Journal of the Senate

Number 24 **Wednesday, May 1, 1991**

CALL TO ORDER

The Senate was called to order by the President at 10:00 a.m. A quorum present—32:

Madam President	Dantzler	Grizzle	Myers
Bankhead	Davis	Johnson	Souto
Beard	Diaz-Balart	Kiser	Thomas
Brown	Dudley	Kurth	Thurman
Casas	Forman	Langley	Weinstein
Childers	Girardeau	Malchon	Weinstock
Crenshaw	Gordon	McKay	Wexler
Crotty	Grant	Meek	Yancey

PRAYER

The following prayer was offered by Senator Dudley:

Heavenly Father, we come to you in prayer this morning to thank you for bringing us safely to the end of another legislative session. Thank you for the love of our friends and families and for the privilege of serving our communities.

By your grace, we have survived the storms of debate, the struggles of ideology and the stresses in our personal relationships.

As we return home, give us the restful peace we need to restore and rejuvenate our bodies and spirits, which we leave in your loving care. Amen.

LOCAL BILLS

SB 2508—A bill to be entitled An act relating to the City of Jacksonville; extending the operation of chapter 89-439, Laws of Florida, relating to the Jacksonville Environmental Protection Board, notwithstanding its scheduled expiration on October 1, 1991; providing for the repeal of such chapter on October 1, 2001; amending chapter 89-439, Laws of Florida; providing liability of the city for attorney's fees not to exceed five thousand dollars ($5,000) when the imposition of a civil penalty assessed for violation of an order of the Jacksonville Environmental Protection Board, failure to comply with such an order, or violation of the City of Jacksonville Ordinance Code is reversed upon court appeal; providing an effective date.

—was read the second time by title. On motion by Senator Bankhead, by two-thirds vote **SB 2508** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1257—A bill to be entitled An act relating to the Acme Improvement District, Palm Beach County; amending chapter 28557, Laws of Florida, 1953, as amended; clarifying the recreational powers of the district to include the power to provide for parks, preserves, playgrounds, and recreational programs; clarifying the reorganization of the board of supervisors and providing for election of supervisors by a majority vote of the electorate; providing for the annual landowner's meeting to be held during the month of January; providing an effective date.

—was read the second time by title. On motion by Senator Weinstock, by two-thirds vote **HB 1257** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1417—A bill to be entitled An act relating to the City of Orlando, Orange County, and the pension funds of the Orlando Police Department and Fire Department; amending chapter 31086, Laws of Florida, 1955, as amended; prescribing circumstances under which a person can purchase pension credit for service rendered during a period when such person was ineligible to participate in the respective pension plan due to employment at an age in excess of 30 years; incorporating limitations on benefits as required by s. 415, Internal Revenue Code of 1986; providing severability; providing an effective date.

—was read the second time by title. On motion by Senator Jennings, by two-thirds vote **HB 1417** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1481—A bill to be entitled An act relating to the City of Tampa, Hillsborough County; providing that any condition or impairment of health of firefighters or police officers of the City of Tampa caused by tuberculosis, hypertension, heart disease, or hardening of the arteries resulting in disability or death shall be presumed to have been accidental and to have been suffered in the line of duty; providing an effective date.

—was read the second time by title. On motion by Senator Davis, by two-thirds vote **HB 1481** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1501—A bill to be entitled An act relating to the Boca Raton Airport Authority; amending chapter 82-259, Laws of Florida; providing for appointment and removal of the member residing in the county by the county commission; providing for members continuing to serve until reappointed or having a successor appointed; providing an effective date.

—was read the second time by title. On motion by Senator Wexler, by two-thirds vote **HB 1501** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1605—A bill to be entitled An act relating to Indian Trail Water Control District, Palm Beach County, created by chapter 57-646, Laws of Florida; granting additional powers to the district to construct, maintain, and operate recreational areas, facilities, and programs; to construct and maintain a system of street lighting; to construct and maintain facilities for and take measures to control mosquitoes and other arthropods; to acquire, construct, and maintain conservation areas and sanctuaries for the storage of water for water control and irrigation purposes and for preservation of wildlife; to purchase, acquire by gift, or otherwise obtain land for the purpose of constructing capital improvements; to finance costs through user fees; to appoint advisory boards; to require permits for connection to and use of district property; providing an effective date.

—was read the second time by title. On motion by Senator Weinstock, by two-thirds vote **HB 1605** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1633—A bill to be entitled An act relating to Santa Rosa County; amending chapter 80-608, Laws of Florida; revising provisions relating to adoption of a millage rate and budget by the Avalon Beach-Mulat Fire Protection District; providing an effective date.

—was read the second time by title.

Senator Thomas moved **Amendment 1** which was adopted.

On motion by Senator Thomas, by two-thirds vote **HB 1633** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1967—A bill to be entitled An act relating to Lee County; prohibiting the taking of saltwater fish, except by hook and line, handheld cast net, or use of five or fewer blue crab traps, from manmade saltwater canals located within a specified area of the county; providing a penalty and an enhanced penalty for second or subsequent violations; providing an effective date.

—was read the second time by title. On motion by Senator Dudley, by two-thirds vote **HB 1967** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 2015—A bill to be entitled An act relating to the South Indian River Water Control District, Palm Beach County; amending chapter 71-820, Laws of Florida, as amended; extending the area in which the Board of Supervisors of the South Indian River Water Control District has the ability to provide potable water distribution and waste water collection systems; providing that the district may levy special assessments on the basis of front footage for potable water distribution and waste water collection systems, as well as acres or parcels; providing that a majority of the landowners within the designated area to be benefited desire such benefits, and to transfer said facilities to the Town of Jupiter and the Loxahatchee River Environmental Control District, for operation and maintenance; prohibiting the board of supervisors from authorizing the formation of an engineering plan unless there is documented evidence that at least 25 percent of the affected landowners desire such plan; providing that a petition signed by the owners of 51 percent of the parcels to be assessed for such plan will satisfy the requirements for voting and notice; providing an effective date.

—was read the second time by title. On motion by Senator Myers, by two-thirds vote **HB 2015** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 2063—A bill to be entitled An act relating to Flagler County; creating the Palm Coast Incorporation Review Committee; providing for membership; providing for duties; providing an effective date.

—was read the second time by title. On motion by Senator Bankhead, by two-thirds vote **HB 2063** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 2137—A bill to be entitled An act relating to the North River Fire District, Manatee County; amending chapter 89-502, Laws of Florida; amending provisions relating to the number of fire commissioners; providing for salaries of commissioners; providing a restriction on other employment of commissioners by the district; providing for election of commissioners; providing for extension of terms of current commissioners; amending the schedule of assessments; providing a cap on assessment rate increases; amending the schedule of impact fees; providing an effective date.

—was read the second time by title.

Senator McKay moved **Amendment 1** which was adopted.

On motion by Senator McKay, by two-thirds vote **HB 2137** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 2207—A bill to be entitled An act relating to Northern Palm Beach County Water Control District, Palm Beach County; amending chapter 59-994, Laws of Florida, expanding the boundaries of said district; amending chapter 89-462, Laws of Florida; declaring a public purpose; deleting reference to ss. 163.501-163.522, F.S.; requiring county approval prior to inclusion of thoroughfare road; providing for dedication of roads to county and construction of roads to county standards under certain circumstances; rearranging the order of provisions in this section; providing for expanding the territorial limits of a unit of development by agreement; defining 51 or 75 percent of acreage in any area; providing an effective date.

—was read the second time by title. On motion by Senator Myers, by two-thirds vote **HB 2207** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 2239—A bill to be entitled An act relating to the Parrish Fire Control District, Manatee County; amending section 2 of chapter 85-451, Laws of Florida, relating to the jurisdictional area of the district; providing for nonpartisan election of the district board of commissioners; providing an effective date.

—was read the second time by title.

Senator McKay moved **Amendments 1** and **2** which were adopted.

On motion by Senator McKay, by two-thirds vote **HB 2239** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 2407—A bill to be entitled An act relating to Anna Maria Fire Control District, Manatee County; amending chapter 27696, Laws of Florida; as amended, providing for election of members of the board of commissioners; providing compensation for said board; providing powers of the district; providing an increase in schedule of assessments; providing an effective date.

—was read the second time by title. On motion by Senator McKay, by two-thirds vote **HB 2407** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1589—A bill to be entitled An act relating to Manatee County; relating to the Manatee County Civic Center Authority, a public body corporate and politic established pursuant to chapter 78-556, Laws of Florida; authorizing the conveyance of the Manatee County Convention and Civic Center to the Board of County Commissioners; providing for the transfer of the functions, responsibilities, duties, and obligations of the Manatee County Civic Center Authority to the Board of County Commissioners for Manatee County; reserving title to property held by the Manatee County Civic Center Authority; maintaining in effect and transferring to Manatee County all obligations of the Manatee County Civic Center Authority; validating existing rules, regulations, and ordinances of or for the Manatee County Civic Center Authority; providing for severability; providing an effective date.

—was read the second time by title. On motion by Senator McKay, by two-thirds vote **HB 1589** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

HB 1323—A bill to be entitled An act relating to Collier County; amending chapter 84-416, Laws of Florida, as amended, relating to the North Naples Fire Control and Rescue District; expanding the boundaries thereof by including all lands belonging to the Little Hickory, Bonita Shores Fire Control District; repealing chapter 67-1243, Laws of Florida, as amended, which created the Little Hickory, Bonita Shores Fire Control District, to conform; providing for a referendum.

—was read the second time by title.

Senator Dudley moved **Amendment 1** which was adopted.

On motion by Senator Dudley, by two-thirds vote **HB 1323** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

On motion by Senator Thomas, the rules were waived by unanimous consent and the Senate reverted to introduction for the purpose of introducing the following bill out of order:

INTRODUCTION OF BILL

By Senators Johnson, Thomas and Margolis—

SB 2512—A bill to be entitled An act relating to education; amending s. 335.035, F.S.; providing for the repayment by the Department of Transportation to the General Revenue Fund, by a specified date, of a specified amount of funds appropriated for interstate highway purposes and appropriating that amount to the Florida Education Finance Program; amending s. 339.135, F.S.; reducing the minimum amount of available cash balance the Department of Transportation is required to have at the end of each quarter in order to facilitate the transfer of funds

appropriated to the Florida Education Finance Program; creating chapter 239, F.S., relating to vocational, adult, and community education; providing for organization of the chapter; creating s. 239.101, F.S.; providing definitions; creating s. 239.105, F.S.; providing for vocational and adult education interinstitutional articulation agreements; amending and renumbering s. 229.132, F.S., relating to registration of adult students; amending and renumbering s. 230.645, F.S., relating to postsecondary student fees; providing for inclusion of community colleges; providing for fees for certain forms of adult education; prohibiting certain fee charges; creating s. 239.129, F.S.; providing for employment of teachers of adult education and nondegreed teachers of vocational education; amending and renumbering s. 233.0681, F.S., relating to occupational specialists; providing for inclusion of community colleges; amending and renumbering s. 233.068, F.S., relating to job-related vocational instruction; deleting certain requirements relating to development of courses, minimum course offerings, certification of instructors, and funding; amending and renumbering s. 240.355, F.S.; deleting certain rulemaking requirements relating to vocational education programs; amending and renumbering s. 229.557, F.S.; providing a cross reference; amending and renumbering s. 233.0695, F.S., relating to vocational preparatory instruction; providing for inclusion of community colleges; providing for exemptions to vocational entry-level tests; amending and renumbering s. 232.2467, F.S., relating to the Florida gold seal vocational endorsement; creating s. 239.241, F.S.; requiring the use and distribution of eye-protective devices in certain courses; amending and renumbering s. 233.069, F.S., relating to the vocational improvement fund; providing for the inclusion of community colleges; amending and renumbering s. 231.614, F.S., relating to the master inservice plan for vocational educators; creating s. 239.261, F.S.; providing for vocational education program evaluations; providing for use of evaluations for funding; amending and renumbering s. 228.072, F.S., relating to adult general education; revising student eligibility for adult basic and secondary education; providing for customized supplemental vocational instruction; deleting certain fee provisions; amending and renumbering s. 228.0713, F.S., relating to the adult literacy plan; expanding types of literacy eligible for inclusion; amending s. 228.0715, F.S., relating to the Adult Literacy Act; revising funding provisions; amending and renumbering s. 228.0727, F.S., relating to education for handicapped adults; correcting cross references; amending and renumbering s. 228.071, F.S., relating to community education; revising provisions relating to distribution of funds; amending and renumbering s. 228.0716, F.S., relating to the Florida Literacy Corps; amending and renumbering s. 230.23165, F.S.; correcting a cross reference; amending and renumbering s. 240.356, F.S., relating to the Sunshine State Skills Program; amending and renumbering s. 240.358, F.S., relating to the workforce literacy program; amending ss. 228.074 and 228.075, F.S.; revising provisions relating to regional coordinating councils; amending s. 228.076, F.S., relating to vocational education and adult general education programs; amending s. 229.551, F.S.; deleting provisions relating to program evaluations for vocational education; amending s. 229.565, F.S.; correcting a cross reference; amending s. 231.1725, F.S.; deleting provisions relating to employment of certain vocational and adult education teachers; amending s. 232.45, F.S.; deleting provisions relating to eye-protective devices in certain vocational courses; requiring provision of safety glasses for students; amending s. 237.34, F.S.; correcting a cross reference; amending s. 240.301, F.S.; deleting provisions relating to certain community college student fees; amending s. 240.35, F.S.; deleting provisions relating to the establishment of certain fees; amending ss. 240.604 and 242.68, F.S.; correcting cross references; amending s. 246.061, F.S.; revising provisions related to the deposit and appropriation of certain funds related to the State Board of Independent Colleges and Universities; amending s. 246.101, F.S.; revising the schedule for fees collected by the State Board of Independent Colleges and Universities; amending s. 246.219, F.S.; revising the schedule for fees collected for school agents by the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools; revising provisions related to the deposit of fees collected by said board; renumbering s. 246.224 as s. 246.31, F.S.; revising provisions related to the administration and use of the Institutional Assessment Trust Fund; renumbering ss. 229.558, 230.63, 230.631, 230.64, 230.643, 231.3505, 231.361, 235.196, 229.601, and 230.66, F.S.; repealing ss. 228.0725, 228.073, 228.077, and 233.0682, F.S., relating to model noninstructional adult literacy centers, vocational and adult education planning regions, customized supplemental vocational instruction, and State Board of Education regulations; providing for future repeal of ss. 228.074, 228.075, and 228.076, F.S., relating to regional coordinating councils and vocational and adult education programs; establishing a MIS Review Task Force; providing for membership and duties; establishing a Student Completion and Placement Task Force; providing for membership and duties; establishing a Vocational Funding Task Force; providing for membership and duties; establishing a Rules Review and Revision Task Force; providing for membership and duties; establishing a Teacher Certification Task Force; providing for membership and duties; establishing a Vocational Equipment Task Force; providing for membership and duties; amending s. 335.035, F.S.; providing for a specified refund from moneys appropriated for the interstate highway system to the General Revenue Fund and appropriating those moneys to the Florida Education Finance Program; providing an effective date.

—which was read by title.

On motions by Senator Johnson, by unanimous consent **SB 2512** was taken up out of order and by two-thirds vote read the second time by title.

Senator Johnson moved **Amendment 1**.

Senator Thomas moved **Substitute Amendment 2** which was adopted.

Senator Thomas moved **Amendment 3** which was adopted.

Senator Johnson moved **Amendments 4** and **5** which were adopted.

Senator Thomas moved **Amendments 6** and **7** which were adopted.

Senators Gardner, Walker, Bruner, Childers, Thomas and Kirkpatrick offered **Amendments 8** and **9** which were moved by Senator Bruner and adopted.

On motion by Senator Johnson, by two-thirds vote **SB 2512** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—40 Nays—None

SPECIAL ORDER

The Senate resumed consideration of—

CS for SB 1022—A bill to be entitled An act relating to health insurance subsidies; creating ss. 175.401, 185.50, F.S.; providing for retiree health insurance subsidies for firefighters and police officers; providing a declaration of home rule authority; providing purpose; authorizing establishment and termination of health insurance subsidy trust funds by ordinance; providing for funding through premium tax moneys, employee contributions, and municipal contributions; providing eligibility; providing for establishment of subsidy amount; providing for payment; providing for investment and deposit of trust funds; providing for refund of contributions; providing for administration, actuarial valuations, and annual audits; providing for promulgation of rules and payment of administrative costs; protecting subsidy payments from assignment, execution, or attachment; providing that such subsidies shall be in addition to other benefits; requiring compliance and providing that premium tax funds may be withheld for noncompliance; providing an effective date.

—which had been considered April 30. Pending **Amendment 1** was withdrawn.

Senators Jenne and Margolis offered **Amendment 2** which was moved by Senator Jenne.

Senator Dantzler moved **Substitute Amendment 3** which was adopted. The vote was:

Yeas—22 Nays—10

On motion by Senator Jenne, by two-thirds vote **CS for SB 1022** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—33 Nays—None

SENATOR GARDNER PRESIDING

On motions by Senator Grizzle, by two-thirds vote **CS for HB 279** was withdrawn from the Committees on Education; Natural Resources and Conservation; and Appropriations.

On motion by Senator Grizzle—

CS for HB 279—A bill to be entitled An act relating to environmental education; reenacting and amending s. 229.8055, F.S., the Florida Environmental Education Act; expanding the environmental education program to provide such education in community colleges and state universities; requiring the Commissioner of Education, the Board of Regents, and the State Board of Community Colleges to administer the program; requiring the Department of Education to disseminate information regarding environmental education for adults to the school districts; providing for regional service projects; reenacting s. 229.8056, F.S.; creating an Office of Environmental Education within the Office of the Commissioner of Education to develop a formal environmental education program; providing for a Coordinator of Environmental Education and specifying duties thereof; reenacting and amending s. 229.8058, F.S.; creating the Advisory Council on Environmental Education within the Legislature; providing membership and authorization for the council to employ staff; deleting an obsolete provision relating to transfer of certain equipment and materials to the council; providing responsibilities of the Advisory Council on Environmental Education; reenacting and amending s. 229.8059, F.S.; creating the Interagency Coordinating Committee for Environmental Education to coordinate the environmental education programs of certain state agencies and water management districts; providing for appointments; providing for payment of per diem and travel expenses; providing for duties of the committee, including the development of a memorandum of understanding and the submission of reports; deleting provisions that have had their effect; reenacting and amending s. 229.8061, F.S.; directing the Governor to administer a grant program for environmental education; authorizing certain organizations and projects to be eligible for the grants; providing duties of the Advisory Council on Environmental Education with respect to the grants; providing for meetings of members and staff of the Office of Environmental Education, the Interagency Coordinating Committee, the Executive Office of the Governor's environmental education staff, and the Advisory Council for Environmental Education; repealing s. 35, ch. 89-175, Laws of Florida, which provides for such meetings; reenacting and amending s. 229.8062, F.S.; creating the Governor's Environmental Education Trust Fund in the Executive Office of the Governor in place of the Save Our State Environmental Education Trust Fund; reenacting s. 229.8063, F.S.; authorizing the Executive Office of the Governor to establish a nonprofit support corporation for certain purposes; requiring an annual audit of the records of the corporation; exempting from public records requirements information in the audit report; providing for future legislative review of such exemption; requiring an annual status report on environmental education activities by the Executive Office of the Governor; providing for future abolition and legislative review of the Advisory Council on Environmental Education and the Interagency Coordinating Committee for Environmental Education; repealing s. 39, ch. 89-175, Laws of Florida, as amended by s. 11, ch. 90-192, Laws of Florida, which provided for such abolition and review; ratifying appropriations, positions, and expenditures made pursuant to s. 40, ch. 89-175, Laws of Florida; providing for reimbursement of certain appropriated moneys; reenacting and amending s. 229.8064, F.S.; providing for the Advisory Council on Environmental Education to propose projects to the Governor and Cabinet for approval; providing for the Governor and Cabinet to act on such recommendations within a specified time; providing for use of funds in the Aquatic Resources Education Account by the Department of Natural Resources for aquatic education purposes; providing an effective date.

