

CHAPTER 99-155

Committee Substitute for Committee Substitute for Senate Bill No. 150

An act relating to state financial matters; amending s. 17.05, F.S.; specifying certain powers of the Comptroller and the Department of Banking and Finance; providing requirements; specifying procedures, rights, and requirements for enforcing compliance with certain subpoenas; providing for assessing certain costs under certain circumstances; amending s. 17.076, F.S.; providing for payment of retirement benefits by direct deposit; amending s. 20.04, F.S.; exempting the Department of Banking and Finance from certain organizational requirements; amending s. 20.12, F.S.; specifying purposes and duties of the Comptroller and providing that provisions of this section do not apply to the Office of Chief Fiscal Officer; deleting divisions of the department; creating the Office of Financial Investigations; repealing s. 20.12(3) and (4), F.S., relating to duties of the Comptroller and the Office of Financial Investigations; amending s. 110.1165, F.S.; deleting a reference for purposes of specifying a statute of limitations for certain purposes; specifying a time limit for filing actions to recover certain compensation; providing application; amending s. 112.061, F.S.; providing for designees of agency heads to perform specified functions; relating to per diem and travel expenses; amending s. 215.422, F.S.; deleting certain requirements relating to vendors and state purchasing agreements and warrants; amending s. 216.011, F.S.; revising a definition; amending s. 216.102, F.S.; revising duties of the Comptroller relating to preparing and publishing certain financial information; amending s. 273.02, F.S.; revising a definition; amending ss. 17.11, 215.3206, 215.3208, 216.183, 216.212, 216.237, 280.08, 288.778, 494.0011, 494.0017, 494.0041, 494.00421, 494.0061, 494.0062, 494.0072, 497.407, 497.435, 516.03, 520.998, 655.90, and 655.942, F.S., to conform; providing compatibility with s. 216.351, F.S.; providing an effective date.

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

Section 1. Section 17.05, Florida Statutes, is amended to read:

17.05 Subpoenas; sworn statements; enforcement proceedings ~~May examine under oath parties and persons privy to accounts.—~~

(1) ~~The Comptroller of this state~~ may demand and require full answers on oath from any and every person, party or privy to any account, claim, or demand against or by the state, such as it may be the Comptroller's ~~his or her~~ official duty to examine into, and which answers the Comptroller may require to be in writing and to be sworn to before the Comptroller or the department ~~himself or herself~~ or before any judicial officer or clerk of any court of the state so as to enable the such Comptroller to determine ~~decide~~ as to the justice or legality of such account, claim, or demand.

(2) In exercising authority under this chapter, the Comptroller or his or her designee may:

(a) Issue subpoenas, administer oaths, and examine witnesses.

(b) Require or permit a person to file a statement in writing, under oath or otherwise as the Comptroller or his or her designee requires, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.

(3) Subpoenas shall be issued by the Comptroller or his or her designee under seal commanding such witnesses to appear before the Comptroller or the Comptroller's representative or the department at a specified time and place and to bring books, records, and documents as specified or to submit books, records, and documents for inspection. Such subpoenas may be served by an authorized representative of the Comptroller or the department.

(4) In the event of noncompliance with a subpoena issued pursuant to this section, the Comptroller or the department may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the subpoenaed person to appear and testify and to produce books, records, and documents as specified in the subpoena. The court may grant legal, equitable, or injunctive relief, including, but not limited to, issuance of a writ of ne exeat or the restraint by injunction or appointment of a receiver of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena and the Comptroller or the department has completed the audit, examination, or investigation. The Comptroller or the department is entitled to the summary procedure provided in s. 51.011 and the court shall advance the cause on its calendar. Costs incurred by the Comptroller or the department to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena shall be charged against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

Section 2. Subsection (8) is added to section 17.076, Florida Statutes, to read:

17.076 Direct deposit of funds.—

(8) Effective July 1, 2000, all new recipients of retirement benefits from this state shall be paid by direct deposit of funds. A retiree may request from the department an exemption from the provisions of this subsection when such retiree can demonstrate a hardship. The department may pay retirement benefits by state warrant when deemed administratively necessary.

Section 3. Subsection (3) of section 20.04, Florida Statutes, is amended to read:

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(3) For their internal structure, all departments, except for the Department of Banking and Finance, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation, must adhere to the following standard terms:

(a) The principal unit of the department is the “division.” Each division is headed by a “director.”

