



Government Operations Appropriations Subcommittee

**Friday, April 8, 2011
8:45 AM – 10:45 AM
404 HOB**

Meeting Packet

**Dean Cannon
Speaker**

**Ed Hooper
Chair**



The Florida House of Representatives

Appropriations Committee

Government Operations Appropriations Subcommittee

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April 8, 2011

AGENDA
8:45 AM – 10:45 AM
404 HOB

I. Call to Order/Roll Call

II. Consideration of Bills

CS/HB 187 Streamlining the Issuance of Licenses, Certifications, and Registrations Issued by State Agencies by Rep. Horner

HB 331 Firesafety by Rep. Weinstein

CS/HB 723 Extraterritorial Reciprocity in Workers' Compensation Claims by Rep. Weinstein

CS/HB 823 Loan Processing by Rep. Workman

CS/HB 1121 Financial Institutions by Rep. Ingram

III. Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 187 Streamlining the Issuance of Licenses, Certifications, & Registrations Issued by State Agencies
SPONSOR(S): Business & Consumer Affairs Subcommittee, Horner and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Whittington	Creamer
2) Government Operations Appropriations Subcommittee		Topp <i>BDT</i>	Topp <i>BDT</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

CS/HB 187 establishes "Florida's One-Stop Business Connect Act". The purpose of the act is to streamline and automate the state's processes for issuing business licenses, certifications, and registrations to individuals who start and operate businesses.

The bill requires the Governor to direct the secretaries or agency heads, or their designees, of seven state agencies to work jointly to review all state requirements for starting, licensing, and operating a business in the state. They must also examine the feasibility of establishing an online connection that provides a single point of entry for businesses to complete business transactions with the state. It also encourages other agencies that interact with businesses to participate.

The Governor is required to submit a report and recommendations to the President of the Senate, and Speaker of the House of Representatives for establishing a single online portal for accessing state requirements for starting, licensing, and operating a business.

The bill will have an insignificant negative fiscal impact on the affected state agencies.

The effective date of the bill is upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

MyFlorida.com is "The Official Portal of The State of Florida" and, in part, provides:

From architects to medical doctors to yacht brokers, Florida requires many professional activities to be state-licensed. This is a listing of regulated professions and businesses, including links to websites that allow you to lookup individual names, license numbers and more.¹

This site lists 365 categories of business activities that are licensed by the state.

The "Florida Statutes 2010 Definitions Index" prepared by the Division of Statutory Revision, includes twenty two categories of definitions for the term "license". The index lists thirteen separate definitions for the term "certificate." The term "registration" is identified by six different definitions.

Included in the index is a frequently referenced statutory definition in s. 455.01, F.S., under the general powers chapter of the Department of Business and Professional Regulation:

4) "License" means any permit, registration, certificate, or license issued by the department.

The "Administrative Procedure act," chapter 120, F.S., specifies under s. 120.52, F.S.:

(10) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(11) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

The license process is one of the core functions performed by agencies in protecting the health, safety, and welfare of the public. The public recognizes the importance of a professional license as an indicator that the business or individual has met the minimum legal qualifications to perform services. An accurate and reliable licensing system is also emphasized because fees, taxes, and fines are annually collected from licensees.

The license requirements are set in statute and amount to a different set of standards that apply to each activity, either for initial licensure or as a practitioner. For instance, some acts require an academic degree for licensure, while others allow a variety of paths, including qualification through experience, internship training, or other specific training.

The practice requirements for most, but not all, businesses require an examination. The practice requirements may require a multi-part examination which must be taken when available and usually includes several days of testing. Other professions are subject to less time consuming examinations, usually developed by the state or by a vendor through a contract with the state.

Licensure requirements that apply to a particular practice will inevitably affect the application and licensure process. The time frame between the initial license application and the actual issuance of the license may vary as a result of the requirements applicable to that particular business activity.

¹ <http://www.myflorida.com/licensee/>
STORAGE NAME: h0187b.GOAS.DOCX
DATE: 4/6/2011

Proposed Changes

The bill requires the Governor to direct the secretary or agency head, or his or her designee, to work jointly to review all state requirements for starting, licensing, and operating a business and examine the feasibility of establishing an online connection that provides a single point of entry for businesses to complete business transactions with the state, of the following state agencies:

Agency for Health Care Administration, Department of Business and Professional Regulation, Department of Children and Family Services, Department of Health, Department of State, and Department of Revenue, and the Agency for Enterprise Information Technology.

Other agencies that interact with businesses are encouraged to participate. This includes, but is not limited to, the Department of Financial Services and the Department of Agriculture and Consumer Services.

The bill requires, to the extent funds are available within the participating agencies' budgets, the agencies to:

- compile a complete, categorical inventory of all business licenses, certifications, and registrations required by each participating agency, including information regarding relevant laws and rules;
- analyze the business licensing, certification, and registration processes for each agency and identify processes that disrupt workflow and result in duplication, waste, unnecessary complexity, and errors and the root causes of those errors; and
- recommend the standardization and automation of business licensing, certification, and registration processes where appropriate.

The bill requires the Governor to submit a report and recommendations, by December 15, 2011, for establishing a single online portal for accessing state requirements for starting, licensing, and operating a business to the President of the Senate, and the Speaker of the House of Representatives.

Additionally, section 20.051, F.S., in part, provides:

To achieve maximum efficiency and effectiveness of government as intended by s. 6, Art. IV of the State Constitution, and to promote quality management and accountability as required in s. 19, Art. III of the State Constitution, all programs, functions, and entities must be reviewed by the executive and the legislative branches. Reviews must determine whether the function, program, or entity:

- serves a beneficial purpose to state agencies in improving the effectiveness and efficiency of the operations of the state and
- is situated within an organizational structure that promotes its efficient and effective administration and does not duplicate activities conducted in other agencies of the state;²

The bill specifies:

It is the intent of the Legislature that the state review all state requirements for starting, licensing, and operating a business and examine the feasibility of establishing an online connection that is easily accessible through one of the state's official portals and that provides an efficient and effective online, self-service method for an individual to access state requirements for starting, licensing, and operating a business.

² These categories are only a partial listing of review determinations.

B. SECTION DIRECTORY:

Section 1. Requires the Governor to direct the secretary or agency head, or his or her designee, to work jointly to review all state requirements for starting, licensing, and operating a business and examine the feasibility of establishing an online connection that provides a single point of entry for businesses to complete business transactions with the state. Provides the Governor must submit a report to the President of the Senate and the Speaker of the House of Representatives.

Section 2. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant negative fiscal impact on the affected state agencies. The bill provides that, "to the extent funds are available within the participating agencies' budgets," the agencies will meet the requirements of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. If an online business portal is ultimately established, it could provide efficiencies to individuals in the private sector.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Business and Consumer Affairs Subcommittee adopted one amendment, as follows:

Amended the bill to require Governor to direct the secretary or agency head, or his or her designee, to work jointly to review all state requirements for starting, licensing, and operating a business and examine the feasibility of establishing an online connection that provides a single point of entry for businesses to complete business transactions with the state instead of establishing a workgroup. It further amended the bill to require the Governor, instead of the workgroup, to submit to the President of the Senate and the Speaker of the House of Representatives a report and recommendations for establishing a single online portal for accessing state requirements for starting, licensing, and operating a business. It amended out of the bill what the Governor's report must identify.

The bill was reported favorably and the analysis has been updated to reflect the committee substitute.

1 A bill to be entitled
 2 An act relating to streamlining the issuance of licenses,
 3 certifications, and registrations issued by state
 4 agencies; providing a short title; providing legislative
 5 findings and intent; requiring the Governor to direct
 6 certain state agencies to jointly conduct a review of the
 7 state's requirements for starting, licensing, and
 8 operating a business and examine the feasibility of
 9 establishing a single online portal for accessing such
 10 requirements; providing review requirements; requiring the
 11 Governor to submit a report and recommendations to the
 12 Legislature by a specified date; providing an effective
 13 date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. (1) This act may be cited as "Florida's One-
 18 Stop Business Connect Act."

19 (2) The Legislature finds that:

20 (a) Individuals who start and operate businesses in this
 21 state must interact with multiple state agencies to obtain
 22 licenses, registrations, and tax certificates needed to legally
 23 operate in the state. This process can be time-consuming and
 24 frustrating for businesses and often requires business owners to
 25 provide similar information to multiple agencies.

26 (b) State government requirements for starting and
 27 operating a business in the state are often cumbersome and place
 28 avoidable burdens on business owners. For several years, the

29 Legislature has recognized that these requirements do not serve
30 to promote the state as a business-friendly state that actively
31 supports the growth of jobs, businesses, and economic
32 opportunities.

33 (c) A phased, deliberative, and collaborative approach
34 should be considered to streamline and automate the state's
35 business processes; to simplify business requirements and
36 eliminate unnecessary business requirements; and to provide a
37 single point of entry for businesses to complete business
38 transactions with the state.

39 (3) It is the intent of the Legislature that the state
40 review all state requirements for starting, licensing, and
41 operating a business and examine the feasibility of
42 establishing an online connection that is easily accessible
43 through one of the state's official portals and that provides an
44 efficient and effective online, self-service method for an
45 individual to access state requirements for starting, licensing,
46 and operating a business.

47 (4) (a) The Governor shall direct the secretary or agency
48 head, or the designee of the secretary or agency head, of the
49 following state agencies to work jointly to review all state
50 requirements for starting, licensing, and operating a business
51 and examine the feasibility of establishing an online connection
52 that provides a single point of entry for businesses to complete
53 business transactions with the state:

- 54 1. The Agency for Health Care Administration.
- 55 2. The Department of Business and Professional Regulation.
- 56 3. The Department of Children and Family Services.

- 57 4. The Department of Health.
- 58 5. The Department of State.
- 59 6. The Department of Revenue.
- 60 7. The Agency for Enterprise Information Technology.
- 61 (b) Other agencies that interact with businesses are
- 62 encouraged to participate, including, but not limited to, the
- 63 Department of Financial Services and the Department of
- 64 Agriculture and Consumer Services.

65 (c) To the extent that funds are available within the
 66 participating agencies' budgets, the agencies shall:

67 1. Compile a complete, categorical inventory of all
 68 business licenses, certifications, and registrations required by
 69 each participating agency, including information regarding
 70 relevant laws and rules.

71 2. Analyze the business licensing, certification, and
 72 registration processes for each agency and identify processes
 73 that disrupt workflow and result in duplication, waste,
 74 unnecessary complexity, and errors and the root causes of those
 75 errors.

76 3. Recommend the standardization and automation of
 77 business licensing, certification, and registration processes
 78 where appropriate.

79 (d) By December 15, 2011, the Governor shall submit to the
 80 President of the Senate and the Speaker of the House of
 81 Representatives a report and recommendations for establishing a
 82 single online portal for accessing state requirements for
 83 starting, licensing, and operating a business.

84 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 331 Firesafety
SPONSOR(S): Weinstein
TIED BILLS: IDEN./SIM. BILLS: SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
2) K-20 Competitiveness Subcommittee	11 Y, 0 N	Graf	Ahearn
3) Rulemaking & Regulation Subcommittee	14 Y, 0 N	Rubottom	Rubottom
4) Government Operations Appropriations Subcommittee		Fox <i>RF</i>	Topp <i>BDT</i>
5) State Affairs Committee			

SUMMARY ANALYSIS

The bill clarifies the role of the State Fire Marshal in firesafety inspections of Florida's educational facilities and streamlines the inspection and enforcement practices at the state and local levels. Specifically, the bill:

- Aligns laws governing the State Fire Marshal with educational laws governing firesafety inspections on educational property;
- Abolishes the classification of the special state firesafety inspector, leaves intact the classification of firesafety inspector, and provides for a contingent grandfathering of existing special state firesafety inspectors;
- Requires uniform firesafety standards and an alternate system to be governed by firesafety inspectors certified by the State Fire Marshal;
- Reduces the number of mandatory annual inspections at educational facilities from two to one, and provides for the inspection report to be distributed at the local level only;
- Clarifies the firesafety inspection process for charter schools and for public colleges;
- Requires all public education boards to use only certified firesafety inspectors and other inspectors who have been certified by the State Fire Marshal in monitoring compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities; and
- Requires a public education board to submit for approval the site plan for new construction to the local entity providing fire-protection services to the facility, and outlines the compliance process.

The bill has no fiscal impact on state expenditures. However, reducing redundant firesafety inspections of Florida's education facilities will reduce related expenditures due to duplicative inspections for state and local governments. The Department of Education estimates an approximate cost savings of \$515,210 for the 67 school districts and 28 colleges within the state.

The bill provides an effective date of July 1, 2011.

See DRAFTING ISSUES.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Division of State Fire Marshal

The law designates the Chief Financial Officer as the State Fire Marshal.¹ The State Fire Marshal operates through the Division of State Fire Marshal within the Florida Department of Financial Services (DFS) to implement and enforce state law on fire prevention and control. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.² Current law authorizes the State Fire Marshal to adopt by rule the Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.³

The Division of State Fire Marshal consists of four bureaus: Fire and Arson Investigations, Forensic Fire and Explosives Analysis, Fire Prevention, and Fire Standards and Training.⁴ The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year in a wide variety of certification and training programs.⁵ The Inspections Section within the Bureau of Fire Prevention conducts inspections of more than 14,000 state-owned buildings and facilities.⁶ The Florida Fire Incident Reporting Section collects over 1,800,000 fire and emergency reports each year. These reports are combined with the reports from other states in the National Fire Incident Reporting System for use by the fire services in analysis and trends. The Florida reports are also used to form the basis for the State Fire Marshal's Annual Report.⁷

Firesafety Inspections of Florida's Educational and Ancillary Facilities

The State Fire Marshal must develop firesafety criteria for educational facilities in cooperation with the Florida Building Commission and the Department of Education.⁸ All public schools, colleges, and universities are required to be inspected once every year by both the fire inspector for each school board and the local fire official.⁹ Unless otherwise specified, under current law, a "board" is defined as:

[A] district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The term "board" does not include the State Board of Education or the Board of Governors.¹⁰

Annual Report on Firesafety

The State Fire Marshal must produce a statewide annual report documenting the status of each board's firesafety program, including the improvement or lack thereof. This involves an annual compilation of district inspection reports of educational and ancillary facilities into one format for distribution to the

¹ Section 633.01(1), F.S.

² Section 633.01, F.S.

³ Sections 633.0215(1), F.S.

⁴ Florida Department of Financial Services, *State Fire Marshal*, available at, <http://www.myfloridacfo.com/sitePages/agency/sections/FireMarshal.aspx> (last visited March 24, 2011).

⁵ Florida Department of Financial Services, *Welcome to the Florida Division of State Fire Marshal*, available at, <http://www.myfloridacfo.com/sfm/index.htm> (last visited March 24, 2011).

⁶ Florida Department of Financial Services, *Bureau of Fire Prevention-Inspections Section*, available at, http://www.myfloridacfo.com/sfm/bfpr/bfpr-insp_index.htm (last visited March 24, 2011).

⁷ Florida Department of Financial Services, *Welcome to the Florida Division of State Fire Marshal*, available at, <http://www.myfloridacfo.com/sfm/index.htm> (last visited March 24, 2011).

⁸ Section 1013.37(1)(c), F.S.

⁹ Section 1013.12(2)(a), (3)(b), and (5); *see also* rule 69A-58.004(1), F.A.C.

¹⁰ Section 1013.01(3), F.S.

substantive committees of the state House of Representatives and Senate having jurisdiction over education, the Commissioner of Education or his or her successor, the State Board of Education, the Board of Governors, and the Governor.¹¹

The State Fire Marshal must adopt and administer rules regarding health and safety standards for educational and ancillary properties. If a county does not employ or appoint a fire official for firesafety inspections of educational properties, the State Fire Marshal assumes the duties of the local fire official.¹²

Firesafety Inspectors

Current law allows two different types of firesafety inspectors to conduct firesafety inspections: firesafety inspectors and special state firesafety inspectors. A “firesafety inspector” is defined as:

[A]n individual officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with firesafety responsibilities.¹³

A “special state firesafety inspector” is defined as:

[A]n individual officially assigned to the duties of conducting firesafety inspections required by law on behalf of or by an agency of the state having authority for inspections other than the Division of State Fire Marshal.¹⁴

A 2010 survey by the Florida State College at Jacksonville found a total of 44 special state firesafety inspectors employed in the 67 school districts and 26 institutions within the Florida College System.¹⁵ The special state firesafety inspectors are required to complete 120 hours of specific training, 80 hours less than the training required for firesafety inspectors.¹⁶ Every firesafety inspector or special state firesafety inspector certificate is valid for a period of 3 years from the date of issuance.¹⁷

Charter Schools

Charter schools are public schools that operate under a performance contract or charter with a sponsor. A charter school may be formed by creating a new school or converting an existing public school to charter status.¹⁸ The charter delineates unique requirements that the school must comply with in order to maintain charter status.¹⁹ A charter school must be inspected annually and meet the requirements of the Florida Fire Prevention Code. In addition, charter schools, with the exception of conversion charter schools, are not required to comply, but may choose to comply, with the State Requirements for Educational Facilities of the Florida Building Code.²⁰

Effect of Proposed Changes

State Fire Marshal

The bill revises the powers and duties of the State Fire Marshal by requiring the State Fire Marshal to consult with the Department of Education regarding the adoption of rules on safety and health standards at educational and ancillary facilities. If a county does not employ or appoint a firesafety inspector certified by the State Fire Marshal, the bill provides that the State Fire Marshal will assume the duties of the local county, municipality, or independent special fire control district to conduct firesafety inspections of educational and ancillary facilities.

¹¹ Section 1013.12(8), F.S.

¹² Section 633.01(7), F.S.

¹³ Section 633.021(24), F.S.

¹⁴ Section 633.021(24), F.S.

¹⁵ E-mail, Florida State College at Jacksonville (Feb. 9, 2011).

¹⁶ Section 633.081(2)(g) and (3), F.S.

¹⁷ Section 633.081(5), F.S.

¹⁸ Section 1002.33(1), F.S.

¹⁹ Section 1002.33(9), F.S.

²⁰ Section 1002.33(18) (a) and (b), F.S.

Firesafety Inspectors

The bill abolishes the classification of “special state firesafety inspector” as of July 1, 2013. All special state firesafety inspector certifications will expire by midnight, June 30, 2013. However, current special state firesafety inspectors may be certified as firesafety inspectors if the following conditions are met:

- The inspector has at least five years of experience as a special state firesafety inspector as of July 1, 2011, and passes the firesafety inspection examination prior to July 1, 2013;
- The inspector does not have five years of experience as a special state firesafety inspector as of July 1, 2011, but takes an additional 80 hours of courses and passes the firesafety inspection examination; or
- The inspector has at least five years of experience as a special state firesafety inspector, fails the firesafety inspection examination, but takes 80 additional hours of courses, and then retakes and passes the firesafety inspection examination.

The bill prohibits a special state firesafety inspector who does not pass the firesafety inspection examination by July 1, 2013, from conducting firesafety inspections of educational and ancillary facilities.

The bill defines “firesafety inspector” as a person certified by the State Fire Marshal to conduct firesafety inspections of buildings and facilities on a recurring or regular basis.

Firesafety Inspections by District School Boards

The bill requires a district school board to appoint certified firesafety inspectors to conduct annual inspections of educational and ancillary facilities. Inspections must begin no sooner than one year after a certificate of occupancy is issued. The district school board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within ten business days after the inspection, unless immediate corrective action is required owing to life-threatening deficiencies identified during a firesafety inspection. The district school board, or any other entity authorized to conduct the firesafety inspection, must certify to the State Fire Marshal that the annual inspection has been completed. The bill requires the district school board to take immediate action to correct the deficiencies identified in the firesafety inspection report, or suspend use of the educational or ancillary facility until the deficiencies are corrected.

Inspections of Educational Property by Other Public Agencies

An annual firesafety inspection must be conducted on educational and ancillary facilities operated by a school board or public college. Such inspections may begin no sooner than one year after a building certificate of occupancy is issued, and annually thereafter. If the firesafety inspection identifies any life-threatening deficiencies, the county, municipality, or independent special fire control district, in conjunction with the board-appointed fire official must require the board to take immediate to correct the deficiencies, or suspend use of the educational or ancillary facility until the deficiencies are corrected.

Inspection of Charter Schools Not Located on Board Owned or Leased Property

The bill authorizes a safety or sanitation inspection of educational and ancillary facilities at any time by an authorized state or local agency. The agency that is authorized by law to conduct such inspections must submit a copy of the inspection report to the charter school sponsor.

A firesafety inspection must be conducted on educational facilities that are not owned or leased by the district school board or a public college in accordance with the standards adopted by the State Fire Marshal.

The inspecting authority is required, upon request, to provide a copy of the firesafety report to the board in the district in which the charter school facility is located. The inspecting authority must include a plan of action to correct each deficiency that is identified in the firesafety inspection. If any life-threatening deficiencies are identified, the inspecting authority must require the charter school to take immediate action to correct the deficiencies, or suspend use of the educational or ancillary facility until the deficiencies are corrected. If the charter school fails to take corrective action within the period

designated in the corrective action plan, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor.

The bill provides the State Fire Marshal enforcement authority over charter school educational and ancillary facilities.

Inspections of Public Postsecondary Education Facilities

The bill requires firesafety inspections of public college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards to comply with the Florida Fire Prevention Code, as adopted by the State Fire Marshal. Local amendments to the provisions of the code relating to inspection of such facilities are prohibited. Each public college facility must be inspected annually by a firesafety inspector certified by the State Fire Marshal.²¹ The certified firesafety inspector must provide a plan of action to the college to correct each deficiency identified during the firesafety inspection. The bill requires the college to provide a copy of the firesafety inspection report to the county, municipality, or independent special fire control district in which the facility is located.

Firesafety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board,²² public college board or charter school fails to correct deficiencies identified by the certified firesafety inspector, the inspecting authority must immediately report the deficiency to the State Fire Marshal.

The bill deletes the requirement for the State Fire Marshal to publish an annual report on firesafety. This report is based on a compilation of firesafety inspection reports received from local entities for each educational and ancillary facility and submitted to the Florida Legislature, Governor, Commissioner of Education, State Board of Education, and the Board of Governors.

Approval of New Construction and Site Plans

The bill requires each board, as defined under current law,²³ to provide for a periodic inspection of proposed educational and ancillary facilities to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the State Requirements for Educational Facilities. Firesafety inspectors certified by the State Fire Marshal must enforce the Florida Fire Prevention Code.

The bill requires local boards to submit for approval to local county, municipality, or independent special fire control district providing fire-protection services to a facility, site plans for new facilities, and describes the process for compliance and informal appeal. The boards must also submit to the local entity, the site plan for each new addition that exceeds 2,500 square feet.

The reviews of site plans and inspections must be conducted by certified building code inspectors,²⁴ fire officials, or firesafety inspectors.

The bill makes clear that such site plans are not subject to local amendments. The site plans will be deemed approved unless the local county, municipality, or independent special fire control district submits to the board-appointed fire official, deficiencies citing the Florida Fire Prevention Code within fifteen days after receipt of the site plan. The fire official must incorporate the identified deficiencies in his or her review and subsequent inspections.

²¹ Section 633.081, F.S., provides training and certification requirements for State Fire Marshal-certified firesafety inspector.

²² The provisions for school board have been included under the section on Inspections of Public Postsecondary Education Facilities in the bill.

²³ Section 1013.01(3), F.S., defines the term "board" as a district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The term "board" does not include the State Board of Education or the Board of Governors.

²⁴ Section 468.603(2), F.S., defines building code inspector.

The State Fire Marshal reserves the final administrative authority to resolve disputes between the local county, municipality, or independent special fire control district, and the fire official pertaining to the requirements or application of the Florida Fire Prevention Code.

Before the commencement of any new construction, renovation, or remodeling, the bill requires that the board must approve the construction documents for compliance with the Florida Building Code and the Florida Fire Prevention Code. The board is required to contract with a State Fire Marshal-certified firesafety inspector to ensure compliance with all firesafety codes. The bill prohibits issuing the certificate of occupancy until the board certifies that the building or structure complies with all applicable statutes and rules. The board must document and maintain as part of the construction record file, the method of compliance that it chooses. Finally, the bill requires that the board must, upon request, provide to the local county, municipality, or independent special fire control district, reasonable access to all construction documents.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.01, F.S., to revise the rulemaking authority and responsibilities of the State Fire Marshal; to provide that if a county does not employ or appoint a certified firesafety inspector, the State Fire Marshal is to perform firesafety inspections of educational property.

Section 2. Amends s. 633.021, F.S., to clarify the definition of "firesafety inspector" to include certification under s. 633.081, F.S.

Section 3. Amends s. 633.081, F.S., to revise requirements and procedures for inspections of buildings and equipment; to abolish special state firesafety inspector classifications and certifications; and to provide criteria, procedures, and requirements for special state firesafety inspectors to be certified as firesafety inspectors.

Section 4. Amends s. 1013.12, F.S., to revise procedures and requirements for certain standards and inspection of educational property; to provide procedures, criteria, and requirements for inspections of charter schools; to provide reporting requirements; to revise requirements for inspections of public postsecondary education facilities; and to delete a provision requiring that the State Fire Marshal publish an annual report.

Section 5. Amends s. 1013.371, F.S., to revise firesafety inspection requirements for educational institution boards to conform to the Florida Building Code and the Florida Fire Prevention Code; and to revise certain code enforcement authority of such boards certified pursuant to chapter 633, F.S.

Section 6. Amends s. 1013.38, F.S., to require educational institution boards to submit certain facility site plans to a local county, municipality, or independent special fire control district for review; to authorize such entities to review site plans for compliance with certain provisions of the Florida Fire Prevention Code; to specify that site plans are not subject to local ordinances or local amendments to the Florida Fire Prevention Code; to provide criteria for approving site plans and correcting firesafety compliance deficiencies; to provide for referral of disputes to the State Fire Marshal; to authorize public education boards to use firesafety inspectors for compliance with the Florida Building Code and the Florida Fire Prevention Code; and to impose additional requirements for such boards relating to construction, renovation, or remodeling of educational facilities.

Section 7. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Currently, the State Requirements for Educational Facilities and the State Fire Marshal rules require two separate or one joint annual fire inspections to be performed by both a local authorized agency as well as the board for each board-owned or leased building. The bill authorizes an annual inspection of educational and ancillary facilities by county, municipal, or special fire control districts, thereby reducing the number of mandatory annual inspections to one every year.²⁵

Deleting the existing requirement for the Florida Division of State Fire Marshal to prepare an annual report based on the compilation of inspection reports received from each board for all educational and ancillary facilities will likely result in cost savings for the State. The Florida Department of Education estimates approximately \$515,210 in cost savings to the school districts and colleges based on an unofficial survey of the 67 school districts and 28 colleges within the Florida College System conducted by the department.²⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Special state firesafety inspectors, who fail the firesafety inspection examination, must meet the training and certification requirements provided in the bill. The bill prohibits special state firesafety inspectors who do not have at least five years of experience by July 1, 2011, and who do not pass the firesafety inspection examination by July 1, 2013, from conducting firesafety inspections.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

²⁵ Florida Department of Education, Analysis of HB 331 (Feb. 17, 2011); *see also* rule 69A-58.004(1), F.A.C.; Chapter 5, State Requirements for Educational Facilities, incorporated by reference in rule 6A-2.0010, F.A.C., State Requirements for Educational Facilities (SREF).

²⁶ Florida Department of Education, Analysis of HB 331 (Feb. 17, 2011).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the State Fire Marshal to consult with the Florida Department of Education (DOE) regarding the adoption of rules pertaining to safety and health standards at educational facilities. Consequently, the DOE rules related to education facilities²⁷ and the State Fire Marshal rules for education facilities²⁸ adopted pursuant to Chapter 120, F.S., may need amending.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill makes references to "public college". As directed by s. 21 of ch. 2010-70, Laws of Florida, a reviser's bill (HB 7111) was prepared to substitute the term "Florida College System Institution" for the terms "Florida college," "community college," and "junior college" where those terms appear in Florida K-20 Education Code. The term "public college" was also included in the reviser's bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²⁷ Rule 6A-2.0010, F.A.C., State Requirements for Educational Facilities (SREF).

²⁸ Rule Chapter 69A-58, F.A.C., Firesafety in Education Facilities.

1 A bill to be entitled
 2 An act relating to firesafety; amending s. 633.01, F.S.;
 3 revising the rulemaking authority and responsibilities of
 4 the State Fire Marshal relating to educational and
 5 ancillary plants; amending s. 633.021, F.S.; revising the
 6 definition of the term "firesafety inspector"; amending s.
 7 633.081, F.S.; revising requirements and procedures for
 8 inspections of buildings and equipment; abolishing special
 9 state firesafety inspector classifications and
 10 certifications; providing criteria, procedures, and
 11 requirements for special state firesafety inspectors to be
 12 certified as firesafety inspectors; amending s. 1013.12,
 13 F.S.; revising procedures and requirements for certain
 14 standards and inspection of educational property;
 15 providing procedures, criteria, and requirements for
 16 inspections of charter schools; providing reporting
 17 requirements; revising requirements for inspections of
 18 public postsecondary education facilities; deleting a
 19 provision requiring that the State Fire Marshal publish an
 20 annual report; amending s. 1013.371, F.S.; revising
 21 firesafety inspection requirements for educational
 22 institution boards to conform to certain codes; revising
 23 certain code enforcement authority of such boards;
 24 amending s. 1013.38, F.S.; requiring educational
 25 institution boards to submit certain facility site plans
 26 to certain local governmental entities for review;
 27 authorizing such entities to review site plans for
 28 compliance with certain provisions of the Florida Fire

29 Prevention Code; specifying that site plans are not
 30 subject to local ordinances or local amendments to the
 31 Florida Fire Prevention Code; providing criteria for
 32 approving site plans and correcting firesafety compliance
 33 deficiencies; providing for referral of disputes to the
 34 State Fire Marshal; authorizing such boards to use certain
 35 firesafety inspectors for certain compliance reviews;
 36 imposing additional requirements for such boards relating
 37 to construction, renovation, or remodeling of educational
 38 facilities; providing an effective date.

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Subsection (7) of section 633.01, Florida
 43 Statutes, is amended to read:

44 633.01 State Fire Marshal; powers and duties; rules.—

45 (7) The State Fire Marshal, in consultation with the
 46 Department of Education, shall adopt and administer rules
 47 prescribing standards for the safety and health of occupants of
 48 educational and ancillary facilities pursuant to ss. 633.022,
 49 1013.12, 1013.37, and 1013.371. In addition, in any county that
 50 does not employ or appoint a firesafety inspector certified
 51 under s. 633.081 ~~local fire official,~~ the State Fire Marshal
 52 shall assume the duties of the local county, municipality, or
 53 independent special fire control district as defined in s.
 54 191.003 ~~fire official~~ with respect to firesafety inspections of
 55 educational property required under s. 1013.12(3)(b), and the
 56 State Fire Marshal may take necessary corrective action as

57 | authorized under s. 1013.12(7)~~(6)~~.

58 | Section 2. Subsection (11) of section 633.021, Florida
59 | Statutes, is amended to read:

60 | 633.021 Definitions.—As used in this chapter:

61 | (11) A "firesafety inspector" is an individual certified
62 | by the State Fire Marshal under s. 633.081 who is officially
63 | assigned the duties of conducting firesafety inspections of
64 | buildings and facilities on a recurring or regular basis ~~on~~
65 | ~~behalf of the state or any county, municipality, or special~~
66 | ~~district with firesafety responsibilities.~~

67 | Section 3. Section 633.081, Florida Statutes, is amended
68 | to read:

69 | 633.081 Inspection of buildings and equipment; orders;
70 | firesafety inspection training requirements; certification;
71 | disciplinary action.—The State Fire Marshal and her or his
72 | agents shall, at any reasonable hour, when the State Fire
73 | Marshal has reasonable cause to believe that a violation of this
74 | chapter or s. 509.215, or a rule promulgated thereunder, or a
75 | minimum firesafety code adopted by the State Fire Marshal or a
76 | local authority, may exist, inspect any and all buildings and
77 | structures which are subject to the requirements of this chapter
78 | or s. 509.215 and rules promulgated thereunder. The authority to
79 | inspect shall extend to all equipment, vehicles, and chemicals
80 | which are located on or within the premises of any such building
81 | or structure.

