

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB's 42-E & 26-E

SPONSOR: Senators Latvala and Geller

SUBJECT: Powers and Duties of the Chief Financial Officer

DATE: May 1, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

In November 1998, the voters of Florida approved an amendment to the State Constitution which merges two cabinet positions, the Comptroller and the Treasurer, into the Chief Financial Officer cabinet position, effective January 7, 2003. Since the Comptroller presently heads the Department of Banking and Finance (DBF) and the Treasurer presently heads the Department of Insurance (DOI), the status of these departments must be determined legislatively.

The bill creates the Department of Financial Services (DFS) which will be headed by the Chief Financial Officer (CFO). A type-two transfer transfers the functions and programs of the Department of Banking and Finance and the Department of Insurance into the DFS January 7, 2003. The bill also provides technical and conforming changes to address the transfers of programs and functions of the departments, the elimination of the Comptroller and Treasurer positions, and the creation of the Chief Financial Officer position.

Fifteen divisions are established within DFS: (1) Treasury, (2) Consumer Services, (3) Insurance, (4) Financial Institutions and Securities, (5) Risk Management, (6) State Fire Marshal, (7) Insurance Fraud, (8) Rehabilitation and Liquidation, (9) Information Systems, (10) Legal Services, (11) Financial Investigations, (12) Accounting and Auditing, (13) Insurance Agent and Agency Services, (14) Administration, and (15) Workers' Compensation.

The director of the Division of Financial Institutions and Securities and the director of the Division of Insurance are designated, for purposes of ch. 120, F.S., as agency heads for their respective divisions. These two division directors are appointed by the Governor, in consultation with the Chief Financial Officer, subject to confirmation by a unanimous vote of the Governor and Cabinet. Upon request by the Governor or the Chief Financial Officer, either division director is subject to a vote for re-confirmation or removal. If a director fails to obtain the

affirmative vote of three officers among the Governor and Cabinet, the director is removed from office. The bill specifies qualifications for these two directors. Their respective divisions are independent divisions administratively housed with the Department of Financial Services.

In addition, this bill provides the following changes:

- Creates the “Florida Firefighters Occupational Safety and Health Act.” These provisions were substantially the same as the repealed provisions formerly in chapter 442, F.S., related to the Division of Safety within the Department of Labor and Employment Security, except that the provisions in this bill are limited to firefighter safety and would be placed under the authority of the Division of State Fire Marshal of the Department of Insurance;
- Amends the Certified Capital Company Act, s. 288.99, F.S., and expands the pool of insurance premium tax credits available to insurers for investments by a certified capital company (CAPCO) in qualified businesses, by creating a second program. The bill establishes a new phase, Program Two, which would be implemented if certain insurance premium tax collection benchmarks are met. Program Two, like the current program, would provide annual tax credits of up to \$15 million and an aggregate amount of \$150 million over the life of the program to insurance companies that invest in CAPCOs. The annualized reduction in General Revenue due to Program Two credits will be \$15 million, beginning in FY 2003-04.
- Repeals the current laws (ss. 627.0623 and 655.019, F.S.) that limit campaign contributions to the Treasurer and Comptroller and candidates for such offices, by entities regulated by the Department of Insurance and the Department of Banking and Finance, respectively, so that no similar restrictions would apply to the Chief Financial Officer or candidates for that office.
- Amends s. 112.313, F.S., to provide that it would not be a conflict of interest for the Governor and members of the Cabinet to have an employment or contractual relationship with business entities regulated by another agency, if the Governor and members of the Cabinet possess only certain limited powers relative to that business or agency.
- Transfers the Small County Technical Assistance Program from the Office of the Comptroller to the Commissioner of Agriculture, changes the criteria used for establishing contract providers, and expands the areas of assistance provided to include economic and community development; and
- Adds two county representatives to the board of the Florida Healthy Kids Corporation, one appointed by the Chief Financial Officer and one by the Governor.

This bill substantially amends the following chapters of the Florida Statutes: 11, 13, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 28, 30, 40, 43, 48, 55, 57, 68, 77, 92, 99, 101, 103, 107, 110, 112, 114, 116, 120, 121, 125, 129, 131, 137, 145, 154, 163, 175, 185, 189, 190, 191, 192, 193, 195, 198, 199, 203, 206, 210, 211, 212, 213, 215, 216, 217, 218, 220, 228, 229, 231, 233, 236, 237, 238, 240, 242, 245, 250, 252, 253, 255, 257, 258, 259, 265, 267, 272, 280, 282, 284, 287, 288, 289,

292, 313, 314, 316, 320, 322, 324, 326, 331, 336, 337, 339, 344, 350, 354, 365, 370, 373, 374, 376, 377, 378, 381, 383, 388, 391, 392, 393, 394, 400, 401, 402, 403, 404, 408, 409, 411, 413, 414, 420, 430, 440, 443, 447, 450, 456, 468, 473, 475, 489, 494, 497, 498, 499, 501, 509, 513, 516, 517, 518, 519, 520, 526, 537, 548, 550, 552, 553, 554, 559, 560, 561, 562, 567, 569, 570, 574, 589, 597, 601, 607, 609, 617, 624, 625, 626, 627, 628, 629, 631, 632, 633, 634, 635, 636, 641, 642, 648, 650, 651, 655, 657, 658, 660, 687, 697, 713, 716, 717, 718, 719, 721, 723, 732, 733, 744, 766, 768, 790, 791, 817, 839, 849, 860, 896, 903, 925, 932, 938, 939, 943, 944, 946, 947, 950, 957 and 985.