(b) The principal unit of the division is the “bureau.” Each bureau is headed by a “chief.”

(c) The principal unit of the bureau is the “section.” Each section is headed by an “administrator.”

(d) If further subdivision is necessary, sections may be divided into “subsections,” which are headed by “supervisors.”

Section 4. Section 20.12, Florida Statutes, is amended to read:

20.12 Department of Banking and Finance.—There is created a Department of Banking and Finance.

(1) The head of the Department of Banking and Finance is the Comptroller.

(2) As provided in s. 4(d), Art. IV of the State Constitution, the purpose of the Comptroller is to serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state.

(3) The Comptroller shall execute the programs and policies as adopted by the Legislature. The following divisions are established within the Department of Banking and Finance:

~~(a) Division of Accounting and Auditing.~~

~~(b) Division of Administration.~~

~~(c) Division of Banking.~~

~~(d) Division of Finance.~~

~~(e) Division of Information Systems.~~

~~(f) Division of Securities and Investor Protection.~~

~~(g) Division of Financial Investigations.~~

(4) There is created as a subunit within the Department of Banking and Finance the Office of Financial Investigations. The Office of Financial Investigations shall:

(a) Function as a criminal justice agency within the meaning of s. 943.045(10)(d); and

(b) Have a separate budget.

Section 5. Subsections (3) and (4) of section 20.12, Florida Statutes, as amended by this act are repealed effective January 7, 2003.

Section 6. Subsection (1) of section 110.1165, Florida Statutes, is amended, and subsection (3) is added to said section, to read:

110.1165 Executive branch personnel errors.—

(1) An agency of the executive branch, including the State University System, shall establish procedures for the receipt, consideration, and disposition of a claim regarding pay or benefits brought by an employee when that employee is damaged as a result of being provided with erroneous written information by the employing agency regarding his or her pay or benefits, and the employee detrimentally relies upon such written information. In order to qualify for the relief provided by this section, the employee's reliance on the representation must have been reasonable and based only upon the written representations made by those persons authorized by the agency head to make such representations. Furthermore, the erroneous calculation and payment of an employee's salary, wages, or benefits is not among the written representations which will trigger relief under this section. ~~Section 95.11(4) is the statute of limitations for filing any action to recover salary, wages, overtime, benefits, or related damages by or on behalf of a state employee, or any action under this section. No distinctions between the terms "salary" and "wages" in construing the provisions of s. 95.11(4) apply to this section or the statute of limitations for filing any action under this section.~~

(3) The time limit to file any action to recover compensation, including, but not limited to, salaries, wages, overtime pay, fringe benefits, or damages or penalties relating to errors in such compensation from, by, or on behalf of a state officer or employee is 2 years from the date of the alleged error in payment of such compensation. The time limit applies in all disputes over compensation for work performed by state officers or employees, and is not confined to cases arising under subsections (1) and (2).

Section 7. Paragraphs (d) and (f) of subsection (3), paragraph (b) of subsection (4), paragraphs (a), (d), and (f) of subsection (7), and subsections (12) and (13) of section 112.061, Florida Statutes, 1998 Supplement, are amended to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(3) AUTHORITY TO INCUR TRAVEL EXPENSES.—

(d) Travel expenses of public employees for the sole purpose of taking merit system or other job placement examinations, written or oral, shall not be allowed under any circumstances, except that upon prior written approval of the agency head or his or her designee, candidates for executive or professional positions may be allowed travel expenses pursuant to this section.

(f) A traveler who becomes sick or injured while away from his or her official headquarters and is therefore unable to perform the official business of the agency may continue to receive subsistence as provided in subsection (6) during this period of illness or injury until such time as he or she is able to perform the official business of the agency or returns to his or her official headquarters, whichever is earlier. Such subsistence may be paid when approved by the agency head or his or her designee.

(4) OFFICIAL HEADQUARTERS.—The official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located except that:

(b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be the employee's official headquarters, and he or she shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head or his or her designee.