82 | (1) Each county, municipality, and special district that
83 | has firesafety enforcement responsibilities shall employ or
84 | contract with a firesafety inspector. Except as provided in s.

85 633.082(2), the firesafety inspector must conduct all firesafety
 86 inspections that are required by law. The governing body of a
 87 county, municipality, or special district that has firesafety
 88 enforcement responsibilities may provide a schedule of fees to
 89 pay only the costs of inspections conducted pursuant to this
 90 subsection and related administrative expenses. Two or more
 91 counties, municipalities, or special districts that have
 92 firesafety enforcement responsibilities may jointly employ or
 93 contract with a firesafety inspector.

94 (2) Except as provided in s. 633.082(2), every firesafety
 95 inspection conducted pursuant to state or local firesafety
 96 requirements shall be by a person certified as having met the
 97 inspection training requirements set by the State Fire Marshal.
 98 Such person shall:

99 (a) Be a high school graduate or the equivalent as
 100 determined by the department;

101 (b) Not have been found guilty of, or having pleaded
 102 guilty or nolo contendere to, a felony or a crime punishable by
 103 imprisonment of 1 year or more under the law of the United
 104 States, or of any state thereof, which involves moral turpitude,
 105 without regard to whether a judgment of conviction has been
 106 entered by the court having jurisdiction of such cases;

107 (c) Have her or his fingerprints on file with the
 108 department or with an agency designated by the department;

109 (d) Have good moral character as determined by the
 110 department;

111 (e) Be at least 18 years of age;

112 (f) Have satisfactorily completed the firesafety inspector

113 certification examination as prescribed by the department; and
 114 (g)1. Have satisfactorily completed, as determined by the
 115 department, a firesafety inspector training program of not less
 116 than 200 hours established by the department and administered by
 117 agencies and institutions approved by the department for the
 118 purpose of providing basic certification training for firesafety
 119 inspectors; or

120 2. Have received in another state training which is
 121 determined by the department to be at least equivalent to that
 122 required by the department for approved firesafety inspector
 123 education and training programs in this state.

124 (3) (a)1. Effective July 1, 2013, the classification of
 125 special state firesafety inspector is abolished and all special
 126 state firesafety inspector certifications shall expire at
 127 midnight June 30, 2013.

128 2. Any person who is a special state firesafety inspector
 129 on June 30, 2013, and who has failed to comply with paragraph
 130 (b) or paragraph (c) may not perform any firesafety inspection
 131 required by law.

132 3. A special state firesafety inspector certificate may
 133 not be issued after June 30, 2011.

134 (b)1. Any person who is a special state firesafety
 135 inspector on July 1, 2011, and who has at least 5 years of
 136 experience as a special state firesafety inspector as of July 1,
 137 2011, may take the firesafety inspection examination as provided
 138 in paragraph (2) (f) for firesafety inspectors before July 1,
 139 2013, to be certified as a firesafety inspector under this
 140 section.

141 2. Upon passing the examination, the person shall be
 142 certified as a firesafety inspector as provided in this section.

143 3. A person who fails to become certified must comply with
 144 paragraph (c) to be certified as a firesafety inspector under
 145 this section.

146 (c)1. To be certified as a firesafety inspector under this
 147 section, any person who:

148 a. Is a special state firesafety inspector on July 1,
 149 2011, and who does not have 5 years of experience as a special
 150 state firesafety inspector as of July 1, 2011; or

151 b. Has 5 years of experience as a special state firesafety
 152 inspector but has failed the examination taken as provided in
 153 paragraph (2) (f),

154
 155 must take an additional 80 hours of the courses described in
 156 paragraph (2) (g).

157 2. After successfully completing the courses described in
 158 this paragraph, such person may take the firesafety inspection
 159 examination as provided in paragraph (2) (f), if such examination
 160 is taken before July 1, 2013.

161 3. Upon passing the examination, the person shall be
 162 certified as a firesafety inspector as provided in this section.

163 4. A person who fails the course of study or the
 164 examination described in this paragraph may not perform any
 165 firesafety inspection required by law on or after July 1, 2013.

166 ~~Each special state firesafety inspection which is required by~~
 167 ~~law and is conducted by or on behalf of an agency of the state~~
 168 ~~must be performed by an individual who has met the provision of~~

169 ~~subsection (2), except that the duration of the training program~~
 170 ~~shall not exceed 120 hours of specific training for the type of~~
 171 ~~property that such special state firesafety inspectors are~~
 172 ~~assigned to inspect.~~

173 (4) A firefighter certified pursuant to s. 633.35 may
 174 conduct firesafety inspections, under the supervision of a
 175 certified firesafety inspector, while on duty as a member of a
 176 fire department company conducting inservice firesafety
 177 inspections without being certified as a firesafety inspector,
 178 if such firefighter has satisfactorily completed an inservice
 179 fire department company inspector training program of at least
 180 24 hours' duration as provided by rule of the department.

181 (5) Every firesafety inspector ~~or special state firesafety~~
 182 ~~inspector~~ certificate is valid for a period of 3 years from the
 183 date of issuance. Renewal of certification is ~~shall be~~ subject
 184 to the affected person's completing proper application for
 185 renewal and meeting all of the requirements for renewal as
 186 established under this chapter or by rule adopted under this
 187 chapter ~~promulgated thereunder~~, which shall include completion
 188 of at least 40 hours during the preceding 3-year period of
 189 continuing education as required by the rule of the department
 190 or, in lieu thereof, successful passage of an examination as
 191 established by the department.

192 (6) The State Fire Marshal may deny, refuse to renew,
 193 suspend, or revoke the certificate of a firesafety inspector ~~or~~
 194 ~~special state firesafety inspector~~ if the State Fire Marshal ~~it~~
 195 finds that any of the following grounds exist:

196 (a) Any cause for which issuance of a certificate could

197 | have been refused had it then existed and been known to the
 198 | State Fire Marshal.

199 | (b) Violation of this chapter or any rule or order of the
 200 | State Fire Marshal.

201 | (c) Falsification of records relating to the certificate.

202 | (d) Having been found guilty of or having pleaded guilty
 203 | or nolo contendere to a felony, whether or not a judgment of
 204 | conviction has been entered.

205 | (e) Failure to meet any of the renewal requirements.

206 | (f) Having been convicted of a crime in any jurisdiction
 207 | which directly relates to the practice of fire code inspection,
 208 | plan review, or administration.

209 | (g) Making or filing a report or record that the
 210 | certificateholder knows to be false, or knowingly inducing
 211 | another to file a false report or record, or knowingly failing
 212 | to file a report or record required by state or local law, or
 213 | knowingly impeding or obstructing such filing, or knowingly
 214 | inducing another person to impede or obstruct such filing.

215 | (h) Failing to properly enforce applicable fire codes or
 216 | permit requirements within this state which the
 217 | certificateholder knows are applicable by committing willful
 218 | misconduct, gross negligence, gross misconduct, repeated
 219 | negligence, or negligence resulting in a significant danger to
 220 | life or property.

221 | (i) Accepting labor, services, or materials at no charge
 222 | or at a noncompetitive rate from any person who performs work
 223 | that is under the enforcement authority of the certificateholder
 224 | and who is not an immediate family member of the

225 certificateholder. For the purpose of this paragraph, the term
 226 "immediate family member" means a spouse, child, parent,
 227 sibling, grandparent, aunt, uncle, or first cousin of the person
 228 or the person's spouse or any person who resides in the primary
 229 residence of the certificateholder.

230 (7) The Division of State Fire Marshal and the Florida
 231 Building Code Administrators and Inspectors Board, established
 232 pursuant to s. 468.605, shall enter into a reciprocity agreement
 233 to facilitate joint recognition of continuing education
 234 recertification hours for certificateholders licensed under s.
 235 468.609 and firesafety inspectors certified under subsection
 236 (2).

237 (8) The State Fire Marshal shall develop by rule an
 238 advanced training and certification program for firesafety
 239 inspectors having fire code management responsibilities. The
 240 program must be consistent with the appropriate provisions of
 241 NFPA 1037, or similar standards adopted by the division, and
 242 establish minimum training, education, and experience levels for
 243 firesafety inspectors having fire code management
 244 responsibilities.

245 (9) The department shall provide by rule for the
 246 certification of firesafety inspectors.

247 Section 4. Section 1013.12, Florida Statutes, is amended
 248 to read:

249 1013.12 Casualty, safety, sanitation, and firesafety
 250 standards and inspection of property.—

251 (1) FIRESAFETY.—The State Board of Education shall adopt
 252 and administer rules prescribing standards for the safety and

253 health of occupants of educational and ancillary plants as a
 254 part of State Requirements for Educational Facilities or the
 255 Florida Building Code for educational facilities construction as
 256 provided in s. 1013.37, except that the State Fire Marshal in
 257 consultation with the Department of Education shall adopt
 258 uniform firesafety standards for educational and ancillary
 259 plants and educational facilities, as provided in s.
 260 633.022(1)(b), and a firesafety evaluation system to be used as
 261 an alternate firesafety inspection standard for existing
 262 educational and ancillary plants and educational facilities. The
 263 uniform firesafety standards and the alternate firesafety
 264 evaluation system shall be administered and enforced by ~~local~~
 265 fire officials certified by the State Fire Marshal under s.
 266 633.081. These standards must be used by all public agencies
 267 when inspecting public educational and ancillary plants, and the
 268 firesafety standards must be used by county, municipal, or
 269 independent special ~~local~~ fire control district inspectors
 270 ~~officials~~ when performing firesafety inspections of public
 271 educational and ancillary plants and educational facilities. In
 272 accordance with such standards, each board shall prescribe
 273 policies and procedures establishing a comprehensive program of
 274 safety and sanitation for the protection of occupants of public
 275 educational and ancillary plants. Such policies must contain
 276 procedures for periodic inspections as prescribed in this
 277 section or chapter 633 and for withdrawal of any educational and
 278 ancillary plant, or portion thereof, from use until unsafe or
 279 unsanitary conditions are corrected or removed.

280 (2) PERIODIC INSPECTION OF PROPERTY BY DISTRICT SCHOOL

281 BOARDS.—

282 (a) Each board shall provide for periodic inspection,
 283 other than firesafety inspection, of each educational and
 284 ancillary plant at least once during each fiscal year to
 285 determine compliance with standards of sanitation and casualty
 286 safety prescribed in the rules of the State Board of Education.

287 (b) Each school cafeteria must post in a visible location
 288 and on the school website the school's semiannual sanitation
 289 certificate and a copy of its most recent sanitation inspection
 290 report.

291 (c) Under the direction of the fire official appointed by
 292 the board under s. 1013.371(2), firesafety inspections of each
 293 educational and ancillary plant located on property owned or
 294 leased by the board, or other educational facilities operated by
 295 the board, must be made no sooner than 1 year after issuance of
 296 a certificate of occupancy and annually thereafter. Such
 297 inspections shall be made by persons certified by the Division
 298 of State Fire Marshal under s. 633.081 to be eligible to conduct
 299 firesafety inspections in public educational and ancillary
 300 plants. The board shall submit a copy of the firesafety
 301 inspection report to the county, municipality, or independent
 302 special fire control district providing fire protection services
 303 to the school facility within 10 business days after the date of
 304 the inspection. Alternate schedules for delivery of reports may
 305 be agreed upon between the school district and the county,
 306 municipality, or independent special fire control district
 307 providing fire protection services to the site in cases in which
 308 delivery is impossible due to hurricanes or other natural

309 | disasters. Regardless, if immediate life-threatening
 310 | deficiencies are noted in the report, the report shall be
 311 | delivered immediately ~~State Fire Marshal and, if there is a~~
 312 | ~~local fire official who conducts firesafety inspections, to the~~
 313 | ~~local fire official.~~ In addition, the board and any other
 314 | authority conducting the fire safety inspection shall certify to
 315 | the State Fire Marshal that the annual inspection has been
 316 | completed. The certification shall be made electronically or by
 317 | such other means as directed by the State Fire Marshal.

318 | (d) In each firesafety inspection report, the board shall
 319 | include a plan of action and a schedule for the correction of
 320 | each deficiency ~~which have been formulated in consultation with~~
 321 | ~~the local fire control authority.~~ If immediate life-threatening
 322 | deficiencies are noted in any inspection, the board shall ~~either~~
 323 | take action to promptly correct the deficiencies or withdraw the
 324 | educational or ancillary plant from use until such time as the
 325 | deficiencies are corrected.

326 | (3) INSPECTION OF EDUCATIONAL PROPERTY BY OTHER PUBLIC
 327 | AGENCIES.—

328 | (a) A safety or sanitation inspection of any educational
 329 | or ancillary plant may be made at any time by the Department of
 330 | Education or any other state or local agency authorized or
 331 | required to conduct such inspections by either general or
 332 | special law. Each agency conducting inspections shall use the
 333 | standards adopted by the Commissioner of Education in lieu of,
 334 | and to the exclusion of, any other inspection standards
 335 | prescribed either by statute or administrative rule. The agency
 336 | shall submit a copy of the inspection report to the board.

337 (b) One firesafety inspection of each educational or
 338 ancillary plant located on the property owned or leased by the
 339 board, or other educational or ancillary plants operated by the
 340 school board, and each public college may ~~must~~ be conducted no
 341 sooner than 1 year after the issuance of the certificate of
 342 occupancy and annually thereafter ~~each fiscal year~~ by the
 343 county, municipality, or independent special fire control
 344 district in which the plant is located using the standards
 345 adopted by the State Fire Marshal. The board or public college
 346 shall cooperate with the inspecting authority when a firesafety
 347 inspection is made by a governmental authority under this
 348 paragraph.

349 (c) In each firesafety inspection report prepared pursuant
 350 to this subsection, the county, municipality, or independent
 351 special ~~local~~ fire control district, ~~official~~ in conjunction
 352 with the board, shall include a plan of action and a schedule
 353 for the correction of each deficiency. If immediate life-
 354 threatening deficiencies are noted in any inspection, the local
 355 county, municipality, or independent special fire control
 356 district, in conjunction with the fire official appointed by the
 357 board, shall ~~either~~ take action to require the board to promptly
 358 correct the deficiencies or withdraw the educational or
 359 ancillary plant ~~facility~~ from use until the deficiencies are
 360 corrected, subject to review by the State Fire Marshal who shall
 361 act within 10 days to ensure that the deficiencies are corrected
 362 or withdraw the plant ~~facility~~ from use.

363 (4) CORRECTIVE ACTION; DEFICIENCIES OTHER THAN FIRESAFETY
 364 DEFICIENCIES.—Upon failure of the board to take corrective

365 | action within a reasonable time, the agency making the
 366 | inspection, other than a local fire official, may request the
 367 | commissioner to:

368 | (a) Order that appropriate action be taken to correct all
 369 | deficiencies in accordance with a schedule determined jointly by
 370 | the inspecting authority and the board; in developing the
 371 | schedule, consideration must be given to the seriousness of the
 372 | deficiencies and the ability of the board to obtain the
 373 | necessary funds; or

374 | (b) After 30 calendar days' notice to the board, order all
 375 | or a portion of the educational or ancillary plant withdrawn
 376 | from use until the deficiencies are corrected.

377 | (5) INSPECTIONS OF CHARTER SCHOOLS NOT LOCATED ON BOARD-
 378 | OWNED OR LEASED PROPERTY OR OTHERWISE OPERATED BY A SCHOOL
 379 | BOARD.-

380 | (a) A safety or sanitation inspection of any educational
 381 | or ancillary plant may be made at any time by a state or local
 382 | agency authorized or required to conduct such inspections by
 383 | general or special law. The agency shall submit a copy of the
 384 | inspection report to the charter school sponsor.

385 | (b) One firesafety inspection of each charter school that
 386 | is not located in facilities owned or leased by the board or a
 387 | public college must be conducted each fiscal year by the county,
 388 | municipality, or independent special fire control district in
 389 | which the charter school is located using the standards adopted
 390 | by the State Fire Marshal. Upon request, the inspecting
 391 | authority shall provide a copy of each firesafety report to the
 392 | board in the district in which the facility is located.

393 (c) In each firesafety inspection report and formulated in
 394 consultation with the charter school, the inspecting authority
 395 shall include a plan of action and a schedule for the correction
 396 of each deficiency. If any immediate life-threatening deficiency
 397 is noted in any inspection, the inspecting authority shall take
 398 action to require the charter school to promptly correct each
 399 deficiency or withdraw the educational or ancillary plant from
 400 use until such time as all deficiencies are corrected.

401 (d) If the charter school fails to take corrective action
 402 within the period designated in the plan of action to correct
 403 any firesafety deficiency noted under paragraph (c), the county,
 404 municipality, or independent special fire control district shall
 405 immediately report the deficiency to the State Fire Marshal and
 406 the charter school sponsor. The State Fire Marshal has
 407 enforcement authority with respect to charter school educational
 408 and ancillary plants and educational facilities as provided in
 409 chapter 633 for any building or structure.

410 (6)-(5) INSPECTIONS OF PUBLIC POSTSECONDARY EDUCATION
 411 FACILITIES.-

412 (a) Firesafety inspections of public ~~community~~ college
 413 facilities, including charter schools located on board-owned or
 414 board-leased facilities or otherwise operated by public college
 415 boards, shall be made in accordance ~~comply~~ with the Florida Fire
 416 Prevention Code, as adopted by the State Fire Marshal.
 417 Notwithstanding s. 633.0215, provisions of the code relating to
 418 inspections of such facilities are not subject to any local
 419 amendments as provided by s. 1013.371. Each public college
 420 facility shall be inspected annually by persons certified under

421 | s. 633.081 Board of Education rules.

422 | (b) After each required firesafety inspection, the
 423 | inspecting authority shall develop a plan of action to correct
 424 | each deficiency identified. The public college shall provide a
 425 | copy of each firesafety inspection report to the county,
 426 | municipality, or independent special fire control district in
 427 | which the facility is located.

428 | (c)(b) Firesafety inspections of state universities shall
 429 | comply with the Florida Fire Prevention Code, as adopted by the
 430 | State Fire Marshal under s. 633.0215 regulations of the Board of
 431 | Governors.

432 | (7)(6) CORRECTIVE ACTION; FIRESAFETY DEFICIENCIES.—If a
 433 | school Upon failure of the board, public college board, or
 434 | charter school fails to correct any firesafety deficiency noted
 435 | under this section take corrective action within the time
 436 | designated in the plan of action to correct any firesafety
 437 | deficiency noted under paragraph (2)(d) or paragraph (3)(e), the
 438 | inspecting authority local fire official shall immediately
 439 | report the deficiency to the State Fire Marshal, who has ~~shall~~
 440 | ~~have~~ enforcement authority with respect to educational and
 441 | ancillary plants and educational facilities as provided in
 442 | chapter 633 for any other building or structure.

443 | (8)(7) ADDITIONAL STANDARDS.—In addition to any other
 444 | rules adopted under this section or s. 633.022, the State Fire
 445 | Marshal in consultation with the Department of Education shall
 446 | adopt and administer rules prescribing the following standards
 447 | for the safety and health of occupants of educational and
 448 | ancillary plants:

449 (a) The designation of serious life-safety hazards,
 450 including, but not limited to, nonfunctional fire alarm systems,
 451 nonfunctional fire sprinkler systems, doors with padlocks or
 452 other locks or devices that preclude egress at any time,
 453 inadequate exits, hazardous electrical system conditions,
 454 potential structural failure, and storage conditions that create
 455 a fire hazard.

456 (b) The proper placement of functional smoke and heat
 457 detectors and accessible, unexpired fire extinguishers.

458 (c) The maintenance of fire doors without doorstops or
 459 wedges improperly holding them open.

460 ~~(8) ANNUAL REPORT. The State Fire Marshal shall publish an~~
 461 ~~annual report to be filed with the substantive committees of the~~
 462 ~~state House of Representatives and Senate having jurisdiction~~
 463 ~~over education, the Commissioner of Education or his or her~~
 464 ~~successor, the State Board of Education, the Board of Governors,~~
 465 ~~and the Governor documenting the status of each board's~~
 466 ~~firesafety program, including the improvement or lack thereof.~~

467 Section 5. Paragraph (a) of subsection (1) and subsection
 468 (2) of section 1013.371, Florida Statutes, are amended to read:
 469 1013.371 Conformity to codes.—

470 (1) CONFORMITY TO FLORIDA BUILDING CODE AND FLORIDA FIRE
 471 PREVENTION CODE REQUIRED FOR APPROVAL.—

472 (a) Except as otherwise provided in paragraph (b), all
 473 public educational and ancillary plants constructed by a board
 474 must conform to the Florida Building Code and the Florida Fire
 475 Prevention Code, and the plants are exempt from all other state
 476 building codes; county, municipal, or other local amendments to

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477 the Florida Building Code and local amendments to the Florida
 478 Fire Prevention Code; building permits, and assessments of fees
 479 for building permits, except as provided in s. 553.80;
 480 ordinances; road closures; and impact fees or service
 481 availability fees. Any inspection by local or state government
 482 must be based on the Florida Building Code and the Florida Fire
 483 Prevention Code. Each board shall provide for periodic
 484 inspection of the proposed educational plant during each phase
 485 of construction to determine compliance with the Florida
 486 Building Code, the Florida Fire Prevention Code, and the State
 487 Requirements for Educational Facilities.

488 (2) ENFORCEMENT BY BOARD.—It is the responsibility of each
 489 board to ensure that all plans and educational and ancillary
 490 plants meet the standards of the Florida Building Code and the
 491 Florida Fire Prevention Code and to provide for the enforcement
 492 of these codes in the areas of its jurisdiction. Each board
 493 shall provide for the proper supervision and inspection of the
 494 work. Each board may employ a chief building official ~~or~~
 495 ~~inspector~~ and such other inspectors, who have been certified
 496 pursuant to chapter 468, and a fire official and such other
 497 inspectors, who have been certified pursuant to chapter 633, and
 498 such personnel as ~~are~~ necessary to administer and enforce the
 499 provisions of such codes ~~this code~~. Boards may also use local
 500 building department inspectors who are certified by the
 501 department to enforce the Florida Building Code and the State
 502 Requirements for Educational Facilities ~~this code~~. Boards may
 503 also use local county, municipal, or independent special fire
 504 control district firesafety inspectors who are certified by the

505 State Fire Marshal to conduct reviews of site plans and
 506 inspections and to enforce the Florida Fire Prevention Code.
 507 Plans or facilities that fail to meet the standards of the
 508 Florida Building Code or the Florida Fire Prevention Code may
 509 not be approved. When planning for and constructing an
 510 educational, auxiliary, or ancillary facility, a board must use
 511 construction materials and systems that meet standards adopted
 512 pursuant to s. 1013.37(1)(e)3. and 4. If the planned or actual
 513 construction of a facility deviates from the adopted standards,
 514 the board must, at a public hearing, quantify and compare the
 515 costs of constructing the facility with the proposed deviations
 516 and in compliance with the adopted standards and the Florida
 517 Building Code. The board must explain the reason for the
 518 proposed deviations and compare how the total construction costs
 519 and projected life-cycle costs of the facility or component
 520 system of the facility would be affected by implementing the
 521 proposed deviations rather than using materials and systems that
 522 meet the adopted standards.

523 Section 6. Section 1013.38, Florida Statutes, is amended
 524 to read:

525 1013.38 Boards to ensure that facilities comply with
 526 building codes and life safety codes.—

527 (1) Boards shall ensure that all new construction,
 528 renovation, remodeling, day labor, and maintenance projects
 529 conform to the appropriate sections of the Florida Building
 530 Code, Florida Fire Prevention Code, or, where applicable as
 531 authorized in other sections of law, other building codes, and
 532 life safety codes.

533 (a) For each proposed new facility and each proposed new
 534 facility addition exceeding 2,500 square feet, the board shall
 535 submit for review a minimum of one copy of the site plan to the
 536 local county, municipality, or independent special fire control
 537 district providing fire-protection services to the facility.

538 (b) The local county, municipality, or independent special
 539 fire control district may review each site plan for compliance
 540 with the applicable provisions of the Florida Fire Prevention
 541 Code relating to fire department access roads, fire-protection
 542 system connection locations, and fire hydrant spacing. Such site
 543 plans are not subject to local amendments to the Florida Fire
 544 Prevention Code or local ordinances as provided in s. 1013.371.
 545 Site plan reviews conducted pursuant to this section shall be
 546 performed at no charge to the school board or public college
 547 board.

548 (c) The site plan shall be deemed approved unless the
 549 local county, municipality, or independent special fire control
 550 district submits to the fire official appointed by the board, in
 551 writing, any deficiencies identified with reference to specific
 552 provisions of the Florida Fire Prevention Code within 15 days
 553 after receipt of the site plan. The fire official shall
 554 incorporate such comments into his or her review and subsequent
 555 inspections.

556 (d) If the local county, municipality, or independent
 557 special fire control district and the fire official appointed by
 558 the board do not agree on the requirements or application of the
 559 Florida Fire Prevention Code, either party may refer the matter
 560 to the State Fire Marshal, who shall have final administrative

561 authority in resolving the matter.

562 (2) In addition to the submission of site plans, boards
 563 may provide compliance as follows:

564 (a) Boards or consortia may individually or cooperatively
 565 provide review services under the insurance risk management
 566 oversight through the use of board employees or consortia
 567 employees, ~~registered pursuant to chapter 471, chapter 481, or~~
 568 part XII of chapter 468 and firesafety inspectors certified
 569 under s. 633.081.

570 (b) Boards may elect to review construction documents
 571 using their own employees registered pursuant to chapter 471,
 572 chapter 481, or part XII of chapter 468 and firesafety
 573 inspectors certified under s. 633.081.

574 (c) Boards may submit phase III construction documents for
 575 review to the department.

576 (d) Boards or consortia may contract for plan review
 577 services directly with engineers and architects registered
 578 pursuant to chapter 471 or chapter 481 and firesafety inspectors
 579 certified under s. 633.081.

580 (3) The Department of Management Services may, upon
 581 request, provide facilities services for the Florida School for
 582 the Deaf and the Blind, the Division of Blind Services, and
 583 public broadcasting. As used in this section, the term
 584 "facilities services" means project management, code and design
 585 plan review, and code compliance inspection for projects as
 586 defined in s. 287.017(5).

587 (4) (a) Before the commencement of any new construction,
 588 renovation, or remodeling, the board shall:

589 1. Approve or cause to be approved the construction
 590 documents and evaluate such documents for compliance with the
 591 Florida Building Code and the Florida Fire Prevention Code.

592 2. Ensure compliance with all applicable firesafety codes
 593 and standards by contracting with a firesafety inspector
 594 certified by the State Fire Marshal under s. 633.081.

595 (b) A certificate of occupancy may not be issued until the
 596 board, through its designated certified building official, has
 597 determined that the building or structure and its site
 598 conditions comply with all applicable statutes and rules.

599 (c) The method of compliance as chosen by the board
 600 pursuant to subsection (2) shall be documented and maintained as
 601 part of the construction record file.

602 (d) Upon request by the local county, municipality, or
 603 independent special fire control district, the board shall
 604 provide reasonable access to all construction documents.

605 Section 7. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 723 State Reciprocity in Workers' Compensation Claims
SPONSOR(S): Insurance & Banking Subcommittee, Weinstein and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N, As CS	Reilly	Cooper
2) Government Operations Appropriations Subcommittee		Fox <i>RF</i>	Topp <i>BDT</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Florida's Workers' Compensation Law, chapter 440, Florida Statutes, provides medically necessary treatment and, in some cases, compensation for disability to employees who suffer work-related injuries. Most states provide that workers' compensation insurance coverage in the employer's home state covers employees temporarily working in another state. Such laws authorize "extraterritorial" coverage.

At least 11 jurisdictions recognize another state's extraterritorial provisions under limited conditions. Specifically, this occurs when the other state also exempts out-of-state employees temporarily working within its borders (and their employers) from its workers' compensation law and provides that such employees (and employers) are subject to the law of the employer's home state. Laws that limit recognition of another state's extraterritorial provisions in this manner are said to provide "extraterritorial reciprocity," i.e., a state will honor other states' extraterritorial provisions as long as the other states honor its extraterritorial provisions. For example, California will not exercise jurisdiction over out-of-state employees temporarily working within its boundaries when certain conditions are met, if the employer's home state similarly would not exercise jurisdiction over California employees temporarily working there.

The bill provides for extraterritorial reciprocity under chapter 440, F.S. Employees who work for an employer in a state other than their primary state of employment for no more than 10 consecutive days or a maximum of 25 total days in a calendar year are considered to be "temporarily working" in that state. Florida employees injured while temporarily working in another state are to receive benefits under Florida's Workers' Compensation Law. Out-of-state employees injured while temporarily working in Florida (and their employers) are exempted from chapter 440, F.S., and will receive benefits under the law of their home state, which will be the employee's exclusive remedy, if the following conditions are met:

1. The employer has furnished coverage under the workers' compensation law (or similar law) of the employer's home state that covers the employee's employment while in Florida.
2. The extraterritorial provisions of Florida's Workers' Compensation Law are recognized in the employer's home state.
3. Florida employees and employers are exempted from the workers' compensation law (or similar law) of the employer's home state for injuries that occur while Florida employees are temporarily working in the employer's home state.

Employees who have a claim in Florida and another state for the same injury are entitled to recover the amount of compensation due under chapter 440, F.S. Florida courts are required to take judicial notice of the construction of the laws of another jurisdiction if such construction is necessary in a legal proceeding.

A certificate from a duly authorized officer of the appropriate department of the employer's home state that the employer has provided extraterritorial coverage for its employees while temporarily working in Florida is prima facie evidence that the employer carries workers' compensation insurance.

The bill has no fiscal impact on state expenditures. To the extent that the bill provides for application of chapter 440, F.S., to Florida employees temporarily working in another state, the bill provides cost certainty for workplace injuries and decreases costs associated with retention of counsel with expertise in other states' workers' compensation laws.

The bill is effective July 1, 2011, and applies to any claim made on or after that date, regardless of the date of the accident.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0723a.GOAS.DOCX

DATE: 4/6/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Workers' Compensation Law

Chapter 440, F.S., is Florida's Workers' Compensation Law. Workers' compensation provides medical benefits and, in some cases,¹ compensation for disability for workplace injuries that arise out of work performed by an employee in the course and scope of employment.² Each state's workers' compensation system is unique, providing different eligibility requirements and levels of benefits (medical and monetary).

Florida employees injured while temporarily working in another state may claim benefits under chapter 440, F.S., or the law of the state in which they are injured. If benefits are claimed from another state, the "total compensation"³ an employee may receive is limited to that available under Florida's Workers' Compensation Law. Employees from another state injured while temporarily working in Florida may claim benefits under Florida law or under their primary state of employment. However, no definition is provided in chapter 440, F.S., for "temporarily working" in a state.