The bill creates the following sections of the Florida Statutes: 633.801, 633.802, 633.803, 633.804, 633.805, 633.806, 633.807, 633.808, 633.809, 633.810, 633.811, 633.812, 633.813, 633.814, 633.815, 633.816, 633.817, 633.818, 633.819, 633.820, 633.821.

The bill also repeals the following sections of the Florida Statutes: 18.03, 18.07, 18.09, 18.091, 18.22, 20.12, 20.13, 627.0623, 655.019, and 657.067.

II. Present Situation:¹

Article IV of the State Constitution establishes the executive branch of state government and provides that the A . . . supreme executive power shall be vested in a governor. Nevertheless, the State Constitution requires the Governor to share some executive powers with six elected cabinet officers:

- < The Attorney General
- < The Commissioner of Agriculture
- < The Commissioner of Education
- < The Comptroller
- < The Secretary of State
- < The Treasurer

In addition to constitutional responsibilities, the Legislature has designated each cabinet member as a department head with statutory duties. Cabinet officers also share powers and duties when sitting as the Governor and Cabinet. When in this form, the Governor and Cabinet may constitute a department head or a board. This collegial form of state government is unique to Florida.

The future configuration of the Cabinet was altered in November of 1998, by the adoption of Constitutional Amendment No. 8, effective January 7, 2003. The amendment merges the offices of the Treasurer and the Comptroller into one Chief Financial Officer. As a result of these modifications, the new state Cabinet will consist of an Attorney General, a Commissioner of Agriculture, and a Chief Financial Officer. As the Comptroller heads the Department of Banking and Finance (DBF) and as the Treasurer heads the Department of Insurance (DOI), the status of these departments must be determined.

¹ See staff analysis for CS/CS SB's 662 & 232 (2002 Legislative Session) for a more detailed analysis of the present situation. During the 1999-2000 interim, staff of the Committee on Governmental Oversight and Productivity reviewed issues relating to cabinet reorganization and issued a report, Interim Project No. 2000-52, which identified a number of issues and options related to the creation of the Chief Financial Officer in the State Constitution.

A. Comptroller and Department of Banking and Finance

Article IV, s. 4(d) of the State Constitution, provides that the Comptroller is the chief fiscal officer of the state, and that this officer settles and approves accounts against the state. The Comptroller ensures that all money paid into the State Treasury has been deposited correctly, that the expenditures of state agencies have been appropriated by the Legislature, and that the state's general fiscal matters are in compliance with state laws and regulations.

Chapter 17, F.S., outlines the duties of the Comptroller. Section 17.011, F.S., authorizes the Comptroller to appoint an Assistant Comptroller. Under s. 17.03, F.S., the Comptroller is required to examine, audit, and settle claims against the state and to issue a warrant to the Treasurer to make payment out of the State Treasury.

In addition to the constitutional duties of the Comptroller, the Legislature appointed the Comptroller as head of the Department of Banking and Finance (DBF).² The Comptroller also sits on various boards, commissions, and public-private organizations and makes appointments to various boards, councils, and commissions. Since 1999, the law no longer specifies the divisions of the DBF³, but the department is currently organized along the following division lines:

1. Division of Accounting and Auditing.
2. Division of Banking.⁴
3. Division of Securities and Finance.⁵
4. Division of Information Systems.

There are also two offices within the DBF, the Office of Unclaimed Property and the Office of Financial Investigations, which have regulatory responsibilities.⁶

The DBF has 900 authorized positions for FY 2001-2002. Departmental functions are funded through both general revenue and trust funds. Fifty-five percent of the operating budget is from general revenue, with the remainder from seven trust funds. Additionally, federal funds going to Florida counties pass through the DBF. As well, the DBF has a non-operating budget in a number of trust funds.

²The Department of Banking and Finance is created in s. 20.12, F.S.

³ ch. 99-55, L.O.F., amending s. 20.12, F.S.

⁴The Division of Banking charters, examines, and regulates state-chartered financial institutions to ensure that deposits are protected from loss.

⁵The Division of Securities and Finance is responsible for reviewing applications for registration of securities dealers, investment advisers, branch offices and associated persons and examining such entities to ensure compliance with statutes and rules. Further, the division reviews applications for licensure of money transmitters, motor vehicle installment sellers, retail installment sellers, sales finance companies, home improvement installment sellers, mortgage brokers and lenders, consumer finance companies, consumer and commercial collection agencies, and cemetery companies and examines such entities.

⁶The Office of Financial Investigations responds to consumer complaints alleging violations of persons regulated by the DBF and conducts investigations of allegations fraud against state government.

B. Treasurer and the Department of Insurance

The cabinet post commonly referred to as the ATreasurer@ actually encompasses the duties of the Treasurer, Fire Marshal, and Insurance Commissioner. Statute designates the Treasurer's title as the AInsurance Commissioner and Treasurer.@⁷

Article IV, s. 4(e) of the State Constitution, provides:

The treasurer shall keep all state funds and securities. He shall disburse state funds only upon the order of the comptroller. Such order may be in any form and may require the disbursement of state funds by electronic means or by means of a magnetic tape or any other transfer medium.

Chapter 18, F.S., establishes more specific duties relating to the Treasurer position. Section 18.02, F.S., provides that the Treasurer is to pay all warrants on the treasury drawn by the Comptroller and other orders by the Comptroller for the disbursement of state funds. No money is to be paid out of the treasury except on such warrants or other orders of the Comptroller.

The Treasurer's office is responsible for investing general funds and trust funds. The Treasurer is also the cash manager for Florida state government, performs consulting services and operates a statewide cash concentration account in this capacity. The Treasurer's office is responsible for protecting and servicing funds and securities deposited as a prerequisite to doing business in the state. As administrator of the Florida Security for Public Deposits Acts, the Treasurer oversees and monitors public funds to ensure that public deposits of the state and its political subdivision maintained in Florida banks and savings associations are fully protected from loss.

