



The Florida Senate

Interim Report 2010-212

December 2009

Committee on Commerce

AGENCY SUNSET REVIEW OF THE DIVISION OF CORPORATIONS OF THE DEPARTMENT OF STATE

Issue Description

Sections 11.901-11.920, F.S., are known as the Florida Government Accountability Act (act). Under this act, most state agencies are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

The sunset review process for the Department of State (DOS) began in July 2008, when the department submitted its statutorily mandated agency report. The Senate Commerce Committee is the primary sunset review committee for review of the Division of Corporations (division) within the Department of State. The Senate Transportation and Economic Development Appropriations Committee is assisting in this review. Recommendations and proposed legislation from this review must be submitted to the Legislature by March 1, 2010, for its consideration during the 2010 Regular Session.

In 2008, the Senate Commerce Committee recommended in its Issue Brief 2009-308 that the committee conduct further research to:

- Evaluate the efficacy of transferring some or all of the responsibilities of the division to the Department of Revenue;
- Re-evaluate the feasibility, value, and associated costs of implementing a Master Business Index; and
- Evaluate consolidating the responsibilities related to administration of the notary public commissioning process either within the division or within the Executive Office of the Governor (EOG).

The Office of Program Policy Analysis and Government Accountability (OPPAGA) conducted a study to assess the first two aforementioned recommendations¹ and the third recommendation, concerning the consolidation of administration of the notary public commissioning process, is addressed in this report.

Background

Sunset Review

Sections 11.901-11.920, F.S., are known as the Florida Government Accountability Act (act). Under this act, most state agencies² and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

Sunset reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- Agency complaint process;

¹ See attached Appendix.

² See s. 11.905, F.S., for the schedule of review for certain state agencies and advisory committees. Not mentioned in the schedule of review is the Department of Military Affairs.

- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;
- Compliance with statutory objectives for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;
- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;
- The process by which an agency actively measures quality and efficiency of services it provides to the public;
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and
- Other information requested by the Legislature.

Second, upon receipt of the agency information, the Joint Legislative Sunset Review Committee and the legislative committees assigned to act as sunset review committees must review the information submitted and may request studies by OPPAGA.

Third, based on the agency submissions, OPPAGA studies, and public input, the joint committee and the legislative sunset review committees will:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

The legislative sunset review committees also propose legislation necessary to carry out the committees' recommendations.

The Legislature then considers the recommendations and the proposed legislation. An agency subject to review will be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The sunset review process for the Department of State (DOS) began in July, 2008, when the department submitted its statutorily mandated agency report. The Senate Commerce Committee is the primary sunset review committee for review of the Division of Corporations (division) within the Department of State. The Senate Transportation and Economic Development Appropriations Committee is assisting in this review. Recommendations and proposed legislation from this review must be submitted to the Legislature by March 1, 2010, for its consideration during the 2010 Regular Session.

Evaluation Method

Based upon statutory directives and a review of previous sunset reports, Senate staff has developed the following guidelines to be used in a preliminary and subsequent review of the agencies, their programs, and their advisory committees. Guidelines include:

- What is the mission of the agency?
- Why is the agency performing this mission?
- How are the programs of the agency funded?

- What would be the impact to public health, safety and welfare should the programs be eliminated or modified?
- What duplication of programs exists within the agency or by other agencies or governments?
- Can these agency programs be provided more efficiently?
- What initiatives has the agency undertaken to increase program efficiency?
- Are there management tools in place to appropriately measure program performance?

Guidelines for agency advisory committees include:

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency if the advisory committee were abolished?
- Is the advisory committee representative of the public and stakeholders impacted by its actions?

Purpose of Interim Project 2010-212

In 2008, the Senate Commerce Committee's Issue Brief 2009-308³ provided an overview of the division by describing the division's mission, various programs, funding, efficiency initiatives, and management tools. The Issue Brief also included a recommendation for further research to:

- Evaluate the efficacy of transferring some or all of the responsibilities of the division to the Department of Revenue;
- Re-evaluate the feasibility, value, and associated costs of implementing a Master Business Index; and
- Evaluate consolidating the responsibilities related to administration of the notary public commissioning process either within the division or within the Executive Office of the Governor (EOG).

OPPAGA conducted a study to assess the first two aforementioned recommendations⁴ and will offer options and recommendations by February 2010. The third recommendation, concerning the consolidation of the administration of the notary public commissioning process, is examined in this report.

Notaries Public

Background

Notaries public are referenced in the State Constitution as public officers, which are to be commissioned by the Governor.⁵

A notary public has been defined as a

public officer whose function it is to attest and certify, by his or her hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgements of and certify deeds and other conveyances, and to perform certain official acts, chiefly in commercial matters.⁶

Simply stated, a notary public verifies the identities of individuals involved in legal transactions and is the gatekeeper for preventing fraudulent transactions.⁷ In Florida, there are two types of notaries: notaries public and

³ Issue Brief 2009-308 is available at

http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-308cm.pdf.

⁴ See attached Appendix.

⁵ See Fla. Const. art. II, s. 5, and art. IV, s. 1. Note: Notaries public differ from other types of public officers (e.g. legislators, law enforcement, clerks of court). For example, notaries are not eligible for the same types of benefits and protections provided for public officers under chs. 111 and 112, F.S.

⁶ 66 C.J.S. *Notaries* s. 1 (2009); see also *Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a "person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments." BLACK'S LAW DICTIONARY (8th ed. 2004).

⁷ For a current example of this gatekeeper role, see: Industry News, *Mortgage Fraud: Notaries on Front Lines of Defense*,

civil-law notaries. Chapter 117, F.S., provides for the appointment and commissioning of notaries public and ch. 118, F.S., provides for the appointment of civil-law notaries.⁸ The main distinctions between notaries public and civil-law notaries are that civil-law notaries must be attorneys and may issue “authentic acts,” which are more likely to be legally recognized by a foreign country than notarizations by notaries public.

The Division of Elections within the DOS has historically administered the notary section. Administration of the notary section was transferred to the Office of International Affairs, within the DOS, in 1999 or 2000.⁹ In 2002, administration of the notary section was transferred to the Office of Tourism, Trade, and Economic Development (OTTED), within the Executive Office of the Governor (EOG). In 2003, administration of the notary section was transferred to the Division of Corporations (division), within the DOS, while the EOG retained certain responsibilities.