In 2003, Florida enacted workers' compensation reform legislation.⁴ Among other changes, it was established that employers with employees engaged in the construction industry in Florida are required to obtain Florida-specific coverage (a Florida policy or endorsement that uses Florida class codes and rates).⁵ At that time of the reform, Florida rates were consistently the highest or second highest in the country.⁶ The requirement was designed, in part, to level the playing field between out-of-state and in-state employers in bidding on construction industry projects in Florida. Since enactment of reform legislation, overall workers' compensation rates in Florida have decreased a cumulative 61.9 percent.⁷

In-State and Out-of-State "Lost-Time" Injuries Reported to the Florida Division of Workers' Compensation

In Florida, a lost-time claim refers to workplace injuries that cause an employee to be out of work for more than 7 days and must be reported by the insurance company to the Florida Division of Workers' Compensation (the Division). From 2005 to 2010, the number of lost-time claims filed each year with the Division for injuries that occurred in another state ranged from a low of 666 (in 2006) to a high of 866 (in 2009). The Division also reports that the number of lost-time claims for employees who resided in another state decreased from 938 claims (in 2005) to 538 claims (in 2010).

Lost-time claims for injuries that occurred in Florida ranged from 68,838 (in 2005) to a low of 42,353 (in 2010). The number of lost-time claims for Florida residents also decreased from 76,136 (in 2005) to 46,041 (in 2010).

¹ Compensation for disability is provided when the workplace injury causes an employee to miss more than 7 days of work. See s. 440.12(1), F.S.

² Section 440.09(1), F.S.

³ Section 440.09, F.S. Pursuant to s. 440.02(7), F.S., compensation is defined to mean monetary benefits.

⁴ Chapter 2003-412, L.O.F.

⁵ Section 440.10(1)(g), F.S.

⁶ In 2000, Florida had the highest workers' compensation premiums in the country, and the second highest in 2002. See "Workers' Compensation Premium Rate Rankings for 2000, 2002," Oregon Department of Consumer and Business Services. Available at: <http://www.cbs.state.or.us> (last accessed March 13, 2010).

⁷ "Florida Office of Insurance Regulation Releases Annual Workers' Compensation Report." Press release dated January 5, 2011. Available at: <http://www.flair.com/pressreleases/viewmediarelease.aspx?id=3777> (last accessed March 13, 2011).

Extraterritorial Coverage and Extraterritorial Reciprocity

Most workers' compensation systems provide that coverage from an employer's home state extends to, and follows, employees who are temporarily working for their employer in another state.⁸ Such "extraterritorial" coverage is available to the extent that it is not inconsistent with the terms of the employer's insurance policy.

At least 11 jurisdictions recognize another state's extraterritorial provisions under limited conditions.⁹ Specifically, this occurs when the other state similarly exempts out-of-state employees temporarily working within its borders (and their employers) from its workers' compensation law and provides that such employees (and employers) are subject to the law of the employer's home state. Laws that limit recognition of another state's extraterritorial provisions in this manner are said to provide "extraterritorial reciprocity," i.e., a state will honor the extraterritorial provisions of other states as long as the other states honor its extraterritorial provisions. For example, California will not exercise jurisdiction over out-of-state employees temporarily working within its boundaries (and their employers) when certain conditions are met, if the employer's home state similarly would not exercise jurisdiction over California employees temporarily working there.

Retroactive Application of Statutes

The general rule in insurance is that the statute in effect at the time an insurance contract is executed governs the substantive issues arising in connection with that contract.¹⁰ Thus, if the Legislature amends an insurance law, the amendment typically will not apply to an insurance contract entered into before the amendment. However, if the amendment is procedural, the court may apply it retroactively to an insurance contract entered into before the amendment.

If the Legislature clearly expresses an intent that a statute apply retroactively, the court then determines whether retroactive application is constitutionally permissible.¹¹ Courts make this determination by looking to the effect of a statute. Stated legislative intent that a statute apply retroactively is not necessarily dispositive as to the retroactive application.

Statutes that do not alter contractual or vested rights but relate only to remedies or procedure can be applied retroactively.¹² Procedural law concerns the means and methods to apply and enforce substantive duties and rights.¹³

Statutes affecting substantive rights, liabilities, and duties cannot apply retroactively.¹⁴ Also, statutes impairing vested rights, creating new obligations, or imposing new penalties cannot apply retroactively.¹⁵

Effect of the Bill

The bill creates s. 440.094, F.S., which provides for extraterritorial reciprocity under Florida's Workers' Compensation Law. Employees who work for an employer in a state other than their primary state of employment for no more than 10 consecutive days or a maximum of 25 total days in a calendar year are considered to be "temporarily working" in that state for purposes of this section. Florida employees injured while temporarily working in another state are to receive Florida's workers' compensation benefits. Out-of-

⁸ See "Extraterritorial Reciprocity Information for All 50 States," a regulatory survey by the Workers' Compensation Division of the Oregon Department of Consumer and Business Services. Available at: <http://www.cbs.state.or.us/wcd/compliance/ecu/etsummary.html> (last accessed March 13, 2011).

⁹ California, the District of Columbia, Maryland, Mississippi, Montana, Nevada, North Dakota, Ohio, Oregon, Rhode Island, and Utah.

¹⁰ Hassen v. State Farm Mutual Automobile Ins. Co., 674 So.2d 106, 107 (Fla. 1996).

¹¹ Romine v. Florida Birth Related Neurological Injury Compensation Ass'n, 842 So.2d 148, 153 (Fla. 5th DCA 2003).

¹² DaimlerChrysler Corp. v. Hurst, 949 So.2d 279 (Fla. 3rd DCA 2007).

¹³ Romine 842 So.2d at 154 .

¹⁴ Menendez v. Progressive Express Ins. Co., 35 So.3d 873 (Fla. 2010).

¹⁵ Romine 842 So.2d at 153.

state employees injured while temporarily working in Florida (and their employers) are exempted from Florida's Workers' Compensation Law and will receive benefits under the law of their home state, which will be the employee's exclusive remedy, if the following conditions are met:

1. The employer has furnished coverage under the workers' compensation law (or similar law) of the employer's home state that covers the employee's employment while in Florida.
2. The extraterritorial provisions of Florida's Workers' Compensation Law are recognized in the employer's home state.
3. Florida employees and employers are exempted from the workers' compensation law (or similar law) of the employer's home state for injuries that occur while Florida employees are temporarily working in the employer's home state.

Employees who have a claim in Florida and another state for the same injury are entitled to recover the amount of compensation due under chapter 440, F.S. Florida courts are required to take judicial notice of the construction of the laws of another jurisdiction if such construction is necessary in a legal proceeding.

With respect to out-of-state employers, a certificate from a duly authorized officer of the appropriate department of the employer's home state that the employer has provided extraterritorial coverage for its employees while temporarily working in Florida is prima facie evidence that the employer carries workers' compensation insurance.

The bill is effective July 1, 2011, and applies to any claim made on or after this date, regardless of the date of the accident.

B. SECTION DIRECTORY:

Section 1: Creates s. 440.094, F.S., establishing extraterritorial reciprocity under Florida's Workers' Compensation Law.

Section 2: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

To the extent that the bill provides for application of chapter 440, F.S., to Florida employees temporarily working in another state (and their employers), the bill provides additional cost certainty for workplace injuries and decreases costs associated with retention of legal counsel with expertise of other states' workers' compensation laws.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to extraterritorial reciprocity in
 3 workers' compensation claims; creating s. 440.094, F.S.;
 4 providing extraterritorial coverage; exempting certain
 5 employees working in this state and the employers of such
 6 employees from the Workers' Compensation Law of this state
 7 under certain conditions; providing requirements for the
 8 establishment of prima facie evidence that the employer
 9 carries certain workers' compensation insurance; requiring
 10 courts to take judicial notice of the construction of
 11 certain laws; providing requirements for claims made in
 12 other states; providing criteria for employees to be
 13 considered temporarily in a state; providing application;
 14 providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 440.094, Florida Statutes, is created
 19 to read:

20 440.094 Extraterritorial reciprocity.-

21 (1) If an employee in this state subject to this chapter
 22 temporarily leaves the state incidental to his or her employment
 23 and receives an accidental injury arising out of and in the
 24 course of employment, the employee is, or the beneficiaries of
 25 the employee if the injury results in death are, entitled to the
 26 benefits of this chapter as if the employee were injured within
 27 this state.

28 (2) An employee from another state and the employer of the
 29 employee in the other state are exempt from this chapter while
 30 the employee is temporarily in this state doing work for the
 31 employer if:

32 (a) The employer has furnished workers' compensation
 33 insurance coverage under the workers' compensation insurance or
 34 similar laws of the other state to cover the employee's
 35 employment while in this state;

36 (b) The extraterritorial provisions of this chapter are
 37 recognized in the other state; and

38 (c) Employees and employers who are covered in this state
 39 are likewise exempted from the application of the workers'
 40 compensation insurance or similar laws of the other state.

41 (3) The benefits under the workers' compensation insurance
 42 or similar laws of the other state, or other remedies under
 43 similar law, are the exclusive remedy against the employer for
 44 any injury, whether resulting in death or not, received by the
 45 employee while temporarily working for that employer in this
 46 state.

47 (4) A certificate from the duly authorized officer of the
 48 appropriate department of another state certifying that the
 49 employer of the other state is insured in that state and has
 50 provided extraterritorial coverage insuring employees while
 51 working in this state is prima facie evidence that the employer
 52 carries that workers' compensation insurance.

53 (5) Whenever in any appeal or other litigation the
 54 construction of the laws of another jurisdiction is required,
 55 the courts shall take judicial notice of such construction of

56 | the laws of the other jurisdiction.

57 | (6) When an employee has a claim under the workers'
 58 | compensation law of another state, territory, province, or
 59 | foreign nation for the same injury or occupational disease as
 60 | the claim filed in this state, the total amount of compensation
 61 | paid or awarded under such other workers' compensation law shall
 62 | be credited against the compensation due under the Florida
 63 | Workers' Compensation Law.

64 | (7) For purposes of this section, an employee is
 65 | considered to be temporarily in a state doing work for an
 66 | employer if the employee is working for his employer in a state
 67 | other than the state where he or she is primarily employed, for
 68 | no more than 10 consecutive days, or no more than 25 total days,
 69 | during a calendar year.

70 | (8) This section applies to any claim made on or after
 71 | July 1, 2011, regardless of the date of the accident.

72 | Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Loan Processing
SPONSOR(S): Insurance & Banking Subcommittee, Workman
TIED BILLS: IDEN./SIM. BILLS: SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Barnum	Cooper
2) Rulemaking & Regulation Subcommittee	14 Y, 0 N	Miller	Rubottom
3) Government Operations Appropriations Subcommittee		Fox <i>RF</i>	Topp <i>BDT</i>
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The Housing and Economic Recovery Act of 2008 was enacted on July 30, 2008. Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E.". The intent is to provide greater accountability and regulation of loan originators. In 2009, the state became compliant with S.A.F.E.

The Office of Financial Regulation is responsible for loan originator licensure and annual renewal. The process includes confirming completion of educational requirements, conducting criminal history background checks, and reviewing credit histories.

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. Current law provides an exception for "loan processors," who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies. S.A.F.E. requires licensure of contract loan processors as loan originators.

The bill distinguishes between in-house loan processors and contract loan processors, and creates a new type of license, unique to in-house loan processors.

The bill specifies that those applying for licensure as an in-house loan processor must comply with some, but not all, of the requirements which must be met for licensure as a loan originator. Applicants must submit fingerprints and undergo a state and federal criminal history background check. However, there is no pre-licensure education requirement or requirement for release of a credit report or a credit history.

The bill requires that applicants for initial licensure or renewal must submit a nonrefundable fee of \$100 or \$75 respectively, while similar fees for loan originators are \$195 and \$150. In-house loan processors are not subject to the \$20 nonrefundable fee required of loan originators for deposit into the Mortgage Guaranty Trust Fund.

The bill requires direction and supervision of an in-house loan processor by a state-licensed loan originator. Individuals currently licensed as loan originators who wish to be licensed as in-house loan processors, will be subject to fewer regulatory requirements and lower fees.

While retaining the requirement that a good faith estimate be provided to an individual applying for a mortgage loan, as required by S.A.F.E., the bill removes the requirement for the borrower to sign and date the good faith estimate.

The bill codifies a requirement of S.A.F.E. that a mortgage lender submit reports of mortgage activity and financial information to the Nationwide Mortgage Licensing System and Registry.

The fiscal impact on state government is indeterminate due to that the OFR is not able to determine the number of persons who will seek licensure under the new license type.

The bill provides for an effective date of January 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

The Housing and Economic Recovery Act of 2008¹ was enacted on July 30, 2008. Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E.". The intent of S.A.F.E. is to provide greater accountability and regulation of loan originators, defined to include mortgage brokers and lenders, and enhance consumer protections by:

- Providing uniform license applications and reporting requirements for state-licensed loan originators.
- Providing a comprehensive licensing and supervisory database.
- Aggregating and improving the flow of information to and between regulators.
- Providing increased accountability and tracking of loan originators.
- Streamlining the licensing process and reducing the regulatory burden.
- Enhancing consumer protections and supporting anti-fraud measures.
- Providing consumers with easily accessible information, offered at no charge, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending.
- Facilitating the collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.²

S.A.F.E. establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. It defines the term, "loan originator," to mean an individual who takes loan applications and offers or negotiates terms of a loan for compensation.

S.A.F.E. requires that states participate in a national licensing registry, the Registry, which has been developed by the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators. It contains employment history, as well as disciplinary and enforcement actions against loan originators, and provides for free consumer access to this information.

S.A.F.E requires loan originators, which include mortgage brokers and lenders, to meet minimum net worth, surety bond, or applicable guaranty fund requirements to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders.

In 2009, the Legislature enacted and the Governor approved legislation bringing the state into compliance with the S.A.F.E. Mortgage Licensing Act of 2008.³ The law requires licensure of individual loan originators, plus mortgage broker businesses and mortgage lender businesses. Loan originators employed by or contracting with a mortgage lender are subject to licensure.

¹ H.R. 3221, Public Law 110-289

² H.R. 3221, Public Law 110-289, Title V, sec. 1502

³ Chapter 2009-241, Laws of Florida

Licensure as a loan originator⁴ includes the following requirements:

- Twenty (20) hours of pre-licensure education through Registry authorized providers and satisfactory completion of a test authorized by the Registry. The course content is specified by the Registry.
- Eight (8) hours of prescribed Continuing Education Units every year through Registry authorized providers.
- Submission of fingerprints to the Office of Financial Regulation (OFR) and the Registry. The cost associated with fingerprinting is the responsibility of the individual.
- An independent credit report to be reviewed by the Registry and OFR. The cost associated with the credit report is the responsibility of the individual.
- A state and federal criminal history background check.
- A demonstration of character, general fitness, and financial responsibility such as to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently.

When applying for licensure as a loan originator, an individual must submit a nonrefundable application fee of \$195. At the time of annual renewal, a nonrefundable fee of \$150 must be submitted. There is an additional \$30 fee for initial set-up in the Registry, plus a \$30 annual processing fee at the time of renewal. In addition, at the time of initial application and renewal, the individual must submit a \$20 nonrefundable fee to be deposited into the Mortgage Guaranty Trust Fund.⁵ That fund was established to compensate persons, in specific circumstances, who have suffered monetary damages because of a violation of ch. 494, F.S., by a licensed individual or business.

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. Current law provides an exception for "loan processors," who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies.

Current law does not differentiate between in-house loan processors and contract loan processors.⁶ A loan processor needs to be licensed as a loan originator and, in addition, have a "declaration of intent" filed with the OFR, if (s)he wishes to engage solely in loan processing and work for multiple employers. If a loan processor wishes to return to standard loan origination activities, the individual can withdraw the declaration of intent.⁷

When executing a written mortgage broker agreement, current law requires that the mortgage broker disclose, in writing, to any applicant for a mortgage loan, a good faith estimate of the total amount of each of the fees the borrower may reasonably expect to pay if the loan is closed. These include fees earned by the mortgage broker, lender fees, third-party fees, and official fees, together with the terms and conditions for obtaining a refund of such fees, if any. Except for all fees to be received by the mortgage broker, they may be disclosed in generic terms. The good faith estimate must be signed and dated by the borrower.⁸

The Department of Housing and Urban Development requires that loan originators provide borrowers with a standardized good faith estimate using a prescribed form.⁹ The form does not contain a signature block and cannot be altered or modified to accommodate a signature block with date.¹⁰

⁴ s. 494.00312, F.S.

⁵ s. 494.00172, F.S.

⁶ An in-house loan processor is an employee of a mortgage broker or mortgage lender, while a contract loan processor provides services as an independent contractor.

⁷ s. 494.00331, F.S.

⁸ s. 494.0038(3)(c), F.S.

⁹ http://hud.gov/offices/hsg/ramh/res/respa_hm.cfm (Last visited on March 10, 2011)

¹⁰ 24 CFR 3500 App C (Instructions for Completing Good Faith Estimate (GFE) Form

Effect of the bill:

The bill creates a new type of license, unique to in-house loan processors. In so doing, it clearly defines "loan processing" as:

- Receipt, collection, distribution, and analysis of information common for the processing of a mortgage loan.
- Communicating with a consumer to obtain the information necessary for the processing of a mortgage loan.

Equally important, the bill makes clear that loan processing does not include offering or negotiating rates or terms, or providing counseling to consumers regarding residential mortgage loan rates or terms.

The bill, through definitions, distinguishes between in-house loan processors and contract loan processors. Making this distinction is essential because S.A.F.E. requires licensing of contract loan processors as loan originators.¹¹

The bill specifies that those applying for licensure as an in-house loan processor must comply with some, but not all, of the requirements which must be met for licensure as a loan originator. In addition to reduced requirements, the fees are also reduced. Like a loan originator applicant, an individual must submit fingerprints and undergo a state and federal criminal history background check. Costs associated with fingerprint processing and retention are borne by the applicant. Consistent with the loan originator requirements, in-house loan processor licensure or renewal may be denied if the person is the subject of a pending felony criminal prosecution or a prosecution or an administrative enforcement action, in any jurisdiction, which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude. An individual who has had a loan originator or in-house loan processor license, or its equivalent, revoked in any jurisdiction, cannot be licensed as an in-house loan processor.

Unlike the loan originator, the in-house loan processor applicant has no pre-licensure education requirement, nor must the individual undergo educational testing as part of the licensure process. In like manner, there is no requirement for release of a credit report or a credit history to be reviewed by the OFR, nor is continuing education required for the annual license renewal.

While applicants for initial licensure or renewal as an in-house loan processor must submit a nonrefundable application fee of \$100 or \$75 respectively, similar fees for loan originators are \$195 and \$150. In-house loan processors are not subject to the \$20 nonrefundable fee required of loan originators for deposit into the Mortgage Guaranty Trust Fund.

While performing clerical or support duties as an employee of a mortgage broker or mortgage lender, the bill requires direction and supervision of an in-house loan processor by a state-licensed loan originator. That loan originator is subject to disciplinary actions for work-related activities of the in-house loan processor (s)he is supervising.

The bill amends s. 494.0011(2), F.S., to extend the rulemaking authority of the Financial Services Commission to the licensing and regulation of in-house loan processors. Revisions to s. 494.0018 and s. 494.0025, F.S., subject unlicensed in-house loan processors to administrative fines and penalties but not to criminal sanctions.

Under the provisions of the bill, individuals currently licensed as loan originators, but performing as in-house loan processors, will be subject to fewer requirements and lower fees should they desire to become licensed as in-house loan processors at their next annual license renewal. The bill provides for less regulation and lower costs for an individual seeking initial licensure in order to be qualified to perform loan processing as an employee of a mortgage broker or mortgage lender.

¹¹ H.R. 3221, Public Law 110-289, Title V, sec. 1504

While retaining the requirement that a good faith estimate be provided to an individual applying for a mortgage loan, as required by S.A.F.E., the bill removes the requirement for the borrower to sign and date the good faith estimate.

The bill codifies a requirement of S.A.F.E. that a mortgage lender submit "reports of condition"¹² to the Nationwide Mortgage Licensing System and Registry.¹³

The bill provides for an effective date of July 1, 2011.

B. SECTION DIRECTORY:

- Section 1. Amends s. 494.001, F.S., by creating and revising definitions.
- Section 2. Amends s. 494.0011, F.S., by specifying the rulemaking powers authorized to the Financial Services Commission extend to in-house loan processors.
- Section 3. Amends s. 494.0018, F.S., by revising cross-references so that acting as an in-house loan processor without a current license is not punishable as a criminal offense.
- Section 4. Amends s. 494.0025, F.S., by revising prohibited activities to include in-house loan processors.
- Section 5. Amends s. 494.00255, F.S., by including in-house loan processors under those subject to administrative penalties and fines for license violations.
- Section 6. Amends s. 494.00312, F.S., by revising the circumstances under which a loan originator license may not be issued.
- Section 7. Creates s. 494.00314, F.S., providing application and processing requirements for an in-house loan processor license.
- Section 8. Creates s. 494.00315, F.S., providing application and processing requirements for an in-house loan processor license renewal.
- Section 9. Amends s. 494.00331, F.S., by revising provisions relating to employment as a loan processor to include distinctions between employment as a contract loan processor and as an in-house loan processor.
- Section 10. Amends s. 494.0035, F.S., by clarifying language concerning the operation of a mortgage broker.
- Section 11. Amends s. 494.0038, F.S., by revising provisions relating to a good faith estimate.
- Section 12. Amends s. 494.00421, F.S., by revising an agency reference.
- Section 13. Amends s. 494.00611, F.S., by revising the circumstances under which a mortgage lender license may not be issued.
- Section 14. Amends s. 494.00612, F.S., by clarifying a mortgage lender license renewal requirement.
- Section 15. Amends s. 494.0067, F.S., by requiring each mortgage lender to submit reports of condition.
- Section 16. Provides an effective date of January 1, 2012.

¹² Reports of condition contain mortgage activity and financial information.

¹³ H.R. 3221, Public Law 110-289, Title V, sec. 1505

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See FISCAL COMMENTS.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual currently licensed as loan originator, but performing as an in-house loan processor, will pay \$95 less in fees should (s)he desire to become licensed as an in-house loan processor at the time of license renewal. In addition, annual cost avoidance related to continuing education equates to approximately \$100. For an individual joining the industry for the first time as an in-house loan processor, the cost would be approximately \$540 less than under current law. For both individuals there may be a savings of approximately \$195 at the time of annual license renewal.¹⁴

D. FISCAL COMMENTS:

The Office of Financial Regulation reports that between October 1, 2010 and March 2, 2011, it received 15,549 applications for licensure as a loan originator, including 275 who are known to be contract loan processors and therefore not affected by the bill.¹⁵ Of the remaining 15,274 individuals, it cannot be determined how many are performing as in-house loan processors, nor how many would desire to change to the new category of licensee with lower fees. The number of new-to-the-industry applicants which could result from the lower costs and fewer licensure requirements, with associated application fees and processing workload, is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

¹⁴ Savings are a result of lower application fees, no education and/or testing requirements, and no annual requirement for the \$20 payment into the Mortgage Guarantee Trust Fund. Pre-licensure courses plus testing average \$460, and the cost for 8 hours of continuing education courses averages \$102.

¹⁵ OFR e-mail dated March 9, 2011 on file with the Insurance & Banking Subcommittee.

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹⁶ Rulemaking authority is delegated by the Legislature¹⁷ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”¹⁸ a rule. Agencies do not have discretion whether to engage in rulemaking.¹⁹ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.²⁰ The grant of rulemaking authority itself need not be detailed.²¹ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.²²

The bill incorporates in-house loan processor licensing and regulation into the general rulemaking authority of the Financial Services Commission under s. 494.0011(2), F.S. The present statute provides significant and specific guidance to the Commission for developing rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁶ s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

¹⁷ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

¹⁸ s. 120.52(17), F.S.

¹⁹ s. 120.54(1)(a), F.S.

²⁰ s. 120.52(8) & s. 120.536(1), F.S.

²¹ *Save the Manatee Club, Inc.*, supra at 599.

²² *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

1 A bill to be entitled
2 An act relating to loan processing; amending s. 494.001,
3 F.S.; creating and revising definitions; deleting a
4 redundant definition; amending s. 494.0011, F.S.;
5 specifying rulemaking powers of the Financial Services
6 Commission; amending s. 494.0018, F.S.; revising cross-
7 references; amending s. 494.0025, F.S.; prohibiting acting
8 as an in-house loan processor without a specified license;
9 amending s. 494.00255, F.S.; including licensed in-house
10 loan processors in disciplinary provisions; amending s.
11 494.00312, F.S.; providing that a loan originator license
12 may not be issued to a person who has had an in-house loan
13 processor license or its equivalent revoked in any
14 jurisdiction; creating s. 494.00314, F.S.; providing for
15 licensing of in-house loan processors; providing
16 application requirements; specifying when an application
17 is considered received; providing grounds for denial of
18 licensure; prohibiting issuance of licenses to applicants
19 who have had certain licenses revoked in other
20 jurisdictions; providing for annulment of licenses in
21 certain circumstances; requiring annual renewal of
22 licenses; prohibiting an in-house loan processor from
23 acting as a loan originator without a loan originator
24 license; authorizing a licensed loan originator to act as
25 an in-house loan processor without an in-house loan
26 processor license; creating s. 494.00315, F.S.; providing
27 for license renewals; amending s. 494.00331, F.S.;
28 providing that specified provisions do not apply to a

29 | licensed contract loan processor who has on file with the
 30 | office a declaration of intent to act solely as a contract
 31 | loan processor; deleting a definition; providing
 32 | restrictions on employment of persons licensed as in-house
 33 | loan processors; amending s. 494.0035, F.S.; clarifying
 34 | provisions concerning operation of mortgage brokers;
 35 | amending s. 494.0038, F.S.; revising provisions relating
 36 | to disclosure of settlement charges and loan terms;
 37 | amending s. 494.00421, F.S.; revising an agency reference
 38 | in the mortgage broker agreement; providing that a
 39 | borrower may contact the Office of Financial Regulation
 40 | rather than the Department of Financial Services regarding
 41 | any complaints against a loan originator; amending s.
 42 | 494.00611, F.S.; providing that a mortgage lender license
 43 | may not be issued to an applicant if any of the
 44 | applicant's control persons has ever had an in-house loan
 45 | processor license or its equivalent revoked in any
 46 | jurisdiction; amending s. 494.00612, F.S.; requiring that
 47 | in order to renew a mortgage lender license a mortgage
 48 | lender must authorize the Nationwide Mortgage Licensing
 49 | System and Registry to obtain an independent credit report
 50 | on each of the mortgage lender's control persons; amending
 51 | s. 494.0067, F.S.; requiring each mortgage lender to
 52 | submit certain reports to the registry as may be required;
 53 | providing an effective date.

54 |
 55 | Be It Enacted by the Legislature of the State of Florida:
 56 |

57 Section 1. Subsections (5) through (9), (10) through (14),
 58 (15) through (24), and (26) through (34) of section 494.001,
 59 Florida Statutes, are renumbered as subsections (6) through
 60 (10), (12) through (16), (18) through (27), and (28) through
 61 (36), respectively, new subsections (5), (11), and (17) are
 62 added to that section, and present subsections (14), (25), and
 63 (26) of that section are amended, to read:

64 494.001 Definitions.—As used in ss. 494.001-494.0077, the
 65 term:

66 (5) "Contract loan processor" means an individual who is
 67 licensed under part II of this chapter as a loan originator, who
 68 is an independent contractor for a mortgage broker or mortgage
 69 lender, and who engages only in loan processing.

70 (11) "In-house loan processor" means an individual who is
 71 an employee of a mortgage broker or a mortgage lender who
 72 engages only in loan processing.

73 (16)(14) "Loan originator" means an individual who,
 74 directly or indirectly, solicits or offers to solicit a mortgage
 75 loan, accepts or offers to accept an application for a mortgage
 76 loan, negotiates or offers to negotiate the terms or conditions
 77 of a new or existing mortgage loan on behalf of a borrower or
 78 lender, ~~processes a mortgage loan application,~~ or negotiates or
 79 offers to negotiate the sale of an existing mortgage loan to a
 80 noninstitutional investor for compensation or gain. The term
 81 includes an individual who is required to be licensed as a loan
 82 originator under the activities of a loan originator as that
 83 term is defined in the S.A.F.E. Mortgage Licensing Act of 2008,
 84 and an individual acting as a loan originator pursuant to that

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85 ~~definition is acting as a loan originator for purposes of this~~
 86 ~~definition.~~ The term does not include an employee of a mortgage
 87 broker or mortgage lender whose duties are limited to who
 88 ~~performs only administrative or clerical tasks, including~~
 89 ~~quoting available interest rates,~~ physically handling a
 90 completed application form, or transmitting a completed
 91 application form to a lender on behalf of a prospective
 92 borrower.

93 (17) "Loan processing" means:

94 (a) Receiving, collecting, distributing, and analyzing
 95 information common for the processing of a mortgage loan; or

96 (b) Communicating with a consumer to obtain information
 97 necessary for the processing of a mortgage loan, if such
 98 communication does not include offering or negotiating loan
 99 rates or terms, or counseling consumers about residential
 100 mortgage loan rates or terms.

101 ~~(25) "Person" has the same meaning as in s. 1.01.~~

102 (28)(26) "Principal loan originator" means the licensed
 103 loan originator in charge of, and responsible for, the operation
 104 of a mortgage lender or mortgage broker, including all of the
 105 activities of the mortgage lender's or mortgage broker's loan
 106 originators, in-house loan processors, and branch managers,
 107 whether employees or independent contractors.

108 Section 2. Subsection (2) of section 494.0011, Florida
 109 Statutes, is amended to read:

110 494.0011 Powers and duties of the commission and office.-

111 (2) ~~To administer ss. 494.001-494.0077,~~ The commission may
 112 adopt rules to administer parts I, II, and III of this chapter,
 113 including rules:

114 (a) Requiring electronic submission of any forms,
 115 documents, or fees required by this act.

116 (b) Relating to compliance with the S.A.F.E. Mortgage
 117 Licensing Act of 2008, including rules to:

118 1. Require in-house loan processors, loan originators,
 119 mortgage brokers, mortgage lenders, and branch offices to
 120 register through the registry.

121 2. Require the use of uniform forms that have been
 122 approved by the registry, and any subsequent amendments to such
 123 forms if the forms are substantially in compliance with the
 124 provisions of this chapter. Uniform forms that the commission
 125 may adopt include, but are not limited to:

- 126 a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.
- 127 b. Uniform Mortgage Biographical Statement & Consent Form,
 128 MU2.
- 129 c. Uniform Mortgage Branch Office Form, MU3.
- 130 d. Uniform Individual Mortgage License/Registration &
 131 Consent Form, MU4.

132 3. Require the filing of forms, documents, and fees in
 133 accordance with the requirements of the registry.

134 4. Prescribe requirements for amending or surrendering a
 135 license or other activities as the commission deems necessary
 136 for the office's participation in the registry.

137 5. Prescribe procedures that allow a licensee to challenge
 138 information contained in the registry.

139 6. Prescribe procedures for reporting violations of this
140 chapter and disciplinary actions on licensees to the registry.

141 (c) Establishing time periods during which an in-house
142 loan processor, a loan originator, a mortgage broker, or a
143 mortgage lender license applicant under part II or part III is
144 barred from licensure due to prior criminal convictions of, or
145 guilty or nolo contendere pleas by, any of the applicant's
146 control persons, regardless of adjudication.

147 1. The rules must provide:

148 a. Permanent bars for felonies involving fraud,
149 dishonesty, breach of trust, or money laundering;

150 b. A 15-year disqualifying period for felonies involving
151 moral turpitude;

152 c. A 7-year disqualifying period for all other felonies;
153 and

154 d. A 5-year disqualifying period for misdemeanors
155 involving fraud, dishonesty, or any other act of moral
156 turpitude.

157 2. The rules may provide for an additional waiting period
158 due to dates of imprisonment or community supervision, the
159 commitment of multiple crimes, and other factors reasonably
160 related to the applicant's criminal history.

