An act relating to the Department of Financial Services; amending s. 440.02, F.S.; redefining the term "employee" for purposes of workers' compensation; amending s. 440.05, F.S.; revising requirements for submitting a notice of election of exemption; revising duties of the Department of Financial Services relating to the expiration of certificates of exemption; expanding applicability of requirements relating to certificates of exemption; repealing s. 440.59, F.S., relating to the duty of the Department of Financial Services to make an annual report on the administration of ch. 440, F.S., the Workers' Compensation Law, to specified officials; amending s. 516.031, F.S.; revising the amount that a lender may impose as a delinquency charge; amending s. 560.1092, F.S.; deleting a provision that provides for the deposit of funds collected from money services business licensees; amending s. 560.144, F.S.; requiring examination fees to be paid directly to the Office of Financial Regulation; providing for the deposit of certain proceeds; providing for the establishment of the Florida Insurance Premium Tax Prepayment Program, to be administered by the State Board of Administration, to help fund the Florida Hurricane Catastrophe Fund; providing definitions; providing the duties of the State Board of Administration with respect to the program; providing
for the selection of a program manager; providing
duties; providing that an insurer who prepays
its insurance premium taxes shall be issued a
certificate representing tax credits against future
taxes; providing for the use and transfer of such
credits; requiring a manager report; providing
effective dates.

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

Section 1.  Paragraph (b) of subsection (15) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(15)

(b) "Employee" includes any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous.

1. Any officer of a corporation may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05.

2. As to officers of a corporation who are engaged in the construction industry, no more than three officers of a corporation or of any group of affiliated corporations may elect to be exempt from this chapter by filing written notice of the election with the department as provided in s. 440.05. Officers
must be shareholders, each owning at least 10 percent of the stock of such corporation and listed as an officer of such corporation with the Division of Corporations of the Department of State, in order to elect exemptions under this chapter. For purposes of this subparagraph, the term "affiliated" means and includes one or more corporations or entities, any one of which is a corporation engaged in the construction industry, under the same or substantially the same control of a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliated" includes, but is not limited to, the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.

3. An officer of a corporation who elects to be exempt from this chapter by filing a written notice of the election with the department as provided in s. 440.05 is not an employee. Services are presumed to have been rendered to the corporation if the officer is compensated by other than dividends upon shares of stock of the corporation which the officer owns.

Section 2. Subsections (3) and (6) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—
(3) Each officer of a corporation who is engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must electronically submit a written notice to such effect to the department on a form prescribed by the department. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath. The notice of election to be exempt which is electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter must list the name, federal tax identification number, date of birth, Florida driver license number or Florida identification card, social security number, all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the department, a copy of the relevant occupational license in the primary jurisdiction of the business, and the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership along with a copy of the stock certificate evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not
entitled to benefits under this chapter, must provide that the
election does not exceed exemption limits for officers provided
in s. 440.02, and must certify that any employees of the
corporation whose officer elects an exemption are covered by
workers' compensation insurance. Upon receipt of the notice of
the election to be exempt, receipt of all application fees, and
a determination by the department that the notice meets the
requirements of this subsection, the department shall issue a
certification of the election to the officer, unless the
department determines that the information contained in the
notice is invalid. The department shall revoke a certificate of
election to be exempt from coverage upon a determination by the
department that the person does not meet the requirements for
exemption or that the information contained in the notice of
election to be exempt is invalid. The certificate of election
must list the name of the corporation listed in the request for
exemption. A new certificate of election must be obtained each
time the person is employed by a new or different corporation
that is not listed on the certificate of election. A copy of the
certificate of election must be sent to each workers'
compensation carrier identified in the request for exemption.
Upon filing a notice of revocation of election, an officer who
is a subcontractor or an officer of a corporate subcontractor
must notify her or his contractor. Upon revocation of a
certificate of election of exemption by the department, the
department shall notify the workers' compensation carriers
identified in the request for exemption.
(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight, 2 years from its issue date, as noted on the face of the exemption certificate. A construction industry certificate of election to be exempt may be revoked before its expiration by the officer for whom it was issued or by the department for the reasons stated in this section. At least 60 days before the expiration date of a construction industry certificate of exemption issued after December 1, 1998, the department shall send notice of the expiration date and an application for renewal to the certificateholder at the address on the certificate or to the e-mail address on file with the department.

