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HOUSE OF REPRESENTATIVES
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS

BILL #: CS/CS/HB 681
RELATING TO: Insurance & Financial Services Department
SPONSOR(S): Council for Competitive Commerce, Committee on State Administration, and Representative(s) Waters, Flanagan, and Brummer
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
 - (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 10 NAYS 0
 - (4)
 - (5)
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I. SUMMARY:

In November 1998, voters approved Constitutional Revision 8 that restructures the Cabinet. The revision establishes a new Cabinet post of Chief Financial Officer and abolishes the offices of Treasurer and Comptroller. These changes apply to the November, 2002, General Election and take effect January 7, 2003. To implement the constitutional amendment, CS/CS/HB 681:

- Creates the Office of Chief Financial Officer for the new Cabinet post of Chief Financial Officer. The duties of the Chief Financial Officer are to serve as chief fiscal officer of the state, to settle and approve accounts against the state, to keep all state funds and securities, to administer the Government Employees Deferred Compensation Plan, and to carry out laws relating to unclaimed property and security for public deposits.
- Assigns the Comptroller's statutory duties as regulator of financial institutions and securities and the Treasurer's statutory duties as insurance regulator to the new Department of Insurance and Financial Services and abolishes the Department of Insurance and the Department of Banking and Finance.
- Directs the Governor and Cabinet to appoint an executive director, subject to Senate confirmation, to serve as the chief administrator of the new department and, beginning no later than August 1, 2001, to head the Office of Transition Management to oversee the transition to the new department (including filling senior management positions, making written recommendations regarding additional statutory changes needed, reporting positions subject to transfer to the Office of Chief Financial Officer).
- Divides the department into three "offices" reflecting functional duties, each headed by a commissioner meeting certain specified qualifications: the Commissioner of Insurance, the Commissioner of Financial Services, and the Commissioner of Securities. Commissioners serve at the pleasure of the executive director, subject to Governor and Cabinet approval.

This bill appropriates \$227,984 to fund the Office of Transition Management for the 2001-2002 fiscal year.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Constitutional Revision 8

In the November , 1998, General Election, Florida voters approved Constitutional Revision 8 to the Florida Constitution. Constitutional Revision 8 creates the Cabinet post of Chief Financial Officer and abolishes the offices of Treasurer and Comptroller. The Secretary of State and the Commissioner of Education likewise are eliminated from the Cabinet. As a result, the Cabinet is reduced from seven to four members, consisting of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. In addition, the membership of the State Board of Administration is changed to the Governor, Chief Financial Officer, and Attorney General, rather than the Governor, Comptroller, and Treasurer. These changes apply to the November 2002 General Election and take effect January 7, 2003.

Constitutional Revision 8 does not address the organizational alignment of the regulatory functions assigned to the Treasurer and the Comptroller by statute.

Treasurer / Department Of Insurance

Constitutional Duties

The Treasurer is an elected position created by the state constitution as part of the Cabinet. The constitutional duties of the Treasurer, under Article IV, section 4, Florida Constitution, are to "keep all state funds and securities." The Treasurer is also a member of the State Board of Administration.

Statutory Duties

The Treasurer is designated by statute to be the head of the Department of Insurance and is also known as the Insurance Commissioner. The Department of Insurance regulates all aspects of insurance in Florida, as well as investigating insurance fraud and violations of the Insurance Code. The other statutory duties of the Treasurer include investing the state's general revenue fund and trust funds, administering the Florida Security for Public Deposits Act and the State Employees Deferred Compensation Program, and serving as State Fire Marshal, whose primary duties are to minimize the loss of life and property in this state due to fire.

The Insurance Commissioner is required by s. 627.0613, F.S., to appoint a consumer advocate to represent the general public before the Department of Insurance. The consumer advocate reports directly to the Insurance Commissioner, but is not directly under the authority of the Department of Insurance. The Insurance Consumer Advocate is authorized to recommend the commencement of proceedings by the Department of Insurance; appear in actions before the Department of Insurance and in administrative hearings concerning matters within the jurisdiction of the Department of Insurance; have access to the records and files of the Department of Insurance; hire consultants; examine rate and form filings and make recommendations; and prepare an annual budget for presentation to the Legislature by the Department of Insurance. The Insurance Consumer Advocate also sits on many boards.