161 3. The rules may provide for mitigating factors for crimes
162 identified in sub-subparagraph 1.b. However, the mitigation may
163 not result in a period of disqualification less than 7 years.

164 The rule may not mitigate the disqualifying periods in sub-
165 subparagraphs 1.a., 1.c., and 1.d.

166 4. An applicant is not eligible for licensure until the
 167 expiration of the disqualifying period set by rule.

168 5. Section 112.011 is not applicable to eligibility for
 169 licensure under this part.

170 Section 3. Subsection (1) of section 494.0018, Florida
 171 Statutes, is amended to read:

172 494.0018 Penalties.—

173 (1) Whoever knowingly violates any provision of s.
 174 494.00255(1)(a), (b), or (c) or s. 494.0025(1), ~~(3)(2)~~, ~~(4)(3)~~,
 175 ~~(5)(4)~~, or ~~(6)(5)~~, except as provided in subsection (2) of this
 176 section, commits a felony of the third degree, punishable as
 177 provided in s. 775.082, s. 775.083, or s. 775.084. Each such
 178 violation constitutes a separate offense.

179 Section 4. Subsections (2) through (10) of section
 180 494.0025, Florida Statutes, are renumbered as subsections (3)
 181 through (11), respectively, and a new subsection (2) is added to
 182 that section to read:

183 494.0025 Prohibited practices.—It is unlawful for any
 184 person:

185 (2) To act as an in-house loan processor in this state
 186 without a current, active in-house loan processor license issued
 187 by the office pursuant to part II of this chapter.

188 Section 5. Paragraphs (n) and (p) of subsection (1),
 189 paragraph (f) of subsection (2), and subsections (3), (4), (5),
 190 (6), and (8) of section 494.00255, Florida Statutes, are
 191 amended, and paragraph (m) of subsection (1) is reenacted, to
 192 read:

193 | 494.00255 Administrative penalties and fines; license
194 | violations.—

195 | (1) Each of the following acts constitutes a ground for
196 | which the disciplinary actions specified in subsection (2) may
197 | be taken against a person licensed or required to be licensed
198 | under part II or part III of this chapter:

199 | (m) In any mortgage transaction, violating any provision
200 | of the federal Real Estate Settlement Procedures Act, as
201 | amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in
202 | Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any
203 | regulations adopted under such acts.

204 | (n) Having a loan originator, an in-house loan processor,
205 | a mortgage broker, or a mortgage lender license, or the
206 | equivalent of such license, revoked in any jurisdiction.

207 | (p) Acting as a loan originator, an in-house loan
208 | processor, a mortgage broker, or a mortgage lender without a
209 | current license issued under part II or part III of this
210 | chapter.

211 | (2) If the office finds a person in violation of any act
212 | specified in this section, it may enter an order imposing one or
213 | more of the following penalties:

214 | (f) An administrative fine of up to \$1,000 per day, but
215 | not to exceed \$25,000 cumulatively, for each day that:

216 | 1. A mortgage broker or mortgage lender conducts business
217 | at an unlicensed branch office.

218 | 2. An unlicensed person acts as a loan originator, an in-
219 | house loan processor, a mortgage broker, or a mortgage lender.

220 (3) A mortgage broker or mortgage lender, as applicable,
 221 is subject to the disciplinary actions specified in subsection
 222 (2) for a violation of subsection (1) by:

223 (a) A control person of the mortgage broker or mortgage
 224 lender; ~~or~~

225 (b) A loan originator employed by or contracting with the
 226 mortgage broker or mortgage lender; or

227 (c) An in-house loan processor who is an employee of the
 228 mortgage broker or mortgage lender.

229 (4) A principal loan originator of a mortgage broker is
 230 subject to the disciplinary actions specified in subsection (2)
 231 for violations of subsection (1) by a loan originator or an in-
 232 house loan processor in the course of an association with the
 233 mortgage broker if there is a pattern of repeated violations by
 234 the loan originator or in-house loan processor or if the
 235 principal loan originator has knowledge of the violations.

236 (5) A principal loan originator of a mortgage lender is
 237 subject to the disciplinary actions specified in subsection (2)
 238 for violations of subsection (1) by a loan originator or an in-
 239 house loan processor in the course of an association with a
 240 mortgage lender if there is a pattern of repeated violations by
 241 the loan originator or in-house loan processor or if the
 242 principal loan originator has knowledge of the violations.

243 (6) A branch manager is subject to the disciplinary
 244 actions specified in subsection (2) for violations of subsection
 245 (1) by a loan originator or an in-house loan processor in the
 246 course of an association with the mortgage broker or mortgage
 247 lender if there is a pattern of repeated violations by the loan

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248 originator or in-house loan processor or if the branch manager
 249 has knowledge of the violations.

250 (8) Pursuant to s. 120.60(6), the office may summarily
 251 suspend the license of a loan originator, an in-house loan
 252 processor, a mortgage broker, or a mortgage lender if the office
 253 has reason to believe that a licensee poses an immediate,
 254 serious danger to the public's health, safety, or welfare. The
 255 arrest of the licensee, or the mortgage broker or the mortgage
 256 lender's control person, for any felony or any crime involving
 257 fraud, dishonesty, breach of trust, money laundering, or any
 258 other act of moral turpitude is deemed sufficient to constitute
 259 an immediate danger to the public's health, safety, or welfare.
 260 Any proceeding for the summary suspension of a license must be
 261 conducted by the commissioner of the office, or designee, who
 262 shall issue the final summary order.

263 Section 6. Subsection (5) of section 494.00312, Florida
 264 Statutes, is amended to read:

265 494.00312 Loan originator license.—

266 (5) The office may not issue a license to an applicant who
 267 has had a loan originator or an in-house loan processor license
 268 or its equivalent revoked in any jurisdiction.

269 Section 7. Section 494.00314, Florida Statutes, is created
 270 to read:

271 494.00314 In-house loan processor license.—

272 (1) An individual acting as an in-house loan processor
 273 must be licensed under this section.

274 (2) In order to apply for an in-house loan processor
 275 license, an applicant must:

276 (a) Be at least 18 years of age and have a high school
 277 diploma or its equivalent.

278 (b) Submit a completed license application form as
 279 prescribed by commission rule.

280 (c) Submit a nonrefundable application fee of \$100.
 281 Application fees may not be prorated for partial years of
 282 licensure.

283 (d) Submit fingerprints in accordance with rules adopted
 284 by the commission.

285 1. The fingerprints must be submitted to a live-scan
 286 vendor authorized by the Department of Law Enforcement.

287 2. A state criminal history background check must be
 288 conducted through the Department of Law Enforcement, and a
 289 federal criminal history check must be conducted through the
 290 Federal Bureau of Investigation.

291 3. All fingerprints submitted to the Department of Law
 292 Enforcement must be submitted electronically and entered into
 293 the statewide automated fingerprint identification system
 294 established in s. 943.05(2)(b) and available for use in
 295 accordance with s. 943.05(2)(g) and (h). The office shall pay an
 296 annual fee to the department to participate in the system and
 297 inform the department of any person whose fingerprints are no
 298 longer required to be retained.

299 4. The costs of fingerprint processing, including the cost
 300 of retaining fingerprints, shall be borne by the person subject
 301 to the background check.

302 | 5. The office is responsible for reviewing the results of
303 | the state and federal criminal history checks and determining
304 | whether the applicant meets licensure requirements.

305 | (e) Submit additional information or documentation
306 | requested by the office and required by rule concerning the
307 | applicant. Additional information may include documentation of
308 | pending or prior disciplinary or criminal history events,
309 | including arrest reports and certified copies of charging
310 | documents, plea agreements, judgments and sentencing documents,
311 | documents relating to pretrial intervention, orders terminating
312 | probation or supervised release, final administrative agency
313 | orders, or other comparable documents that may provide the
314 | office with the appropriate information to determine eligibility
315 | for licensure.

316 | (f) Submit any other information required by the registry
317 | for processing the application.

318 | (3) An application is considered received for the purposes
319 | of s. 120.60 upon the office's receipt of all documentation from
320 | the registry, including the completed application form, criminal
321 | history information, and license application fee.

322 | (4) The office shall issue an in-house loan processor
323 | license to each person who is not otherwise ineligible and who
324 | meets the requirements of this section. However, it is a ground
325 | for denial of licensure if the applicant:

326 | (a) Has committed any violation specified in ss. 494.001-
327 | 494.0077; or

328 | (b) Is the subject of a pending felony criminal
329 | prosecution or a prosecution or an administrative enforcement

330 | action in any jurisdiction which involves fraud, dishonesty,
 331 | breach of trust, money laundering, or any other act of moral
 332 | turpitude.

333 | (5) The office may not issue a license to an applicant who
 334 | has had an in-house loan processor or loan originator license or
 335 | its equivalent revoked in any jurisdiction.

336 | (6) An in-house loan processor license shall be annulled
 337 | pursuant to s. 120.60 if it was issued by the office by mistake.
 338 | A license must be reinstated if the applicant demonstrates that
 339 | the requirements for obtaining the license have been satisfied.

340 | (7) All in-house loan processor licenses must be renewed
 341 | annually by December 31, pursuant to s. 494.00315. If a person
 342 | holding an active license has not applied to renew the license
 343 | on or before December 31, the license expires on December 31. If
 344 | a person holding an active license has applied to renew on or
 345 | before December 31, the license remains active until the renewal
 346 | application is approved or denied. An in-house loan processor is
 347 | not precluded from reapplying for licensure upon expiration of a
 348 | previous license.

349 | (8) An in-house loan processor licensed under this section
 350 | may not act as a loan originator without a loan originator
 351 | license issued under this part.

352 | (9) A loan originator licensed under this part may also
 353 | act as an in-house loan processor without an in-house loan
 354 | processor license.

355 | Section 8. Section 494.00315, Florida Statutes, is created
 356 | to read:

357 494.00315 In-house loan processor license renewal.—In
 358 order to renew an in-house loan processor license, an in-house
 359 loan processor must:

360 (1) Submit a completed license renewal form as prescribed
 361 by commission rule.

362 (2) Submit a nonrefundable renewal fee of \$75 and
 363 nonrefundable fees to cover the costs of further fingerprint
 364 processing and retention as set forth in commission rule.

365 (3) Submit any additional information or documentation
 366 requested by the office and required by rule concerning the
 367 licensee. Additional information may include documentation of
 368 pending and prior disciplinary and criminal history events,
 369 including arrest reports and certified copies of charging
 370 documents, plea agreements, judgments and sentencing documents,
 371 documents relating to pretrial intervention, orders terminating
 372 probation or supervised release, final administrative agency
 373 orders, or other comparable documents that may provide the
 374 office with the appropriate information to determine eligibility
 375 for renewal of licensure.

376 Section 9. Section 494.00331, Florida Statutes, is amended
 377 to read:

378 494.00331 Loan originator and loan processor employment.—

379 (1) LOAN ORIGINATORS.—An individual may not act as a loan
 380 originator unless he or she is an employee of, or an independent
 381 contractor for, a mortgage broker or a mortgage lender, and may
 382 not be employed by or contract with more than one mortgage
 383 broker or mortgage lender, or either simultaneously.

384 (2) CONTRACT LOAN PROCESSORS.—~~Subsection (1) However, this~~
 385 ~~provision~~ does not apply to a contract loan processor who has a
 386 declaration of intent to act solely as a contract loan processor
 387 on file with the office. The declaration of intent must be on a
 388 form as prescribed by commission rule ~~any licensed loan~~
 389 ~~originator who acts solely as a loan processor and contracts~~
 390 ~~with more than one mortgage broker or mortgage lender, or either~~
 391 ~~simultaneously.~~

392 ~~(2) For purposes of this section, the term "loan~~
 393 ~~processor" means an individual who is licensed as a loan~~
 394 ~~originator who engages only in:~~

395 ~~(a) The receipt, collection, distribution, and analysis of~~
 396 ~~information common for the processing or underwriting of a~~
 397 ~~residential mortgage loan; or~~

398 ~~(b) Communication with consumers to obtain the information~~
 399 ~~necessary for the processing or underwriting of a loan, to the~~
 400 ~~extent that such communication does not include offering or~~
 401 ~~negotiating loan rates or terms or does not include counseling~~
 402 ~~consumers about residential mortgage loan rates or terms.~~

403 ~~(3) A person may not act as a loan processor unless the~~
 404 ~~person is licensed as a loan originator under this chapter and~~
 405 ~~has on file with the office a declaration of intent to engage~~
 406 ~~solely in loan processing. The declaration of intent must be on~~
 407 ~~such form as prescribed by the commission by rule.~~

408 (a)-(4) A loan originator ~~that currently has a declaration~~
 409 ~~of intent to engage solely in loan processing on file with the~~
 410 ~~office may withdraw his or her declaration of intent to engage~~

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411 ~~solely in loan processing.~~ The withdrawal of declaration of
 412 intent must be on such form as prescribed by commission rule.

413 ~~(b)(5)~~ A declaration of intent or a withdrawal of
 414 declaration of intent is effective upon receipt by the office.

415 ~~(c)(6)~~ The fee earned by a contract loan processor may be
 416 paid to the company that employs the loan processor without
 417 violating the restriction in s. 494.0025(8)~~(7)~~ requiring fees or
 418 commissions to be paid to a licensed mortgage broker or mortgage
 419 lender or a person exempt from licensure under this chapter.

420 (3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as
 421 an in-house loan processor unless he or she is an employee of a
 422 mortgage broker or a mortgage lender and may not be employed by
 423 more than one mortgage broker or mortgage lender, or either,
 424 simultaneously. An in-house loan processor must work at the
 425 direction of and be subject to the supervision and instruction
 426 of a loan originator licensed under this part.

427 Section 10. Subsection (1) of section 494.0035, Florida
 428 Statutes, is amended to read:

429 494.0035 Principal loan originator and branch manager for
 430 mortgage broker.—

431 (1) Each mortgage broker must be operated by a principal
 432 loan originator who shall have full charge, control, and
 433 supervision of the mortgage broker ~~business~~. The principal loan
 434 originator must have been licensed as a loan originator for at
 435 least 1 year before being designated as the principal loan
 436 originator, or must demonstrate to the satisfaction of the
 437 office that he or she has been actively engaged in a mortgage-
 438 related ~~mortgage broker-related~~ business for at least 1 year

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439 before being designated as a principal loan originator. Each
 440 mortgage broker must keep the office informed of the person
 441 designated as the principal loan originator as prescribed by
 442 commission rule. If the designation is inaccurate, the mortgage
 443 broker business shall be deemed to be operated under the full
 444 charge, control, and supervision of each officer, director, or
 445 ultimate equitable owner of a 10-percent or greater interest in
 446 the mortgage broker, or any other person in a similar capacity.
 447 A loan originator may not be a principal loan originator for
 448 more than one mortgage broker at any given time.

449 Section 11. Paragraph (c) of subsection (3) of section
 450 494.0038, Florida Statutes, is amended to read:

451 494.0038 Loan origination and mortgage broker fees and
 452 disclosures.—

453 (3) At the time a written mortgage broker agreement is
 454 signed by the borrower or forwarded to the borrower for
 455 signature, or at the time the mortgage broker business accepts
 456 an application fee, credit report fee, property appraisal fee,
 457 or any other third-party fee, but at least 3 business days
 458 before execution of the closing or settlement statement, the
 459 mortgage broker shall disclose in writing to any applicant for a
 460 mortgage loan the following information:

461 (c) A good faith estimate that discloses settlement
 462 charges and loan terms, ~~signed and dated by the borrower, which~~
 463 ~~discloses the total amount of each of the fees the borrower may~~
 464 ~~reasonably expect to pay if the loan is closed, including, but~~
 465 ~~not limited to, fees earned by the mortgage broker, lender fees,~~

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466 | ~~third-party fees, and official fees, together with the terms and~~
 467 | ~~conditions for obtaining a refund of such fees, if any.~~

468 | 1. Any amount collected in excess of the actual cost shall
 469 | be returned within 60 days after rejection, withdrawal, or
 470 | closing.

471 | 2. At the time a good faith estimate is provided to the
 472 | borrower, the loan originator must identify in writing an
 473 | itemized list that provides the recipient of all payments
 474 | charged the borrower, which, except for all fees to be received
 475 | by the mortgage broker, may be disclosed in generic terms, such
 476 | as, but not limited to, paid to lender, appraiser, officials,
 477 | title company, or any other third-party service provider. This
 478 | requirement does not supplant or is not a substitute for the
 479 | written mortgage broker agreement described in subsection (1).
 480 | The disclosure required under this subparagraph must be signed
 481 | and dated by the borrower.

482 | Section 12. Paragraph (a) of subsection (7) of section
 483 | 494.00421, Florida Statutes, is amended to read:

484 | 494.00421 Fees earned upon obtaining a bona fide
 485 | commitment.—Notwithstanding the provisions of ss. 494.001-
 486 | 494.0077, any mortgage broker which contracts to receive a loan
 487 | origination fee from a borrower upon obtaining a bona fide
 488 | commitment shall accurately disclose in the mortgage broker
 489 | agreement:

490 | (7)(a) The following statement, in at least 12-point
 491 | boldface type immediately above the signature lines for the
 492 | borrowers:

493 "You are entering into a contract with a mortgage broker to
 494 obtain a bona fide mortgage loan commitment under the same terms
 495 and conditions as stated hereinabove or in a separate executed
 496 good faith estimate form. If the mortgage broker obtains a bona
 497 fide commitment under the same terms and conditions, you will be
 498 obligated to pay the loan origination fees even if you choose
 499 not to complete the loan transaction. If the provisions of s.
 500 494.00421, Florida Statutes, are not met, the loan origination
 501 fee can only be earned upon the funding of the mortgage loan.
 502 The borrower may contact the Office of Financial Regulation
 503 ~~Department of Financial Services~~, Tallahassee, Florida,
 504 regarding any complaints that the borrower may have against the
 505 loan originator. The telephone number of the office ~~department~~
 506 is: ...(insert telephone number)...."

507 Section 13. Subsection (5) of section 494.00611, Florida
 508 Statutes, is amended to read:

509 494.00611 Mortgage lender license.—

510 (5) The office may not issue a license if the applicant
 511 has had a mortgage lender license or its equivalent revoked in
 512 any jurisdiction, or any of the applicant's control persons has
 513 ever had a loan originator or an in-house loan processor license
 514 or its equivalent revoked in any jurisdiction.

515 Section 14. Paragraph (e) of subsection (1) of section
 516 494.00612, Florida Statutes, is amended to read:

517 494.00612 Mortgage lender license renewal.—

518 (1) In order to renew a mortgage lender license, a
 519 mortgage lender must:

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520 (e) Authorize the registry to obtain an independent credit
 521 report on each of the mortgage lender's control persons ~~lender~~
 522 from a consumer reporting agency, and transmit or provide access
 523 to the report to the office. The cost of the credit report shall
 524 be borne by the licensee.

525 Section 15. Subsection (13) is added to section 494.0067,
 526 Florida Statutes, to read:

527 494.0067 Requirements of mortgage lenders.-

528 (13) Each mortgage lender shall submit to the registry
 529 reports of condition which are in a form and which contain such
 530 information as the registry may require.

531 Section 16. This act shall take effect January 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 823 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative(s) Workman offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (5) through (9), (10) through (14),
8 (15) through (24), and (26) through (34) of section 494.001,
9 Florida Statutes, are renumbered as subsections (6) through
10 (10), (12) through (16), (18) through (27), and (28) through
11 (36), respectively, new subsections (5), (11), and (17) are
12 added to that section, and present subsections (14), (25), and
13 (26) of that section are amended, to read:

14 494.001 Definitions.—As used in ss. 494.001-494.0077, the
15 term:

16 (5) "Contract loan processor" means an individual who is
17 licensed under part II of this chapter as a loan originator, who
18 is an independent contractor for a mortgage broker or mortgage
19 lender, and who engages only in loan processing.

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20 (11) "In-house loan processor" means an individual who is
21 an employee of a mortgage broker or a mortgage lender who
22 engages only in loan processing.

23 ~~(16)-(14)~~ "Loan originator" means an individual who,
24 directly or indirectly, solicits or offers to solicit a mortgage
25 loan, accepts or offers to accept an application for a mortgage
26 loan, negotiates or offers to negotiate the terms or conditions
27 of a new or existing mortgage loan on behalf of a borrower or
28 lender, ~~processes a mortgage loan application,~~ or negotiates or
29 offers to negotiate the sale of an existing mortgage loan to a
30 noninstitutional investor for compensation or gain. The term
31 includes an individual who is required to be licensed as a loan
32 originator under the activities of a loan originator as that
33 ~~term is defined in the S.A.F.E. Mortgage Licensing Act of 2008,~~
34 ~~and an individual acting as a loan originator pursuant to that~~
35 ~~definition is acting as a loan originator for purposes of this~~
36 ~~definition.~~ The term does not include an employee of a mortgage
37 broker or mortgage lender whose duties are limited to who
38 ~~performs only administrative or clerical tasks, including~~
39 ~~quoting available interest rates,~~ physically handling a
40 completed application form, or transmitting a completed
41 application form to a lender on behalf of a prospective
42 borrower.

43 (17) "Loan processing" means:

44 (a) Receiving, collecting, distributing, and analyzing
45 information common for the processing of a mortgage loan; or

46 (b) Communicating with a consumer to obtain information
47 necessary for the processing of a mortgage loan if such

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48 communication does not include offering or negotiating loan
49 rates or terms, or counseling consumers about residential
50 mortgage loan rates or terms.

51 ~~(25) "Person" has the same meaning as in s. 1.01.~~

52 (28)~~(26)~~ "Principal loan originator" means the licensed
53 loan originator in charge of, and responsible for, the operation
54 of a mortgage lender or mortgage broker, including all of the
55 activities of the mortgage lender's or mortgage broker's loan
56 originators, in-house loan processors, and branch managers,
57 whether employees or independent contractors.

58 Section 2. Subsection (2) of section 494.0011, Florida
59 Statutes, is amended to read:

60 494.0011 Powers and duties of the commission and office.—

61 ~~(2) To administer ss. 494.001-494.0077, The commission may~~
62 adopt rules to administer parts I, II, and III of this chapter,
63 including rules:

64 (a) Requiring electronic submission of any forms,
65 documents, or fees required by this act.

66 (b) Relating to compliance with the S.A.F.E. Mortgage
67 Licensing Act of 2008, including rules to:

68 1. Require loan originators, mortgage brokers, mortgage
69 lenders, and branch offices to register through the registry.

70 2. Require the use of uniform forms that have been
71 approved by the registry, and any subsequent amendments to such
72 forms if the forms are substantially in compliance with the
73 provisions of this chapter. Uniform forms that the commission
74 may adopt include, but are not limited to:

75 a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

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76 b. Uniform Mortgage Biographical Statement & Consent Form,
77 MU2.

78 c. Uniform Mortgage Branch Office Form, MU3.

79 d. Uniform Individual Mortgage License/Registration &
80 Consent Form, MU4.

81 3. Require the filing of forms, documents, and fees in
82 accordance with the requirements of the registry.

83 4. Prescribe requirements for amending or surrendering a
84 license or other activities as the commission deems necessary
85 for the office's participation in the registry.

86 5. Prescribe procedures that allow a licensee to challenge
87 information contained in the registry.

88 6. Prescribe procedures for reporting violations of this
89 chapter and disciplinary actions on licensees to the registry.

90 (c) Establishing time periods during which a loan
91 originator, mortgage broker, or mortgage lender license
92 applicant under part II or part III is barred from licensure due
93 to prior criminal convictions of, or guilty or nolo contendere
94 pleas by, any of the applicant's control persons, regardless of
95 adjudication.

96 1. The rules must provide:

97 a. Permanent bars for felonies involving fraud,
98 dishonesty, breach of trust, or money laundering;

99 b. A 15-year disqualifying period for felonies involving
100 moral turpitude;

101 c. A 7-year disqualifying period for all other felonies;
102 and

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103 d. A 5-year disqualifying period for misdemeanors
104 involving fraud, dishonesty, or any other act of moral
105 turpitude.

106 2. The rules may provide for an additional waiting period
107 due to dates of imprisonment or community supervision, the
108 commitment of multiple crimes, and other factors reasonably
109 related to the applicant's criminal history.

110 3. The rules may provide for mitigating factors for crimes
111 identified in sub-subparagraph 1.b. However, the mitigation may
112 not result in a period of disqualification less than 7 years.
113 The rule may not mitigate the disqualifying periods in sub-
114 subparagraphs 1.a., 1.c., and 1.d.

115 4. An applicant is not eligible for licensure until the
116 expiration of the disqualifying period set by rule.

117 5. Section 112.011 is not applicable to eligibility for
118 licensure under this part.

119 Section 3. Subsections (3), (4), (5), and (6) of section
120 494.00255, Florida Statutes, are amended, and paragraph (m) of
121 subsection (1) is reenacted, to read:

122 494.00255 Administrative penalties and fines; license
123 violations.—

124 (1) Each of the following acts constitutes a ground for
125 which the disciplinary actions specified in subsection (2) may
126 be taken against a person licensed or required to be licensed
127 under part II or part III of this chapter:

128 (m) In any mortgage transaction, violating any provision
129 of the federal Real Estate Settlement Procedures Act, as
130 amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in

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131 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any
132 regulations adopted under such acts.

133 (3) A mortgage broker or mortgage lender, as applicable,
134 is subject to the disciplinary actions specified in subsection
135 (2) for a violation of subsection (1) by:

136 (a) A control person of the mortgage broker or mortgage
137 lender; ~~or~~

138 (b) A loan originator employed by or contracting with the
139 mortgage broker or mortgage lender; or

140 (c) An in-house loan processor who is an employee of the
141 mortgage broker or mortgage lender.

142 (4) A principal loan originator of a mortgage broker is
143 subject to the disciplinary actions specified in subsection (2)
144 for violations of subsection (1) by a loan originator or an in-
145 house loan processor in the course of an association with the
146 mortgage broker if there is a pattern of repeated violations by
147 the loan originator or in-house loan processor or if the
148 principal loan originator has knowledge of the violations.

149 (5) A principal loan originator of a mortgage lender is
150 subject to the disciplinary actions specified in subsection (2)
151 for violations of subsection (1) by a loan originator or an in-
152 house loan processor in the course of an association with a
153 mortgage lender if there is a pattern of repeated violations by
154 the loan originator or in-house loan processor or if the
155 principal loan originator has knowledge of the violations.

156 (6) A branch manager is subject to the disciplinary
157 actions specified in subsection (2) for violations of subsection
158 (1) by a loan originator or an in-house loan processor in the

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159 course of an association with the mortgage broker or mortgage
160 lender if there is a pattern of repeated violations by the loan
161 originator or in-house loan processor or if the branch manager
162 has knowledge of the violations.

163 Section 4. Section 494.00331, Florida Statutes, is amended
164 to read:

165 494.00331 Loan originator and loan processor employment.—

166 (1) LOAN ORIGINATORS.—An individual may not act as a loan
167 originator unless he or she is an employee of, or an independent
168 contractor for, a mortgage broker or a mortgage lender, and may
169 not be employed by or contract with more than one mortgage
170 broker or mortgage lender, or either simultaneously.

171 (2) CONTRACT LOAN PROCESSORS.—~~Subsection (1) However, this~~
172 ~~provision~~ does not apply to a contract loan processor who has a
173 declaration of intent to act solely as a contract loan processor
174 on file with the office. The declaration of intent must be on a
175 form as prescribed by commission rule ~~any licensed loan~~
176 ~~originator who acts solely as a loan processor and contracts~~
177 ~~with more than one mortgage broker or mortgage lender, or either~~
178 ~~simultaneously.~~

179 ~~(2) For purposes of this section, the term "loan~~
180 ~~processor" means an individual who is licensed as a loan~~
181 ~~originator who engages only in:~~

182 ~~(a) The receipt, collection, distribution, and analysis of~~
183 ~~information common for the processing or underwriting of a~~
184 ~~residential mortgage loan; or~~

185 ~~(b) Communication with consumers to obtain the information~~
186 ~~necessary for the processing or underwriting of a loan, to the~~

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187 ~~extent that such communication does not include offering or~~
188 ~~negotiating loan rates or terms or does not include counseling~~
189 ~~consumers about residential mortgage loan rates or terms.~~

190 ~~(3) A person may not act as a loan processor unless the~~
191 ~~person is licensed as a loan originator under this chapter and~~
192 ~~has on file with the office a declaration of intent to engage~~
193 ~~solely in loan processing. The declaration of intent must be on~~
194 ~~such form as prescribed by the commission by rule.~~

195 ~~(a)(4) A loan originator that currently has a declaration~~
196 ~~of intent to engage solely in loan processing on file with the~~
197 ~~office may withdraw his or her declaration of intent to engage~~
198 ~~solely in loan processing. The withdrawal of declaration of~~
199 ~~intent must be on such form as prescribed by commission rule.~~

200 ~~(b)(5) A declaration of intent or a withdrawal of~~
201 ~~declaration of intent is effective upon receipt by the office.~~

202 ~~(c)(6) The fee earned by a contract loan processor may be~~
203 ~~paid to the company that employs the loan processor without~~
204 ~~violating the restriction in s. 494.0025(8)(7) requiring fees or~~
205 ~~commissions to be paid to a licensed mortgage broker or mortgage~~
206 ~~lender or a person exempt from licensure under this chapter.~~

207 ~~(3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as~~
208 ~~an in-house loan processor unless he or she is an employee of a~~
209 ~~mortgage broker or a mortgage lender and may not be employed by~~
210 ~~more than one mortgage broker or mortgage lender, or either,~~
211 ~~simultaneously. An in-house loan processor must work at the~~
212 ~~direction of and be subject to the supervision and instruction~~
213 ~~of a loan originator licensed under this part.~~

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214 Section 5. Subsection (1) of section 494.0035, Florida
215 Statutes, is amended to read:

216 494.0035 Principal loan originator and branch manager for
217 mortgage broker.—

218 (1) Each mortgage broker must be operated by a principal
219 loan originator who shall have full charge, control, and
220 supervision of the mortgage broker ~~business~~. The principal loan
221 originator must have been licensed as a loan originator for at
222 least 1 year before being designated as the principal loan
223 originator, or must demonstrate to the satisfaction of the
224 office that he or she has been actively engaged in a mortgage-
225 related ~~mortgage broker related~~ business for at least 1 year
226 before being designated as a principal loan originator. Each
227 mortgage broker must keep the office informed of the person
228 designated as the principal loan originator as prescribed by
229 commission rule. If the designation is inaccurate, the mortgage
230 broker ~~business~~ shall be deemed to be operated under the full
231 charge, control, and supervision of each officer, director, or
232 ultimate equitable owner of a 10-percent or greater interest in
233 the mortgage broker, or any other person in a similar capacity.
234 A loan originator may not be a principal loan originator for
235 more than one mortgage broker at any given time.

236 Section 6. Paragraph (c) of subsection (3) of section
237 494.0038, Florida Statutes, is amended to read:

238 494.0038 Loan origination and mortgage broker fees and
239 disclosures.—

240 (3) At the time a written mortgage broker agreement is
241 signed by the borrower or forwarded to the borrower for

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242 signature, or at the time the mortgage broker business accepts
243 an application fee, credit report fee, property appraisal fee,
244 or any other third-party fee, but at least 3 business days
245 before execution of the closing or settlement statement, the
246 mortgage broker shall disclose in writing to any applicant for a
247 mortgage loan the following information:

248 (c) A good faith estimate that discloses settlement
249 charges and loan terms, ~~signed and dated by the borrower, which~~
250 ~~discloses the total amount of each of the fees the borrower may~~
251 ~~reasonably expect to pay if the loan is closed, including, but~~
252 ~~not limited to, fees earned by the mortgage broker, lender fees,~~
253 ~~third party fees, and official fees, together with the terms and~~
254 ~~conditions for obtaining a refund of such fees, if any.~~

255 1. Any amount collected in excess of the actual cost shall
256 be returned within 60 days after rejection, withdrawal, or
257 closing.

