SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 31, 1998 Revised: _____ _____ _____ _____

Subject: Credit Unions/Conversion

	Analyst	Staff Director	Reference	Action
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.			RC	
3.				
4.				
5.				

I. Summary:

The bill provides that the Department of Banking and Finance will not approve an application by a federally-chartered credit union for conversion to a state charter unless a completed application for conversion is on file with the department on February 25, 1998. The prohibition on conversion will terminate on July 1, 1999, unless the Comptroller determines before such date by an order of general application that is in the public interest to accept and approve such conversion applications and identifies a procedure for the acceptance and processing of such conversion applications. The Comptroller will consider certain specified factors and such other factors deemed relevant to the maintenance of a fair and competitive financial system in this state in making such a determination.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Federal Regulation: Field of Membership/Common Bond

Pursuant to the 1934 Federal Credit Union Act, federal credit unions can only serve members who share a single bond of occupation or association, or to groups within well-defined neighborhoods. Section 109 of the Act provides that federal credit union membership is "limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district. However, in recent years, National Credit Union Administration (NCUA) has attempted to expand the field of membership by broadly interpreting what constitutes a field of membership, due to use of the word "groups" in the definition, to permit federal credit unions to be composed of multiple, unrelated employer groups, each having its own distinct common bond of occupation.

NCUA authorized AT&T Family Credit Union to add a number of additional employee groups to its field of membership. Several banks filed suit against NCUA, contending that NCUA's approval violated the "common bond" provision. In July 1996, the U.S. Court of Appeals for the District of Columbia ruled that all members of a federal credit union must share a common bond (*First National Bank and Trust Company, et. al, v. NCUA).* If there are multiple occupational groups within a single credit union, then it is not sufficient that the members of each different group have a bond common to that group only. An injunction was issued which banned federal credit unions from adding new members to any group outside of the core group of membership. This decision was ultimately appealed to and affirmed by the U.S. Supreme Court in February 1998.

The U.S. Supreme Court held in the matter of *AT &T Family Federal Credit, et al, v. First National Bank and Trust Co., et. al.)* that NCUA's interpretation of Section 109, allowing a common bond to unite only the members of each unrelated employer-group, is impermissible because that interpretation is contrary to the unambiguously expressed intent of Congress that the same common bond of occupation must unite each member of an occupationally defined federal credit union. The case was remanded back to the trial court for a ruling in view of the Supreme Court's opinion. That ruling has not been released.

State Regulation of Credit Unions

Chapter 657, F.S., defines a credit union as a cooperative, nonprofit association organized ". . . for the purpose of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing opportunities for its members to use and control their resources on a democratic basis. . . . " Credit unions qualify for tax exemption due to their nonprofit status. Board members are volunteer members. Dividends earned by members are taxable income.

In Florida, field of membership, for a state-chartered credit union, is defined by s. 657.002(12), F.S., to mean:

The defined group of persons designated as eligible for membership in the credit union who:

(1) Have a similar profession, occupation, or formal association with an identifiable purpose; or
(2) Reside within an identifiable neighborhood, community, rural district, or county; or
(3) Are employed by a common employer; or
(4) Are employed by the credit union; and members of the immediate family of persons within such group.

This statutory definition does not use the "common bond" provision found in the federal act. As a result of that, as well as the procedure/criteria for approving amendments to the bylaws relating to changing the field of membership, the membership field for a state-chartered credit union has been broadly interpreted.

Pursuant to s. 657.0061, F.S., all amendments to bylaws must be submitted to the department for approval or disapproval. The department must approve the proposed amendment unless: it finds that the amendment is not in the best of the membership; is not in accord with sound credit union practices; or exposes the assets of the credit union to unnecessary risks.

On February 20, 1997, the Florida Bankers Association filed a petition with the department requesting that the department initiate rulemaking to implement the "plain language" of chapter 657, F.S. The proposed rule prevented the expansion of credit unions beyond the limited field of membership through amendments to bylaws, merger, or conversion from a federal to a state chartered credit union. On July 28, 1997, the department issued a Final Order Denying Petition to Institute Rulemaking (pursuant to s. 120.54(7), F.S.) on the grounds that the statutes relating to amendments to bylaws, merger, and conversions required the department to permit "daisy-chaining" and the department held that such requirement was so unambiguous as to obviate the need for a rule interpreting the statutes. The Florida Bankers Association is appealing the Final Order.

On February 26, 1998, in a letter addressed to the President of the Senate and Speaker of the House of Representatives, the Comptroller announced that he was instituting a 90-day moratorium on any new applications for conversion of federal credit unions to state credit unions. Under the provisions of s. 120.60(1), F.S., (The Administrative Procedure Act), every application for a license must be approved or denied within 90-days after receipt of the completed application, unless a shorter period of time for agency action is provided by law.

Under the provisions of s. 657.066, F.S., any federal credit union seeking to convert to a state-chartered credit union is required to pay a $500 nonrefundable filing fee to the Department of Banking and Finance. The department is authorized to conduct an examination of any converting credit union before approving the conversion and the converting credit union is required to pay a nonrefundable examination fee, as provided in s. 655.411(1)(b), F.S.

Financial Services Market

According to the Department of Banking and Finance, state chartered credit unions in Florida account for about 2 percent of aggregate market share for insured depository institutions (banks, thrifts and federal credit unions) in Florida.

As of December 31, 1987, there were 230 federal credit unions and 160 state credit unions. As of December 31, 1996, there were a total of 155 federal credit unions and 115 state credit unions. From 1987 to 1996, no federal credit union sought to convert to a state credit union. In 1997, five federal credit unions converted to state credit unions. At this time, no applications for conversion from a federal credit union to state credit union are pending.

III. Effect of Proposed Changes:

Section 1. This section provides that the Department of Banking and Finance will not approve an application by a federally-chartered credit union for conversion to a state charter unless a

completed application for conversion is on file with the department on February 25, 1998. The prohibition on conversion will terminate on July 1, 1999, unless the Comptroller determines before such date by an order of general application that is in the public interest to accept and approve such conversion applications and identifies a procedure for the acceptance and processing of such conversion applications. The Comptroller will consider the following factors in making such a determination: 1) Whether the U.S. Congress has amended the Federal Credit Union Act, subsequent to the enactment of this section and, if so, the effect such amendments have or may have on the relative competitive positions of state-chartered and federally-chartered credit unions; 2) Whether, and the extent to which, Florida will be able to assume the costs of examination and supervision for any newly converted institutions; and 3) Other factors as the Comptroller deems relevant to the maintenance of a fair and competitive financial system in the state.

Section 2. This act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.