In addition to the financial responsibilities of the Treasurer, the Legislature has designated the Treasurer as the head of the Department of Insurance (DOI).⁸ The Insurance Commissioner and Treasurer are responsible for regulating many types of insurance, including life, health, property, casualty, title, workers' compensation, marine, surety, and surplus lines. The Insurance Commissioner tests and licenses insurance agents, adjusters, and bail bond agents. The Insurance Commissioner is charged with investigating fraud in all lines of insurance, plus violations of the Insurance Code. Additionally, the Insurance Commissioner administers the funds for retirement of police officers and firefighters.

Pursuant to s. 20.13(2), F.S., the following 10 divisions are established within the DOI:

1. Division of Insurer Services.
2. Division of Insurance Consumer Services.
3. Division of Agents and Agencies Services.
4. Division of Rehabilitation and Liquidation.
5. Division of Risk Management.
6. Division of State Fire Marshal.
7. Division of Insurance Fraud.

⁷Section 20.13(1), F.S.

⁸Section 20.13, F.S.

8. Division of Administration.
9. Division of Treasury.
10. Division of Legal Services.

Additionally, a number of offices have been established in the DOI, which provide legislative, accounting, and administrative support. The department has 1,486.5 authorized positions for FY 2001-2002. Department activities are funded through seven trust funds.

The Legislature has also designated the Insurance Commissioner and Treasurer as the State Fire Marshal.⁹ In this capacity, the Treasurer is responsible for investigating and suppressing arson, educating firefighters and ensuring that state-owned buildings are in conformance with fire codes. The Treasurer is also responsible for the administration of the State Employees Deferred Compensation Program. The Treasurer sits on various boards, commissions and public-private entities. Additionally, the Treasurer makes appointments to various statutory boards, councils, and commissions.

C. Small County Technical Assistance Program

The Office of the Comptroller (Department of Banking and Finance) presently administers the Small County Technical Assistance Program. The purpose of the program, as stated in s. 163.05(3), F.S., "...is to provide technical assistance to small counties to enable them to implement workable solutions to financial and administrative problems." The program, initiated in 1993 through a \$250,000 appropriation from the Legislature, began by serving 31 counties with populations less than 50,000. Subsequently, the program has been expanded to \$500,000 and serves 32 counties with populations less than 75,000.

D. Regulation of Occupational Safety and Health Standards for Firefighters

Legislation enacted in 1993 (ch. 93-415, L.O.F.) created the "Florida Occupational Safety and Health Act." The act enhanced occupational safety and health through the implementation and maintenance of policies, procedures, practices, rules, and standards that were to reduce the incidence of employee accidents, occupational diseases, and fatalities for employees of the state and all political subdivisions, all public and quasi-public corporations, and private corporations. In 1999, the Legislature repealed the Florida Occupational Safety and Health Act and also abolished the Division of Safety as of July 1, 2000 (ch. 99-240, L.O.F.). Firefighters and their employers were among those covered under this act. In general, firefighters are regulated under ch. 633, F.S., which is administered by the Division of State Fire Marshal of the Department of Insurance.

E. Certified Capital Company Act

The Certified Capital Company Act (act), s. 288.99, F.S., was created in 1998 to establish a mechanism to provide financing (i.e., venture capital) via certified capital companies (CAPCOs), for qualified small businesses. This act is intended to increase the number of Florida-based

⁹Section 633.01, F.S.

venture capitalists, to facilitate access to institutional investors for smaller companies, and to create high-paying, high-skilled jobs.

Under current law, corporations, partnerships, or limited liability companies could apply for certification as a CAPCO on or before December 1, 1998. CAPCOs are venture capital firms that provide early-stage capital to other businesses. CAPCOs are eligible to receive investments from insurers (or other investors).

Insurance companies, in turn, can receive a credit against state premium taxes for each dollar contributed to a CAPCO, at the rate of 10 percent a year for 10 years, beginning with the premium tax filings for the year 2000. The purpose of this tax credit is to encourage insurance companies to invest in certified capital companies, which in turn, will make investments in qualified small businesses. Under the current program, the total amount of tax credits may not exceed \$15 million annually. Further, the tax credits allowed under the program are subject to an aggregate cap of \$150 million.

Three entities are responsible for administration of the CAPCO program. The Department of Banking and Finance is responsible for certification and decertification. The Department of Revenue oversees the tax credit filings and conducts tax audits. The Office of Tourism, Trade, and Economic Development (OTTED) is responsible for the allocation of premium tax credits and is responsible for preparing an annual report on the CAPCO program.

III. Effect of Proposed Changes:

Section 1. Creates s. 17.001, F.S., which establishes the Chief Financial Officer (CFO) as the chief fiscal officer of the state who is responsible for settling and approving accounts against the state and keeping all state funds and securities. The section reiterates the constitutional duties of the Chief Financial Officer as established in s. 4(c), Art. IV of the State Constitution.

Section 2. Creates s. 20.121, F.S., which establishes the Department of Financial Services (DFS), designates the Chief Financial Officer as the head of the DFS, and creates the following 15 divisions within the DFS:

- < Treasury
- < Consumer Services
- < Insurance
- < Financial Institutions and Securities
- < Risk Management
- < State Fire Marshal
- < Insurance Fraud
- < Rehabilitation and Liquidation
- < Information Systems
- < Legal Services
- < Financial Investigations
- < Accounting and Auditing
- < Insurance Agent and Agency Services
- < Administration

< Workers' Compensation.

The responsibilities of the Division of Insurance, as provided in the Insurance Code, include issuing certificates of authority to insurers, regulatory oversight of insurer solvency, approving policy rates and forms, performing market conduct examinations, and enforcing statutes related to insurers.

