CHAPTER 2002-404

House Bill No. 3-E

An act relating to governmental reorganization; amending s. 20.04, F.S.; providing an exception to departmental structure requirements; deleting reference to the Department of Banking and Finance and substituting the Department of Financial Services; creating s. 20.121, F.S.; creating the Department of Financial Services; specifying the Chief Financial Officer as the head of the department; providing for departmental structure; creating the Financial Services Commission; providing commission composition, structure, and powers; establishing the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation within the commission; providing powers, duties, and responsibilities of such offices; requiring the commission to establish certain additional organizational structure of such offices; providing for appointment and specifying qualifications of directors of such offices; providing for administrative support for such offices; transferring certain programs, including employees and equipment, from the Department of Banking and Finance and the Department of Insurance to the Department of Financial Services, the Office of Insurance Regulation, and the Office of Financial Institutions and Securities Regulation; transferring certain trust funds from the Department of Banking and Finance and the Department of Insurance to the Department of Financial Services, the Office of Insurance Regulation, and the Office of Financial Institutions and Securities Regulation; specifying that certain statutory appointment responsibilities vested by law in certain officers are the responsibility of the Chief Financial Officer; specifying that rules of the Department of Banking and Finance and the Department of Insurance become rules of the Department of Financial Services or the Financial Services Commission; providing for preservation of validity of judicial or administrative actions involving such departments; providing for substitution of certain parties in interest in such actions; creating the Committee of Transition Management; providing for independent function; providing for treatment for administrative purposes as an office of the Executive Office of the Governor; providing for appointment of committee members; specifying powers and duties of the committee; requiring certain reports, proposed organizational plans, and written recommendations to the Financial Services Commission and the Legislature; providing additional legislative intent relating to statutory responsibility for certain appointments becoming the responsibility of the Chief Financial Officer or the Financial Services Commission; providing for conforming legislation; providing for assistance of certain legislative substantive committees by the Division of Statutory Revision for certain purposes; amending s. 1, ch. 2002-194, Laws of Florida; providing an exception to a transfer provided for in said act; amending s. 288.99, F.S.; redefining the terms "early stage technology business" and "qualified distribution"; defining the terms "Program One" and "Program Two"; revising procedures and dates for certification and decertification under Program One and

Program Two; revising the process for earning premium tax credits; providing a limitation on tax credits under Program Two; providing for distributions under both programs; requiring the Department of Revenue to adopt certain rules; providing for additional premium; providing for additional allocations of certain insurance premium tax credits under certain circumstances; authorizing the Department of Revenue to adopt rules; amending s. 517.12, Florida Statutes; exempting general lines insurance agents and life insurance agents from registration requirements relating to sales of certain securities in certain circumstances; providing for the applicability of specified sections of the Insurance Code; amending s. 570.07, F.S.; specifying emergency powers of the Commissioner of Agriculture; amending s. 624.91, F.S.; revising provisions of the Florida Healthy Kids Corporation Act, to conform; creating ss. 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, and 633.821, F.S.; providing a short title; providing definitions; providing legislative intent; authorizing the Division of State Fire Marshal of the Department of Insurance to adopt rules related to firefighter safety inspections; requiring the division to conduct a study of firefighter occupational diseases; authorizing representatives of the division to enter and inspect any place of firefighter employment; requiring firefighter employers to provide safe employment conditions; authorizing the division to adopt rules that prescribe means for preventing accidents in places of firefighter employment and establish standards for construction, repair, and maintenance; requiring the division to inspect places of firefighter employment and to develop safety and health programs for those firefighter employers whose employees have a high frequency or severity of work-related injuries; requiring certain firefighter employers to establish workplace safety committees and to maintain certain records; providing penalties for firefighter employers who violate provisions of the act; providing exemptions; providing a penalty for the failure to implement a safety and health program and cancellations; providing for expenses of administration; providing penalties for refusal to admit division; specifying firefighter employee rights and responsibilities; providing division remedies for failure to comply; providing penalties for firefighter employers who make false statements to the division or to an insurer; providing criminal penalties for false, malicious, or fraudulent statements and representatives; specifying applicability to volunteer firefighters and fire departments; providing for workplace safety and to authorize the division to adopt rules including federal standards for assuring safe working conditions for all firefighter employees; amending s. 633.31, F.S.; changing the name of and expanding and diversifying the Firefighters Standards and Training Council; amending s. 633.33, F.S.; providing additional duties of the council; amending ss. 383.3362, 633.330, and 633.32, F.S.; conforming language; providing a declaration of important state interest; amending s. 163.05, F.S.; revising legislative findings; providing criteria for contracts between the Commissioner of Agriculture and

program providers; deleting responsibilities of the Comptroller and the Legislative Committee on Intergovernmental Relations; authorizing the Commissioner of Agriculture to award contracts to provide assistance to small counties; requiring the Commissioner of Agriculture to provide fiscal oversight and performance reviews; providing an appropriation; providing effective dates.

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

Section 1. Effective January 7, 2003, 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 Financial Services ~~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 2. Effective January 7, 2003, section 20.121, Florida Statutes, is created to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(1) DEPARTMENT HEAD.—The head of the Department of Financial Services is the Chief Financial Officer.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions:

(a) The Division of Accounting and Auditing, which shall include the following bureau and office:

1. The Bureau of Unclaimed Property.

2. The Office of Fiscal Integrity which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The office may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If during

an investigation the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

(b) The Division of State Fire Marshal.

(c) The Division of Risk Management.

(d) The Division of Treasury, which shall include a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan established under s. 112.215 for state employees.

(e) The Division of Insurance Fraud.

(f) The Division of Rehabilitation and Liquidation.

(g) The Division of Insurance Agents and Agency Services.

(h) The Division of Consumer Services, which shall include a Bureau of Funeral and Cemetery Services.

(i) The Division of Workers' Compensation.

(j) The Division of Administration.

(k) The Division of Legal Services.

(l) The Division of Information Systems.

(m) The Office of Insurance Consumer Advocate.

(3) FINANCIAL SERVICES COMMISSION.—Effective January 7, 2003, there is created within the Department of Financial Services the Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which shall for purposes of this section be referred to as the commission. Commission members shall serve as agency head of the Financial Services Commission. The commission shall be a separate budget entity and shall be exempt from the provisions of s. 20.052. Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

(a) STRUCTURE.—The major structural unit of the commission is the office. Each office shall be headed by a director. The following offices are established:

1. The Office of Insurance Regulation, which shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of

certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Insurance Code or chapter 636. The head of the Office of Insurance Regulation is the Director of the Office of Insurance Regulation.

2. The Office of Financial Institutions and Securities Regulation, which shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. The head of the office is the Director of the Office of Financial Institutions and Securities Regulation. The Office of Financial Institutions and Securities Regulation shall include a Bureau of Financial Investigations, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The bureau may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If, during an investigation, the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

(b) ORGANIZATION.—The commission shall establish by rule any additional organizational structure of the offices. It is the intent of the Legislature to provide the commission with the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability.

(c) POWERS.—Commission members shall serve as the agency head for purposes of rulemaking under ss. 120.536-120.565 by the commission and all subunits of the commission. Each director is agency head for purposes of final agency action under chapter 120 for all areas within the regulatory authority delegated to the director's office.

(d) APPOINTMENT AND QUALIFICATIONS OF DIRECTORS.—The commission shall appoint or remove each director by a majority vote consisting of at least three affirmative votes, with both the Governor and the Chief Financial Officer on the prevailing side. The minimum qualifications of the directors are as follows:

1. Prior to appointment as director, the director of the Office of Insurance Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full-time in areas within the scope of the subject matter jurisdiction of the Office of Insurance Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over insurers or insurance agencies.

2. Prior to appointment as director, the director of the Office of Financial Institutions and Securities Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full-time in areas within the subject matter jurisdiction of the Office of Financial Institutions and Securities Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal

agency having regulatory responsibility over financial institutions, finance companies, or securities companies.

(e) ADMINISTRATIVE SUPPORT.—The offices shall have a sufficient number of attorneys, examiners, investigators, other professional personnel to carry out their responsibilities and administrative personnel as determined annually in the appropriations process. The Department of Financial Services shall provide administrative and information systems support to the offices.

Section 3. Transfers.—

(1) The following programs, including the incumbent employees in the existing positions of such programs on January 6, 2003, and all property issued and assigned directly to such employees, are hereby transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes:

(a) From the Department of Banking and Finance to the Department of Financial Services:

1. The Financial Accountability for Public Funds Program.

2. The Comptroller and Cabinet Affairs Program.

3. The Bureau of Funeral and Cemetery Services.

(b) From the Department of Insurance to the Department of Financial Services:

1. The Treasury Program.

2. The State Fire Marshal Program.

3. The Risk Management Program.

4. The Office of Insurance Consumer Advocate.

5. The Division of Insurance Fraud.

6. The Division of Rehabilitation and Liquidation.

7. The Division of Agents and Agencies Services, except for those portions of the division that implement functions assigned to the Office of Insurance Regulation under s. 20.121(3)(a)1., Florida Statutes, as created by this act.

8. The Division of Insurance Consumer Services, which is renamed the Division of Consumer Services.

9. The Division of Legal Services, except for those positions whose responsibilities involve the functions assigned to the Office of Insurance Regulation.

10. The Division of Information Systems.

11. The Office of the Treasurer, the Administration Program, and the Office of the Chief of Staff of the Treasurer.

(c) From the Department of Banking and Finance to the Office of Financial Institutions and Securities Regulation, the Financial Institutions Regulatory Program.

(d) From the Department of Insurance to the Office of Insurance Regulation:

1. The Division of Insurer Services.

2. Those portions of the Division of Agents and Agency Services that implement functions assigned to the Office of Insurance Regulation under s. 20.121(3)(a)1., Florida Statutes, as created by this act.

3. Those positions within the Division of Legal Services that are not transferred to the Department of Financial Services under subparagraph (b)9.

