



# The Florida Senate

Interim Project Report 2003-109

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Committee on Banking and Insurance

Senator James E. "Jim" King, Jr., President

## THE OFFICE OF THE CHIEF FINANCIAL OFFICER AND THE TRANSFER OF THE DEPARTMENT OF INSURANCE AND THE DEPARTMENT OF BANKING AND FINANCE TO THE DEPARTMENT OF FINANCIAL SERVICES

### SUMMARY

The Office of the Chief Financial Officer (CFO) and the Department of Financial Services (DFS) are created, effective January 7, 2003. The act creating the new department outlined its regulatory authority but did not make conforming changes to the Florida Statutes and did not allocate the number of positions transferred to the new agency, which legislative staff and a transition committee were directed to address.

Staff recommends that conforming legislation maintain the current statutory organization of the insurance and financial codes, but to use the terms *office* (meaning either Office of Insurance Regulation or Office of Financial Institutions and Securities Regulation), *commission* (Financial Services Commission), and *department* (DFS) for matters within their respective jurisdiction. Other recommendations include: merging chapter 17 (Treasurer) and chapter 18 (Comptroller) into a single chapter prescribing the constitutional duties of the CFO; authorizing OIR to make the determination that an insurer has been rendered insolvent and to petition a court for an order appointing DFS as receiver; providing general enforcement powers to both DFS and OIR; and specifying authority of OIR and/or DFS to enforce unfair insurance trade practice violations by unlicensed persons. The Legislature should also consider whether the role of the Division of Consumer Services should be addressed in statute; should review all appointment authority of the CFO; and consider application to the commission members of the campaign contribution limitations and financial interest prohibitions applicable to the Treasurer and Comptroller.

### BACKGROUND

#### *Chief Financial Officer; House Bill 3-E (2002)*

In 1998, the voters of Florida approved the 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. 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.

The Legislature, by general law, designated the Comptroller as head of the Department of Banking and Finance, and designated the Treasurer as the Insurance Commissioner (head of the Department of Insurance) and as the State Fire Marshal. These statutory duties needed to be reassigned after passage of the constitutional amendment. House Bill 3-E ("the act"), passed in the 2002 Legislative Special Session "E" and signed by Governor Bush on June 12, 2002, (ch. 2002-404, L.O.F.), reassigned the statutory duties of the Comptroller and Treasurer to the newly created Department of Financial Services, headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet, effective January 7, 2003. The act created s. 20.121, F.S., which prescribes, in general terms, the organizational structure and regulatory duties of the department and commission. The act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new department and commission. However, the act did not make conforming changes to the Florida Statutes and did not allocate the number of positions or the specific appropriations for the various regulatory functions, which legislative staff and a transition committee were directed to address.

### ***Department of Financial Services***

The act created the Department of Financial Services (DFS) headed by the CFO, consisting of the following divisions:

- Accounting and Auditing (which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity)
- State Fire Marshal
- Risk Management
- Treasury (which includes the Bureau of Deferred Compensation)
- Insurance Fraud
- Rehabilitation and Liquidation
- Insurance Agents and Agency Services
- Consumer Services (which includes the Bureau of Funeral and Cemetery Services)
- Workers' Compensation
- Administration
- Legal Services
- Information Systems
- Office of Insurance Consumer Advocate

### ***Financial Services Commission***

The act created the Financial Services Commission ("commission") within DFS. The commission consists of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, i.e., the Governor and Cabinet, as constituted on January 7, 2003. Three votes are required for any commission action. The act provides:

*The commission shall be a separate budget entity and shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters. [s. 20.121(3), F.S.]*

Two "Offices" are created under the commission:

- The Office of Insurance Regulation
- The Office of Financial Institutions and Securities Regulation

Each office is headed by a director who is appointed by, and serves at the pleasure of, the commission, with a requirement that both the Governor and the CFO must concur in appointment and removal.