The Division of Financial Institutions and Securities is charged with the responsibility of administering the following programs and functions: (1) licensure, examination, and regulation of state-chartered financial institutions, as provided in chs. 655, 657, 658, 660, 663, 665, and 667, F.S., (2) the Florida Securities and Investor Protection Act, ch. 517, F.S., (3) mortgage brokerage and mortgage lending; ch. 494, F.S., (4) Consumer Finance Act, ch. 516, F.S., (5) retail installment sales, ch. 520, F.S., (6) the Money Transmitters' Code, ch. 560, F.S., (7) cemeteries and preneed contracts, ch. 497, F.S., (8) collection agencies, ch. 559, F.S., and (9) certified capital companies, s. 289.99, F.S. The section also provides that the Division of Financial Institutions would consist of the Bureau of Banking, Bureau of Credit Unions and Finance Entities, Bureau of Securities, and Bureau of Regulation.

As a prerequisite for serving as a director of the Division of Financial Institutions and Securities, a person must have had private-sector experience in the financial institutions or securities industries or at least 5 years of experience as a senior employee of a state or federal agency having regulatory responsibility over financial institutions or securities. Likewise, a person seeking to serve as a director of the Division of Insurance must possess prior private-sector experience working in an area that is under the regulatory jurisdiction of the Division of Insurance or at least 5 years experience as a senior employee of a state or federal agency having regulatory responsibility over the business of insurance.

The section provides that the directors of the Division of Financial Institutions and Securities and the Division of Insurance serve as the agency heads for their respective divisions, for purposes of ch. 120, F.S., and would be appointed by the Governor, in consultation with the Chief Financial Officer, and subject to confirmation by all three members of the Cabinet prior to serving in the respective positions. After the initial appointment, if the Governor or the Chief Financial Officer requests, the Governor is required to call for a vote within 30 days on whether the director would continue in office. If a director fails to obtain an affirmative vote of a three officers among the Governor and Cabinet, the subject director would be removed from office, and the Governor would appoint a replacement director, in the same manner as previously described.

The Division of Financial Institutions and Securities and the Division of Insurance are established as independent divisions housed administratively within the Department of Financial Services. The division directors have exclusive control of the budget, purchasing, personnel, transactions involving real or personal property, and regulatory matters. Each of these divisions would have adequate number of positions for attorneys, investigators, other professional personnel and administrative personnel, as determined annually in the appropriations process. The department is required to provide support services to each of these divisions pursuant to an agreement entered into between the Chief Financial Officer and the respective division director.

The Chief Financial Officer serves as agency head for the remaining 13 divisions. The Division of Financial Investigations (previously part of the Department of Banking and Finance) would continue to function as a criminal justice agency within the meaning of s. 943.045(10)(e), F.S.

Section 3. This section provides that the Division of Treasury (previously part of the Department of Insurance) would continue to be responsible for the administration of the Government Employees Deferred Compensation program, established under s. 112.215, F.S.

Section 4. The section provides that this act would not affect the validity of any judicial or administrative action involving the Department of Banking and Finance or the Department of Insurance pending January 7, 2003, and the Department of Financial Services would be substituted as a party in interest in any such action. In the event the action involves the constitutional duties of the Comptroller or the Treasurer, the Chief Financial Officer would instead be substituted as a party in interest.

Section 5. The section transfers the Department of Banking and Finance and the Department of Insurance to the Department of Financial Services by a type-two transfer.

Section 6. The section clarifies that any agency contract in effect on the bill's effective date remains in effect for the successor agency.

Sections 7 - 759 and 768 - 893. These sections provide technical and conforming changes to transfer the current programs and functions of the Department of Banking and Finance and the Department of Insurance to the Department of Financial Services and eliminate the positions of Comptroller and Treasurer and reassign the responsibilities of the respective positions to the Chief Financial Officer. Substantive changes are noted in the sections below.

Section 16. Amends s. 14.055, F.S., relating to the succession to office of Governor, to provide that upon vacancy of the office of the Governor and the office of the Lieutenant Governor, the Attorney General would become Governor. In the event the office of the Attorney General was vacant, the Chief Financial Officer would become Governor. If the office of the Chief Financial Officer were vacant, the Commissioner of Agriculture would become Governor. Presently, in the event the office of the Governor and the office of the Lieutenant Governor become vacant, the Secretary of State would become Governor, followed by the Attorney General, Comptroller, Treasurer, Commissioner of Education, and finally the Commissioner of Agriculture.

Section 151. Amends s. 121.4501, F.S., relating to the Public Employee Optional Retirement Advisory Committee, to require the Governor to appoint two members, rather than one, and to require the Chief Financial Officer, rather than the Comptroller, to appoint one member. Effective January 7, 2003, the term of office of the one member appointed by the Treasurer and the one member appointed by the Comptroller expires; and the Chief Financial Officer would choose one of those members for reappointment for the remainder of the term. Presently, there are seven members of the committee. The President of Senate and the Speaker of the House of Representatives appoint two members each and the Governor, Treasurer, and Comptroller also appoint one member each.

Section 225. Amends s. 215.555, F.S., relating to the membership of the board of directors of the Florida Hurricane Catastrophe Fund, to replace the Comptroller with the Chief Financial Officer and to replace the Treasurer with the Attorney General. Presently, the Governor, Comptroller, Treasurer, (the three current board members of the State Board of Administration), the director of the Division of Bond Finance of the State Board of Administration, and the chief operating officer of the Florida Hurricane Catastrophe Fund serve on the board. Effective January 7, 2003, the Attorney General would become a member of the State Board of Administration (along with the Governor and Chief Financial Officer).