For the purposes of this section, employees transferred from the Department of Banking and Finance and the Department of Insurance to the Department of Financial Services or the Financial Services Commission shall not be considered new employees for the purpose of subjecting such employees to an employee probationary period.

(2) That portion of the Division of Workers' Compensation transferred pursuant to chapter 2002-194, Laws of Florida, to the Department of Insurance, including the incumbent employees in the existing positions of such division on January 6, 2003, and all property issued and assigned directly to such employees, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Insurance to the Department of Financial Services.

(3) The following trust funds are transferred:

(a) From the Department of Banking and Finance to the Department of Financial Services:

1. The Child Support Depository Trust Fund, FLAIR number 44-2-080.

2. The Child Support Clearing Trust Fund, FLAIR number 44-2-081.

3. The Collections Internal Revenue Clearing Trust Fund, FLAIR number 44-2-101.

4. The Consolidated Miscellaneous Deduction Clearing Trust Fund, FLAIR number 44-2-139.

5. The Consolidated Payment Trust Fund, FLAIR number 44-2-140.

6. The Electronic Funds Transfer Clearing Trust Fund, FLAIR number 44-2-188.

7. The Employee Refund Clearing Trust Fund, FLAIR number 44-2-194.

8. The Federal Tax Levy Clearing Trust Fund, FLAIR number 44-2-274.

9. The Federal Use of State Lands Trust Fund, FLAIR number 44-2-307.

10. The Florida Retirement Clearing Trust Fund, FLAIR number 44-2-323.

11. The Hospital Insurance Tax Clearing Trust Fund, FLAIR number 44-2-370.

12. The Miscellaneous Deductions Restoration Trust Fund, FLAIR number 44-2-577.

13. The Preneed Funeral Contract Consumer Protection Trust Fund, FLAIR number 44-2-536.

14. The Prison Industries Trust Fund, FLAIR number 44-2-385.

15. The Social Security Clearing Trust Fund, FLAIR number 44-2-643.

16. The Tobacco Settlement Clearing Trust Fund, FLAIR number 44-2-123.

17. The Trust Funds Trust Fund, FLAIR number 44-2-732.

18. The Unclaimed Property Trust Fund, FLAIR number 44-2-007.

19. The Working Capital Trust Fund, FLAIR number 44-2-792.

(b) From the Department of Insurance to the Department of Financial Services:

1. The Agents and Solicitors County Tax Trust Fund, FLAIR number 46-2-024.

2. The Florida Casualty Insurance Risk Management Trust Fund, FLAIR number 46-2-078.

3. The Government Employees Deferred Compensation Trust Fund, FLAIR number 46-2-155.

4. The Rehabilitation Administrative Expense Trust Fund, FLAIR number 46-2-582.

5. The Special Disability Trust Fund, FLAIR number 46-2-798.

6. The State Treasurer Escrow Trust Fund, FLAIR number 46-2-622.

7. The Treasurer's Administrative And Investment Trust Fund, FLAIR number 46-2-725.

8. The Treasury Cash Deposit Trust Fund, FLAIR number 46-2-720.

9. The Treasurer Investment Trust Fund, FLAIR number 46-2-728.

10. The Workers' Compensation Administration Trust Fund, FLAIR number 46-2-795.

(c) From the Department of Banking and Finance to the Office of Financial Institutions and Securities Regulation within the Department of Financial Services:

1. The Administrative Trust Fund, FLAIR number 44-2-021, except the moneys in fund account number 44-2-021003 are transferred from the Department of Banking and Finance to the Office of Chief Financial Officer.

2. The Anti-Fraud Trust Fund, FLAIR number 44-2-038.

3. The Comptroller's Federal Equitable Sharing Trust Fund, FLAIR number 44-2-719.

4. The Financial Institutions' Regulatory Trust Fund, FLAIR number 44-2-275.

5. The Mortgage Brokerage Guaranty Trust Fund, FLAIR number 44-2-485.

6. The Regulatory Trust Fund, FLAIR number 44-2-573.

7. The Securities Guaranty Fund, FLAIR number 44-2-626.

(d) From the Department of Insurance to the Department of Financial Services, the Insurance Commissioner's Regulatory Trust Fund, FLAIR number 46-2-393. There is created within the trust fund a subaccount for purposes of funding the Office of Insurance Regulation.

(4) The authority to make appointments to the Citizens Property Insurance Corporation shall remain with the Chief Financial Officer as provided in Committee Substitute for Senate Bill 1418 as enacted by the Legislature in the 2002 Regular Session.

(5) This section shall take effect January 7, 2003.

Section 4. (1) Effective January 7, 2003, the rules of the Department of Banking and Finance and of the Department of Insurance that were in effect on January 6, 2003, shall become rules of the Department of Financial Services or the Financial Services Commission as is appropriate to the corresponding regulatory or constitutional function and shall remain in effect until specifically amended or repealed in the manner provided by law.

Section 5. (1) This act shall not affect the validity of any judicial or administrative action involving the Department of Banking and Finance or the Department of Insurance pending on January 7, 2003, and the Department of Financial Services, or the Financial Services Commission, or the respective office, shall be substituted as a party in interest in any such action.

(2) Notwithstanding subsection (1), if the action involves the constitutional functions of the Comptroller or Treasurer, the Chief Financial Officer shall instead be substituted as a party in interest.

Section 6. Transitional provisions.—

(1)(a) There is created the Committee of Transition Management. The committee shall function independently but shall for administrative purposes be treated as an office of the Executive Office of the Governor.

(b) The Governor, the Comptroller, the Treasurer, the chair of the House Fiscal Responsibility Council, and the chair of the Senate Appropriations Committee shall each appoint one member to the committee.

(c) The committee shall oversee the transition to the new Department of Financial Services and the new Financial Services Commission. The management duties of the office shall include, but not be limited to:

1. Providing a written report that specifies the placement of those positions that are transferred to the Chief Financial Officer, the Department of Financial Services, and the Offices of the Financial Services Commission under this act. The committee shall provide the report to the Governor, the Cabinet, the President of the Senate, the Speaker of the House of Representatives, the chair of the House Fiscal Responsibility Council, and the chair of the Senate Appropriations Committee.

2. Submitting to the Financial Services Commission a proposed organizational plan for the commission, which plan the commission may adopt by rule.

3. Providing written recommendations to the commission, the President of the Senate, and the Speaker of the House of Representatives, by no later than February 1, 2003, as to statutory changes that are necessary or desirable to facilitate the operations of the department.

(d) The Department of Banking and Finance, the Department of Insurance, the Office of the Comptroller, and the Office of the Treasurer shall fully cooperate with the Committee of Transition Management and shall promptly provide the office with any requested information.

Section 7. Notwithstanding the provisions of ss. 216.292 and 216.351, Florida Statutes, upon approval by the Legislative Budget Committee, the Executive Office of the Governor may transfer funds and positions between agencies to implement this act.

Section 8. Conforming legislation.—The Legislature recognizes that there is a need to conform the Florida Statutes to the policy decisions reflected in this act and that there is a need to resolve apparent conflicts between any other legislation that has been or may be enacted during 2002 and the creation by this act of the Department of Financial Services, the Office of Insurance Regulation, the Office of Financial Institutions and Securities Regulation, and the Chief Financial Officer. Therefore, in the interim between this act becoming a law and the 2003 Regular Session of the

Legislature or an earlier special session addressing this issue, the Division of Statutory Revision shall provide the relevant substantive committees of the Senate and the House of Representatives with assistance, upon request, to enable such committees to prepare draft legislation to conform the Florida Statutes and any legislation enacted during 2002 to the provisions of s. 20.121, Florida Statutes, as created by this act. It is specifically the intent of the Legislature that, until June 1, 2003, the statutory responsibility for appointments to commissions, boards, associations, councils, committees, or other collegial bodies now vested in the Comptroller, the Treasurer, the Insurance Commissioner, or the State FIre Marshal shall become the responsibility of the Chief Financial Officer.

Section 9. Effective July 1, 2002, subsection 1 of section 1. of chapter 2002-194, Laws of Florida, is amended to read:

Section 1. (1) All powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of the Division of Workers' Compensation are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Insurance, except as otherwise provided in this subsection, as follows: the full-time equivalent positions and the associated funding for salaries, benefits, other capital outlay, and expenses related to oversight of medical services in workers' compensation provider relations, dispute and complaint resolution, program evaluation, data review and analysis ~~data management~~, and review of carrier medical bill payments on issues which are jurisdictionally governed by the Agency for Health Care Administration, including, but not limited to, the duties in s. 440.13(3), (7), (8), (11)(a), (11)(c), (12), (13), and (14), Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Agency for Health Care Administration; the full-time equivalent positions and the associated funding for salaries, benefits, other capital outlay, and expenses related to the rehabilitation and reemployment of injured workers are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Education; and the full-time equivalent positions and the associated funding for salaries, benefits, other capital outlay, and expenses related to the administration of child labor laws under chapter 450, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Business and Professional Regulation. To the extent feasible, the positions transferred to the Department of Insurance will be reclassified to pay grades comparable to the positions established by the Department of Labor and Employment Security, based on the classification codes and specifications of the positions for work to be performed at the Department of Insurance. The number of positions the department establishes may not exceed the number of authorized positions and the salary and benefits that were authorized for the Division of Workers' Compensation within the Department of Labor and Employment Security prior to the transfer. The Department of Insurance is further authorized to reassign, reorganize, reclassify, or otherwise transfer positions to appropriate administrative subdivisions within the department and to establish such

regional offices as are necessary to properly enforce and administer its responsibilities under the Florida Insurance Code and chapter 440, Florida Statutes. The department may also enter into contracts with public or private entities to administer its duties and responsibilities associated with the transfer of the Division of Workers' Compensation.