(7) TRANSPORTATION.—

(a) All travel must be by a usually traveled route. In case a person travels by an indirect route for his or her own convenience, any extra costs shall be borne by the traveler; and reimbursement for expenses shall be based only on such charges as would have been incurred by a usually traveled route. The agency head or his or her designee shall designate the most economical method of travel for each trip, keeping in mind the following conditions:

1. The nature of the business.

2. The most efficient and economical means of travel (considering time of the traveler, impact on the productivity of the traveler, cost of transportation, and per diem or subsistence required). When it is more efficient and economical to either the traveler or the agency head, jet service offered by any airline, whether on state contract or not, may be used when the cost is within an approved threshold determined by the agency head or his or her designee.

3. The number of persons making the trip and the amount of equipment or material to be transported.

(d)1. The use of privately owned vehicles for official travel in lieu of publicly owned vehicles or common carriers may be authorized by the agency head or his or her designee. Whenever travel is by privately owned vehicle, the traveler shall be entitled to a mileage allowance at a fixed rate of 25 cents per mile for state fiscal year 1994-1995 and 29 cents per mile thereafter or the common carrier fare for such travel, as determined by the agency head. Reimbursement for expenditures related to the operation, maintenance, and ownership of a vehicle shall not be allowed when privately owned vehicles are used on public business and reimbursement is made pursuant to this paragraph, except as provided in subsection (8).

2. All mileage shall be shown from point of origin to point of destination and, when possible, shall be computed on the basis of the current map of the

Department of Transportation. Vicinity mileage necessary for the conduct of official business is allowable but must be shown as a separate item on the expense voucher.

(f) The agency head or his or her designee may grant monthly allowances in fixed amounts for use of privately owned automobiles on official business in lieu of the mileage rate provided in paragraph (d). Allowances granted pursuant to this paragraph shall be reasonable, taking into account the customary use of the automobile, the roads customarily traveled, and whether any of the expenses incident to the operation, maintenance, and ownership of the automobile are paid from funds of the agency or other public funds. Such allowance may be changed at any time, and shall be made on the basis of a signed statement of the traveler, filed before the allowance is granted or changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to paragraph (d).

(12) **ADVANCEMENTS.**—Notwithstanding any of the foregoing restrictions and limitations, an agency head or his or her designee may make, or authorize the making of, advances to cover anticipated costs of travel to travelers. Such advancements may include the costs of subsistence and travel of any person transported in the care or custody of the traveler in the performance of his or her duties.

(13) **DIRECT PAYMENT OF EXPENSES BY AGENCY.**—Whenever an agency requires an employee to incur either Class A or Class B travel on emergency notice to the traveler, such traveler may request the agency to pay his or her expenses for meals and lodging directly to the vendor, and the agency may pay the vendor the actual expenses for meals and lodging during the travel period, limited to an amount not to exceed that authorized pursuant to this section. In emergency situations, the agency head or his or her designee may authorize an increase in the amount paid for a specific meal, provided that the total daily cost of meals does not exceed the total amount authorized for meals each day. The agency head or his or her designee may also grant prior approval for a state agency to make direct payments of travel expenses in other situations that result in cost savings to the state, and such cost savings shall be documented in the voucher submitted to the Comptroller for the direct payment of travel expenses. The provisions of this subsection shall not be deemed to apply to any legislator or to any employee of the Legislature.

Section 8. Subsections (5), (6), and (9) of section 215.422, Florida Statutes, are amended to read:

215.422 Warrants, vouchers, and invoices; processing time limits; dispute resolution; agency or judicial branch compliance.—

(5) All purchasing agreements between a state agency or the judicial branch and a vendor, applicable to this section, shall include a statement of the vendor's rights and the state's responsibilities under this section. The vendor's rights shall include being provided with the ~~name and~~ telephone

number of the vendor ombudsman within the Department of Banking and Finance, which information shall also be placed on all agency or judicial branch purchase orders.

(6) The Department of Banking and Finance shall monitor each agency's and the judicial branch's compliance with the time limits and interest penalty provisions of this section. The department shall provide a report to an agency or to the judicial branch if the department determines that the agency or the judicial branch has failed to maintain an acceptable rate of compliance with the time limits and interest penalty provisions of this section. The department shall establish criteria for determining acceptable rates of compliance. The report shall also include a list of late vouchers or payments, the amount of interest owed or paid, and any corrective actions recommended. The department shall perform monitoring responsibilities, pursuant to this section, using the Management Services and Purchasing Subsystem or the Florida Accounting Information Resource Subsystem State Automated Management Accounting Subsystem provided in s. 215.94. Each agency and the judicial branch shall be responsible for the accuracy of information entered into the Management Services and Purchasing Subsystem and the Florida Accounting Information Resource Subsystem State Automated Management Accounting Subsystem for use in this monitoring.