Section 288. Amends s. 240.551, F.S., relating to the members of the board of the Florida Prepaid College Program, to reduce the number of members from seven to six due to the elimination of the positions of Comptroller and Treasurer and the substitution of the Chief Financial Officer as a board member. The Chancellor of the Board of Regents, the Executive Director of the State Board of Community Colleges, and members appointed by the Governor and subject to confirmation by the Senate would continue to serve as board members.

Section 299. Amends s. 253.02, F.S., relating to the members of the board of trustees for the Internal Improvement Trust Fund and Land Acquisition Trust Fund, to reduce the number of members from seven to four. The Chief Financial Officer is added and the board positions for the Comptroller, Treasurer, the Commissioner of Education, and the Secretary of State are eliminated. The Governor, Attorney General, and the Commissioner of Agriculture would also continue to serve on the board of trustees.

Section 314. Amends s. 280.02, F.S., relating to the public deposits program, to clarify that the term, "public depositor," as used in this chapter, means the official custodian of funds for a governmental unit who is responsible for handling public deposits. Presently, the term is defined to mean the Treasurer or other designee handling public deposits.

Section 375. Amends 288.99, F.S., relating to the Certified Capital Company Act., to establish Program Two, revise requirements for certified capital companies (CAPCOs), and revise the certification and regulation of CAPCOs.

The criteria for a qualified business that is eligible for an investment by a CAPCO is revised to require such a business to be headquartered in Florida and have its principal business located in Florida *or* to have at least 75 percent of the employees employed in Florida.

The definition of the term, "affiliate of an insurance company", is revised to mean any person who controls or holds power to vote 15, rather than 10, percent or more of the outstanding voting securities or other ownership interests of the insurance company.

Program One and Program Two are defined for purposes of the CAPCOs. Program One is defined to mean the \$150 million in premium tax credits issued under this section in 1999, and the regulation of CAPCOs. Program Two is defined to mean the \$150 million in premium tax credits to be issued if certain conditions are met in subsection (17), the allocation of such credits, and the regulation of CAPCOs.

Program Two would be implemented in the first year in which the total insurance premium tax collected exceeds collections for fiscal year 2000-01 by more than the total amount of tax credits issued and used by CAPCOs in that year.

Conforming changes are made to provide for the implementation of Program Two. The annual premium tax credit limit is changed from \$15 million to 10 percent of the total tax credit available to reflect the implementation of Program Two. This change would provide an annual tax credit of \$15 million for each program (10 percent of \$300 million or \$30 million). The insurance premium tax credit authorized by Program Two may not be used by certified investors until the annual return due March 1, 2004.

In addition, the section also provides that the maximum amount of certified capital for premium tax allocation for any certified investor and its affiliates by one or more CAPCOs is limited to 15 percent of the total tax credits available, thereby decreasing the annual cap from \$15 million per year to \$4.5 million per year.

Many of the powers and duties previously performed by the Office of Tourism, Trade, and Economic Development of the Executive Office of the Governor, such as the allocation of the premium tax credit and the review of investments by CAPCOs, are transferred to the Department of Financial Services. Technical conforming changes are made to replace references to the Department of Banking and Finance with the Department of Financial Services, since the cabinet positions of Comptroller and Treasurer are merged into the Chief Financial Officer cabinet position, effective January 7, 2003.

Section 420. Amends s. 376.3075, F.S., relating to the board of directors of the Inland Protection Financing Corporation, to reduce the number of directors from five to four due to the elimination of the positions of Comptroller and Treasurer and the addition of the Chief Financial Officer. The Governor, the chair of the Florida Black Business Investment Board, and the secretary of the Department of Environmental Protection would also continue to serve as directors of the corporation.

Section 482. Amends s. 420.101, F.S., relating to the board of directors of the Housing Development Corporation of Florida, to reduce the number of nonvoting members from five to four due to the elimination of the Department of Banking and Finance and the Department of Insurance representatives and the substitution of the head of the Department of Financial Services or his or her representative.

Section 626. Amends s. 624.307, F.S., related to general powers of the Department of Financial Services. The current law provides that the Department of Insurance may employ actuaries who are at-will employees who shall serve at the pleasure of the Insurance Commissioner. The bill provides that the new department may employ actuaries who are at-will employees who shall serve at the pleasure of the Director of the Division of Insurance (who has final agency authority over matters within the division's jurisdiction, including regulation of insurance rates.)

Section 655. Amends s. 624.91, F.S., to add two members to the board of the Florida Healthy Kids Corporation, increasing total board membership from 12 to 14: one member appointed by the CFO from among three members nominated by the Florida Association of Counties,

representing rural counties, and one member appointed by the Governor from among three members nominated by the Florida Association of Counties, representing urban counties.

Section 759. Creates ss. 633.801, F.S., through 633.821, F.S. Section 633.801, F.S., designates these sections as the “Florida Firefighters Occupational Safety and Health Act” (FFOSHA). These sections:

633.802-- Defines terms. “Firefighter employee” is defined as any person engaged in any employment, public or private, as a firefighter under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, responding to or assisting with fire or medical emergencies, whether or not the firefighter is on duty.

“Firefighter employer” is defined as the state and all political subdivisions of this state, all public and quasi-public corporations in this state, and every person carrying on any employment for this state, political subdivision of this state, and public and quasi-public corporations in this state, which employs firefighters.

The definitions of firefighter employer and employee exclude individuals appointed by the Division of Forestry of the Department of Agriculture and Consumer Services.

633.803, F.S. -- Provides that it is the intent of the Legislature to enhance firefighter occupational safety and health in the state by adopting policies, procedures, and rules that reduce the incidence of accidents, firefighter occupational diseases, and firefighter fatalities compensable under chapter 440 or otherwise.