Section 10. Effective July 1, 2002, Subsections (3) and (4), paragraph (b) of subsection (5), paragraph (a) of subsection (6), paragraphs (a), (c), (d), (e), (f), (g), and (h) of subsection (7), paragraph (a) of subsection (8), paragraphs (a) and (b) of subsection (9), paragraph (f) of subsection (10), and subsection (11) of section 288.99, Florida Statutes, are amended, paragraph (i) is added to subsection (7) of said section, and subsection (17) is added to said section, to read:

288.99 Certified Capital Company Act.—

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

(a) "Affiliate of an insurance company" means:

1. Any person directly or indirectly beneficially owning, whether through rights, options, convertible interests, or otherwise, controlling, or holding power to vote 15 ~~10~~ percent or more of the outstanding voting securities or other voting ownership interests of the insurance company;

2. Any person 15 ~~10~~ percent or more of whose outstanding voting securities or other voting ownership interest is directly or indirectly beneficially owned, whether through rights, options, convertible interests, or otherwise, controlled, or held with power to vote by the insurance company;

3. Any person directly or indirectly controlling, controlled by, or under common control with the insurance company;

4. A partnership in which the insurance company is a general partner; or

5. Any person who is a principal, director, employee, or agent of the insurance company or an immediate family member of the principal, director, employee, or agent.

(b) "Certified capital" means an investment of cash by a certified investor in a certified capital company which fully funds the purchase price of either or both its equity interest in the certified capital company or a qualified debt instrument issued by the certified capital company.

(c) "Certified capital company" means a corporation, partnership, or limited liability company which:

1. Is certified by the department in accordance with this act.

2. Receives investments of certified capital from two or more unaffiliated certified investors.

3. Makes qualified investments as its primary activity.

(d) "Certified investor" means any insurance company subject to premium tax liability pursuant to s. 624.509 that invests ~~contributes~~ certified capital.

(e) "Department" means the Department of Banking and Finance.

(f) "Director" means the director of the Office of Tourism, Trade, and Economic Development.

(g) "Early stage technology business" means a qualified business that is:

1. Involved, at the time of the certified capital company's initial investment in such business, in activities related to developing initial product or service offerings, such as prototype development or the establishment of initial production or service processes;~~. The term includes a qualified business that is~~

2. Less than 2 years old and has, together with its affiliates, less than $3 million in annual revenues for the fiscal year immediately preceding the initial investment by the certified capital company on a consolidated basis, as determined in accordance with generally accepted accounting principles;~~. The term also includes~~

3. The Florida Black Business Investment Board;~~,~~

4. Any entity that is majority owned by the Florida Black Business Investment Board;~~,~~ or

5. Any entity in which the Florida Black Business Investment Board holds a majority voting interest on the board of directors.

(h) "Office" means the Office of Tourism, Trade, and Economic Development.

(i) "Premium tax liability" means any liability incurred by an insurance company under the provisions of s. 624.509 and s. 624.5091.

(j) "Principal" means an executive officer of a corporation, partner of a partnership, manager of a limited liability company, or any other person with equivalent executive functions.

(k) "Qualified business" means the Digital Divide Trust Fund established under the State of Florida Technology Office or a business that meets the following conditions as evidenced by documentation required by department rule:

1. The business is headquartered in this state and its principal business operations are located in this state or at least 75 percent of the employees are employed in the state.

2. At the time a certified capital company makes an initial investment in a business, the business would qualify for investment under ~~is a small business concern as defined in~~ 13 C.F.R. s. 121.301(c) ~~121.201~~, ~~"Size Standards Used to Define Small Business Concerns" of the United States Small~~

~~Business Administration~~ which is involved in manufacturing, processing or assembling products, conducting research and development, or providing services.

3. At the time a certified capital company makes an initial investment in a business, the business certifies in an affidavit that:

a. The business is unable to obtain conventional financing, which means that the business has failed in an attempt to obtain funding for a loan from a bank or other commercial lender or that the business cannot reasonably be expected to qualify for such financing under the standards of commercial lending;

b. The business plan for the business projects that the business is reasonably expected to achieve in excess of $25 million in sales revenue within 5 years after the initial investment, or the business is located in a designated Front Porch community, enterprise zone, urban high crime area, rural job tax credit county, or nationally recognized historic district;

c. The business will maintain its headquarters in this state for the next 10 years and any new manufacturing facility financed by a qualified investment will remain in this state for the next 10 years, or the business is located in a designated Front Porch community, enterprise zone, urban high crime area, rural job tax credit county, or nationally recognized historic district; and

d. The business has fewer than 200 employees and at least 75 percent of the employees are employed in this state. For purposes of this subsection, the term "~~qualified business~~" also includes the Florida Black Business Investment Board, any entity majority owned by the Florida Black Business Investment Board, or any entity in which the Florida Black Business Investment Board holds a majority voting interest on the board of directors.

4. The term does not include:

a. Any business predominantly engaged in retail sales, real estate development, insurance, banking, lending, or oil and gas exploration.

b. Any business predominantly engaged in professional services provided by accountants, lawyers, or physicians.

c. Any company that has no historical revenues and either has no specific business plan or purpose or has indicated that its business plan is solely to engage in a merger or acquisition with any unidentified company or other entity.

d. Any company that has a strategic plan to grow through the acquisition of firms with substantially similar business which would result in the planned net loss of Florida-based jobs over a 12-month period after the acquisition as determined by the department.

~~A business predominantly engaged in retail sales, real estate development, insurance, banking, lending, oil and gas exploration, or engaged in profes-~~

~~sional services provided by accountants, lawyers, or physicians does not constitute a qualified business.~~

(l) "Qualified debt instrument" means a debt instrument, or a hybrid of a debt instrument, issued by a certified capital company, at par value or a premium, with an original maturity date of at least 5 years after the date of issuance, a repayment schedule which is no faster than a level principal amortization over a 5-year period, and interest, distribution, or payment features which are not related to the profitability of the certified capital company or the performance of the certified capital company's investment portfolio.

(m) "Qualified distribution" means any distribution or payment by ~~to equity holders of~~ a certified capital company for:

1. Reasonable costs and expenses, including, but not limited to, professional fees, of forming and~~,~~ syndicating the certified capital company, if no such costs or expenses are paid to a certified investor, except as provided in subparagraph (4)(f)2., and the total cash, cash equivalents, and other current assets permitted by sub-subparagraph (5)(b)3.g. that can be converted into cash within 5 business days available to the certified capital company at the time of receipt of certified capital from certified investors, after deducting the costs and expenses of forming and syndicating the certified capital company, including any payments made over time for obligations incurred at the time of receipt of certified capital but excluding other future qualified distributions and payments made under paragraph (9)(a), are an amount equal to or greater than 50 percent of the total certified capital allocated to the certified capital pursuant to subsection (7);~~,~~

2. Reasonable costs of managing~~,~~ and operating the certified capital company, not exceeding 5 percent of the certified capital in any single year, including an annual management fee in an amount that does not exceed 2.5 percent of the certified capital of the certified capital company;~~, plus~~

3. Reasonable and necessary fees in accordance with industry custom for professional services, including, but not limited to, legal and accounting services, related to the operation of the certified capital company; or~~.~~

4.~~2.~~ Any projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, of the equity owners of a certified capital company resulting from the earnings or other tax liability of the certified capital company to the extent that the increase is related to the ownership, management, or operation of a certified capital company.

(n)1. "Qualified investment" means the investment of cash by a certified capital company in a qualified business for the purchase of any debt, equity, or hybrid security ~~of any nature and description whatsoever~~, including a debt instrument or security that ~~which~~ has the characteristics of debt but which provides for conversion into equity or equity participation instruments such as options or warrants.

2. The term does not include:

a. Any investment made after the effective date of this act the contractual terms of which require the repayment of any portion of the principal in instances, other than default as determined by department rule, within 12 months following the initial investment by the certified capital company unless such investment has a repayment schedule no faster than a level principal amortization of at least 2 years;

b. Any "follow-on" or "add-on" investment except for the amount by which the new investment is in addition to the amount of the certified capital company's initial investment returned to it other than in the form of interest, dividends, or other types of profit participation or distributions; or

c. Any investment in a qualified business or affiliate of a qualified business that exceeds 15 percent of certified capital.

(o) "Program One" means the $150 million in premium tax credits issued under this section in 1999, the allocation of such credits under this section, and the regulation of certified capital companies and investments made by them hereunder.

(p) "Program Two" means the $150 million in premium tax credits to be issued under subsection (17), the allocation of such credits under this section, and the regulation of certified capital companies and investments made by them hereunder.

(4) CERTIFICATION; GROUNDS FOR DENIAL OR DECERTIFICATION.—

(a) To operate as a certified capital company, a corporation, partnership, or limited liability company must be certified by the department pursuant to this act.

(b) An applicant for certification as a certified capital company must file a verified application with the department on or before December 1, 1998, a date determined in rules adopted pursuant to subsection (17) in the case of applicants for Program Two, in a form which the department may prescribe by rule. The applicant shall submit a nonrefundable application fee of $7,500 to the department. The applicant shall provide:

1. The name of the applicant and the address of its principal office and each office in this state.

2. The applicant's form and place of organization and the relevant organizational documents, bylaws, and amendments or restatements of such documents, bylaws, or amendments.

3. Evidence from the Department of State that the applicant is registered with the Department of State as required by law, maintains an active status with the Department of State, and has not been dissolved or had its registration revoked, canceled, or withdrawn.

4. The applicant's proposed method of doing business.

5. The applicant's financial condition and history, including an audit report on the financial statements prepared in accordance with generally accepted accounting principles. The applicant must have, at the time of application for certification, an equity capitalization of at least $500,000 in the form of cash or cash equivalents. The applicant must maintain this equity capitalization until the applicant receives an allocation of certified capital pursuant to this act ~~showing net capital of not less than $500,000 within 90 days after the date the application is submitted to the department~~. If the date of the application is more than 90 days after preparation of the applicant's fiscal year-end financial statements, the applicant may file financial statements reviewed by an independent certified public accountant for the period subsequent to the audit report, together with the audited financial statement for the most recent fiscal year. If the applicant has been in business less than 12 months, and has not prepared an audited financial statement, the applicant may file a financial statement reviewed by an independent certified public accountant.