That act provides that the Office of Insurance Regulation (OIR):

*... shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct,*

*claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision of insurers, as provided in the Florida Insurance Code or ch. 636. [s. 20.121(3)(a)1., F.S.]*

The act provides that the Office of Financial Institutions and Securities Regulation (OFISR):

*....shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. [s. 20.121(3)(a)2., F.S.]*

The OFISR duties quoted above encompass all of the statutory responsibilities previously delegated to the Department of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all assigned to the Department of Financial Services.

The commission and the directors of each office (OIR and OFISR) share responsibility for final agency action. The commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S., while the directors are each agency head for (other) final agency actions under ch. 120 for all areas within the regulatory authority of their office.

### ***Committee of Transition Management; Draft Legislation***

The act created the Committee of Transition Management ("Transition Committee"), with one member each appointed by the Governor, the Comptroller, the Treasurer, the chair of the Senate Appropriations Committee, and the chair of the House Fiscal Responsibility Council. The committee was charged with overseeing the transition of the affected agencies and to provide a written report specifying the placement of those positions that are transferred, submit to the commission a proposed organization plan, and provide written recommendations by February 1, 2003, as to statutory changes to facilitate the operations of the department. The act further directed the relevant substantive committees of the Senate and the House to prepare draft legislation to conform the Florida Statutes to the act.

## **METHODOLOGY**

Committee staff monitored the meetings of the Transition Committee. The Division of Statutory Revision provided copies of all Florida Statutes that use relevant terms (Treasurer, Comptroller, etc.). Committee staff worked with staff of the House Council for Competitive Commerce and the House Banking Committee to review each reference to determine what change is necessary to conform to the act and to prepare draft legislation. This report focuses on the issues raised in drafting conforming legislation, and highlights the major issues addressed by the Transition Committee.

## **FINDINGS**

### ***Transition Committee - Organizational Issues***

At the time of this report, the Committee on Transition Management had not yet submitted a final report or a proposed organizational plan to the commission. One main issue is the degree of autonomy that should be provided to the commission and its two offices. The act provides that the commission “shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.” But, the act also provides that the department shall provide administrative and information systems support to the offices, and that the commission has the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability. This raises issues of whether the commission, separate from the department, should have its own administrative offices, such as budgeting, personnel management, financial and support services, communications, and legislative affairs. But, if these functions are put under the commission, it is problematical how to organize these functions in relation to the directors of each of the two offices under the commission. Administrative personnel would either have to report to, and be hired by, the director of each office, or report to, and be hired by, the Governor and Cabinet sitting as the commission. The latter option would seemingly require the commission to have an executive director or similar position, but the act did not specify any such position. If efficiency and minimizing positions are goals that take precedence over concerns for independence of the commission, administrative functions would be centralized under the department.

Another primary task is the appropriate allocation of current positions. For the Department of Insurance, the

positions in the divisions assigned to DFS, in general, would need to be transferred to DFS, and the positions in the Division of Insurer Services (which regulates insurers, rates, and forms) would be transferred to OIR. But, certain areas require analysis of workload, particularly the attorneys in DOI’s Division of Legal Services, who must be divided between DFS and OIR. Also, those persons in the Division of Agent and Agency Services responsible for licensure of adjusters would need to be assigned to OIR. The transition committee debated the issue of the allocation of employees for the licensure of securities dealers, currently in DBF. The act delegated authority to OFISR for all activities of the securities industry. But, the Department of Insurance argued that for reasons of efficiency, this function should be performed by the Division of Agent and Agency Licensing in DFS, claiming that most of the functions were administrative and data processing.

The commission is expected to hire the directors of OIR and OFISR shortly after the commission (Cabinet) takes office on January 7, 2003. Soon after that, the commission is expected to take action on the organizational recommendations of the transition committee, which will also be presented to the Legislative Budget Commission in January.

### ***Conforming Legislation***

All statutory authority currently delegated to the Treasurer, Comptroller, Insurance Commissioner, Department of Insurance, and Department of Banking and Finance, must be re-assigned to the CFO, DFS, commission, OIR, or OFISR, consistent with section 20.121, F.S. Insurance regulation requires the closest analysis, given the division of authority between DFS (headed by the CFO) and OIR (headed by a director appointed by the commission). Statutory power currently delegated to DOI must be assigned to either DFS or OIR, but certain general powers may need to be provided to both.