633.804, F.S. -- Requires the Division of State Fire Marshal (division) to adopt rules governing the “manner, means, and frequency” of fire employer and employee safety inspections and consultations conducted by insurers and self-insurers.

633.805, F.S. -- Requires the division to make a “continuous” study of firefighter occupational diseases and the ways and means for the control and prevention of such diseases. Authorizes the division to adopt rules necessary for such control and prevention.

633.806, F.S. -- Requires the division to make studies and investigations regarding safety provisions and the causes of firefighter injuries in firefighter places of employment. Requires the division to make recommendations to the Legislature, firefighter employers, and insurers regarding the best means of preventing firefighter injuries. Authorizes the division to adopt rules regarding procedures for conducting investigations of firefighter employers.

633.807, F.S. -- Requires every firefighter employer to furnish and use safety devices and adopt and use processes reasonably adequate to render such employment and place of employment safe for the protection of the firefighters. Provides requirements for a firefighter employer to meet in order to provide safe places of employment for the firefighter employee.

633.808, F.S. -- Authorizes the division to: 1) investigate and prescribe by rule safety devices, safeguards, and other means of protection that must be adopted for the prevention of workplace

accidents, and to determine those devices, safeguards, and other means of protection that are suitable, 2) assist firefighter employers in the development and implementation of safety training programs by contracting with professional safety organizations; and 3) adopt rules prescribing record keeping requirements.

633.809, F.S. -- Provides for identification of firefighter employers with a high degree of work-related injuries. Authorizes the division to develop means and methods to identify and reduce work-related injuries. The section allows firefighter employers to submit their own safety and health program to the division, for division approval. The division must review the program submitted, and approve or disapprove such program within 60 days or such program would be deemed approved. Requires the division to adopt rules setting forth the criteria for safety and health programs.

633.810, F.S. --Requires a firefighter employer who employs 20 or more firefighter employees to establish a workplace safety committee. In addition, a firefighter employer who employs fewer than 20 firefighter employees must establish such a committee or designate a workplace safety coordinator *if* the division determines that such employer has a high frequency or severity of work-related injuries. Authorizes the division to adopt rules governing the membership of workplace safety committees and the meetings of those committees. The composition, selection, and function of such committees must be a topic of negotiation for those employers operating under a collective bargaining agreement. Requires that firefighter employees be compensated their regular hourly wage while participating in workplace safety committees or workplace safety coordinator training, meetings, or other such duties.

633.811, F.S.--Establishes penalties for firefighter employers who fail to or refuse to comply with the FFOSHA or any rule adopted pursuant to the FFOSHA. The division may assess against the firefighter employer a civil penalty of not less than \$100 and not more than \$5,000 for each day the violation continues after the firefighter employer has been given notice of such violation. The total penalty for each violation may not exceed \$50,000. Penalties assessed and collected must be deposited in the Insurance Regulatory Trust Fund. Requires a hearing to be held in the county in which the violation, omission, failure, or refusal is alleged to have occurred. Authorizes the division to adopt rules requiring penalties commensurate with the frequency or severity of safety violations.

633.812, F.S. --Requires the division to cooperate with the federal government in order to avoid duplicate inspections and to ensure safe places of firefighter employment. Provides exceptions to the division requirements for private firefighter employers who meet certain specifications.

633.813, F.S. --Permits an insurer to cancel coverage of any firefighter employer who has been found by the division to have a high frequency or severity of work-related injuries and fails to implement a safety and health program.

633.814, F.S. --Requires that the amounts needed to administer the FFOSHA shall be disbursed from the Insurance Regulatory Trust Fund.

633.815, F.S. --Permits the division and authorized representatives of the division to enter and inspect firefighter places of employment at any reasonable time. Establishes a second-degree misdemeanor penalty for refusal to admit such persons for inspection purposes.

633.816, F.S. --Requires firefighter employees and firefighter employers to comply with the rules adopted by the division. A firefighter employer may not discharge, threaten to discharge, or cause a firefighter employee to be discharged, intimidated, coerced, or disciplined for certain reasons.

633.817, F.S. --Permits the division to seek remedies regarding firefighter employers or insurers who fail to comply with the FFOSHA and rules adopted pursuant to the FFOSHA.

633.818, F.S. --Provides that a firefighter employer who makes a false statement to an insurer or falsifies a document submitted to an insurer is guilty of a misdemeanor of the second degree.

633.819, F.S. -- Provides a second-degree misdemeanor penalty for any person who knowingly and willfully falsifies or conceals any material fact. Provides a statute of limitations of 5 years after the date the act was committed or 5 years after the date the act was discovered, if not discovered within 30 days.

633.820, F.S. --Provides that the FFOSHA applies to volunteer firefighters and volunteer fire departments.

633.821, F.S.--Authorizes the division to adopt rules for the purpose of ensuring safe working conditions for all firefighter employees by:

1. Enforcing effective standards;
2. Assisting and encouraging firefighter employers to maintain safe working conditions; and
3. Providing for education and training in the field of safety.

The division may adopt by rule subparts C through T and subpart Z of 29 Code of Federal Regulations (C.F.R.) s. 1910;¹⁰ Standard 1500, paragraphs five through seven (Personal Alert Safety System) of the National Fire Protection Association, Inc. (NFPA); and American National Standards Institute (ANSI) A 10.4-1990 (relating to personnel hoists and employee elevators).

With regard to 29 C.F.R. s. 1910.134(g)(4),¹¹ the bill provides that the two individuals located outside the “immediately dangerous to life and health atmosphere” may be assigned to an additional role so long as those individuals are able to “immediately perform assistance or rescue activities without jeopardizing the safety or health of any firefighter working at an incident.”