6. Copies of any offering materials used or proposed to be used by the applicant in soliciting investments of certified capital from certified investors.

(c) Within 60 days after receipt of a verified application ~~On December 31, 1998~~, the department shall grant or deny certification as a certified capital company. If the department denies certification within the time period specified, the department shall inform the applicant of the grounds for the denial. If the department has not granted or denied certification within the time specified, the application shall be deemed approved. The department shall approve the application if the department finds that:

1. The applicant satisfies the requirements of paragraph (b).

2. No evidence exists that the applicant has committed any act specified in paragraph (d).

3. At least two of the principals have a minimum of 5 years of experience making venture capital investments out of private equity funds, with not less than $20 million being provided by third-party investors for investment in the early stage of operating businesses. At least one full-time manager or principal of the certified capital company who has such experience must be primarily located in an office of the certified capital company which is based in this state.

4. The applicant's proposed method of doing business and raising certified capital as described in its offering materials and other materials submitted to the department conforms with the requirements of this section.

(d) The department may deny certification or decertify a certified capital company if the grounds for decertification are not removed or corrected within 90 days after the notice of such grounds is received by the certified capital company. The department may deny certification or decertify a certified capital company if the certified capital company fails to maintain com-

mon stock or paid in capital ~~a net worth~~ of at least $500,000, or if the department determines that the applicant, or any principal or director of the certified capital company, has:

1. Violated any provision of this section;

2. Made a material misrepresentation or false statement or concealed any essential or material fact from any person during the application process or with respect to information and reports required of certified capital companies under this section;

3. Been convicted of, or entered a plea of guilty or nolo contendere to, a crime against the laws of this state or any other state or of the United States or any other country or government, including a fraudulent act in connection with the operation of a certified capital company, or in connection with the performance of fiduciary duties in another capacity;

4. Been adjudicated liable in a civil action on grounds of fraud, embezzlement, misrepresentation, or deceit; or

5.a. Been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a material violation of any federal or state securities or commodities law or any rule or regulation adopted under such law, or any rule or regulation of any national securities, commodities, or options exchange, or national securities, commodities, or options association; or

b. Been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers, or other related or similar industries.

~~(e) The certified capital company shall file a copy of its certification with the office by January 31, 1999.~~

(e)~~(f)~~ Any offering material involving the sale of securities of the certified capital company shall include the following statement: "By authorizing the formation of a certified capital company, the State of Florida does not endorse the quality of management or the potential for earnings of such company and is not liable for damages or losses to a certified investor in the company. Use of the word 'certified' in an offering does not constitute a recommendation or endorsement of the investment by the State of Florida. Investments in a certified capital company prior to the time such company is certified are not eligible for premium tax credits. If applicable provisions of law are violated, the state may require forfeiture of unused premium tax credits and repayment of used premium tax credits by the certified investor."

(f)1.~~(g)~~ No insurance company or any affiliate of an insurance company shall, directly or indirectly, own, whether through rights, options, convertible interests, or otherwise, 15 percent or more of the voting equity interests

of or manage or control the direction of investments of a certified capital company. This prohibition does not preclude a certified investor, insurance company, or any other party from exercising its legal rights and remedies, which may include interim management of a certified capital company, if a certified capital company is in default of its obligations under law or its contractual obligations to such certified investor, insurance company, or other party. Nothing in this subparagraph shall limit an insurance company's ownership of nonvoting equity interests in a certified capital company.

2. A certified capital company may obtain a guaranty, indemnity, bond, insurance policy or other payment undertaking in favor of all of the certified investors of the certified capital company and its affiliates; provided that the entity from which such guaranty, indemnity, bond, insurance policy or other payment undertaking is obtained may not be a certified investor of, or be affiliated with more than one certified investor of, the certified capital company.

(g)~~(h)~~ On or before December 31 of each year, each certified capital company shall pay to the department an annual, nonrefundable renewal certification fee of $5,000. If a certified capital company fails to pay its renewal fee by the specified deadline, the company must pay a late fee of $5,000 in addition to the renewal fee on or by January 31 of each year in order to continue its certification in the program. On or before April 30 of each year, each certified capital company shall file audited financial statements with the department. No renewal fees shall be required within 6 months after the date of initial certification.

(h)~~(i)~~ The department shall administer and provide for the enforcement of certification requirements for certified capital companies as provided in this act. The department may adopt any rules necessary to carry out its duties, obligations, and powers related to certification, renewal of certification, or decertification of certified capital companies and may perform any other acts necessary for the proper administration and enforcement of such duties, obligations, and powers.

(i)~~(j)~~ Decertification of a certified capital company under this subsection does not affect the ability of certified investors in such certified capital company from claiming future premium tax credits earned as a result of an investment in the certified capital company during the period in which it was duly certified.

(5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.—

(b) All capital not invested in qualified investments by the certified capital company:

1. Must be held in a financial institution as defined by s. 655.005(1)(h) or held by a broker-dealer registered under s. 517.12, except as set forth in sub-subparagraph 3.g.

2. Must not be invested in a certified investor of the certified capital company or any affiliate of the certified investor of the certified capital company, except for an investment permitted by sub-subparagraph 3.g.,

provided repayment terms do not permit the obligor to directly or indirectly manage or control the investment decisions of the certified capital company.

3. Must be invested only in:

a. Any United States Treasury obligations;

b. Certificates of deposit or other obligations, maturing within 3 years after acquisition of such certificates or obligations, issued by any financial institution or trust company incorporated under the laws of the United States;

c. Marketable obligations, maturing within 10 ~~5~~ years or less after the acquisition of such obligations, which are rated "A" or better by any nationally recognized credit rating agency;

d. Mortgage-backed securities, with an average life of 5 years or less, after the acquisition of such securities, which are rated "A" or better by any nationally recognized credit rating agency;

e. Collateralized mortgage obligations and real estate mortgage investment conduits that are direct obligations of an agency of the United States Government; are not private-label issues; are in book-entry form; and do not include the classes of interest only, principal only, residual, or zero; ~~or~~

f. Interests in money market funds, the portfolio of which is limited to cash and obligations described in sub-subparagraphs a.-d.; or

g. Obligations that are issued by an insurance company that is not a certified investor of the certified capital company making the investment, that has provided a guarantee indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company's certified investors as permitted by subparagraph (3)(m)1. or an affiliate of such insurance company as defined by subparagraph (3)(a)3. that is not a certified investor of the certified capital company making the investment, provided that such obligations are:

(I) Issued or guaranteed as to principal by an entity whose senior debt is rated "AA" or better by Standard & Poor's Ratings Group or such other nationally recognized credit rating agency as the department may by rule determine.

(II) Not subordinated to other unsecured indebtedness of the issuer or the guarantor.

(III) Invested by such issuing entity in accordance with sub-subparagraphs 3.a.-f.

(IV) Readily convertible into cash within 5 business days for the purpose of making a qualified investment unless such obligations are held to provide a guarantee, indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company's certified investors as permitted by subparagraph (3)(m)1.

(6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.—

(a) Any certified investor who makes an investment of certified capital shall earn a vested credit against premium tax liability equal to 100 percent of the certified capital invested by the certified investor. Certified investors shall be entitled to use no more than 10 percentage points of the vested premium tax credit earned under a particular program, including any carryforward credits from such program under this act, per year beginning with premium tax filings for calendar year 2000 for credits earned under Program One. Any premium tax credits not used by certified investors in any single year may be carried forward and applied against the premium tax liabilities of such investors for subsequent calendar years. ~~The carryforward credit may be applied against subsequent premium tax filings through calendar year 2017.~~

(7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION PROCESS.—

(a) The total amount of tax credits which may be allocated by the office shall not exceed $150 million with respect to Program One and $150 million with respect to Program Two. The total amount of tax credits which may be used by certified investors under this act shall not exceed $15 million annually with respect to credits earned under Program One and $15 million annually with respect to credits earned under Program Two.

(c) Each certified capital company must apply to the office for an allocation of premium tax credits for potential certified investors ~~by March 15, 1999,~~ on a form developed by the office with the cooperation of the Department of Revenue. The form shall be accompanied by an affidavit from each potential certified investor confirming that the potential certified investor has agreed to make an investment of certified capital in a certified capital company up to a specified amount, subject only to the receipt of a premium tax credit allocation pursuant to this subsection. No certified capital company shall submit premium tax allocation claims on behalf of certified investors that in the aggregate would exceed the total dollar amount appropriated by the Legislature for the specific program. No allocation shall be made to the potential investors of a certified capital company under Program Two unless such certified capital company has filed premium tax allocation claims ~~that would result in an allocation to the potential investors in such certified capital company~~ of not less than $15 million in the aggregate.

(d) ~~On or before April 1, 1999,~~ The office shall inform each certified capital company of its share of total premium tax credits available for allocation to each of its potential investors.

(e) If a certified capital company does not receive certified capital equaling the amount of premium tax credits allocated to a potential certified investor for which the investor filed a premium tax allocation claim within 10 business days after the investor received a notice of allocation, the certified capital company shall notify the office by overnight common carrier delivery service of the company's failure to receive the capital. That portion of the premium tax credits allocated to the certified capital company shall be forfeited. If the office must make a pro rata allocation under paragraph

(f), the office shall reallocate such available credits among the other certified capital companies on the same pro rata basis as the initial allocation.

(f) If the total amount of capital committed by all certified investors to certified capital companies in premium tax allocation claims under Program Two exceeds the aggregate cap on the amount of credits that may be awarded under Program Two, the premium tax credits that may be allowed to any one certified investor under Program Two shall be allocated using the following ratio:

A/B = X/>$150,000,000

where the letter "A" represents the total amount of certified capital certified investors have agreed to invest in any one certified capital company under Program Two, the letter "B" represents the aggregate amount of certified capital that all certified investors have agreed to invest in all certified capital companies under Program Two, the letter "X" is the numerator and represents the total amount of premium tax credits and certified capital that may be allocated to a certified capital company on a date determined by rule adopted by the department pursuant to subsection (17) ~~in calendar year 1999~~, and $150 million is the denominator and represents the total amount of premium tax credits and certified capital that may be allocated to all certified investors under Program Two ~~in calendar year 1999~~. Any such premium tax credits are not first available for utilization until annual filings are made in 2001 for calendar year 2000 in the case of Program One, and the tax credits may be used at a rate not to exceed 10 percent annually per program.