The statutes must also conform to the designation of the commission as agency head for rulemaking for matters within the jurisdiction of OIR and OFISR. One option is to use the term, “commission,” wherever a statute currently authorizes DOI or DBF to adopt a rule. But, some statutes do not expressly require a rule, yet require an agency to take action that needs to be done by rule. This requires judgment calls as to which statutory duties must be done by rule. The other drafting option is to use the term, “office” (meaning either OIR or OFISR, as appropriate), in *all* instances where agency action is statutorily authorized, including

rulemaking, as long as it is otherwise made clear that all rules must be adopted by the commission. This avoids the need to make judgment calls, but it could be interpreted as allowing OIR or OFISR to independently adopt rules or, at best, would be misleading. The Legislature's express distinction between the authority of the commission and the directors of each office argues for clarifying this authority in each affected statute.

The CFO is agency head of DFS for all purposes. Therefore, using the term "department" is appropriate for all statutory powers assigned to DFS. However, the term "Chief Financial Officer" is more appropriate if the duty is derived from the constitutional authority of the office itself (for which the statutes generally refer to the "Comptroller" or "Treasurer") or if the duty is personal in nature, such as appointment powers or serving as a member of a board or commission.

***Statutory Jurisdiction of the CFO and the Department of Financial Services***

Currently, ch. 17, F.S., prescribes the duties of the Comptroller regarding the accounting and auditing of state funds, and ch. 18, F.S., prescribes the duties of the Treasurer regarding the holding, investing, and payment of state funds. These two chapters address the core constitutional duties of the two offices, which must be consolidated and revised to apply to the CFO. The current law provides that the Comptroller approves the expenditure of funds, which triggers the duty of the Treasurer to issue payment. This procedure must be revised to apply solely to the CFO, who will both approve and issue payment. A certain degree of cross-agency accountability is necessarily lost by virtue of the merger of the two offices, but the statutory requirement for DFS to have both a Division of Treasury (formerly under the Treasurer) and a Division of Accounting and Auditing (formerly under the Comptroller) provides a means for intra-agency accountability. For example, s. 18.08, F.S., currently requires that the Treasurer turn over to the Comptroller all warrants drawn by the Comptroller and paid by the Treasurer. Rather than being repealed, this could be revised to require the Division of Treasury to turn over to the Division of Accounting and Auditing all warrants drawn by the CFO and paid by the Division of Treasury.

The act delegates certain insurance and Fire Marshal duties to DFS by virtue of the names of the divisions assigned to DFS and the omission of insurance powers expressly delegated to OIR. Each division of DFS is listed below, followed by the major statutory jurisdiction which is reasonably included:

- Accounting and Auditing:
  - Accounting, auditing, and approving payment of state funds (ch. 17, F.S.); general financial powers of Comptroller (e.g., chs. 215, 216, 287, F.S.)
  - Administration of the unclaimed property program (ch. 717, F.S.)
- State Fire Marshal
  - Regulate installation of fire equipment, conduct safety inspections, investigate causes of fires, provide firefighter training and certification, adopt safety rules for firefighter employers and fire codes for specified buildings (ch. 633, F.S.); license and permit the manufacture and use of explosives (ch. 552, F.S.); regulate the sale of fireworks (ch. 791, F.S.)
- Risk Management
  - Administer the state's risk management program for property, auto, liability, and workers' comp. (ch. 284, F.S.; ss. 263.53-263.55, 393.002, 393.075, 409.175, 766.28, F.S.)
- Treasury
  - Coordinate and direct the keeping of all state funds and securities, disburse payment of state funds, and invest surplus state funds collected by state agencies (ch. 18, F.S.)
  - Approve financial institutions as public depositories (ch. 280, F.S.)
  - Administer the deferred compensation program for state employees (s. 112.215)
- Insurance Fraud
  - Investigation and arrest of insurance fraud crimes (ss. 626.989, 626.9892, F.S.)
- Rehabilitation and Liquidation
  - Acting as receiver, liquidator, or rehabilitator of an insurer, HMO, or other entity regulated by OIR to which the provisions of ch. 631 apply; approval of plans of operation and oversight of insurance guaranty associations (relevant sections of ch. 631, et al.)
- Insurance Agents and Agency Services
  - Licensure and regulation of insurance agents and agencies, customer representatives, service representatives, reinsurance intermediaries, and bail bond agents (applicable provisions of chs. 626 and 648, F.S.);
- Consumer Services