Organization of the Department of Insurance

The Department of Insurance is divided into 10 divisions. These divisions are:

- *Administration*, which performs facilities management, personnel management, training, and purchasing;
- *Agents and Agencies Services*, which is responsible for licensing, regulating, and investigating the professional activities of insurance agents;
- *Insurance Consumer Services*, which handles all consumer inquiries and complaints, provides educational materials, and maintains a toll-free hotline for consumers;
- *Insurance Fraud*, which investigates all forms of insurance fraud;
- *Insurer Services*, which regulates insurance companies by monitoring the financial condition and regulatory compliance of insurance companies and approves insurance rates and forms;
- *Legal Services*, which represents the Department of Insurance in administrative hearings and court proceedings and provides legal opinions to the public and the Department of Insurance;
- *Rehabilitation and Liquidation*, which oversees financially unstable insurance companies;
- *Risk Management*, which administers the state's property and casualty self-insurance funds;
- *State Fire Marshal*, which investigates fires and suppresses arson, inspects state owned and leased buildings, enforces laws governing explosives, fireworks, fire suppression equipment, and sprinkler systems, establishes standards for firefighters, licenses and permits fire equipment dealers, and operates the Fire College; and
- *Treasury*, which carries out the constitutional duties of the treasurer and oversees the State Employees Deferred Compensation Program.

Staffing and Funding

The Department of Insurance has 1,537 full-time positions and an annual operating budget of \$115.7 million for FY 2000-01. The activities of the Department of Insurance are funded through four different operating trust funds: Treasurer's Administrative and Investment Trust Fund, Florida

Risk Management Trust Fund, Agents and Solicitors County Tax Trust Fund, and Insurance Commissioner's Regulatory Trust Fund.

Field Offices

The Department of Insurance maintains seventeen field offices that are located in Bartow, Daytona Beach, Ft. Lauderdale, Ft. Myers, Ft. Walton Beach, Jacksonville, Lake City, Largo, Marianna, Miami, Ocala, Orlando, Pensacola, Plantation, Quincy, Tampa, and West Palm Beach.

Comptroller / Department of Banking and Finance

Constitutional Duties

The Comptroller is an elected position created by the state constitution as part of the Cabinet. The constitutional duties of the Comptroller, under Article IV, section 4, Florida Constitution, are to serve as Chief Financial Officer of the state and to settle and approve all accounts against the state. The Comptroller is also a member of the State Board of Administration.

Statutory Duties

The statutory duties of the Comptroller include examining, auditing, and settling claims and demands against the state, and serving as the head of the Department of Banking and Finance, which is responsible for regulating financial institutions and securities-related businesses, providing consumer financial protections, and administering the Unclaimed Property Act.

Organization of the Department of Banking and Finance

The Comptroller is charged with executing the programs and policies adopted by the Legislature. The Department of Banking and Finance is one of six departments not required to comply with the specific organizational units applicable to departments generally. The functions of the Department of Banking and Finance have been organized into the following divisions:

- *Accounting and Auditing*, which provides financial accountability for public funds;
- *Banking*, which regulates state-chartered financial institutions;
- *Financial Investigations*, which examines consumer complaints, investigates allegations or suspected wrongdoing, and educates consumers.
- *Information Services*, which maintains the Florida Accounting Information Resource and the regulatory and licensing programs within the department; and
- *Securities and Finance*, which regulates the securities industry and the financial industry.

The Comptroller also oversees the Office of Unclaimed Property, which receives, accounts for, and disperses tangible and intangible property from unclaimed savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashier's checks, stocks, bonds, other securities, insurance policy proceeds, refunds, security and utility deposits, and contents of safety deposit boxes.