(9) Each agency and the judicial branch shall include in the official position description of every officer or employee who is responsible for the approval or processing of vendors' invoices or distribution of warrants to vendors that the requirements of this section are mandatory. ~~In addition, each employee shall be required to sign a statement at least annually that he or she has been provided a copy of this section and the rules promulgated by the Comptroller. The statement shall also acknowledge that the employee understands the approval and processing time limitations and the provision for automatic interest penalty payments. Each agency and the judicial branch shall certify its compliance with this subsection to the Comptroller on or before February 1 of each year.~~

Section 9. Paragraph (x) of subsection (1) of section 216.011, Florida Statutes, 1998 Supplement, is amended to read:

216.011 Definitions.—

(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, each of the following terms has the meaning indicated:

(x) "Operating capital outlay" means equipment, fixtures, and other tangible personal property of a nonconsumable and nonexpendable nature, the value or cost of which is \$1,000 ~~\$500~~ or more and the normal expected life of which is 1 year or more, and hardback-covered bound books that are circulated to students or the general public, the value or cost of which is \$25 or more, and hardback-covered bound books, the value or cost of which is \$250 ~~\$100~~ or more.

Section 10. Section 216.102, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 216.102, F.S., for present text.)

216.102 Filing of financial information; handling by Comptroller; penalty for noncompliance.—

(1) By September 30 of each year, each agency supported by any form of taxation, licenses, fees, imposts, or exactions, the judicial branch, and, for financial reporting purposes, each component unit of the state as determined by the Comptroller shall prepare, using generally accepted accounting principles, and file with the Comptroller the financial and other information necessary for the preparation of annual financial statements for the State of Florida as of June 30. In addition, each such agency and the judicial branch shall prepare financial statements showing the financial position and results of agency or branch operations as of June 30 for internal management purposes.

(a) Each state agency and the judicial branch shall record the receipt and disbursement of funds from federal sources in a form and format prescribed by the Comptroller. The access to federal funds by the administering agencies or the judicial branch may not be authorized until:

1. The deposit has been recorded in the Florida Accounting Information Resource Subsystem using proper, consistent codes that designate deposits as federal funds.

2. The deposit and appropriate recording required by this paragraph have been verified by the Office of the Treasurer.

(b) The Comptroller shall publish a statewide policy detailing the requirements for recording receipt and disbursement of federal funds into the Florida Accounting Information Resource Subsystem and provide technical assistance to the agencies and the judicial branch to implement the policy.

(2) Financial information must be contained within the Florida Accounting Information Resource Subsystem. Other information must be submitted in the form and format prescribed by the Comptroller.

(a) Each component unit shall file financial information and other information necessary for the preparation of annual financial statements with the agency or branch designated by the Comptroller by the date specified by the Comptroller.

(b) The state agency or branch designated by the Comptroller to receive financial information and other information from component units shall include the financial information in the Florida Accounting Information Resource Subsystem and shall include the component units' other information in its submission to the Comptroller.

(3) The Comptroller shall:

(a) Prepare and furnish to the Auditor General annual financial statements for the state on or before December 31 of each year, using generally accepted accounting principles.

(b) Prepare and publish a comprehensive annual financial report for the state in accordance with generally accepted accounting principles on or before February 28 of each year.

(c) Furnish the Governor, the President of the Senate, and the Speaker of the House of Representatives with a copy of the comprehensive annual financial report prepared pursuant to paragraph (b).

(d) Notify each agency and the judicial branch of the data that is required to be recorded to enhance accountability for tracking federal financial assistance.

(e) Provide reports, as requested, to executive or judicial branch entities, the President of the Senate, the Speaker of the House of Representatives, and the members of the Florida Congressional Delegation, detailing the federal financial assistance received and disbursed by state agencies and the judicial branch.

(f) Consult with and elicit comments from the Executive Office of the Governor on changes to the Florida Accounting Information Resource Subsystem which clearly affect the accounting of federal funds, so as to ensure consistency of information entered into the Federal Aid Tracking System by state executive and judicial branch entities. While efforts shall be made to ensure the compatibility of the Florida Accounting Information Resource Subsystem and the Federal Aid Tracking System, any successive systems serving identical or similar functions shall preserve such compatibility.