Section 3. Effective January 1, 2013, subsection (6) of section 440.05, Florida Statutes, as amended by this act, is amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(6) A construction industry certificate of election to be exempt which is issued on or after January 1, 2013, in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight, 2 years from its issue date.
date, as noted on the face of the exemption certificate. A
construction industry certificate of election to be exempt may
be revoked before its expiration by the officer for whom it was
issued or by the department for the reasons stated in this
section. At least 60 days before the expiration date of a
construction industry certificate of exemption, the department
shall send notice of the expiration date to the
certificateholder at the address on the certificate or to the e-
mail address on file with the department.

Section 4. Section 440.59, Florida Statutes, is repealed.

Section 5. Paragraph (a) of subsection (3) of section
516.031, Florida Statutes, is amended to read:

516.031 Finance charge; maximum rates.—
(3) OTHER CHARGES.—
(a) In addition to the interest, delinquency, and
insurance charges herein provided for, no further or other
charges or amount whatsoever for any examination, service,
commission, or other thing or otherwise shall be directly or
indirectly charged, contracted for, or received as a condition
to the grant of a loan, except:
1. An amount not to exceed $25 to reimburse a portion of
the costs for investigating the character and credit of the
person applying for the loan;
2. An annual fee of $25 on the anniversary date of each
line-of-credit account;
3. Charges paid for brokerage fee on a loan or line of
credit of more than $10,000, title insurance, and the appraisal
of real property offered as security when paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation when secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan, if the premium does not exceed the fees which would otherwise be payable, which premium may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney’s fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses of repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge not to exceed $10 for each payment in default for a period of not less than 10 days, if the charge is agreed upon, in writing, between the parties before imposing the charge. Such delinquency charge shall be adjusted annually on July 1 by the Chief Financial Officer to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers for the most recent calendar year exceeds the CPI for the calendar year immediately preceding.
preceding. The adjusted charge shall be rounded to the nearest hundredth of a dollar.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days from the discovery of such error.

Section 6. Subsections (3) and (4) of section 560.1092, Florida Statutes, are renumbered as subsections (2) and (3), respectively, and present subsection (2) of that section is amended to read:

560.1092 Examination expenses.—
(2) All moneys collected from licensees for examinations shall be deposited into the Regulatory Trust Fund, and the office may make deposits into such fund from moneys appropriated for the operation of the office.

Section 7. Section 560.144, Florida Statutes, is amended to read:

560.144 Deposit of fees and assessments.—License application fees, license renewal fees, late payment penalties, civil penalties, administrative fines, examination fees, and other fees, costs, or penalties provided for in this chapter shall be paid directly to the office. Proceeds from part II of this chapter shall be deposited into the Financial Institutions' Regulatory Trust Fund. Proceeds from part III of this chapter
shall be deposited, which shall deposit such proceeds into the Regulatory Trust Fund and use the proceeds to pay the costs of the office as necessary to carry out its responsibilities under this chapter.

Section 8. Florida Insurance Premium Tax Prepayment Program.—The Governor may direct the State Board of Administration to create the Florida Insurance Premium Tax Prepayment Program for the purpose of creating an additional funding mechanism for the Florida Hurricane Catastrophe Fund.

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

(a) "Affiliate" means:

1. A person who directly or indirectly:
   a. Beneficially owns 10 percent or more of the outstanding voting securities or other ownership interests of the other person, whether through rights, options, convertible interests, or otherwise; or
   b. Controls or holds power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the other person;

2. A person with 10 percent or more of the outstanding voting securities or other ownership interests, of which are directly or indirectly:
   a. Beneficially owned by the other person, whether through rights, options, convertible interest, or otherwise; or
   b. Controlled or held with power to vote by the other person;

3. A partnership in which the other person is a general partner; or
4. An officer, employee, or agent of the other person, or
an immediate family member of the officer, employee, or agent.