- Receive inquiries and complaints from consumers, provide assistance for consumers, and prepare and disseminate information about regulated products and services; (no specific statutory authority)
- Bureau of Funeral and Cemetery Services - licensure and regulation of cemeteries and pre-need funeral and burial contracts (ch. 497, F.S.)
- Workers' Compensation
  - Administer the workers' compensation act: enforce employer compliance, monitor carrier compliance; and assist employees with obtaining compensation (ch. 440, F.S.)
- Office of Insurance Consumer Advocate
  - Represent the general public in any insurance matter or hearing (s. 627.0613, F.S.)
- Administration (no specific statutes)
- Legal Services (no specific statutes)
- Prepaid limited health service organizations (ch. 636, F.S.)
- Health maintenance organizations (ch. 641, part I., F.S.)
- Prepaid health clinics (ch. 641, part II, F.S.)
- Legal expense corporations (ch. 642, F.S.)
- Continuing care facilities (ch. 651, F.S.)
- Financial and market conduct examinations of insurers (ss. 624.316, 624.3161, 627.4238, F.S.)
- Administrative supervision of insurers (ss. 624.80-624.915, F.S.)
- Powers regarding accounting, investments, and deposits of insurers (ch. 625, F.S.)
- Licensure and regulation of insurance adjusters (ch. 626, part VI, F.S.)
- Approval of eligible surplus lines insurers (ss. 626.913-9201, F.S.)
- Regulation of rates for property and casualty insurance, approval of rating organizations, and ordering returns of excess profits (ss. ch. 627, part I, F.S.)
- Approval of plans of operation and regulation of joint underwriting associations (not including appointment of board members), including Citizens Property Insurance Corporation, the Florida Patient's Compensation Fund, and the Florida Birth-Related Neurological Injury Compensation Association, and adoption of a market assistance plan (ss. 627.311, 627.351, 627.3515, 766.105, and 766.314, F.S.)
- Approval of insurance policy forms and health insurance rates (ss. 627.410-627.4234, F.S.)
- Regulation of donor annuity agreements (s. 627.481, F.S.)
- Licensure and regulation of premium finance companies and agreements (ch. 627, part XV, F.S.)
- Receiving reports of claims information from insurers (ch. 627, part XVII, F.S.)

### ***Statutory Jurisdiction of OIR***

The act provides that OIR is responsible for all activities concerning insurers and other risk bearing entities. There is no statutory definition of *risk bearing entities*, but the Florida Insurance Code requires licensure or certification of various entities which provide a type of *insurance* as that term is defined in s. 624.02, F.S. The major statutory jurisdiction and duties of OIR would reasonably include the following, as formerly delegated to the Department of Insurance:

- Issuance of certificates of authority or licenses to, and regulation of:
  - Authorized insurers (ss. 624.401-430, F.S.), including domestic insurers, assessable mutual insurers, insurance holding companies, captive insurers (ch. 628, F.S.), and reciprocal insurers (ch. 629, F.S.)
  - Multiple-employer welfare arrangements (ss. 624.436-624.446, F.S.)
  - Commercial self-insurance funds (ss. 624.460-624.488, F.S.)
  - Viatical settlement providers (ss. 626.991-626.99295, F.S.)
  - Purchasing groups and risk retention groups (ss. 627.941-627.955)
  - Fraternal benefit societies (ch. 632, F.S.)
  - Warranty associations (motor vehicle, home, and service) (ch. 634, F.S.)