(g) The maximum amount of certified capital for which premium tax allocation claims may be filed on behalf of any certified investor and its affiliates by one or more certified capital companies may not exceed $15 million for Program One and $22.5 million for Program Two.

(h) To the extent that less than $150 million in certified capital is raised in connection with the procedure set forth in paragraphs (c)-(g), the department may adopt rules to allow a subsequent allocation of the remaining premium tax credits authorized under this section.

(i) The office shall issue a certification letter for each certified investor, showing the amount invested in the certified capital company under each program. The applicable certified capital company shall attest to the validity of the certification letter.

(8) ANNUAL TAX CREDIT; CLAIM PROCESS.—

(a) On an annual basis, on or before January ~~December~~ 31, each certified capital company shall file with the department and the office, in consultation with the department, on a form prescribed by the office, for each calendar year:

1. The total dollar amount the certified capital company received from certified investors, the identity of the certified investors, and the amount

received from each certified investor during the immediately preceding calendar year.

2. The total dollar amount the certified capital company invested and the amount invested in qualified businesses, together with the identity and location of those businesses and the amount invested in each qualified business during the immediately preceding calendar year.

3. For informational purposes only, the total number of permanent, full-time jobs either created or retained by the qualified business during the immediately preceding calendar year, the average wage of the jobs created or retained, the industry sectors in which the qualified businesses operate, and any additional capital invested in qualified businesses from sources other than certified capital companies.

(9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE PARTICIPATION.—

(a) A certified capital company may make qualified distributions at any time. In order to make a distribution to its equity holders, other than a qualified distribution from funds related to a particular program, a certified capital company must have invested an amount cumulatively equal to 100 percent of its certified capital raised under such program in qualified investments. Payments to debt holders of a certified capital company, however, may be made without restriction with respect to repayments of principal and interest on indebtedness owed to them by a certified capital company, including indebtedness of the certified capital company on which certified investors earned premium tax credits. A debt holder that is also a certified investor or equity holder of a certified capital company may receive payments with respect to such debt without restrictions.

(b) Cumulative distributions from a certified capital company from funds related to a particular program to its certified investors and equity holders under such program, other than qualified distributions, in excess of the certified capital company's original certified capital raised under such program and any additional capital contributions to the certified capital company with respect to such program may be audited by a nationally recognized certified public accounting firm acceptable to the department, at the expense of the certified capital company, if the department directs such audit be conducted. The audit shall determine whether aggregate cumulative distributions from the funds related to a particular program made by the certified capital company to all certified investors and equity holders under such program, other than qualified distributions, have equaled the sum of the certified capital company's original certified capital raised under such program and any additional capital contributions to the certified capital company with respect to such program. If at the time of any such distribution made by the certified capital company, such distribution taken together with all other such distributions from the funds related to such program made by the certified capital company, other than qualified distributions, exceeds in the aggregate the sum of the certified capital company's original certified capital raised under such program and any additional capital contributions to the certified capital company with respect to such

program, as determined by the audit, the certified capital company shall pay to the Department of Revenue 10 percent of the portion of such distribution in excess of such amount. Payments to the Department of Revenue by a certified capital company pursuant to this paragraph shall not exceed the aggregate amount of tax credits used by all certified investors in such certified capital company for such program.

(10) DECERTIFICATION.—

(f) Decertification of a certified capital company for failure to meet all requirements for continued certification under paragraph (5)(a) with respect to the certified capital raised under a particular program may cause the recapture of premium tax credits previously claimed by such company under such program and the forfeiture of future premium tax credits to be claimed by certified investors under such program with respect to such certified capital company, as follows:

1. Decertification of a certified capital company within 3 years after its certification date with respect to a particular program shall cause the recapture of all premium tax credits earned under such program and previously claimed by such company and the forfeiture of all future premium tax credits earned under such program which are to be claimed by certified investors with respect to such company.

2. When a certified capital company meets all requirements for continued certification under subparagraph (5)(a)1. with respect to certified capital raised under a particular program and subsequently fails to meet the requirements for continued certification under the provisions of subparagraph (5)(a)2. with respect to certified capital raised under such program, those premium tax credits earned under such program which have been or will be taken by certified investors within 3 years after the certification date of the certified capital company with respect to such program shall not be subject to recapture or forfeiture; however, all premium tax credits earned under such program that have been or will be taken by certified investors after the third anniversary of the certification date of the certified capital company for such program shall be subject to recapture or forfeiture.

3. When a certified capital company meets all requirements for continued certification under subparagraphs (5)(a)1. and 2. with respect to a particular program and subsequently fails to meet the requirements for continued certification under the subparagraph (5)(a)3. with respect to such program, those premium tax credits earned under such program which have been or will be taken by certified investors within 4 years after the certification date of the certified capital company with respect to such program shall not be subject to recapture or forfeiture; however, all premium tax credits earned under such program that have been or will be taken by certified investors after the fourth anniversary of the certification date of the certified capital company with respect to such program shall be subject to recapture and forfeiture.

4. If a certified capital company has met all requirements for continued certification under paragraph (5)(a) with respect to certified capital raised under a particular program, but such company is subsequently decertified,

those premium tax credits earned under such program which have been or will be taken by certified investors within 5 years after the certification date of such company with respect to such program shall not be subject to recapture or forfeiture. Those premium tax credits earned under such program to be taken subsequent to the 5th year of certification with respect to such program shall be subject to forfeiture only if the certified capital company is decertified within 5 years after its certification date with respect to such program.

5. If a certified capital company has invested an amount cumulatively equal to 100 percent of its certified capital raised under a particular program in qualified investments, all premium tax credits claimed or to be claimed by its certified investors under such program shall not be subject to recapture or forfeiture.

(11) TRANSFERABILITY.—The premium tax credit established pursuant to this act may be transferred or sold. The Department of Revenue shall adopt rules to facilitate the transfer or sale of such premium tax credits. A transfer or sale shall not affect the time schedule for taking the premium tax credit as provided in this act. Any premium tax credits recaptured shall be the liability of the taxpayer who actually claimed the premium tax credits. The claim of a transferee of a certified investor's unused premium tax credit shall be permitted in the same manner and subject to the same provisions and limitations of this act as the original certified investor. ~~The term "transferee" means any person who:~~

~~(a) Through the voluntary sale, assignment, or other transfer of the business or control of the business of the certified investor, including the sale or other transfer of stock or assets by merger, consolidation, or dissolution, succeeds to all or substantially all of the business and property of the certified investor;~~

~~(b) Becomes by operation of law or otherwise the parent company of the certified investor;~~

~~(c) Directly or indirectly owns, whether through rights, options, convertible interests, or otherwise, controls, or holds power to vote 10 percent or more of the outstanding voting securities or other ownership interest of the certified investor;~~

~~(d) Is a subsidiary of the certified investor or 10 percent or more of whose outstanding voting securities or other ownership interest are directly or indirectly owned, whether through rights, options, convertible interests, or otherwise, by the certified investor; or~~

~~(e) Directly or indirectly controls, is controlled by, or is under the common control with the certified investor.~~

Section 11. Except as otherwise specifically provided in this act, the provisions of this act shall apply only to "Program Two" as defined in s. 288.99(3), Florida Statutes, as amended by this act.

(17) Notwithstanding the limitations set forth in paragraph (7)(a), in the first fiscal year in which the total insurance premium tax collections as

determined by the Revenue Estimating Conference exceed collections for fiscal year 2000-2001 by more than the total amount of tax credits issued pursuant to this section which were used by certified investors in that year, the office may allocate to certified investors in accordance with paragraph (7)(a) tax credits for Program Two. The department shall establish, by rule, a date and procedures by which certified capital companies must file applications for allocations of such additional premium tax credits, which date shall be no later than 180 days from the date of determination by the Revenue Estimating Conference. With respect to new certified capital invested and premium tax credits earned pursuant to this subsection, the schedule specified in subparagraphs (5)(a)1.-4. is satisfied by investments by December 31 of the 2nd, 3rd, 4th, and 5th calendar year, respectively, after the date established by the department for applications of additional premium tax credits. The department shall adopt rules by which an entity not already certified as a certified capital company may apply for certification as a certified capital company for participation in this additional allocation. The insurance premium tax credit authorized by Program Two may not be used by certified investors until the annual return due March 1, 2004, and may be used on all subsequent returns and estimated payments; however, notwithstanding the provisions of s. 624.5092(2)(b), the installments of taxes due and payable on April 15, 2004, and June 15, 2004, shall be based on the net tax due in 2003 not taking into account credits granted pursuant to this section for Program Two.

Section 12. Subsection (20) is added to section 517.12, Florida Statutes, to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(20) The registration requirements of this section do not apply to individuals licensed under s. 626.041 or its successor statute, or s. 626.051 or its successor statute, for the sale of a security as defined in s. 517.021(19)(g), if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 13. Subsection (21) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(21) To declare an emergency when one exists in any matter pertaining to agriculture; to make, adopt, and promulgate rules and issue orders which will be effective during the term of the emergency; and to issue or require to be issued food safety information, pertaining to the emergency, that is based on reliable scientific facts and reliable scientific data. When the Commissioner of Agriculture has declared an agricultural emergency, no county or municipal ordinance relating to any action intended to end the emergency

shall be enforced within a county or municipality with respect to such action taken by the Department of Agriculture and Consumer Services during the agricultural emergency.