(b) "Certificate" means an instrument issued by the state
as authorized by the program in exchange for the prepayment of
insurance premium taxes by purchasers which does not extend
beyond the 11th calendar year following the calendar year of the
fund allocation date to which the certificate relates, except as
otherwise provided in paragraph (4)(d).

(c) "Corporation" means the Florida Hurricane Catastrophe
Fund Finance Corporation.

(d) "Full tax credit amount" means the aggregate stated
amount of all certificates issued by the state to purchasers
evidencing prepayment of the purchaser's premium taxes.

(e) "Fund" means the Florida Hurricane Catastrophe Fund.

(f) "Fund allocation date" means the date on which the
state board receives premium tax prepayments from purchasers in
return for the issuance of the certificates that entitle the
purchasers to receive an allocation of the full tax credit
amount authorized by the program.

(g) "Manager" means a person, including its principals,
partners, subsidiaries, affiliates, or subcontractors,
designated pursuant to the program to arrange for the sale of
certificates and the receipt of prepayments of insurance premium
taxes.

(h) "Manager costs" means a fee of up to 150 basis points,
as determined by the state board, of the stated amount of the
certificates issued and sold for all of the manager's costs
related to configuring and selling the certificates.
(i) "Person" means any natural person, corporation, limited liability company, partnership, joint venture, trust, incorporated or unincorporated association, joint stock company, governmental agency or political subdivision thereof, or other entity of any kind.

(j) "Premium tax year" means the 12-month period used under state law to measure an insurer's premium tax liability, which begins on January 1 of each calendar year and ends on the following December 31 of such calendar year.

(k) "Premium taxes" means the taxes imposed pursuant to ss. 624.509 and 624.5091, Florida Statutes, and chapter 220, Florida Statutes.

(l) "Principal" means:
   1. A senior officer or director of a corporation;
   2. An individual manager of a limited liability company or a principal of an entity manager;
   3. An individual general partner of a partnership or limited partnership or a principal of an entity that serves as a general partner; or
   4. An individual in a position of similar authority in an entity not specifically named in this paragraph.

(m) "Program" means the Florida Insurance Premium Tax Prepayment Program.

(n) "Purchaser" means an insurer authorized to transact insurance in this state which has a liability for insurance premium taxes under ss. 624.509 and 624.5091, Florida Statutes, or corporate income and excise taxes under chapter 220, Florida Statutes.
Statutes, which prepays its insurance premium taxes or corporate and excise taxes as provided under the program.

(o) “State board” or “board” means the State Board of Administration.

(p) “Tax credits” means credits against insurance premium tax liability under ss. 624.509 and 624.5091, Florida Statutes, and corporate income and emergency excise tax liability under chapter 220, Florida Statutes, arising from the prepayment of an insurer’s insurance premium taxes as authorized under the program.

(2) STATE BOARD OF ADMINISTRATION DUTIES.—Upon receiving direction from the Governor to create the program, the state board shall administer the program, and shall have the following powers and duties necessary or proper to conduct the program, including, but not limited to:

(a) Making and executing contracts and other necessary instruments.

(b) Authorizing the issuance and sale of up to $1.5 billion in certificates to offset insurance premium tax liability under ss. 624.509 and 624.5091, Florida Statutes, or corporate income and emergency excise tax liability under chapter 220, Florida Statutes.

(c) Arranging for the sale of the certificates. The funds derived from the sale of the certificates shall be deposited into a separate account established within the state board as provided in paragraph (d).