—a companion measure, was substituted for **CS for SB 26** and read the second time by title.

Senator Kiser moved **Amendment 1** which was adopted.

On motion by Senator Grizzle, by two-thirds vote **CS for HB 279** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

THE PRESIDENT PRESIDING

CS for HB 1637—A bill to be entitled An act relating to education; amending s. 228.041, F.S.; revising definitions in the Florida School Code; amending s. 228.071, F.S.; revising provisions relating to community education grants; amending s. 228.0713, F.S.; revising provisions relating to the Adult Literacy Plan; amending ss. 228.0715 and 228.0716, F.S.; revising provisions of the Adult Literacy Act and the Florida Literacy Corps Act; amending s. 228.072, F.S.; revising adult general education provisions; amending s. 228.0725, F.S.; revising provisions relating to adult literacy centers; amending s. 228.075, F.S.; providing dates by which local, regional, and state vocational education plans must be completed; providing for the Department of Education to modify, revise, and review the state plan; providing a maximum length of time that may elapse between plan revisions; deleting deadlines that have passed; amending s. 229.132, F.S.; revising provisions relating to the registration of adult students; amending s. 229.55, F.S.; revising provisions relating to educational accountability; amending s. 229.557, F.S.; revising provisions relating to the vocational education management information system; amending s. 229.805, F.S.; revising Department of Education powers relating to educational television; providing requirements for funding of stations; amending s. 229.8051, F.S.; revising requirements of the public broadcasting program system; providing for rules; amending s. 229.808, F.S.; correcting a cross reference; amending s. 230.23, F.S.; revising provisions relating to programs for students in residential care facilities; revising provisions relating to school board duties in admitting, classifying, promoting, and graduating students; amending s. 230.2316, F.S.; revising provisions relating to educational alternatives programs; amending s. 230.645, F.S.; revising provisions relating to postsecondary adult student fees; amending s. 231.02, F.S.; providing for fingerprinting of certain personnel; amending s. 231.095, F.S.; deleting provisions relating to reporting of teachers assigned out-of-field; amending s. 231.15, F.S.; revising provisions relating to positions for which certificates are required; amending s. 231.17, F.S.; revising provisions relating to requirements for teacher certification and demonstration of competencies; providing for personnel records; amending s. 231.1711, F.S.; revising provisions relating to issuance of a teaching certificate; amending s. 231.1712, F.S., to conform; amending s. 231.1725, F.S.; conforming provisions; creating s. 231.1735, F.S.; providing requirements for certification of out-of-state administrators; providing for review and repeal; amending ss. 231.30 and 231.36, F.S.; conforming provisions relating to certification; amending s. 231.47, F.S.; correcting a cross reference; amending s. 231.471, F.S.; providing for certain qualified part-time teachers; amending s. 231.603, F.S.; conforming provisions; amending s. 232.01, F.S.; revising provisions relating to regular school attendance; amending s. 232.0315, F.S.; requiring school health examinations for entry to prekindergarten; amending s. 232.032, F.S.; revising provisions relating to immunizations; amending s. 232.06, F.S.; providing requirements for the child care exemption from compulsory school attendance; amending s. 232.145, F.S.; providing for information relating to exceptional students; amending s. 232.245, F.S.; revising provisions relating to pupil progression; amending s. 232.246, F.S.; deleting obsolete language; amending s. 232.2461, F.S.; correcting a cross reference; amending s. 232.2465, F.S.; revising requirements to qualify as a Florida Academic Scholar; amending s. 232.247, F.S.; revising provisions relating to high school graduation requirements for certain exceptional students; amending s. 232.26, F.S.; providing for recommendation of expulsion of handicapped students; amending s. 232.3015, F.S.; revising provisions relating to outreach programs for educationally deprived children; amending s. 233.0575, F.S.; revising provisions relating to funding for mathematics/science mentor teachers; amending s. 233.0625, F.S.; deleting Department of Education responsibility for the traffic education program; amending s. 233.0663, F.S.; designating grade level at which D.A.R.E. Program is taught; providing exceptions; requiring annual program evaluations; amending s. 233.0664, F.S.; adding the Governor or his designated appointee to the D.A.R.E. Board of Directors; amending s. 234.01, F.S.; revising provisions relating to transportation of students; amending s. 234.02, F.S.; revising provisions relating to children standing on a school bus; amending s. 234.051, F.S.; correcting a cross reference; amending s. 234.091, F.S.; revising general qualifications of school bus drivers; amending s. 236.013, F.S.; including prekindergarten handicapped students in the definition of full-time equivalent students; amending s. 236.081, F.S.; revising provisions relating to calculation of full-time equivalent students for small, isolated high schools and the calculation of the extended day supplement; amending s. 236.088, F.S.; correcting a cross reference; amending s. 236.1223, F.S.; revising provisions relating to writing skills instruction; amending s. 236.1228, F.S.; revising a statewide indicator for improving student productivity; amending s. 236.13, F.S.; revising provisions relating to temporarily advancing moneys from one fund to another; amending s. 237.02, F.S.; revising provisions relating to expenditure of funds; amending s. 237.091, F.S.; specifying a cross reference relating to certification of assessed valuation of property; amending s. 237.34, F.S.; correcting cross references; amending s. 240.402, F.S.; revising provisions relating to awards from the Florida Undergraduate Scholars' Fund; amending s. 240.604, F.S.; correcting a cross reference; amending ss. 246.041 and 246.207, F.S.; conforming provisions; amending s. 228.061, F.S.; deleting provisions relating to nursery schools

and providing for preschool programs; amending s. 230.2305, F.S.; revising provisions relating to the prekindergarten early intervention program; deleting obsolete language; revising requirements for plan approval; amending s. 230.2312, F.S.; revising provisions relating to promotion from the Florida Primary Education Program; amending ss. 231.1713 and 402.3057, F.S.; providing that noninstructional personnel need not be refingerprinted under certain circumstances; amending s. 232.045, F.S.; providing eligibility for admission to preschool programs; repealing s. 232.05, F.S., relating to eligibility for nursery schools; amending s. 229.555, F.S.; deleting a reporting requirement; revising provisions relating to educational accountability; amending s. 230.2305, F.S.; revising provisions relating to the prekindergarten early intervention program; revising training requirements; creating s. 234.301, F.S.; authorizing nonpublic schools to participate in the state pool purchase of school buses, providing conditions for such participation; amending s. 237.211, F.S.; allowing school boards to contract with a third-party administrator to handle employees' fringe benefit programs; directing statute editors to change the title of s. 229.814, F.S., relating to high school equivalency diplomas; repealing ss. 229.055, 229.552, 229.8371, 230.222, 230.23135(3)(m), 230.2405, 230.631, 230.69, 231.031, 231.165, 231.251, 231.29(1), 231.532, 231.5335, 231.5336, 231.534, 231.609(3)(d) and (e), 231.612, 231.6125, 231.615, 232.302, 233.055, 233.064, and 233.505, F.S., relating to education reports, the Florida Center for Educational Statistics, the Center for Middle Grades Education, playing of "Dixie," conforming provisions, accreditation of schools, area vocational centers, Youth Enhancement Services Centers, maximum age for employment of instructional personnel, prevention counselors, adjunct instructors, records of personnel, district quality instruction incentives, the Raymond B. Stewart Career Achievement Program, the Professional Teacher Career Development Council, subject area examinations, conforming provisions, school-focused program improvement, professional development plans, the Visiting School Scholars Program, the Florida Center for Dropout Prevention, remedial reading education plan, Americanism versus Communism course, and art or craft materials; providing effective dates.

—was read the second time by title.

Senator Johnson moved **Amendments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18** and **19** which were adopted.

Senator Gordon moved **Amendments 20** and **21** which were adopted.

Senator McKay moved **Amendments 22** and **23** which were adopted.

Senator Souto moved **Amendments 24** and **25** which were adopted.

On motion by Senator Johnson, by two-thirds vote **CS for HB 1637** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—40 Nays—None

MOTION

On motion by Senator Thomas, the rules were waived and time of recess was extended until final action on the Conference Committee Report on **HB 2251** and announcements.

RECESS

On motion by Senator Thomas, the Senate recessed at 12:05 p.m. to reconvene at 2:00 p.m. or upon call of the President.

AFTERNOON SESSION

The Senate was called to order by the President at 2:00 p.m. A quorum present—34:

Madam President	Davis	Kiser	Thomas
Bankhead	Diaz-Balart	Kurth	Thurman
Beard	Dudley	Langley	Walker
Brown	Forman	Malchon	Weinstein
Bruner	Gordon	McKay	Weinstock
Casas	Grant	Meek	Wexler
Childers	Grizzle	Myers	Yancey
Crotty	Jennings	Plummer	
Dantzler	Johnson	Souto	

SPECIAL ORDER, continued

SENATOR JOHNSON PRESIDING

RECONSIDERATION

On motion by Senator Jenne, the Senate reconsidered the vote by which—

CS for SB 1022—A bill to be entitled An act relating to health insurance subsidies; creating ss. 175.401, 185.50, F.S.; providing for retiree health insurance subsidies for firefighters and police officers; providing a declaration of home rule authority; providing purpose; authorizing establishment and termination of health insurance subsidy trust funds by ordinance; providing for funding through premium tax moneys, employee contributions, and municipal contributions; providing eligibility; providing for establishment of subsidy amount; providing for payment; providing for investment and deposit of trust funds; providing for refund of contributions; providing for administration, actuarial valuations, and annual audits; providing for promulgation of rules and payment of administrative costs; protecting subsidy payments from assignment, execution, or attachment; providing that such subsidies shall be in addition to other benefits; requiring compliance and providing that premium tax funds may be withheld for noncompliance; providing an effective date.

—passed as amended this day.

On motion by Senator Jenne, by two-thirds vote the Senate reconsidered the vote by which **CS for SB 1022** was read the third time.

On motion by Senator Jenne, the Senate reconsidered the vote by which **Substitute Amendment 3** was adopted. By permission, **Amendment 2** and **Substitute Amendment 3** were withdrawn.

On motion by Senator Jenne, by two-thirds vote **CS for SB 1022** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—None

THE PRESIDENT PRESIDING

On motion by Senator Childers, by unanimous consent—

HB 1841—A bill to be entitled An act relating to legislative review and repeal; rescheduling Sunset review and repeal of specified chapters and parts of chapters from October 1, 1991, to October 1, 1992; rescheduling Sundown review and repeal of specified sections and parts of chapters from October 1, 1991, to October 1, 1992; rescheduling repeal and expiration dates of other specified provisions in Florida Statutes and chapter laws from 1991 to 1992; providing an effective date.

—was taken up out of order and read the second time by title.

The Committee on Governmental Operations recommended **Amendments 1** and **2** which were moved by Senator Childers and failed.

Senator Childers moved **Amendments 3** and **4** which were adopted.

On motion by Senator Childers, by two-thirds vote **HB 1841** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—None

LOCAL BILLS, continued

On motions by Senator McKay, by two-thirds vote—

HB 1693—A bill to be entitled An act relating to Manatee County; amending chapter 61-2455, Laws of Florida, as amended, the Manatee County Law Library Act, to provide that the Clerk of the Circuit Court of Manatee County shall collect the sum of $15 in each civil cause or proceeding commenced in circuit court, and the sum of $8, $10, or $15 in each civil cause or proceeding commenced in county court, which costs or fees are in addition to costs or fees otherwise provided by law, and the whole of which additional costs or fees shall be paid into the county law library fund and expended according to the Manatee County Law Library Act; providing an effective date.

—was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

On motions by Senator Johnson, by two-thirds vote—

HB 1951—A bill to be entitled An act relating to Charlotte County; amending chapter 65-1357, Laws of Florida, relating to the Charlotte

County Development Authority; revising the annual levy of ad valorem taxes; providing an effective date.

—was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

On motions by Senator Childers, by two-thirds vote—

HB 1953—A bill to be entitled An act relating to the City of Milton, Santa Rosa County; amending chapter 73-551, Laws of Florida, as amended; providing promotional procedures for fire department employees; providing an effective date.

—was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

On motions by Senator Myers, by two-thirds vote—

HB 2153—A bill to be entitled An act relating to Palm Beach County; providing for an Environmental Control Board and its organization; providing an effective date.

—was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

On motions by Senator Thomas, by two-thirds vote—

SB 2514—A bill to be entitled An act relating to Gadsden County and the municipalities therein; creating a dependent special district in the county to be governed by the Quincy-Gadsden Landfill Authority; providing definitions; providing for the membership of the authority; granting the authority the power to acquire, finance, and operate landfill facilities within the district; providing for the authority to issue revenue bonds or other obligations; providing for the payment of the expenses of the authority from fees and charges collected by the authority; authorizing the authority to enter into contracts, leases, mortgages, and other agreements and exercise all incidental powers necessary to carry out the purposes of this act; authorizing the county and municipalities therein to lease, sell, or give property to the authority; authorizing the authority to set fees and charges; providing for financial reports and budget procedure; requiring notice of meetings of the authority; requiring the authority to comply with financial reporting requirements; prohibiting the creation of certain debts; providing for construction of the act; providing severability; providing an effective date.

—was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

On motions by Senator McKay, by two-thirds vote—

HB 2317—A bill to be entitled An act relating to Manatee County; creating and establishing the Manatee County Environmental Action Commission for the purpose of controlling and regulating pollution of air, water, soil, and property; providing legislative intent; providing definitions; providing method and manner of appointing members of the commission; providing for its powers, functions, privileges, duties, and responsibilities; providing for its adopting of rules and regulations; providing for an appeals process; providing for appointment of an Environmental Director and his respective powers and duties; providing for the Board of Environmental Appeals and its appointment; providing for reporting of pollution sources; providing for issuance of permits, except as required pursuant to chapter 403, Florida Statutes; providing for sampling and testing; providing for issuance of citation and emergency orders; providing for notification of appeal rights; prohibiting nuisances, pollution, and violation of an order; declaring a violation to be a misdemeanor; providing enforcement procedure and remedies; providing for additional liability and damages; creating a pollution recovery fund; providing for appropriation of funds; providing for legal counsel; providing for liberal construction; providing that this act will be subject to section 403.182, Florida Statutes; providing for assumption of the county pollution control code, programs, and contracts; providing for transfer of the Manatee County Pollution Control Division; providing for severability; repealing chapter 67-1671, Laws of Florida, as amended; providing for the contingency repeal of this act; providing an effective date.

—was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

SPECIAL ORDER, continued

HB 325—A bill to be entitled An act relating to saltwater fisheries; amending s. 370.06, F.S., relating to saltwater products licenses; providing additional exceptions from income requirements for a restricted species endorsement; amending s. 370.0605, F.S.; providing separate fees for nonresident saltwater fishing licenses for individuals who are residents of states contiguous to Florida which states do not have reciprocal agreements with Florida; amending s. 370.0605, F.S.; authorizing the Department of Natural Resources to designate two "Disabled Angler Fishing Days"; reenacting s. 370.06(5), F.S., relating to Apalachicola Bay oyster harvesting licenses; reenacting s. 370.16, F.S., relating to regulation of oysters and shellfish; providing that future repeals are unaffected by the act; providing effective dates.

—was read the second time by title.

Senator Childers moved **Amendments 1, 2, 3, 4, 5, 6, 7, 8** and **9** which were adopted.

Senator Bruner moved **Amendment 10** which was adopted.

On motion by Senator Childers, by two-thirds vote **HB 325** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

CS for SB 1792—A bill to be entitled An act relating to aquaculture; reenacting ss. 253.01(1)(b), 253.71(1), (2), and (4), 270.22, 370.16(5) and (21), F.S.; relating to aquaculture leases and shellfish leases; amending s. 370.16, F.S.; deleting language relating to monitoring of cultivation of certain perpetual shellfish grants and leaseholds; providing intent with respect to scheduled repeal; amending s. 258.42, F.S.; deleting restrictions relating to aquaculture activities; creating s. 597.0015, F.S.; providing definitions; amending s. 597.002, F.S.; providing for use of appropriated funds; amending s. 597.0021, F.S.; conforming language; amending s. 597.003, F.S.; providing additional functions of the Department of Agriculture and Consumer Services; amending s. 597.005, F.S.; providing additional responsibilities of the Aquaculture Review Council; amending s. 597.006, F.S.; providing additional responsibilities of the Aquaculture Interagency Coordinating Council; adding an agency participating in interagency coordination; amending s. 597.007, F.S.; clarifying provisions relating to permitting of aquaculture facilities; providing an effective date.

—was read the second time by title. On motion by Senator Thurman, by two-thirds vote **CS for SB 1792** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—29 Nays—None

HB 747—A bill to be entitled An act for the relief of Hank J. Williams; providing an appropriation to compensate him for injuries suffered as a result of the negligence of the Department of Corrections; providing an effective date.

—was read the second time by title.

Senator Wexler moved **Amendment 1** which failed.

On motion by Senator Langley, by two-thirds vote **HB 747** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—29 Nays—6

CS for HB 653—A bill to be entitled An act for the relief of Edith and Lewis Crosley, parents of Todd Patrick Neely; providing an appropriation to compensate them for losses incurred in defense of their son,

unjustly arrested and convicted on the basis of evidence suppressed by the state; providing an effective date.

—was read the second time by title. On motion by Senator Myers, by two-thirds vote **CS for HB 653** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—2

SENATOR JOHNSON PRESIDING

RECONSIDERATION

On motion by Senator Grizzle, the Senate reconsidered the vote by which—

CS for HB 279—A bill to be entitled An act relating to environmental education; reenacting and amending s. 229.8055, F.S., the Florida Environmental Education Act; expanding the environmental education program to provide such education in community colleges and state universities; requiring the Commissioner of Education, the Board of Regents, and the State Board of Community Colleges to administer the program; requiring the Department of Education to disseminate information regarding environmental education for adults to the school districts; providing for regional service projects; reenacting s. 229.8056, F.S.; creating an Office of Environmental Education within the Office of the Commissioner of Education to develop a formal environmental education program; providing for a Coordinator of Environmental Education and specifying duties thereof; reenacting and amending s. 229.8058, F.S.; creating the Advisory Council on Environmental Education within the Legislature; providing membership and authorization for the council to employ staff; deleting an obsolete provision relating to transfer of certain equipment and materials to the council; providing responsibilities of the Advisory Council on Environmental Education; reenacting and amending s. 229.8059, F.S.; creating the Interagency Coordinating Committee for Environmental Education to coordinate the environmental education programs of certain state agencies and water management districts; providing for appointments; providing for payment of per diem and travel expenses; providing for duties of the committee, including the development of a memorandum of understanding and the submission of reports; deleting provisions that have had their effect; reenacting and amending s. 229.8061, F.S.; directing the Governor to administer a grant program for environmental education; authorizing certain organizations and projects to be eligible for the grants; providing duties of the Advisory Council on Environmental Education with respect to the grants; providing for meetings of members and staff of the Office of Environmental Education, the Interagency Coordinating Committee, the Executive Office of the Governor's environmental education staff, and the Advisory Council for Environmental Education; repealing s. 35, ch. 89-175, Laws of Florida, which provides for such meetings; reenacting and amending s. 229.8062, F.S.; creating the Governor's Environmental Education Trust Fund in the Executive Office of the Governor in place of the Save Our State Environmental Education Trust Fund; reenacting s. 229.8063, F.S.; authorizing the Executive Office of the Governor to establish a nonprofit support corporation for certain purposes; requiring an annual audit of the records of the corporation; exempting from public records requirements information in the audit report; providing for future legislative review of such exemption; requiring an annual status report on environmental education activities by the Executive Office of the Governor; providing for future abolition and legislative review of the Advisory Council on Environmental Education and the Interagency Coordinating Committee for Environmental Education; repealing s. 39, ch. 89-175, Laws of Florida, as amended by s. 11, ch. 90-192, Laws of Florida, which provided for such abolition and review; ratifying appropriations, positions, and expenditures made pursuant to s. 40, ch. 89-175, Laws of Florida; providing for reimbursement of certain appropriated moneys; reenacting and amending s. 229.8064, F.S.; providing for the Advisory Council on Environmental Education to propose projects to the Governor and Cabinet for approval; providing for the Governor and Cabinet to act on such recommendations within a specified time; providing for use of funds in the Aquatic Resources Education Account by the Department of Natural Resources for aquatic education purposes; providing an effective date.