### ***Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps***

Even though the act is clear on most jurisdictional issues, certain areas may be unclear, pose difficult problems in conforming the statutes, or raise policy concerns, as discussed below.

*Receivership proceedings* - The act delegates to OIR the responsibility for all Insurance Code activities concerning insurers, including solvency and administrative supervision. But, DFS is assigned the Division of Insurer Rehabilitation and Liquidation.

This indicates the Legislature's intent that OIR make the determination that a carrier has been rendered insolvent and to petition a court for an order to appoint a receiver to liquidate the insurer's assets, but that DFS be appointed as the receiver and handle the receivership from that point forward. The related powers of DOI in ch. 631, F.S., must be carefully reviewed and amended accordingly. A related management decision is whether attorneys employed by DFS or OIR go to court to seek the receivership order. Authorizing DFS to approve plans of operation and oversee the operations of the various insurance guaranty associations appears consistent with its jurisdiction.

*Service of Process* - The Insurance Commissioner is the agent for service of process for various persons in the insurance arena. A distinction could be made to make the Director of OIR and the CFO each agents for service of process for persons related to each one's jurisdiction. But it may be preferable to have one office for service of process, given its ministerial nature and for reasons of efficiency and minimizing confusion.

*General Powers* - Section 624.310, F.S., provides powers to DOI to issue cease and desist orders against persons who violate the Insurance Code and to order the removal of affiliated parties under certain circumstances. This statute is a key example of a general enforcement power that would need to be provided to both DFS and OIR over the persons they each regulate. Rather than re-create duplicate statutes, the current law could be amended to apply to both DFS and OIR, as long as it is clear that each agency's power is limited to its respective regulatory jurisdiction.

*Administrators and Service Companies* - The act provides for OIR to regulate risk-bearing entities and insurance adjusters and for DFS to regulate insurance agents (by virtue of DFS being assigned the Division of Agent and Agency Services). However, the regulation of administrators and service companies (ss. 626.88-626.899, F.S.) is not clearly in either category. An administrator is a person who solicits or effects coverage, collects premiums, or adjusts or settles claims, in connection with insured or self-insured programs which provide life or health coverage. A service company performs these same functions but does not control funds. Neither appears to be a "risk-bearing entity" and both perform functions similar to an agent, which argues for regulation by DFS. But, both are currently licensed under DOI's Division of Insurer Services and perform functions similar to an insurance adjuster, which argues for regulation by OIR.

*Viatical settlement brokers*: Unlike viatical settlement providers who are risk assuming entities, viatical settlement brokers are similar to insurance agents. Even though the act assigned regulation of insurance agents to DFS, the act also assigned regulation of "viatical settlements" to OIR, which appears to include both brokers and providers.

*Unfair Insurance Trade Practice Violations* - Section 626.9541, F.S., lists various prohibited acts, commonly known as unfair insurance trade practices. In some cases, this law applies to persons who are not licensed by DOI, but DOI is authorized to take enforcement actions relative to such persons. For example, it is unlawful for any person to offer free insurance as an inducement to the purchase of property or services. Also, physicians are prohibited from filing false claims with insurers. With insurance jurisdiction split between DFS and OIR, it may not be clear where the authority lies to pursue a given violation.

*Division of Consumer Services* - The act assigned to DFS the Division of Consumer Services (which existed under DOI), but there is no current statute that cites this division or specifies its powers. Based on past practice, this division would receive inquiries and complaints from consumers, request insurers to submit a written response, and attempt to resolve the complaint. The division also prepares and disseminates information as to insurance products or services. But, any sanctions against insurers that arise from consumer complaints or otherwise would appear to be within the authority of OIR. It may be appropriate for the Legislature to specify this division's role.

*Statewide Provider and Subscriber Assistance Program* (s. 408.7056) - Current law establishes a panel to assist subscribers who have unresolved grievances with managed care entities. The panel includes employees of DOI and the Agency for Health Care Administration (among others). The panel holds hearings and makes recommendations to either DOI or ACHA for imposing any sanctions against the managed care entity. It may be unclear whether employees of OIR, which assumes DOI's duties of regulating HMOs, or employees of DFS, which is assigned the Office of Insurance Consumer Advocate, or both, should be on the panel. Until further addressed by the Legislature, this may be an "appointment" by the Insurance Commissioner that the CFO is authorized to make until June 30, 2003. (See, Membership and Appointments to Boards and Commissions, below.)