258 2. At the time a good faith estimate is provided to the
259 borrower, the loan originator must identify in writing an
260 itemized list that provides the recipient of all payments
261 charged the borrower, which, except for all fees to be received
262 by the mortgage broker, may be disclosed in generic terms, such
263 as, but not limited to, paid to lender, appraiser, officials,
264 title company, or any other third-party service provider. This
265 requirement does not supplant or is not a substitute for the
266 written mortgage broker agreement described in subsection (1).
267 The disclosure required under this subparagraph must be signed
268 and dated by the borrower.

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269 Section 7. Paragraph (a) of subsection (7) of section
270 494.00421, Florida Statutes, is amended to read:

271 494.00421 Fees earned upon obtaining a bona fide
272 commitment.—Notwithstanding the provisions of ss. 494.001-
273 494.0077, any mortgage broker which contracts to receive a loan
274 origination fee from a borrower upon obtaining a bona fide
275 commitment shall accurately disclose in the mortgage broker
276 agreement:

277 (7) (a) The following statement, in at least 12-point
278 boldface type immediately above the signature lines for the
279 borrowers:

280 "You are entering into a contract with a mortgage broker to
281 obtain a bona fide mortgage loan commitment under the same terms
282 and conditions as stated hereinabove or in a separate executed
283 good faith estimate form. If the mortgage broker obtains a bona
284 fide commitment under the same terms and conditions, you will be
285 obligated to pay the loan origination fees even if you choose
286 not to complete the loan transaction. If the provisions of s.
287 494.00421, Florida Statutes, are not met, the loan origination
288 fee can only be earned upon the funding of the mortgage loan.
289 The borrower may contact the Office of Financial Regulation
290 ~~Department of Financial Services~~, Tallahassee, Florida,
291 regarding any complaints that the borrower may have against the
292 loan originator. The telephone number of the office ~~department~~
293 is: ...(insert telephone number)...."

294 Section 8. Paragraph (e) of subsection (1) of section
295 494.00612, Florida Statutes, is amended to read:

296 494.00612 Mortgage lender license renewal.—

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297 (1) In order to renew a mortgage lender license, a
298 mortgage lender must:

299 (e) Authorize the registry to obtain an independent credit
300 report on each of the mortgage lender's control persons ~~lender~~
301 from a consumer reporting agency, and transmit or provide access
302 to the report to the office. The cost of the credit report shall
303 be borne by the licensee.

304 Section 9. Subsection (13) is added to section 494.0067,
305 Florida Statutes, to read:

306 494.0067 Requirements of mortgage lenders.—

307 (13) Each mortgage lender shall submit to the registry
308 reports of condition which are in a form and which contain such
309 information as the registry may require.

310 Section 10. This act shall take effect July 1, 2011.

311

312 -----

313 **T I T L E A M E N D M E N T**

314 Remove the entire title and insert:

315 A bill to be entitled

316 An act relating to loan processing; amending s.

317 494.001, F.S.; creating and revising definitions;

318 deleting a redundant definition; amending s. 494.0011,

319 F.S.; specifying rulemaking powers of the Financial

320 Services Commission; amending s. 494.00255, F.S.;

321 including in-house loan processors in disciplinary

322 provisions; amending s. 494.00331, F.S.; providing

323 that specified provisions do not apply to a licensed

324 contract loan processor who has on file with the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 823 (2011)

Amendment No. 1

325 office a declaration of intent to act solely as a
326 contract loan processor; deleting a definition;
327 providing restrictions on employment of persons
328 licensed as in-house loan processors; amending s.
329 494.0035, F.S.; clarifying provisions concerning
330 operation of mortgage brokers; amending s. 494.0038,
331 F.S.; revising provisions relating to disclosure of
332 settlement charges and loan terms; amending s.
333 494.00421, F.S.; revising an agency reference in the
334 mortgage broker agreement; providing that a borrower
335 may contact the Office of Financial Regulation rather
336 than the Department of Financial Services regarding
337 any complaints against a loan originator; amending s.
338 494.00612, F.S.; requiring that in order to renew a
339 mortgage lender license a mortgage lender must
340 authorize the Nationwide Mortgage Licensing System and
341 Registry to obtain an independent credit report on
342 each of the mortgage lender's control persons;
343 amending s. 494.0067, F.S.; requiring each mortgage
344 lender to submit certain reports to the registry as
345 may be required; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1121 Financial Institutions
SPONSOR(S): Insurance & Banking Subcommittee, Ingram
TIED BILLS: IDEN./SIM. **BILLS:** SB 1332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Barnum	Cooper
2) Government Operations Appropriations Subcommittee		Fox <i>RF</i>	Topp <i>BDT</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) is responsible for administering the financial institution codes. CS/HB 1121 authorizes the OFR to appoint provisional directors if a bank or credit union lacks the minimum number of directors to meet statutory requirements, and appoint provisional executive officers if there is an insufficient number of qualified executive officers to operate the financial institution in a safe and sound manner. Current law does not provide for such provisional appointments.

The bill removes the requirement that the OFR conduct its own evaluation of each state-chartered bank at least once during each 36-month period, thereby reducing potential duplication of activities by federal regulators. It allows the OFR to enter into agreements with other appropriate state and federal regulatory agencies to facilitate the efficient utilization and coordination of resources in the examinations.

The bill also expands the actions that the OFR can take under an emergency order regarding a failing financial institution. These include:

- Authorizing the direct or indirect acquisition of control of the failing institution.
- Appointing provisional directors, executive officers, or other employees.
- Authorizing any other capital or liquidity restoration plan or action deemed prudent.

The bill authorizes the OFR to grant prior approval of a bank charter which would remain inactive until the investor(s) acquire a troubled institution. By granting preliminary approval of a "shelf charter", the pool of potential buyers for troubled institutions is expanded, potentially resulting in new equity capital available to bid on troubled institutions.

The bill provides for compliance with the Wall Street Reform and Consumer Protection Act which implements changes that affect the oversight and supervision of financial institutions. In doing so, it:

- Removes references to, or requirement for, reliance on credit ratings as regards a financial institution's investment of funds. It replaces those provisions with a requirement that financial institutions establish written policies and procedures to evaluate the risks and benefits associated with authorized investments.
- Requires state-chartered credit unions and banks to take into account potential liabilities and obligations resulting from derivatives transactions, repurchase agreements, securities lending and borrowing transactions, credit default swaps, and similar contracts when considering loans or lines of credit.
- Provides for de novo branching by an out-of-state bank and allows for establishment of additional branches by an out-of-state financial institution as though it was chartered in Florida,

The bill authorizes the OFR to approve special stock offering plans to assist undercapitalized banks in raising capital. Plans could include such things as stock splits, revaluations of par value, and creation of new classes of stock. In addition, the bill clarifies the definition and functions of a "banker's bank" to create uniformity with federal regulations.

The bill should have a positive fiscal impact on the private sector. The fiscal impact on state government is indeterminate but may have an insignificant positive fiscal impact on OFR.

The bill provides for an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Chapters 655 through 667, Florida Statutes comprise the financial institution codes (Codes).¹ These provide general regulatory powers to be exercised by the Financial Services Commission² and the Office of Financial Regulation (OFR). The OFR is responsible for administering Florida's financial institution codes. The specific chapters are:

- Chapter 655, relating to financial institutions generally
- Chapter 657, relating to credit unions
- Chapter 658, relating to banks and trust companies
- Chapter 660, relating to trust business
- Chapter 663, relating to international banking corporations
- Chapter 665, relating to associations
- Chapter 667, relating to savings banks

While OFR has authority to regulate entities conducting banking or trust business in Florida, there are certain exceptions. These include:

- Banks chartered and regulated by other states.
- National banks, which are regulated by the Office of the Comptroller of the Currency.
- Federal thrifts, which are regulated by the Office of Thrift Supervision.
- Federal credit unions, which are regulated by the National Credit Union Administration.
- Institutions chartered and regulated by foreign countries, unless those institutions seek to "engage in the business of banking" or "engage in trust business" in Florida.

Currently, credit unions and banks are required to have a minimum of five directors on their board of directors.^{3,4} However, the Codes do not address the circumstance in which a state financial institution has an insufficient number of directors to meet those requirements. In a similar manner, the Codes are silent regarding the operation of a financial institution when there is no executive officer, or the institution lacks a qualified executive officer. This can leave the financial institution without the ability to take important actions to protect the institution and its depositors.

The OFR is required to conduct an examination of the condition of each state-chartered financial institution during each 18-month period, as computed beginning July 1, 1981. The law provides that it may accept an examination made by the Federal Reserve Bank, FDIC or the National Credit Union Association, as appropriate, or make a joint or concurrent examination. However, there is also a requirement that the OFR conduct its own evaluation of each state-chartered bank at least once during each 36-month period from July 3, 1992 onwards.⁵

The OFR, based upon reports or receipt of other evidence indicating a financial institution is insolvent or is threatened with imminent insolvency, may enter an emergency order to prevent the probable failure of a financial institution.⁶ This can only be done with the concurrence of the appropriate federal

¹ s. 655.005(j), F.S.

² The Financial Services Commission is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

³ s. 657.021(1), F.S.

⁴ s. 658.33(1), F.S.

⁵ s. 655.045(1)(a), F.S.

⁶ s. 655.4185(1), F.S.

regulatory agency in the case of any financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. The emergency order may authorize:

- The merger with an appropriate state financial entity.
- An appropriate state financial entity to acquire assets and assume liabilities, including all rights, powers, and responsibilities as fiduciary in an instance in which the failing financial institution is actively engaged in the exercise of trust powers.
- The conversion into a state financial entity.
- The chartering of a new state financial entity to acquire assets and assume liabilities, and to assume rights, powers, and responsibilities as fiduciary in a case in which such failing financial entity is engaged in the exercise of trust powers.

The OFR may pre-approve individuals who may become directors and executive officers of a failing financial institution. A nonrefundable, nontransferable filing fee of \$7,500 must accompany the application.⁷ The law does not provide for pre-approval of a new institutional charter.

The Wall Street Reform and Consumer Protection Act⁸ (Act) enacted on July 21, 2010 implements changes that affect the oversight and supervision of financial institutions. Many of the provisions apply to financial institutions with over \$10 billion in assets. There are currently no state-chartered financial institutions which meet that threshold. There are some sections of the Act that do impact the OFR and require modification of Florida law. These involve:

- The use of credit rating service grades for the determination of permissible investments.
- Interstate branching, conversions, mergers, and acquisitions.
- Risk management criteria for derivatives, to include potential liabilities and obligations.

The law relating to the investment powers and limitations for credit unions contains provisions that require the use of credit rating services grades for determining permissible investments.⁹ There are similar provisions which relate to banks and trust companies.¹⁰

Currently, the law prohibits a bank or bank holding company headquartered in another state from establishing its initial presence in Florida by any means other than a merger or acquisition of an existing Florida bank that is more than three years old.¹¹ An out-of-state bank that does not operate a branch in this state is prohibited from establishing a de novo branch in this state.¹² The law prohibits ownership and operation of remote financial service units (e.g., ATMs) by a bank which is not authorized to do business in Florida or does not have its principal office and place of business in Florida.¹³

Under current law, a credit union may make a loan to its member based on approved security and terms contained in written loan policies established either in law or by its board of directors. All loans endorsed or guaranteed by the member and any related interest must be included when computing the member's total liabilities.¹⁴ For a bank making a loan to a person, the computation of total liabilities is the same.¹⁵ There are no statutory requirements that potential liabilities and obligations be considered in computing total liabilities.

⁷ s. 658.20(3), F.S.

⁸ H.R. 4173, Public Law 111-203

⁹ s. 657.042, F.S.

¹⁰ s. 658.67, F.S.

¹¹ s. 658.2953(7)(c), F.S.

¹² s. 658.2953(5), F.S.

¹³ s. 658.65, F.S.

¹⁴ s. 657.038(7), F.S.

¹⁵ s. 658.48(5)(f), F.S.

The law prohibits a bank or trust company from issuing capital stock with a par value¹⁶ of less than \$1.¹⁷ No state bank or trust company can reduce its capital stock without OFR approval, and notice must be given to the OFR prior to any increase in its capital stock.¹⁸ Historically, the market price of a bank's stock has not fallen below the par value. Should that occur, it would be a serious impediment to a bank's efforts to raise capital. OFR reports that this situation has occurred during the current economic downturn.¹⁹

Under current law, a banker's bank is either an FDIC insured bank or holding company which owns and controls such a bank, where 100% of its stock is owned by other banks. A banker's bank exclusively provides services for other financial institutions and their officers, directors, and employees.²⁰ In the current economic environment, the financial ability of other banks to purchase new stock offered for sale by a banker's bank is limited. Therefore, a banker's bank is limited in its ability to increase its capital accounts through sale of stock, as is necessary to offset losses.

Effect of the bill:

CS/HB 1121 authorizes the OFR to appoint provisional directors if a bank or credit union lacks the minimum number of directors to meet statutory requirements for a period of 30 days or greater. A provisional director has all the rights and powers of a duly elected director.

The bill also authorizes the OFR to appoint provisional executive officers if there is an insufficient number of qualified executive officers to operate the financial institution in a safe and sound manner. A provisional executive officer has all the rights and powers as provided in the financial institution's articles of incorporation or bylaws, or as specified by the OFR in the appointment order.

As specified in the bill, a provisional director or executive officer:

- Must be an impartial person who is not a shareholder, member, nor a creditor of the financial institution, nor of any subsidiary, affiliate, or service corporation of the financial institution.
- Must be qualified, as determined by the OFR consistent with the provisions of the Code.
- Shall serve until such time as the provisional director's or executive officer's tenure is ended by order of the OFR.
- Is not liable for any lawful action taken or lawful decision made, except as provided in the financial institutions codes and s. 607.0831, F.S.
- Must submit to the OFR, if so directed, reports as to the financial and operating condition of the financial institution and recommendations as to the appropriate corrective actions.
- Is to be reasonably compensated by the financial institution for services rendered, and receive reimbursement for costs and expenses.

The bill requires that the OFR consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes. It reduces regulation by removing the requirement that the OFR conduct its own evaluation of each state-chartered bank at least once during each 36-month period,²¹ thereby reducing potential duplication of activities by federal regulators. It provides that the frequency of examination may be based upon the risk profile of the institution, prior examination or visitation results, or significant changes in the institution or its operations. In addition, it allows the OFR to enter into agreements with other appropriate state and federal financial institution regulatory agencies to facilitate the efficient utilization and coordination of resources in the examinations. The OFR is permitted to use methods of continuous, phase, or other

¹⁶ The value of the security set by the company issuing it, having no relationship to market value.

¹⁷ s. 658.34(1), F.S.

¹⁸ s. 658.36, F.S.

¹⁹ Office of Financial Regulation HB 1121 Bill Analysis dated March 3, 2011 on file with the Insurance & Banking Subcommittee.

²⁰ s. 658.12(3), F.S.

²¹ s. 655.045(1)(a), F.S.

flexible scheduling examination methods for very large or complex state financial institutions, and financial institutions owned or controlled by a multi-financial institution holding company.²²

The bill also expands the actions that the OFR can take under an emergency order. These are:

- Authorizing the direct or indirect acquisition of control of the failing financial institution.
- Appointing provisional directors, executive officers, or other employees for the failing financial institution.
- Authorizing any other capital or liquidity restoration plan or action deemed prudent by the OFR.

The bill authorizes the OFR to grant prior approval of a bank charter which would remain inactive until the investor(s) acquire a troubled institution. This is often referred to as a "shelf charter", and is a process already utilized by the Office of the Comptroller for federally-chartered banks. By granting preliminary approval, the pool of potential buyers for troubled institutions is expanded. This may result in new equity capital available to bid on troubled institutions through the Federal Deposit Insurance Corporation (FDIC) bid process. The FDIC has already established a modified bidder qualification process to accommodate "shelf charters".²³ Under HB 1121, the current application fee of \$7,500 for pre-approval of proposed directors and executive officers²⁴ will also encompass processing the application for prior approval of a "shelf charter".

The bill removes references to or requirement for reliance on credit ratings as regards a financial institution's investment of funds. It replaces those provisions with a requirement that financial institutions establish written policies and procedures to evaluate the risks and benefits associated with authorized investments. The applicable federal agencies have already been directed to make similar modifications to federal regulations.²⁵

The bill requires state-chartered credit unions to take into account potential liabilities and obligations resulting from derivatives transactions, repurchase agreements, securities lending and borrowing transactions, credit default swaps, and similar contracts. This is consistent with similar requirements for state-chartered banks.²⁶

The bill provides for de novo branching by an out-of-state bank as required by the Wall Street Reform and Consumer Protection Act²⁷ which preempts the current prohibition in law.²⁸ It allows for establishment of additional branches by an out-of-state financial institution as though it was chartered in Florida, and removes the prohibition regarding ownership and operation of remote financial service units.

The bill authorizes the OFR to approve special stock offering plans to assist undercapitalized banks in raising capital. To be eligible, a bank would need to meet the following criteria:

- The capital accounts have been diminished by losses to less than the minimum thresholds required under the Codes.
- The market value of its share of capital stock is less than par value.
- The bank cannot reasonably issue and sell new shares to restore its capital accounts²⁹ at the share price of par value.

²² A "multi-financial institution holding company" is a financial institution holding company that owns or controls more than one financial institution.

²³ <http://www.fdic.gov/news/news/press/2008/pr08127.html> (Last visited on March 14, 2011)

²⁴ s. 658.20(3), F.S.

²⁵ H.R. 4173, Public Law 111-203, Sec. 939A.

²⁶ H.R. 4173, Public Law 111-203, Sec 614.

²⁷ H.R. 4173, Public Law 111-203, Sec 613.

²⁸ s. 658.2953(5), F.S.

²⁹ s. 655.005(1)(c) defines "Capital accounts" as unimpaired capital stock, unimpaired surplus, and undivided profits or retained earnings of a financial institution.

Plans could include such things as stock splits, revaluations of par value, and creation of new classes of stock.

Prior to approval by the OFR, a special stock offering plan must be approved by majority vote of the bank or trust company's entire board of directors and by a two-thirds vote of the outstanding shares of stock. The OFR may not approve of any plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their related interests, or that is unlikely to restore the capital accounts to sufficient levels to achieve a sustainable, safe, and sound financial institution. If the OFR makes a determination that the bank or trust company is a failing financial institution, per statute, it may approve special stock offering plans without shareholder approval.

The bill aligns Florida law with federal regulations³⁰ regarding the ownership and incidental business operations of a banker's bank. It authorizes the sale of up to 25 percent of a state-chartered banker's bank's stock to persons who are not financial institutions. In addition, the bill allows for limited deposit and lending activity by a banker's bank to entities and persons other than financial institutions. These activities cannot exceed 10 percent of the banker's bank's total liabilities and assets, respectively.

The bill provides for an effective date of July 1, 2011.

B. SECTION DIRECTORY:

- Section 1. Amends s. 655.005, F.S., by revising definitions relating to the Financial Institutions Codes.
- Section 2. Amends s. 655.013, F.S., by updating a reference.
- Section 3. Creates s. 655.03855, F.S., providing for provisional directors or executive officers.
- Section 4. Amends s. 655.044, F.S., by clarifying which accounting practice must be followed.
- Section 5. Amends s. 655.045, F.S., by revising examination requirements and permissible activities.
- Section 6. Amends s. 655.41, F.S., by conforming language.
- Section 7. Amends s. 655.411, F.S., by revising criteria for approval of a financial entity's plan of conversion.
- Section 8. Amends s. 655.414, F.S., by providing for the transfer of assets from a federally chartered or out-of-state chartered financial institution.
- Section 9. Amends s. 655.416, F.S., by conforming language.
- Section 10. Amends s. 655.417, F.S., by conforming language.
- Section 11. Amends s. 655.418, F.S., by conforming language.
- Section 12. Amends s. 655.4185, F.S., by revising provisions relating to emergency actions.
- Section 13. Amends s. 655.419, F.S., by deleting a provision relating to actions conducted outside this state.
- Section 14. Amends s. 655.947, F.S., by conforming a cross-reference.

³⁰ 12CFR204.121 (2007).

- Section 15. Amends s. 657.038, F.S.; specifying the loan factors that must be considered when computing a person's total obligations for purposes of extending credit.
- Section 16. Amends s. 657.042, F.S.; revising criteria that limit a credit union's investment of funds; requiring a credit union to establish policies and procedures for evaluating risk.
- Section 17. Amends s. 657.063, F.S., by conforming a cross-reference.
- Section 18. Amends s. 657.064, F.S., by conforming a cross-reference.
- Section 19. Amends s. 658.12, F.S.; by revising definitions relating to a banker's bank and a branch or branch office.
- Section 20. Amends s. 658.165, F.S., revising and updating provisions relating to a banker's bank.
- Section 21. Repeals s. 658.20(3), F.S., relating to applications for prior approval of officers or directors.
- Section 22. Amends s. 658.28, F.S.; providing additional limitations on acquiring or controlling another bank.
- Section 23. Repeals s. 658.295, F.S., relating to the Florida Interstate Banking Act.
- Section 24. Amends s. 658.2953, F.S.; revising and updating provisions relating to Florida bank mergers with out-of-state banks; deleting legislative intent.
- Section 25. Repeals s. 658.296, F.S., relating to the control of deposit-taking institutions.
- Section 26. Amends s. 658.36, F.S.; authorizing the office to approve a special stock offering plan under certain circumstances.
- Section 27. Amends s. 658.41, F.S.; clarifying that state laws do not restrict the right of a state bank or trust company to merge with an out-of-state bank.
- Section 28. Amends s. 658.48, F.S.; revising provisions relating to bank loans; specifying the process for computing the liabilities of a person seeking a loan.
- Section 29. Amends s. 658.53, F.S.; deleting a provision providing that unpaid proceeds of sales are used to evaluate the adequacy of a bank's capital.
- Section 30. Repeals ss. 658.65, 665.013(33), and 667.003(35), F.S., relating to remote financial service units.
- Section 31. Amends s. 658.67, F.S.; updating provisions relating to the investment powers of a bank or trust company; requiring banks and trust companies to establish procedures for evaluating risk.
- Section 32. Amends s. 288.772, F.S., by conforming a cross-reference.
- Section 33. Amends s. 288.99, F.S., by conforming a cross-reference.
- Section 34. Amends s. 440.12, F.S., by conforming a cross-reference.
- Section 35. Amends s. 440.20, F.S., by conforming a cross-reference.
- Section 36. Amends s. 445.051, F.S., by conforming a cross-reference.

- Section 37. Amends s. 489.503, F.S., by conforming a cross-reference.
- Section 38. Amends s. 501.005, F.S., by conforming a cross-reference.
- Section 39. Amends s. 501.165, F.S., by conforming a cross-reference.
- Section 40. Amends s. 624.605, F.S., by conforming a cross-reference.
- Section 41. Amends s. 626.321, F.S., by conforming a cross-reference.
- Section 42. Amends s. 626.730, F.S., by conforming a cross-reference.
- Section 43. Amends s. 626.9885, F.S., by conforming a cross-reference.
- Section 44. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

- By authorizing the OFR to grant prior approval of a bank charter which would remain inactive until the investor(s) acquire a troubled institution, the pool of potential buyers for troubled institutions is expanded, potentially resulting in new equity capital available to bid on troubled institutions. This may assist in precluding future bank failures.
- By allowing for the possibility of a bank or trust company to sell stock at less than par value, the bill may assist undercapitalized financial institutions in raising new capital.
- The reduction in duplicative efforts necessary to satisfy separate and independent examinations by federal and state regulators may result in decreased costs for state-chartered banks.
- By providing for limited ownership of a banker's bank's stock by persons who are not financial institutions, banker's banks will have an increased ability to raise capital. In addition, authorizing incidental deposit and lending activities will allow the banker's bank greater flexibility in providing services which could generate revenue.

D. FISCAL COMMENTS:

The elimination of the requirement to conduct its own independent evaluation of each state-chartered bank at least once every 36-month period may have an insignificant positive fiscal impact on the OFR.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides for Financial Services Commission rule-making as regards application for prior approval of a charter involving a new financial institution resulting from the creation, acquisition, or merger surrounding a failing financial institution.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the March 23, 2011 meeting of the Insurance & Banking Subcommittee, six (6) amendments were proposed and adopted.

Amendment 1 corrected a statutory reference.

Amendment 2 restored current law regarding the definition of an "officer" of a financial institution.

Amendment 3 corrected terminology to reflect "principles" rather than "practices".

Amendment 4 removed a redundant authorization.

Amendment 5 conformed terminology.

Amendment 6 clarified the definition and functions of a "Banker's Bank" to create uniformity with federal regulations.

The analysis is drafted to the Committee Substitute.

Pursuant to the Office of Financial Regulation, the referenced amendments were technical in nature and therefore do not have any negative fiscal impact on the bill.³¹

³¹ Correspondence with Andrea Moreland, Director of Legislative and Cabinet Affairs, dated March 23, 2011, on file with the House Government Operations Appropriations Subcommittee.

1 A bill to be entitled
 2 An act relating to financial institutions; amending s.
 3 655.005, F.S.; revising definitions relating to the
 4 financial institutions codes; amending s. 655.013, F.S.;
 5 updating a reference; creating s. 655.03855, F.S.;
 6 authorizing the office to appoint provisional directors or
 7 executive officers; specifying the rights, qualifications,
 8 and reporting requirements of such directors and officers;
 9 clarifying the liability of such directors and officers
 10 and of the office; amending s. 655.044, F.S.; specifying
 11 which accounting principles must be followed by financial
 12 institutions; amending s. 655.045, F.S.; authorizing the
 13 office to conduct additional examinations of financial
 14 institutions if warranted; providing for the use of
 15 certain examination methods; amending s. 655.41, F.S.;
 16 revising definitions to conform provisions to changes made
 17 by the act; amending s. 655.411, F.S.; revising the
 18 criteria for approval of a financial entity's plan of
 19 conversion; amending s. 655.414, F.S.; providing for the
 20 transfer of assets from a federally chartered or out-of-
 21 state chartered institution; amending ss. 655.416,
 22 655.417, and 655.418, F.S.; conforming provisions to
 23 changes made by the act; amending s. 655.4185, F.S.;
 24 revising provisions relating to emergency actions that may
 25 be taken for a failing financial institution; authorizing
 26 the office to provide prior approval for the chartering of
 27 an entity acquiring control of a failing institution;
 28 amending s. 655.419, F.S.; deleting a provision relating

29 to actions conducted outside this state; amending s.
 30 655.947, F.S.; conforming a cross-reference; amending s.
 31 657.038, F.S.; specifying the loan factors that must be
 32 considered when computing a person's total obligations for
 33 purposes of extending credit; amending s. 657.042, F.S.;
 34 revising criteria that limit a credit union's investment
 35 of funds; requiring a credit union to establish policies
 36 and procedures for evaluating risk; amending ss. 657.063
 37 and 657.064, F.S.; conforming cross-references; amending
 38 s. 658.12, F.S.; revising the definition of "banker's
 39 bank"; conforming a cross-reference; deleting a provision
 40 relating to the application of definitions in the
 41 financial institutions codes; amending s. 658.165, F.S.;
 42 revising provisions relating to banker's banks; specifying
 43 the type of business that such bank may do with entities
 44 or individuals that are not banks; revising provisions
 45 relating to the services a banker's bank may provide to
 46 financial institutions in organization; repealing s.
 47 658.20(3), F.S., relating to applications for prior
 48 approval of officers or directors; amending s. 658.28,
 49 F.S.; providing additional limitations on acquiring or
 50 controlling another bank; repealing s. 658.295, F.S.,
 51 relating to the Florida Interstate Banking Act; amending
 52 s. 658.2953, F.S.; revising and updating provisions
 53 relating to Florida bank mergers with out-of-state banks;
 54 deleting legislative intent; repealing s. 658.296, F.S.,
 55 relating to the control of deposit-taking institutions;
 56 amending s. 658.36, F.S.; authorizing the office to

57 approve a special stock offering plan under certain
 58 circumstances; amending s. 658.41, F.S.; clarifying that
 59 state laws do not restrict the right of a state bank or
 60 trust company to merge with an out-of-state bank; amending
 61 s. 658.48, F.S.; revising provisions relating to bank
 62 loans; specifying the process for computing the
 63 liabilities of a person seeking a loan; amending s.
 64 658.53, F.S.; deleting a provision providing that unpaid
 65 proceeds of sales are used to evaluate the adequacy of a
 66 bank's capital; repealing ss. 658.65, 665.013(33), and
 67 667.003(35), F.S., relating to remote financial service
 68 units; amending s. 658.67, F.S.; updating provisions
 69 relating to the investment powers of a bank or trust
 70 company; requiring banks and trust companies to establish
 71 procedures for evaluating risk; amending ss. 288.772,
 72 288.99, 440.12, 440.20, 445.051, 489.503, 501.005,
 73 501.165, 624.605, 626.321, 626.730, and 626.9885, F.S.;
 74 conforming cross-references; providing an effective date.

75
 76 Be It Enacted by the Legislature of the State of Florida:

77
 78 Section 1. Section 655.005, Florida Statutes, is reordered
 79 and amended to read:

80 655.005 Definitions.—

81 (1) As used in the financial institutions codes, unless
 82 the context otherwise requires, the term:

83 (a) "Affiliate" means a holding company of a ~~any~~ financial
 84 institution established ~~holding company~~ pursuant to state or

85 federal law, a ~~or any~~ subsidiary or service corporation of such
 86 a holding company, or a subsidiary or service corporation of a
 87 financial institution.

88 (b) "Appropriate federal regulatory agency" means the
 89 federal ~~financial institution~~ regulatory agency that has ~~granted~~
 90 ~~federal~~ statutory authority over a financial institution.

91 (c) "Bank holding company" means a business organization
 92 that is a bank holding company under the Bank Holding Company
 93 Act of 1956, as amended, 12 U.S.C. ss. 1841 et seq., or is
 94 otherwise determined or authorized by the office to be a holding
 95 company of a financial institution pursuant to ss. 658.27-
 96 658.285.

97 (d) ~~(e)~~ "Capital accounts" means the aggregate value of
 98 unimpaired capital stock based on the par value of the shares,
 99 plus any unimpaired surplus, and undivided profits or retained
 100 earnings of a financial institution. For the purposes of
 101 determining insolvency or imminent insolvency, the term does not
 102 include allowances for loan or lease loss reserves, intangible
 103 assets, subordinated debt, deferred tax assets, or similar
 104 assets.

105 (e) ~~(d)~~ "Capital stock" means the ~~aggregate of~~ shares of
 106 stock issued to create nonwithdrawable capital ~~issued.~~

107 (f) ~~(e)~~ "Commission" means the Financial Services
 108 Commission.

109 (h) ~~(f)~~ "Executive officer" means an individual, whether or
 110 not the individual has an official title or receives a salary or
 111 other compensation, who participates or has authority to
 112 participate, other than in the capacity of a director, in the

113 major policymaking functions of a ~~the~~ financial institution.†
 114 The term does not include an individual who may have an official
 115 title and may exercise discretion in the performance of duties
 116 and functions, including discretion in the making of loans, but
 117 who does not participate in the determination of major policies
 118 of the financial institution and whose decisions are limited by
 119 policy standards established by other officers ~~other than such~~
 120 ~~individual~~, whether or not the ~~such~~ policy standards have been
 121 adopted by the board of directors. The chair of the board of
 122 directors, the president, the chief executive officer, the chief
 123 financial officer, the senior loan officer, and every executive
 124 vice president of a financial institution, and the senior trust
 125 officer of a trust company, are presumed to be executive
 126 officers unless ~~any~~ such officer is excluded, by resolution of
 127 the board of directors or by the bylaws of the financial
 128 institution, from participating, other than in the capacity of a
 129 director, in major policymaking functions of the financial
 130 institution and the individual holding such office so excluded
 131 does not actually participate therein.