Today, the EOG’s notary section is responsible for appointing, investigating, and educating notary public applicants. The EOG also has the discretion to suspend notary public commissions. The division is responsible for processing notary public applications, approving and recording a required \$7,500 bond, issuing notary public commissions and certificates of notarial authority, and recording the results of actions taken by the EOG against a notary public. The division notes that “[c]oordination between the Division and the Governor’s Office is essential in carrying out the duties and responsibilities of the notary public program.”¹⁰

The division reported that in FY 2008-09, there were 101,848 notary public commissions (including renewals) and 95 civil-law notary renewals.¹¹ In FY 2008-09, 246 applicants were not granted a commission by the EOG.¹² The division has also reported that as of September 2009, there are 440,503 notary public commissions and 95 civil-law notary appointments active in Florida.¹³

Legal Qualifications for Florida Notaries Public

Section 117.01, F.S., requires notary public applicants to meet certain legal qualifications prior to being commissioned by the Governor. These legal qualifications require an applicant to:

- Be at least 18 years of age;
- Be a legal resident of the state and maintain such residency throughout his or her 4-year term of appointment;
- Be able to read, write, and understand the English language;
- Complete an application form prescribed by the DOS¹⁴;
- Submit to the division an affidavit of good character from someone unrelated to the applicant and who has known the applicant for 1 year or more;

June 6, 2005, available at

<http://www.valuationreview.com/ME2/Audiences/dirmod.asp?sid=63BC7A7A20BC48EEBDBC08290841922B&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=EB053935DAFF4A1999982B1489DD342A&tier=4&id=ABAA9AC8E84A4DB49D7B2964FF6166FC&AudID=The%20Legal%20Description>.

⁸ Section 118.10(3), F.S., authorizes a civil-law notary to “authenticate or certify any document, transaction, event, condition, or occurrence” and s. 118.10(7), F.S., specifies that civil-law notaries have “all the power of a notary public under any law of this state.”

⁹ Historical information provided via telephone interview with Jennifer Kennedy, Deputy Secretary for Corporations and Elections, October 1, 2009. Exact dates could not be provided as most transfers have been made by a memorandum of understanding or have not been recorded.

¹⁰ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page IV-68.

¹¹ Information received from the Division of Corporations on November 9, 2009, on file with the Commerce Committee.

Note: A civil-law notary’s appointment is continued as long as an annual report is filed with the division each year. See 1C-18.001(4)(c), F.A.C.

¹² Information received from the EOG on January 12, 2010, on file with the Commerce Committee.

¹³ Information received from the Division of Corporations on September 11, 2009, on file with the Commerce Committee.

¹⁴ A person must complete a new application when applying for a new commission, renewal of a commission, or subsequent commission.

- Submit to the division a list of all professional licenses and commissions issued by the state during the previous 10 years and a statement as to whether or not the applicant has had any such license or commission revoked or suspended;
- Submit to the division a statement as to whether or not the applicant has been convicted of a felony, and if so, the nature of the felony and whether or not the applicant's civil rights have been restored;
- Take an oath that the application for a commission is true and correct, that he or she has read ch. 117, F.S., that he or she knows the duties, responsibilities, limitations, and powers of a notary public, and that he or she will honestly, diligently, and faithfully discharge the duties of the notary public;¹⁵
- Obtain a bond for \$7,500, payable to any individual harmed as a result of a breach of duty by the notary public acting in his or her official capacity; and
- Provide any other information the Governor deems necessary for determining whether the applicant is eligible to be commissioned.

In addition, s. 668.50(11)(b), F.S., requires first-time notary public applicants to submit proof that the applicant has, within 1 year prior to the application, completed at least 3 hours of interactive or classroom instruction, which covers electronic notarization and the duties of the notary public.

Civil-law notaries are appointed by the Secretary of State. Pursuant to s. 118.10(1)(b), F.S., applicants must be a Florida Bar member in good standing who has practiced law for at least 5 years.¹⁶ Additionally, under the DOS' administrative rule, 1C-18.001, F.A.C., civil-law notary applicants must complete an application form as prescribed by the DOS and must successfully complete a civil-law notary examination with a score of 70 percent or higher on the exam. The Secretary of State may adopt rules prescribing procedures for the disciplining of civil-law notaries, including the suspension and revocation of appointments.¹⁷ However, the Secretary of State is prohibited from regulating and disciplining "any civil-law notary for, or with regard to, any action or conduct that would constitute the practice of law in this state, except by agreement with The Florida Bar."¹⁸

Application Fees

Section 117.01(2), F.S., requires notary public applicants, including renewals, to pay a \$25 application fee and a \$10 commission fee.¹⁹ In addition, applicants must pay a \$4 fee, which is appropriated to the EOG to be used to educate and assist notaries.²⁰

Civil-law notary applicants, pursuant to 1C-18.001(1)(b)2., F.A.C., must pay a \$50 application processing fee.²¹ In addition, applicants may pay up to \$200 to take the civil-law notary examination.²²

¹⁵ A person taking the oath is subject to the penalty of perjury under s. 837.012, F.S., which is a misdemeanor of the 1st degree.

¹⁶ Chapter 1C-18.001(1)(b)1., F.A.C., requires civil-law notary applicants to submit a certificate of good standing from the Supreme Court of Florida to the division within 90 days of the date of application.

¹⁷ Section 118.10(5)(e), F.S. *See also*, ch. 1C-18.001, F.A.C.

¹⁸ Section 118.10(6), F.S.

¹⁹ Because there are approximately 100,000 applications a year, the division collects an estimated \$3.5 million annually, which is deposited into General Revenue. Statistics provided by the Division of Corporations, September 2009, on file with the committee.

²⁰ Because there are approximately 100,000 applications a year, the EOG collects an estimated \$400,000 annually, which is deposited in the Grants & Donations Trust Fund. Statistics provided by the notary section of the EOG and by the Division of Corporations, September 2009, on file with the committee.

²¹ Civil-law notaries also pay \$50 a year when submitting annual reports. Because the current 95 civil-law notaries retain their appointment as long as they file an annual report, the division collects approximately \$4,750 annually, which is deposited into General Revenue. Statistics provided by the Division of Corporations, November 2009, on file with the committee.

²² *See* ch. 1C-18.001(2)(c), F.A.C.