Section 14. Paragraph (b) of subsection (4), paragraph (a) of subsection (5), and paragraphs (a) and (c) of subsection (6) of section 624.91, Florida Statutes, as amended by section 20 of chapter 2001-377, Laws of Florida, are amended to read:

624.91 The Florida Healthy Kids Corporation Act.—

(4) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(b) The Florida Healthy Kids Corporation shall phase in a program to:

1. Organize school children groups to facilitate the provision of comprehensive health insurance coverage to children;

2. Arrange for the collection of any family, local contributions, or employer payment or premium, in an amount to be determined by the board of directors, to provide for payment of premiums for comprehensive insurance coverage and for the actual or estimated administrative expenses;

3. Establish the administrative and accounting procedures for the operation of the corporation;

4. Establish, with consultation from appropriate professional organizations, standards for preventive health services and providers and comprehensive insurance benefits appropriate to children; provided that such standards for rural areas shall not limit primary care providers to board-certified pediatricians;

5. Establish eligibility criteria which children must meet in order to participate in the program;

6. Establish procedures under which applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the board of directors of the corporation;

7. Establish participation criteria and, if appropriate, contract with an authorized insurer, health maintenance organization, or insurance administrator to provide administrative services to the corporation;

8. Establish enrollment criteria which shall include penalties or waiting periods of not fewer than 60 days for reinstatement of coverage upon voluntary cancellation for nonpayment of family premiums;

9. If a space is available, establish a special open enrollment period of 30 days' duration for any child who is enrolled in Medicaid or Medikids if such child loses Medicaid or Medikids eligibility and becomes eligible for the Florida Healthy Kids program;

10. Contract with authorized insurers or any provider of health care services, meeting standards established by the corporation, for the provision

of comprehensive insurance coverage to participants. Such standards shall include criteria under which the corporation may contract with more than one provider of health care services in program sites. Health plans shall be selected through a competitive bid process. The selection of health plans shall be based primarily on quality criteria established by the board. The health plan selection criteria and scoring system, and the scoring results, shall be available upon request for inspection after the bids have been awarded;

11. Develop and implement a plan to publicize the Florida Healthy Kids Corporation, the eligibility requirements of the program, and the procedures for enrollment in the program and to maintain public awareness of the corporation and the program;

12. Secure staff necessary to properly administer the corporation. Staff costs shall be funded from state and local matching funds and such other private or public funds as become available. The board of directors shall determine the number of staff members necessary to administer the corporation;

13. As appropriate, enter into contracts with local school boards or other agencies to provide onsite information, enrollment, and other services necessary to the operation of the corporation;

14. Provide a report annually ~~on an annual basis~~ to the Governor, Chief Financial Officer ~~Insurance Commissioner~~, Commissioner of Education, Senate President, Speaker of the House of Representatives, and Minority Leaders of the Senate and the House of Representatives;

15. Each fiscal year, establish a maximum number of participants by county, on a statewide basis, who may enroll in the program without the benefit of local matching funds. Thereafter, the corporation may establish local matching requirements for supplemental participation in the program. The corporation may vary local matching requirements and enrollment by county depending on factors which may influence the generation of local match, including, but not limited to, population density, per capita income, existing local tax effort, and other factors. The corporation also may accept in-kind match in lieu of cash for the local match requirement to the extent allowed by Title XXI of the Social Security Act; and

16. Establish eligibility criteria, premium and cost-sharing requirements, and benefit packages which conform to the provisions of the Florida Kidcare program, as created in ss. 409.810-409.820; and

17. Notwithstanding the requirements of subparagraph 15. to the contrary, establish a local matching requirement of $0.00 for the Title XXI program in each county of the state for the 2001-2002 fiscal year. This subparagraph shall take effect upon becoming a law and shall operate retroactively to July 1, 2001. This subparagraph expires July 1, 2002.

(5) BOARD OF DIRECTORS.—

(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors chaired by the Chief Finan-

cial Officer ~~Insurance Commissioner~~ or her or his designee, and composed of 14 ~~12~~ other members selected for 3-year terms of office as follows:

1. One member appointed by the Commissioner of Education from among three persons nominated by the Florida Association of School Administrators;

2. One member appointed by the Commissioner of Education from among three persons nominated by the Florida Association of School Boards;

3. One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education;

4. One member appointed by the Governor from among three members nominated by the Florida Pediatric Society;

5. One member, appointed by the Governor, who represents the Children's Medical Services Program;

6. One member appointed by the Chief Financial Officer ~~Insurance Commissioner~~ from among three members nominated by the Florida Hospital Association;

7. Two members, appointed by the Chief Financial Officer ~~Insurance Commissioner~~, who are representatives of authorized health care insurers or health maintenance organizations;

8. One member, appointed by the Chief Financial Officer ~~Insurance Commissioner~~, who represents the Institute for Child Health Policy;

9. One member, appointed by the Governor, from among three members nominated by the Florida Academy of Family Physicians;

10. One member, appointed by the Governor, who represents the Agency for Health Care Administration; ~~and~~

11. One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties, representing rural counties;

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

13.~~11.~~ The State Health Officer or her or his designee.

(6) LICENSING NOT REQUIRED; FISCAL OPERATION.—

(a) The corporation shall not be deemed an insurer. The officers, directors, and employees of the corporation shall not be deemed to be agents of an insurer. Neither the corporation nor any officer, director, or employee of the corporation is subject to the licensing requirements of the insurance code or the rules of the Department of Financial Services ~~Insurance~~. However, any marketing representative utilized and compensated by the corporation

must be appointed as a representative of the insurers or health services providers with which the corporation contracts.

(c) The Department of Financial Services ~~Insurance~~ shall supervise any liquidation or dissolution of the corporation and shall have, with respect to such liquidation or dissolution, all power granted to it pursuant to the insurance code.

Section 15. Sections 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, and 633.821, Florida Statutes, are created to read:

633.801 Short title.—Sections 633.801-633.821 may be cited as the "Florida Firefighters Occupational Safety and Health Act."

633.802 Definitions.—Unless the context clearly requires otherwise, the following definitions shall apply to ss. 633.801-633.821:

(1) "Department" means the Department of Insurance.

(2) "Division" means the Division of State Fire Marshal of the department.

(3) "Firefighter employee" means 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, except those appointed under s. 590.02(1)(d).

(4) "Firefighter employer" means 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 subdivisions of this state, and public and quasi-public corporations in this state which employs firefighters, except those appointed under s. 590.02(1)(d).

(5) "Firefighter employment" or "employment" means any service performed by a firefighter employee for the firefighter employer.

(6) "Firefighter place of employment" or "place of employment" means the physical location at which the firefighter is employed.

633.803 Legislative intent.—It is the intent of the Legislature to enhance firefighter occupational safety and health in the state through the implementation and maintenance of policies, procedures, practices, rules, and standards that reduce the incidence of firefighter employee accidents, firefighter employee occupational diseases, and firefighter employee fatalities compensable under chapter 440 or otherwise. The Legislature further intends that the division develop a means by which the division can identify individual firefighter employers with a high frequency or severity of work-related injuries, conduct safety inspections of those firefighter employers, and assist those firefighter employers in the development and implementation of firefighter employee safety and health programs. In addition, it is the

intent of the Legislature that the division administer the provisions of ss. 633.801-633.821; provide assistance to firefighter employers, firefighter employees, and insurers; and enforce the policies, rules, and standards set forth in ss. 633.801-633.821.

633.804 Safety inspections and consultations; rules.—The division shall adopt rules governing the manner, means, and frequency of firefighter employer and firefighter employee safety inspections and consultations by all insurers and self-insurers.

633.805 Division to make study of firefighter employee occupational diseases.—The division shall make a continuous study of firefighter employee occupational diseases and the ways and means for their control and prevention and shall adopt rules necessary for such control and prevention. For this purpose, the division is authorized to cooperate with firefighter employers, firefighter employees, and insurers and with the Department of Health.

633.806 Investigations by the division; refusal to admit; penalty.—

(1) The division shall make studies and investigations with respect to safety provisions and the causes of firefighter employee injuries in firefighter employee places of employment and shall make such recommendations to the Legislature and firefighter employers and insurers as the division considers proper as to the best means of preventing firefighter injuries. In making such studies and investigations, the division may cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any place of firefighter employment covered by ss. 633.801-633.821 or any agency or department of the state engaged in enforcing any law to ensure safety for firefighter employees.

(2) The division by rule may adopt procedures for conducting investigations of firefighter employers under ss. 633.801-633.821.

633.807 Safety; firefighter employer responsibilities.—Every firefighter employer shall furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary to protect the lives, health, and safety of such firefighter employees. As used in this section, the terms “safe” and “safety,” as applied to any employment or place of firefighter employment, mean such freedom from danger as is reasonably necessary for the protection of the lives, health, and safety of firefighter employees, including conditions and methods of sanitation and hygiene. Safety devices and safeguards required to be furnished by the firefighter employer by this section or by the division under authority of this section shall not include personal apparel and protective devices that replace personal apparel normally worn by firefighter employees during regular working hours.

633.808 Division authority.—The division shall:

(1) Investigate and prescribe by rule what safety devices, safeguards, or other means of protection must be adopted for the prevention of accidents in every firefighter employee place of employment or at any fire scene;

determine what suitable devices, safeguards, or other means of protection for the prevention of occupational diseases must be adopted or followed in any or all such firefighter places of employment or at any fire scene; and adopt reasonable rules for the prevention of accidents, the safety, protection, and security of firefighter employees engaged in interior firefighting, and the prevention of occupational diseases.

(2) Ascertain, fix, and order such reasonable standards and rules for the construction, repair, and maintenance of firefighter employee places of employment as shall render them safe. Such rules and standards shall be adopted in accordance with chapter 120.

(3) Assist firefighter employers in the development and implementation of firefighter employee safety training programs by contracting with professional safety organizations.

(4) Adopt rules prescribing recordkeeping responsibilities for firefighter employers, which may include maintaining a log and summary of occupational injuries, diseases, and illnesses, for producing on request a notice of injury and firefighter employee accident investigation records, and prescribing a retention schedule for such records.