132 (i) ~~(g)~~ "Federal financial institution" means a federally
 133 or nationally chartered or organized financial institution.

134 (j) ~~(h)~~ "Financial institution" means a state or federal
 135 savings or thrift association, bank, savings bank, trust
 136 company, international bank agency, international banking
 137 corporation, international branch, international representative
 138 office, international administrative office, international trust
 139 company representative office, ~~or~~ credit union, or an agreement
 140 corporation operating pursuant to s. 25 of the Federal Reserve

141 Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized
 142 pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss.
 143 611 et seq.

144 (k)~~(i)~~ "Financial institution-affiliated party" means:

145 1. A ~~Any~~ director, officer, employee, or controlling
 146 stockholder, ~~other than a financial institution holding~~
 147 company, ~~of, or agent for, a financial institution, subsidiary,~~
 148 or service corporation;

149 2. Any other person who has filed or is required to file a
 150 change-of-control notice with the appropriate state or federal
 151 regulatory agency;

152 3. A ~~Any~~ stockholder, ~~other than a financial institution~~
 153 holding company, ~~a any~~ joint venture partner, or any other
 154 person as determined by the office who participates in ~~the~~
 155 ~~conduct of~~ the affairs of a financial institution, subsidiary,
 156 or service corporation; or

157 4. An ~~Any~~ independent contractor, ~~(including an any~~
 158 attorney, appraiser, consultant, or accountant, ~~)~~ who knowingly
 159 or recklessly participates in:

160 a. A ~~Any~~ violation of any law or regulation;

161 b. A ~~Any~~ breach of fiduciary duty; or

162 c. An ~~Any~~ unsafe and unsound practice,

163

164 which caused or is likely to cause more than a minimal financial
 165 loss to, or a significant adverse effect on, the financial
 166 institution, subsidiary, or service corporation.

167 (l)~~(j)~~ "Financial institutions codes" means:

168 1. Chapter 655, relating to financial institutions

- 169 generally;
- 170 2. Chapter 657, relating to credit unions;
- 171 3. Chapter 658, relating to banks and trust companies;
- 172 4. Chapter 660, relating to trust business;
- 173 5. Chapter 663, relating to international banking
- 174 ~~corporations;~~
- 175 6. Chapter 665, relating to associations; and
- 176 7. Chapter 667, relating to savings banks.
- 177 (m) "Home state" means:
- 178 1. The state where a financial institution is chartered.
- 179 2. The state where the main office of a federal financial
- 180 institution is located.
- 181 3. The state determined to be the home state of an
- 182 international banking corporation pursuant to 12 U.S.C. s.
- 183 3103(c).
- 184 (n) "Home state regulator" means, with respect to an out-
- 185 of-state state financial institution, the financial institution
- 186 regulatory agency of the state in which the institution is
- 187 chartered.
- 188 (o) "Host state" means a state, other than the home state,
- 189 in which the financial institution seeks to establish or
- 190 maintains a branch or nonbranch office.
- 191 (p) ~~(k)~~ "Imminently insolvent" means a condition in which a
- 192 financial institution has total capital accounts, or equity in
- 193 the case of a credit union, of less than 2 percent of its total
- 194 assets, after adjustment for apparent losses.
- 195 (q) ~~(l)~~ "Insolvent" means a condition in which:
- 196 1. The capital accounts, or equity in the case of a credit

197 union, and all assets of a financial institution are
 198 insufficient to meet liabilities;

199 2. The financial institution is unable to meet current
 200 obligations as they mature, even though assets may exceed
 201 liabilities; or

202 3. The capital accounts, ~~or equity in the case of a credit~~
 203 ~~union,~~ of a financial institution, or equity in the case of a
 204 credit union, are exhausted by losses and no immediate prospect
 205 of replacement exists.

206 (r) ~~(m)~~ "Main office" or "principal office" of a financial
 207 institution means the main business office designated ~~or~~
 208 ~~provided for~~ in its ~~the~~ articles of incorporation or bylaws ~~of a~~
 209 ~~financial institution~~ at an ~~such~~ identified location ~~as has been~~
 210 ~~or is hereafter~~ approved by the office ~~of Financial Regulation,~~
 211 in the case of a state financial institution, or by the
 212 appropriate federal regulatory agency, ~~in the case of a federal~~
 213 ~~financial institution,~~ ~~and,~~ With respect to the trust
 214 department of a bank or association that has trust powers, the
 215 ~~each of these terms mean~~ means the office or place of business
 216 of the trust department at an ~~such~~ identified location, which
 217 need not be the same location as the main office of the bank or
 218 association ~~exclusive of the trust department, as has been or is~~
 219 ~~hereafter~~ approved by the office ~~of Financial Regulation,~~ in the
 220 case of a state bank or association ~~that has a trust department,~~
 221 or by the appropriate federal regulatory agency, ~~in the case of~~
 222 ~~a national bank or federal association that has a trust~~
 223 ~~department.~~ The "main office" or "principal office" of a trust
 224 company means the office designated or provided for ~~as such~~ in

225 its articles of incorporation, at an ~~such~~ identified location as
 226 ~~has been or is hereafter~~ approved by the relevant chartering
 227 authority.

228 ~~(t)(n)~~ "Officer" of a financial institution means an ~~any~~
 229 individual ~~duly~~ elected or appointed to, or otherwise performing
 230 the duties and functions appropriate to, any position or office
 231 having the designation or title of chair of the board of
 232 directors, vice chair of the board of directors, chair of the
 233 executive committee, president, vice president, assistant vice
 234 president, cashier or assistant cashier, comptroller, assistant
 235 comptroller, trust officer, assistant trust officer, secretary
 236 or assistant secretary ~~(of a trust company)~~, or any other office
 237 or officer designated in, or as provided by, the articles of
 238 incorporation or bylaws.

239 (u) "Out-of-state financial institution" means a financial
 240 institution whose home state is a state other than this state.

241 (v) "Related interest" means, with respect to any person,
 242 the person's spouse, partner, sibling, parent, child, or other
 243 individual residing in the same household as the person. With
 244 respect to any person, the term means a company, partnership,
 245 corporation, or other business organization controlled by the
 246 person. A person has control if the person:

247 1. Owns, controls, or has the power to vote 25 percent or
 248 more of any class of voting securities of the organization;

249 2. Controls in any manner the election of a majority of
 250 the directors of the organization; or

251 3. Has the power to exercise a controlling influence over
 252 the management or policies of the organization.

253 (w) ~~(e)~~ "Service corporation" means a corporation that is
 254 organized to perform, for two or more financial institutions,
 255 services related or incidental to the business of a financial
 256 institution and that is wholly or partially owned or controlled
 257 by one or more financial institutions.

258 (x) "State," when used in the context of a state other
 259 than this state, means any other state of the United States, the
 260 District of Columbia, and any territories of the United States.

261 (y) ~~(p)~~ "State financial institution" means a state-
 262 chartered or state-organized financial institution ~~association,~~
 263 ~~bank, investment company, trust company, international bank~~
 264 ~~agency, international branch, international representative~~
 265 ~~office, international administrative office, international trust~~
 266 ~~company representative office, or credit union.~~

267 (z) ~~(q)~~ "Subsidiary" means an any organization that
 268 ~~permitted by the office which~~ is controlled by a financial
 269 institution or a holding company of a financial institution.

270 (aa) ~~(r)~~ "Unsafe or unsound practice" means any practice or
 271 conduct found by the office to be contrary to generally accepted
 272 standards applicable to a ~~the specific~~ financial institution, or
 273 a violation of any prior agreement in writing or order of a
 274 state or federal regulatory agency, which practice, conduct, or
 275 violation creates the likelihood of loss, insolvency, or
 276 dissipation of assets or otherwise prejudices the interest of
 277 the ~~specific~~ financial institution or its depositors or members.
 278 In making this determination, the office must consider the size
 279 and condition of the financial institution, the gravity of the
 280 violation, and the prior conduct of the person or institution

281 | involved.

282 | ~~(bb)(s)~~ "Office" means the Office of Financial Regulation.

283 | ~~(cc)(t)~~ "Debt cancellation products" means loan, lease, or

284 | retail installment contract terms, or modifications or addenda

285 | to such ~~loan, lease, or retail installment~~ contracts, under

286 | which a creditor agrees to cancel or suspend all or part of a

287 | customer's obligation to make payments upon the occurrence of

288 | specified events and includes, but is not limited to, debt

289 | cancellation contracts, debt suspension agreements, and

290 | guaranteed asset protection contracts offered by financial

291 | institutions, insured depository institutions as defined in 12

292 | U.S.C. s. 1813(c), and subsidiaries of such institutions.

293 | ~~However,~~ The term "~~debt cancellation products~~" does not include

294 | title insurance as defined in s. 624.608.

295 | (2) Terms used but not defined in the financial

296 | institutions codes, but which are defined in Title XXXIX,

297 | entitled Commercial Relations, as enacted in chapters 668

298 | through 680, have the meanings ascribed to them in Title XXXIX.

299 | ~~(2) Terms which are defined in the financial institutions~~

300 | ~~codes, unless the context otherwise requires, have the meanings~~

301 | ~~ascribed to them therein.~~

302 | Section 2. Section 655.013, Florida Statutes, is amended

303 | to read:

304 | 655.013 Effect on existing financial institutions.—The

305 | charters of state financial institutions existing on July 1,

306 | 1992, at the time of the adoption of this act shall continue in

307 | full force and effect. However, after that date, all state

308 | financial institutions and, to the extent applicable, all

309 financial institutions shall operate ~~hereafter be operated~~ in
 310 accordance with ~~the provisions of~~ the financial institutions
 311 codes.

312 Section 3. Section 655.03855, Florida Statutes, is created
 313 to read:

314 655.03855 Provisional directors and executive officers.-

315 (1) If a state financial institution has an insufficient
 316 number of directors to meet the minimum requirements of s.
 317 657.021 or s. 658.33 for 30 days or longer, there are an
 318 insufficient number of executive officers, or the qualifications
 319 of the executive officers are insufficient to operate the
 320 financial institution in a safe and sound manner, the office may
 321 appoint one or more provisional directors or executive officers
 322 by order.

323 (2) A provisional director has all the rights and powers
 324 of a duly elected director, including the right to notice of and
 325 to vote at meetings of directors. A provisional executive
 326 officer has all the rights and powers provided in the financial
 327 institution's articles of incorporation or bylaws, or as
 328 specified by the office in the appointment order. A provisional
 329 director or executive officer must be an impartial person and
 330 may not be a shareholder, member, or creditor of the financial
 331 institution or its affiliate. Additional qualifications, if any,
 332 may be determined by the office consistent with the financial
 333 institutions codes. Provisional directors and executive officers
 334 shall serve until the provisional director's or executive
 335 officer's tenure is ended by order of the office.

336 (3) A provisional director or executive officer is not

337 liable for any action taken or decision made, except as provided
 338 in the financial institutions codes and s. 607.0831. If directed
 339 by the office, provisional directors and executive officers must
 340 submit reports to the office as to the financial and operating
 341 condition of the financial institution and recommendations as to
 342 appropriate corrective actions to be taken by the institution.

343 (4) The office shall allow reasonable compensation, if
 344 applicable, to a provisional director or executive officer
 345 appointed under this section for services rendered, and
 346 reimbursement or direct payment of all reasonable costs and
 347 expenses, which shall be paid by the financial institution. The
 348 office is not liable for any appointment, action, or decision
 349 made pursuant to this section.

350 Section 4. Subsection (1) of section 655.044, Florida
 351 Statutes, is amended to read:

352 655.044 Accounting practices; bad debts ineligible to be
 353 carried as assets.—

354 (1) Except as otherwise provided by law, a state financial
 355 institution shall observe United States generally accepted
 356 accounting principles ~~and practices~~. The commission may
 357 authorize ~~by rule~~ exceptions to such accounting principles by
 358 rule ~~practices as necessary~~.

359 Section 5. Subsections (1) and (4) of section 655.045,
 360 Florida Statutes, are amended to read:

361 655.045 Examinations, reports, and internal audits;
 362 penalty.—

363 (1)~~(a)~~ The office shall conduct an examination of the
 364 condition of each state financial institution during each 18-

365 month period, ~~beginning July 1, 1981.~~ The office may conduct
 366 more frequent examinations based upon the risk profile of the
 367 financial institution, prior examination results, or significant
 368 changes in the institution or its operations. The office may use
 369 continuous, phase, or other flexible scheduling examinations
 370 methods for very large or complex state financial institutions
 371 and financial institutions owned or controlled by a multi-
 372 financial institution holding company. The office shall consider
 373 examination guidelines from federal regulatory agencies in order
 374 to facilitate, coordinate, and standardize examination
 375 processes. ~~The office may accept an examination made by the~~
 376 ~~appropriate federal regulator, insuring or guaranteeing~~
 377 ~~corporation, or agency with respect to the condition of the~~
 378 ~~state financial institution or may make a joint or concurrent~~
 379 ~~examination with the appropriate federal regulator, insuring or~~
 380 ~~guaranteeing corporation, or agency. However, at least once~~
 381 ~~during each 36-month period beginning on July 3, 1992, the~~
 382 ~~office shall conduct an examination of each state financial~~
 383 ~~institution in such a manner as to allow the preparation of a~~
 384 ~~complete examination report not subject to the right of any~~
 385 ~~federal or other non-Florida entity to limit access to the~~
 386 ~~information contained therein.~~

387 (a) With respect to, and examination of, the condition of
 388 a state institution, the office may accept an examination made
 389 by an appropriate federal regulatory agency, or may make a joint
 390 or concurrent examination with the federal agency. The office
 391 may furnish a copy of all examinations or reviews made of
 392 financial institutions or their affiliates to the state or

393 federal agencies participating in the examination,
 394 investigation, or review, or as otherwise authorized by s.
 395 655.057.

396 (b) If, as a part of an examination or investigation of a
 397 state financial institution, subsidiary, or service corporation,
 398 the office has reason to believe that ~~an affiliate is engaged in~~
 399 ~~an unsafe or unsound practice or that the~~ conduct or business
 400 operations of an affiliate may have ~~has~~ a negative impact on the
 401 state financial institution, subsidiary, or service corporation,
 402 ~~then the office may~~ conduct such ~~review such books and records~~
 403 ~~as are reasonably related to the examination or investigation of~~ of
 404 the affiliate as the office deems necessary. ~~The office may~~
 405 ~~furnish a copy of all examinations or reviews made of such~~
 406 ~~financial institutions or their affiliates to the state or~~
 407 ~~federal financial institution regulators participating in the~~
 408 ~~examination of a bank holding company; an association holding~~
 409 ~~company; or any of their subsidiaries, service corporations, or~~
 410 ~~affiliates; an insuring or guaranteeing corporation or agency or~~
 411 ~~its representatives; or state financial institution regulators~~
 412 ~~participating in the examination of a holding company or its~~
 413 ~~subsidiaries.~~

414 (c) ~~(b)~~ The office may recover the costs of examination and
 415 supervision of a state financial institution, subsidiary, or
 416 service corporation that is determined by the office to be
 417 engaged in an unsafe or unsound practice. The office may also
 418 recover the costs of any review conducted pursuant to paragraph
 419 (b) ~~(a)~~ of any affiliate of a state financial institution
 420 determined by the office to have contributed to an unsafe or

421 | unsound practice at a state financial institution, subsidiary,
 422 | or service corporation.

423 | (d)~~(e)~~ For the purposes of this section, the term "costs"
 424 | means the salary and travel expenses directly attributable to
 425 | the field staff examining the state financial institution,
 426 | subsidiary, or service corporation, and the travel expenses of
 427 | any supervisory staff required as a result of examination
 428 | findings. The mailing of any costs incurred under this
 429 | subsection must be postmarked within ~~not later than~~ 30 days
 430 | after the date of receipt of a notice stating that such costs
 431 | are due. The office may levy a late payment of up to \$100 per
 432 | day or part thereof that a payment is overdue, unless ~~it is~~
 433 | excused for good cause. However, for intentional late payment of
 434 | costs, the office may levy an administrative fine of up to
 435 | \$1,000 per day for each day the payment is overdue.

436 | (e)~~(d)~~ The office may require an audit of a ~~any~~ state
 437 | financial institution, subsidiary, or service corporation by an
 438 | independent certified public accountant, or other person
 439 | approved by the office, if ~~whenever~~ the office, after conducting
 440 | an examination of the ~~such~~ state financial institution,
 441 | subsidiary, or service corporation, or after accepting an
 442 | examination of such state financial institution by an ~~the~~
 443 | appropriate state or federal regulatory agency, determines that
 444 | ~~such~~ an audit is necessary in order to ascertain the condition
 445 | of the financial institution, subsidiary, or service
 446 | corporation. The cost of such audit shall be paid by the state
 447 | financial institution, subsidiary, or state service corporation.

448 | (4) A copy of the report of each examination must be

449 furnished to the entity ~~financial institution~~ examined. Such
 450 report ~~of examination~~ shall be presented to the board of
 451 directors at its next regular or special meeting.

452 Section 6. Section 655.41, Florida Statutes, is amended to
 453 read:

454 655.41 ~~Cross-industry Conversions, mergers,~~
 455 ~~consolidations, and acquisitions;~~ Definitions used in ss.
 456 ~~655.41-655.419.~~—As used in ss. 655.41-655.419, the term:

457 (1) "Financial entity" means a financial institution whose
 458 ~~an association, bank, credit union, savings bank, Edge Act or~~
 459 ~~agreement corporation, or trust company organized under the laws~~
 460 ~~of this state or organized under the laws of the United States~~
 461 ~~and having its principal office is place of business in this~~
 462 state.

463 (2) "Capital stock financial institution" means a
 464 financial institution that ~~entity which~~ is authorized to issue
 465 capital stock.

466 (3) "Mutual financial institution" means a financial
 467 institution that ~~entity which~~ is not authorized to issue stock
 468 and the assets of which are owned by its members.

469 Section 7. Paragraphs (a) and (c) of subsection (1) of
 470 section 655.411, Florida Statutes, are amended to read:

471 655.411 Conversion of charter.—

472 (1) A ~~Any~~ financial entity may apply to the office for
 473 permission to convert its charter without changing its ~~a change~~
 474 ~~of business form or convert its charter in order to do business~~
 475 as another type of financial entity in accordance with the
 476 following procedures:

477 (a) The board of directors must approve a plan of
 478 conversion by a majority vote ~~of a majority~~ of all the
 479 directors. The plan must include a statement of:

480 1. The type of financial entity which would result if the
 481 application were approved and the proposed name under which it
 482 would do business.

483 2. The method and schedule for terminating any activities
 484 and disposing of any assets or liabilities that ~~which~~ would not
 485 conform to the requirements of applicable ~~to~~ the resulting
 486 financial entity.

487 3. The ~~competitive~~ impact of such change on the financial
 488 entity's business plan and operations, including any effect on
 489 the availability of particular financial services in the market
 490 area served by the financial entity.

491 4. Such financial data as may be required to determine
 492 compliance with the capital, reserve, and liquidity requirements
 493 applicable to the resulting financial entity.

494 5. Such other information as the commission may by rule
 495 require.

496 (c) The office shall approve the plan if it finds that:

497 1. The resulting financial entity would have an adequate
 498 capital structure with regard to its activities and its deposit
 499 liabilities.

500 2. The proposed conversion would not cause a substantially
 501 adverse effect on the financial condition of the any financial
 502 entity ~~already established in the primary service area~~.

503 3. The officers and directors have sufficient experience,
 504 ability, and standing to indicate a reasonable promise for the

505 successful operation of the resulting financial entity.

506 4. The schedule for termination of any nonconforming
 507 activities and disposition of any nonconforming assets and
 508 liabilities is reasonably prompt, and the plan for such
 509 termination and disposition does not include an ~~any~~ unsafe or
 510 unsound practice.

511 5. ~~None of~~ The officers or directors have not ~~has~~ been
 512 convicted of, or pled guilty or nolo contendere to, a violation
 513 of s. 655.50, relating to ~~the Florida Control of~~ money
 514 laundering in financial institutions ~~Act~~; chapter 896, relating
 515 to offenses related to financial transactions; or any similar
 516 state or federal law.

517 6. The resulting financial entity is able to comply with
 518 the applicable terms of any regulatory action in effect before
 519 the date of the conversion.

520 7. The current and resulting primary federal regulatory
 521 agencies do not object to the proposed conversion.

522
 523 If the office disapproves the plan, it shall state its
 524 objections and give the financial entity an opportunity ~~to the~~
 525 ~~parties~~ to amend the plan to overcome such objections. The
 526 office may deny an application by an ~~any financial~~ entity that
 527 ~~which~~ is subject to a cease and desist order or other
 528 supervisory restriction or order imposed by a ~~any~~ state or
 529 federal supervisory authority, insurer, or guarantor.

530 Section 8. Section 655.414, Florida Statutes, is amended
 531 to read:

532 655.414 Acquisition of assets; assumption of liabilities.—

533 With prior approval of the office and upon such conditions as
 534 the commission prescribes by rule, a ~~any~~ financial entity may
 535 acquire all or substantially all of the assets of, or assume all
 536 or any part of the liabilities of, any other financial
 537 institution ~~entity~~ in accordance with the procedures and subject
 538 to the following conditions and limitations:

539 (1) ADOPTION OF A PLAN.—The board of directors of the
 540 acquiring or assuming financial entity and the board of
 541 directors of the transferring financial institution ~~entity~~ must
 542 adopt, by a majority vote, a plan for such acquisition,
 543 assumption, or sale on ~~such~~ terms that ~~as~~ are mutually agreed
 544 upon. The plan must include:

545 (a) The names and types of financial institutions ~~entities~~
 546 involved.

547 (b) A statement setting forth the material terms of the
 548 proposed acquisition, assumption, or sale, including the plan
 549 for disposition of all assets and liabilities not subject to the
 550 plan.

551 (c) A provision for liquidation, if applicable, of the
 552 transferring financial institution ~~entity~~ upon execution of the
 553 plan, or a provision setting forth the business plan for the
 554 continued operation of each financial institution after the
 555 execution of the plan.

556 (d) A statement that the entire transaction is subject to
 557 written approval of the office and approval of the members or
 558 stockholders of the transferring financial institution ~~entity~~.

559 (e) If a stock financial institution is the transferring
 560 financial institution ~~entity~~ and the proposed sale is not ~~to be~~

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561 for cash, a clear and concise statement that dissenting
 562 stockholders of the institution ~~such financial entity~~ are
 563 entitled to the rights set forth in s. 658.44(4) and (5).

564 (f) The proposed effective date of the ~~such~~ acquisition,
 565 assumption, or sale and such other information and provisions as
 566 ~~may be~~ necessary to execute the transaction or as ~~may be~~
 567 required by the office.

568 (2) APPROVAL OF OFFICE.—Following approval by the board of
 569 directors of each participating financial institution ~~entity~~,
 570 the plan, together with certified copies of the authorizing
 571 resolutions adopted by the boards and a completed application
 572 with a nonrefundable filing fee, must be forwarded to the office
 573 for ~~its~~ approval or disapproval. The office shall approve the
 574 plan of acquisition, assumption, or sale if it appears that:

575 (a) The resulting financial entity or entities would have
 576 an adequate capital structure in relation to its activities and
 577 its deposit liabilities;

578 (b) The plan is fair to all parties; and

579 (c) The plan is not contrary to the public interest.

580

581 If the office disapproves the plan, it shall state its
 582 objections and give the parties an opportunity ~~to the parties~~ to
 583 amend the plan to overcome such objections.

584 (3) VOTE OF MEMBERS OR STOCKHOLDERS.—If the office
 585 approves the plan, it may be submitted to the members or
 586 stockholders of the transferring financial institution ~~entity~~ at
 587 an annual meeting or at a ~~any~~ special meeting called to consider
 588 such action. Upon a majority ~~favorable~~ vote ~~of 51 percent or~~

589 ~~more~~ of the total number of votes eligible to be cast or, in the
 590 case of a credit union, a majority vote ~~51 percent or more~~ of
 591 the members present at the meeting, the plan is adopted.

592 (4) ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

593 (a) If the plan is adopted by the members or stockholders
 594 of the transferring financial institution ~~entity~~, the president
 595 or vice president and the cashier, manager, or corporate
 596 secretary of such institution ~~financial entity~~ shall submit the
 597 adopted plan to the office, together with a certified copy of
 598 the resolution of the members or stockholders approving it.

599 (b) Upon receipt of the certified copies and evidence that
 600 the participating financial institutions ~~entities~~ have complied
 601 with all applicable state and federal law and rules ~~regulations~~,
 602 the office shall certify, in writing, to the participants that
 603 the plan has been approved.

604 (c) Notwithstanding approval of the members or
 605 stockholders or certification by the office, the board of
 606 directors of the transferring financial institution ~~entity~~ may,
 607 ~~in its discretion~~, abandon such a transaction without further
 608 action or approval by the members or stockholders, subject to
 609 the rights of third parties under any contracts relating
 610 thereto.

611 (5) FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A
 612 PARTICIPANT.—If one of the participants in a transaction under
 613 this section is a federally chartered financial institution or
 614 an out-of-state financial institution ~~entity~~, all participants
 615 must also comply with ~~such~~ requirements ~~as may be~~ imposed by
 616 federal and other state law for the ~~such an~~ acquisition,

617 assumption, or sale and provide evidence of such compliance to
 618 the office as a condition precedent to the issuance of a
 619 certificate authorizing the transaction; however, if the
 620 purchasing or assuming financial institution ~~entity~~ is a federal
 621 or out-of-state state-chartered ~~federally chartered~~ financial
 622 institution and the transferring state financial ~~entity~~ will be
 623 liquidated, approval of the office is not required.

624 (6) STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A
 625 mutual financial institution may not sell all or substantially
 626 all of its assets to a stock financial institution ~~entity~~ until
 627 it has first converted into a capital stock financial
 628 institution in accordance with s. 665.033(1) and (2). For this
 629 purpose, references in s. 665.033(1) and (2) to associations ~~are~~
 630 ~~deemed to refer~~ also refer to credit unions~~;~~ but, in the case of
 631 a credit union, the provision ~~therein~~ concerning proxy
 632 statements does not apply.

633 Section 9. Section 655.416, Florida Statutes, is amended
 634 to read:

635 655.416 Book value of assets.—Upon the effective date of a
 636 merger, consolidation, conversion, or acquisition pursuant to
 637 ss. 655.41-655.419, an asset may not be carried on the books of
 638 the resulting financial entity at a valuation higher than that
 639 at which it was carried on the books of a participating or
 640 converting financial institution ~~entity~~ at the time of its last
 641 examination by a state or federal examiner before such ~~the~~
 642 effective date ~~of such merger, consolidation, conversion, or~~
 643 ~~acquisition~~, without written approval from the office.

644 Section 10. Section 655.417, Florida Statutes, is amended

645 to read:

646 655.417 Effect of merger, consolidation, conversion, or
 647 acquisition.—From and after the effective date of a merger,
 648 consolidation, conversion, or acquisition, the resulting
 649 financial entity or entities may conduct business in accordance
 650 with the terms of the plan as approved, subject to the following
 651 conditions and limitations, ~~provided that:~~

652 (1) CONTINUING ENTITY.—Even though the charter of a
 653 participating or converting financial institution may have
 654 ~~entity has~~ been terminated, the resulting financial entity is
 655 deemed to be a continuation of the participating or converting
 656 financial institution ~~entity~~ such that all acquired property of
 657 the participating or converting institution ~~financial entity~~,
 658 including rights, titles, and interests in and to all property
 659 of whatsoever kind, whether real, personal, or mixed, and things
 660 in action, and all rights, privileges, interests, and assets of
 661 any conceivable value or benefit which are then existing, or
 662 pertaining to it, or which would inure to it, are immediately
 663 vested in and continue to be the property of the resulting
 664 financial entity, by act of law and without any conveyance or
 665 transfer and without further act or deed. The resulting, ~~and~~
 666 ~~such~~ financial entity has, holds, and enjoys the same in its own
 667 right as fully and to the same extent as the same was possessed,
 668 held, and enjoyed by the participating or converting financial
 669 institution ~~entity~~, and, at the time ~~of the taking effect of~~
 670 such merger, consolidation, conversion, or acquisition takes
 671 effect, the resulting financial entity has and succeeds to all
 672 the rights, obligations, and relations of the participating or

673 converting institution ~~financial entity~~.

674 (2) EFFECT ON JUDICIAL PROCEEDINGS.—Any pending action or
 675 other judicial proceeding to which the participating or
 676 converting financial institution ~~entity~~ is a party is not abated
 677 by reason of such merger, consolidation, conversion, or
 678 acquisition but may be prosecuted to final judgment, order, or
 679 decree ~~in the same manner~~ as if such action had not been taken, ~~+~~
 680 ~~and~~ The resulting financial entity ~~resulting from such merger,~~
 681 ~~consolidation, conversion, or acquisition~~ may continue such
 682 action in its new name, ~~+~~ and any judgment, order, or decree that
 683 ~~may be rendered for or against it which~~ might have been rendered
 684 for or against the participating or converting institution ~~may~~
 685 be rendered for or against the resulting financial entity
 686 ~~previously involved in such judicial proceeding.~~

687 (3) CREDITORS' RIGHTS.—The resulting financial entity in a
 688 merger, consolidation, conversion, or acquisition is liable for
 689 all obligations of the participating or converting financial
 690 institution ~~entity~~ which existed before ~~prior to~~ such action, ~~+~~
 691 and the action taken does not prejudice the right of a creditor
 692 of the participating or converting financial institution
 693 ~~financial entity~~ to have his or her debts paid out of the assets
 694 thereof, nor may such creditor be deprived of, or prejudiced in,
 695 any action against the officers, directors, members, or other
 696 persons participating in the conduct of the affairs of a
 697 participating or converting financial institution ~~entity~~ for any
 698 neglect or misconduct.

699 (4) EXCEPTION.—In the case of an acquisition of assets or
 700 assumption of liabilities pursuant to s. 655.414, ~~the provisions~~

701 ~~of~~ subsections (1), (2), and (3) apply only to the assets
 702 acquired and the liabilities assumed by the resulting financial
 703 entity if, ~~provided~~ sufficient assets to satisfy all liabilities
 704 not assumed by the resulting financial entity are retained by
 705 the transferring financial institution ~~entity~~.

706 Section 11. Section 655.418, Florida Statutes, is amended
 707 to read:

708 655.418 Nonconforming activities; cessation.—If, as a
 709 result of a merger, consolidation, conversion, or acquisition
 710 ~~pursuant to ss. 655.41–655.419~~, the resulting financial entity
 711 is to be of a different type or of a different character than
 712 any one or all of the participating or converting financial
 713 institutions ~~entities~~, such resulting financial entity is ~~will~~
 714 ~~be~~ subject to the following conditions and limitations:

715 (1) PLAN FOR TERMINATION.—The plan of merger,
 716 consolidation, conversion, or acquisition must set forth the
 717 method and schedule for terminating those activities that are
 718 not permitted by the laws of this state for the resulting
 719 financial entity but ~~that~~ were authorized for ~~any of~~ the
 720 participating or converting financial institutions ~~entities~~.

