STORAGE NAME: h0439s1z.fs ****AS PASSED BY THE LEGISLATURE****
DATE: May 17, 2000 **CHAPTER #: 00-311, Laws of Florida**

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
FINAL ANALYSIS

BILL #: CS/HB 439

RELATING TO: Public Records/Certified Capital Companies

SPONSOR(S): Committee on Governmental Operations and Representative Crow

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FINANCIAL SERVICES YEAS 9 NAYS 0
(2) GOVERNMENTAL OPERATIONS YEAS 7 NAYS 0
(3) FINANCE AND TAXATION YEAS 13 NAYS 0
(4)
(5)

I. SUMMARY:

Certified capital companies (CAPCOs) are statutorily authorized entities designed to provide venture capital for investment in new and expanding Florida businesses. The main function of a CAPCO requires the writing of investment contracts and complex structuring of investments with private sector businesses whose financial and tax records are generally not open to the public for competitive reasons. Additionally, the personal financial records of the principals of such companies are also generally protected under the private sector corporate veil.

This bill provides a limited exemption from public records requirements for certain information relating to an investigation or departmental review of a CAPCO, so long as the investigation is active, except under certain circumstances. Under certain circumstances, personal information relating to departmental investigatory personnel and their families is exempted and the social security numbers of customers, complainants, and other persons involved in a CAPCO are exempted. The confidentiality of information only given to the department on a confidential basis is also assured. The bill provides a privilege against civil liability for persons who in good faith provide information to the department. Finally, the bill provides a public necessity statement outlining the reasons for the exemptions and confidentiality.

This bill does not appear to have a fiscal impact on state or local governments.

Please see Section VI for a history of this bill and the Senate Companion Bill, **CS/SB 1872 by Banking & Insurance and Senator Sullivan.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [X]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes [X]	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

> Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public

policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Exemptions are analyzed using the following definition of public necessity: A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

The Legislature has previously granted exemptions from the public records requirements to the Department of Banking and Finance for investigative records and other financial records relating to the banking, securities, and money transaction industries, see ss. 517.2015, 560.129 and 655.057, F.S.

Certified Capital Companies

The Certified Capital Company program (CAPCO) was established under s. 288.99, F.S. (sec. 2, ch.98-259, L.O.F.), to provide a one-time stimulus for venture capital creation for investment in Florida businesses. The primary functions of a CAPCO require the writing of investment contracts and the complex structuring of investments with these private sector businesses. The purpose of the program is to encourage insurance companies to invest in entities known as certified capital companies which in turn provide capital for new or expanding businesses in the state. The Department of Banking and Finance has been charged with administering the certification of the CAPCOs. Included in this process is an initial application period, which has expired, and oversight of continued certification by each of the 3 approved entities.

CAPCOs certified by the department are authorized to receive contributions of capital from insurance companies (defined in the act as "certified investors"), who in turn would receive a credit against state premium taxes for each dollar contributed to a CAPCO. Investors who contribute to a CAPCO may utilize premium tax credits at a rate not to exceed 10 percent annually if the CAPCO invests at least 20 percent of its certified capital in qualified businesses beginning with premium tax filings for calendar year 2000. Investment in

CAPCOs is not limited to insurance companies, however, only those entities defined as “certified investors” are eligible to receive tax credit allocations.

To remain certified, CAPCOs are required to meet a series of investment benchmarks so that by December 31, 2003, at least 50 percent of CAPCO funds must be invested in small businesses headquartered in and with their principal business operations in Florida ("qualified businesses"). Of the 50 percent required to be invested in qualified businesses, at least one-half of those investment funds must be invested in early stage technology businesses. If those investment benchmarks are not met the CAPCO would risk decertification. Decertification could result in the forfeiture or recapture of some, or all, of the premium tax credits earned by a CAPCO’s certified investors.

The department has been charged with administering the continued certification of the CAPCOs during this time period and has been authorized to collect information through certain periodic investigations and reviews and to produce subsequent reports. In general, private sector businesses carefully preserve the confidentiality of their tax records, corporate financial records, and contractual agreements in order to remain competitive. Additionally, these businesses protect the privacy of their principals by keeping their personal financial records confidential. The department itself asserts that companies are generally more willing to release a greater variety of records if the department can assure the confidentiality of the information it seeks.