(d) Simultaneously with the deposit of sale proceeds of the certificates as provided in paragraph (c), loaning such...
proceeds to the fund or the corporation, as determined by board
based on the recommendations of the manager. Such loan shall be
memorialized in a written statement by the board and filed with
the board and the corporation, setting forth the terms and
details of the loan, including, but not limited to, the rate of
interest, if any, to be borne by the loan; the dates for the
payment of principal and interest, if any, on the loan; the
principal amortization schedule for the loan; and sources and
priority of payments for the loan, all of which must be in
accordance with s. 215.555, Florida Statutes; and all
outstanding obligations associated with or relating to the fund.
In determining the terms and details of the loan, the state
board must reasonably protect the interests of the state to have
the loan fully repaid in a timely manner and design the schedule
of loan repayments in each state fiscal year to equal the amount
of tax credits that are expected to be applied to reduce state
tax liabilities in such fiscal year. If the state board deems it
helpful, the corporation may execute such agreements as the
board prepares and presents to the corporation relating to or
associated with the loan. The state board and the corporation
are each granted such duties, rights, and powers as may be
necessary or helpful in carrying out the purposes of this
paragraph. The loan must be repaid in accordance with its terms.
Loan repayments received by the board shall be transferred to
the State Treasury for deposit into the General Revenue Fund
within 5 days after receipt.
(e) Soliciting proposals and selecting a manager in
accordance with subsection (3), and contracting for such other
services as deemed necessary or useful by the board for
structuring the program and implementing the sale of
certificates, and paying the manager costs thereof from the
proceeds of the sale of the certificates.

(f) Reviewing and approving or disapproving proposals from
prospective purchasers solicited and structured by the manager,
agreeing or disagreeing with the recommendation of the manager
to sell the certificates to the purchasers in a public or
private sale, approving or disapproving the price or prices to
be paid by purchasers for the certificates, determining the form
and denominations of the certificates, and determining such
other administrative details regarding the certificates as
deemed useful by the state board. All such determinations,
together with such other matters deemed appropriate by the state
board, shall be memorialized in a written statement by the board
and filed with the state board and the corporation.

(g) Determining the amount of the tax credits evidenced by
the certificates, the calendar years to which the tax credits
apply, and the amount of tax credits applicable to each calendar
year subject to the following:

1. The aggregate amount of tax credits evidenced by the
certificates may not exceed $1.5 billion;

2. The calendar years to which the tax credits apply shall
be any of the calendar years 2012 through 2023, inclusive, as
determined by the board;

3. The aggregate amount of the tax credits applicable to
any individual calendar year may not exceed $150 million; and
4. In recognition of the time value of money, the sale price of any certificate shall be less than the future tax credit evidenced by the certificate, as determined by the board.

(h) The Department of Revenue must notify the fund and the corporation by June 30 of each year of the total amount of tax credits under the program applied against premium taxes for the preceding premium tax year.

(3) MANAGER APPLICATION AND DESIGNATION; FUND ALLOCATION DATE.—

(a) Within 30 days after receiving directions from the Governor, the state board, based upon the recommendation of the Division of Bond Finance, shall select one manager to be the exclusive manager for all purposes under the program and provide a statement of the services to be provided, which may include the services contained in paragraph (d); the time and date for the receipt of proposals and of the public opening; and all of the terms and conditions applicable to the designation of the manager, including the criteria contained in paragraph (b).

(b) An applicant for manager must demonstrate in its response to the request for proposals that it meets all of the following criteria:

1. Have experience in structuring and marketing notes repaid all or in part with insurance premium tax credits. If a subcontractor is used to meet the requirements of this subsection, the subcontractor must have been authorized to do business in this state on or before January 1, 2012.
2. Have experience during the previous calendar year with underwriting and marketing Florida state and local government securities.

3. Has more than $5 billion in equity capital.

4. Have experience during the previous calendar year in managing a minimum of 50 state and local government financing transactions nationwide, each in excess of $50 million.

(c) The fund allocation date may not be later than 120 days following the designation of the manager.