The Comptroller may furnish and publish in electronic form the financial statements and the comprehensive annual financial report required under paragraphs (a), (b), and (c).

(4) If any agency or the judicial branch fails to comply with subsection (1) or subsection (2), the Comptroller may refuse to honor salary claims for agency or branch fiscal and executive staff until the agency or branch corrects its deficiency.

(5) The Comptroller may withhold any funds payable to a component unit that does not comply with subsection (1) or subsection (2) until the component unit corrects its deficiency.

(6) The Comptroller may adopt rules to administer this section.

Section 11. Section 273.02, Florida Statutes, is amended to read:

273.02 Record and inventory of certain property.—The word “property” as used in this section means equipment, fixtures, and other tangible personal property of a nonconsumable and nonexpendable nature, the value or cost of which is ~~\$1,000~~ \$500 or more and the normal expected life of which is 1 year or more, and hardback-covered bound books that are circulated to students or the general public, the value or cost of which is \$25 or more, and hardback-covered bound books, the value or cost of which is ~~\$250~~ \$100 or more. Each item of property which it is practicable to identify by marking shall be marked in the manner required by the Auditor General. Each

custodian shall maintain an adequate record of property in his or her custody, which record shall contain such information as shall be required by the Auditor General. Once each year, on July 1 or as soon thereafter as is practicable, and whenever there is a change of custodian, each custodian shall take an inventory of property in his or her custody. The inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled. All publicly supported libraries shall be exempt from marking hardback-covered bound books, as required by this section. The catalog and inventory control records maintained by each publicly supported library shall constitute the property record of hardback-covered bound books with a value or cost of \$25 or more included in each publicly supported library collection and shall serve as a perpetual inventory in lieu of an annual physical inventory. All books identified by these records as missing shall be traced and reconciled, and the library inventory shall be adjusted accordingly.

Section 12. Subsection (2) of section 17.11, Florida Statutes, is amended to read:

17.11 To report disbursements made.—

(2) The Comptroller shall also cause to have reported from the Florida Accounting Information Resource Subsystem ~~state automated management accounting subsystem~~ no less than quarterly the disbursements which agencies made to small businesses, as defined in the Florida Small and Minority Business Assistance Act of 1985; to certified minority business enterprises in the aggregate; and to certified minority business enterprises broken down into categories of minority persons, as well as gender and nationality subgroups. This information shall be made available to the agencies, the Minority Business Advocacy and Assistance Office, the Governor, the President of the Senate, and the Speaker of the House of Representatives. Each agency shall be responsible for the accuracy of information entered into the Florida Accounting Information Resource Subsystem ~~state automated management accounting subsystem~~ for use in this reporting.

Section 13. Subsection (4) of section 215.3206, Florida Statutes, is amended to read:

215.3206 Trust funds; termination or re-creation.—

(4) For the purposes of this section, the Governor, Chief Justice, and agencies shall review the trust funds as they are identified by a unique 6-digit code in the Florida Accounting Information Resource Subsystem ~~State Automated Management Accounting Subsystem (SAMAS)~~ at a level composed of the 2-digit organization level 1, the 1-digit state fund type 2, and the first three digits of the fund identifier. The Governor, Chief Justice, and agencies may also conduct their review and make recommendations concerning accounts within such trust funds.

Section 14. Subsection (3) of section 215.3208, Florida Statutes, is amended to read:

215.3208 Trust funds; schedule for termination; legislative review.—

(3) For the purposes of this section, the Legislature shall review the trust funds as they are identified by a unique 6-digit code in the Florida Accounting Information Resource Subsystem ~~State Automated Management Accounting Subsystem (SAMAS)~~ at a level composed of the 2-digit organization level 1, the 1-digit state fund type 2, and the first three digits of the fund identifier. When a statutorily created trust fund that was in existence on November 4, 1992, has more than one 6-digit code, the Legislature may treat it as a single trust fund for the purposes of this section. The Legislature may also conduct its review concerning accounts within such trust funds.

Section 15. Section 216.183, Florida Statutes, is amended to read:

216.183 Entities using performance-based program budgets; chart of accounts.—State agencies and the judicial branch for which a performance-based program budget has been appropriated shall utilize the chart of accounts used by the Florida Accounting Information Resource Subsystem ~~State Automated Management Accounting Subsystem~~ in the manner described in s. 215.93(3). The chart of accounts for state agencies and the judicial branch for which a performance-based program budget has been appropriated shall be developed and amended, if necessary, in consultation with the Department of Banking and Finance and the Executive Office of the Governor.