Staffing and Funding

The Department of Banking and Finance has 916 full-time equivalent positions and an annual operating budget of \$69.8 million for FY 2000-01. Fifty-five percent of the operating budget of the Department of Banking and Finance is from the General Revenue Fund, with the remainder from the following eight trust funds: Administrative Trust Fund, Working Capital Trust Fund, Consolidated Payment Trust Fund, Regulatory Trust Fund, Financial Institutions Regulatory Trust Fund, Anti-Fraud Trust Fund, Federal Use of State Lands Trust Fund, and Comptroller's Federal Equitable Sharing Trust Fund.

Regional/Field Offices

The Department of Banking and Finance maintains eight regional offices. These offices are located in Fort Lauderdale, Fort Myers, Jacksonville, Miami, Orlando, Pensacola, Tampa, and West Palm Beach.

Merging Departments—The Type Two Transfer

Under a type two transfer, which is defined in s. 20.06, F.S., an agency, department, program, activity, function, unit, or subunit is merged into another agency or department. The merging agency or department retains all its statutory powers, duties, and functions. Its records, personnel, property and balance of appropriations, allocations, or other funds are transferred to the agency with which it is merged. The administrative rules that were in effect before the transfer remain in effect.

C. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 681 implements Constitutional Revision 8. The bill:

- Creates the Office of Chief Financial Officer for the newly-created Cabinet post of Chief Financial Officer. The duties of the Chief Financial Officer are to serve as chief fiscal officer of the state, to settle and approve accounts against the state, to keep all state funds and securities, to administer the Government Employees Deferred Compensation Plan, and to carry out laws relating to unclaimed property and security for public deposits.
- Assigns the statutory duties of the Comptroller (as financial institutions and securities regulator) and the Treasurer (as insurance regulator and Fire Marshal) to the new Department of Insurance and Financial Services and abolishes the Department of Insurance and the Department of Banking and Finance.
- Directs the Governor and Cabinet to appoint an executive director, subject to Senate confirmation, to serve as the chief administrator of the new department and, beginning no later than August 1, 2001, to oversee the transition to the new department (e.g., filling senior management positions, recommending needed statutory changes, reporting on positions subject to transfer to the Office of Chief Financial Officer).
- Establishes the Office of Transition Management as an independent office housed within the Executive Office of the Governor for the purpose of managing the transition to the new Office of Chief Financial Officer and Department of Insurance and Financial Services.
- Divides the department into three "offices" reflecting functional duties, each of which would be headed by a commissioner meeting certain specified qualifications: the Commissioner of Insurance, the Commissioner of Financial Services, and the Commissioner of Securities.

Commissioners would serve at the pleasure of the executive director, subject to Governor and Cabinet approval.

- Vests each commissioner with final agency authority with regard to final orders under Chapter 120, F.S., the Administrative Procedure Act.
- Preserves existing rules and pending administrative and judicial actions.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 Amends s. 20.04(3), F.S., relating to structure of the Executive Branch. Currently, this provision exempts the Department of Banking and Finance from the requirement that departments be organized into divisions, bureaus, and sections. This bill provides that, effective January 7, 2003, the exemption applies to the new Department of Insurance and Financial Services.

Section 2 Creates s. 20.121, F. S., establishing the Office of Chief Financial Officer, effective January 7, 2003. The head of the office is the elected Chief Financial Officer, and the duties of the office are as specified in the State Constitution (i.e., to serve as chief fiscal officer of the state, to settle and approve accounts against the state, and to keep all state funds and securities).

This section also provides that the Chief Financial Officer is responsible for unclaimed property (currently under the Comptroller), security for public deposits (currently under the Treasurer), and the Government Employees Deferred Compensation Plan (currently under the Treasurer).