Notary Section of the Executive Office of the Governor

Section 117.01, F.S., vests the Governor with the authority to appoint and commission as many notaries public as he deems necessary. The Governor is also responsible for disciplining and providing educational assistance to notaries public.²³

The notary section of the Executive Office of the Governor (EOG) states that it carries out its function by:

publishing and distributing educational materials, particularly the notary laws and the Governor's Reference Manual for Notaries; by answering telephone inquiries from Notaries; by conducting notary seminars; and maintaining the on-line Notary Education Course. . . . The Notary Section also assists the Governor by reviewing "special review" applications related to the applicants' eligibility for appointment and by reviewing complaints against Notaries and recommending disciplinary action when appropriate.²⁴

One person is assigned to the notary section of the EOG and is responsible for completing these responsibilities.²⁵ According to the notary section of the EOG, complaints and the section's workload have increased during the past 2 years, especially because of the increase in mortgage or real estate fraud.²⁶ The notary section of the EOG reports that it receives approximately 25-40 complaints a month and the division reports that, on average, 27 notary commissions are suspended each year.²⁷ The notary section was previously staffed with a total of 4 people, including 1 education coordinator, 2 complaints investigators, and 1 other personal services (OPS) person.²⁸

The notary section, by and large, fulfills its educational assistance requirement by approving notary education curricula for certain vendors. Applicants can only take the required 3-hour class from a notary education vendor that has a core curriculum approved by the EOG. In Florida there are 16 vendors that provide notary public applicants with the required 3-hour notary public education course.²⁹ Many of these vendors also offer "one-stop" type services for notary applicants by providing them with the surety bond (directly or in coordination with an underwriter), educational course, application forms, and notary equipment required by statute.

Another important function of the notary section is the investigation of notaries or notary public applicants. Investigations are conducted on applicants under "special review," when their applications have been flagged by a vendor or the division. Under s. 117.01(2), F.S., an applicant is required to self-disclose if he or she has ever been convicted of a felony, which may trigger an investigation. In addition, the notary section may receive complaints by phone or mail, which may lead to the investigation of a commissioned notary public or an applicant. Section 117.01(8), F.S., requires a surety company to notify the Governor when a claim for a bond has been paid and the circumstances under which the bond was paid, which could lead to an investigation of a commissioned notary.

Usually during an investigation a criminal background check is performed, which is not statutorily required for notary public applicants under ch. 117, F.S. The notary section reports that it coordinates investigations with law enforcement and the Florida Bar if the notary is also an attorney.³⁰

The notary section of the EOG has no role in the administration, investigation, or appointment of civil-law notaries.

²³ See s. 117.01, F.S.

²⁴ See http://www.flgov.com/notary_intro.

²⁵ Interview with Heather Slager, the EOG's Notary Education Coordinator, September 8, 2009.

²⁶ *Id.*

²⁷ Statistics provided by the notary section of the EOG and by the division, September 2009, on file with the committee.

²⁸ *Supra* fn. 25.

²⁹ A list of vendors with approved curricula is available at http://www.flgov.com/notary_education.

³⁰ *Supra* fn. 25.

Notary Section of the Division of Corporations

The division serves solely in a ministerial capacity when processing notary public applications, issuing certificates of notarial authority, and recording bonds. The division does not verify application information or investigate notary public applicants or commissioned notaries. If a concern with the application is identified during processing, it is referred to the EOG for review and investigation.

The division reports that it receives all of its notary public applications from vendors that provide a “one-stop” type service for those seeking to become a notary public. These companies provide surety services (directly or through its affiliates) to meet the \$7,500 statutory bond requirement for notaries public, ensure that the educational courses satisfy the 3-hour notary public educational course required by statute, ensure that the application forms meet with the DOS’ approval, and may provide notary equipment, such as stamps and embossers, to notaries once they have been commissioned. These companies submit their customers’ applications, along with proof of attendance of the educational course and the required bond, to the DOS. The DOS receives the applications and reviews them for completeness to ensure they meet the statutory requirements under ch. 117, F.S., before processing the application and printing a commissioning certificate.³¹

Six employees (FTEs) are funded in the division to process notary public applications and record the required bonds and certificates of authority for notaries public.³² The division reports that 2 FTEs process applications, while the others answer incoming calls concerning notary public questions.³³

The division reports that complaints concerning notaries public are referred to the notary section of the EOG.³⁴

Although the division reports that it operates solely in a ministerial capacity when processing notary public applications, it has a different role with civil-law notaries. Statutorily, the Secretary of State has the authority to develop application processes, prescribe educational requirements, investigate applications, appoint civil-law notaries, and suspend or revoke the appointments of civil-law notaries under ch. 118, F.S.³⁵ These functions are carried out by the division. However, to date, the division has not deemed it necessary to investigate civil-law notaries or suspend or revoke a civil-law notary’s appointment.³⁶

Notary Misconduct

It is reported that notary public misconduct has been a problem in the United States ever since the first notary public was appointed in the American colonies in 1639.³⁷ Examples of notary public misconduct include the forgery of signatures, the notarization of signatures of persons not present before the notary, and the notarization of blank documents that are later drafted with fraudulent terms.³⁸ The National Notary Association (NNA) reports that, in Florida, notary public misconduct is especially prevalent in fraudulent real estate transactions where the

³¹ Information obtained during a tour of the notary section of the Division of Corporations, September 10, 2009.

³² Department of State’s Agency Programs, Services, and Committees/Councils Review (FY 2008-2009), on file with the Commerce Committee.

³³ *Supra* fn. 31.

³⁴ *Id.*

³⁵ See s. 118.10(2), (5)(a)-(g), F.S. See also, ch. 1C-18.001, F.A.C.

³⁶ *Supra* fn. 31.

³⁷ Anderson, John C., and Closen, Michael L; *A Proposed Code of Ethics for Employers and Customers of Notaries: A Companion to the Notary Public Code of Professional Responsibility*; 32 J. Marshall L. Rev. 887 (Summer 1999).

³⁸ See Lilly, Joanna, *The Unlawful Notary*, which gives an account of various cases of notary fraud, available at <http://www.lastwordedits.com/unlawfulnotary.pdf>. Note: This is not an exhaustive list of the types of notary misconduct.

elderly and those who speak English poorly are targeted.³⁹ Notary misconduct is punishable as a felony of the third degree or misdemeanor of the second degree.⁴⁰

Notaries as Gatekeepers

The NNA reports that:

[n]otarization is an effective weapon against mortgage fraud because it verifies identity, proves willingness and awareness on the part of the signer, authenticates signatures, and creates an auditable evidence trail for prosecution. In addition, the notarial seal is an authenticating tool that is used by law enforcement in detecting cases of document tampering.⁴¹

This kind of gatekeeping against mortgage fraud is especially important in Florida. The Mortgage Asset Research Institute (MARI) reported in March 2009 that Florida had the second largest number of mortgage frauds in the country in 2008 and had the most instances of mortgage fraud in 2006 and 2007.⁴²

However, the effectiveness of notaries as gatekeepers to prevent fraud may be limited under circumstances where a signer is committing identity theft, but has seemingly valid proof of identification.