¹⁰ 29 Code of Federal Regulations (C.F.R.) s. 1910 pertains to hazardous waste operations and emergency response regarding firefighters.

¹¹ 29 C.F.R. s. 1910.134(g)(4) provides procedures for interior structural firefighting. The section requires the employer to ensure that: 1) At least two employees enter the “immediately dangerous to life or health” (IDLH) atmosphere and remain in visual or voice contact with one another at all times; 2) At least two employees are located outside the IDLH atmosphere; and 3) All employees engaged in interior structural firefighting use self-contained breathing apparatuses (SCBA).

This is commonly referred to as 2-in 2-out. Such role may include incident commander, pumper operator, engineer, or driver.

Each county, municipality, and special district must implement such provision by April 1, 2003, except as otherwise provided. The exception applies to a county, municipality, or special district that is unable to implement such provision by April 1, 2003, without adding additional personnel to its firefighting staff or expending significant additional funds. Such a county, municipality, or special district will have an additional 6 months within which to implement such provision. If that county, municipality, or special district decides to implement the 6-month extension, then that county, municipality, or special district must notify the division of that decision within 30 days after its decision to extend the time.

After the extension, if that county, municipality, or special district is still unable to implement such provisions without adding additional personnel to its firefighting staff or expending significant additional funds, such county, municipality, or special district will be exempt from the requirements of 29 C.F.R. s. 1910.134(g)(4). The division may adopt any rule necessary to implement, interpret, and make specific such provisions. The division may not adopt by rule any other standard or standards of the Occupational Safety and Health Administration or the National Fire Protection Association relating to ss. 633.801 through 633.821, F.S., and firefighter employment safety, without specific legislative authority.

Section 760. Amends s. 633.31, F.S., to change the name of the Firefighters Standards and Training Council to the Firefighters Employment, Standards, and Training Council, expands the membership on the council from 9 members to 13 members, and revises the appointment process. Two members would be appointed by the Florida Fire Chiefs Association, two members would be appointed by the Florida Professional Firefighters Association, five members would be appointed by the State Fire Marshal, and one member each appointed by the Florida League of Cities, the Florida Association of Counties, the Florida Association of Special Districts, and the Florida Fire Marshal Association, respectively. Currently, the State Fire Marshal appoints all nine members. The section also provides additional duties for the Firefighters Employment, Standards, and Training Council.

Section 761. Amends s. 633.33, F.S., to expand the powers and duties of the Firefighters Employment, Standards, and Training Council to include consulting and cooperating with private and public entities concerning employment and safety of firefighters.

Section 762 - 764. Provides technical and conforming changes to implement the provisions of the "Florida Firefighters Occupational Safety and Health Act."

Section 765. Provides a declaration of important state interest regarding the Florida Firefighters Occupational Safety and Health Act.

Section 893. Amends s. 163.05, F.S., to transfer the oversight of the Small County Technical Assistance Program (program) from the Office of the Comptroller to the Commissioner of Agriculture (Commissioner).

In addition, the bill requires providers bidding on the program contract to be a nonprofit 501c(3) foundation with a governing board having representation of county commissioners and professional staff of the county. Providers must have substantial, documented experience working closely with and providing educational and technical assistance to county governments. The bill also expands the areas of assistance provided under the program contract to include economic and community development.

The bill provides that requests for proposals be required no more frequently than every third year. In addition, all contracts in existence on the effective date of this legislation between the Comptroller and other parties regarding the program will be accepted by the Commissioner and shall remain in force and effect according to its terms.

The bill relieves the Legislative Committee on Intergovernmental Relations of their duties regarding oversight and conducting annual performance reviews of the program. The Commissioner becomes responsible for conducting the performance reviews as necessary to ensure that the goals and objectives of the program are being met.

Section 894. repeals Specific Appropriation 2252 in the 2002-03 General Appropriations Act and an identical amount is appropriated to the Department of Agriculture and Consumer Services from the General Revenue Fund for the purpose of program funding. The effective date of this legislation is June 30, 2002.

Section 895. Amends s. 112.313, F.S., related to standards of conduct for public officers. Current law prohibits a public officer or employee of any agency from having or holding any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, subject to certain exceptions. The bill provides that this subsection shall not prohibit and it shall not be deemed a conflict if the Governor and members of the Cabinet have an employment or contractual relationship with a business entity if the Governor and members of the Cabinet possess the power of appointment, confirmation, or termination and the regulatory power over the business entity resides in another agency, or when the regulatory power that the Governor and members of the Cabinet exercise over the business entity or agency is to adopt rules establishing the organizational structure of the agency. The definition of "agency" in s. 112.312, F.S. (applicable to s. 112.313, F.S.) includes any department, *division*, bureau, or commission, and other specified governmental entities.

Section 896. Repeals ss. 18.03, 18.07, 18.09, 18.091, and 18.22, relating to duties of the Treasurer that are transferred to the Chief Financial Officer, and s. 657.067, F.S., which relates to an outdated provision regarding credit unions.

This section also repeals s 627.0623, F.S., related to restrictions on expenditures and solicitations of insurers and affiliates, currently applicable to the office of the Treasurer. The current law prohibits any insurer, affiliate, or officer of an insurer or affiliate, or any political action committee representing the interests of such persons from making a contribution in excess of \$100 (and prohibits the Treasurer or any candidate for that office from accepting such a contribution) for any election, to or on behalf of the Treasurer or any candidate for that office. The current definition of "insurer" includes entities licensed by the Department of Insurance

under specified chapters of the Florida Insurance Code, but does not include insurance agents. Under the bill, these limitations would not apply to the office of the Chief Financial Officer. The current statute also prohibits any employee (as defined) of the Department of Insurance from soliciting a campaign contribution for the Treasurer or any candidate for that office from any insurer, affiliate, or officer of an insurer or affiliate. Under the bill, this prohibition would not apply to employees of the Department of Financial Services.