721 (2) EFFECTIVE DATE.—The plan of merger, consolidation,
 722 conversion, or acquisition must state that, from the effective
 723 date of such action, the resulting financial entity will not
 724 engage in any nonconforming activities, except to the extent
 725 necessary to fulfill obligations existing before ~~prior to~~ the
 726 merger, consolidation, conversion, or acquisition, ~~pursuant to~~
 727 subsection (4).

728 (3) COMPLIANCE WITH LENDING AND INVESTMENT LIMITATIONS.—

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729 If, as a result of such merger, consolidation, conversion, or
 730 acquisition, the resulting financial entity will exceed any
 731 lending, investment, or other limitations imposed by law, the
 732 financial entity must ~~shall~~ conform to such limitations within
 733 such period of time as is established by the office.

734 (4) DIVESTITURE.—The office may, as a condition to such
 735 merger, consolidation, conversion, or acquisition, require a
 736 nonconforming activity to be divested in accordance with such
 737 additional requirements as it considers appropriate under the
 738 circumstances.

739 Section 12. Section 655.4185, Florida Statutes, is amended
 740 to read:

741 655.4185 Emergency action.—

742 (1) Notwithstanding any other provision of the financial
 743 institutions codes or ~~of~~ chapter 120, if the office or the
 744 appropriate federal regulatory agency, or the appropriate home
 745 state regulatory agency for an out-of-state state financial
 746 institution, finds that immediate action is necessary ~~in order~~
 747 to prevent the probable failure of one or more financial
 748 institutions, aid in the resolution of a receivership,
 749 conservatorship, or liquidation of a financial institution, or
 750 otherwise protect the depositors of a failing financial
 751 institution, ~~which in this subsection may be referred to as a~~
 752 ~~"failing financial entity,"~~ the office may, ~~with the concurrence~~
 753 ~~of the appropriate federal regulatory agency in the case of any~~
 754 ~~financial institution the deposits of which are insured by the~~
 755 ~~Federal Deposit Insurance Corporation or the National Credit~~
 756 ~~Union Administration,~~ issue an emergency order authorizing:

757 (a) The merger of ~~any~~ such failing institution ~~financial~~
 758 ~~entity~~ with an appropriate state financial institution ~~entity~~;

759 (b) An appropriate state financial institution ~~entity~~ to
 760 acquire any of the assets ~~or and~~ assume any of the liabilities,
 761 or any combination thereof, of the ~~any such~~ failing institution
 762 ~~financial entity~~, including all rights, powers, and
 763 responsibilities as fiduciary in an instance in which the
 764 failing ~~financial~~ institution is actively engaged in the
 765 exercise of trust powers;

766 (c) The conversion of a ~~any such~~ failing institution
 767 ~~financial entity~~ into a state financial institution that is not
 768 failing entity; ~~or~~

769 (d) The chartering of a new state financial institution
 770 ~~entity~~ to acquire any of the assets ~~or and~~ assume any of the
 771 liabilities, or any combination thereof, of a ~~any such~~ failing
 772 institution ~~financial entity~~ and to assume rights, powers, and
 773 responsibilities as fiduciary in a case in which such failing
 774 institution ~~financial entity~~ is engaged in the exercise of trust
 775 powers; ~~or~~

776 (e) The direct or indirect acquisition of control of the
 777 failing institution;

778 (f) The appointment of provisional directors, executive
 779 officers, or other employees for the failing institution
 780 pursuant to s. 655.03855; or

781 (g) Any other capital or liquidity restoration plan or
 782 action deemed prudent by the office.

783 (2) Any ~~such~~ finding by the office must be based upon
 784 reports or other information furnished to it by the failing

785 financial institution, by a state or federal financial
 786 institution examiner or regulatory entity, or upon other
 787 evidence from which it is reasonable to conclude that the
 788 failing such financial institution is insolvent, ~~or~~ is
 789 threatened with imminent insolvency, or lacks a board of
 790 directors or executive management that can operate the entity in
 791 a safe and sound manner. The office may disallow intangible
 792 assets, deferred tax assets, loan or lease loss reserves,
 793 subordinated debt, and illegally obtained currency, monetary
 794 instruments, funds, or other financial resources from the
 795 capitalization requirements of the financial institutions codes.
 796 The stockholders of a failing institution bank, association, or
 797 trust company that is acquired by another financial institution
 798 bank or trust company under this section are entitled to the
 799 same procedural rights and ~~to~~ compensation for the remaining
 800 value of their shares as is provided for dissenters in s.
 801 658.44, except that they may not have no right to vote against
 802 the transaction. Any transaction authorized by this section may
 803 be accomplished through the organization of a successor
 804 financial institution.

805 (3) The office may provide prior approval of business
 806 entities or individuals who, pursuant to this section, may
 807 charter a new state financial institution or acquire control of,
 808 purchase, merge with, or become directors and executive officers
 809 of, a failing financial institution. The application for prior
 810 approval must be in the form prescribed by the commission by
 811 rule and be accompanied by a nonrefundable filing fee of \$7,500.

812 Section 13. Section 655.419, Florida Statutes, is amended

813 to read:

814 655.419 Effect.—The provisions of ss. 655.41- 655.419
 815 relating to merger, consolidation, conversion, or acquisition of
 816 assets of any financial institution ~~entity~~ are cumulative with
 817 all other provisions of the financial institutions codes and do
 818 not modify, limit, or repeal any ~~of such~~ other provisions except
 819 as expressly provided in the codes or as stated in an emergency
 820 order issued by the office pursuant to s. 655.4185 ~~stated~~
 821 ~~herein. Additionally, the provisions of ss. 655.41- 655.419~~
 822 ~~do not grant any authority, directly or indirectly, for any~~
 823 ~~bank, association, trust company, association holding company,~~
 824 ~~or bank holding company, the operations of which are principally~~
 825 ~~conducted outside this state, to acquire, convert to, or merge~~
 826 ~~or consolidate with any financial entity.~~

827 Section 14. Subsection (1) of section 655.947, Florida
 828 Statutes, is amended to read:

829 655.947 Debt cancellation products.—

830 (1) Debt cancellation products may be offered, and a fee
 831 may be charged, by financial institutions and subsidiaries of
 832 financial institutions subject to ~~the provisions of~~ this section
 833 and the rules and orders of the commission or office. As used in
 834 this section, the term "financial institutions" includes those
 835 defined in s. 655.005~~(1)~~(h), insured depository institutions as
 836 defined in 12 U.S.C. s. 1813, and subsidiaries of such
 837 institutions.

838 Section 15. Present subsections (8) through (16) of
 839 section 657.038, Florida Statutes, are redesignated as
 840 subsections (7) through (15), respectively, and subsections (6)

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841 and (7) of that section are amended, to read:

842 657.038 Loan powers.—

843 ~~(6) As used in this section, the term "related interest"~~
 844 ~~means a person's interest in a partnership as a general partner,~~
 845 ~~and any limited partnership, corporation, or other business~~
 846 ~~organization controlled by that person. A limited partnership,~~
 847 ~~corporation, or other business organization is controlled by a~~
 848 ~~person who:~~

849 ~~(a) Owns, controls, or has the power to vote 25 percent or~~
 850 ~~more of any class of voting securities of any such business~~
 851 ~~organization;~~

852 ~~(b) Controls in any manner the election of a majority of~~
 853 ~~the directors of any such business organization; or~~

854 ~~(c) Has the power to exercise a controlling influence over~~
 855 ~~the management or policies of such business organization.~~

856 (6)(7) In computing a person's the total obligations
 857 outstanding liabilities of any person, all loans endorsed or
 858 guaranteed as to repayment by that such person and by any
 859 related interest of such person must be included. The credit
 860 union must also include all of the person's potential
 861 liabilities and obligations resulting from the person's
 862 derivatives transactions, repurchase agreements, securities
 863 lending and borrowing transactions, credit default swaps, and
 864 similar contracts.

865 Section 16. Subsection (7) of section 657.042, Florida
 866 Statutes, is amended to read:

867 657.042 Investment powers and limitations.—A credit union
 868 may invest its funds subject to the following definitions,

869 restrictions, and limitations:

870 (7) SPECIAL PROVISIONS.—

871 (a) A credit union may not invest its funds in ~~None of the~~
 872 ~~bonds or other obligations described in this section shall be~~
 873 ~~eligible for investment by credit unions in any amount unless~~
 874 the bonds or other obligations are current as to all payments of
 875 principal and interest and unless rated in one of the four
 876 highest classifications, or, in the case of commercial paper,
 877 unless it is of prime quality and of the highest letter and
 878 numerical rating, as established by a nationally recognized
 879 investment rating service, or any comparable rating as
 880 determined by the office.

881 (b) A credit union shall establish written policies and
 882 procedures for evaluating the systemic and specific risks and
 883 benefits associated with investments authorized under this
 884 section before making such investments and must conduct
 885 appropriate risk management and monitoring for the duration of
 886 the investment. An investment decision may not be based solely
 887 on the rating of the bond or other obligation by an investment
 888 rating service. The office may require a credit union to divest
 889 itself of an investment that the office determines creates
 890 excessive risk or the associated risk exceeds the ability of the
 891 credit union to properly evaluate and manage.

892 (c) ~~(b)~~ With prior office approval ~~of the office~~, any
 893 investment permitted in this section may also be made indirectly
 894 by investment in a trust or mutual fund, the investments of
 895 which are limited as set forth in this section, ~~provided that~~
 896 The credit union must maintain a current file on each investment

897 | which contains sufficient information to determine whether the
 898 | investment complies with the requirements of this section. If
 899 | the investment fails to comply ~~with the requirements of this~~
 900 | ~~section~~, the credit union must divest itself of its investment,
 901 | unless otherwise approved by the office.

902 | Section 17. Subsection (5) of section 657.063, Florida
 903 | Statutes, is amended to read:

904 | 657.063 Involuntary liquidation.—

905 | (5) When the liquidating agent of the credit union has
 906 | been appointed, the office may waive or deem inapplicable the
 907 | fees required by this chapter and the examination required by s.
 908 | 655.045(1)(a) if, ~~provided~~ the liquidating agent submits
 909 | periodic reports to the office on the status of the liquidation.

910 | Section 18. Subsection (8) of section 657.064, Florida
 911 | Statutes, is amended to read:

912 | 657.064 Voluntary liquidation.—A credit union may elect to
 913 | dissolve voluntarily and liquidate its affairs in the following
 914 | manner:

915 | (8) When the liquidating agent of the credit union has
 916 | been appointed, the office may waive or hold inapplicable the
 917 | fees required by this chapter and the examination required by s.
 918 | 655.045(1)(a) if, ~~provided~~ the liquidating agent submits
 919 | periodic reports to the office on the status of the liquidation.

920 | Section 19. Subsections (3), (4), and (25) of section
 921 | 658.12, Florida Statutes, are amended to read:

922 | 658.12 Definitions.—Subject to other definitions contained
 923 | in the financial institutions codes and unless the context
 924 | otherwise requires:

925 (3) "Banker's bank" means a bank insured by the Federal
 926 Deposit Insurance Corporation, or a holding company which owns
 927 or controls such an insured bank, if a minimum of 75 percent of
 928 ~~when~~ the stock of such bank or holding company is owned
 929 exclusively by other banks, the bank is organized solely to do
 930 business with other financial institutions, and the bank does
 931 not do business with the general public ~~and such bank or holding~~
 932 ~~company and all subsidiaries thereof are engaged exclusively in~~
 933 ~~providing services for other financial institutions and their~~
 934 ~~officers, directors, and employees.~~

935 (4) "Branch" or "branch office" of a bank means any office
 936 or place of business of a bank, other than its main office and
 937 the facilities and operations authorized by ss. 658.26(4) ~~7~~
 938 ~~658.657~~, and 660.33, at which deposits are received, checks are
 939 paid, or money is lent. With respect to a bank that ~~which~~ has a
 940 trust department, the terms "~~branch~~" and "~~branch office~~" have
 941 the meanings herein ascribed to a branch or a branch office of a
 942 trust company and mean. "~~Branch~~" or "~~branch office~~" of a trust
 943 ~~company means~~ any office or place of business of a trust
 944 company, other than its main office and its trust service
 945 offices established pursuant to s. 660.33, where trust business
 946 is transacted with its customers.

947 ~~(25) Terms used but not defined in this code, but which~~
 948 ~~are defined in Revised Article 3 or Article 4 of the Uniform~~
 949 ~~Commercial Code as enacted in chapters 673 and 674 shall, in~~
 950 ~~this code, unless the context otherwise requires, have the~~
 951 ~~meanings ascribed to them in chapters 673 and 674.~~

952 Section 20. Section 658.165, Florida Statutes, is amended

953 to read:

954 658.165 Banker's banks; formation; applicability of
 955 financial institutions codes; exceptions.—

956 (1) ~~If~~ ~~When~~ authorized by the office, a corporation may be
 957 formed under the laws of this state for the purpose of becoming
 958 a banker's bank. An application for authority to organize a
 959 banker's bank is subject to ~~the provisions of~~ ss. 658.19,
 960 658.20, and 658.21, except that s. the provisions of ss.
 961 658.20(1)(b) and (c) and the minimum stock ownership
 962 requirements for the organizing directors provided in s.
 963 658.21(2) do not apply.

964 (2) A banker's bank chartered pursuant to subsection (1)
 965 ~~is shall be~~ subject to the ~~provisions of the~~ financial
 966 institutions codes and rules adopted thereunder; and, except as
 967 otherwise specifically provided herein or by rule or order of
 968 the commission or office, a banker's bank ~~is shall be~~ vested
 969 with or subject to the same rights, privileges, duties,
 970 restrictions, penalties, liabilities, conditions, and
 971 limitations that would apply to a state bank. A banker's bank is
 972 organized solely to do business with other financial
 973 institutions and is not deemed to be doing business with the
 974 general public even if, as an incidental part of its activities,
 975 it does business to a limited extent with entities and persons
 976 other than financial institutions as follows:

977 (a) The range of customers with which the banker's bank
 978 does business is limited to financial institutions, including
 979 subsidiaries or organizations owned by financial institutions;
 980 directors, officers, or employees of the same or other financial

981 institutions; individuals whose accounts are acquired at the
 982 request of a financial institution's supervisory authority due
 983 to the actual or impending failure of a financial institution;
 984 and financial institution trade associations; and

985 (b) The banker's bank does not make loans to, or
 986 investments in, entities and persons other than financial
 987 institutions which exceed 10 percent of the banker's bank's
 988 total assets, and the banker's bank does not receive deposits
 989 from, or issue other liabilities to, entities and persons other
 990 than financial institutions which exceed 10 percent of the
 991 banker's bank total liabilities.

992 (3) Notwithstanding any other provision of this chapter, a
 993 banker's bank may repurchase, for its own account, shares of its
 994 own capital stock; however, the outstanding capital stock may
 995 not be reduced below the minimum required by this chapter
 996 without the prior approval of the office.

997 (4) A banker's bank may provide services at the request of
 998 financial institutions in organization ~~organizations~~ that have:

999 (a) Received conditional regulatory approval from the
 1000 office in the case of a state bank or trust company, or from the
 1001 appropriate state regulatory agency in the case of an out-of-
 1002 state bank or trust company, or received preliminary approval
 1003 from the Office of the Comptroller of the Currency in the case
 1004 of a national bank.

1005 (b) Filed articles of incorporation or organization
 1006 pursuant to s. 658.23 in the case of a state bank or trust
 1007 company, or pursuant to applicable state law in the case of an
 1008 out-of-state bank or trust company, or filed acceptable articles

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1009 of incorporation and an organization certificate in the case of
 1010 a national bank.

1011 (c) Received capital funds in an amount not less than the
 1012 minimum capitalization required in any notice of or order
 1013 granting conditional regulatory approval.

1014 (5) A banker's bank may provide services to the organizers
 1015 of a ~~proposed~~ financial institution in organization which ~~that~~
 1016 has not received conditional regulatory approval if ~~provided~~
 1017 ~~that~~ such services are limited to the financing of the expenses
 1018 of organizing such proposed financial institution and expenses
 1019 relating to the acquisition or construction of the institution's
 1020 proposed operating facilities and associated fixtures and
 1021 equipment.

1022 (6) If the commission or office finds that any provision
 1023 of this chapter is inconsistent with the purpose for which a
 1024 banker's bank is organized and that the welfare of the public or
 1025 any financial institution would not be jeopardized thereby, the
 1026 commission, by rule, or the office, by order, may exempt a
 1027 banker's bank from such provision or limit the application
 1028 thereof.

1029 Section 21. Subsection (3) of section 658.20, Florida
 1030 Statutes, is repealed.

1031 Section 22. Subsection (1) of section 658.28, Florida
 1032 Statutes, is amended to read:

1033 658.28 Acquisition of control of a bank or trust company.—

1034 (1) If ~~In any case in which~~ a person or a group of
 1035 persons, directly or indirectly or acting by or through one or
 1036 more persons, proposes to purchase or acquire a controlling

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1037 interest in a any state bank or state trust company, and ~~thereby~~
 1038 ~~to~~ change the control of that bank or trust company, such each
 1039 ~~person or group of persons~~ must ~~shall~~ first submit an ~~make~~
 1040 application to the office for a certificate of approval of such
 1041 proposed change ~~of control of the bank or trust company.~~

1042 (a) The application must ~~shall~~ contain the name and
 1043 address, and such other relevant information as the commission
 1044 or office requires, including information relating to other and
 1045 former addresses and the reputation, character, responsibility,
 1046 and business affiliations, ~~of the proposed new owner or each of~~
 1047 ~~the proposed~~ new owners of the controlling interest.

1048 (b) The office shall issue a certificate of approval only
 1049 after it has made an investigation and determined that the
 1050 proposed new ~~owner or~~ owners of the interest are qualified by
 1051 reputation, character, experience, and financial responsibility
 1052 to control and operate the bank or trust company in a legal and
 1053 proper manner and that the interests of the other stockholders,
 1054 if any, ~~and~~ the depositors and creditors of the bank or trust
 1055 company, and the ~~interests of the~~ public generally will not be
 1056 jeopardized by the proposed change in ownership, controlling
 1057 interest, or management.

1058 (c) ~~A~~ No person who has been convicted of, or pled guilty
 1059 or nolo contendere to, a violation of s. 655.50, relating to ~~the~~
 1060 ~~Florida Control of~~ money laundering in financial institutions
 1061 ~~Act~~; chapter 896, relating to offenses related to financial
 1062 transactions; or any similar state or federal law may not
 1063 receive ~~shall be given~~ a certificate of approval ~~by the office.~~

1064 (d) A business organization that is not a bank holding

1065 company authorized by the office or the federal Bank Holding
 1066 Company Act of 1956, as amended, 12 U.S.C. ss. 1841 et seq., may
 1067 not control a bank.

1068 Section 23. Section 658.295, Florida Statutes, is
 1069 repealed.

1070 Section 24. Section 658.2953, Florida Statutes, is amended
 1071 to read:

1072 658.2953 Interstate branching.—

1073 (1) SHORT TITLE.—This section may be cited as the "Florida
 1074 Interstate Branching Act."

1075 (2) PURPOSE.—The purpose of this section is to provide for
 1076 the regulation of ~~permit~~ interstate branching, ~~effective May 31,~~
 1077 ~~1997, by a merger transaction under s. 102 of the Riegle-Neal~~
 1078 ~~Interstate Banking and Branching Efficiency Act of 1994, Pub. L.~~
 1079 ~~No. 103-328,~~ in accordance with this section and consistent with
 1080 the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.
 1081 1811 et seq.; the Bank Holding Company Act of 1956, as amended,
 1082 12 U.S.C. ss. 1841 et seq., and 12 U.S.C. s. 5451; and Pub. L.
 1083 No. 111-203.

1084 ~~(3) LEGISLATIVE INTENT. The Legislature finds it is in the~~
 1085 ~~interest of the citizens of this state, and declares it to be~~
 1086 ~~the intent of this section, to:~~

1087 ~~(a) Supervise, regulate, and examine persons, firms,~~
 1088 ~~corporations, associations, and other business entities~~
 1089 ~~furnishing depository, lending, and associated financial~~
 1090 ~~services in this state.~~

1091 ~~(b) Protect the interests of shareholders, members,~~
 1092 ~~depositors, and other customers of financial institutions~~

1093 ~~operating in this state.~~

1094 ~~(c) Preserve the competitive equality of state financial~~
 1095 ~~institutions as compared with federal financial institutions.~~

1096 ~~(d) Promote the availability, efficiency, and~~
 1097 ~~profitability of financial services in the communities of this~~
 1098 ~~state.~~

1099 ~~(e) Preserve the advantages of the dual banking system.~~

1100 ~~(f) Cooperate with federal regulators and regulators from~~
 1101 ~~other states in regulating financial institutions, in improving~~
 1102 ~~the quality of regulation, and in promoting the interests of~~
 1103 ~~this state in interstate matters.~~

1104 ~~(g) Provide the commission and office sufficient powers~~
 1105 ~~and responsibilities to carry out such purposes.~~

1106 ~~(3)(4)~~ DEFINITIONS.—As used in this section, the term
 1107 ~~unless a different meaning is required by the context:~~

1108 ~~(a) "Bank" has the meaning set forth in 12 U.S.C. s.~~
 1109 ~~1813(h), provided the term "bank" does not include any "foreign~~
 1110 ~~bank" as defined in 12 U.S.C. s. 3101(7), except such term~~
 1111 ~~includes any foreign bank organized under the laws of a~~
 1112 ~~territory of the United States, Puerto Rico, Guam, American~~
 1113 ~~Samoa, or the Virgin Islands, the deposits of which are insured~~
 1114 ~~by the Federal Deposit Insurance Corporation.~~

1115 ~~(b) "Bank holding company" has the meaning set forth in 12~~
 1116 ~~U.S.C. s. 1841(a)(1).~~

1117 ~~(c) "Bank regulatory agency" means:~~

1118 ~~1. Any agency of another state with primary responsibility~~
 1119 ~~for chartering and regulating banks.~~

1120 ~~2. The Office of the Comptroller of the Currency, the~~

1121 ~~Federal Deposit Insurance Corporation, the Board of Governors of~~
 1122 ~~the Federal Reserve System, and any successor to such agencies.~~
 1123 ~~(d) "Branch" has the meaning set forth in s. 658.12.~~
 1124 ~~(e) "De novo branch" means a branch of a bank located in a~~
 1125 ~~host state which:~~
 1126 ~~1. Is originally established by the bank as a branch.~~
 1127 ~~2. Does not become a branch of the bank as a result of:~~
 1128 ~~a. The acquisition of another bank or a branch of another~~
 1129 ~~bank; or~~
 1130 ~~b. The merger, consolidation, or conversion involving any~~
 1131 ~~such bank or branch.~~
 1132 ~~(f) "Control" shall be construed consistently with the~~
 1133 ~~provisions of 12 U.S.C. s. 1841(a)(2).~~
 1134 ~~(g) "Failing financial entity" means an out-of-state state~~
 1135 ~~bank that has been determined by its home state regulator or the~~
 1136 ~~appropriate federal regulatory agency to be imminently insolvent~~
 1137 ~~or to require immediate action to prevent its probable failure.~~
 1138 ~~(h) "Home state" means:~~
 1139 ~~1. With respect to a state bank, the state by which the~~
 1140 ~~bank is chartered.~~
 1141 ~~2. With respect to a national bank, the state in which the~~
 1142 ~~main office of the bank is located.~~
 1143 ~~3. With respect to a foreign bank, the state determined to~~
 1144 ~~be the home state of such foreign bank under 12 U.S.C. s.~~
 1145 ~~3103(e).~~
 1146 ~~(i) "Home state regulator" means, with respect to an out-~~
 1147 ~~of-state state bank, the bank's regulatory agency of the state~~
 1148 ~~in which such bank is chartered.~~

1149 ~~(j) "Host state" means a state, other than the home state~~
 1150 ~~of a bank, in which the bank maintains or seeks to establish and~~
 1151 ~~maintain a branch.~~

1152 ~~(k) "Insured depository institution" has the meaning set~~
 1153 ~~forth in 12 U.S.C. s. 1813(c)(2) and (3).~~

1154 (a)(1) "Interstate merger transaction" means the merger or
 1155 consolidation of banks with different home states, and the
 1156 conversion of branches of any bank involved in the merger or
 1157 consolidation into branches of the resulting bank.

1158 ~~(m) "Out-of-state bank" means a bank whose home state is a~~
 1159 ~~state other than this state.~~

1160 ~~(n) "Out-of-state state bank" means a bank chartered under~~
 1161 ~~the laws of any state other than this state.~~

1162 (b)(e) "Resulting bank" means a bank that results ~~has~~
 1163 ~~resulted~~ from an interstate merger transaction under this
 1164 section.

1165 ~~(p) "State" means any state of the United States, the~~
 1166 ~~District of Columbia, any territory of the United States, Puerto~~
 1167 ~~Rico, Guam, American Samoa, the Trust Territory of the Pacific~~
 1168 ~~Islands, the Virgin Islands, and the Northern Mariana Islands.~~

1169 (c)(q) "Florida bank" means a bank whose home state is
 1170 this state.

1171 ~~(r) "State bank" means a bank chartered under the laws of~~
 1172 ~~this state.~~

1173 ~~(5) INTERSTATE BRANCHING BY DE NOVO ENTRY PROHIBITED. An~~
 1174 ~~out-of-state bank that does not operate a branch in this state~~
 1175 ~~is prohibited from establishing a de novo branch in this state.~~

1176 (4)(6) AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE

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1177 BRANCHES BY MERGER.—With the prior written approval of the
 1178 office, a state bank may establish, maintain, and operate one or
 1179 more branches in a state other than this state pursuant to an
 1180 interstate merger transaction in which the state bank is the
 1181 resulting bank. No later than the date on which the required
 1182 application for the interstate merger transaction is filed with
 1183 the appropriate ~~responsible~~ federal bank regulatory agency, the
 1184 applicant state bank shall file an application on a form
 1185 prescribed by the commission accompanied by the required fee
 1186 pursuant to s. 658.73. The applicant must ~~shall~~ also comply with
 1187 the provisions of ss. 658.40-658.45.

1188 (5) ~~(7)~~ INTERSTATE MERGER TRANSACTIONS AND BRANCHING
 1189 PERMITTED.—

1190 (a) One or more Florida banks may enter into an interstate
 1191 merger transaction with one or more out-of-state banks. An out-
 1192 of-state bank resulting from such transaction may maintain and
 1193 operate the branches of a Florida bank that participated in such
 1194 transaction if, ~~provided that~~ the conditions and filing
 1195 requirements of this section are met.

1196 (b) Except as otherwise expressly provided in this
 1197 section, an interstate merger transaction is ~~is shall~~ not ~~be~~
 1198 permitted if, upon consummation of such transaction, the
 1199 resulting bank, including all insured depository institutions
 1200 that would be "affiliates," as defined in 12 U.S.C. s. 1841(k),
 1201 of the resulting bank, would control 30 percent or more of the
 1202 total amount of deposits held by all insured depository
 1203 institutions in this state. However, this paragraph does not
 1204 apply to initial entry into this state by an out-of-state bank

1205 or bank holding company.

1206 ~~(c) An interstate merger transaction resulting in the~~
 1207 ~~acquisition by an out-of-state bank of a Florida bank shall not~~
 1208 ~~be permitted under this section unless such Florida bank has~~
 1209 ~~been in existence and continuously operating, on the date of~~
 1210 ~~such acquisition, for more than 3 years.~~

1211 (6)(8) NOTICE AND FILING REQUIREMENTS.—An Any out-of-state
 1212 bank that will be the resulting bank pursuant to an interstate
 1213 merger transaction involving a Florida bank must ~~shall~~ notify
 1214 the office of the proposed merger within 15 days after the date
 1215 ~~on which~~ it files an application for an interstate merger
 1216 transaction with the appropriate federal regulatory agency and
 1217 the home state regulatory agency, if applicable. Thereafter, the
 1218 out-of-state bank and the Florida bank must, upon request of the
 1219 office, submit status updates with such information as the
 1220 office specifies until the merger transaction is completed or
 1221 the merger application is withdrawn or denied.

1222 (7)(9) EXAMINATIONS; PERIODIC REPORTS; COOPERATIVE
 1223 AGREEMENTS; ASSESSMENT OF FEES.—

1224 (a) The office may examine any Florida branch of an out-
 1225 of-state state bank which the office deems necessary for the
 1226 purpose of determining whether the branch is being operated in
 1227 compliance with the laws of this state and in accordance with
 1228 safe and sound banking practices.

1229 (b) The office may enter into cooperative, coordinating,
 1230 or information-sharing agreements with other bank regulatory
 1231 agencies or any organization affiliated with or representing one
 1232 or more bank regulatory agencies to facilitate the regulation of

1233 out-of-state state branches doing business in this state.

1234 (c) The office may accept reports of examinations or
 1235 investigations, or other records from other regulatory agencies
 1236 having concurrent jurisdiction over a state bank or a bank
 1237 holding company that controls out-of-state state banks that
 1238 operate branches in this state in lieu of conducting its own
 1239 examinations or investigations.

1240 (d) The office may assess supervisory and examination fees
 1241 that are ~~shall be~~ payable by state banks and out-of-state state
 1242 bank holding companies doing business in this state in
 1243 connection with the office's performance of its duties under
 1244 this section and as prescribed by the commission. Such fees may
 1245 be shared with other bank regulatory agencies or ~~any~~
 1246 organizations affiliated with or representing one or more bank
 1247 regulatory agencies in accordance with agreements between them
 1248 and the office.

1249 (8) ~~(10)~~ LAWS APPLICABLE TO INTERSTATE BRANCHING
 1250 OPERATIONS.—Laws of this state regarding consumer protection,
 1251 fair lending, and establishment of intrastate branches apply to
 1252 any out-of-state bank branch doing business in this state to the
 1253 same extent as the laws of this state apply to a state bank,
 1254 unless ~~except~~:

1255 (a) ~~When~~ Federal law preempts the application of the laws
 1256 of this state.

1257 (b) ~~When~~ The Comptroller of the Currency determines that
 1258 the application of the ~~such~~ laws of this state would have a
 1259 discriminatory effect on the branch of a national bank in
 1260 comparison with the effect the application of such state laws

1261 | would have with respect to branches of a state bank.

1262 | (9)~~(11)~~ ENFORCEMENT.—

1263 | (a) If the office determines that a branch maintained by
 1264 | an out-of-state state bank in this state is being operated in
 1265 | violation of any ~~provision of~~ law of this state, or that such
 1266 | branch is being operated in an unsafe and unsound manner, the
 1267 | office may take all such enforcement actions as it would be
 1268 | empowered to take if the branch were a state bank if,~~provided~~
 1269 | ~~that~~ the office ~~shall~~ promptly gives ~~give~~ notice to the home
 1270 | state regulator of each enforcement action taken against the ~~an~~
 1271 | out-of-state state bank and, to the extent practicable, consults
 1272 | and cooperates ~~shall consult and cooperate~~ with the home state
 1273 | regulator in pursuing and resolving the ~~said~~ enforcement action.

1274 | (b) The office may take any action jointly with other
 1275 | regulatory agencies having concurrent jurisdiction over out-of-
 1276 | state banks and bank holding companies that operate branches in
 1277 | this state, or take such action independently, to carry out its
 1278 | responsibilities.

1279 | (10)~~(12)~~ NOTICE OF SUBSEQUENT MERGER.—

1280 | (a) Each out-of-state state bank that has established and
 1281 | maintains a branch in this state must ~~pursuant to this section~~
 1282 | ~~shall~~ give at least 30 days' prior written notice to the office
 1283 | of any merger, consolidation, or other transaction that would
 1284 | cause a change of control pursuant to home state or federal law
 1285 | with respect to such bank or any bank holding company that
 1286 | controls such bank.