(d) The state board may require the manager to provide all of the following services:

1. Before the board determines the aggregate amount of tax credits applicable to any single calendar year, the manager must estimate the amounts of and the dates for payments of the principal and interest, if any, on the loan provided in paragraph (2)(d) such that all such payments:

   a. Are consistent with s. 215.555, Florida Statutes, and all outstanding obligations associated with or relating to the fund; and

   b. Are estimated to offset in each state fiscal year the amount of state revenues expected not to be collected due to the sale of the certificates.

2. To assist the state board in structuring the program in a manner complying with the provisions of this section.

3. Such additional services relating to the duties of the board as the board shall reasonably determine and set forth in the statement of services referenced in paragraph (a).

(4) PURCHASER TAX CREDITS.—
(a) Each purchaser that prepays its insurance premium taxes shall earn vested tax credits against future taxes under ss. 624.509 and 624.5091, Florida Statutes, and chapter 220, Florida Statutes, equal to the stated amount of the certificates issued to the purchasers and evidencing their prepayment of insurance premium taxes in cash. The aggregate tax credits available to purchasers in the form of certificates may not exceed $1.5 billion. Tax credits vest on the fund allocation date.

(b) Each purchaser prepaying its insurance premium tax obligation through the purchase of certificates authorized under the program may:

1. Take the vested tax credits against purchaser's insurance premium taxes or income taxes each premium tax year in accordance with the terms of the certificate; and

2. Reduce its estimated payments of tax liability for each year, on a quarterly and an annual basis, for which tax credits are available to offset tax liability by all or part of the same percentage as the percentage payment due on each estimated payment date.

(c) The tax credits that are used by a purchaser with respect to any year may not exceed the full tax liability of the purchaser for that year.

(d) Notwithstanding any limitation set forth in any other provision of the program, any tax credits that a purchaser is permitted to use under paragraph (a) or paragraph (b), but is unable to use because of paragraph (c), may be carried forward until the end of the 10th year following the expiration date set
forth in the certificate to which the tax credit relates and be
used to offset the purchaser's liability in any subsequent year
in which the purchaser has sufficient tax liability, including
in a year in which the purchaser also uses tax credits that are
allocated to that year pursuant to paragraph (b).

(e) A purchaser that has purchased certificates is not
required to reduce the amount of tax liability included by the
purchaser in connection with the ratemaking for a insurance
contract written because of a reduction in the purchaser's
assessment derived from the tax credits granted under the
program.

(f) If the taxes that a purchaser does not pay by virtue
of the tax credits purchased under this program would constitute
a credit against another tax or assessment if paid, the insurer
shall continue to earn the credit as though the tax credits
evidenced by the certificates were paid by cash.

(g) A purchaser may transfer any certificate authorized
under the program to another purchaser if the transferor
delivers to the Commissioner of Insurance Regulation within 30
days after the transfer a written notice indicating the name of
the transferee, the stated amount of certificates being
transferred, and the year or years to which the tax credits
evidenced by the certificate are allocable as provided in
paragraph (b) and such other information, if any, as required in
the body of the certificate being transferred.

(h) A purchaser claiming a tax credit against its premium
tax liability earned through the prepayment of insurance premium
taxes evidenced by a certificate does not have to pay any
additional retaliatory tax levied pursuant to s. 624.5091, Florida Statutes, as a result of claiming that tax credit.

(i) For statutory accounting purposes, a purchaser may treat the transferable tax credits as an admitted asset, pursuant to the National Association of Insurance Commissioners Accounting Practices and Procedures Manual and Statement of Statutory Accounting Principle No. 94.

(j) The general revenue service charge payable by a trust fund may not be reduced by the tax credits taken under this program.

(5) MANAGER REPORTS.—Within 30 days after the fund allocation date, the manager shall report all of the following to the state board and the Office of Insurance Regulation:

(a) The name of each purchaser from whom prepayment of insurance premium taxes was received, including the purchaser's identification number.

(b) The stated amount of certificates purchased by each purchaser.

(c) The date on which such purchase was made.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012.