Section 16. Subsection (4) of section 216.212, Florida Statutes, is amended to read:

216.212 Budgets for federal funds; restrictions on expenditure of federal funds.—

(4) The Office of the Comptroller and the Executive Office of the Governor, in consultation with the Office of the Treasurer and the Office of the Auditor General, shall develop and maintain a means to ensure the compatibility of the Florida Accounting Information Resource Subsystem ~~State Automated Management Accounting Subsystem~~ and the Federal Aid Tracking System. Any successive systems serving identical or similar functions shall preserve such compatibility.

Section 17. Section 216.237, Florida Statutes, is amended to read:

216.237 Availability of any remaining funds; agency maintenance of accounting records.—Any remaining funds from the General Revenue Fund and trust fund spending authority not awarded to agencies pursuant to section 2 of this bill shall be available to agencies for innovative projects which generate a cost savings, increase revenue, or improve service delivery. Innovative projects which generate a cost savings shall receive greater consideration when awarding innovation investment funds. Any trust fund authority granted under this program shall be utilized in a manner consistent with the statutory authority for the use of said trust fund. Any savings realized as a result of implementing the innovative project shall be used by the agency to establish an internal innovations fund. State agencies which are awarded funds for innovative projects shall utilize the chart of accounts

used by the Florida Accounting Information Resource Subsystem State Automated Management Accounting System in the manner described in s. 215.93(3). Such chart of accounts shall be developed and amended in consultation with the Department of Banking and Finance and the Executive Office of the Governor to separate and account for the savings that result from the implementation of the innovative projects and to keep track of how the innovative funds are reinvested by the state agency to fund additional innovative projects, which may include, but not be limited to, expenditures for training and information technology resources. Guidelines for the establishment of such internal innovations fund shall be provided by the Department of Management Services. Any agency awarded funds under this section shall maintain detailed accounting records showing all expenses, loan transfers, savings, or other financial actions concerning the project. Any savings realized as a result of implementing the innovative project shall be quantified, validated, and verified by the agency. A final report of the results of the implementation of each innovative project shall be submitted by each participating agency to the Governor's Office of Planning and Budgeting and the legislative appropriations committees by June 30 of the fiscal year in which the funds were received and ensuing fiscal years for the life of the project.

Section 18. Subsection (1) of section 280.08, Florida Statutes, 1998 Supplement, is amended to read:

280.08 Procedure for payment of losses.—When the Treasurer determines that a default or insolvency has occurred, he or she shall provide notice as required in s. 280.085(1) and implement the following procedures:

(1) The Treasurer, in cooperation with the ~~Director of the Division of Banking of the~~ Department of Banking and Finance or the receiver of the qualified public depository in default, shall ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits.

Section 19. Section 288.778, Florida Statutes, is amended to read:

288.778 Department of Banking and Finance.—~~The Division of Banking of the~~ Department of Banking and Finance shall review the corporation's activities once every 24 months to determine compliance with this part and other related laws and rules and to evaluate the corporation's operations. ~~The department division~~ shall prepare a report based on its review and evaluation with recommendation for any corrective action. The president shall submit to the ~~department division~~ regular reports on the corporation's activities. The content and frequency of such reports shall be determined by the ~~department division~~. ~~The department division~~ shall charge a fee for conducting the review and evaluation and preparing the related report, which fee shall not be in excess of the examination fee paid by financial institutions chartered or licensed under the financial institutions code of this state.

Section 20. Subsection (3) of section 494.0011, Florida Statutes, 1998 Supplement, is amended to read:

494.0011 Powers and duties of the department.—

(3) All fees, charges, and fines collected by the department pursuant to ss. 494.001-494.0077 shall be deposited in the State Treasury to the credit of the Regulatory Trust Fund under the ~~Division of Finance of the department.~~

Section 21. Subsection (3) of section 494.0017, Florida Statutes, is amended to read:

494.0017 Mortgage Brokerage Guaranty Fund.—

(3) The Mortgage Brokerage Guaranty Fund shall be disbursed as provided in former s. 494.044, upon approval by the department ~~Division of Finance~~, to any party to a mortgage financing transaction who:

(a) Is adjudged by a court of competent jurisdiction of this state to have suffered monetary damages as a result of any violation of chapter 494 in effect prior to October 1, 1991, committed by a licensee or registrant;

(b) Has filed a claim for recovery prior to January 1, 1992; and

(c) Has suffered monetary damages as a result of an act occurring prior to October 1, 1991.