633.809 Firefighter employers whose firefighter employees have a high frequency of work-related injuries.—The division shall develop a means by which the division may identify individual firefighter employers whose firefighter employees have a high frequency or severity of work-related injuries. The division shall carry out safety inspections of the facilities and operations of those firefighter employers in order to assist them in reducing the frequency and severity of work-related injuries. The division shall develop safety and health programs for those firefighter employers. Insurers shall distribute such safety and health programs to the firefighter employers so identified by the division. Those firefighter employers identified by the division as having a high frequency or severity of work-related injuries shall implement a safety and health program developed by the division. The division shall carry out safety inspections of those firefighter employers so identified to ensure compliance with the safety and health program and to assist such firefighter employers in reducing the number of work-related injuries. The division may not assess penalties as a result of such inspections, except as provided by s. 633.813. Copies of any report made as the result of such an inspection shall be provided to the firefighter employer and its insurer. Firefighter employers may submit their own safety and health programs to the division for approval in lieu of using the safety and health program developed by the division. The division shall promptly review the program submitted and approve or disapprove the program within 60 days or such program shall be deemed approved. Upon approval by the division, the program shall be implemented by the firefighter employer. If the program is not approved or if a program is not submitted, the firefighter employer shall implement the program developed by the division. The division shall adopt rules setting forth the criteria for safety and health programs, as such rules relate to this section.

633.810 Workplace safety committees and safety coordinators.—

(1) In order to promote health and safety in firefighter employee places of employment in this state:

(a) Each firefighter employer of 20 or more firefighter employees shall establish and administer a workplace safety committee in accordance with rules adopted under this section.

(b) Each firefighter employer of fewer than 20 firefighter employees identified by the division as having high frequency or high severity of work-related injuries shall establish and administer a workplace safety committee or designate a workplace safety coordinator who shall establish and administer workplace safety activities in accordance with rules adopted under this section.

(2) The division shall adopt rules:

(a) Prescribing the membership of the workplace safety committees so as to ensure an equal number of firefighter employee representatives who are volunteers or are elected by their peers and firefighter employer representatives, and specifying the frequency of meetings.

(b) Requiring firefighter employers to make adequate records of each meeting and to file and to maintain the records subject to inspection by the division.

(c) Prescribing the duties and functions of the workplace safety committee and workplace safety coordinator, which include, but are not limited to:

1. Establishing procedures for workplace safety inspections by the committee.

2. Establishing procedures for investigating all workplace accidents, safety-related incidents, illnesses, and deaths.

3. Evaluating accident prevention and illness prevention programs.

4. Prescribing guidelines for the training of safety committee members.

(3) The composition, selection, and function of workplace safety committees shall be a mandatory topic of negotiations with any certified collective bargaining agent for firefighter employers that operate under a collective bargaining agreement. Firefighter employers that operate under a collective bargaining agreement that contains provisions regulating the formation and operation of workplace safety committees that meet or exceed the minimum requirements contained in this section, or firefighter employers who otherwise have existing workplace safety committees that meet or exceed the minimum requirements established by this section, are in compliance with this section.

(4) Firefighter employees shall be compensated their regular hourly wage while engaged in workplace safety committee or workplace safety coordinator training, meetings, or other duties prescribed under this section.

633.811 Firefighter employer penalties.—If any firefighter employer violates or fails or refuses to comply with ss. 633.801-633.821, or with any rule adopted by the division under such sections in accordance with chapter 120 for the prevention of injuries, accidents, or occupational diseases or with any lawful order of the division in connection with ss. 633.801-633.821, or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by division rule under ss. 633.801-633.821 for the prevention of accidents or occupational diseases, the division may assess against the firefighter employer a civil penalty of not less than $100 nor more than $5,000 for each day the violation, omission, failure, or refusal continues after the firefighter employer has been given written notice of such violation, omission, failure, or refusal. The total penalty for each violation shall not exceed $50,000. The division shall adopt rules requiring penalties commensurate with the frequency or severity of safety violations. A hearing shall be held in the county in which the violation, omission, failure, or refusal is alleged to have occurred, unless otherwise agreed to by the firefighter employer and authorized by the division. All penalties assessed and collected under this section shall be deposited in the Insurance Commissioner's Regulatory Trust Fund.

633.812 Division cooperation with Federal Government; exemption from requirements for private firefighter employers.—

(1) The division shall cooperate with the Federal Government so that duplicate inspections will be avoided while at the same time ensuring safe firefighter employee places of employment for the citizens of this state.

(2) Except as provided in this section, a private firefighter employer is not subject to the requirements of the division if:

(a) The private firefighter employer is subject to the federal regulations in 29 C.F.R. ss. 1910 and 1926.

(b) The private firefighter employer has adopted and implemented a written safety program that conforms to the requirements of 29 C.F.R. ss. 1910 and 1926.

(c) A private firefighter employer with 20 or more full-time firefighter employees shall include provisions for a safety committee in the safety program. The safety committee shall include firefighter employee representation and shall meet at least once each calendar quarter. The private firefighter employer shall make adequate records of each meeting and maintain the records subject to inspections under subsection (3). The safety committee shall, if appropriate, make recommendations regarding improvements to the safety program and corrections of hazards affecting workplace safety.

(d) The private firefighter employer provides the division with a written statement that certifies compliance with this subsection.

(3) The division may enter at any reasonable time any place of private firefighter employment for the purpose of verifying the accuracy of the written certification. If the division determines that the private firefighter em-

ployer has not complied with the requirements of subsection (2), the private firefighter employer shall be subject to the rules of the division until the private firefighter employer complies with subsection (2) and recertifies that fact to the division.

(4) This section shall not restrict the division's performance of any duties pursuant to a written contract between the division and the federal Occupational Safety and Health Administration.

633.813 Failure to implement a safety and health program; cancellations.—If a firefighter employer that is found by the division to have a high frequency or severity of work-related injuries fails to implement a safety and health program, the insurer or self-insurer's fund that is providing coverage for the firefighter employer may cancel the contract for insurance with the firefighter employer. In the alternative, the insurer or fund may terminate any discount or deviation granted to the firefighter employer for the remainder of the term of the policy. If the contract is canceled or the discount or deviation is terminated, the insurer shall make such reports as are required by law.

633.814 Expenses of administration.—The amounts that are needed to administer ss. 633.801-633.821 shall be disbursed from the Insurance Commissioner's Regulatory Trust Fund.

633.815 Refusal to admit; penalty.—The division and authorized representatives of the division may enter and inspect any firefighter place of employment at any reasonable time for the purpose of investigating compliance with ss. 633.801-633.821 and conducting inspections for the proper enforcement of ss. 633.801-633.821. A firefighter employer who refuses to admit any member of the division or authorized representative of the division to any place of employment or to allow investigation and inspection pursuant to this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

633.816 Firefighter employee rights and responsibilities.—

(1) Each firefighter employee of a firefighter employer covered under ss. 633.801-633.821 shall comply with rules adopted by the division and with reasonable workplace safety and health standards, rules, policies, procedures, and work practices established by the firefighter employer and the workplace safety committee. A firefighter employee who knowingly fails to comply with this subsection may be disciplined or discharged by the firefighter employer.

(2) A firefighter employer may not discharge, threaten to discharge, cause to be discharged, intimidate, coerce, otherwise discipline, or in any manner discriminate against a firefighter employee for any of the following reasons:

(a) The firefighter employee has testified or is about to testify, on her or his own behalf or on behalf of others, in any proceeding instituted under ss. 633.801-633.821;

(b) The firefighter employee has exercised any other right afforded under ss. 633.801-633.821; or

(c) The firefighter employee is engaged in activities relating to the workplace safety committee.

(3) No pay, position, seniority, or other benefit may be lost for exercising any right under, or for seeking compliance with any requirement of, ss. 633.801-633.821.

633.817 Compliance.—Failure of a firefighter employer or an insurer to comply with ss. 633.801-633.821, or with any rules adopted under ss. 633.801-633.821, constitutes grounds for the division to seek remedies, including injunctive relief, by making appropriate filings with the circuit court.

633.818 False statements to insurers.—A firefighter employer who knowingly and willfully falsifies or conceals a material fact, who makes a false, fictitious, or fraudulent statement or representation, or who makes or uses any false document knowing the document to contain any false, fictitious, or fraudulent entry or statement to an insurer of workers' compensation insurance under ss. 633.801-633.821 commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

633.819 Matters within jurisdiction of the division; false, fictitious, or fraudulent acts, statements, and representations prohibited; penalty; statute of limitations.—A person may not, in any matter within the jurisdiction of the division, knowingly and willfully falsify or conceal a material fact; make any false, fictitious, or fraudulent statement or representation; or make or use any false document, knowing the same to contain any false, fictitious, or fraudulent statement or entry. A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The statute of limitations for prosecution of an act committed in violation of this section is 5 years after the date the act was committed or, if not discovered within 30 days after the act was committed, 5 years after the date the act was discovered.

633.820 Volunteer firefighters.—Sections 633.803-633.821 apply to volunteer firefighters and volunteer fire departments.

633.821 Workplace safety.—

(1) The division shall assist in making the firefighter employee place of employment a safer place to work and decreasing the frequency and severity of on-the-job injuries in such workplace.

(2) The division shall have the authority to adopt rules for the purpose of ensuring safe working conditions for all firefighter employees by authorizing the enforcement of effective standards, by assisting and encouraging firefighter employers to maintain safe working conditions, and by providing for education and training in the field of safety. Specifically, the division may by rule adopt all or any part of subparts C through T and subpart Z of 29 C.F.R. s. 1910, as revised April 8, 1998; the National Fire Protection

Association, Inc., Standard 1500, paragraph 5-7 (Personal Alert Safety System) (1992 edition); and ANSI A 10.4-1990.

(3) With respect to 29 C.F.R. s. 1910.134(g)(4), the two individuals located outside the immediately dangerous to life and health atmosphere may be assigned to an additional role, such as incident commander, pumper operator, engineer, or driver, so long as such individual is able to immediately perform assistance or rescue activities without jeopardizing the safety or health of any firefighter working at an incident. Also with respect to 29 C.F.R. s. 1910.134(g)(4):

(a) Each county, municipality, and special district shall implement such provision by April 1, 2002, except as provided in paragraphs (b) and (c).