1287 | (b) ~~Notwithstanding any other provisions of the financial~~
 1288 | ~~institutions codes or of chapter 120,~~ In the case of a failing

1289 financial institution entity, the office ~~shall have the power,~~
 1290 with the concurrence of the appropriate regulatory agencies
 1291 ~~agency,~~ may ~~to~~ issue an emergency order authorizing any
 1292 necessary interstate banking or branching transaction pursuant
 1293 to s. 655.4185.+

1294 ~~1. The merger or interstate merger transaction of any such~~
 1295 ~~failing financial entity with a state bank or bank holding~~
 1296 ~~company that controls a state bank;~~

1297 ~~2. Any bank to acquire assets and assume liabilities of~~
 1298 ~~the Florida branches of any such failing financial entity;~~

1299 ~~3. The conversion of any such failing financial entity~~
 1300 ~~into a state bank or trust company;~~

1301 ~~4. The chartering of a new state bank to acquire the~~
 1302 ~~Florida branches of any such failing financial entity; or~~

1303 ~~5. The chartering of a new state trust company to acquire~~
 1304 ~~assets and assume liabilities and rights, powers, and~~
 1305 ~~responsibilities as fiduciary of such failing financial entity.~~

1306 ~~(11)-(13)~~ DE NOVO INTERSTATE BRANCHING BY STATE BANKS.-

1307 (a) With the prior approval of the office, a ~~any~~ state
 1308 bank may establish and maintain a de novo branch or acquire a
 1309 branch in a state other than this state by submitting an
 1310 application with the office pursuant to s. 658.26.

1311 (b) A state bank desiring to establish and maintain a
 1312 branch in another state ~~pursuant to s. 658.26~~ shall pay the
 1313 branch application fee set forth in s. 658.73. In acting on the
 1314 application, the office shall consider the views of the
 1315 appropriate bank regulatory agencies.

1316 (c) An out-of-state bank may establish and maintain a de

1317 | novo branch or acquire a branch in this state upon compliance
 1318 | with chapter 607 or chapter 608 relating to doing business in
 1319 | this state as a foreign business entity, including maintaining a
 1320 | registered agent for service of process and other legal notice
 1321 | pursuant to s. 655.0201.

1322 | (12)~~(14)~~ ADDITIONAL BRANCHES; POWERS.—

1323 | (a) An out-of-state bank that has lawfully acquired or
 1324 | established a branch in this state ~~or bank holding company that~~
 1325 | ~~has acquired a bank in this state pursuant to s. 658.295, or by~~
 1326 | ~~interstate merger pursuant to this section,~~ may establish an
 1327 | ~~additional branch or~~ additional branches in this state to the
 1328 | same extent that any Florida bank may establish ~~a branch or~~
 1329 | branches in this state.

1330 | (b) An out-of-state bank may conduct only those activities
 1331 | at its Florida branch or branches which ~~that~~ are authorized
 1332 | under the laws of this state or of the United States. However,
 1333 | an out-of-state bank with trust powers ~~resulting from an~~
 1334 | ~~interstate merger transaction with one or more Florida banks~~
 1335 | ~~with trust powers shall be entitled to and~~ may exercise all
 1336 | trust powers in this state as a Florida bank with trust powers
 1337 | ~~that participated in the transaction.~~

1338 | Section 25. Section 658.296, Florida Statutes, is
 1339 | repealed.

1340 | Section 26. Section 658.36, Florida Statutes, is amended
 1341 | to read:

1342 | 658.36 Changes in capital.—

1343 | (1) A ~~No~~ state bank or trust company may not ~~shall~~ reduce
 1344 | the number of shares of its outstanding capital stock without

1345 first obtaining the approval of the office, ~~and such~~ Approval
 1346 shall be withheld if the reduction will cause ~~the outstanding~~
 1347 capital accounts ~~stock~~ to be less than the minimum required
 1348 pursuant to the financial institutions codes.

1349 (2) A ~~Any~~ state bank or trust company may provide for an
 1350 increase in its number of outstanding shares of capital stock
 1351 after filing a written notice with the office at least 15 days
 1352 before ~~prior to~~ making such increase. The office may waive the
 1353 time requirement upon a demonstration of good cause.

1354 (3) If a bank or trust company's capital accounts have
 1355 been diminished by losses to less than the minimum required
 1356 pursuant to the financial institutions codes, the market value
 1357 of its shares of capital stock is less than the present par
 1358 value, and the bank or trust company cannot reasonably issue and
 1359 sell new shares of stock to restore its capital accounts at a
 1360 share price of par value or greater of the previously issued
 1361 capital stock, the office, notwithstanding any other provisions
 1362 of chapter 607 or the financial institutions codes, may approve
 1363 special stock offering plans.

1364 (a) Such plans may include, but are not limited to,
 1365 mechanisms for stock splits including reverse splits;
 1366 revaluations of par value of outstanding stock; changes in
 1367 voting rights, dividends, or other preferences; and creation of
 1368 new classes of stock.

1369 (b) The plan must be approved by majority vote of the bank
 1370 or trust company's entire board of directors and by holders of
 1371 two-thirds of the outstanding shares of stock.

1372 (c) The office shall disapprove a plan that provides

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1373 unfair or disproportionate benefits to existing shareholders,
 1374 directors, executive officers, or their related interests. The
 1375 office shall also disapprove any plan that is not likely to
 1376 restore the capital accounts to sufficient levels to achieve a
 1377 sustainable, safe, and sound financial institution.

1378 (d) For any bank or trust company that the office
 1379 determines to be a failing financial institution pursuant to s.
 1380 655.4185, the office may approve special stock offering plans
 1381 without a vote of the shareholders.

1382 Section 27. Subsection (2) of section 658.41, Florida
 1383 Statutes, is amended to read:

1384 658.41 Merger; resulting state or national bank.—

1385 (2) ~~Nothing in~~ The laws ~~law~~ of this state do not shall
 1386 restrict the right of a state bank or state trust company to
 1387 merge with a resulting national bank or out-of-state bank. In
 1388 such case the action to be taken by a constituent state bank or
 1389 state trust company, and its rights and liabilities and those of
 1390 its shareholders, are shall be the same as those prescribed for
 1391 constituent national banks at the time of the action by the
 1392 applicable federal ~~law of the United States~~ and not ~~by~~ the law
 1393 of this state.

1394 Section 28. Subsections (3) through (11) of section
 1395 658.48, Florida Statutes, are amended to read:

1396 658.48 Loans.—A state bank may make loans and extensions
 1397 of credit, with or without security, subject to the following
 1398 limitations and provisions:

1399 (3) LOANS TO OTHER PERSONS.—A ~~No~~ bank may not shall extend
 1400 credit, including the granting of a line of credit, to any ~~other~~

1401 person ~~not included in subsection (2)~~, including a any related
 1402 interest of that person, which that, if when aggregated with the
 1403 amount of all other extensions of credit to that person and any
 1404 related interest of that person, exceeds 15 percent of the
 1405 capital accounts of the lending bank, unless the extension of
 1406 credit has been approved in advance by a majority of the entire
 1407 board of directors or by all members of an authorized committee
 1408 thereof within not more than 1 year before ~~prior to~~ the time
 1409 ~~when~~ such credit is extended.

1410 ~~(4) RELATED INTERESTS. As used in this section, the term~~
 1411 ~~"related interest" means, with respect to any person, any~~
 1412 ~~partnership, corporation, or other business organization~~
 1413 ~~controlled by that person. A corporation is controlled by a~~
 1414 ~~person who:~~

1415 ~~(a) Owns, controls, or has the power to vote 25 percent or~~
 1416 ~~more of any class of voting securities of the corporation;~~

1417 ~~(b) Controls in any manner the election of a majority of~~
 1418 ~~the directors of the corporation; or~~

1419 ~~(c) Has the power to exercise a controlling influence over~~
 1420 ~~the management or policies of the corporation.~~

1421 ~~(4)(5) SPECIAL PROVISIONS.-~~

1422 (a) A limitation of 25 percent of the capital accounts of
 1423 the lending bank applies to the aggregate of all loans made to a
 1424 corporation, together with all loans secured by shares of stock,
 1425 bonds, or other obligations of the same corporation, unless the
 1426 stocks or bonds are listed and traded on a recognized stock
 1427 exchange, ~~or~~ are registered under the Securities Exchange Act of
 1428 1934, ~~or~~ are registered with the Board of Governors of the

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1429 Federal Reserve System, ~~with~~ the Federal Deposit Insurance
 1430 Corporation, or ~~with~~ the Comptroller of the Currency, in which
 1431 case no aggregate loan limit applies.

1432 (b) A limitation of 15 percent of the capital accounts of
 1433 the lending bank applies to loans made to any one borrower on
 1434 the security of shares of capital stock listed and traded on a
 1435 recognized exchange. A limitation of 10 percent of the capital
 1436 accounts of the lending bank applies to loans made to any one
 1437 borrower on the security of shares of capital stock not listed
 1438 on a recognized exchange or the obligations subordinate to
 1439 deposits of another bank. A limitation of 25 percent of the
 1440 capital accounts of the lending state bank applies to the
 1441 aggregate of all loans secured by the shares of capital stock or
 1442 the obligations subordinate to deposits of any one bank.

1443 (c) A ~~No~~ loan may not shall be made by a bank:

1444 1. On the security of the shares of its own capital stock
 1445 or of its obligations subordinate to deposits.

1446 2. On an unsecured basis for the purpose of purchasing the
 1447 ~~purchase of~~ shares of its own capital stock or its obligations
 1448 subordinate to deposits.

1449 3. On a secured or unsecured basis for the purpose of
 1450 purchasing the ~~purchase of~~ shares of the stock of its one-bank
 1451 holding company.

1452 (d) A one-bank holding company bank may make loans on its
 1453 own one-bank holding company stock. For capital stock that is
 1454 listed and traded on a recognized exchange, the stock may not be
 1455 valued at more than 70 percent of its current market value, and
 1456 for capital stock that is not listed and traded on a recognized

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1457 exchange, the stock may not be valued at more than 70 percent of
 1458 its current book value.

1459 ~~(e) Loans based upon the security of real estate mortgages~~
 1460 ~~shall be documented as first liens, except that liens other than~~
 1461 ~~first liens may be taken:~~

- 1462 ~~1. To protect a loan previously made in good faith;~~
- 1463 ~~2. To further secure a loan otherwise amply and entirely~~
 1464 ~~secured;~~
- 1465 ~~3. As additional security for Federal Housing~~
 1466 ~~Administration Title 1 loans or loans made with participation or~~
 1467 ~~guaranty by the Small Business Administration;~~
- 1468 ~~4. To secure a loan not in excess of 15 percent of the~~
 1469 ~~capital accounts of the bank; or~~
- 1470 ~~5. As provided by rules of the commission.~~

1471 ~~(e)(f)~~ In computing the total liabilities of any person,
 1472 ~~there shall be included all loans or lines of credit~~ endorsed or
 1473 guaranteed as to repayment by such person and ~~by~~ any related
 1474 interest of such person must be included. Purchased
 1475 participations in pools of loans which are carried as loans
 1476 subject to the limits of this section must be aggregated when
 1477 computing the total liabilities of a person who is a borrower,
 1478 originator, seller, broker, or guarantor, or has a repurchase
 1479 agreement obligation for the individual and pooled loans. The
 1480 computation of total liabilities must also include all potential
 1481 liabilities and obligations of the person, and any related
 1482 interest, resulting from the person's derivatives transactions,
 1483 repurchase agreements, securities lending and borrowing
 1484 transactions, credit default swaps, and similar contracts.

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1485 (f)~~(g)~~ All loan documentation must ~~shall~~ be written in ~~the~~
 1486 English ~~language~~ or contain an English translation of foreign
 1487 language provisions.

1488 (5)~~(6)~~ APPLICABILITY OF LOAN LIMITATIONS.—The loan
 1489 limitations ~~otherwise~~ provided in this section do not apply to:

1490 (a) Loans that ~~which~~ are fully secured by assignment of a
 1491 savings account or certificate of deposit of the lending bank;

1492 (b) Loans that ~~which~~ are fully secured by notes, bonds, or
 1493 other evidences of indebtedness issued by the United States
 1494 Government or fully guaranteed as to repayment by the United
 1495 States Government or its agencies, bureaus, boards, or
 1496 commissions; ~~or~~

1497 (c) Loans made to district school boards if ~~when~~ such
 1498 loans are secured by the assignment of revenues reasonably
 1499 expected to be received from the state and are otherwise made in
 1500 compliance with statutes governing borrowings by such boards;
 1501 or—

1502 (d) Purchased participations in pools of loans which are
 1503 carried as investments subject to the limitations of s. 658.67.

1504 (6)~~(7)~~ APPROVAL BY BOARD.—The requirements of this section
 1505 concerning approval of lending activities by the board of
 1506 directors or an authorized committee therefrom are ~~have been~~ met
 1507 only if ~~when~~ such approvals are recorded in the formal minutes
 1508 of the actions of the board and its committees by name of
 1509 borrower, amount of loan, maturity of loan, and general type of
 1510 collateral. If, at the time of approval of a line of credit,
 1511 such information is not available, the name of the borrower and
 1512 the amount of the approved line of credit must ~~shall~~ be recorded

1513 in the minutes. Any action required by this section ~~to be taken~~
 1514 ~~by the board of directors or an authorized committee therefrom~~
 1515 may be taken pursuant to s. 607.0820(4) if the minutes of the
 1516 proceedings of the board or of the committee reflect such action
 1517 and each director taking such action signs the minutes
 1518 reflecting such action at the next regular meeting of the board
 1519 or committee attended by such director.

1520 (7)~~(8)~~ LIABILITY OF OFFICERS AND DIRECTORS.—Officers and
 1521 directors are personally liable, jointly and severally, for any
 1522 loss that may be occasioned by a ~~any~~ willful violation of this
 1523 section.

1524 (8)~~(9)~~ If ~~When~~ a bank's capital has been diminished by
 1525 losses so that its ability to honor legally binding written loan
 1526 commitments is impaired, the office may approve limited
 1527 expansion of the lending limitations set forth in this section.

1528 ~~(10) IMMINENTLY INSOLVENT BANK. When the office has~~
 1529 ~~determined that a state bank is imminently insolvent, the bank~~
 1530 ~~may not make any new loans or discounts other than by~~
 1531 ~~discounting or purchasing bills of exchange payable at sight.~~

1532 (9)~~(11)~~ FEDERAL RESTRICTIONS AND LIMITATIONS. ~~Nothing in~~
 1533 This section does not expand, enlarge ~~shall be construed as~~
 1534 ~~expanding, enlarging,~~ or otherwise affect ~~affecting~~ any lending
 1535 limits, restrictions, or procedures now provided by federal law
 1536 applicable to state banks in conjunction with any loan or loans
 1537 to any borrower or class of borrowers.

1538 Section 29. Subsection (4) of section 658.53, Florida
 1539 Statutes, is amended to read:

1540 658.53 Borrowing; limits of indebtedness.—

1541 (4) Unrepaid proceeds of sales of capital notes and
 1542 capital debentures are, ~~as provided herein, shall be considered~~
 1543 ~~as a part of the aggregate amount of capital and surplus in~~
 1544 ~~computing loan and investment limitations and in evaluating~~
 1545 ~~adequacy of capital of the issuing bank~~ if the issuing bank is
 1546 not in default ~~thereunder~~.

1547 Section 30. Section 658.65, subsection (33) of section
 1548 665.013, and subsection (35) of section 667.003, Florida
 1549 Statutes, are repealed.

1550 Section 31. Paragraph (c) of subsection (5) and
 1551 subsections (6) and (10) of section 658.67, Florida Statutes,
 1552 are amended to read:

1553 658.67 Investment powers and limitations.—A bank may
 1554 invest its funds, and a trust company may invest its corporate
 1555 funds, subject to the following definitions, restrictions, and
 1556 limitations:

1557 (5) INVESTMENTS IN RELATED COMPANIES.—A bank or trust
 1558 company may invest in the stock of incorporated companies to the
 1559 extent hereinafter defined:

1560 (c) Up to 10 percent of the capital accounts of a bank may
 1561 be invested in a clearing corporation as defined in s. 678.1021
 1562 ~~678.102(3)~~.

1563 (6) INVESTMENTS IN CORPORATIONS.—Up to an aggregate of 10
 1564 percent of the total assets of a bank may be invested in the
 1565 stock, obligations, or other securities of subsidiary
 1566 corporations or other corporations or entities, except as
 1567 limited or prohibited by federal law, and except that during the
 1568 first 3 years of existence of a bank, such investments are

1569 | limited to 5 percent of the total assets. ~~Any bank whose~~
 1570 | ~~aggregate investment on June 30, 1992, exceeds the limitation in~~
 1571 | ~~this subsection has 5 years within which to achieve compliance;~~
 1572 | ~~additional time may be approved by the office if the office~~
 1573 | ~~finds that compliance with this subsection will result in more~~
 1574 | ~~than a minimal loss to the bank. The commission may, by rule, or~~
 1575 | ~~the office by order, may further limit any type of investment~~
 1576 | ~~made pursuant to this subsection if it finds that such~~
 1577 | ~~investment would constitute an unsafe or unsound practice.~~

1578 | (10) SPECIAL PROVISIONS.—

1579 | (a) ~~None of~~ The bonds or other obligations described in
 1580 | this section are not ~~shall be~~ eligible for investment in ~~any~~
 1581 | ~~amount~~ unless current as to all payments of principal and
 1582 | interest and ~~unless rated in one of the four highest~~
 1583 | ~~classifications, or, in the case of commercial paper, unless it~~
 1584 | ~~is of prime quality and of the highest letter and numerical~~
 1585 | ~~rating, as established by a nationally recognized rating service~~
 1586 | ~~or any comparable rating as determined by the office. Bonds or~~
 1587 | ~~other obligations which are unrated shall not be eligible for~~
 1588 | ~~investment unless~~ otherwise supported as to investment quality
 1589 | and marketability by a credit rating file compiled and
 1590 | maintained in current status by the purchasing bank or trust
 1591 | company. Banks and trust companies shall establish written
 1592 | policies and procedures to evaluate the systemic and specific
 1593 | risks and benefits associated with all investments authorized in
 1594 | this section before making such investments and must provide for
 1595 | appropriate risk management and monitoring for the duration of
 1596 | the investment. An investment decision may not be based solely

1597 on the rating of the bond or other obligation by an investment
 1598 rating service. The office may require a bank or trust company
 1599 to divest itself of any investment that the office determines
 1600 creates excessive risk or that has an associated risk that
 1601 exceeds the ability of the bank or trust company to properly
 1602 evaluate and manage.

1603 (b) Investment securities shall be entered on the books of
 1604 the bank or trust company at the fair market value on the date
 1605 of acquisition. Premiums paid in excess of par value shall be
 1606 amortized ~~either~~ over the life of the security or to the first
 1607 call date at its call price and thereafter to subsequent call
 1608 dates at their respective call prices until maturity. Discount
 1609 may be accredited over the life of the security.

1610 Section 32. Subsection (5) of section 288.772, Florida
 1611 Statutes, is amended to read:

1612 288.772 Definitions.—For purposes of ss. 288.771–288.778:

1613 (5) "Financial institution" shall have the same meaning as
 1614 that term is defined in s. 655.005~~(1)(h)~~.

1615 Section 33. Paragraph (b) of subsection (5) of section
 1616 288.99, Florida Statutes, is amended to read:

1617 288.99 Certified Capital Company Act.—

1618 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.—

1619 (b) All capital not invested in qualified investments by
 1620 the certified capital company:

1621 1. Must be held in a financial institution as defined in
 1622 ~~by~~ s. 655.005~~(1)(h)~~ or held by a broker-dealer registered under
 1623 s. 517.12, except as set forth in sub-subparagraph 3.g.

1624 2. Must not be invested in a certified investor of the

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1625 certified capital company or any affiliate of the certified
 1626 investor of the certified capital company, except for an
 1627 investment permitted by sub-subparagraph 3.g. if, ~~provided~~
 1628 repayment terms do not permit the obligor to directly or
 1629 indirectly manage or control the investment decisions of the
 1630 certified capital company.

- 1631 3. Must be invested only in:
 - 1632 a. ~~Any~~ United States Treasury obligations;
 - 1633 b. Certificates of deposit or other obligations, maturing
 1634 within 3 years after acquisition of such certificates or
 1635 obligations, issued by any financial institution or trust
 1636 company incorporated under the laws of the United States;
 - 1637 c. Marketable obligations, maturing within 10 years or
 1638 less after the acquisition of such obligations, which are rated
 1639 "A" or better by any nationally recognized credit rating agency;
 - 1640 d. Mortgage-backed securities that have, ~~with~~ an average
 1641 life of 5 years or less, after the acquisition of such
 1642 securities, which are rated "A" or better by a ~~any~~ nationally
 1643 recognized credit rating agency;
 - 1644 e. Collateralized mortgage obligations and real estate
 1645 mortgage investment conduits that are direct obligations of an
 1646 agency of the United States Government; are not private-label
 1647 issues; are in book-entry form; and do not include the classes
 1648 of interest only, principal only, residual, or zero;
 - 1649 f. Interests in money market funds, the portfolio of which
 1650 is limited to cash and obligations described in sub-
 1651 subparagraphs a.-d.; or
 - 1652 g. Obligations that are issued by an insurance company

1653 that is not a certified investor of the certified capital
 1654 company making the investment, that has provided a guarantee
 1655 indemnity bond, insurance policy, or other payment undertaking
 1656 in favor of the certified capital company's certified investors
 1657 as permitted by subparagraph (3)(1)1. or an affiliate of such
 1658 insurance company as defined by subparagraph (3)(a)3. that is
 1659 not a certified investor of the certified capital company making
 1660 the investment, provided that such obligations are:

1661 (I) Issued or guaranteed as to principal by an entity
 1662 whose senior debt is rated "AA" or better by Standard & Poor's
 1663 Ratings Group or such other nationally recognized credit rating
 1664 agency as the commission may determine by rule ~~determine~~.

1665 (II) Not subordinated to other unsecured indebtedness of
 1666 the issuer or the guarantor.

1667 (III) Invested by such issuing entity in accordance with
 1668 sub-subparagraphs 3.a.-f.

1669 (IV) Readily convertible into cash within 5 business days
 1670 for the purpose of making a qualified investment unless such
 1671 obligations are held to provide a guarantee, indemnity bond,
 1672 insurance policy, or other payment undertaking in favor of the
 1673 certified capital company's certified investors as permitted by
 1674 subparagraph (3)(1)1.

1675 Section 34. Subsection (1) of section 440.12, Florida
 1676 Statutes, is amended to read:

1677 440.12 Time for commencement and limits on weekly rate of
 1678 compensation.—

1679 (1) ~~No~~ Compensation is not ~~shall be~~ allowed for the first
 1680 7 days of the disability, except for benefits provided for in s.

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1681 440.13. However, if the injury results in ~~disability~~ of more
 1682 than 21 days of disability, compensation is ~~shall be~~ allowed
 1683 from the commencement of the disability. All weekly compensation
 1684 payments, except for the first payment, must ~~shall~~ be paid by
 1685 check or, if authorized by the employee, deposited directly into
 1686 the employee's account at a financial institution. ~~As used in~~
 1687 ~~this subsection, the term "financial institution" means a~~
 1688 ~~financial institution~~ as defined in s. 655.005(1)(h).

1689 Section 35. Paragraph (a) of subsection (1) of section
 1690 440.20, Florida Statutes, is amended to read:

1691 440.20 Time for payment of compensation and medical bills;
 1692 penalties for late payment.—

1693 (1)(a) Unless the carrier ~~it~~ denies compensability or
 1694 entitlement to benefits, the carrier shall pay compensation
 1695 directly to the employee as required by ss. 440.14, 440.15, and
 1696 440.16, in accordance with those ~~the obligations set forth in~~
 1697 ~~such~~ sections. If authorized by the employee, the carrier's
 1698 obligation to pay compensation directly to the employee is
 1699 satisfied when the carrier directly deposits, by electronic
 1700 transfer or other means, compensation into the employee's
 1701 account at a financial institution. ~~As used in this paragraph,~~
 1702 ~~the term "financial institution" means a financial institution~~
 1703 as defined in s. 655.005(1)(h). Compensation by direct deposit
 1704 is considered paid on the date the funds become available for
 1705 withdrawal by the employee.

1706 Section 36. Paragraph (c) of subsection (2) of section
 1707 445.051, Florida Statutes, is amended to read:

1708 445.051 Individual development accounts.—

1709 (2) As used in this section, the term:
 1710 (c) "Financial institution" has the same meaning ~~means a~~
 1711 ~~financial institution~~ as defined in s. 655.005(1)(h).
 1712 Section 37. Subsection (18) of section 489.503, Florida
 1713 Statutes, is amended to read:
 1714 489.503 Exemptions.—This part does not apply to:
 1715 (18) The monitoring of an alarm system by a direct
 1716 employee of any state or federally chartered financial
 1717 institution, as defined in s. 655.005(1)(h), or any parent,
 1718 affiliate, or subsidiary thereof, so long as:
 1719 (a) The institution is subject to, and in compliance with,
 1720 s. 3 of the Federal Bank Protection Act of 1968, 12 U.S.C. s.
 1721 1882;
 1722 (b) The alarm system is in compliance with all applicable
 1723 firesafety standards as set forth in chapter 633; and
 1724 (c) The monitoring is limited to an alarm system
 1725 associated with:
 1726 1. The commercial property where banking operations are
 1727 housed or ~~where~~ other operations are conducted by a state or
 1728 federally chartered financial institution, ~~as defined in s.~~
 1729 ~~655.005(1)(h)~~, or any parent, affiliate, or subsidiary thereof;
 1730 or
 1731 2. The private property occupied by the institution's
 1732 executive officers, as defined in s. 655.005(1)(f),
 1733
 1734 and does not otherwise extend to the monitoring of residential
 1735 systems.
 1736 Section 38. Paragraph (b) of subsection (15) of section

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1737 501.005, Florida Statutes, is amended to read:
 1738 501.005 Consumer report security freeze.—
 1739 (15) The provisions of this section do not apply to the
 1740 following entities:
 1741 (b) A deposit account information service company that,
 1742 ~~which~~ issues reports regarding account closures due to fraud,
 1743 substantial overdrafts, automatic teller machine abuse, or
 1744 similar negative information regarding a consumer to an
 1745 inquiring ~~banks or other~~ financial institution as defined in s.
 1746 655.005 institutions for use only in reviewing a consumer
 1747 request for a deposit account at the inquiring ~~bank or~~ financial
 1748 institution, as defined in s. 655.005-~~(1)(g) or (h)~~, or in
 1749 federal law.
 1750 Section 39. Paragraph (d) of subsection (2) of section
 1751 501.165, Florida Statutes, is amended to read:
 1752 501.165 Automatic renewal of service contracts.—
 1753 (2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—
 1754 (d) This subsection does not apply to:
 1755 1. A financial institution as defined in s. 655.005-~~(1)(h)~~
 1756 or any depository institution as defined in 12 U.S.C. s.
 1757 1813(c)(2).
 1758 2. A foreign bank maintaining a branch or agency licensed
 1759 under the laws of any state of the United States.
 1760 3. Any subsidiary or affiliate of an entity described in
 1761 subparagraph 1. or subparagraph 2.
 1762 4. A health studio as defined in s. 501.0125-~~(1)~~.
 1763 5. Any entity licensed under chapter 624, chapter 627,
 1764 chapter 634, chapter 636, or chapter 641.

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- 1765 6. Any electric utility as defined in s. 366.02~~(2)~~.
 1766 7. Any private company as defined in s. 180.05 providing
 1767 services described in chapter 180 which ~~that~~ is competing
 1768 against a governmental entity or has a governmental entity
 1769 providing billing services on its behalf.

1770 Section 40. Paragraph (r) of subsection (1) of section
 1771 624.605, Florida Statutes, is amended to read:

1772 624.605 "Casualty insurance" defined.—

1773 (1) "Casualty insurance" includes:

1774 (r) *Insurance for debt cancellation products.*—Insurance
 1775 that a creditor may purchase against the risk of financial loss
 1776 from the use of debt cancellation products with consumer loans
 1777 or leases or retail installment contracts. Insurance for debt
 1778 cancellation products is not liability insurance but is ~~shall be~~
 1779 considered credit insurance only for the purposes of s.
 1780 631.52(4).

1781 1. For purposes of this paragraph, the term "debt
 1782 cancellation products" means loan, lease, or retail installment
 1783 contract terms, or modifications to loan, lease, or retail
 1784 installment contracts, under which a creditor agrees to cancel
 1785 or suspend all or part of a customer's obligation to make
 1786 payments upon the occurrence of specified events and includes,
 1787 but is not limited to, debt cancellation contracts, debt
 1788 suspension agreements, and guaranteed asset protection
 1789 contracts. However, the term "~~debt cancellation products~~" does
 1790 not include title insurance as defined in s. 624.608.

1791 2. Debt cancellation products may be offered by financial
 1792 institutions~~7~~ as defined in s. 655.005~~(1)(h)~~, insured depository

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1793 institutions as defined in 12 U.S.C. s. 1813(c), and
 1794 subsidiaries of such institutions, as provided in the financial
 1795 institutions codes; by sellers as defined in s. 721.05, or by
 1796 the parents, subsidiaries, or affiliated entities of sellers, in
 1797 connection with the sale of timeshare interests; or by other
 1798 business entities as ~~may be~~ specifically authorized by law, and
 1799 such products are ~~shall not constitute~~ insurance for purposes of
 1800 the Florida Insurance Code.

1801 Section 41. Paragraph (g) of subsection (1) of section
 1802 626.321, Florida Statutes, is amended to read:

1803 626.321 Limited licenses.—

1804 (1) The department shall issue to a qualified individual,
 1805 or a qualified individual or entity under paragraphs (c), (d),
 1806 (e), and (i), a license as agent authorized to transact a
 1807 limited class of business in any of the following categories:

1808 (g) *Credit property insurance.*—A license covering only
 1809 credit property insurance may be issued to any individual except
 1810 an individual employed by or associated with a ~~lending or~~
 1811 financial institution as defined in s. 655.005(1)(g), ~~(h), or~~
 1812 ~~(p)~~ and authorized to sell such insurance only with respect to a
 1813 borrower or debtor, not to exceed the amount of the loan.

1814 Section 42. Subsection (4) of section 626.730, Florida
 1815 Statutes, is amended to read:

1816 626.730 Purpose of license.—

1817 (4) This section does not ~~shall not be deemed to~~ prohibit
 1818 the licensing under a limited license as to motor vehicle
 1819 physical damage and mechanical breakdown insurance or ~~the~~
 1820 ~~licensing under a limited license for~~ credit property insurance

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1821 of any person employed by or associated with a motor vehicle
 1822 sales or financing agency, a retail sales establishment, or a
 1823 consumer loan office, other than a consumer loan office owned by
 1824 or affiliated with a financial institution as defined in s.
 1825 655.005(1)(g), ~~(h)~~, or ~~(p)~~, with respect to insurance of the
 1826 interest of such agency in a motor vehicle sold or financed by
 1827 it or in personal property if ~~when~~ used as collateral for a
 1828 loan. This section does not apply with respect to the interest
 1829 of a real estate mortgagee in or as to insurance covering such
 1830 interest or in the real estate subject to such mortgage.

1831 Section 43. Section 626.9885, Florida Statutes, is amended
 1832 to read:

1833 626.9885 Financial institutions conducting insurance
 1834 transactions.—A financial institution, as defined in s.
 1835 655.005(1)(g), ~~(h)~~, or ~~(p)~~, may conduct insurance transactions
 1836 only through Florida-licensed insurance agents representing
 1837 Florida-authorized insurers or representing Florida-eligible
 1838 surplus lines insurers.

1839 Section 44. This act shall take effect July 1, 2011.