8. The amendment, which passed by a margin of 55.5% to 44.5%, modifies the Cabinet in the year 2003 by merging two cabinet positions and by eliminating two others. Specifically, the offices of the Treasurer and the Comptroller will be merged into one Chief Financial Officer. The amendment also removes the Secretary of State from the Cabinet, but still refers to undefined *custodian of state records* who will perform limited constitutional recordkeeping duties. Additionally, the amendment removes the Commissioner of Education from the Cabinet, but still provides for a commissioner who will be appointed by a seven-member State Board of Education. Under the amendment, members of the State Board of Education will be appointed by the Governor and confirmed by the Senate. As a result of these modifications, the new state Cabinet will consist of an Attorney General, a Commissioner of Agriculture, and a Chief Financial Officer.

Probably the most significant issue before the Legislature resulting from cabinet reorganization is the future status and jurisdiction of four departments that are headed by individual cabinet officers. The Legislature must consider the future of the departments of: (1) Banking and Finance; (2) Education; (3) Insurance; and (4) State.

The Legislature has a high level of flexibility to modify state government within constitutional limitations.

METHODOLOGY

A review of statutes and case law was performed. Interviews were conducted, other state laws were reviewed, meetings of various task forces and commissions were attended, and information from affected departments was gathered.

FINDINGS

Chief Financial Officer - The amendment merges the constitutional functions of Comptroller and Treasurer into a new Chief Financial Officer (CFO). As the Comptroller heads the Department of Banking and Finance (DBF) and as the Treasurer heads the Department of Insurance (DOI), the status of these departments must be determined. Four options were identified:

Option 1.A. - Merging the DBF with the DOI and designating the CFO as the head of the merged department.

Option 1.B. - Merging the DBF with the DOI and designating an officer or board *other than* the CFO as the agency head. Assigning no additional statutory duties to the CFO.

Option 2.A. - Maintaining a separate DBF and DOI and designating an officer or board *other than* the CFO as the head of each department. Assigning no additional statutory duties to the CFO.

Option 2.B. - Maintaining a separate DBF and DOI and designating the CFO as the head of only one department. Designating another officer or board as the head of the remaining department.

A number of policy issues affect the identified options. Specifically, should the statutory functions of the DBF and the DOI be merged? Should the CFO be assigned statutory responsibilities in addition to constitutional duties? What type of department head or heads would be best? Further, under each option, the Legislature may wish to consider whether regulatory responsibilities within each industry should be realigned. For example, should an independent commission or commissions be created to perform limited functions, such as rate hearings, while retaining other executive functions, such as enforcement, in one or more departments? These issues are reviewed below.

Combined or Multiple Departments - The Legislature must decide whether the regulatory functions of the DBF and the DOI should be merged or kept in separate agencies. At least 13 states place regulatory responsibility for banking, securities, and insurance in a single department. Eight states have departments that regulate banking and securities. Three states delegate banking and insurance regulation to a single department.

One consideration affecting this decision is how a merged department would compare with other departments. A review of existing departments shows that if the DBF and DOI were merged, without changing the number of employees or amounts appropriated, 15 departments would have larger appropriations and 10 would have a larger number of employees. As a result, a merged DBF and DOI would be in the mid-range of departments based upon size.

Another issue for legislative review is the compatibility of regulation in the two departments. Banking is regulated primarily at the federal level and insurance is regulated at the state level. Problems that might arise due to a difference in type of regulation probably can be resolved by organizational structure. Typically, departments have distinct divisions, each with primary responsibility over specific regulatory functions. If additional protections are considered necessary, the Legislature could create separate, independent commissions with responsibility over limited regulatory functions. For example, an insurance commission could be created and given responsibility for rate hearings, licensure hearings, or rulemaking. Enforcement responsibility could be maintained in a division of a department.