Section 22. Paragraph (m) of subsection (2) of section 494.0041, Florida Statutes, is amended to read:

494.0041 Administrative penalties and fines; license violations.—

(2) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (1) may be taken:

(m) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by ss. 494.001-494.0077 and the rules of the department ~~Division of Finance~~.

Section 23. Section 494.00421, Florida Statutes, is amended to read:

494.00421 Fees earned upon obtaining a bona fide commitment.—Notwithstanding the provisions of ss. 494.001-494.0077, any mortgage brokerage business which contracts to receive from a borrower a mortgage brokerage fee upon obtaining a bona fide commitment shall accurately disclose in the mortgage brokerage agreement:

(1) The gross loan amount.

(2) In the case of a fixed-rate mortgage, the note rate.

(3) In the case of an adjustable rate mortgage:

(a) The initial note rate.

(b) The length of time for which the initial note rate is effective.

- (c) The frequency of changes.
- (d) The limitation upon such changes including adjustment to adjustment cap and life cap.
- (e) Whether the loan has any potential for negative amortization.
- (f) Identification of the margin-interest rate differential.
- (g) Identification of a nationally recognized index which index must be free from control of the mortgage broker, mortgage brokerage business, mortgage lender, or correspondent mortgage lender.
- (4) The estimated net proceeds to be paid directly to the borrower. "Estimated net proceeds" means the cash to be received by the borrower after payment of any fees, charges, debts, liens, or encumbrances to perfect the lien of the new mortgage and establish the agreed-upon priority of the new mortgage.
- (5) The lien priority of the new proposed mortgage.
- (6) The number of calendar days, which are mutually agreed upon, within which the mortgage brokerage business shall obtain a bona fide mortgage commitment.
- (7)(a) The following statement, in no less than 12-point boldface type immediately above the signature lines for the borrowers:

"You are entering into a contract with a mortgage brokerage business to obtain a bona fide mortgage loan commitment under the same terms and conditions as stated hereinabove or in a separate executed good faith estimate form. If the mortgage brokerage business obtains a bona fide commitment under the same terms and conditions, you will be obligated to pay the mortgage brokerage business fees, including, but not limited to, a mortgage brokerage fee, even if you choose not to complete the loan transaction. If the provisions of s. 494.00421, Florida Statutes, are not met, the mortgage brokerage fee can only be earned upon the funding of the mortgage loan. The borrower may contact the Department of Banking and Finance, ~~Division of Finance~~, Tallahassee, Florida, regarding any complaints that the borrower may have against the mortgage broker or the mortgage brokerage business. The telephone number of the department as set by rule of the department is: ...[insert telephone number]..."

(b) Paragraph (a) does not apply to nonresidential mortgage loan commitments in excess of \$1 million.

- (8) Any other disclosure required pursuant to s. 494.0038.

~~The Department of Banking and Finance shall review the effects of this section on consumers and shall issue a written report, by January 31, 1997, to the President of the Senate and the Speaker of the House of Representatives. Such report shall summarize the findings of the department's review and include recommended changes, if any, to this section.~~

Section 24. Subsection (3) of section 494.0061, Florida Statutes, is amended to read:

494.0061 Mortgage lender's license requirements.—

(3) Each initial application for a mortgage lender's license must be in written form prescribed by the department. The ~~department division~~ may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The department may require that each officer, director, and ultimate equitable owner of a 10-percent or greater interest in the applicant submit a complete set of fingerprints taken by an authorized law enforcement officer.

Section 25. Subsection (3) of section 494.0062, Florida Statutes, is amended to read:

494.0062 Correspondent mortgage lender's license requirements.—

(3) Each initial application for a correspondent mortgage lender's license must be in written form prescribed by the department. The ~~department division~~ may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The department may require that each officer, director, and ultimate equitable owner of a 10-percent or greater interest submit a complete set of fingerprints taken by an authorized law enforcement officer.

