

By the Committee on Fiscal Policy

301-296A-99

1                                   A bill to be entitled  
2           An act relating to trust funds within the  
3           Department of Insurance; abolishing the Home  
4           Equity Conversion Mortgage Guaranty Fund and  
5           transferring its balance to the Treasurer's  
6           Administrative and Investment Trust Fund;  
7           re-creating the Treasurer's Administrative and  
8           Investment Trust Fund; carrying forward current  
9           balances and continuing current sources and  
10          uses thereof; amending s. 697.205, F.S., and  
11          repealing s. 697.203, F.S., relating to the  
12          Home Equity Conversion Mortgage Guaranty Fund;  
13          conforming provisions to the transfer of the  
14          balance of the trust fund to the Treasurer's  
15          Administrative and Investment Trust Fund;  
16          providing effective dates.

17  
18           WHEREAS, the Legislature wishes to transfer the Home  
19   Equity Conversion Mortgage Guaranty Fund to the Treasurer's  
20   Administrative and Investment Trust Fund, and

21           WHEREAS, the Legislature wishes to extend the life of  
22   the Treasurer's Administrative and Investment Trust Fund,  
23   which is otherwise scheduled to be terminated pursuant to  
24   constitutional mandate, and

25           WHEREAS, the Legislature has reviewed the trust fund  
26   before its scheduled termination date and has found that it  
27   continues to meet an important public purpose, and

28           WHEREAS, the Legislature finds that the existing public  
29   policy concerning the trust fund sets adequate parameters for  
30   its use, NOW, THEREFORE,

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

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3           Section 1. Effective July 1, 1999, the Home Equity  
4 Conversion Mortgage Guaranty Fund within the Department of  
5 Insurance, FLAIR number 46-2-369, is abolished and its entire  
6 balance is transferred to the Treasurer's Administrative and  
7 Investment Trust Fund.

8           Section 2. (1) The Treasurer's Administrative and  
9 Investment Trust Fund within the State Treasury, FLAIR number  
10 46-2-725, which is to be terminated pursuant to Section 19(f),  
11 Article III of the State Constitution on November 4, 2000, is  
12 re-created.

13           (2) All current balances of the trust fund are carried  
14 forward and all current sources and uses of the trust fund are  
15 continued.

16           Section 3. Section 697.205, Florida Statutes, is  
17 amended to read:

18           697.205 Recoveries from the trust fund.--

19           (1)(a) Any person is eligible to seek recovery from  
20 the Treasurer's Administrative and Investment Trust ~~Home~~  
21 ~~Equity Conversion Mortgage Guaranty~~ Fund if:

22           1. Such person was the mortgagee of a home equity  
23 conversion mortgage which was foreclosed upon termination, and  
24 the proceeds from the foreclosure sale were insufficient to  
25 repay the full loan amount due;

26           2. Such person has caused to be issued a writ of  
27 execution upon a decree rendered pursuant to chapter 702, and  
28 the officer executing the writ has made a return showing that  
29 no real or personal property of the judgment debtor can be  
30 found which is liable to be levied upon in satisfaction of the  
31 decree or that the amount realized on the sale of the judgment

1 debtor's property pursuant to such execution was insufficient  
2 to satisfy the judgment;

3           3. Such person has made all searches and inquiries  
4 which are reasonable to ascertain whether the judgment debtor  
5 possesses real or personal property or other assets subject to  
6 being sold or applied in satisfaction of the judgment, and  
7 such person through her or his search has discovered no  
8 property or assets or has discovered property and assets and  
9 taken all necessary action and proceedings for the application  
10 of such property and assets in satisfaction of the judgment  
11 but the amounts thereby realized were insufficient to satisfy  
12 the judgment;

13           4. Such person has applied any amounts recovered from  
14 the judgment debtor, or from any other source, to the  
15 deficiency decree; or

16           5. The mortgage on which recovery is sought was  
17 insured pursuant to s. 697.204 prior to July 1, 1993.

18           (b) Any person who meets all of the conditions  
19 prescribed in subsection (1) may apply to the department for  
20 payment to be made to such person from the Treasurer's  
21 Administrative and Investment Trust ~~Home Equity Conversion~~  
22 ~~Mortgage Guaranty~~ Fund in an amount equal to the unsatisfied  
23 portion of such person's deficiency decree. ~~In no event shall~~  
24 Such amount may not exceed the difference between the amount  
25 of the proceeds from a foreclosure sale and the loan amount  
26 due, including principal and interest.

27           (c) Upon receipt by the mortgagee of the payment from  
28 the Treasurer's Administrative and Investment Trust ~~Home~~  
29 ~~Equity Conversion Mortgage Guaranty~~ Fund, the mortgagee shall  
30 assign to the department any additional right, title, and  
31 interest in the judgment, to the extent of such payment.

1           (2)  
2           (a) ~~If in the event that~~ a search is made by the  
3 mortgagee to determine all of the debtor's real and personal  
4 property which may be applied towards payment of the debt and  
5 it is determined that foreclosure of the home equity  
6 conversion mortgage would not result in recovering any  
7 significant additional assets of the debtor which may be used  
8 to satisfy the mortgage, the mortgagee may still be able to  
9 recover from the fund without having to foreclose, provided  
10 that such mortgage was insured pursuant to s. 697.204 prior to  
11 July 1, 1993.

12           1. Such recovery shall be provided for by rule adopted  
13 under ~~promulgated pursuant to~~ s. 697.203; shall be conditioned  
14 on the mortgagee acquiring the mortgaged property by deed; and  
15 shall be based on a reasonable appraised value of the  
16 property. The rules adopted ~~promulgated~~ for such recovery  
17 shall include provisions for requiring the mortgagee to  
18 determine the total assets of the debtor; provisions for  
19 determining whether foreclosure would result in recovering any  
20 additional assets of the debtor which may be used to satisfy  
21 the mortgage; and provisions for determining what constitutes  
22 a reasonable appraised value of the property.

23           2. The maximum recovery to be allowed by this section  
24 shall be the difference between the loan amount due, including  
25 principal and interest, and the appraised value of the  
26 property.

27           (b) Any person who meets all of the conditions set by  
28 rule for recovery under this subsection may apply to the  
29 department for payment to be made to such person from the  
30 Treasurer's Administrative and Investment Trust ~~Home Equity~~  
31

1 ~~Conversion Mortgage Guaranty~~ Fund in an amount equal to the  
2 maximum recovery ~~as provided in this section herein.~~

3 Section 4. Section 697.203, Florida Statutes, is  
4 repealed.

5 Section 5. This act shall take effect July 1, 1999,  
6 except that section 2 shall take effect November 4, 2000.

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9 SENATE SUMMARY

10 Abolishes the Home Equity Conversion Mortgage Guaranty  
11 Fund within the Department of Insurance and transfers its  
12 balance to the Treasurer's Administrative and Investment  
13 Trust Fund. Re-creates the Treasurer's Administrative and  
14 Investment Trust Fund.

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