—passed this day.

On motion by Senator Grizzle, by two-thirds vote the Senate reconsidered the vote by which **CS for HB 279** was read the third time.

On motion by Senator Kiser, the Senate reconsidered the vote by which **Amendment 1** was adopted. By permission, **Amendment 1** was withdrawn.

Senator Kirkpatrick moved **Amendment 2** which was adopted.

On motion by Senator Grizzle, by two-thirds vote **CS for HB 279** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

On motions by Senator Kirkpatrick, by two-thirds vote **CS for HB 1527** was withdrawn from the Committees on Education and Appropriations.

On motion by Senator Kirkpatrick—

CS for HB 1527—A bill to be entitled An act relating to postsecondary education; amending s. 250.10, F.S.; providing that the Adjutant General and representatives of the Board of Regents, State Board of Community Colleges, and State Board of Education shall develop a program for waiver of one-half of the cost of tuition and fees for certain members of the Florida National Guard; providing requirements; amending s. 240.235, F.S.; requiring the Board of Regents to provide tuition and fee waivers; amending s. 240.35, F.S.; requiring the State Board of Community Colleges to provide tuition and fee waivers; amending s. 240.355, F.S.; requiring the State Board of Education to adopt rules; providing an effective date.

—a companion measure, was substituted for **CS for SB 912** and read the second time by title.

Senators Meek, Thurman, Walker and Kirkpatrick offered **Amendments 1** and **2** which were moved by Senator Meek and adopted.

On motion by Senator Kirkpatrick, by two-thirds vote **CS for HB 1527** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

CS for CS for SB 2220—A bill to be entitled An act relating to sentencing and circuit correctional planning committees; amending s. 921.187, F.S.; authorizing specified substance abuse punishment programs as sentencing alternatives for certain felony drug possessors and felony drug sellers, manufacturers, and deliverers; amending s. 893.15, F.S., and creating s. 893.155, F.S.; providing for placement on probation with set conditions; authorizing residential supervision in a probation and restitution center or other specified residential facility in certain circumstances; authorizing the withholding of adjudication for first-time felony drug possessors; providing penalties for violation of probation; providing for fines; providing for reports; creating circuit correctional planning committees; providing an effective date.

—was read the second time by title.

Two amendments were adopted to **CS for CS for SB 2220** to conform the bill to **CS for HB 95**.

Pending further consideration of **CS for CS for SB 2220** as amended, on motion by Senator Grant, by two-thirds vote **CS for HB 95** was withdrawn from the Committees on Corrections, Probation and Parole; and Criminal Justice.

On motion by Senator Grant—

CS for HB 95—A bill to be entitled An act relating to substance abuse punishment; amending s. 921.187, F.S.; authorizing specified substance abuse punishment programs as sentencing alternatives for certain felony drug possessors and felony drug sellers, manufacturers, and deliverers; amending s. 893.15, F.S., and creating s. 893.155, F.S.; providing for placement on probation with set conditions; authorizing residential supervision in a probation and restitution center or other specified residential facility in certain circumstances; authorizing the withholding of adjudication for first-time felony drug possessors; providing penalties for violation of probation; providing for fines; providing for reports; creating circuit correctional planning committees; providing an effective date.

—a companion measure, was substituted for **CS for CS for SB 2220** and read the second time by title. On motion by Senator Grant, by two-thirds vote **CS for HB 95** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

CS for SB 1280—A bill to be entitled An act relating to personal injury protection insurance; amending s. 627.736, F.S.; requiring insurers to pay assigned personal injury protection benefits directly to the treatment providers in certain situations; providing that insurers remain liable to the treatment providers when assigned benefits are paid to other persons in certain situations; providing that the refusal of an insurer to pay assigned benefits to the treatment provider is prohibited conduct that subjects the insurer to penalties; limiting the scope of certain mental or physical examinations and limiting who may conduct them; requiring certain independent examinations prior to an insurer withdrawing payment of a treating physician; limiting such examinations; exempting physicians from the provisions of s. 455.241, F.S., under certain conditions; providing an effective date.

—was read the second time by title.

Senator Crotty moved **Amendments 1** and **2** which were adopted.

Senator Crotty moved **Amendment 3** which failed.

On motion by Senator Weinstein, by two-thirds vote **CS for SB 1280** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—35 Nays—None

THE PRESIDENT PRESIDING

RECESS

On motion by Senator Thomas, the Senate recessed at 3:25 p.m. to reconvene at 4:00 p.m. or upon call of the President.

CALL TO ORDER

The Senate was called to order by the President at 4:45 p.m. A quorum present—37:

Madam President	Davis	Kiser	Thomas
Bankhead	Diaz-Balart	Kurth	Thurman
Beard	Dudley	Langley	Walker
Brown	Forman	Malchon	Weinstein
Bruner	Girardeau	McKay	Weinstock
Casas	Gordon	Meek	Wexler
Childers	Grant	Myers	Yancey
Crenshaw	Jennings	Plummer	
Crotty	Johnson	Scott	
Dantzler	Kirkpatrick	Souto	

SENATOR SCOTT PRESIDING

On motion by Senator Yancey, by unanimous consent—

HB 27—A bill to be entitled An act relating to mobile home park lot tenancies; amending s. 723.003, F.S.; defining the term "resale agreement" for the purposes of the Florida Mobile Home Act; amending s. 723.058, F.S., relating to restrictions on the sale of mobile homes; prohibiting the requirement of certain resale agreements as a condition of tenancy; prohibiting resale agreements of perpetual or indefinite duration; prohibiting discriminatory increases in lot rental amounts based upon refusal to enter or extend a resale agreement; providing an effective date.

—was taken up out of order and read the second time by title. On motion by Senator Yancey, by two-thirds vote **HB 27** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

On motion by Senator McKay, by two-thirds vote—

HB 2315—A bill to be entitled An act relating to Manatee County; providing for election of board members; providing for impact fees; providing a schedule of special assessments; providing consolidation; repealing chapter 84-477, Laws of Florida, as amended, relating to the Oneco-Tallevast Fire Control District; repealing chapter 84-481, Laws of Florida, as amended, relating to the Samoset Fire Control District; providing an effective date.

—was read the second time by title.

Senator McKay moved **Amendment 1** which was adopted.

On motion by Senator McKay, by two-thirds vote **HB 2315** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

On motion by Senator McKay, by two-thirds vote—

HB 2535—A bill to be entitled An act relating to Manatee County; amending section 15 of chapter 84-474, Laws of Florida, as amended; increasing the rates of special assessments that may be charged by the Whitfield Fire Control District; providing for nonpartisan election of the district board of commissioners; providing an effective date.

—was read the second time by title.

Senator McKay moved **Amendments 1** and **2** which were adopted.

On motion by Senator McKay, by two-thirds vote **HB 2535** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

THE PRESIDENT PRESIDING

REPORTS OF COMMITTEES

The Committee on Rules and Calendar submits the following bills to be placed on the Special Order Calendar for Wednesday, May 1, 1991: CS for SB 1022, CS for SB 26, CS for HB 1637, HB 325, CS for SB 1792, HB 747, CS for SB 912, CS for CS for SB 2220, CS for SB 1280, CS for SB 350, CS for SB's 1530 and 1524, SB 256, SB 1464, CS for SB 524, SB 1612, SB 1004, CS for HB 359, CS for SB 408, HB 1001

Respectfully submitted,
Pat Thomas, Chairman

The Committee on Rules and Calendar withdraws the following bills and submits them for the Local Bill Calendar for Wednesday, May 1, 1991: SB 2508, HB 1257, HB 1417, HB 1481, HB 1501, HB 1605, HB 1633, HB 1967, HB 2015, HB 2063, HB 2137, HB 2207, HB 2239, HB 2407, HB 1589, HB 1693, HB 1951, HB 1953, HB 2153, HB 2317, SB 2514

Respectfully submitted,
Pat Thomas, Chairman

INTRODUCTION AND REFERENCE OF BILLS

First Reading

SR 2510 was introduced out of order and adopted April 30.

SB 2512 was introduced out of order and passed this day.

By Senator Thomas—

SB 2514—A bill to be entitled An act relating to Gadsden County and the municipalities therein; creating a dependent special district in the county to be governed by the Quincy-Gadsden Landfill Authority; providing definitions; providing for the membership of the authority; granting the authority the power to acquire, finance, and operate landfill facilities within the district; providing for the authority to issue revenue bonds or other obligations; providing for the payment of the expenses of the authority from fees and charges collected by the authority; authorizing the authority to enter into contracts, leases, mortgages, and other agreements and exercise all incidental powers necessary to carry out the purposes of this act; authorizing the county and municipalities therein to lease, sell, or give property to the authority; authorizing the authority to set fees and charges; providing for financial reports and budget procedure; requiring notice of meetings of the authority; requiring the authority to comply with financial reporting requirements; prohibiting the creation of certain debts; providing for construction of the act; providing severability; providing an effective date.

—was referred to the Committee on Rules and Calendar.

MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator Thomas, by two-thirds vote **HB 1323** was withdrawn from the Committee on Rules and Calendar

On motions by Senator Thomas, by two-thirds vote **CS for SB 1632** and **CS for HB 653** were withdrawn from the Committee on Appropriations; **CS for CS for HB 937** was withdrawn from the Committees on Governmental Operations; Finance, Taxation and Claims; and Appropriations; **HB 1841** was withdrawn from the Committee on Rules and Cal-

endar; and **CS for HB 543** was withdrawn from the Committee on Natural Resources and Conservation.

On motions by Senator Thomas, by two-thirds vote **CS for HB 1313** was withdrawn from the Committees on Education and Commerce, and by two-thirds vote placed on the special order calendar.

On motions by Senator Thomas, by two-thirds vote **House Bills 2315** and **2535** were withdrawn from the Committee on Rules and Calendar; and **HB 27** was withdrawn from the Committee on Commerce.

MOTIONS

On motions by Senator Thomas, the rules were waived and **CS for SB 1022** was placed first on the special order calendar; **CS for SB 1368** was placed at the end of the special order calendar; and **HB 1323** was added to the local bill calendar.

On motion by Senator Wexler, by two-thirds vote **CS for SB 1756** was placed on the special order calendar. The vote was:

Yeas—33 Nays—2

On motion by Senator Thomas, by two-thirds vote **CS for HB 653** was placed on the special order calendar to be considered following **HB 747**.

On motions by Senator Thomas, by two-thirds vote **CS for SB 1632, SM 2, CS for CS for HB 937, HB 1841** and **CS for HB 543** were placed on the special order calendar.

On motion by Senator McKay, the House was requested to return **HB 2239**.

On motions by Senator Thomas, by two-thirds vote **House Bills 2315** and **2535** were placed on the special order calendar to be considered before **CS for SB 350**.

MESSAGES FROM THE GOVERNOR AND OTHER EXECUTIVE COMMUNICATIONS

APPOINTMENTS SUBJECT TO CONFIRMATION BY THE SENATE:

The Secretary of State has certified that pursuant to the provisions of Section 114.05, Florida Statutes, certificates subject to confirmation by the Senate had been prepared for the following:

Office and Appointment	*For Term Ending*
Board of Acupuncture	
Kaltsas, Harvey James, Sarasota	09/30/94
Affordable Housing Study Commission	
Frese, Claudia, Tallahassee	Pleasure of Governor
Gonzalez, Jose' Andrew, Key West	Pleasure of Governor
Florida Board of Auctioneers	
Weir, Russell E., Sr., Bushnell	09/30/94
Barbers' Board	
Bell, George Wm., Winter Garden	06/30/94
Gormley, Reginald, Bradenton	06/30/94
Rhea, Rex R., Jacksonville	08/10/94
Florida Black Business Investment Board	
Stith, Melvin T., Tallahassee	09/30/94
Board of Chiropractic	
Hebert, John T., Clearwater	08/01/94
Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling	
Ramers, M. Katherine, Dunedin	09/30/94
State Board of Community Colleges	
Widerman, Judie, Cocoa Beach	09/30/95
Board of Trustees of Brevard Community College	
Lesser, Jennie L., Melbourne Beach	05/31/94
Board of Trustees of Daytona Beach Community College	
Likes, Christopher, DeLand	05/31/94
Megonegal, E. Russell, Palm Coast	05/31/94
Board of Trustees of Florida Community College at Jacksonville	
Slaughter, George M., Amelia Island	05/31/93
Zell, Donald D., Jacksonville	05/31/94
Board of Trustees of Florida Keys Community College	
Freeman, Shirley V., Key West	05/31/94
Board of Trustees of Gulf Coast Community College	
Arnold, David A., Panama City	05/31/94
Board of Trustees of Hillsborough Community College	
Berry, Alfred E., Plant City	05/31/94
Board of Trustees of Indian River Community College	
Minix, James A., Port St. Joe	05/31/91
Mounts, Georgia L., Okeechobee	05/31/94
Board of Trustees of Okaloosa-Walton Community College	
Donaldson, Allyn C., Jr., Santa Rosa Beach	05/31/94
Board of Trustees of St. Johns River Community College	
Newell, Homer L., Green Cove Springs	05/31/94
Board of Cosmetology	
Ransom, Joan B., Jacksonville	01/01/94
Electrical Contractors' Licensing Board	
Daniels, Susan J., Tallahassee	12/17/93
Lenhart, James C., Fruitland Park	12/17/94
Board of Professional Engineers	
Martinez, Pedro O., Miami	12/20/94
Florida State Fair Authority, Congressional District 9	
Cox, J. Mark, Valrico	06/30/94
Board of Funeral Directors and Embalmers	
Brown, Charles M., Bradenton	08/01/94
Game and Fresh Water Fish Commission	
Spicola, Joseph G., Tampa	01/06/93
Harbormaster for the Port of Ft. Pierce	
Ergle, Walter W., Ft. Pierce	09/26/91
Harbormaster for the Port of New Smyrna Beach	
Ridgdill, J. Richard, New Smyrna Beach	02/19/91
Board of Hearing Aid Specialists	
Dettmer, Alton R., Safety Harbor	07/30/94
Hoffmeyer, C. B., Jr., Hudson	07/30/94
Florida High Speed Rail Transportation Commission	
Dockery, C. C., Lakeland	06/30/94
Teele, Arthur E., Jr., Miami	06/30/94
Health Care Cost Containment Board	
Tidikis, Frank, Clearwater	01/01/91
State Board of Independent Colleges and Universities	
Cone, Fred M., Jr., St. Augustine	09/30/92
Board of Professional Land Surveyors	
Thompson, Dale, Tallahassee	06/21/94
Board of Landscape Architecture	
Magiera, Randall J., Orlando	03/04/91
Marine Fisheries Commission	
Brown, David C., Ft. Myers	08/01/94
Temple, John W., Boca Raton	08/01/94
Board of Medicine	
Ashkar, Fuad S., Miami	08/01/94
Slade, George F., Tallahassee	08/01/94
Vitale, George P., Boca Raton	08/01/91
Wertheimer, David E., Stuart	08/01/94
Board of Nursing	
Ryals, Charolette, Tallahassee	08/01/94

Office and Appointment	*For Term Ending*
Stark, Jeanne, Tamarac	08/01/93
Board of Pharmacy	
Alvarez, J. Chris, Tampa	08/01/94
Natter, Martin R., Sarasota	08/01/94
Board of Physical Therapy Practice	
Socarras, Patricia D., Mary Esther	01/01/93
Board of Pilot Commissioners	
Parker, William R., Jacksonville	06/30/94
Peters, Billy J., Tallahassee	06/30/94
Prepaid Postsecondary Education Expense Board	
Jones, Luther, Tallahassee	06/30/92
Historic Broward County Preservation Board of Trustees	
Williams, John L., Pompano Beach	11/01/93
Board of Public Schools	
Vijayanagar, R., Tampa	10/01/94
North Central Florida Regional Planning Council, Region 3	
Tefertiller, K. R., Gainesville	10/01/92
Board of Trustees of the John and Mable Ringling Museum of Art	
Wilhelm, Jan, Boca Raton	11/05/93
Board of Speech-Language Pathology and Audiology	
Adams, Jack H., Cape Coral	09/30/93
Hahn, Theodore W., Lighthouse Point	09/30/94
Moore, Phyllis C., Jupiter	09/30/94
Jacksonville Sports Development Authority	
Pitman, Donald D., Jacksonville	09/30/94
Board of Veterinary Medicine	
Gomez-Sanchez, Elise Peery, Lutz	08/01/94
Governing Board of the Southwest Florida Water Management District	
Casper, Joseph S., Tampa	03/01/94
Alafia River Basin Board of the Southwest Florida Water Management District	
Davis, James D., Brandon	03/01/92

Referred to the Committee on Executive Business, Ethics and Elections.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

First Reading

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed CS for CS for HB 937, HB 1693; has passed as amended HB 1951, HB 1953, HB 2153, HB 2315, HB 2317, HB 2535 and requests the concurrence of the Senate.

John B. Phelps, Clerk

By the Committees on Appropriations and Judiciary and Representative Langton—

CS for CS for HB 937—A bill to be entitled An act relating to claims involving the state; creating s. 17.0415, F.S.; providing that the Comptroller may authorize the assignment of claims among the state, its agencies, and its subdivisions for set-off or collection purposes; amending s. 284.385, F.S.; providing for a system to coordinate the exchange of information about claims for and against the state; amending s. 768.28, F.S.; specifying prior unpaid claims information that must be disclosed; authorizing remedy for unexcused failure to disclose; providing circumstances under which a court may excuse incomplete or inaccurate compliance; providing an appropriation; providing an effective date.

—was referred to the Committees on Governmental Operations; Finance, Taxation and Claims; and Appropriations.