Findings

Necessity, Duplication, & Efficiency

The regulation of notaries public is necessary to protect the public against fraud in legal transactions.

The responsibilities related to the administration of the notary public commissioning process is shared by the Division of Corporations (division) within the Department of State (DOS) and the Executive Office of the Governor (EOG). However, each entity has distinct responsibilities. The Governor appoints, investigates, disciplines, and provides educational assistance to notaries public. The division processes applications, issues certificates of notarial authority, and performs recordkeeping.

The Secretary of State is solely responsible for appointing civil-law notaries and processing civil-law notary applications.

³⁹ National Notary Association, *The Growing Real Estate Problem in Florida: How Requiring a Thumbprint in a Notary Recordbook Can Significantly Diminish Real Property Scams in the State*, March 2003, pg. 4, available at <http://www.nationalnotary.org/userimages/reFraudfla.pdf>. See also, White, Gary, *The Ledger*, *Real Estate Fraud Growing in Polk and Across Florida*, February 28, 2009, available at <http://www.theledger.com/article/20090227/NEWS/902280283?Title=Real-Estate-Fraud-Growing-in-Polk-and-Across-Florida>.

⁴⁰ Section 117.105, F.S., provides that “a notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree.” Pursuant to s. 117.05(1), F.S., a notary public is guilty of a felony of the third degree if the notary uses a commission in other than the notary’s real name and if the notary notarizes his or her own signature. In addition, it is unlawful to possess a notary public official seal or any papers or copies relating to notarial acts, impersonate a notary public, or to knowingly act as a notary public after a commission has expired; all are a misdemeanor of the second degree. See s. 117.05, F.S.

⁴¹ National Notary Association, *National Notary Association Issues Consumer Tips to Protect Against Mortgage Fraud: FBI and NNA collaborate on the heels of FBI warning that mortgage fraud has become "epidemic,"* available at <http://www.nationalnotary.org/about/index.cfm?Text=aboutPR&newsID=402>.

⁴² James, Denise; Butts, Jennifer; and Donahue, Michelle; Lexis Nexis, MARI, *Eleventh Periodic Mortgage Fraud Case Report to: Mortgage Bankers Association*, March 2009, available at <http://www.marisolutions.com/pdfs/mba/mortgage-fraud-report-11th.pdf>.

There may be marginal gains in efficiency if the responsibilities of the EOG are transferred to the division. Applicants, current notaries, and the public would have one point of contact for all inquiries or complaints; however, transferring the appointment, investigation, and education responsibilities from the EOG to the division would require the division to expand beyond its current ministerial role into a regulatory role – similar to its current responsibility in the administration of civil-law notaries.

Transferring the application processing and recordkeeping responsibilities from the division to the EOG would not increase program efficiency, as it would require an investment in systems infrastructure and maintenance.

Agency Performance

The current applicant review process could be improved to provide a higher degree of protection to the public against fraud in legal transactions.

The primary purpose of this report is to evaluate consolidating the responsibilities related to administration of the notary public commissioning process either within the division or within the EOG. In the course of this review, committee staff observed that unless an applicant was “flagged” by vendors or by another interested party, applications are simply reviewed for “completeness” by the division – the statutorily required information submitted by the applicant is not verified by staff of the division or the EOG. While such verification may currently be accomplished by the “one-stop” vendors, the inherent potential conflict of interest may erode the public’s confidence in the sufficiency of such review.⁴³

Committee staff did not find obvious evidence that applications submitted by unscrupulous persons went undetected by the state, and that these applicants were consequently commissioned as notaries public. In addition, committee staff did not find a significant number of complaints made against, and there has been no reported widespread fraud committed by, commissioned notaries public. However, the current applicant screening system may be insufficient because potentially disqualifying information from dishonest or deceitful applicants may go undetected, such as a felony conviction or revocation of a professional license. Consequently, the disqualifying information may not be considered in the commissioning process.

In addition, there may be insufficient reporting of notary misconduct by surety companies. According to the EOG, most surety companies do not report instances when bond claims are paid or the circumstances under which they are paid.⁴⁴ Under current law, there is no penalty provision for those surety companies in non-compliance with s. 117.01(8), F.S.

Professional Qualifications and Practices

In comparison to Florida, some states have more stringent laws that may be more effective in preventing or deterring notary public misconduct.

For example, California’s notary public law requires notary public applicants to complete a 6-hour course of study and a written exam to become a notary public.⁴⁵ Additionally, notaries public in California must take a 3-hour notary education refresher course prior to reappointment for all subsequent terms.⁴⁶ Nine other states and the District of Columbia require an examination prior to an applicant being appointed or commissioned.⁴⁷ In 2000, the Florida Legislature enacted a law that required all first-time notary public applicants to complete a 3-hour notary education course within 1 year of, and prior to, their submission of an application.⁴⁸ Effectively, this law

⁴³ A review of the verification of the information submitted with the application by the “one-stop” vendors, or the practices of the surety underwriters, was not within the scope of the research for this report.

⁴⁴ See s. 117.01(8), F.S.

⁴⁵ West’s Ann. Cal. Gov. Code §8200-8230. See also, Bowen, Debra, Secretary of State of California, 2009 Notary Public Handbook, available at <http://www.sos.ca.gov/business/notary/forms/notary-handbook-2009.pdf>.

⁴⁶ *Id.*

⁴⁷ California, Connecticut, District of Columbia, Hawaii, Louisiana, Maine, Nebraska, New York, North Carolina, Oregon, and Utah.

⁴⁸ See s. 1, ch. 2000-164, L.O.F.

“grandfathered” in all existing commissioned notaries and, therefore, those notaries have never been required to take a notary education course. In addition, once a notary takes the 3-hour educational course upon his or her initial application, the notary is not required to take another educational course again. Notaries that have never taken a notary education course, or those notaries who took a notary education course many years ago, may not be aware of new legal requirements, best-practices, and emerging issues concerning notaries.