*Monitoring of Workers' Compensation Insurers* - The act placed the Division of Workers' Compensation under DFS, but made OIR responsible for "market conduct examinations" of insurers. When a prior act transferred this division from the Department of Labor and Employment Security (DLES) to the Department of Insurance, s. 440.20, F.S., was amended to require that market conduct examinations of workers' compensation insurers be conducted pursuant to the applicable provisions of the Insurance Code. However, certain provisions authorize DOI (and previously authorized DLES) to monitor carrier payments and to fine insurers for late payments. One option is to authorize OIR to conduct market conduct examinations of workers' compensation insurers, but to retain authority for DFS to monitor carrier payments and performance, similar to the authority formerly provided to DLES.

*Authorization of employers to self-insure for workers' compensation* - The authority for OIR to regulate "risk assuming entities" and for DFS to assume the responsibilities of the Division of Workers' Compensation raises the question of which office should approve employers to be self-insured for workers' compensation coverage (including public utility self-insurance programs) under s. 440.38, F.S. This was formerly done by the Division under DLES, which argues for this task to be assumed by the same division under DFS. This is also supported by the argument that a single employer, unlike a group self-insurance fund, is not assuming the risk of any other party, only its own risk. Similarly, DFS would assume the oversight responsibilities of the Division with respect to the Florida Self-Insurers Guaranty Association, which guarantees payment of workers' compensation claims for insolvent self-insured employers, which was also the responsibility of the Division under DLES. Plus, the oversight role over all insurance guaranty funds appears to be within the scope of DFS's Division of Rehabilitation and Liquidation.

#### ***Statutory Jurisdiction of OFISR***

The following areas were regulated by the Department of Banking and Finance and are now reasonably within the jurisdiction of OFISR:

- Certified Capital Companies (s. 288.99, F.S.)
- Mortgage Brokers, Lenders and Mortgage Companies (ch. 494, F.S.)
- Consumer Finance Companies (ch. 516, F.S.)

- Securities Registration and Securities Dealers, Investment Advisers, and Associated Persons (ch. 517, F.S.)
- Retail Installment Sales Providers (motor vehicle installment sellers, retail installment sellers, sales finance companies and home improvement finance sellers; ch. 520, F.S.)
- Title Loans (ch. 537, F.S.)
- Collection Agencies (ch. 559, parts V and VI, F.S.)
- Money Transmitters (including check cashers, foreign currency exchanges, and deferred presentment provider; ch. 560, F.S.)
- Financial Institutions (ch. 655, F.S.)
- Credit Unions (ch. 657, F.S.)
- Bank and Trust Companies (ch. 658, F.S.)
- Trust Business (ch. 660, F.S.)
- International Banking (ch. 663, F.S.)
- Associations (ch. 665, F.S.)
- Savings Banks (ch. 667, F.S.)
- Interest and Usury; Lending Practices (ch. 687, F.S.)

#### ***Membership and Appointment to Boards and Commissions***

The act provides legislative intent that from January 7 until June 30, 2003, the CFO is to make all appointments to boards, commissions, etc., that were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal. A conforming bill must delegate continuing appointment authority for each of these boards and commissions. The Legislature must determine whether the CFO should appoint only one member in those cases where the Treasurer and Comptroller each appointed a member, and consider whether any appointments should be made by a different officer, such as the director of OIR, that has a closer jurisdictional tie to a particular commission than the CFO. Currently, employees of the Department of Insurance are designated as members of certain boards or councils. The Legislature must now determine whether an employee of DFS or OIR should be a member, regardless of whether the CFO continues to make the appointment.