Section 3 Creates s. 20.131, F. S., establishing the Department of Insurance and Financial Services and specifies that the head of the department is the Governor and Cabinet. The other provisions of this section are as follows:

Executive Director—Provides that the chief administrator of the department is the Executive Director, appointed by the Governor and Cabinet, subject to Senate confirmation, and who serves at the pleasure of the Governor and Cabinet. The functions of the Executive Director are limited to personnel, administrative, and budgetary matters (including administrative coordination of issues that affect more than one commissioner and coordination of legislative activities).

Departmental Structure—The regulatory functions of the department are divided into three “offices” headed by “commissioners.” The Office of the Commissioner of Insurance handles all of the insurance-related functions (including insurance fraud, state government risk management, and the Fire Marshal’s office), the Office of the Commissioner of Financial Services handles regulatory functions relating to banks, credit unions, other financial institutions, finance companies, and funeral and cemetery services, and the Office of the Commissioner of Securities handles regulatory functions relating to securities.

For purposes of adopting final orders under the Administrative Procedure Act, each commissioner is the “agency head” and is responsible for taking final agency action.

Commissioners—Each commissioner is appointed by, and serves at the pleasure of, the Executive Director. Appointment is subject to the approval of the Governor and Cabinet. The minimum qualification for the Commissioner of Insurance is 5 years of responsible private sector experience (within the preceding 10 years) working full time in an area under the regulatory

jurisdiction of the Office of the Commissioner of Insurance, or as a senior examiner or other senior employee of an insurance regulatory agency. The minimum qualification for Commissioner of Financial Services is 5 years of responsible private sector experience (within the preceding 10 years) working full time in an area under the regulatory jurisdiction of the Office of the Commissioner of Financial Services, or as a senior examiner or other senior employee of a financial services regulatory agency. The minimum qualification for Commissioner of Securities is 5 years of responsible private sector experience (within the preceding 10 years) working full time in an area under the regulatory jurisdiction of the Office of the Commissioner of Securities, or as a senior examiner or other senior employee of a securities agency.

Section 4 Provides, effective January 7, 2003, for transfers of powers, duties, functions, rules, records, personnel, property, and funds from the old departments to the Office of Chief Financial Officer and the new Department of Insurance and Financial Services. Matters relating to constitutional duties of the Comptroller and Treasurer, and duties relating to unclaimed property and security for public deposits, are transferred to the Office of Chief Financial Officer, and everything else is transferred to the new department.

Section 5 Provides that rules of the Department of Banking and Finance or of the Department of Insurance that were in on January 6, 2003, become rules of the new Department of Insurance and Financial Services on January 7, 2003, except for rules relating to constitutional powers and duties, which become rules of the Chief Financial Officer.

Section 6 Preserves judicial and administrative actions involving the Department of Banking and Finance and the Department of Insurance pending on January 7, 2003, and substitutes the new Department of Insurance and Financial Services as a party (or substitutes the Chief Financial Officer where appropriate).

Section 7 Provides for management of the transition to the new Office of Chief Financial Officer and Department of Insurance and Financial Services.

Appointment of Executive Director—The Governor and Cabinet are required to appoint a person who will be the Executive Director of the Department of Insurance and Financial Services by no later than August 1, 2001. Until the creation of the new department takes effect January 7, 2003, the Executive Director serves as head of the Office of Transition Management.

Office of Transition Management—The Office of Transition Management is established as an independent office housed within the Executive Office of the Governor. The purpose is to manage the transition to the new Office of Chief Financial Officer and Department of Insurance and Financial Services, including:

Assuring that the employees of the offices of Commissioner of Insurance, Commissioner of Financial Services, and Commissioner of Securities, including all senior management positions, are occupied by qualified personnel by January 7, 2003.

Submitting written recommendations to the Legislature for statutory changes by January 1, 2002. This submission must include recommendations regarding the need for, and structure of, investigative services for the Office of Chief Financial Officer, including confidentiality requirements, and must also include recommendations regarding streamlined rulemaking procedures and procedures to allow adoption of emergency rules without action of the Governor and Cabinet.