To deter fraud and aid in investigations by law enforcement, California notaries are required to keep a journal of notarizations and journal a signer’s thumbprint when notarizing certain types of documents.⁴⁹ The NNA reports that since California’s “thumbprint requirement went into effect, law enforcement and consumer affairs investigators reported that their forgery caseloads have significantly diminished – and, in some cases, disappeared altogether.”⁵⁰

While notaries public in Florida are encouraged to maintain a journal of their activities, it is not required.⁵¹

Eight states require criminal background checks for all notary public applicants.⁵² As previously stated, Florida has no similar requirement; although Florida currently requires criminal background checks on persons licensed by the state to:

- Provide, or operate facilities that provide, a wide range of health and social services;
- Operate pari-mutuel facilities;
- Bottle, distribute, or sell alcohol;
- Sell, facilitate the sale of, appraise, or manage property;
- Sell insurance, mortgages, and title loans;
- Operate pawnshops and second-hand businesses;
- Provide money services;
- Sell securities and provide investment advice;
- Sell motor homes and vehicles; and
- Provide construction services.

Florida law also requires many applicants for public employment to undergo a criminal background check as a condition of employment.⁵³ Applicants for civil-law notary commissions undergo a criminal background check as a condition of licensure by the Florida Bar.

At least twenty-two states automatically disqualify an applicant from becoming a notary public if they have been convicted of a felony.⁵⁴ Under Florida law, an applicant is required to submit a statement as to whether or not he

⁴⁹ *Supra* fn. 45. Specifically, if the document to be notarized is a deed, quitclaim deed, or deed of trust affecting real property or a power of attorney document, the notary public has to require the party signing the document to place his or her right thumbprint in the notary’s journal. Note: Illinois enacted a law in 2009 that initiated a 4-year pilot program, which requires notaries to journal a thumbprint of a signer in every notarial act in Illinois involving a document of conveyance that transfers title to residential real property located in Cook County. See IL Public Act 095-0988, available at <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0988&print=true&write=>.

⁵⁰ National Notary Association, *The Growing Real Estate Problem in Florida: How Requiring a Thumbprint in a Notary Recordbook Can Significantly Diminish Real Property Scams in the State*, March 2003, pg. 3, available at <http://www.nationalnotary.org/userimages/reFraudfla.pdf>.

⁵¹ However, it was a statutory requirement for electronic notarizations for a short period (s. 9, ch. 98-246, L.O.F.) but was repealed by s. 165, ch. 99-251, L.O.F. In 2006, the Legislature passed CS/CS/HB 567, which included a similar journal requirement. However, the Governor vetoed the bill.

⁵² Table of states and their background check requirements, provided by the National Notary Association, is on file with the Commerce Committee. Note: Texas performs random background checks on applicants. The other 7 states requiring background checks are Arizona, Colorado, Connecticut, Illinois, Massachusetts, New Hampshire, and Ohio.

⁵³ A complete list of state licensed professions or occupations that require a criminal background check as a condition of state licensure or employment is available from the Florida Department of Law Enforcement, available at http://www.fdle.state.fl.us/Content/getdoc/8b6a7e96-c83c-49af-aa9d-c2134bd8abd0/BackgroundChecks_FAQs_100109.aspx, pgs. 4-9.

⁵⁴ Information provided on a state-by-state basis on the American Society of Notaries website, available at <http://www.asnnotary.org/?form=stateinfo>.

or she has been convicted of a felony, the nature of the felony, and whether his or her rights have been restored.⁵⁵ However, Florida's law does not automatically disqualify an applicant that has been convicted of a felony; instead, the EOG has the discretion to determine if the applicant may still be commissioned as a notary.

Options

Duplication & Efficiency

If the Legislature determines that the public would be better served by consolidating the responsibilities related to administration of the notary public commissioning process, committee staff recommends that the responsibilities be transferred from the EOG to the division. The division should also be authorized to use the current \$4 fee collected for notary public education and assistance to fund the new responsibilities.

Agency Performance

The primary purpose of this report was to evaluate consolidating the responsibilities related to administration of the notary public commissioning process either within the division or within the EOG. In the course of this review, committee staff observed that unless an applicant was "flagged" by vendors or by another interested party, applications are simply reviewed for "completeness" by the division – the statutorily required information submitted by the applicant is not verified by staff of the division or the EOG.

To ascertain whether the current application system sufficiently screens applicants to identify potentially disqualifying information, the Legislature should consider requesting additional research on this issue. This research could include requesting that the Florida Department of Law Enforcement conduct criminal background checks on a representative sample of current notaries public, to ascertain whether unscrupulous applicants have evaded detection in the screening process.

If the Legislature determines that the administration of the program should be improved, it should consider expanding the level of screening of applicants. The Legislature could require verification of information it considers important, such as the status of professional licenses, affidavit of good character, driver's license number, or the existence of a criminal record.

To fund this expansion of agency review, the Legislature could specify that revenue from the \$4 surcharge levied on applicants be allocated solely for the administration of the notary public program by the EOG or the division. If insufficient, the Legislature should consider increasing the application fee to fund the costs of expanded review.

To ensure better reporting by surety companies to the EOG of bonds paid, the Legislature should consider requiring surety companies to provide the EOG with an annual report stating whether or not they have paid any bonds, and if so the appropriate information as required under s. 117.01(8), F.S. In addition, the Legislature could provide a penalty for those in non-compliance.

Professional Qualifications and Practices

In lieu of reallocating existing, or providing additional, resources for the application review process, the Legislature could provide the public with additional protection against fraud by imposing new qualification requirements on notary public applicants or impose new recording requirements on notaries public in their practice.

To increase the qualification requirements for first-time notary public applicants and renewal applicants, the verification of which could be integrated into the division's current review of completeness, the Legislature could:

- Require submission of proof that the applicant has passed an approved exam, taken in person, after completing the required education course.

⁵⁵ See s. 117.01(2), F.S.

- Require notaries to complete an additional educational requirement prior to application for renewal of the notaries' commissions, to ensure that all notaries become apprised of the current notary laws, best-practices, and emerging issues.
- Require submission of a criminal background check from the Florida Department of Law Enforcement.
- Prohibit anyone who has been convicted of a felony, or who has been convicted of a crime of dishonesty, from becoming a notary.

To discourage fraud, encourage personal accountability, and aid in investigations by law enforcement, the Legislature could:

- Require notaries to maintain a journal of their activities, limited to the types of publically available information most useful to law enforcement in their investigations; and⁵⁶
- Require a notary public to request a thumbprint of the signer for the notary to journal, which would help circumvent the misrepresentation of a signer's identity.

Technical Statutory Revisions

The 3-hour educational course requirement for first-time notary public applicants is specified in s. 668.50(11)(b), F.S., which addresses electronic transactions and electronic signatures. The Legislature should consider transferring or referencing this provision in ch. 117, F.S., which specifies the application requirements for a notary public commission.

