

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: CS/SB 1402

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Organization of the Department of Financial Services

DATE: April 7, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1402 changes the organization of the Department of Financial Services (DFS or department). The bill gives the Chief Financial Officer (CFO) the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote effective and efficient operations. The bill does not change the review and approval process by the Department of Management Services and the Executive Office of the Governor.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The Strategic Markets Research and Assessment Unit, which is currently not active nor funded, is repealed.

The bill provides that all auditing and accounting positions in the DFS are exempt from the career services provisions of law.

The \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund.

The bill removes the requirement that the Florida Clerks of Court Operations Corporation (FCCOC) contract with the DFS to audit the court-related expenditures of individual clerks. The requirement that \$1 from various circuit court filing fees be deposited in the Administrative Trust Fund is eliminated. The bill directs that fifty cents from a \$4 service charge imposed in certain probate cases will fund education provided to the clerks of court by the FCCOC.

The department has indicated the cost of changing the 66 accountants and auditors to the select exempt service classification from career service is estimated to be \$75,000 from the General Revenue Fund and \$12,000 from the Administrative Trust Fund. The department has indicated that it has sufficient current appropriations to cover these increased costs.

The effective date of the bill is July 1, 2015.

## II. Present Situation:

The CFO is a member of the Cabinet<sup>1</sup> and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.<sup>2</sup> The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>3</sup>

Section 20.04, F.S., provides for the establishment of divisions, bureaus, sections, or subsections within a state department. A department head may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the

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<sup>1</sup> See Art. IV, s. 4, Fla. Const.

<sup>2</sup> See s. 20.121(1), F.S.

<sup>3</sup> See s. 20.121(2), F.S.

department.<sup>4</sup> The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.<sup>5</sup>

### **Bureau of Unclaimed Property**

Chapter 717, Florida Statutes, governs the disposition of unclaimed property and requires the DFS to administer the statute. Currently, the DFS holds unclaimed property accounts valued at more than \$1 billion from dormant accounts in financial institutions, insurance and utility companies, securities, trust holdings, and unclaimed safe deposit boxes. The Bureau of Unclaimed Property within the DFS is the bureau responsible for administering chapter 717, F.S.<sup>6</sup>

### **The Office of Fiscal Integrity**

The Office of Fiscal Integrity is a criminal justice entity within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The office performs functions related to the duty of the CFO to examine, audit, adjust, and settle the accounts of all state officers and any other person who has received state funds or moneys.<sup>7</sup> The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.<sup>8</sup>

### **Division of Insurance Fraud**

The Division of Insurance Fraud investigates various types of insurance fraud including Personal Injury Protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's fraud, and healthcare fraud.<sup>9</sup> The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,<sup>10</sup> false and fraudulent insurance claims,<sup>11</sup> and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.<sup>12</sup> The division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2012-2013, the division received over 15,440 referrals.

### **Division of Consumer Services**

The Division of Consumer Services within the DFS is created by s. 20.121, F.S., and handles consumer issues and complaints related to the jurisdiction of the DFS and the Office of Insurance Regulation ("OIR"). The division:

- Receives inquiries and complaints from consumers;

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<sup>4</sup> See s. 20.04(7)(b), F.S.

<sup>5</sup> See s. 20.04(7)(c), F.S.

<sup>6</sup> See <https://www.fttreasurehunt.org/> (discussing the Bureau of Unclaimed Property)(last accessed March 11, 2015).

<sup>7</sup> Section 17.04, F.S.

<sup>8</sup> See <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE> (last accessed March 11, 2015).

<sup>9</sup> See <http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eF> (last accessed March 11, 2015).

<sup>10</sup> Section 626.9541, F.S.

<sup>11</sup> Section 817.234, F.S.

<sup>12</sup> Section 624.15, F.S.

- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to appropriate division within DFS or the OIR, as appropriate.<sup>13</sup>

### **Strategic Markets Research and Assistance Unit**

Section 20.121, F.S., creates the Strategic Markets Research and Assessment Unit within the DFS. It requires the CFO or his or her designee to report quarterly to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on the status of the state's financial services markets. The CFO must also provide findings and recommendations regarding regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. According to the DFS, the unit has not functioned since before 2010 and funding was discontinued in 2009.<sup>14</sup>

### **Florida Clerks of Court Operations Corporation**

The Florida Clerks of Court Operations Corporation (FCCOC), created by s. 28.35, F.S., performs various functions related to the operations of the clerks of the court. It reviews and verifies that court clerk budgets are limited to court-related functions.<sup>15</sup> It recommends to the Legislature changes in the amounts of the various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions. The FCCOC develops and certifies a uniform system of workload measures and applicable workload standards for court-related functions.<sup>16</sup> The FCCOC develops and conducts clerk education programs.<sup>17</sup> Section 28.35(4), F.S., provides that the FCCOC is funded through a contract with the DFS. That contract is funded by directing \$4 from various court filing fees be used to fund the contract.<sup>18</sup>

Section 28.35(2)(e), F.S., requires the FCCOC to enter into a contract with the DFS to audit court-related expenditures of individual clerks. The audits are funded by directing \$1 of the court filing fee in various circuit court proceedings to the Administrative Trust Fund.<sup>19</sup> The DFS reports that it has conducted such audits for ten years and the audit findings were insignificant.<sup>20</sup> Section 28.2401, F.S., imposes a \$4 service charge on certain probate matters.<sup>21</sup> It provides that the fifty cents from the service charge is deposited in the Administrative Trust Fund to fund clerk education.<sup>22</sup>

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<sup>13</sup> See s. 20.121(2)(h), F.S.

<sup>14</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015)(on file with the Senate Committee on Banking and Insurance).

<sup>15</sup> See s. 28.36(3), F.S.

<sup>16</sup> See s. 28.35(2), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> See s. 28.241, F.S.

<sup>19</sup> See s. 28.241, F.S.

<sup>20</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015).

<sup>21</sup> The \$4 charge is imposed on petitions seeking summary administration, formal administration, guardianship, curatorship, and conservatorship. See s. 28.2401, F.S.

<sup>22</sup> See s. 28.2401, F.S.

## **Audit and Accounting Positions in the Department of Financial Services**

Article III, s. 14, Florida Constitution, requires the Legislature to create a civil service system for state employees, except for those employees specifically exempted. Employees in the civil service system are “career service” employees<sup>23</sup> while employees exempted from the career service system are called “select exempt”<sup>24</sup> or “senior management.”<sup>25</sup> In general, career service employees are subject to dismissal for cause while senior management and select exempt employees serve at the pleasure of the agency head.<sup>26</sup> The various classes also have different pay scales, different leave rules, and different levels of insurance subsidies. Section 110.205, F.S., provides a number of classes of employees that are exempt from the career service and serve in the senior management or select exempt classifications.

According to the DFS, in 2008 the Department of Management Services authorized that DFS “investigators and auditors” could remain in the select exempt class but suggested that the department should seek a legislative change to make the authorization permanent. Positions reverted to career service as they became vacant. There are currently 66 accounting and auditing positions which the DFS seeks to change from career service to select exempt.

### **Service of Process**

Section 624.502, F.S., requires that in all instances as provided in any section of the insurance code and s. 48.151(3), F.S.,<sup>27</sup> in which service of process is authorized to be made upon the CFO or the director of the OIR, the plaintiff shall pay \$15 to the DFS or the OIR for service of process. The fee is deposited into the Insurance Regulatory Trust Fund. Chapter 2014-53, Laws of Florida, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

## **III. Effect of Proposed Changes:**

### **Organization of the DFS**

**Section 1** makes various changes to the organization of the DFS. The bill gives the CFO the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote the effective and efficient operation of the DFS pursuant to s. 20.04, F.S. The bill does not change the review and approval process of s. 20.04, F.S.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;

<sup>23</sup> See s. 110.205, F.S.