By Representative Simone—

HB 1693—A bill to be entitled An act relating to Manatee County; amending chapter 61-2455, Laws of Florida, as amended, the Manatee County Law Library Act, to provide that the Clerk of the Circuit Court of Manatee County shall collect the sum of $15 in each civil cause or proceeding commenced in circuit court, and the sum of $8, $10, or $15 in each civil cause or proceeding commenced in county court, which costs or fees are in addition to costs or fees otherwise provided by law, and the whole of which additional costs or fees shall be paid into the county law library fund and expended according to the Manatee County Law Library Act; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Peeples—

HB 1951—A bill to be entitled An act relating to Charlotte County; amending chapter 65-1357, Laws of Florida, relating to the Charlotte County Development Authority; revising the annual levy of ad valorem taxes; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Bo Johnson—

HB 1953—A bill to be entitled An act relating to the City of Milton, Santa Rosa County; amending chapter 73-551, Laws of Florida, as amended; providing promotional procedures for fire department employees; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Liberti—

HB 2153—A bill to be entitled An act relating to Palm Beach County; providing for an Environmental Control Board and its organization; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Simone—

HB 2315—A bill to be entitled An act relating to Manatee County; providing for election of board members; providing for impact fees; providing a schedule of special assessments; providing consolidation; repealing chapter 84-477, Laws of Florida, as amended, relating to the Oneco-Tallevast Fire Control District; repealing chapter 84-481, Laws of Florida, as amended, relating to the Samoset Fire Control District; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Simone—

HB 2317—A bill to be entitled An act relating to Manatee County; creating and establishing the Manatee County Environmental Action Commission for the purpose of controlling and regulating pollution of air, water, soil, and property; providing legislative intent; providing definitions; providing method and manner of appointing members of the commission; providing for its powers, functions, privileges, duties, and responsibilities; providing for its adopting of rules and regulations; providing for an appeals process; providing for appointment of an Environmental Director and his respective powers and duties; providing for the Board of Environmental Appeals and its appointment; providing for reporting of pollution sources; providing for issuance of permits, except as required pursuant to chapter 403, Florida Statutes; providing for sampling and testing; providing for issuance of citation and emergency orders; providing for notification of appeal rights; prohibiting nuisances, pollution, and violation of an order; declaring a violation to be a misdemeanor; providing enforcement procedure and remedies; providing for additional liability and damages; creating a pollution recovery fund; providing for appropriation of funds; providing for legal counsel; providing

for liberal construction; providing that this act will be subject to section 403.182, Florida Statutes; providing for assumption of the county pollution control code, programs, and contracts; providing for transfer of the Manatee County Pollution Control Division; providing for severability; repealing chapter 67-1671, Laws of Florida, as amended; providing for the contingency repeal of this act; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Simone—

HB 2535—A bill to be entitled An act relating to Manatee County; amending section 15 of chapter 84-474, Laws of Florida, as amended; increasing the rates of special assessments that may be charged by the Whitfield Fire Control District; providing for nonpartisan election of the district board of commissioners; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

RETURNING MESSAGES ON SENATE BILLS

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 10 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 10—A bill to be entitled An act relating to hazardous waste facility permits; amending s. 403.722, F.S.; requiring an applicant for a permit to construct, modify, or operate a biohazardous waste or hazardous waste disposal, storage, or treatment facility to notify certain local governments and state officials and publish notice in a local newspaper a specified time before applying; providing an effective date.

House Amendment 1—On page 1, line 14, strike everything after the enacting clause and insert:

Section 1. Subsection (10) is added to section 403.707, Florida Statutes, to read:

403.707 Permits.—

(10) On the same day of filing with the department of an application for any construction or renovation permit for the treatment of biohazardous waste, other than a general permit, which the department may require by rule, the applicant shall notify each city and county within one mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published in a newspaper of general circulation in the county in which the facility is located or is proposed to be located. Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county. The notice shall contain:

(a) The name of the applicant and a brief description of the facility and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Regulation announces receipt of an application for a permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city).

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

Section 2. Subsection (12) is added to section 403.722, Florida Statutes, to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(12) On the same day of filing with the department of an application for a permit for the construction modification, or operation of a hazardous waste facility, the applicant shall notify each city and county within one mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published in a newspaper of general circulation in the county in which the facility is located or is proposed to be located. Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county. The notice shall contain:

(a) The name of the applicant and a brief description of the project and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Regulation announces receipt of an application for a permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city).

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

Section 3. This act shall take effect October 1, 1991, and shall apply only to those facilities for which an application is filed on or after such date.

House Amendment 2—In title, on page 1, lines 2-10, strike all of said lines and insert: An act relating to hazardous and biohazardous waste facility permits; amending ss. 403.707 and 403.722, F.S.; requiring applicants for certain hazardous and biohazardous waste permits to notify certain local governments and publish notice in a local newspaper; providing an effective date.

On motions by Senator Walker, the Senate concurred in the House amendments.

CS for SB 10 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—39 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 46 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 46—A bill to be entitled An act relating to public records; amending s. 570.544, F.S.; providing a limited exemption from s. 119.07(1), F.S., for certain records and information obtained by the Department of Agriculture and Consumer Services or by any other office or agency during the investigation of consumer complaints and alleged violations of consumer protection laws; reenacting and amending s. 320.025(1) and (2), F.S., which provides for confidential registration cer-

tificates and license plates for vehicles used by law enforcement agencies; reenacting and amending s. 378.406(1), F.S., which provides confidentiality for secret processes or methods of operation used in land reclamation; reenacting and amending s. 377.2409(2), F.S., which provides confidentiality for information related to geophysical activities; providing for future review and repeal of such public records exemptions; providing an effective date.

House Amendment 1—On page 1, line 26, through page 2, line 18, strike all of said lines and insert:

Section 1. Subsection (8) of section 570.544, Florida Statutes, 1990 Supplement, is amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.—

(8) The records of the Division of Consumer Services *are* ~~shall be~~ public records. *However, information contained in an original consumer complaint received by the division, and information pertaining to consumer fraud or consumer protection received by any other agency, which, if disclosed, would reveal*~~, except for information which would separately disclose~~ the business transactions of any person, trade secrets, or names of customers *is*~~, all of which shall be held~~ confidential and *exempt from the provisions of s. 119.07(1)* ~~shall not be disclosed~~. However, such disclosure as may be necessary to enforcement procedures shall not be construed as violative of this prohibition against disclosure. *This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.*

On motion by Senator Grant, the Senate concurred in the House amendment.

CS for SB 46 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—27 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 74 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 74—A bill to be entitled An act relating to labor regulations; prohibiting employers from taking retaliatory personnel action against employees under certain conditions; authorizing civil actions and providing specified relief; providing for certain employer relief; providing an effective date.

House Amendment 1—On page 1, line 12, strike everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (4), paragraph (b) of subsection (5), and subsections (7) and (10) of section 112.3187, Florida Statutes, are amended to read:

112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.—

(4) ACTIONS PROHIBITED.—

(c) The provisions of this subsection shall not be applicable when an employee or person ~~knowingly~~ discloses ~~false~~ information *known by the employee or person to be false.*

(5) NATURE OF INFORMATION DISCLOSED.—The information disclosed under this section shall include:

(b) Any act or suspected act of malfeasance, misfeasance, *gross waste of funds,* or neglect of duty committed by an agency.

(7) EMPLOYEES AND PERSONS PROTECTED.—This section shall protect employees and persons who disclose information on their own initiative in a *written and signed* ~~sworn~~ complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; or who refuse to participate in any *adverse* action prohibited by this section.

(10) DEFENSES.—It shall be *an affirmative* a defense to any action brought pursuant to this section that the adverse action was predicated upon grounds other than, *and would have been taken absent,* the employee's or person's exercise of rights protected by this section.

Section 2. For the purpose of incorporating the amendment to section 112.3187, Florida Statutes, in references thereto, the subdivision of the Florida Statutes set forth below is reenacted to read:

20.055 Agency chief internal auditors.—

(4) The chief internal auditor shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The chief internal auditor shall conduct financial, compliance, and performance audits of the agency and prepare audit reports of his findings. The scope and assignment of the audits shall be determined by the chief internal auditor; however, the head of the agency may at any time direct the chief internal auditor to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the chief internal auditor.

(b) Audit workpapers and reports shall be public records to the extent that they do not include information which has been made confidential and exempt from the provisions of s. 119.07(1) pursuant to law. However, when the chief internal auditor or a member of his staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual shall not be disclosed to anyone other than the chief internal auditor without the written consent of the individual, unless the chief internal auditor determines that such disclosure is unavoidable during the course of the audit or investigation. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 3. Section 112.3188, Florida Statutes, 1990 Supplement, is amended to read:

112.3188 Confidentiality of information given to *internal auditors and* inspectors general.—When *an internal auditor or* ~~a state agency's~~ inspector general *of an agency, as defined in s. 112.3187(3),* or a member of *such internal auditor's or inspector general's* ~~his~~ staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual shall not be disclosed to anyone other than the *internal auditor or* inspector general without the written consent of the individual, unless the *internal auditor or* inspector general determines that such disclosure is unavoidable during the course of the audit, evaluation, or investigation. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 4. Definitions.—As used in sections 4 through 8 of this act, the term:

(1) "Appropriate governmental agency" means any agency of government charged with the enforcement of laws, rules, or regulations governing an activity, policy, or practice of an employer.

(2) "Employee" means a person who performs services for and under the control and direction of an employer for wages or other remuneration. The term does not include an independent contractor.

(3) "Employer" means any private individual, firm, partnership, institution, corporation, or association, that employs ten or more persons.

(4) "Law, rule, or regulation" includes any statute or ordinance or any rule or regulation adopted pursuant to any federal, state, or local statute or ordinance applicable to the employer and pertaining to the business.

(5) "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.

(6) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee or who has managerial authority to take corrective action regarding the violation of law, rule, or regulation of which the employee complains.

Section 5. Prohibitions.—An employer may not take any retaliatory personnel action against an employee because the employee has:

(1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice.

(2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer.

(3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

Section 6. Employee's remedy; relief.—

(1)(a) An employee who has been the object of a retaliatory personnel action in violation of this act may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within four years after the personnel action was taken, whichever is earlier.

(b) Any civil action authorized under this section may be brought in the county in which the alleged retaliatory personnel action occurred, in which the complainant resides, or in which the employer has its principal place of business.

(c) An employee may not recover in any action brought pursuant to this subsection if he failed to notify the employer about the illegal activity, policy, or practice as required by subsection (1) of section 2 or if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by this act.

(2) In any action brought pursuant to subsection (1), the court may order relief as follows:

(a) An injunction restraining continued violation of this act.

(b) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position.

(c) Reinstatement of full fringe benefits and seniority rights.

(d) Compensation for lost wages, benefits, and other remuneration.

(e) Any other compensatory damages allowable at law.

Section 7. Attorney's fees and costs.—A court may award reasonable attorney's fees, court costs, and expenses to the prevailing party.

Section 8. Existing rights.—This act does not diminish the rights, privileges, or remedies of an employee or employer under any other law or rule or under any collective bargaining agreement or employment contract.

Section 9. This act shall take effect upon becoming a law.

House Amendment 2—In title, on page 1, line 2, after the "semicolon" insert: amending s. 112.3187, F.S.; revising conditions under which the act does not apply; providing additional information that may be disclosed under the act without adverse action; revising conditions under which disclosure of information is protected; revising provisions relating to defense to actions brought pursuant to the act; reenacting s. 20.055(4)(b), F.S., relating to confidentiality of information received by a chief internal auditor, to incorporate the amendment to s. 112.3187, F.S., in reference thereto; amending s. 112.3188, F.S.; providing for confidentiality of certain information given to internal auditors and inspectors general;

On motions by Senator Malchon, the Senate concurred in the House amendments.

CS for SB 74 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—25 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 156 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 156—A bill to be entitled An act relating to the tax on sales, use, rentals, admissions, and other transactions; reenacting s. 212.054, F.S.; amending s. 212.055, F.S.; authorizing certain counties to impose, pursuant to ordinance approved by an extraordinary majority of the governing body or conditioned on a referendum, a surtax on that tax in order to finance health care services for certain residents who are certified as indigent or medically poor; or to finance county public hospitals; specifying a maximum rate of surtax; providing for computation of the surtax; providing for collection and distribution of the surtax; providing for establishment of indigent care trust funds; providing for investment of moneys in the trust funds; providing for use of the proceeds; providing a limitation on the combined surtax amount that may be imposed by counties; providing an effective date.

House Amendment 2—On page 6, lines 21 through 24, strike all of said lines and insert:

(h) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsection (2) in excess of a combined rate of 1 percent.

House Amendment 3—On page 2, line 8, strike said line and insert:

Section 2. Subsection (3) is added to

House Amendment 7—On page 6, between lines 24 and 25, insert:

Section 3. Subsections (3) and (4) of section 212.055, Florida Statutes, as created by this act are repealed on October 1, 1998.

(Renumber subsequent section.)

House Amendment 8—In title, on page 1, line 20, after the semicolon (;) insert: repealing s. 212.055(3) and (4), F.S., relating to the health care services surtax, effective October 1, 1998;

House Amendment 9—On page 5, line 25, after "(g)" insert: *Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection only as provided in this paragraph by referendum or extraordinary vote of the county commission.*

On motions by Senator Davis, the Senate concurred in the House amendments.

CS for SB 156 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—32 Nays—3

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 464 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 464—A bill to be entitled An act relating to water resources; amending s. 373.069, F.S.; modifying the boundaries of the Suwannee River Water Management District and the St. Johns River Water Management District; providing for the transfer of water management district rules, permits, and applications for permits affected by the boundary modifications; amending s. 373.079, F.S.; authorizing the governing board of a water management district to delegate to its executive director authority relating to permits; amending s. 373.083, F.S.; authorizing a governing board to require surety to provide reasonable assurances of compliance; providing exemptions; amending s. 373.117, F.S.; authorizing the Department of Environmental Regulation or the governing boards of water management districts to adopt rules to require certification by a professional of certain projects that involve the services of that professional; prohibiting the use or operation of a completed project without such certification; providing a limitation; providing exceptions; creating s. 373.1395, F.S.; limiting the liability of water management districts for damages that occur on real property or water areas of the dis-

trict that are made available to the public for recreational purposes, or for access to recreational activities, if no fee is charged for admission to the real property or water areas and no commercial activity is conducted upon the real property or water areas; amending s. 373.139, F.S.; providing that the title information of real property to be acquired by a water management district is exempt from public records requirements under certain circumstances; creating s. 373.1401, F.S.; authorizing the governing board of each water management district to contract with governmental entities and environmental nonprofit organizations to provide for the improvement, management, and maintenance of the district's real property; amending s. 373.59, F.S.; repealing a provision providing for such a contract with state agencies; amending s. 373.089, F.S.; authorizing the governing board of a water management district to exchange real property of the district for other real property located in the state; authorizing the governing board to enter into a contract for such an exchange; creating s. 373.199, F.S.; requiring water management districts to establish agricultural advisory committees; providing duties of the committees; creating s. 373.42, F.S.; authorizing water management districts to provide wetland determinations; providing procedures; amending s. 373.536, F.S.; providing for review of water management district budgets by the Department of Environmental Regulation; providing for a report; amending s. 373.503, F.S., relating to manner of taxation; deleting obsolete provisions; revising the apportionment of millage levied by the Southwest Florida Water Management District; amending s. 373.553, F.S.; authorizing the governing board of a water management district to provide for the disbursement of funds of the board and of the district by wire or electronic transfer; amending s. 119.07, F.S.; exempting from public records requirements information relating to the medical condition or medical status of employees of a water management district; requiring legislative review of water management district regulatory programs under parts II, III, and IV of ch. 373, F.S.; providing an effective date.

House Amendment 1—On page 3, strike everything after the enacting clause and insert:

Section 1. Subsection (1) of section 119.07, Florida Statutes, 1990 Supplement, is republished, and paragraph (x) of subsection (3) of that section is amended to read:

119.07 Inspection and examination of records; exemptions.—

(1)(a) 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 any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8½ inches, upon payment of 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. However, the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with its duplication. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency. An agency may charge up to $1 per copy for a certified copy of a public record.

(b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. "Information technology resources" shall have the same meaning as in s. 282.303(10).

(c) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or his employees shall touch the ballots. The supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(3)

(x) All information relating to the medical condition or medical status of employees of the state *or of a water management district*, which is not relevant to the employee's capacity to perform his duties, is exempt from the provisions of subsection (1). Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits. All information which is exempt from subsection (1) pursuant to this paragraph shall be maintained separately from nonexempt employment information.

Section 2. Section 373.089, Florida Statutes, 1990 Supplement, is amended to read:

373.089 Sale *or exchange* of lands.—The governing board of the district may sell lands to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, in no case shall the selling price be less than the appraised value of the lands as determined by a certified appraisal obtained no less than 120 days before the sale.

(2) All sales of land shall be for cash or upon terms and security to be approved by the governing board, but a deed therefor shall not be executed and delivered until full payment is made.

(3) Before selling any land, except as provided in subsection (5), it shall be the duty of the district to cause a notice of intention to sell to be published in a newspaper published in the county in which the land is situated once each week for 3 successive weeks (three insertions being sufficient), the first publication of which shall be not less than 30 days nor more than 45 days prior to any sale, which notice shall set forth the time and place of the sale and a description of lands to be offered for sale.

(4) All sales shall be conducted at the county courthouse in the county in which the land is located on any day of the week except Sunday and at any time specified in the notice between the hours of 11 a.m. and 2 p.m.

(5) Public sale shall not be required when surplus lands are being resold to the then owner of that adjacent parcel from which the surplus land was originally parted; provided such sale is made within 1 year from the time the land is declared surplus; and the owner of the adjacent parcel shall be notified by registered mail to the address shown on the county tax roll within 30 days after the land is declared surplus.

(6) Public sale shall not be required when a building determined to be surplus was constructed or purchased using funds from the General Revenue Fund and the buyer is another regional agency or state agency that will use the structure in furtherance of its programs.

(7) The governing board of a district may exchange lands owned by, or lands for which title is otherwise vested in, the district for other lands within the state owned by any person. The governing board shall fix the terms and conditions of any such exchange and may pay or receive any sum of money that the board considers necessary to equalize the values of exchanged properties. Land acquired under s. 373.59 may be exchanged only for lands that otherwise meet the requirements of that section for acquisition.

Section 3. Subsection (8) of section 373.103, Florida Statutes, 1990 Supplement , is amended to read:

373.103 Powers which may be vested in the governing board at the department's discretion.—In addition to the other powers and duties allowed it by law, the governing board of a water management district may be specifically authorized by the department to:

(8) Delegate to a local government by rule or agreement the power and duty to administer *and enforce* any of the statutes, rules, or regulations relating to stormwater permitting or surface water management which the district is authorized or required to administer, including those delegated by a state agency to the district, if the governing board deter-

mines that such a delegation is necessary or desirable. Such a delegation shall be made only if the governing board determines that the local government's program for administering the delegated statute, rule, or regulation:

(a) Provides by ordinance, regulation, or local law for requirements compatible with or stricter or more extensive than those imposed by the statute or the rules and regulations adopted pursuant thereto;

(b) Provides for the enforcement of such requirements by appropriate administrative and judicial processes; and

(c) Provides for administrative organization, staff, and financial and other resources necessary to effectively and efficiently enforce such requirements.

The governing board shall give prior notice of its intention to enter into an agreement described in this subsection. At a minimum, such notice shall be published in the Florida Administrative Weekly at least 21 days in advance of the governing board's action. At least once every six months, the district shall update its rules to include a list of the agreements adopted pursuant to this subsection to which the district is a party. The list shall identify the parties to, and the date and location of each agreement, and shall specify the nature of the authority delegated by the agreement.

Section 4. Section 373.129, Florida Statutes, is amended to read:

373.129 Maintenance of actions.—The department, the governing board of any water management district, ~~or~~ any local board, *or a local government to which authority has been delegated pursuant to s. 373.103(8),* is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

(1) To enforce rules, regulations, and orders adopted or issued pursuant to this law.

(2) To enjoin or abate violations of the provisions of this law or rules, regulations, and orders adopted pursuant hereto.

(3) To protect and preserve the water resources of the state.