In 1999, the required bond amount for a notary public was increased from \$5,000 to \$7,500. This change was incorporated in s. 117.01(7)(b), F.S., which states that “[a]ny notary public whose term of appointment extends beyond January 1, 1999, is required to increase the amount of his or her bond to \$7,500 only upon reappointment on or after January 1, 1999.” Because notaries public are appointed for 4 years and therefore, all notaries that were previously bonded for \$5,000 should have been reappointed by now, this provision is obsolete. The Legislature should consider deleting this obsolete provision.

Section 117.01, F.S., contains a catch line stating, “Appointment, application, suspension, revocation, application fee, bond, and oath.” However, ch. 117, F.S., does not provide for the “revocation” of a notary public commission. The Legislature should consider deleting this misleading reference in the catch line.

⁵⁶ A similar requirement was specified for electronic notarizations in s. 9, ch. 98-246, L.O.F., but was repealed by s.165, ch. 99-251, L.O.F.

APPENDIX



OFFICE OF PROGRAM POLICY ANALYSIS
& GOVERNMENT ACCOUNTABILITY



February 2010

Report No. 10-22

Florida Has Made Limited Progress in Streamlining Business Processes; One-Stop Portals of Benefit to Some Other States

at a glance

Florida has made limited progress in establishing a master business index to streamline business start-up requirements. Other states have developed web portals that make it easier for businesses to obtain needed start-up licenses, permits, and registrations and have reported benefits to both businesses and the state. If the Legislature chooses to implement a business one-stop portal in Florida, it should consider key success factors identified by other states, including establishing clear system objectives, a strong governance and accountability structure, mandatory agency participation, and provisions for stakeholder input.

Scope

As directed by the Legislature, OPPAGA examined options for consolidating the business and tax registration functions currently residing within multiple state agencies and establishing an online business one-stop portal.

Background

Individuals that start businesses in Florida must interact with multiple state agencies to obtain needed registrations, licenses, and tax certificates (see Exhibit 1). For example, a contractor starting a construction company may need to obtain a professional license from the Department of Business and Professional Regulation, apply for tax certificates with the Department of Revenue, and register their corporation with the Department of State. It can be frustrating and time-consuming for

businesses to determine what licenses, permits, and registrations they need to legally operate in Florida, and the process often requires applicants to provide similar information (e.g., name, address, and business type) to multiple agencies. In addition, because agencies may track information in different ways (e.g., using business address versus mailing address), data on businesses may be inconsistent across state agencies.

Exhibit 1

Starting a Business in Florida Requires Separate Interactions with Multiple State Agencies

State Agency	Activity
Department of State, Division of Corporations	Business registration – Corporate entities must usually register with the Division of Corporations, and entities conducting business under a name other than their own are required to register their fictitious name.
Department of Revenue, General Tax Administration	Tax certificate(s) – Businesses that sell taxable goods and services must obtain a tax certificate(s) from the Department of Revenue, which administers the collection of 33 taxes and fees, including sales and use, corporate income, and Unemployment Compensation Tax.
Department of Business and Professional Regulation, Professional Regulation Program	Business or professional license – Individuals and companies in many business and professional fields must obtain licenses from the Department of Business and Professional Regulation.
Other state agencies	Other licenses and permits – Individuals and companies in many business and professional fields must interact with other agencies, including the Department of Agriculture and Consumer Services, Department of Environmental Protection, Department of Financial Services, and Department of Health.

Source: OPPAGA analysis.

*Office of Program Policy Analysis & Government Accountability
an office of the Florida Legislature*

Findings

Little progress has been made in streamlining Florida's business start-up process despite legislative directives to do so. Several other states have implemented online one-stop systems that streamline business start-up, which could produce similar benefits if implemented in Florida. The Legislature should consider several issues if it wishes to direct Florida agencies to develop a business one-stop portal.

There has been limited progress in streamlining Florida's business start-up processes

The Department of State has made limited progress to implement a 1997 legislative directive to streamline the state's business start-up process. The state also has considered but has not implemented options to consolidate state agencies that have business registration functions.

The 1997 Legislature required development of a master business index to streamline the business start-up process. In 1997, the Legislature recognized that state government requirements for establishing businesses were cumbersome and placed an undue hardship on the business community. To address these issues, the Legislature enacted the Florida Business Coordination Act.¹ This act directed the Department of State to develop a master business index, which was to consolidate all business entity records maintained by state agencies and assign a single identifying number to each business to enable agencies to share and easily retrieve business registration and license information.

The 1999 Legislature modified the act to require participating agencies to use, contribute, and share information through the master business index. However, the act does not require state agencies to participate.² In addition, the Legislature directed that the master business index be a central index of business entities and list all licenses and registrations held by a business with any

participating state agency. The Legislature also required the Department of State to create a uniform business report for collecting and updating data for the master business index.

Despite Department of State efforts, limited progress has been made to streamline business start-up processes. The Department of State has taken some steps to implement the Florida Business Coordination Act, but it has not yet been successful in doing so. In 1997, the department completed a feasibility study on the act's provisions and concluded that implementation was feasible and would cost approximately \$12 million over three years. However, the department has never requested an appropriation to proceed with implementation.

In 1999, the department created a single business identifier to meet the requirements of the act. However, as no other agency volunteered to participate in this effort, the business identifier is used only by the Department of State and it cannot yet be used to access business registration or license information from other agencies. Also, in 2000 the department implemented a Uniform Business Report to list registration and licensure information for each business. However, as no other agency has participated in this effort, only Department of State data are included in the report.

In 2009, the department renewed its efforts to implement the act by initiating a pilot project with the Department of Business and Professional Regulation. The two agencies agreed to share information related to licensed construction businesses. The Department of State has developed a master business index database that the Department of Business and Professional Regulation can access to obtain information. As of January 2010, the database had been populated with a test set of corporate data, and once test protocols are completed the database will be fully populated with Department of State data.

Once completed, the database will contain demographic information on entities registered with the Department of State and construction licensure information maintained by the Department of Business and Professional

¹ Chapter 97-15, *Laws of Florida*.

² Section 606.03(4), *F.S.*, defines "participating agency" as an agency of government, which elects to participate in the exchange of information through the master business index.

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Regulation. This information will be searchable by a single business identifier assigned to each entity. The department reports that when the pilot is completed, it will be able integrate information from other agencies interested in participating in the effort.

Despite these recent efforts, because of the little to no participation of other state agencies, the intent of the act to create a central statewide index of business entities and the licenses and registrations they hold has not been realized. The Department of State cites limited funding and the lack of a mandate that all agencies participate as reasons why the intent of the act has not yet been achieved.

