

Date of Hearing: April 29, 2013

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Roger Dickinson, Chair
AB 1396 (Banking & Finance) – As Introduced: March 6, 2013

SUBJECT: Department of Financial Services

SUMMARY: Would change the name of the proposed Department of Business Oversight (DBO) to the Department of Financial Services (DFS). Specifically, this bill:

- 1) Deletes references to DBO in Governor's Reorganization Plan No. 2 (GRP #2) and would instead transfer the duties of the Department of Financial Institutions (DFI) and Department of Corporations (DOC) to DFS.
- 2) Makes other technical and clarifying changes.

EXISTING LAW provides for the regulation and oversight of state chartered banks and credits unions and money transmitters under DFI. Furthermore, DOC is charged with the regulation and oversight of mortgage loan originators, deferred deposit transaction licensees, finance lenders, residential mortgage lenders, escrow agents, securities broker-dealers, and investment advisors. Effective July 1, 2013 the duties of DFI and DOC will be combined and moved to DBO.

FISCAL EFFECT: Unknown

COMMENTS:

Last year the legislature acted on GRP #2 which assigns and reorganizes the functions of state government among executive offices and agencies by creating the following general agency structure in the executive branch:

- 1) Business, Consumer Services, and Housing;
- 2) Government Operations;
- 3) Corrections and Rehabilitation;
- 4) Labor and Workforce Development;
- 5) California Health and Human Services;
- 6) Environmental Protection;
- 7) Natural Resources; and
- 8) Transportation.

In creating the new general agency structure listed above, GRP #2 abolished certain existing state entities and offices, including, among others, the Business, Transportation and Housing Agency and its secretary.

GRP process.

The California Constitution authorizes the Legislature to delegate to the Governor the authority to assign and reorganize functions among executive branch officers, agencies and their employees. The Governor's authority to reorganize does not extend to other constitutional offices. Existing law specifies the process for a reorganization and places limits on that authority.

Existing law sets forth the purposes of the Governor's reorganization authority, providing in the form of a GRP a means by which the Governor can reorganize government to promote improved strategies for:

- 1) Executing the law,
- 2) Managing state government,
- 3) Reducing expenditures,
- 4) Increasing efficiency,
- 5) Improving coordination among agencies and functions,
- 6) Reducing the number of agencies, and
- 7) Eliminating duplication and overlap among agencies.

To achieve those goals, the Governor can use a GRP to transfer functions among state agencies, eliminate functions or entire agencies, consolidate operations or specific functions, and establish new entities to perform the functions of an existing entity.

State law prohibits a GRP from:

Extending the authority of an agency or a function beyond the period authorized by law.
Authorizing any agency to exercise any function not expressly authorized by law.
Increasing the term of an office beyond what is provided by law, or abolishing any agency created by the California Constitution or transferring jurisdiction and control of a function by the California Constitution.

A reorganization plan may be delivered to the Legislature at any time during a regular session, provided the Legislature has at least 60 calendar days of a continuous session to consider the plan. The Governor's plan becomes effective on the 61st day after it is given to the Legislature, unless either the Senate or the Assembly adopts a resolution rejecting the plan. The resolution requires a majority vote.

At least 30 days prior to submitting a GRP to the Legislature, the Governor must provide a copy to the Little Hoover Commission, in its advisory capacity. The Commission must review the plan and submit a report to the Legislature within 30 days of transmission to the Legislature.

After the effective date of a GRP, Legislative Counsel prepares a bill for introduction that would conform the statutes to the GRP. The GRP itself does not amend the statutes. However, unless either house of the Legislature does not affirmatively reject the GRP, it becomes law whether or not an implementing bill is passed.

Typically, implementing legislation, in one or more bills, is passed in the year following the effective date of a GRP. While the GRP itself cannot be amended by the Legislature, implementing legislation can modify a GRP's provisions.

A GRP may provide for the appointment of individuals, subject to Senate confirmation, to lead an entity that results from consolidation or other type of reorganization.

DBO vs DFS.

In 2009, the Assembly passed AB 33 (Nava), by a vote of 77-0, which called for the elimination DFI, DOC and the Department of Real Estate and the creation of DFS. The justification for AB 33 was that California needs a central regulator of financial services and that a number of other large states within the United States has one central financial regulator. Unfortunately, AB 33 stalled in the Senate Banking Committee due to several disagreements regarding the means and policy of creating a new department.

Why was the name DBO chosen for the department, tasked with regulating financial services in California? Unfortunately, the public analysis of GRP #2 does not reveal any discussion regarding the name "DBO." Instead the bulk of analysis on this change focused on the necessity to combine DFI and DOC as the substance of the reorganization was much more prominent than the eventual names of the entities that would emerge from the reorganization. The substance of the reorganization of DOC and DFI into a new department is vital and necessary for the financial regulatory environment of California. However, the name DBO does not delineate or convey in any sense that the new department is the regulatory of state licensed financial service entities. During the recent subprime lending/foreclosure crisis committee staff received numerous inquiries from consumers unsure of what regulator they should contact regarding a complaint concerning a mortgage loan originator, a bank, or other financial services provider. DBO could further lead to confusion as consumers search for help, or new startup financial service providers seek a license. Furthermore, other financial regulators in the United States have a term in their official title that denotes a concentration on matters concerning finance and banking. It is for these reasons that changing DBO to DFS is necessary and fundamental.

Among states with the most significant banking activity, the names of their banking and financial regulators denote their respective regulatory purview making it all the more important that California also has a regulator body with a title that denotes its function and status. For example,

- New York- Department of Financial Services
- Delaware-Office of State Banking Commissioner

- Florida- Office of Financial Regulation.
- Illinois- Office of Financial and Professional Regulation.
- Texas- Department of Banking

Additionally, in a document released during consideration of GRP #2, *Project Initiation Document, GRP 2, Reorganization of California Department of Corporations & California Department of Financial Institutions* reveals that the need to change the name to DFS. Beginning on page 39 of the document:

The creation of a new department affords an important opportunity to rectify a decades-old problem with the name “Department of Corporations.” Many consumers and businesses mistakenly contact the Department of Corporations about matters unrelated to financial services regulation. Historically, ten percent of all inquiries to the DOC call center (where reports on fraudulent activity by our licensees are reported) are referred to the Secretary of State, who actually issues business licenses to corporations. The need to accurately “brand” the department has been identified in past DOC strategic plans as well.

The name “Department of Business Oversight (DBO)” is unlikely to clarify the purpose of the DOC or DFI. There is concern that the DBO title will lead to even greater business and consumer confusion and unnecessary diversions of state resources. Additionally, the DBO title is not easily distinguished from the Department of Consumer Affairs and the term “oversight” is redundant.

It is recommended that GRP2 clean-up legislation include language to change the name of the new organization from “Department of Business Oversight” to “Department of Financial Services (DFS).” This alternative preserves the vitally-important concept of the new department’s role in regulating all of the state’s financial services industry. The title aptly describes the licensees of the department with a unique and easily identifiable acronym.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file.

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