(4) To defend all actions and proceedings involving its powers and duties pertaining to the water resources of the state.

(5)~~(a)~~ To recover a civil penalty for each offense in an amount not to exceed $10,000 per offense. Each date during which such violation occurs constitutes a separate offense.

(a)~~(b)~~ A civil penalty recovered pursuant to *this subsection* ~~paragraph (a)~~ shall be deposited in the Water Management Lands Trust Fund established under s. 373.59 and *used* ~~utilized~~ exclusively by the water management district that deposits the money into the fund. Any such civil penalty recovered after the expiration of such fund shall be deposited in the Pollution Recovery Fund created by s. 403.165 and *used* ~~utilized~~ exclusively within the water management district that deposits the money into the fund.

(b) A local government that is delegated authority pursuant to s. 373.103(8) may deposit a civil penalty recovered pursuant to this subsection into a local water pollution control program trust fund, notwithstanding the provisions of paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violation of requirements relating to water quantity may be used only to purchase lands and make capital improvements associated with surface water management, or other purposes consistent with the requirements of this chapter for the management and storage of surface water.

(6) To recover investigative costs, court costs, and reasonable attorney's fees.

Section 5. Subsection (3) of section 373.139, Florida Statutes, is amended to read:

373.139 Acquisition of real property.—

(3) *Title information,* appraisal reports, offers, and counteroffers are confidential and exempt from the provisions of s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. In the event that negotiation is terminated by the district, the *title information,* appraisal report, offers, and counteroffers shall become available pursuant to s. 119.07(1). Notwithstanding the provisions of this section and s. 253.025, a district and the Division of State Lands may share and disclose *title information,* appraisal reports, appraisal information, offers, and counteroffers when joint acquisition of property is contemplated. A district and the Division of State Lands shall maintain the confidentiality of such *title information,* appraisal reports, appraisal information, offers, and counteroffers in conformance with this section and s. 253.025. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 6. Section 373.1401, Florida Statutes, is created to read:

373.1401 Management of lands of water management districts.—The governing board of each water management district may contract with a federal or state agency, a county, a municipality, or any other governmental entity or environmental nonprofit organization to provide for the improvement, management, or maintenance of any real property owned by or under the control of the district.

Section 7. Section 373.421, Florida Statutes, is created to read:

373.421 Formal wetland determinations.—

(1) A water management district may provide a process by rule for formal wetland determinations. If a rule is adopted, a property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in property may petition the district for a formal wetland determination. In such rule, the governing board shall specify information which must be provided and may require authorization to enter upon the property. The rule shall also establish procedures for issuing a formal wetland determination. The governing board may authorize its executive director to issue formal wetland determinations. The governing board must, by rule, prescribe the circumstances in which its executive director may issue such determinations. The governing board may require a fee to cover the costs of processing and acting upon the petition. That fee must be established by rule.

(2) A formal wetland determination is binding for a period not to exceed 5 years, as long as physical conditions on the property do not change so as to alter the wetland boundaries during that period.

(3) The governing board may revoke a formal wetland determination if it finds that the petitioner has submitted inaccurate information to the district.

(4) A formal wetland determination obtained under this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable under s. 120.565. Sections 120.57 and 120.59 apply to formal wetland determinations under this section.

(5) The district may also issue informal wetland determinations or otherwise institute wetland determinations on its own initiative as provided by law.

Section 8. Subsection (3) of section 373.503, Florida Statutes, is amended to read:

373.503 Manner of taxation.—

(3)(a) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, Laws of Florida, 1949, as amended, and chapter 61-691, Laws of Florida, as amended. The authority to levy ad valorem taxes as provided in this act shall commence with the year 1977. However, the taxes levied for 1977 by the governing boards pursuant to this section shall be prorated to ensure that no such taxes will be levied for the first 4 days of the tax year, which days will fall prior to the effective date of the amendment to s. 9(b), Art. VII of the Constitution of the State of Florida, which was approved March 9, 1976. When appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695. Beginning with the taxing year 1977, and notwithstanding the provisions of any other general or special law to the contrary, the maximum total millage rate for district and basin purposes shall be:

1. Northwest Florida Water Management District: 0.05 mill.

2. Suwannee River Water Management District: 0.75 mill.

3. St. Johns River Water Management District: 0.6 mill.

4. Southwest Florida Water Management District: 1.0 mill.

5. South Florida Water Management District: 0.80 mill.

(b) ~~The maximum millage assessed for district purposes shall not exceed 25 percent of the total authorized millage when there are one or more basins in a district, and the maximum millage assessed for basin purposes shall not exceed 75 percent of the total authorized millage, except that:~~

~~1.~~ The apportionment in the South Florida Water Management District shall be a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes, respectively.

(c)~~2.~~ Within the Southwest Florida Water Management District, the maximum millage assessed for district purposes shall not exceed *50* ~~40~~ percent of the total authorized millage when there are one or more basins in the district, and the maximum millage assessed for basin purposes shall not exceed *50* ~~60~~ percent of the total authorized millage.

Section 9. Subsection (5) is added to section 373.536, Florida Statutes, to read:

373.536 District budget and hearing thereon.—

(5)(a) Beginning in 1991, each water management district shall, by August 5 of each year, submit to the Department of Environmental Regulation for its review a tentative budget that includes, but is not limited to, the following information for the preceding fiscal year and the current fiscal year, and the proposed amounts for the upcoming fiscal year, in a standard format prescribed by the department which is generally consistent with the format prescribed by legislative budget instructions for state agencies and the format requirements of s. 216.031:

1. The millage rates and the percentage increase above the rolled-back rate, and the percentage increase in taxable value resulting from new construction;

2. For each program area, the salary and benefits, expenses, operating capital outlay, number of authorized positions, and other personal services;

3. A description of each new, expanded, reduced, or eliminated program;

4. A 5-year capital improvements plan; and

5. The funding sources, including, but not limited to, ad valorem taxes, Surface Water Improvement and Management Program funds, other state funds, federal funds, and user fees and permit fees for each program area.

(b) The department shall, by September 5 of the year in which the budget is submitted, after taking into account continuing and proposed program needs, provide its review and comments to the governing board and the Governor.

(c) The department shall annually, on or before December 15, file with the Governor and the Legislature, a report that summarizes the expenditures of the water management districts by program area and identifies the districts that are not in compliance with the reporting requirements of this section. State funds shall be withheld from a water management district that fails to comply with these reporting requirements.

Section 10. Subsection (1) of section 373.553, Florida Statutes, is amended to read:

373.553 Treasurer of the board; *payment of funds;* depositories.—

(1) The governing board shall designate a treasurer who shall be custodian of all funds belonging to the board and to the district, and such funds shall be disbursed upon the order of, or in the manner prescribed by, the governing board by warrant or check signed by the treasurer or assistant treasurer and countersigned by the chairman or vice chairman of the board. The board is authorized to establish procedures for disbursement of funds in such amounts and in such manner as the board may prescribe, except that disbursement of funds prior to specific board approval may only be authorized upon certification by its chief executive officer or his designated assistant to the treasurer or assistant treasurer and to the chairman or vice chairman of the board that such disbursement is proper and in order and is within budgetary limits. Any such disbursements shall be reported to the board at its next regular meeting. *The board may establish, by rule, a procedure for the disbursement of funds of the district by means of wire or electronic transfers.*

Section 11. Subsection (1) of section 373.59, Florida Statutes, 1990 Supplement, is amended to read:

373.59 Water Management Lands Trust Fund.—

(1) There is established within the Department of Environmental Regulation the Water Management Lands Trust Fund to be used as a nonlapsing fund for the purposes of this section. The moneys in this fund are hereby continually appropriated for the purposes of land acquisition, management, maintenance, and capital improvements in accordance with the provisions of this section. Up to 10 percent of the moneys in the fund may be allocated annually to the districts for management, maintenance, and capital improvements pursuant to subsection (7). ~~The districts may contract with state agencies to provide the management and maintenance services.~~

Section 12. In addition to rulemaking procedures required pursuant to chapter 120, Florida Statutes, the water management districts, when proposing to adopt, amend, or repeal any rule, shall provide notice of intent by publication in a newspaper of general circulation in the affected area. The publication notice shall summarize the proposed rule and shall occur at least 14 days prior to the intended action.

Section 13. The Legislature shall review and comment on the regulatory programs under parts II, III, and IV of chapter 373, Florida Statutes, according to the following schedule:

(1) Part IV of chapter 373, Florida Statutes, consisting of sections 373.403, 373.406, 373.409, 373.413, 373.414, 373.415, 373.416, 373.417, 373.418, 373.419, 373.423, 373.426, 373.429, 373.433, 373.436, 373.439, 373.443, 373.451, 373.453, 373.455, 373.456, 373.457, 373.459, 373.4595, and 373.4596, Florida Statutes, is scheduled for review and comment prior to October 1, 1992.

(2) Part II of chapter 373, Florida Statutes, consisting of sections 373.203, 373.206, 373.207, 373.209, 373.213, 373.216, 373.217, 373.219, 373.223, 373.2235, 373.224, 373.226, 373.229, 373.2295, 373.232, 373.233, 373.236, 373.239, 373.243, 373.244, 373.245, 373.246, and 373.249, Florida Statutes, is scheduled for review and comment prior to October 1, 1993.

(3) Part III of chapter 373, Florida Statutes, consisting of sections 373.302, 373.303, 373.306, 373.308, 373.309, 373.313, 373.314, 373.316, 373.319, 373.323, 373.324, 373.325, 373.326, 373.329, 373.333, 373.335, 373.336, 373.337, and 373.342, Florida Statutes, is scheduled for review and comment prior to October 1, 1994.

Section 14. This act shall take effect upon becoming a law.

House Amendment 2—In title, on page 3, strike everything before the enacting clause and insert: A bill to be entitled An act relating to water resources; amending s. 119.07, F.S.; exempting from public records requirements information relating to the medical condition or medical status of employees of a water management district; amending s. 373.089, F.S.; authorizing the governing board of a water management district to exchange real property of the district for other real property located in the state; authorizing the governing board to enter into a contract for such an exchange; amending s. 373.103, F.S.; providing for the Department of Environmental Regulation to delegate to local governments the enforcement of stormwater permitting or surface water management programs; amending s. 373.129, F.S.; authorizing such local governments to maintain actions and deposit civil penalties into a local water pollution control trust fund and use those funds for specified purposes; amending s. 373.139, F.S.; providing that the title information of real property to be acquired by a water management district is exempt from public records requirements under certain circumstances; creating s. 373.1401, F.S.; authorizing the governing board of each water management district to contract with governmental entities and environmental nonprofit organizations to provide for the improvement, management, and maintenance of the district's real property; creating s. 373.421, F.S.; authorizing water management districts to provide for formal wetlands determinations by rule; providing a time limit; providing for revocation; providing for final

agency action and application of ch. 120, F.S.; amending s. 373.503, F.S., relating to manner of taxation; deleting obsolete provisions; revising the apportionment of millage levied by the Southwest Florida Water Management District; amending s. 373.536, F.S.; providing for review of water management district budgets by the Department of Environmental Regulation; providing for a report; amending s. 373.553, F.S.; authorizing the governing board of a water management district to provide for the disbursement of funds of the board and of the district by wire or electronic transfer; amending s. 373.59, F.S.; deleting a provision authorizing water management districts to contract with state agencies to provide certain services; requiring districts to provide, by publication in a local newspaper, notice of intent to adopt, amend, or repeal any rule; requiring legislative review of water management district regulatory programs under parts II, III, and IV of ch. 373, F.S.; providing an effective date.

On motions by Senator Myers, the Senate concurred in the House amendments.

CS for SB 464 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—35 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments, SB 854 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 854—A bill to be entitled An act relating to transportation of school children; creating s. 234.0515, F.S.; authorizing school districts to provide a list of transportation companies to parents of school students; providing requirements for the list; requiring assessment of a fee; providing an effective date.

House Amendment 1—On page 1, lines 14 through 17, strike: "234.0515 Transportation of school students by private transportation companies.—Where transportation is not provided to public school students pursuant to s. 234.01, or to private school students in grades K through 12," and insert: 234.0515 Transportation of public school students by private transportation companies.—Where transportation is not provided to public school students pursuant to s. 234.01,

House Amendment 2—In title, on page 1, line 6, before "school", insert: public

On motions by Senator Weinstein, the Senate concurred in the House amendments.

SB 854 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 856 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 856—A bill to be entitled An act relating to notaries public; amending s. 117.01, F.S.; providing for appointment, application, suspension, revocation, application fee, bond, and oath; amending s. 117.03, F.S.; providing for administration of oaths; amending s. 117.04, F.S.; specifying authority of notaries with respect to marriages and acknowledgments; amending s. 117.05, F.S.; providing for use of notary commission, unlawful use, notary fee, seal, duties, employer liability, name change, advertising, and photocopies; providing penalties; creating s. 117.103, F.S.; providing for certification of notary's authority; creating s. 117.105, F.S.; prohibiting false or fraudulent acknowledgments; providing penalties; creating s. 117.107, F.S.; prohibiting certain acts by notaries; repealing ss. 117.02, 117.07, 117.08, 117.09, F.S., relating to eligibility of women to be notaries, notary's seal, acting after expiration of commission, and penalties for prohibited acts; amending s. 117.10, F.S.; adding and deleting references to repealed sections; amending s. 695.25, F.S., relating to short forms of acknowledgment; providing an effective date.

House Amendment 1—On page 3, lines 17 through 22, strike all of said lines

On motion by Senator Dudley, the Senate concurred in the House amendment.

CS for SB 856 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—30 Nays—2

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for CS for SB's 1000, 1234 and 2158 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for CS for SB's 1000, 1234 and 2158—A bill to be entitled An act relating to health care; amending s. 381.702, F.S.; providing that, for the purposes of ss. 381.701-381.715, F.S., the Health Facility and Services Development Act, the term "capital expenditure" includes initial financing costs but excludes refinancing costs; amending s. 381.703, F.S.; increasing fees for certain abortion clinics, ambulatory surgical centers, birthing centers, clinical laboratories except community nonprofit blood banks, home health agencies, hospices, intermediate care facilities for the mentally retarded, multiphasic testing centers, health maintenance organizations, and prepaid health clinics to fund state and local health planning; providing for distribution of health care facilities assessments and certificate-of-need application fees among the Statewide Health Council, local health councils, and the Department of Health and Rehabilitative Services; amending s. 381.705, F.S.; correcting a cross-reference; amending s. 381.706, F.S.; revising projects subject to review under certificate of need; repealing s. 381.713(1), F.S., relating to application for exemption from certificate-of-need review for certain projects of certain health maintenance organizations or health care facilities; saving exemptions that have been approved; amending s. 381.708, F.S.; increasing application fees for certificates of need; amending s. 381.710, F.S.; correcting cross-references; amending s. 390 014, F.S.; increasing licensure fees for abortion clinics; amending s. 395.002, F.S.; providing a definition; amending s. 395.003, F.S.; requiring that a cardiac catheterization facility be licensed; prohibiting such facilities from providing certain services; requiring the Department of Health and Rehabilitative Services to adopt rules for the operation of such facilities; amending s. 395.004, F.S.; increasing licensure fees for hospitals, cardiac catheterization facilities, and ambulatory surgical centers; amending s. 395.007, F.S.; increasing fees for plans and construction review for hospitals, cardiac catheterization facilities, and ambulatory surgical centers; amending s. 400.062, F.S.; increasing nursing home licensure fees; amending s. 400.23, F.S.; increasing fees for plans and construction review for nursing homes; amending s. 400.407, F.S.; increasing adult congregate living facility licensure fees; amending s. 400.467, F.S.; increasing home health agency licensure fees; amending s. 400.605, F.S.; increasing hospice licensure fees; amending s. 407.002, F.S.; providing definitions; amending s. 407.05, F.S.; requiring hospitals to file budgets with the Health Care Cost Containment Board; amending s. 407.09, F.S.; authorizing the board to collect fees and specifying disposition thereof; amending s. 407.31, F.S.; requiring nursing homes to submit certain data; amending s. 407.32, F.S.; revising the reporting date for the annual board report on nursing home financial data; amending s. 407.70, F.S.; providing for publication of data on physician charges; requiring health insurers to submit certain information; amending s. 483.172, F.S.; increasing clinical laboratory licensure fees; repealing s. 381.702(16), F.S., relating to the definition of the term "major medical equipment"; providing an effective date.

House Substitute Amendment 1—On page 3, line 16, strike everything after the enacting clause and insert:

Section 1. Effective upon this act becoming a law, subsection (1) of section 381.702, Florida Statutes, is amended to read:

381.702 Definitions.—As used in ss. 381.701-381.715, the term:

(1) "Capital expenditure" means an expenditure, including an expenditure for a construction project undertaken by a health care facility as its own contractor, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or an expenditure which exceeds the minimum as specified

in s. 381.706(1)(c), changes the bed capacity of the facility, or substantially changes the services or service area of the health care facility, health service provider, or hospice, and which includes the cost of the studies, surveys, designs, plans, working drawings, specifications, *initial financing* ~~refinancing~~ costs, and other activities essential to acquisition, improvement, expansion, or replacement of the plant and equipment. The department shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.

Section 2. Effective upon this act becoming a law, paragraphs (b), (c), and (g) of subsection (3) of section 381.703, Florida Statutes, are amended to read:

381.703 Local and state health planning.—

(3) FUNDING.—

(b)1. A hospital licensed under chapter 395, a nursing home licensed under chapter 400, and an adult congregate living facility licensed under chapter 400 shall be assessed an annual fee based on number of beds.

2. All other facilities and organizations listed in paragraph (a) shall each be assessed *an annual fee of $150* ~~a graduated annual fee based on volume of service~~.

3. Facilities operated by the Department of Health and Rehabilitative Services or the Department of Corrections and any hospital which meets the definition of rural hospital pursuant to s. 395.102(2) are exempt from the assessment required in this subsection.

(c)1. The department shall, by rule, establish fees for hospitals and nursing homes based on an assessment of $2 per bed. However, no such facility shall be assessed more than a total of $500 under this subsection.

2. The department shall, by rule, establish fees for adult congregate living facilities based on an assessment of $1 per bed. However, no such facility shall be assessed more than a total of $150 under this subsection.

3. The department shall, by rule, establish *an annual fee of $150* ~~graduated fees~~ for all other facilities and organizations listed in paragraph (a) ~~based on volume of service. Such fees shall not exceed a maximum of $150 for any facility or organization~~.

(g) The department shall *deposit in the Local and State Health Trust Fund all health care facility assessments that are assessed under this subsection and proceeds from the certificate-of-need application fees which are sufficient to maintain the aggregate funding level for the local health councils and the Statewide Health Council as specified in the General Appropriations Act for the 1990-1991 fiscal year, plus any increase specifically mandated by the Legislature for the Statewide Health Council. The remaining certificate-of-need application fees shall be deposited in a trust account administered by the department and may be used only for the purpose of administering the Health Facility and Services Development Act.*~~, on an ongoing basis, deposit 90 percent of all certificate of need application fees and 100 percent of health care facilities assessments assessed pursuant to this subsection in the Local and State Health Trust Fund.~~

Section 3. Effective upon this act becoming a law, paragraph (c) of subsection (1) of section 381.706, Florida Statutes, is amended to read:

381.706 Projects subject to review.—

(1) APPLICABILITY.—Unless exempt pursuant to subsection (3), all health-care-related projects, as described in paragraphs (a)-(n), *are* ~~shall be~~ subject to review and *must* ~~shall~~ file an application for a certificate of need with the department. The department is exclusively responsible for determining whether a health-care-related project is subject to review under ss. 381.701-381.715.