The state has considered consolidating state agencies to streamline business-related processes. Over the last decade, the state has considered several proposals to consolidate and streamline state agency business-related functions.

- 1999 – The Senate Committee on Governmental Oversight and Productivity reviewed the reorganization of the Florida Cabinet structure to assess the status and jurisdiction of four departments that were headed by individual cabinet officers.³ The review proposed dismantling the Department of State and redistributing its programs to other agencies, including merging Division of Corporations functions into the Department of Business and Professional Regulation.
- 2003 – The Legislature considered a proposal to abolish both the Department of State and Department of Community Affairs to create the Department of State and Community Affairs.⁴ The intent of this change was, in part, to promote a positive business climate by maintaining efficient and effective business registration activities and to promote the economical and efficient management of public records.
- 2003 – The Governor’s Office of Policy and Budget examined the feasibility of merging the

Division of Corporations and the Department of Revenue’s General Tax Administration program. The study concluded that the entities had similar processes, and integration or merger would increase awareness of tax obligations by corporations.

- 2008 – The Senate Committee on Commerce’s Sunset Review of the Division of Corporations examined previous efforts to merge the division with other entities and recommended continuing to evaluate the efficacy of transferring some or all of the division’s responsibilities to the Department of Revenue and re-evaluating the feasibility, value, and associated costs of implementing a Master Business Index.⁵

The state has not implemented any of these proposals, due in part to opposition by the business community, which has asserted that consolidation is not desirable or necessary. These stakeholders assert that the Department of State’s Division of Corporations has efficient and reliable processes, easily accessible data, and high levels of customer satisfaction, and that transferring the business registration process to the Department of Revenue would discourage new business from locating in Florida due to that agency’s regulatory focus. However, these stakeholders did support the streamlining of business processes through a master business index or other similar system. In addition, our current review found no compelling advantage to transferring the Division of Corporations to the Department of Revenue. This transfer is unlikely to result in a large reduction in staff and there would be costs associated with transferring data systems and creating new business processes.

Several states have implemented online one-stop systems to streamline business start-up processes

Other states have developed web portals that make it easier for businesses to obtain needed start-up

³ These agencies included the Department of Banking and Finance, the Department of Education, the Department of Insurance, and the Department of State.

⁴ House Bill 1687 – Governmental Reorganization.

⁵ *Agency Sunset Review of the Division of Corporations of the Department of State, Florida Senate Committee on Commerce, Issue Brief 2009-308, October 2008.*

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licenses, permits, and registrations. Florida could achieve similar benefits from such an initiative, which would result in the virtual consolidation of some processes of the Department of State and Department of Revenue as well as other state agencies.

The Florida Business Coordination Act sought to make it easier for businesses to obtain needed authorizations by creating a master business index that would link all registrations and licenses via a single business identifier. However, under this proposed system, businesses would continue to need to register separately with each agency, often providing the same information to each.

In contrast, several states have established online portals that provide information and tools to help applicants start and operate a business. These one-stop portals allow applicants to enter business-related information one time, which is then shared with all participating agencies and automatically used to complete these agencies' existing

application processes. After completing the online registration process, applicants receive the information and documents necessary to begin operating their business.

As shown in Exhibit 2, several states have established one-stop online business start-up portals. For example, beginning in 2007 Michigan's governor sought to improve the state's business climate by reducing the time it takes businesses to begin operating and to simplify their transactions with state agencies. Michigan's enterprise-wide technology agency led the system design and implementation effort, which became operational in March 2009 at an estimated cost of between \$5 million and \$10 million. The online portal helps applicants determine what business registrations, permits, and licenses they will need; file the needed information online; and obtain tax statements and pay taxes. The web portal also enables businesses to contact a call center for additional information and assistance.

Exhibit 2

Several States Have Implemented One Stop Portals to Aid Business Start-up

State and Implementation Date	Name of System	Participating Entities ¹	Functions
Delaware (2006)	One Stop Business Registration and Licensing System	<ul style="list-style-type: none"> Department of Finance Department of Labor Department of State Department of Technology and Information 	<ul style="list-style-type: none"> Enables applicants to register and obtain business licenses and register as a withholding agent and for unemployment and workers' compensation Provides a link to the Department of State, Division of Corporations to access incorporation forms and reserve a legal entity name Provides a link to the Internal Revenue Service to receive a Federal Employer Identification Number
Hawaii (2004)	Business Express	<ul style="list-style-type: none"> Department of Business, Economic Development and Tourism Department of Commerce and Consumer Affairs Department of Labor and Industrial Relations Department of Taxation State Procurement Office 	<ul style="list-style-type: none"> Enables applicants to register a business and obtain taxpayer and employer identification numbers Provides customer assistance through live chat
Michigan (2009)	Michigan Business One Stop	<ul style="list-style-type: none"> Department of Information Technology Department of Labor and Economic Growth Department of Treasury 	<ul style="list-style-type: none"> Enables applicants to determine state requirements, register/start a business, register to pay taxes, pay fees, and update information Has associated customer assistance call center

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State and Implementation Date	Name of System	Participating Entities ¹	Functions
South Carolina (2005)	South Carolina Business One Stop	<ul style="list-style-type: none"> Department of Commerce Department of Consumer Affairs Department of Health and Environmental Control Department of Labor, Licensing, and Regulation Department of Plant Industry Department of Revenue Employer Security Commission Office of Regulatory Staff Secretary of State State Library 	<ul style="list-style-type: none"> Enables applicants to establish and register a business entity, make changes to business filings, file and pay business taxes, register as an employer, and obtain and maintain selected other licenses, permits and registrations Provides customer assistance through telephone, live chat, e-mail, and fax via a help center
Utah (2003)	OneStop Online Business Registration System	<ul style="list-style-type: none"> Department of Commerce Department of Environmental Quality Department of Workforce Services Labor Commission State Tax Commission Some municipalities Utah Interactive (private contractor) 	<ul style="list-style-type: none"> Enables applicants to register business name and type and apply for and obtain tax licenses and identification numbers for income tax withholding and unemployment insurance Provides information on obtaining local business licenses, although businesses must complete this process in the local office Provides link to the Internal Revenue Service to receive a Federal Employer Identification Number Provides customer assistance through e-mail and live chat
Washington (2000)	Master Business Application	<ul style="list-style-type: none"> Department of Labor and Industries Department of Licensing Department of Revenue Employment Security Department Some municipalities 	<ul style="list-style-type: none"> Enables applicants to obtain a Unified Business Identifier and apply for over 100 state registrations and licenses, including business and tax registration, industrial insurance coverage, and unemployment insurance Can be used to obtain licenses in some municipalities Provides customized information and forms for specific business licensing requirements and corresponding contacts through a Business Licensing Guide Sheet

¹ Bold font denotes agency with primary responsibility for system.