See III.D., Fiscal Comments, for type of expenses and assumptions used.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

CS/CS/HB 681 creates an Office of Transition Management to manage the transition to the new department. This involves hiring an Executive Director to direct the transition. The duties of the Executive Director will include developing a proposed organizational plan for the new department, preparing an analysis of staffing needs on a position-by-position basis, assuring all senior management positions are occupied no later than January 7, 2003, and submitting written recommendations to the Legislature for any additional statutory changes needed to ensure a smooth transition. In addition to salaries and benefits for the Executive Director and one support staff person, expenses will include office space and office equipment such as telephones, personal computers, supplies, file cabinets and a facsimile machine. In calculating the fiscal impact, staff used the standard expense and operating capital outlay package developed by the Office of Planning and Budgeting in conjunction with the Department of Management Services, and an average annual salary of \$113,000 for current department secretaries of executive branch departments and \$40,000 as mid-range salary for an Administrative Assistant III. Added to both of these salary amounts is a sum equal to 35 percent of salary for benefits. Recurring expenditures for FY 2002-03 reflect a 2.5 percent increase over FY 2001-02 expenditures.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

Effective January 7, 2003, the rules of the Department of Banking and Finance and of the Department of Insurance that were in effect on January 6, 2003, shall become rules of the Department of Insurance and Financial Services and shall remain in effect until specifically amended or repealed in the manner provided by law. However, any such rules that relate to the constitutional functions of the Comptroller or the Treasure shall instead become rules of the Office of the Chief Financial Officer and shall remain in effect until amended or repealed in the manner provided by law.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Differences between the Council Substitute for CS/HB 681 and CS/HB 681 as passed by State Administration:

- CS/CS/HB 681 revises the minimum qualifications for appointment of commissioners. As revised, the Insurance Commissioner must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full-time in an area under the regulatory jurisdiction of the Office of the Commissioner of Insurance, or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over insurers or insurance agencies. (Under CS/HB 681, the private sector qualifications required service as a "senior officer" of an insurer or insurance agency.)
- Under CS/CS/HB 681, the Financial Services Commissioner must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full-time in an area under the regulatory jurisdiction of the Office of the Commissioner of Financial Services, or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over financial institutions, finance companies, or securities companies. (Under CS/HB 681, the private sector qualifications required service as a "senior officer" of a financial institution, finance company, or securities company.)
- CS/CS/HB 681 incorporates an amendment adopted on April 4, 2001 by the Committee on General Government Appropriations. The amendment provides the appropriation of \$227,984 and two FTE to the Executive Office of the Governor for the interim office. The amendment also provides transfers of one-half of the funding from the Administrative Trust Fund in the Department of Banking and Finance and one-half from the Insurance Commissioner's Regulatory Trust Fund in the Department of Insurance.
- CS/CS/HB 681 creates the Office of the Commissioner of Securities as a third commissioner's office within the new Department of Insurance and Financial Services, and specifies qualifications for appointment of the commissioner. The prior version of the bill included securities within the jurisdiction of the Office of the Commissioner of Financial Services.

Differences between CS/HB 681 and HB 681 as filed:

- The CS provides two commissioners, one for the current Department of Insurance functions and one for the current Department of Banking and Finance functions. The original bill had split the Department of Banking and Finance functions between a Commissioner of Financial Institutions and a Commissioner of Securities.
- The CS does not include any special provisions on rulemaking by the new department.
 - Under the CS, the rulemaking process will basically be the same as the process used by other Governor-and –Cabinet agencies, such as Revenue, Highway Safety and FDLE.
 - The CS also calls for recommendations on streamlining the rulemaking process.
 - Under the bill as filed, the Governor and Cabinet were limited to reviewing and rejecting a rule after it was adopted.
- The original bill did not specify that the Office of Transition Management would make recommendations on investigative services for the CFO or on streamlined rulemaking for the new department. It also did not require the transition office to submit monthly reports to the Speaker and President.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

J. Marleen Ahearn, Ph.D., J.D.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Juliette Noble

Staff Director:

Lynn Dixon

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Leonard Schulte

Staff Director:

Hubert "Bo" Bohannon