(c) A capital expenditure of $1 million or more by or on behalf of a health care facility or hospice for a purpose directly related to the furnishing of health services at such facility; provided that a certificate of need shall not be required for an expenditure to provide an outpatient health service, or to acquire equipment *or refinance debt*, for which a certificate of need is not otherwise required pursuant to this subsection. The department shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.

Section 4. Effective upon this act becoming a law, section 381.708, Florida Statutes, is amended to read:

381.708 Fees.—The department shall assess fees on certificate-of-need applications. Such fees shall be for the purpose of funding the Statewide Health Council, the functions of the local health councils, and the activities of the department *and shall be allocated as provided in s. 381.703*. The fee shall be determined as follows:

(1) A minimum base fee of *$5,000* ~~$750~~.

(2) In addition to the base fee of *$5,000* ~~$750~~, *0.015* ~~0.006~~ of each dollar of proposed expenditure, except that *a* ~~no~~ fee *may not* ~~shall~~ exceed *$22,000* ~~$10,000~~.

Section 5. Effective upon this act becoming a law, subsection (3) of section 390.014, Florida Statutes, is amended to read:

390.014 Licenses; fees, display, etc.—

(3) The annual license fee required for a clinic shall be nonrefundable and shall be *reasonably calculated to cover the cost of regulation under this chapter, but may* ~~equal to $1 times the authorized patient capacity of the clinic; however, the fee shall~~ not be less than $35~~,~~ nor more than *$250* ~~$75~~.

Section 6. Effective upon this act becoming a law, subsection (2) of section 395.004, Florida Statutes, is amended to read:

395.004 Application for license, disposition of fees; expenses.—

(2) Each application for a general hospital license, specialty hospital license, or ambulatory surgical center license, or renewal thereof, shall be accompanied by a license fee, in accordance with the following schedule:

(a) The biennial license and license renewal fee required of a facility licensed under this part *shall be reasonably calculated to cover the cost of regulation under this part and* shall be established by rule at the rate of not less than $9.50 per hospital bed, nor more than *$30* ~~$15~~ per hospital bed, except that the minimum license fee hereunder shall be *$1,500* ~~$475~~ and the total fees collected from all licensed facilities *may* ~~shall~~ not exceed the cost of properly carrying out the provisions of this part.

(b) Such fees shall be payable to the department and shall be deposited in the Hospital Licensure Trust Fund for the sole purpose of carrying out the provisions of this part.

Section 7. Effective upon this act becoming a law, paragraph (a) of subsection (2) of section 395.007, Florida Statutes, is amended to read:

395.007 Construction inspections; plan submission and approval; fees.—

(2)(a) The department is authorized to charge *an initial fee of $2,000 for review of plans and construction on all projects, no part of which is refundable. The department may also collect* a fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for *the portion of the review which encompasses initial review through the initial revised construction document review. The department is further authorized to collect its actual costs on all subsequent portions of the review and construction inspections. Initial* ~~services rendered in conducting the review of plans and specifications for each new project, in an amount sufficient to cover the cost of necessary architectural and engineering services to meet the requirements of this section.~~ fee payment shall accompany the initial submission of ~~final~~ plans and specifications. *Any subsequent payment that is due is payable upon receipt of the invoice from the department.*

Section 8. Effective upon this act becoming a law, subsection (3) of section 400.062, Florida Statutes, is amended to read:

400.062 License required; fee; disposition; display; transfer.—

(3) The annual license fee required for each license issued under this part shall be comprised of two parts. Part I of the license fee shall be the basic license fee. The rate per bed for the basic license fee shall be established annually~~;~~ and *must be reasonably calculated to cover the cost of regulation under this part, but may not exceed $35 per bed.*~~, in establishing such rate, the department shall divide one-third of the total fiscal year's legislative appropriation for carrying out the provisions of this part by the total number of beds to be licensed under this part.~~ Part II of the license fee shall be the resident protection fee, which shall be at the rate of not less than 25 cents per bed. The rate per bed shall be the minimum rate per bed, and such rate shall remain in effect until the effective date of a rate per bed *adopted* ~~promulgated~~ by rule by the department pursu-

ant to this part. At such time as the amount on deposit in the Resident Protection Trust Fund is less than $500,000, the department may *adopt* ~~promulgate~~ rules to establish a rate which may not exceed $10 per bed. The rate per bed shall revert back to the minimum rate per bed when the amount on deposit in the Resident Protection Trust Fund reaches $500,000, except that any rate established by rule shall remain in effect until such time as the rate has been equally required for each license issued under this part. Any amount in the fund in excess of $800,000 shall revert to the Nursing Home and Related Facilities Licensure Trust Fund and may not be expended without prior approval of the Legislature. The department may prorate the annual license fee for those licenses which it issues under this part for less than 1 year. Funds generated by license fees collected in accordance with this section shall be deposited in the following manner:

(a) The basic license fee collected shall be deposited in the Nursing Homes and Related Facilities Licensure Trust Fund, which is hereby established for the sole purpose of carrying out the provisions of this part.

(b) The resident protection fee collected shall be deposited in the Resident Protection Trust Fund for the sole purpose of paying, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a resident removed from a nursing home facility on a temporary, emergency basis or for the maintenance and care of residents in a nursing home facility pending removal and alternate placement.

Section 9. Effective upon this act becoming a law, subsection (8) of section 400.23, Florida Statutes, 1990 Supplement, is amended to read:

400.23 Rules; minimum standards; evaluation and rating system; fee for review of plans.—

(8) The department is authorized to charge *an initial fee of $2,000 for review of plans and construction on all projects, no part of which is refundable. The department may also collect* a fee, not to exceed *1* ~~0.5~~ percent of the estimated construction cost or the actual cost of review, whichever is less, for *the portion of the review which encompasses initial review through the initial revised construction document review. The department is further authorized to collect its actual costs on all subsequent portions of the review and construction inspections. Initial* ~~services rendered in conducting the review of plans and specifications for each new project, in an amount sufficient to cover the costs of purchasing necessary additional architectural and engineering services to meet the requirements of this section.~~ fee payment shall accompany the initial submission of plans and specifications. *Any subsequent payment that is due is payable upon receipt of the invoice from the department.* Notwithstanding any other provisions of law to the contrary, all money received by the department pursuant to the provisions of this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

Section 10. Effective upon this act becoming a law, paragraph (a) of subsection (4) of section 400.407, Florida Statutes, is amended to read:

400.407 License required; fee, display.—

(4)(a) The *biennial* ~~annual~~ license fee required of a facility shall be *$240* ~~$100~~ per license, with an additional fee of *$30* ~~$5~~ per resident based on the total licensed resident capacity of the facility, *except that a reduced additional fee of $10 per resident shall be assessed for beds designated for recipients of optional state supplementation payments provided for in s. 409.212.*. The total fee shall not exceed *$10,000* ~~$1,000~~, no part of which shall be returned to the facility. ~~Beginning July 1, 1988, the department may adjust the $100 annual license fee and the maximum total license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.~~

Section 11. Effective upon this act becoming a law, section 400.418, Florida Statutes, is amended to read:

400.418 Disposition of fees and administrative fines.—Income from license fees, late fees, and administrative fines generated pursuant to ss. 400.407, 400.417 and 400.419 shall be deposited in *a trust fund administered by the* ~~the Licensure Fees Trust Fund of the~~ department. Such funds shall be directed to and used by the department for the following purposes:

(1) Up to 50 percent of the trust funds accrued each fiscal year may be used to offset the expenses of receivership, pursuant to s. 400.422, if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.

(2) An amount of $5,000 of the trust funds accrued each year shall be allocated to pay for inspection-related physical and mental health examinations requested by the department pursuant to s. 400.426 for residents who are either recipients of supplemental security income or have monthly incomes not in excess of the maximum combined federal and state cash subsidies available to supplemental security income recipients, as provided for in s. 409.212. Such funds shall only be used where the resident is ineligible for Medicaid.

(3) The balance of trust funds accrued each year may be used to offset the costs of the licensure program, including the costs of conducting background investigations, verifying information submitted, and defraying the costs of processing the names of applicants.

Section 12. Effective upon this act becoming a law, subsection (2) of section 400.467, Florida Statutes, 1990 Supplement, is amended to read:

400.467 License required; fee; display.—

(2) The license fee and annual renewal fee required of an agency shall be nonrefundable and in an amount determined by the department to be sufficient to cover the department's costs in carrying out its responsibilities under this part but not to exceed *$1,000* ~~$500~~. However, state, county, or municipal governments applying for licenses under this part are exempt from the payment of license fees.

Section 13. Effective upon this act becoming a law, subsection (2) of section 400.605, Florida Statutes, is amended to read:

400.605 Administration; forms; fees; rules; inspections; fines.—The administration of this act is vested in the Department of Health and Rehabilitative Services, which shall:

(2) Collect in advance (and the applicant so served shall pay to it in advance) at the time of filing an application for a license or at the time of renewal of a license a fee *which must be reasonably calculated to cover the cost of regulation under this part, but may not exceed $600 per program* ~~of $100~~.

Section 14. Effective upon this act becoming a law, subsection (5) of section 483.172, Florida Statutes, is amended to read:

483.172 License fees.—The department shall collect fees for all licenses issued under this part. The fee schedule for fiscal year 1983-1984 shall be the minimum fees provided herein, and such schedule shall remain in effect until the effective date of a fee schedule adopted by rule by the department pursuant to this part. The fee schedule for licensure of clinical laboratories shall be increased annually in substantially equal increments to produce, by fiscal year 1985-1986, an overall fee schedule in which fees from licensure of clinical laboratories are sufficient to carry out the responsibilities of the department for regulation of clinical laboratories and fees from licensure of clinical laboratory personnel are sufficient to carry out the responsibilities of the department for regulation of clinical laboratory personnel. Each fee shall be due at the time of application and shall be payable to the department to be deposited in a trust fund administered by the department and used only for the purposes of this chapter. The fee schedule is as follows:

(5) For licensure as a clinical laboratory, an annual fee of not less than $210 or more than *$1,200* ~~$1,000~~. No separate licensure fee shall be paid by any branch office, mobile donor unit, or transfusion service operated by a blood bank when the principal location of the blood bank is licensed under this part. For late filing of an application for renewal, a fee of $100. In any licensure period in which the department accepts an equivalent inspection of a blood bank pursuant to s. 483.061, such blood bank shall pay only a fee of $50.

Section 15. Effective upon this act becoming a law, subsection (1) of section 381.713, Florida Statutes, is hereby repealed. The repeal of subsection (1) of section 381.713, Florida Statutes, shall not in any manner divest, affect, abate, or terminate any exemption granted or the grant of any application for exemption submitted to the Department of Health and Rehabilitative Services pursuant to said subsection prior to April 17, 1991.

Section 16. Effective upon this act becoming a law, paragraph (a) of subsection (3) of section 381.706, Florida Statutes, as amended by chapter 89-527, Laws of Florida, is hereby repealed.

Section 17. Effective upon this act becoming a law, paragraph (a) of subsection (3) of section 11.45, Florida Statutes, 1990 Supplement, is amended to read:

11.45 Definitions; duties; audits; reports.—

(3)(a)1. The Auditor General shall annually make financial audits of the accounts and records of all state agencies, as defined in this section, of all district school boards, and of all district boards of trustees of community colleges. Nothing herein shall limit the Auditor General's discretionary authority to conduct performance audits of these governmental entities as authorized in subparagraph 2. Nothing in this section shall be construed as prohibiting a district school board from selecting an independent auditor to perform a financial audit as defined in paragraph (1)(b) notwithstanding the notification provisions of this section.

2. The Auditor General may at any time make financial audits and performance audits of the accounts and records of all governmental entities created pursuant to law. The audits referred to in this subparagraph shall be made whenever determined by the Auditor General, whenever directed by the Legislative Auditing Committee, or whenever otherwise required by law or concurrent resolution. District school boards and expressway and bridge authorities may require that the annual financial audit of its accounts and records be completed within 12 months after the end of its fiscal year. In the event that the Auditor General may not be able to meet that requirement, the Auditor General shall notify the school board or the expressway and bridge authority pursuant to subparagraph 4.

3.a. The Auditor General shall complete a performance audit of each new major program and each major modification to an existing program specifically identified in the General Appropriations Act, and any new major program or major modification to an existing program which becomes law but which is not specifically identified in the General Appropriations Act, within 3 years after the date when such program or modification becomes law, unless such program or modification has been subject during the 3-year period to an evaluation and review pursuant to ss. 11.513 and 216.0165. The chairmen of the appropriations committees and the appropriate substantive committees of the Senate and the House of Representatives shall provide the Legislative Auditing Committee with a list of the new major programs and major modifications to existing programs provided for in the General Appropriations Act or any other act within 10 days after the General Appropriations Act or the other act becomes law. The Legislative Auditing Committee shall arrange the lists of programs and modifications in order of priority before directing the Auditor General to conduct the performance audits. If the Auditor General conducts a preliminary review of a program or modification and determines that a performance audit is unnecessary, the Auditor General shall submit a letter stating the reasons why such audit is unnecessary to the Legislative Auditing Committee for its review and approval.

b. In addition to any other audits performed under subparagraph 2. and this subparagraph, the Auditor General shall perform an evaluation of the implementation of the recommendations prepared for each agency that has been reviewed under the provisions of s. 216.0165. Such evaluation must begin no later than 2 years after the beginning of the fiscal year that next follows the submission of the budget requests submitted pursuant to s. 216.023(7). The Auditor General shall maintain a schedule of performance audits of state programs sufficient to audit all major state programs within a 10-year period, taking into consideration the schedule established according to s. 216.0165(2) or the schedule determined by the Legislative Auditing Committee pursuant to s. 216.0165(3), unless directed otherwise by the Legislative Auditing Committee.

4. If by July 1 in any fiscal year a district school board or local governmental entity has not been notified that a financial audit for that fiscal year will be performed by the Auditor General pursuant to subparagraph 2., each municipality with either revenues or expenditures of more than $100,000, each special district with either revenues or expenditures of more than $25,000, each special district issuing, or which has outstanding, bonds with face value greater than $500,000 with an original maturity date in excess of 1 year from the time of issuance, and each county agency shall, and each district school board may, require that an annual financial audit of its accounts and records be completed, within 12 months after the end of its respective fiscal year, by an independent certified public accountant retained by it and paid from its public funds. A management letter shall be prepared and included as a part of each financial audit report. The county audit shall be one document which shall include a separate audit of each county agency. The county audit shall be a single report. The governing body of a county shall be responsible for selecting an independent certified public accountant to audit the county agencies of the county according to the following procedure:

a. In each noncharter county, an auditor selection committee shall be established, consisting of the county officers elected pursuant to s. 1(d), Art. VIII, State Constitution, and one member of the board of county commissioners or its designee.

b. The committee shall publicly announce, in a uniform and consistent manner, each occasion when auditing services are required to be purchased. Public notice shall include a general description of the audit and shall indicate how interested certified public accountants can apply for consideration.

c. The committee shall encourage firms engaged in the lawful practice of public accounting who desire to provide professional services to submit annually a statement of qualifications and performance data.

d. Any certified public accountant desiring to provide auditing services must first be qualified pursuant to law. The committee shall make a finding that the firm or individual to be employed is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

e. The committee shall adopt procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record, experience, and such other factors as may be determined by the committee to be applicable to its particular requirements.

f. The public shall not be excluded from the proceedings under this subparagraph.

g. The committee shall evaluate current statements of qualifications and performance data on file with the committee, together with those that may be submitted by other firms regarding the proposed audit, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the audit, and ability to furnish the required services.

h. The committee shall select no fewer than three firms deemed to be the most highly qualified to perform the required services after considering such factors as the ability of professional personnel; past performance; willingness to meet time requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to the firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. If fewer than three firms desire to perform the services, the committee shall recommend such firms as it determines to be qualified.

i. Nothing in this subparagraph shall be construed to prohibit a contract for a period in excess of 1 year.

j. If the board of county commissioners receives more than one proposal for the same engagement, the board may rank, in order of preference, the firms to perform the engagement. The firm ranked first may then negotiate a contract with the board giving, among other things, a basis of its fee for that engagement. Should the board be unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the board shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The board, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time. The board shall also negotiate on the scope and quality of services. In making such determination, the board shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For contracts over $50,000, the board shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that the rates of compensation and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Such certificate shall also contain a description and disclosure of any understanding that places a limit on current or future years' audit contract fees, including any arrangements under which fixed limits on fees will not be subject to reconsideration if unexpected accounting or auditing issues are encountered. Such certificate shall also contain a description of any services rendered by the certified public accountant or firm of certified public accountants at rates or terms that are not customary. Any auditing ser-

vice contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the board determines the contract price was increased due to inaccurate or incomplete factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract. This sub-subparagraph shall apply to audits covering the 1982-1983 fiscal year, and the procedure in this sub-subparagraph may be used by any county for subsequent audits. If there is a conflict between this sub-subparagraph and s. 473.317, this sub-subparagraph shall prevail.

k. Should the board be unable to negotiate a satisfactory contract with any of the selected firms, the committee shall select additional firms, and the board shall continue negotiations in accordance with this subsection until an agreement is reached.

l. At the conclusion of the audit field work, the independent certified public accountant shall discuss with the head of each county agency and the chairman of the board of county commissioners or his designee or with the chairman of the district school board or his designee, as appropriate, all of the auditor's comments pertaining to that agency which will be included in the audit report containing the auditor's comments for the areas within their responsibility. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his office.

m. The officer's written statement of explanation or rebuttal concerning the auditor's comments, including corrective action to be taken, shall be filed with the governing body of the county and with the Auditor General within 30 days after the delivery of the financial audit report.

n. Each district school board or expressway and bridge authority that elects to utilize an independent audit shall select an auditor by using the same selection procedure as outlined under sub-subparagraphs b.-k. The district school board or expressway and bridge authority selection committee shall be set by policy of that respective district school board or expressway and bridge authority. The district school board reports shall be presented to the superintendent of schools and the chairman of the school board in that district and filed with the district school board and the Auditor General in conformity with sub-subparagraphs l. and m., and expressway and bridge authority reports shall be presented to the chairman of the expressway and bridge authority and the Auditor General.

o. The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all local governmental entity audits. Such rules shall include, but not be limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Government Financial Emergency and Accountability Act, chapter 79-183, Laws of Florida.

The procedures under sub-subparagraphs a.-k. do not apply to audit agreements or contracts entered into before July 1, 1983.

5. Any financial audit report required under subparagraph 4. shall be submitted to the Auditor General within 30 days after completion of the audit but no later than 12 months after the end of the fiscal year of the governmental entity and district school board. If the Auditor General does not receive the financial audit within such period, he shall notify the Legislative Auditing Committee that such governmental entity has not complied with this subparagraph. Following notification of failure to submit the required audit, a hearing shall be scheduled by the committee for the purpose of receiving testimony addressing the failure of local governmental entities to comply with the reporting requirements of this section. After the hearing, the committee shall determine which local governmental entities will be subjected to further state action. If it finds that one or more local governmental entities should be subjected to further state action, the committee shall:

a. In the case of a local governmental entity, request the Department of Revenue and the Department of Banking and Finance to withhold any funds payable to such governmental entity until the required financial audit is received by the Auditor General.

b. In the case of a special district, notify the Department of Community Affairs that the special district has failed to provide the required audits. Upon receipt of notification, the Department of Community Affairs shall proceed pursuant to ss. 189.421 and 189.422.

6. The Auditor General, in consultation with the Board of Accountancy, shall review all audits made pursuant to this paragraph by an independent certified public accountant.