Both the Comptroller and Treasurer testified before the Senate Committee on Governmental Oversight and Productivity in February of 1999, in favor of merger. The primary basis for this recommendation was that the traditional legal walls separating insurance, banking, securities, and other financial services were being eliminated and that an agency with jurisdiction over all these services would be more effective and efficient. This testimony is supported by legislation passed during the 1999 session, as well as current events. Chapter 99-388, Laws of Florida, repealed the anti-affiliation law which prohibited licensed insurance agents from engaging in insurance agency activities through a financial institution except in the case of a bank located in a city with a population of less than 5,000. Further, the Gramm-Leach Bliley Act of 1999, authorizes banks, brokerages, and insurers to merge and to override state laws that conflict with federal affiliation provisions. As a result, merger of these regulatory functions in one department appears logical.

Type of Department Head - The Legislature also must determine what type of department head or heads it prefers. In testimony before the Senate Committee on Governmental Oversight and Productivity, the Comptroller recommended that the head of a combined

department should be an officer or board appointed by the Governor, but the Treasurer recommended that the department head be elected. Currently, 12 states have elected insurance commissioners and 38 have appointed insurance commissioners.

As noted previously, the State Constitution limits the available choices of department heads. Under Amendment No. 8, there will be fewer options in 2003. The available choices will be: (1) the Governor; (2) the Lieutenant Governor; (3) the Attorney General; (4) the Chief Financial Officer; (5) the Commissioner of Agriculture; (6) the Governor and Cabinet; (7) a secretary appointed by the Governor; or (8) a board whose members are appointed by the Governor.

Designating an appointed officer or board as a department head would consolidate more authority, as well as accountability, in the Governor. It would also permit the Legislature to establish qualifications for appointees. In the case of a board, the Legislature could ensure that at least one board member was knowledgeable about an industry regulated by a merged department.

One reason for the Comptroller's testimony in favor of an appointed head is that an appointee may be less susceptible to influence by regulated industries because they do not need campaign contributions. Campaign contributions for the election of the Comptroller and Treasurer, however, are regulated by Florida law. A financial institution or insurer, officer or affiliate, or committee of continuous existence representing their interests, may not make a contribution in excess of \$100 for any election for the Comptroller or Treasurer. While the Treasurer did not dispute that an elected official could be influenced by industry through campaign contributions, he emphasized that an elected official has the mandate of the electorate and, as a result, can protect the public in ways that a mere appointee might not. The Treasurer also noted that appointees are not immune from influence by regulated industries because they often come from, and return to, the industries they regulate.

Designation of an appointee would bifurcate the constitutional duties of the CFO from the statutory duties of the current Comptroller and Treasurer. As a result, there would be one cabinet member who would not be designated as head of a department with related statutory duties. This would conflict not only with historical precedent which designates cabinet officers as department heads, but with constitutional and

legislative policy to merge state functions into a limited number of departments to promote efficiency.

Instead of an appointed officer or board, the Legislature could designate the Governor and Cabinet, the Governor, the Lieutenant Governor, or an elected cabinet officer as a department head. Such a designation would affect the ability of the Legislature to specify the qualifications for the statutory office because the State Constitution, not the Legislature, establishes the qualifications for these officers. The only cabinet officer required by the State Constitution to have professional qualifications is the Attorney General. As a result, it does not appear that the Legislature could require one of these officers to have a particular license or level of professional experience. It should be noted, however, that the Legislature has not established qualifications for most statutory officers who head departments.

Designating the Governor and Cabinet as department head might be an effective method for governing the large number of regulated entities in a merged department, but it could be argued that it would disperse accountability. Additionally, designating the Governor and Cabinet as head of a merged agency would bifurcate constitutional and statutory duties as the constitutional duties of the CFO cannot be reassigned by the Legislature. Further, assigning the Governor and Cabinet as agency head of a merged department would leave only one member of the Cabinet, the CFO, without a department with statutory duties related to his or her functions.