This section also repeals s. s. 655.019, F.S., related to campaign contributions for the office of the Comptroller. The current law prohibits any financial institution which is licensed or authorized pursuant to chapters 655-665 and any officer, executive officer, affiliate, subsidiary or service corporation of such financial institution, and any political action committee representing the interests of such financial institution from making a contribution in excess of \$100 (and prohibits the Comptroller or any candidate for that office from accepting such a contribution) for any election, to or on behalf of the Comptroller or any candidate for that office. Under the bill, these limitations would not apply to the office of the Chief Financial Officer. The current statute also prohibits any employee (as defined) of the Department of Banking and Finance from soliciting a campaign contribution for the Comptroller or any candidate for that office from any person who is licensed or authorized to do business with the department or who has an application pending for licensure. Under the bill, this prohibition would not apply to employees of the Department of Financial Services.

Section 897. Provides that if any law that is amended by this act was also amended by a law enacted at the 2002 Regular Session of the Legislature, such law would be construed as if it had been enacted at the same session of the Legislature, and full effect should be given to each, if possible.

Section 898. Provides that except as otherwise expressly provided in this act, this act would take effect January 7, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

An insurer would earn a vested credit against premium tax liability of 100 percent of the certified capital invested in the CAPCO, but the insurer could use no more than 10 percent of the tax credit annually. (See B. and C., below, for the impact of the tax credits.)

B. Private Sector Impact:

To the extent that certain regulatory and related administrative functions are consolidated, greater efficiencies and reduced regulatory costs would be anticipated by entities regulated by the department.

To the extent that certain regulatory and related administrative functions are consolidated, greater efficiencies and reduced regulatory costs would be anticipated by entities regulated by the department.

CAPCOs (Section 375). Assuming that the proposed tax credits (\$150 million over 10 years) are fully subscribed, insurance companies would be entitled to take tax credits of \$15 million per year against their insurance premium tax filings beginning with the filings made in February 2003 for calendar year 2002. A company may carry forward any unused taxes indefinitely.

The bill would not impose any additional costs on the private sector. Companies seeking certification as a CAPCO would continue to pay the \$7,500 application fee to the Department of Banking and Finance.

Expansion of the CAPCO program could result in additional venture capital investing and high-wage job creation in Florida-based technology businesses. Smaller or emerging businesses, including early stage technology businesses, may have access to additional sources of venture capital for start-up or expansion.

Investors in CAPCOs, and the CAPCOs themselves, would have an opportunity to receive positive returns on their investments.

C. Government Sector Impact:

There will be costs associated with merging departments, though the amounts are unknown at this time. It would be expected that there would be efficiencies associated with a merger as well, such as one less agency head, reduced administrative costs, and the consolidation of regional offices. The bill does not require that a staff reduction occur as part of the merger process.

According to the Department of Banking and Finance, it is anticipated that the merger of the Department of Banking and Finance and the Department of Insurance would result in

a reduction of 26 positions that represents 11.8 percent reduction in administrative positions.

CAPCOs (Section 375.) The annualized reduction in General Revenue due to Program Two credits will be \$15 million, beginning in FY 2003-04, as explained below.

The bill provides that the CAPCO Program Two is implemented in the first year fiscal year in which the total insurance premium tax collections, as determined by the Revenue Estimating Conference, exceed collections for fiscal year 2000-01 by more than the total amount of tax credits issued and used by certified investors for that year. For FY 2001-02, premium tax collections were estimated (by the Florida Consensus Estimating Conference Revenue Analysis for Fall, 2001) to exceed collections for FY 2000-01 by approximately \$27.4 million. This amount is in excess of the \$13.5 million in premium tax credits used for FY 2000-01. Since the triggers or thresholds will appear to have been met, it is anticipated that Program Two would be implemented, but the bill provides that the insurance premium tax credit for Program Two may not be used by insurers until the annual return due March 1, 2004 and that the premium tax credit for that return may not exceed \$10 million. It is estimated that an addition \$2.50 million in tax credits would be included in each estimated payment in April and June of 2003 for a total of \$15.0 million impact in FY 2003-04. Each of the following nine fiscal years will realize credits of \$15 million and a corresponding reduction in General Revenue.

The fiscal impact of the bill on the Department of Financial Services is indeterminate. The bill transfers many of the powers and duties presently performed by OTTED to the Department.

Presently, three companies are certified by the Department of Banking and Finance as CAPCOs. Initially, 15 companies submitted applications for certification in Program One. The bill does not require current CAPCOs to apply for certification for Program Two. The number of additional entities that would apply for certification is indeterminate.

VI. Technical Deficiencies:

Section 103.091, F.S., (section 116 of the bill) provides for the voting representation of the state executive committee of a political party to members of the party which include the Governor, cabinet officers, and certain elected positions within the Legislature; however, the positions of Treasurer and Comptroller have not been deleted nor has the position of Chief Financial Officer been substituted.

VII. Related Issues:

Section 375 (CAPCOs) does not appear to specifically limit the annual amount of tax credits available for Program Two. The section does not appear to require a certified capital company already certified with the Department of Banking and Finance for Program One to apply for certification under Program Two. According to the department, this could potentially allow the commingling of funds between Program One and Program Two for the same CAPCO, which

could create difficulties in ascertaining the performance and compliance of a CAPCO. This change would also be in conflict with the requirements of the prior program that required these funds to be managed as a single fund.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