7. In conducting a performance audit of any agency, the Auditor General shall use the Agency Functional Plan of the agency in evaluating the performance of the agency.

Section 18. Effective upon this act becoming a law, subsection (8) is added to section 20.055, Florida Statutes, 1990 Supplement, to read:

20.055 Agency chief internal auditors.—

(8) The chief internal auditor shall monitor the implementation of the agency's response to any audit of the agency conducted by the Auditor General pursuant to s. 11.45. No later than 6 months after the Auditor General publishes a report of his audit of the agency, the chief internal auditor shall report to the agency head on the status of corrective actions taken. A copy of such report shall be filed with the Joint Legislative Auditing Committee.

Section 19. Effective upon this act becoming a law, section 216.176, Florida Statutes, is created to read:

216.176 Truth in budgeting.—The Governor's recommended budget shall contain a "truth in budgeting" statement which shall display in summary form all currently estimated fees, taxes, revenues, or other income which need to be raised to fund the proposed budget and its annualized costs. The "truth in budgeting" statement for the General Appropriations Act shall be completed by the Legislature as soon as practicable but no later than 72 hours prior to the end of the period authorized by law for veto consideration by the Governor.

Section 20. Effective upon this act becoming a law, subsection (3) of section 216.136, Florida Statutes, 1990 Supplement, is amended to read:

216.136 Consensus estimating conferences; duties and principals.—

(3) REVENUE ESTIMATING CONFERENCE.—

(a) Duties.—The Revenue Estimating Conference shall develop such official information with respect to anticipated state and local government revenues as the conference determines is needed for the state planning and budgeting system. *Any principal may request the conference to review and estimate revenues for any trust fund.*

(b) Principals.—The Executive Office of the Governor, the director of the Division of Economic and Demographic Research of the Joint Legislative Management Committee, and professional staff of the Senate and House of Representatives who have forecasting expertise, or their designees, are the principals of the Revenue Estimating Conference. The responsibility of presiding over sessions of the conference shall be rotated among the principals.

Section 21. (1) The Legislature recognizes the importance of providing early prenatal care as a primary means to ensure healthy births. The Legislature also recognizes that one of the most effective weapons in the fight against infant mortality is early, high quality, and comprehensive prenatal care. Despite this convincing evidence that prenatal care is effective in improving pregnancy outcomes, access to prenatal care for all pregnant women has not been achieved in this state. Therefore, it is the intent of the Legislature to assure that the existing economic, social, and geographic barriers to health care are minimized, and that an adequate number of health care providers remain available to assist pregnant women and their infants.

(2) Therefore, it is the overall intent of the Legislature to promote and protect the health and well being of all pregnant women and their children through the provision and accessibility of health care programs to fully meet the health requirements of this population.

(3) The Legislature recognizes the importance of community-based coalitions that combine the resources and talents of its citizenry with involvement of its local business communities. The Legislature also believes that information derived through community involvement is a vital contribution to the success of any state initiative, and is desirous to use this information where available and accessible. Therefore, it is the intent of the Legislature to provide assistance in the establishment of such coalitions in order to ensure that the voice of Florida's communities be heard through the creation of prenatal and infant health care coalitions.

Section 22. Effective March 1, 1992, section 383.14, Florida Statutes, 1990 Supplement, is amended to read:

383.14 Screening ~~of infants~~ for metabolic *disorders,* ~~and~~ other hereditary and congenital disorders, *and environmental risk factors.*—

(1) SCREENING REQUIREMENTS.—To help ensure access to the maternal and child health care system, ~~It shall be the duty of~~ the Department of Health and Rehabilitative Services *shall* ~~to~~ promote the screening of all infants born in Florida for phenylketonuria and other metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. *The department shall also promote the identification and screening of all infants born in this state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care provider. Such efforts shall be conducted in hospitals, perinatal centers, county public health units, school health programs that provide prenatal care, and birthing centers, and reported to the Office of Vital Statistics.*

(a) Prenatal screening.—The department shall develop a multilevel screening process that includes a risk-assessment instrument to identify women at risk for a preterm birth or other high-risk condition. The primary health care provider shall complete the risk-assessment instrument and report the results to the Office of Vital Statistics so that the woman may immediately be notified and referred to appropriate health, education, and social services.

(b) Postnatal screening.—A risk-factor analysis using the department's designated risk-assessment instrument shall also be conducted as part of the medical screening process upon the birth of a child and submitted to the department's Office of Vital Statistics for recording and other purposes provided for in this chapter. The department's screening process for risk assessment shall include a scoring mechanism and procedures that establish thresholds for notification, further assessment, referral, and eligibility for services by professionals or paraprofessionals consistent with the level of risk. Procedures for developing and using the screening instrument, notification, referral, and care coordination services, reporting requirements, management information, and maintenance of a computer-driven registry in the Office of Vital Statistics which ensures privacy safeguards must be consistent with the provisions and plans established under chapter 411, Pub. L. No. 99-457, and this chapter. Procedures established for reporting information and maintaining a confidential registry must include a mechanism for a centralized information depository at the state and county levels. The department shall coordinate with existing risk-assessment systems and information registries. The department must ensure, to the maximum extent possible, that the screening information registry is integrated with the department's automated data systems, including the Florida On-line Recipient Integrated Data Access (FLORIDA) system. Tests *and screenings must* ~~shall~~ be performed at such times and in such manner as *is* ~~may be~~ prescribed by the department after consultation with the Genetics and Infant Screening Advisory Council *and the State Coordinating Council for Early Childhood Services.*

(2)~~(1)~~ RULES.—After consultation with the Genetics and Infant Screening Advisory Council, the department shall *adopt* ~~promulgate~~ and enforce rules requiring that every infant born in *this state* ~~Florida~~ shall, prior to becoming 2 weeks of age, be subjected to a test for phenylketonuria and, at the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary from time to time. *After consultation with the State Coordinating Council for Early Childhood Services, the department shall also adopt and enforce rules requiring every infant born in this state to be screened for environmental risk factors that place children and their families at risk for increased morbidity, mortality, and other negative outcomes.* The department is empowered to promulgate such additional rules as are found necessary for the administration of this section, including rules relating to the methods used and time or times for testing as accepted medical practice indicates, and rules requiring mandatory reporting of the results of tests *and screenings* for these conditions to the department.

(3)~~(2)~~ DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES; POWERS AND DUTIES.—The department shall administer and provide certain services to implement the provisions of this section and shall:

(a) Assure the availability and quality of the necessary laboratory tests and materials.

(b) Furnish all physicians, *county* public health units, *perinatal centers, birthing centers,* and hospitals forms on which *environmental screening and* the results of tests for phenylketonuria and such other disorders for which testing may be required from time to time shall be reported to the department.

(c) Promote education of the public about the prevention and management of metabolic, hereditary, and congenital disorders *and dangers associated with environmental risk factors.*

(d) Maintain a confidential registry of cases, including information of importance for the purpose of followup services to prevent mental retardation, to correct or ameliorate physical handicaps, and for epidemiologic studies, if indicated. Such registry shall be exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(e) Supply the necessary dietary treatment products where practicable for diagnosed cases *of phenylketonuria and other metabolic diseases* for as long as medically indicated when the products are not otherwise available. *Provide nutrition education and supplemental foods to those families eligible for the Special Supplemental Food Program for Women, Infants, and Children as provided in s. 383.011.*

(f) Promote the availability of genetic studies and counseling in order that the parents, siblings, and affected infants may benefit from available knowledge of the condition.

All provisions of this subsection shall be coordinated with the provisions and plans established under this chapter, chapter 411, and Pub. L. No. 99-457.

(4)~~(3)~~ OBJECTIONS OF PARENT OR GUARDIAN.—The provisions of this section shall not apply when the parent or guardian of the child objects thereto. A written statement of such objection shall be presented to the physician or other person whose duty it is to administer and report ~~such~~ tests *and screenings* under ~~the provisions of~~ this section.

(5)~~(4)~~ ADVISORY COUNCIL.—There is established a Genetics and Infant Screening Advisory Council made up of 12 members appointed by the Secretary of Health and Rehabilitative Services. The council shall be composed of two consumer members, three practicing pediatricians, at least one of whom must be a pediatric hematologist, one representative from each of the four medical schools in the state, the Deputy Secretary for Health or his designee, one representative from the Children's Medical Services Program Office, and one representative from the Developmental Services Program Office. All appointments shall be for a term of 4 years. The chairperson of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon the call of the chairperson. The council may establish ad hoc or temporary technical advisory groups to assist the council with specific topics which come before the council. Council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members are entitled to be reimbursed for per diem and travel expenses. It is the purpose of the council to advise the department about:

(a) Conditions for which testing should be included under the screening program and the genetics program;

(b) Procedures for collection and transmission of specimens and recording of results; and

(c) Methods whereby screening programs and genetics services for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

Section 23. Effective upon this act becoming a law, subsection (1) of section 383.011, Florida Statutes, is amended to read:

383.011 Administration of maternal and child health programs.—

(1) The Department of Health and Rehabilitative Services is designated as the state agency for:

(a) Administering or providing for maternal and child health services to provide periodic prenatal care for patients who are at low or medium risk of complications during pregnancy and to provide referrals to higher level medical facilities for those patients who develop medical conditions for which treatment is beyond the scope and capabilities of the county public health units.

(b) Administering or providing for periodic medical examinations, nursing appraisals, and nutrition counseling on infant and child patients to assess developmental progress and general health conditions; administering or providing for treatment for health complications when such treatment is within the scope and capabilities of the county public health units or Children's Medical Services.

(c) Administering and providing for the expansion of the maternal and child health services to include pediatric primary care programs subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.

(d) Administering and providing for prenatal and infant health care delivery services through county public health units or subcontractors for the provision of the following enhanced services for medically and socially high-risk clients subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216:

1. Case finding or outreach.

2. Assessment of health, social, environmental, and behavioral risk factors.

3. Case management utilizing a service delivery plan.

4. Home visiting to support the delivery of and participation in prenatal and infant primary health care services.

5. Childbirth and parenting education.

(e) The department shall establish in each county public health unit a Healthy Start Care Coordination Program in which a care coordinator is responsible for receiving screening reports and risk-assessment reports from the Office of Vital Statistics; conducting assessments as part of a multidisciplinary team, where appropriate; providing technical assistance to the district prenatal and infant care coalitions; directing family outreach efforts; and coordinating the provision of services within and outside the department using the plan developed by the coalition. The care coordination process must include, at a minimum, family outreach workers and health paraprofessionals who will assist in providing the following enhanced services to pregnant women, infants, and their families that are determined to be at potential risk by the department's screening instrument: case finding or outreach; assessment of health, social, environmental, and behavioral risk factors; case management utilizing the family support plan; home visiting to support the delivery of and participation in prenatal and infant primary care services; childbirth and parenting education; counseling; and social services, as appropriate. Family outreach workers may include social work professionals or nurses with public health education and counseling experience. Paraprofessionals may include resource mothers and fathers, trained health aides, and parent educators. The care coordination program shall be developed in a coordinated, nonduplicative manner with the Developmental Evaluation and Intervention Program of Children's Medical Services, using the local assessment findings and plans of the prenatal and infant care coalitions and the programs and services established in chapter 411, Pub. L. No. 99-457, and this chapter.

1. Families determined to be at potential risk based on the thresholds established in the department's screening instrument must be notified by the department of the determination and recommendations for follow-up services. All Medicaid-eligible families shall receive Early Periodic Screening, Diagnosis and Treatment (EPSDT) Services of the Florida Medicaid Program to help ensure continuity of care. All other families identified at potential risk shall be directed to seek additional health care follow-up visits as provided under s 627.6579. A family identified as a family at potential risk is eligible for enhanced services under the care coordination process within the resources allocated, if it is not already receiving services from the Developmental Evaluation and Intervention Program. The department shall adopt rules regulating the assignment of family outreach workers and paraprofessionals based on the thresholds established in the department's risk-assessment tool.

2. As part of the care coordination process, the department must ensure that subsequent screenings are conducted for those families identified as families at potential risk. Procedures for subsequent screenings of all infants and toddlers must be consistent with the established periodicity schedule and the level of risk. Screening programs must be conducted in accessible locations, such as child care centers, local schools, teenage pregnancy programs, community centers, and county public health units. Care coordination must also include initiatives to provide immunizations in accessible locations. Such initiatives must address ways to ensure that children not currently being served by immunization efforts are reached.

3. The provision of services under this section must be consistent with the provisions and plans established under chapter 411, Pub. L. No. 99-457, and this chapter.

(f)~~(c)~~ Receiving the federal maternal and child health and preventive health services block grant funds.

(g)~~(d)~~ Receiving the federal funds for the "Special Supplemental Food Program for Women, Infants, and Children," or WIC, authorized by the Child Nutrition Act of 1966, as amended, and for administering the statewide WIC program. (The WIC program provides nutrition education and supplemental foods, by means of food instruments called checks that are redeemed by authorized food vendors, to participants certified by the department as pregnant, breast-feeding, or postpartum women; infants; or children.)

Section 24. Effective upon this act becoming a law, subsection (7) is added to section 383.013, Florida Statutes, to read:

383.013 Prenatal care.—The Department of Health and Rehabilitative Services shall:

(7) Provide regional perinatal intensive care satellite clinics to deliver level III obstetric outpatient services to women diagnosed as being high risk, which includes an interdisciplinary team to deliver specialized high-risk obstetric care. The provision of satellite clinics is subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.

Section 25. Effective upon this act becoming a law, subsections (2) and (4) of section 383.215, Florida Statutes, are amended to read:

383.215 Developmental intervention and parent support and training programs.—

(2) It is the intent of the Legislature to establish developmental intervention and parent support and training programs at all Level III regional perinatal intensive care centers and *at hospitals with level II neonatal* ~~stepdown perinatal~~ intensive care *units* ~~centers~~, in order that families with high-risk or handicapped infants may gain the services and skills they need to support their infant. *It is also the intent of the Legislature to establish Developmental Evaluation and Intervention (DEI) programs at hospitals with level II neonatal intensive care units. The provision of developmental evaluation and intervention care units is subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.*

(4) The developmental intervention and family support and training programs shall be established in conjunction with the Level III regional perinatal intensive care centers. *Developmental Evaluation and Intervention (DEI)* ~~Additional~~ programs *shall also* ~~may~~ be established at *hospitals with level II neonatal* ~~stepdown perinatal~~ intensive care *units* ~~centers~~ based on geographic location and population. *The provision of developmental evaluation and intervention care units is subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.* Each program shall have a program director and the necessary staff. The program director shall establish and coordinate the developmental intervention and family support and training program. The program shall include:

(a) In-hospital intervention services, parent support and training, and individual and family service planning.

(b) Interdisciplinary team meetings on a regular basis to develop and update the individual and family service plan.

(c) Discharge planning by the interdisciplinary team.

(d) Education and training for neonatal intensive care unit staff, volunteers, and others, as needed, in order to expand the services provided to high-risk or handicapped infants and their families.

(e) Followup intervention services after hospital discharge, to aid the family and high-risk or handicapped infant's transition into the community. These services shall include home intervention services and non-home-based intervention services, both contractual and voluntary.

(f) Coordination of services with community providers.

(g) Educational materials about infant care, infant growth and development, community resources, medical conditions and treatments, and family advocacy.

Section 26. Effective upon this act becoming a law, section 383.216, Florida Statutes, is created to read:

383.216 Community-based prenatal and infant health care.—

(1) The Department of Health and Rehabilitative Services shall cooperate with localities which wish to establish prenatal and infant health care coalitions, and shall acknowledge and incorporate, if appropriate, existing community children's services organizations, pursuant to this section within the resources allocated. The purpose of this program is to establish a partnership among the private sector, the public sector, state government, local government, community alliances, and maternal and child health care providers, for the provision of coordinated community-based prenatal and infant health care. The prenatal and infant health care coalitions must work in a coordinated, nonduplicative manner with local health planning councils established pursuant to s. 381.703.

(2) Each prenatal and infant health care coalition shall develop, in coordination with the Department of Health and Rehabilitative Services, a plan which shall include at a minimum provision to:

(a) Perform community assessments, using the Planned Approach to Community Health (PATCH) process, to identify the local need for comprehensive preventive and primary prenatal and infant health care. These assessments shall be used to:

1. Determine the priority target groups for receipt of care.

2. Determine outcome performance objectives jointly with the department.

3. Identify potential local providers of services.

4. Determine the type of services required to serve the identified priority target groups.

5. Identify the unmet need for services for the identified priority target groups.

(b) Design a prenatal and infant health care services delivery plan which is consistent with local community objectives and this section.

(c) Solicit and select local service providers based on reliability and availability, and define the role of each in the services delivery plan.

(d) Determine the allocation of available federal, state, and local resources to prenatal and infant health care providers.

(e) Review, monitor, and advise the department concerning the performance of the services delivery system, and make any necessary annual adjustments in the design of the delivery system, the provider composition, the targeting of services, and other factors necessary for achieving projected outcomes.

(f) Build broad-based community support.

(3) Supervision of the prenatal and infant health care coalitions is the responsibility of the department. The department shall:

(a) Assist in the formation and development of the coalitions.

(b) Define the core services package so that it is consistent with the prenatal and infant health care services delivery plan.

(c) Provide data and technical assistance.

(d) Assure implementation of a quality management system within the provider coalition.

(e) Define statewide, uniform eligibility and fee schedules.

(f) Evaluate provider performance based on outcome measures established by the prenatal and infant health care coalition and the department.

(4) In those communities which do not elect to establish a prenatal and infant health care coalition, the Department of Health and Rehabilitative Services is responsible for all of the functions delegated to the coalitions in this section.

(5) The membership of each prenatal and infant health care coalition shall represent health care providers, the recipient community, and the community at large; shall represent the racial, ethnic, and gender composition of the community; and shall include at least the following:

(a) Consumers of family planning, primary care, or prenatal care services, at least two of whom are low-income or Medicaid eligible.

(b) Health care providers, including:

1. County public health units.

2. Migrant and community health centers.

3. Hospitals.

4. Local medical societies.

5. Local health planning organizations.

(c) Local health advocacy interest groups and community organizations.

(d) County and municipal governments.

(e) Social service organizations.

(f) Local education communities.

(6) Prenatal and infant health care coalitions may be established for single counties or for services delivery catchment areas. A prenatal and infant health care coalition shall be initiated at the local level on a voluntary basis. Once a coalition has been organized locally and includes the membership specified in subsection (5), the coalition must submit a list of its members to the Secretary of Health and Rehabilitative Services to carry out the responsibilities outlined in this section.

(7) Effective January 1, 1992, the Department of Health and Rehabilitative Services shall provide up to $150,000 to each prenatal and infant health care coalition that petitions for recognition, meets the membership criteria, demonstrates the commitment of all the designated members to participate in the coalition, and provides a local cash or in-kind contribution match of 25 percent of the costs of the coalition. An in-kind contribution match may be in the form of staff time, office facilities, or supplies or other materials necessary for the functioning of the coalition.

(8) Local prenatal and infant health care coalitions may hire staff or contract for independent staffing and support to enable them to carry out the objectives of this section. Staff shall have knowledge and expertise in community health and related resources and planning, grant writing, public information and communication techniques, organizational development, and data compilation and analysis.

(9) Local prenatal and infant health care coalitions shall incorporate as not-for-profit corporations for the purpose of seeking and receiving grants from federal, state, and local government and other contributors.

(10) The Department of Health and Rehabilitative Services shall adopt rules as necessary to implement this section, including rules defining acceptable "in-kind" contributions.