C. EFFECT OF PROPOSED CHANGES:

The specific exemption from the public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I, Fla. Const., created by this bill provides confidentiality for information the department gathers from a CAPCO during an administrative investigation or review, so long as the investigation is active, except under certain circumstances. Additionally, this bill provides that this information may be made available to a law enforcement agency or an administrative agency with responsibilities related to the CAPCO program, however, that entity is charged with maintaining the confidentiality of the imparted information.

This bill provides a limited exemption from public records requirements for certain information relating to an investigation or departmental review of a CAPCO, so long as the investigation is active, except under certain circumstances. Under certain circumstances, personal information relating to departmental investigatory personnel and their families is exempted and the social security numbers of customers, complainants, and other persons involved in a CAPCO are exempted. The confidentiality of information only given to the department on a confidential basis is also assured. The bill provides a privilege against civil liability for persons who in good faith provide information to the department. Finally, the bill provides a public necessity statement outlining the reasons for the exemptions and confidentiality.

The public necessity statement provides that having successful CAPCOs operate in Florida is an economic benefit to the state, measured in terms of expanding employment and tax bases. Consequently, preserving the competitive environment for these entities, protecting the safety of investigatory personnel, and protecting the privacy of complainants and customers, through public records exemptions, serve a greater public purpose than would be served if the records were released. Additionally, the public purpose statement asserts that extending the confidentiality of information made available to the department only on a confidential basis will serve to continue the flow of this information to the department.

D. SECTION-BY-SECTION ANALYSIS:

(See Effect of Proposed Changes)

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The ability of Florida CAPCOs to maintain their competitive advantage will enable them to continue to provide capital investments for emerging small businesses in Florida.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Disposition of the House Bill:

HB 439 was prefiled on November 9, 1999, by Representative Crow, and referred to the Committees on Financial Services, Governmental Operations, and Finance & Taxation. The bill was reported favorably by the Committee on Financial Services on January 18, 2000, by a vote of 9 YEAS to 0 NAYS. On February 8, 2000, the Committee on Governmental Operations adopted a strike-everything amendment, and then favorably reported the bill as a Committee Substitute by a vote of 7 YEAS to 0 NAYS. The strike-everything amendment differs from the bill as follows:

- provides that after the investigation, the exemption is maintained to protect trade secrets, other investigations, or other confidential sources.
- provides for confidentiality of personal information of departmental investigative employees and their families if such personnel have been involved in an investigation which would endanger their lives or safety.
- provides confidentiality for information only given to the department on a confidential basis.
- provides for confidentiality of the Social Security Number of any customer of a CAPCO, a complainant, or a person associated with a CAPCO, to protect their privacy.
- deletes the confidentiality of information relating to an applicant to the CAPCO program.
- provides an expanded statement of public necessity, as required by Art. I, sec. 24(c) of the Florida Constitution, for the additional exemptions.

On March 9, 2000 the Committee on Finance and Taxation adopted one amendment to the Committee Substitute and reported the bill favorably with a vote of 13 YEAS to) NAYS. The amendment adds a statement of public necessity related to the confidentiality of information only given to the department on a confidential basis. The bill was place on the Special Order Calendar on March 29, and April 6, 2000. On April 6, a syntax amendment was adopted on Second Reading and the bill was passed on April 12, 2000, as amended by a vote of 115 YEAS to 0 NAYS. On May 4, 2000, the bill was substituted for CS/SB 1872, and on May 5, 2000, passed the Senate by a vote of 39 YEAS and 0 NAYS.

Disposition of the Senate Bill:

SB 1872 was prefiled on March 2, 2000, by Senator Sullivan, and referred to the Committees on Banking & Insurance and Rules & Calendar. The Committee on Banking & Insurance put the bill on its agenda on March 22, March 29, April 5, and April 10, 2000. On April 10, 2000, the Banking & Insurance Committee reported the bill favorably as a Committee Substitute by a vote of 9 YEAS to 0 NAYS. The Committee Substitute differs from the bill by the inclusion of the syntax clarification adopted by the House to CS/HB 439. On May 2, 2000, the bill was Withdrawn from the Committee on Rules and Calendar. On May 4, 2000, CS/SB 1872 was Laid on the Table and CS/HB 439 was substituted and passed by a vote of 39 YEAS and 0 NAYS.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Staff Director:
Susan F. Cutchins	Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Staff Director:
Douglas Pile	Jimmy O. Helms

AS FURTHER REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:	Staff Director:
Lynne Overton	Alan Johansen

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Staff Director:
Susan F. Cutchins	Susan F. Cutchins