(b) If any county, municipality, or special district is unable to implement such provision by April 1, 2002, without adding additional personnel to its firefighting staff or expending significant additional funds, such county, municipality, or special district shall have an additional 6 months within which to implement such provision. Such county, municipality, or special district shall notify the division that the 6-month extension to implement such provision is in effect in such county, municipality, or special district within 30 days after its decision to extend the time for the additional 6 months. The decision to extend the time for implementation shall be made prior to April 1, 2002.

(c) If, after the extension granted in paragraph (b), the county, municipality, or special district, after having worked with and cooperated fully with the division and the Firefighters Employment, Standards, and Training Council, is still unable to implement such provisions without adding additional personnel to its firefighting staff or expending significant additional funds, such municipality, county, or special district shall be exempt from the requirements of 29 C.F.R. s. 1910.134(g)(4). However, each year thereafter the division shall review each such county, municipality, or special district to determine if such county, municipality, or special district has the ability to implement such provision without adding additional personnel to its firefighting staff or expending significant additional funds. If the division determines that any county, municipality, or special district has the ability to implement such provision without adding additional personnel to its firefighting staff or expending significant additional funds, the division shall require such county, municipality, or special district to implement such provision. Such requirement by the division under this paragraph constitutes final agency action subject to chapter 120.

(4) The provisions of chapter 440 that pertain to workplace safety apply to the division.

(5) The division may adopt any rule necessary to implement, interpret, and make specific the provisions of this section, provided 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 solely to ss. 633.801-633.821 and firefighter employment safety without specific legislative authority.

Section 16. Section 633.31, Florida Statutes, is amended to read:

633.31 Firefighters Employment, Standards, and Training Council.—

(1) There is created within the Department of Insurance a Firefighters Employment, Standards, and Training Council of 13 ~~nine~~ members ~~appointed by the State Fire Marshal~~. Two members shall be fire chiefs appointed by the Florida Fire Chiefs Association, two members shall be firefighters who are not officers, appointed by the Florida Professional Firefighters Association, two members shall be firefighter officers who are not fire chiefs, appointed by the State Fire Marshal, one member appointed by the Florida League of Cities, one member appointed by the Florida Association of Counties, one member appointed by the Florida Association of Special Districts, one member appointed by the Florida Fire Marshal's Association, and one member appointed by the State Fire Marshal, and one member shall be a director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal. To be eligible for appointment as a fire chief member, firefighter officer member, firefighter member, or a director or instructor of a state-certified firefighting facility, a person shall have had at least 4 years' experience in the firefighting profession. The remaining member, who shall be appointed by the State Fire Marshal, ~~two members~~ shall not be a member or representative ~~members~~ of the firefighting profession or of any local government. Members shall serve only as long as they continue to meet the criteria under which they were appointed, or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.

(2) ~~Initially, the State Fire Marshal shall appoint three members for terms of 4 years, two members for terms of 3 years, two members for terms of 2 years, and two members for terms of 1 year. Thereafter,~~ Members shall be appointed for 4-year terms and in no event shall a member serve more than two consecutive terms. Any vacancy shall be filled in the manner of the original appointment for the remaining time of the term.

(3) The State Fire Marshal, in making her or his appointments, shall take into consideration representation by geography, population, and other relevant factors, in order that the membership on the council will be apportioned to give representation to the state at large rather than to a particular area.

(4) Membership on the council shall not disqualify a member from holding any other public office or being employed by a public entity, except that no member of the Legislature shall serve on the council.

Section 17. Subsections (4) and (5) of section 633.33, Florida Statutes, are amended to read:

633.33 Special powers; firefighter training.—The council shall have special powers in connection with the employment and training of firefighters to:

(4) Consult and cooperate with any employing agency, university, college, community college, the Florida State Fire College, or other educational

institution concerning the employment and safety of firefighters, including, but not limited to, the safety of firefighters while at the scene of a fire or the scene of an incident related to the provision of emergency services to which a firefighter responds, and the development of firefighter training schools and programs of courses of instruction, including, but not limited to, education and training in the areas of firefighter employment, fire science, fire technology, fire administration, and all allied and supporting fields.

(5) Make or support studies on any aspect of firefighting employment, education, and training or recruitment.

Section 18. Paragraph (c) of subsection (3) of section 383.3362, Florida Statutes, is amended to read:

383.3362 Sudden Infant Death Syndrome.—

(3) TRAINING.—

(c) The Department of Health, in consultation with the Emergency Medical Services Advisory Council, the Firefighters Employment, Standards, and Training Council, and the Criminal Justice Standards and Training Commission, shall develop and adopt, by rule, curriculum that, at a minimum, includes training in the nature of SIDS, standard procedures to be followed by law enforcement agencies in investigating cases involving sudden deaths of infants, and training in responding appropriately to the parents or caretakers who have requested assistance.

Section 19. Subsection (4) of section 633.30, Florida Statutes, is amended to read:

633.30 Standards for firefighting; definitions.—As used in this chapter:

(4) "Council" means the Firefighters Employment, Standards, and Training Council.

Section 20. Subsection (4) of section 633.32, Florida Statutes, is amended to read:

633.32 Organization; meetings; quorum; compensation; seal.—

(4) The council may adopt a seal for its use containing the words "Firefighters Employment, Standards, and Training Council."

Section 21. The Legislature determines and declares that this act fulfills an important state interest.

Section 22. Effective June 30, 2002, paragraphs (a) and (c) of subsection (1) and subsections (4), (5), (6), (7), (8), and (9) of section 163.05, Florida Statutes, are amended to read:

163.05 Small County Technical Assistance Program.—

(1) Among small counties, the Legislature finds that:

(a) The percentage of the population of small counties residing in the unincorporated areas is relatively high based on the United States Decennial Census of 2000 ~~and increased substantially between 1980 and 1990~~.

(c) Fiscal shortfalls persist even though 12 ~~13~~ of the small counties levied the maximum ad valorem millage authorized in their jurisdictions in 2001 ~~1990~~ and an additional 15 ~~13~~ small counties levied between 8 and 10 mills.

(4) The Commissioner of Agriculture ~~Comptroller~~ shall enter into contracts with program providers who shall:

(a) Be a foundation that meets the requirements for nonprofit status under s. 501(c)(3) of the Internal Revenue Code with a governing board which includes in its membership county commissioners and professional staff of the county ~~public agency or private, nonprofit corporation, association, or entity~~.

(b) Have substantial and documented experience working closely with county governments in providing both educational and technical assistance.

(c)~~(b)~~ Use existing resources, services, and information that are available from state or local agencies, universities, or the private sector.

(d)~~(c)~~ Seek and accept funding from any public or private source.

~~(d) Annually submit information to assist the Legislative Committee on Intergovernmental Relations in preparing a performance review that will include an analysis of the effectiveness of the program.~~

(e) Assist small counties in developing alternative revenue sources.

(f) Provide assistance to small counties in ~~the~~ areas such as ~~of~~ financial management, accounting, investing, purchasing, planning and budgeting, debt issuance, public management, management systems, computers and information technology, economic and community development, and public safety management.

(g) Provide for an annual independent financial audit of the program.

(h) In each county served, conduct a needs assessment upon which the assistance provided for that county will be designed.

(5)(a) The Commissioner of Agriculture ~~Comptroller~~ shall issue a request for proposals to provide assistance to small counties. The request for proposals shall be required no more frequently than every third year beginning with fiscal year 2004-2005. All contracts in existence on the effective date of this act between the Comptroller and any other party with respect to the Small County Technical Assistance Program may be accepted by the Commissioner of Agriculture as the party in interest and said contracts shall remain in full force and effect according to their terms. ~~At the request of the Comptroller, the Legislative Committee on Intergovernmental Relations shall assist in the preparation of the request for proposals.~~

(b) The Commissioner of Agriculture ~~Comptroller~~ shall review each contract proposal submitted.

~~(c) The Legislative Committee on Intergovernmental Relations shall review each contract proposal and submit to the Comptroller, in writing, advisory comments and recommendations, citing with specificity the reasons for its recommendations.~~

(c)~~(d)~~ The Commissioner of Agriculture ~~Comptroller and the council~~ shall consider the following factors in reviewing contract proposals:

1. The demonstrated capacity of the provider to conduct needs assessments and implement the program as proposed.

2. The number of small counties to be served under the proposal.

3. The cost of the program as specified in a proposed budget.

4. The short-term and long-term benefits of the assistance to small counties.

5. The form and extent to which existing resources, services, and information that are available from state and local agencies, universities, and the private sector will be used by the provider under the contract.

(6) A decision of the Commissioner of Agriculture ~~Comptroller~~ to award a contract under this section is final and shall be in writing ~~with a copy provided to the Legislative Committee on Intergovernmental Relations~~.

~~(7) The Comptroller may enter into contracts and agreements with other state and local agencies and with any person, association, corporation, or entity other than the program providers, for the purpose of administering this section.~~

(7)~~(8)~~ The Commissioner of Agriculture ~~Comptroller~~ shall provide fiscal oversight to ensure that funds expended for the program are used in accordance with the contracts entered into pursuant to subsection (4) and shall conduct a performance review of the program as may be necessary to ensure that the goals and objectives of the program are being met.

~~(9) The Legislative Committee on Intergovernmental Relations shall annually conduct a performance review of the program. The findings of the review shall be presented in a report submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Comptroller by January 15 of each year.~~

Section 23. Effective June 30, 2002, Specific Appropriation 2252 in the 2002-2003 General Appropriations Act is hereby repealed and an identical amount is hereby appropriated to the Department of Agriculture and Consumer Services from the General Revenue Fund for the purposes of this act.

Section 24. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Approved by the Governor June 12, 2002.

Filed in Office Secretary of State June 12, 2002.