The elected officials specified in the State Constitution that may be designated as department heads are limited. The Governor has not been designated the head of an entity called a *department*, but has been designated the head of a statutorily-created office that arguably may be a department. Given this assignment, as well as other constitutional duties, naming the Governor as department head might be too burdensome. The Lieutenant Governor, historically, has not been designated by the Legislature as a department head, though a few Lieutenant Governors have been temporarily assigned this responsibility. It could be argued that the Lieutenant Governor might have more flexibility for such an assignment, and that the designation would fix as much accountability in the Governor as would an appointed secretary. The Attorney General and the Commissioner of Agriculture already head departments closely-aligned with their constitutional duties. Thus, they do not appear to be

strong choices to designate as head of a new department relating to financial affairs and insurance.

As a result, under the limited options available under the State Constitution, the remaining elected officer for consideration of a combined department is the CFO. Given that the constitutional duties of the Comptroller and Treasurer are merged by the State Constitution, the merger of their statutory duties and responsibilities would be consistent, especially in light of changes that are occurring in the industry.

Commissioner of Education - The amendment removes the elected Commissioner of Education from the Cabinet in 2003, but provides for the appointment of a Commissioner of Education by the State Board of Education. The composition of the State Board of Education is modified, as well. While the State Board of Education currently consists of the Governor and Cabinet, the future board will consist of seven members appointed by the Governor and confirmed by the Senate.

Two options relating to the educational governance system have been identified for legislative consideration. The first is to designate the State Board of Education as the head of the Department of Education. The second is to limit the jurisdiction of the State Board of Education to K-12 and designate another agency head. The type of authority and the level of autonomy each of the various educational boards has could be considered and modified under either option.

Education Option 1. As a board of gubernatorial appointees, the State Board of Education is a viable option for head of the Department of Education. On the other hand, the future Commissioner of Education does not appear to be an authorized choice as the position will be appointed by a board and not the Governor. The commissioner could serve as the executive director of the department, however.

Under the amendment, the State Board of Education will have jurisdiction over the system of *free* public education as provided by law. The addition of the word *free* does not appear to limit the ability of the Legislature to delegate broader jurisdiction to the board, however, as the State Constitution still provides that the jurisdiction of the board is *as provided by law*.

There are some issues that the Legislature may want to consider which might affect this choice. Specifically, as

the State Board of Education is created by the State Constitution, the ability of the Legislature to establish member qualifications may be questioned. The Florida Supreme Court has held that where the State Constitution specifies qualifications for a constitutional office, the Legislature may not add or otherwise change these requirements unless expressly or impliedly authorized to do so by the State Constitution. What is less clear from precedent is whether the Legislature may specify qualifications for a constitutional office when the State Constitution is silent on the issue.

The amendment does not establish member qualifications, but neither does it contain explicit language authorizing the Legislature to establish qualifications. Further, the amendment does not provide that members are to be chosen *as is provided by law*, which would provide the Legislature with some leeway. Implied authority to establish qualifications could be inferred by the lack of stated qualifications in the State Constitution, coupled with the ability of the Legislature to determine the jurisdiction and duties of the State Board of Education. On the other hand, it could be argued that, as the amendment provides only for gubernatorial appointment and Senate confirmation, the Legislature is limited to confirmation. Given these circumstances, the ability of the Legislature to establish qualifications for members of the future board is uncertain. A similar question is raised regarding the establishment of qualifications for the future Commissioner of Education, as well as the ability of the Legislature to confirm the appointee.

Education Option 2. In the alternative, the Legislature could limit the jurisdiction of the State Board of Education to K-12, much as the Board of Community Colleges and the Board of Regents are limited to specific jurisdictional areas. Where each board has only limited jurisdiction, however, no entity has administrative oversight or responsibility for coordinating the education system as a whole. As a result, under this option, an officer or board with oversight over the boards should be designated. Further, what level of authority this officer or board should have over the boards should be determined. Given the current structure of the department, that is, where some divisions are headed by boards and not the department head, the Legislature could designate a department head consisting of gubernatorial appointees selected from the State Board of Education, the State Board of Community Colleges, and the Board of Regents. The members of all of these boards are

already, or will be, gubernatorial appointees who are confirmed by the Senate.