<sup>24</sup> See Part V, ch. 110, F.S.

<sup>25</sup> See Part III, ch. 110, F.S.

<sup>26</sup> See ss. 110.227, 110.402, and 110.604, F.S.

<sup>27</sup> Section 48.151(3), provides that the CFO or his or her designee is the agent for service of process on all insurers applying for authority to transact insurance, all licensed nonresident insurance agents, all nonresident disability insurance agents, certain surplus lines, domestic reciprocal insurers, fraternal benefit societies, warranty associations, and prepaid limited health service organizations.

- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions, but the CFO will have the authority to determine the organizational placement of those functions within the DFS. The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The division will retain the same powers and duties as the Division of Insurance Fraud.

**Sections 9-30** amend various statutory provisions to reflect the Division's name change.

The Strategic Markets Research and Assessment Unit, which is not currently active nor funded, is repealed.

### **Relocation of the Division of Consumer Services Statute**

**Sections 1, 6, and 7** relocate statutory references to the duties of the Division of Consumer Services from s. 20.121, F.S., to the Insurance Code at s. 624.307, F.S., and provide conforming changes.

### **Florida Clerks of Court Operations Corporation**

**Section 4** amends s. 28.35, F.S., to remove the requirement that the FCCOC contract with the DFS to audit the court-related expenditures of individual clerks. The DFS is requesting that the requirement be deleted on the basis that it has conducted such audits for ten years, and the audit findings have been insignificant.<sup>28</sup> The bill does not change the CFO's auditing power pursuant to s. 17.03, F.S.

**Section 2** amends s. 28.2401, F.S., to specify that the fifty cents from the \$4 service charge imposed in certain probate cases that is deposited in the Administrative Trust Fund to fund clerk education will fund education provided by the FCCOC.

**Section 3** amends s. 28.241, F.S., to remove the requirement that \$1 from various circuit court filing fees be deposited in the Administrative Trust Fund to fund audits. The bill will not increase court filing fees.

According to the DFS, there are six positions related to the auditing of court clerks that could be eliminated if the bill passes. The positions are currently vacant. If the DFS audits clerks of court in the future, it would use staff from the Division of Accounting and Auditing.<sup>29</sup>

### **Audit and Accounting Positions in the Department of Financial Services**

**Section 5** amends s. 110.205, F.S., to provide that all auditing and accounting positions in the DFS are exempt from the career services provisions of law.

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<sup>28</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015).

<sup>29</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015).

**Service of Process Fees**

**Section 8** of this bill amends s. 624.502, F.S., to provide that the \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund. The Insurance Regulatory Trust Fund, created by s. 624.523, F.S., is appropriated for use by the DFS and the OIR to defray the expenses in the discharge of administrative and regulatory powers. Chapter 2014-53, Laws of Florida, implementing the 2014-2015 General Appropriations Act, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

**Effective Date**

**Section 31** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The DFS reports that CS/SB 1402 would result in a reduction of \$500,000 and six positions in Fiscal Year 2015-2016 as a result of eliminating the requirement to enter into a contract with the Florida Clerks of the Court Operations Corporation to perform audits.<sup>30</sup> According to the DFS' analysis, the elimination of the \$1 fee remitted to the DFS will result in the local governments retaining an estimated \$400,000 per year from court filing fees.

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<sup>30</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015).

According to the department, there will be an additional cost of \$75,000 in general revenue and \$12,000 from the Administrative Trust Fund to reclassify 66 positions from career service to select exempt service. These additional costs can be provided within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 20.121, 28.2401, 28.241, 28.35, 110.205, 624.26, 624.307, 624.502, 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9891, 626.9892, 626.9893, 626.9894, 626.9895, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, and 932.7055.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment to change the name of the “Division of Insurance Fraud” to the “Division of Criminal Investigations” in various sections of law.

**B. Amendments:**

None.