Section 26. Paragraph (m) of subsection (2) of section 494.0072, Florida Statutes, is amended to read:

494.0072 Administrative penalties and fines; license violations.—

(2) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (1) may be taken:

(m) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by ss. 494.001-494.0077 or the rules of the ~~department Division of Finance~~.

Section 27. Subsections (4), (9), and (12) of section 497.407, Florida Statutes, are amended to read:

497.407 Certificate of authority; annual statement; renewal; transfer.—

(4) The fee payable to the department for issuance of the original certificate of authority and each annual renewal thereof shall be set by the board at an amount not to exceed \$500 and shall accompany each application for an original certificate and, thereafter, each annual statement. Any person or entity that is part of a common business enterprise that has a certificate of authority issued pursuant to this section and elects to operate under a name other than that of the common business enterprise shall submit an application on a form adopted by the board to become a branch registrant. Upon the approval of the board that such entity qualifies to sell preneed contracts under this chapter except for the requirements of subparagraph

(2)(c)1. and if the certificateholder meets the requirements of such subparagraph, a branch registration shall be issued. Each branch registrant may operate under the certificate of authority of the common business enterprise upon the payment of a fee established by the board not to exceed \$100 accompanying the application on April 1 annually. The fee shall be payable to the Regulatory Trust Fund under the department ~~Division of Finance~~.

(9) In addition to any other penalty that may be provided for under this chapter, the board may levy a fine not to exceed \$50 a day for each day the certificateholder fails to file its annual statement, and the board may levy a fine not to exceed \$50 a day for each day the certificateholder fails to file the statement of activities of the trust. Upon notice to the certificateholder by the board that the certificateholder has failed to file the annual statement or the statement of activities of the trust, the certificateholder's authority to sell preneed contracts shall cease while such default continues. The board shall deposit all sums collected under this section to the credit of the Regulatory Trust Fund under the department ~~Division of Finance~~.

(12) Each certificateholder shall pay to the Regulatory Trust Fund under the department ~~Division of Finance~~ an amount established by the board not to exceed \$5 for each preneed contract entered into. This amount must be paid within 60 days after the end of each quarter. These funds must be used to defray the cost of the board and the department in administering the provisions of this chapter.

Section 28. Subsection (3) of section 497.435, Florida Statutes, is amended to read:

497.435 Administrative fine in lieu of revocation or suspension of certificate of authority.—

(3) The fine shall be deposited into the Regulatory Trust Fund under the department ~~Division of Finance~~.

Section 29. Subsection (2) of section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(2) FEES.—Fees herein provided for shall be collected by the department and shall be turned into the State Treasury to the credit of the regulatory trust fund under the ~~Division of Finance of the department~~. The department shall have full power to employ such examiners or clerks to assist the department as may from time to time be deemed necessary and fix their compensation.

Section 30. Section 520.998, Florida Statutes, is amended to read:

520.998 Regulatory Trust Fund.—All fees, charges, and fines collected by the department pursuant to this chapter shall be deposited in the State Treasury to the credit of the Regulatory Trust Fund under the ~~Division of Finance of the department~~.

Section 31. Paragraph (a) of subsection (1) of section 655.90, Florida Statutes, is amended to read:

655.90 Closing during emergencies and other special days.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Commissioner” means the officer of this state designated by law as the head of the Department of Banking and Finance and any other person lawfully exercising such powers, whether as a deputy to such officer,[;] as a ~~division~~ director, bureau chief, or financial administrator of or within such department,[;] or otherwise. ~~In the absence of any person lawfully exercising the powers of the head of the Department of Banking and Finance, the director of the Division of Banking or any other person lawfully exercising the powers of the director of the division, whether as another division director, as a bureau chief or financial administrator, or otherwise.~~

Section 32. Subsection (1) of section 655.942, Florida Statutes, is amended to read:

655.942 Standards of conduct; institutions.—

(1) A financial institution which is licensed or authorized to do business pursuant to the financial institutions codes, or its officers, directors, or employees may not make or grant any loan or gratuity to any employee of the ~~department~~ Division of Banking who has authority to examine or otherwise supervise such financial institution.

Section 33. The amendments made by this act to sections 216.011, 216.102, 216.183, 216.212, and 216.237, Florida Statutes, shall take effect notwithstanding the provisions of section 216.351, Florida Statutes.

Section 34. This act shall take effect October 1, 1999.

Approved by the Governor May 13, 1999.

Filed in Office Secretary of State May 13, 1999.