Under either Option 1. or Option 2., the Legislature could review whether to strengthen the authority of the department head by limiting the authority of the divisions in the Department of Education that are headed by boards. Specifically, the Division of Community Colleges is not headed by the department head but by the Board of Community Colleges. Likewise, the Division of Universities is headed by the Board of Regents. While the current department head sits on both boards, the arrangement limits the authority of the department head over large portions of the public educational system, and disperses accountability. The Legislature has broad discretion under the State Constitution to establish the type of authority that each board is to have. As a result, the Legislature could create a stronger department head and narrowly define the authority of the State Board of Education, and the other statutory boards of the department, if desirable.

Secretary of State - The amendment will remove the Secretary of State from the Cabinet and will create a new undefined *custodian of state records*. Not all of the constitutional recordkeeping duties of the former Secretary of State are transferred to the new custodian, however, as language requiring the secretary to keep the records of the official acts of the legislative and executive departments was stricken. A number of specific documents still must be filed with the custodian under the amended constitution, however. As a result, the Legislature must determine the location where the official acts of the legislative and executive departments must be filed. Two options regarding the Department of State (DOS) present themselves for legislative consideration:

State Option 1. The first option is to maintain the status quo, except for cabinet functions. If the Legislature maintains the department, it must designate an agency head. While the Legislature is not prohibited from creating a statewide elected officer, the State Constitution does not authorize such an elected official to head a department. As noted previously, the choices available to the Legislature to head a department include the Governor, the Lieutenant Governor, a cabinet officer, the Governor and Cabinet, or an officer or board appointed by the Governor.

The standard choice for an agency head in the executive branch is an officer appointed by the Governor. Such an officer could still be assigned the

title of the “Secretary of State.” Alternatively, though not a traditional choice, the Lieutenant Governor could be designated as the department head. Some important functions of the Department of State and the Executive Office of the Governor (EOG), such as notaries and international trade, overlap. Given the importance of trade to the state, designation of the Lieutenant Governor as department head could bring added prestige to the position. The department head, whether a gubernatorial appointee or the Lieutenant Governor, could also be designated as the custodian of state records.

Under this option, the basic form of the Department of State, as well as the functions assigned to the department, could be maintained. Maintenance of the current structure of the department was adopted by the Senate in the Committee Substitute for Senate Bill 2142 during the 1999 legislative session, with one modification. The bill transferred the Division of Licensing, minus the games promotions program, to the Department of Business and Professional Regulation. The games promotions program was transferred to the Department of Agriculture and Consumer Services. These programs, as well as others, could still be transferred under Option 1.

There are a number of reasons supporting Option 1. Florida has had a Secretary of State in some form since the 1838 charter. While an appointed head of the department would not be the equivalent of a Cabinet office, maintenance of the position would provide for continuity of some of the duties of that office. Additionally, the position is a standard office in 47 of the 50 states. Additionally, based upon the location of certain functions within the office of the secretary of state in most other states, certain duties are typically considered to fall within the functions of that office. Further, the current Secretary of State, as well as departmental staff, have testified that officials of foreign governments recognize the title *Secretary of State* and, as a result, it is easier for the department to establish cultural exchanges and foster a more favorable business climate.

It could be argued that one of the strongest reasons for leaving records custodian functions, historical and cultural resource responsibilities, notaries, commercial registrations, and others in the DOS is that there is a longstanding structure in place for the performance of these functions. No new positions, offices, or divisions would need to be created in, or transferred to, another governmental entity if the DOS were continued. Given the potential for dramatic structural changes to

government in Florida in the wake of cabinet reorganization, departmental stability could be considered a high priority.

State Option 2. In the alternative, the Legislature could completely dismantle the DOS. Many of the functions currently housed in the department could be transferred to other departments or the EOG. This option would require the Legislature to reconsider the placement of many programs.

Specifically, under Option 2., it would be necessary to designate a custodian of state records and determine where this function should be housed. One option would be to designate the State Librarian as the custodian of state records and assign the State Library to the Department of Education. Regulatory functions that are currently housed in the Office of the Secretary of the Division of Administration could be placed in the EOG. For example, responsibilities related to trade, protocol, and some aspects of cultural affairs could also be placed within the EOG.