Source: OPPAGA analysis of information provided by other states.

The states reported that their online portals had produced advantages to both businesses and state agencies. The states noted that their systems enabled applicants to begin operating more quickly because they could simultaneously file for multiple registrations and licenses and could file needed information at any time and place where internet service is available. The systems also helped improve the states' relationships with the business community, increased state agencies' understanding of each other's data and processes, which could lead to efficiencies, improved data accuracy, and enhanced compliance with state laws and regulations. Several states indicated that their

systems had reduced staff costs and improved revenue collections, but could not provide quantitative data regarding these benefits.

Implementing a business one-stop portal in Florida could yield similar benefits, as well as provide a virtual consolidation of agency functions without the need to merge organizational units and the opportunity to implement a single business identifier. In addition to making it easier to establish a business in the state, such a system could eventually be used to facilitate ongoing processes, such as license renewal and annual reporting.

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Exhibit 3 There Are Several Key Components for Successful One-Stop Initiatives

Component	Rationale
Leadership support	Articulates vision and objectives and helps ensure progress
System governance and project sponsor	Creates an accountability structure; one entity should be designated as the project sponsor and should receive direction from a steering committee of staff from participating agencies that would provide input into system design and refinement
Agency participation	Mandatory participation ensures that the system incorporates all necessary components
Stakeholder participation	Helps ensure that the system is user-friendly through collaboration with user groups such as small businesses, accountants, and lawyers
Consultant participation	Helps ensure that the system design and implementation is led by staff with needed expertise
Implementation plan with concrete timelines	Promotes accountability and realistic project schedule
Data system analysis	Identifies any needed changes to existing data systems
Funding	Will require additional resources; some other states reported implementation costs ranging from \$3 million to \$10 million

Source: OPPAGA analysis.

There are several key components to implementing an online business portal

Considering Florida's lack of progress in establishing a master business index and our review of other states' initiatives, we found several components key to implementation of a business one-stop portal. The states noted that it is critical for the initiative to be championed by chief executives, and agency participation should be mandatory. It is important to establish a clear governance structure for the effort, and the system should be designed with the assistance of stakeholders including business groups. Some states have used consultants to manage system design and implementation to ensure that the effort was led by persons with required technical skills. Exhibit 3 lists key components and their rationale.

If the Legislature wishes to direct that the state create an online business start-up portal, it should consider these key components and create a statutory framework to guide the portal's design

and implementation. Chapter 2009-73, *Laws of Florida*, related to the Unemployment Compensation Claims and Benefits Information System, could serve as a model for this effort, as this act specified project scope, agency roles and responsibilities, and created a governance structure including a project sponsor, steering committee, and implementation plan. At a minimum, the effort should mandate participation by the Departments of State, Revenue, Business and Professional Regulation, and Financial Services.

Agency Response

In accordance with the provision s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of State and the executive director of the Department of Revenue for review and response. The Secretary's written response is included in Appendix A. The executive director's written response is included in Appendix B.

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

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Project supervised by Kara Collins-Gomez (850/487-4257)

Project conducted by Claire Mazur (850/487-9211), Larry Novey, and Mike Bolland
Gary R. VanLandingham, Ph.D., OPPAGA Director

*Report No. 10-22**OPPAGA Report****Appendix A***

**FLORIDA DEPARTMENT of STATE****CHARLIE CRIST**
Governor**KURT S. BROWNING**
Secretary of State

February 5, 2010

Mr. Gary R. VanLandingham, Ph.D.,
Director, Office of Program Policy
Analysis and Government Accountability
111 West Madison Street
Room 312, Claude Pepper Building
Tallahassee, Fl. 32399-1475

Dear Dr. VanLandingham:

The Department of State agrees with the OPPAGA report stating that no efficiencies could be gained by consolidating the Division of Corporations into the Department of Revenue. We have maintained for years that consolidation would not yield positive results for the State of Florida. Further, the missions of each agency, business formation and tax regulation, are incompatible and counterproductive in encouraging economic growth in Florida.

The Division of Corporations has the highest volume of business entities filings in the United States. We maintain a 24-36 hour turnaround time on filings and have a 95% or higher customer satisfaction rating. We are often praised for being one of the most efficient and responsive organizations in state or federal government. In our view, consolidation would not improve upon the successes of the Division of Corporations.

Thank you for the time and attention your staff contributed to this review. They were diligent and thorough in their approach and we found them to be fair and objective.

Sincerely,

A handwritten signature in blue ink that reads "Dawn K. Roberts".

Dawn K. Roberts
Assistant Secretary of State/Chief of Staff

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Appendix B



Executive Director
Lisa Echeverri

Child Support Enforcement
Ann Coffin
Director

General Tax Administration
Jim Evers
Director

Property Tax Oversight
James McAdams
Director

Information Services
Tony Powell
Director

February 4, 2010

Gary R. VanLandingham, Ph.D.
Director of OPPAGA
The Florida Legislature
111 West Madison Street, Room 312
Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Dr. VanLandingham:

I want to thank you for the opportunity to respond to OPPAGA's report:

Florida Has Made Limited Progress to Streamline Business Processes; Other States Have Realized Benefits from One-Stop Portals

The Department of Revenue agrees with OPPAGA's recommendation that the State of Florida should develop an online one-stop portal for businesses.

Creating such a portal would simplify the registration and filing requirements for businesses and improve coordination between state agencies. In addition to reducing the burden on businesses, a centralized portal would improve overall tax and regulatory compliance. This proposed system would also improve the quality of information available to state agencies, and it would eliminate multiple agencies from duplicating the same effort of maintaining social data.

We also agree that a governing board should be formed to determine the business requirements needed by all agencies, including confidentiality and frequency requirements. Better understanding each agency's business requirements will help determine the appropriate agency to lead this effort, and the most cost-effective solution to implement this proposed system.

We appreciate the opportunity to be of assistance to you. If you have any questions regarding this response please contact Teresa Wood, Director of Auditing, at (850) 497-0701 or WoodTe@dor.state.fl.us.

Sincerely,

Lisa Echeverri

LE/tw

- cc: Jeff Kielbasa, Deputy Executive Director
- Jim Evers, Program Director, GTA
- Robert Babin, Legislative Affairs Director
- Maria Johnson, Deputy Program Director, GTA
- Sharon Doredant, Inspector General
- Teresa Wood, Director of Auditing

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