Some boards and commissions, such as the Administration Commission (s. 14.202, F.S.) reference "the Governor and Cabinet" as members, which will be reduced from seven to four members by virtue of the Constitutional amendment. But, this statute requires approval of the Governor and at least *three* other members, which would now require a unanimous vote,

unless amended. Other statutes name the former Cabinet members by their *office* as board members, such as s. 253.02, F.S., for the membership of the Board of Trustees of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund. In this case, the Legislature may want to delete reference to the Secretary of State and the Commissioner of Education, and would further need to consider changing the current requirement for a “two-thirds” vote for certain actions (s. 253.034, F.S.).

Presumably, the Legislature would also want to delete the Secretary of State and the Commissioner of Education from the line of succession to the office of the Governor, in the event of death (s. 14.055, F.S.)

***Campaign Contribution Limitations; Financial Interests***

Section 627.0623, F.S., prohibits insurers and their officers and affiliates from making a campaign contribution in excess of \$100 to the Treasurer or any candidate for that office and prohibits any employee of the DOI from soliciting a campaign contribution for the Treasurer or any candidate for that office from any insurer or affiliate. Similarly, s. 655.019, F.S., prohibits any financial institution which is licensed pursuant to chapters 655-665, F.S., and its officers and affiliates from making a campaign contribution in excess of \$100 to the Comptroller or any candidate for that office, and prohibits any employee of the DBF from soliciting a campaign contribution for the Comptroller or any candidate for that office from any licensee or person who has an application pending for licensure. These prohibitions would not apply to the office of the Chief Financial Officer or employees of the Department of Financial Services. Comments made by bill sponsors indicated that such restrictions would no longer be necessary, since the primary insurance and banking regulation would be under professional appointees (directors of OIR and OFISR), rather than elected officials. Repealing these laws would be consistent with this intent. Reenactment of an amended law would require the Legislature to consider applying similar restrictions to the Governor and each Cabinet officer, given the Commission’s power to adopt rules and to appoint the directors of OIR and OFISR.

Another law, s. 624.305, F.S., prohibits the Insurance Commissioner and Treasurer and any employee of DOI from having any financial interest in any insurer or insurance agency, except as a policyholder or claimant, or from receiving any outside compensation for services rendered as a department employee. The Legislature must determine whether the current

restrictions should be repealed or amended to apply to the commission members (the Governor and Cabinet), given the commission’s power to adopt rules and to appoint the director of OIR. If the restrictions are applied to all DFS and OIR (but not OFISR) employees, it may be appropriate to allow an extended time to comply for employees who were not previously subject to this law.

**RECOMMENDATIONS**

It is recommended that the Legislature:

- Review the organizational charts approved by the commission to determine that the appropriate level of independence has been provided to the commission and that adequate resources have been provided to OIR and OFISR.
- Maintain the current statutory organization of the insurance and financial codes, but substitute the term, *office* (defined as either OIR or OFISR) for *department* for matters within the jurisdiction of each office; use the term, *commission*, for rulemaking authority within the jurisdiction of OIR or OFISR; and continue to use the term, *department*, re-defined as DFS, rather than DOI or DBF, for matters within the jurisdiction of DFS.
- Merge chapter 17 (Treasurer) and chapter 18 (Comptroller) into a single chapter prescribing the constitutional duties of the Chief Financial Officer.
- Authorize OIR to make the determination that an insurer has been rendered insolvent and to petition a circuit court for an order to appoint DFS as receiver.
- Substitute the CFO for the Insurance Commissioner as agent for service of process in all cases.
- Provide general enforcement powers (e.g., cease and desist powers of s. 624.310, F.S.) to both DFS and OIR, but limited to their respective jurisdiction.
- Determine whether OIR or DFS should regulate administrators and service companies.
- Consider whether the role of the Division of Consumer Services should be addressed in statute.
- Specify authority of OIR and/or DFS to enforce unfair insurance trade practice violations by unlicensed persons.
- Review all appointments made by the CFO to determine whether appointments should be made by a different officer and whether employees of OIR or DFS should be members.
- Consider application to the commission members of the campaign contribution limitations to the Treasurer and Comptroller and the financial interest prohibitions applicable to the Insurance Commissioner.