Functions within the Division of Elections also could be redistributed. The Florida Elections Commission is currently housed as an independent entity within the Department of Legal Affairs. Elections responsibilities could be placed within that department or be merged into the Commission. The Division of Elections is also responsible for publication of the Florida Administrative Weekly and the Florida Administrative Code. This responsibility could be placed within the Division of Administrative Hearings.

Further, some or all functions of the Division of Historical Resources and the Division of Cultural Affairs could be placed within the Department of Community Affairs, the Department of Environmental Protection, or the EOG. Functions of the Division of Corporations and the Division of Licensing could be placed in the Department of Business and Professional Regulation and the Department of Agriculture and Consumer Services.

While dismantling the Department of State and reassigning all of its programs to other agencies is possible, it would require a significant restructuring of state governmental programs and agencies and could be disruptive. Further, the need for a wide scale reorganization has not been established. As a result, the Legislature may prefer to maintain the department, but review programs within the department on an individual basis to determine if transfer is appropriate.

In conclusion, the adoption of Constitutional Amendment No. 8 presents the Legislature with the opportunity to significantly reshape state government. The Legislature has a great deal of discretion, within constitutional limitations, to decide how to restructure state government as a result of changes to the Cabinet. While numerous options are available for legislative consideration, the focus of this report is on issues that *must* be resolved as a result of the amendment, and not on changes that *may* be desirable for other reasons.

OPTIONS

Constitutional Amendment No. 8 merges the offices of the Comptroller and Treasurer into a Chief Financial Officer (CFO). The options identified in the report relating to the reorganization of the departments affected by this change include:

Option 1.A. - Merging the Department of Banking and Finance with the Department of Insurance and designating the Chief Financial Officer as the head of the merged department.

Option 1.B. - Merging the Department of Banking and Finance with the Department of Insurance and designating an officer or board *other than* the Chief Financial Officer as the agency head. Assigning no statutory duties to the Chief Financial Officer.

Option 2.A. - Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating an officer or board *other than* the Chief Financial Officer as the head of each department. Assigning no statutory duties to the Chief Financial Officer.

Option 2.B. - Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating the Chief Financial Officer as the head of only one department. Designating another officer or board as agency head for the remaining department.

In those instances when the CFO is not the head of the DBF, the DOI, or a merged department, the Legislature also must consider whether an elected officer or board or an appointed officer or board should be the head of a department. Finally, in any of the options above, the

Legislature also could choose to bifurcate executive responsibilities by creating an independent commission or commissions to perform some statutory duties currently assigned to a department.

Further, Amendment No. 8 eliminates the Commissioner of Education from the cabinet and provides that the new Commissioner of Education will be appointed by the State Board of Education. The amendment modifies the composition of this board by making its members gubernatorial appointees. Identified options include:

Option 1. - Designating the State Board of Education the head of the Department of Education, delegating the board jurisdiction of secondary and postsecondary education, and providing the Commissioner of Education is the executive director of the department.

Option 2. - Limiting the State Board of Education to K-12 and designating the board as the head of a division within the Department of Education. Designating the Commissioner of Education as the executive director.

In either option presented above, the Legislature may wish to consider whether the current level of autonomy provided to statutory boards, such as the Board of

Regents and the Board of Community Colleges, should be retained or if more authority should be directed toward the head of the Department of Education.

Finally, Constitutional Amendment No. 8 also eliminates the Secretary of State from the Cabinet and provides for an undefined custodian of state records. The report identifies two options for consideration:

Option 1. - Maintaining the Department of State and designating an appointed officer or board as the Secretary of State. In the alternative, designating the Lieutenant Governor as the secretary of the Department of State. Providing that the head of the Department of State is the custodian of state records.

Option 2. - Eliminating the Department of State and placing its functions in a number of agencies.

Within constitutional limitations, the Legislature has numerous options available to it for consideration. This report does not present every available option, but only presents a few of the available choices for legislative review.

COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

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MEMBER OVERSIGHT

Senators Jack Latvala and Tom Rossin