Section 27. Effective upon this act becoming a law, section 383.2161, Florida Statutes, is created to read:

383.2161 Maternal and child health report.—Beginning in 1993, the Department of Health and Rehabilitative Services annually shall compile and analyze the risk information collected by the Office of Vital Statistics and the district prenatal and infant care coalitions and shall prepare and submit to the Legislature by January 2 a report that includes, but is not limited to:

(1) The number of families identified as families at potential risk;

(2) The number of families that receive family outreach services;

(3) The increase in demand for services; and

(4) The unmet need for services for identified target groups.

Section 28. (1) The Department of Health and Rehabilitative Services shall develop, for submission to the Legislature by December 1, 1991, a plan for decategorizing the resources provided to two districts into a single child and maternal health budget. The plan must establish procedures to allow for allocating resources on the basis of child and maternal welfare concerns, as opposed to specific program categories, using the assessment findings of the district prenatal and infant care coalitions established in section 383.135, Florida Statutes.

(2) The department shall develop, as a part of this plan, an alternative reimbursement methodology for providers that provide performance-based payment and payment that rewards providers who develop social services and educational linkages and support services. The methodology shall be designed to enhance services by increasing resource flexibility within current budgetary levels. The department shall develop this plan in consultation with the appropriate substantive committees in the Legislature and state advisory councils.

Section 29. Effective upon this act becoming a law, paragraph (k) is added to subsection (1) of section 427.012, Florida Statutes, to read:

427.012 Transportation Disadvantaged Commission.—There is created a Transportation Disadvantaged Commission in the Department of Transportation.

(1) The commission shall consist of the following members:

(k) One member of the Early Childhood Council. Such person shall be appointed by the Governor to represent maternal and child health care providers and shall be appointed to serve a term of 4 years.

Section 30. Section 409.901, Florida Statutes, is created to read:

409.901 Definitions.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(1) "Applicant" means an individual whose written application for medical assistance provided by Medicaid under ss. 409.903-409.906 has been submitted to the department, but has not received final action. This term includes an individual, who need not be alive at the time of application, whose application is submitted through a representative or a person acting for the individual.

(2) "Benefit" means any benefit, assistance, aid, obligation, promise, debt, liability, or the like, related to any covered injury, illness, or necessary medical care, goods, or services.

(3) "Claim" means any communication, whether oral, written, or electronic (electronic impulse or magnetic), which is used by any person to apply for payment from the Medicaid program or its fiscal agent for each item or service purported by any person to have been provided by a person to any Medicaid recipient.

(4) "Collateral" means:

(a) Any and all causes of action, suits, claims, counterclaims, and demands which accrue to the recipient or to the recipient's legal representative, related to any covered injury, illness, or necessary medical care, goods, or services which necessitated that Medicaid provide medical assistance.

(b) All judgments, settlements, and settlement agreements rendered or entered into and related to such causes of action, suits, claims, counterclaims, demands, or judgments.

(c) Proceeds, as defined in this section.

(5) "Covered injury or illness" means any sickness, injury, disease, disability, deformity, abnormality disease, necessary medical care, pregnancy, or death for which a third party is, may be, could be, should be, or has been liable, and for which Medicaid is, or may be, obligated to provide, or has provided, medical assistance.

(6) "Department" means the Department of Health and Rehabilitative Services. The department is the Medicaid agency for the state, as provided under federal law.

(7) "Legal representative" means a guardian, conservator, survivor, or personal representative of a recipient or applicant, or of the property or estate of a recipient or applicant.

(8) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, 42 U.S.C. s. 1396 et seq., and regulations thereunder, as administered in this state by the department.

(9) "Medicaid agency" means the single state agency that administers or supervises the administration of the state Medicaid plan under federal law.

(10) "Medicaid program" means the program authorized under Title XIX of the federal Social Security Act that provides for payments for medical items or services, or both, on behalf of any person who is determined by the department to be eligible on the date of service for Medicaid assistance.

(11) "Medicaid provider" or "provider" means a person or entity that has a Medicaid provider agreement in effect with the department and is in good standing with the department.

(12) "Medicaid provider agreement" or "provider agreement" means a contract between the department and a provider for the provision of services or goods, or both, to Medicaid recipients pursuant to Medicaid.

(13) "Medicaid recipient" or "recipient" means an individual whom the department determines is eligible, pursuant to federal and state law, to receive medical assistance and related services for which the department may make payments under the Medicaid program. For the purposes of determining third-party liability, the term includes an individual formerly determined to be eligible for Medicaid, an individual who has received medical assistance under the Medicaid program, or an individual on whose behalf Medicaid has become obligated.

(14) "Medicaid-related records" means records that relate to the provider's business or profession and to a Medicaid recipient. Medicaid-related records include records related to non-Medicaid customers, clients, or patients but only to the extent that the documentation is shown by the department to be necessary to determine a provider's entitlement to payments under the Medicaid program.

(15) "Medical assistance" means any provision of, payment for, or liability for medical services by Medicaid to, or on behalf of, any recipient.

(16) "Medical services" or "medical care" means medical or medically related institutional or noninstitutional care, goods, or services covered by the Medicaid program. The term includes, without limitation, physician services, inpatient hospital services, outpatient hospital services, independent laboratory services, X-ray services, and prescribed drug services, and such other services as are covered by the Medicaid program.

(17) "Payment," as it relates to third-party benefits, means performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery, provision, or transfer of third-party benefits for medical services. To "pay" means to do any of the acts set forth in this subsection.

(18) "Proceeds" means whatever is received upon the sale, exchange, collection, or other disposition of the collateral or proceeds thereon and includes insurance payable by reason of loss or damage to the collateral or proceeds. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(19) "Third party" means an individual, entity, or program, excluding Medicaid, that is, may be, could be, should be, or has been liable for all or part of the cost of medical services related to any medical assistance covered by Medicaid.

(20) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the department, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for personal injury or for death of the recipient, but specifically excluding policies of life insurance on the recipient, unless available under terms of the policy to pay medical expenses prior to death. The term includes, without limitation, collateral, as defined in this section, health insurance, any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance or personal injury protection coverage, medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.

Section 31. Section 409.902, Florida Statutes, is created to read:

409.902 Designated single state agency; payment requirements; program title.—The Department of Health and Rehabilitative Services is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. These payments shall be made only for services included in the program, shall be made only on behalf of eligible individuals, and shall be made only to qualified providers in accordance with federal requirements for Title XIX of the Social Security Act and the provisions of state law. This program of medical assistance is designated the "Medicaid program."

Section 32. Section 409.903, Florida Statutes, is created to read:

409.903 Mandatory payments for eligible persons.—The department shall make payments for medical assistance and related services on behalf of the following persons who the department determines to be eligible, subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216.

(1) Persons who receive payments from or are determined eligible for the federal and state program known as Aid to Families with Dependent Children (AFDC), and certain persons who were eligible for that program but who became ineligible or who would be eligible but do not meet certain technical requirements. This group includes, but is not limited to:

(a) Low-income, single-parent families and their children.

(b) Low-income, two-parent families in which at least one parent is disabled or otherwise incapacitated.

(c) Certain unemployed two-parent families and their children.

(2) A person who receives payments from, who is determined eligible for, or who was eligible for but lost cash benefits from the federal program known as the Supplemental Security Income program (SSI). This category includes a low-income person age 65 or over and a low-income person under age 65 considered to be permanently and totally disabled.

(3) A child under age 21 living in a low-income, two-parent family, and a child under age 7 living with a nonrelative, if the income and assets of the family or child, as applicable, do not exceed the cash-assistance limits under the Aid to Families with Dependent Children program.

(4) A child who is eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care, or adoption subsidies, and a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption.

(5) A pregnant woman for the duration of her pregnancy and for the post partum period as defined in federal law and rule, or a child under age 1, if either is living in a family that has an income which is at or below 150 percent of the most current federal poverty level, or, effective January 1, 1992, that has an income which is at or below 185 percent of the most current federal poverty level. Such a person is not subject to an assets test. Further, a pregnant woman who applies for eligibility for the Medicaid program through a qualified Medicaid provider must be offered the opportunity, subject to federal rules, to be made presumptively eligible for the Medicaid program.

(6) A child born after September 30, 1983, living in a family that has an income which is at or below 100 percent of the current federal poverty level, who has attained the age of 6, but has not attained the age of 19. In determining the eligibility of such a child, an assets test is not required.

(7) A child living in a family that has an income which is at or below 133 percent of the current federal poverty level, who has attained the age of 1, but has not attained the age of 6. In determining the eligibility of such a child, an assets test is not required.

(8) A person who is age 65 or over or is determined by the department to be disabled, whose income is at or below 100 percent of the most current federal poverty level and whose assets do not exceed limitations established by the department. However, the department may only pay for premiums, coinsurance, and deductibles, as required by federal law, unless additional coverage is provided for any or all members of this group by s. 409.904(1).

Section 33. Section 409.904, Florida Statutes, is created to read:

409.904 Optional payments for eligible persons.—The department may make payments for medical assistance and related services on behalf of the following persons who the department determines to be eligible subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216.

(1) A person who is age 65 or older or is determined by the department to be disabled, whose income is at or below 100 percent of federal poverty level, and whose assets do not exceed limitations established by the department.

(2) A family, a pregnant woman, a child under age 18, a person age 65 or over, or a blind or disabled person who would be eligible under any group listed in s. 409.903(1), (2), or (3), except that the income or assets of such family or person exceed limitations established by the department. For a family or person in this group, medical expenses are deductible from income in accordance with federal requirements in order to make a determination of eligibility. A family or person in this group, which group is known as the "medically needy," is eligible to receive the same services as other Medicaid recipients, with the exception of services in skilled nursing facilities and intermediate care facilities for the mentally retarded.

(3) A person who is in need of the services of a licensed nursing facility, a licensed intermediate care facility for the mentally retarded, or a state mental hospital, whose income does not exceed 300 percent of the SSI income standard, and who meets the assets standards established under federal and state law.

(4) A low-income person who meets all other requirements for Medicaid eligibility except citizenship and who is in need of emergency medical services. The eligibility of such a recipient is limited to the period of the emergency, in accordance with federal regulations.

Section 34. Section 409.905, Florida Statutes, is created to read:

409.905 Mandatory Medicaid services.—The department may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined by the department to be eligible on the dates on which the services were provided. Any service under this section may be provided only when medically necessary, shall be provided in accordance with state and federal law, and is subject to the availability of moneys and any limitation established by the general appropriations act or chapter 216.

(1) ADVANCED REGISTERED NURSE PRACTITIONER SERVICES.—The department shall pay for services provided to a recipient by a licensed advanced registered nurse practitioner who has a valid collaboration agreement with a licensed physician on file with the Department of Professional Regulation or who provides anesthesia services in accordance with established protocol required by state law and approved by the medical staff of the facility in which the anesthetic service is performed. Reimbursement for such services must be provided in an amount that equals not less than 80 percent of the reimbursement to a physician who provides the same services.

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.—The department shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the department to be medically necessary for the treatment, correction, or amelioration of these problems, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

(3) FAMILY PLANNING SERVICES.—The department shall pay for services necessary to enable a recipient voluntarily to plan family size or to space children. These services include information, education, drugs and supplies, and necessary medical care and followup. Each recipient participating in the family planning portion of the Medicaid program must be provided freedom to choose any alternative method of family planning, as required by federal law.

(4) HOME HEALTH CARE SERVICES.—The department shall pay for nursing and home health aide services, supplies, appliances, and

durable medical equipment, necessary to assist a recipient living at home. An entity that provides services pursuant to this subsection shall be licensed under part III of chapter 400 or part II of chapter 499, if appropriate. These services, equipment, and supplies may be limited as provided in the general appropriations act and do not include services, equipment, or supplies provided to a person residing in a hospital or nursing facility.

(5) HOSPITAL INPATIENT SERVICES.—The department shall pay for all services provided for the medical care and treatment of a recipient who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395. However, payment for inpatient hospital services in excess of 45 days for a Medicaid recipient 21 years of age or older is dependent upon the availability of sufficient county contributions. A licensed hospital maintained primarily for the care and treatment of patients having mental disorders or mental diseases is not eligible to participate in the hospital inpatient portion of the Medicaid program except as provided in federal law. However, the department shall apply for a waiver, within 9 months after the effective date of this part, designed to provide hospitalization services for mental health reasons to children and adults in the most cost effective and lowest cost setting possible. Such waiver shall include a request for the opportunity to pay for care in hospitals known under federal law as "institutions for mental disease" or "IMD's." The waiver proposal shall propose no additional aggregate cost to the state or federal government, and shall be conducted in District 6 of the Department of Health and Rehabilitative Services. The waiver proposal may incorporate competitive bidding for hospital services, comprehensive brokering, prepaid capitated arrangements, or other mechanisms deemed by the department to show promise in reducing the cost of acute care and increasing the effectiveness of preventive care. When developing the waiver proposal, the department shall take into account price, quality, accessibility, linkages of the hospital to community services and family support programs, plans of the hospital to ensure the earliest discharge possible, and the comprehensiveness of the mental health and other health care services offered by participating providers. The department is directed to monitor and evaluate the implementation of this waiver program if it is granted and report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives by February 1, 1992.

(6) HOSPITAL OUTPATIENT SERVICES.—The department shall pay for preventive, diagnostic, therapeutic, or palliative care and other services provided to a recipient in the outpatient portion of a hospital licensed under part I of chapter 395, and provided under the direction of a licensed physician or licensed dentist, except that payment for such care and services is limited to $1,000 per state fiscal year per recipient, unless an exception has been made by the department, and with the exception of a Medicaid recipient under age 21 in which case the only limitation is medical necessity.

(7) INDEPENDENT LABORATORY SERVICES.—The department shall pay for medically necessary diagnostic laboratory procedures ordered by a licensed physician or other licensed practitioner of the healing arts which are provided for a recipient in a laboratory that meets the requirements for Medicare participation and is licensed under chapter 483, if required.

(8) NURSING FACILITY SERVICES.—The department shall pay for 24-hour-a-day nursing and rehabilitative services for a recipient in a nursing facility licensed under part I of chapter 400, which are ordered by and provided under the direction of a licensed physician.

(9) PHYSICIAN SERVICES.—The department shall pay for services and procedures rendered to a recipient by, or under the personal supervision of, a person licensed under state law to practice medicine or osteopathy. These services may be furnished in the physician's office, the Medicaid recipient's home, a hospital, a nursing facility, or elsewhere, but shall be medically necessary for the treatment of an injury, illness, or disease within the scope of the practice of medicine or osteopathy as defined by state law. The department shall not pay for services that are clinically unproven, experimental, or for purely cosmetic purposes.

(10) PORTABLE X-RAY SERVICES.—The department shall pay for professional and technical portable radiological services ordered by a licensed physician or other licensed practitioner of the healing arts which are provided by a licensed professional in a setting other than a hospital, clinic, or office of a physician or practitioner of the healing arts, on behalf of a recipient.

(11) RURAL HEALTH CLINIC SERVICES.—The department shall pay for outpatient primary health care services for a recipient provided by a clinic certified by and participating in the Medicare program which is located in a federally designated, rural, medically underserved area and has on its staff one or more licensed primary care nurse practitioners or physician assistants, and a licensed staff supervising physician or a consulting supervising physician.

(12) TRANSPORTATION SERVICES.—The department shall ensure that transportation services are available for a Medicaid recipient in need of transport to a qualified Medicaid provider for necessary and Medicaid-compensable services. The department may pay for transportation and other related travel expenses as necessary if these services are not otherwise available.

Section 35. Section 409.906, Florida Statutes, is created to read:

409.906 Optional Medicaid services.—The department may make payments for the following services, which are optional to the state under Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined by the department to be eligible on the dates on which the services were provided. Any service that is provided under this section may be provided only when medically necessary, must be provided in accordance with state and federal law, and is subject to any limitation established by the general appropriations act or chapter 216.

(1) ADULT DENTURE SERVICES.—The department may pay for dentures, the procedures required to seat dentures, and the repair and reline of dentures, provided by or under the direction of a licensed dentist, for a recipient who is age 21 or older.

(2) ADULT HEALTH SCREENING SERVICES.—The department may pay for an annual routine physical examination, conducted by or under the direction of a licensed physician, for a recipient age 21 or older, without regard to medical necessity, in order to detect and prevent disease, disability, or other health condition or its progression.

(3) AMBULATORY SURGICAL CENTER SERVICES.—The department may pay for services provided to a recipient in an ambulatory surgical center licensed under part I of chapter 395, by or under the direction of a licensed physician or dentist.

(4) BIRTH CENTER SERVICES.—The department may pay for examinations and delivery, recovery, and newborn assessment, and related services, provided in a licensed birth center staffed with licensed physicians, certified nurse midwives, and midwives licensed in accordance with chapter 467, to a recipient expected to experience a low-risk pregnancy and delivery.

(5) CASE MANAGEMENT SERVICES.—The department may pay for primary care case management services rendered to a recipient pursuant to a federally approved waiver, and targeted case management services for specific groups of targeted recipients, which services are rendered pursuant to federal guidelines.

(6) CHILDREN'S DENTAL SERVICES.—The department may pay for diagnostic, preventive, or corrective procedures, including orthodontia in severe cases, provided to a recipient under age 21, by or under the supervision of a licensed dentist. Services provided under this program include treatment of the teeth and associated structures of the oral cavity, as well as treatment of disease, injury, or impairment that may affect the oral or general health of the individual.

(7) CHIROPRACTIC SERVICES.—The department may pay for manual manipulation of the spine and initial services, screening, and X rays provided to a recipient by a licensed chiropractic physician.

(8) COMMUNITY MENTAL HEALTH SERVICES.—The department may pay for rehabilitative services provided to a recipient in a mental health, drug abuse, or alcohol abuse center licensed by and under contract to the department, which are psychiatric in nature and rendered or recommended by a psychiatrist or which are medical in nature and rendered or recommended by a physician or psychiatrist.

(9) DURABLE MEDICAL EQUIPMENT.—The department may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary.

(10) HEARING SERVICES.—The department may pay for hearing and related services, including hearing evaluations, hearing aid devices,

dispensing of the hearing aid, and related repairs, if provided to a recipient by a licensed hearing aid specialist, otolaryngologist, otologist, audiologist, or physician.

(11) HOME AND COMMUNITY-BASED SERVICES.—The department may pay for home-based or community-based services that are rendered to a recipient in accordance with a federally approved waiver program.

(12) HOSPICE CARE SERVICES.—The department may pay for all reasonable and necessary services for the palliation or management of a recipient's terminal illness, if the services are provided by a hospice that is licensed under the provisions of part V of chapter 400 and meets Medicare certification requirements.

(13) INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED SERVICES.—The department may pay for health-related care and services provided on a 24-hour-a-day basis by a facility licensed under chapter 393, to a recipient who needs such care because of his mental or physical condition.

(14) INTERMEDIATE CARE SERVICES.—The department may pay for 24-hour-a-day intermediate care nursing and rehabilitation services rendered to a recipient in a nursing facility licensed under part I of chapter 400, if the services are ordered by and provided under the direction of a physician.

(15) OPTOMETRIC SERVICES.—The department may pay for services provided to a recipient, including examination, diagnosis, treatment, and management, related to ocular pathology, if the services are provided by a licensed optometrist or physician.

(16) PODIATRIC SERVICES.—The department may pay for services, including diagnosis and medical, surgical, palliative, and mechanical treatment, related to ailments of the human foot and lower leg, if provided to a recipient by a podiatrist licensed under state law.

(17) PRESCRIBED DRUG SERVICES.—The department may pay for medications that are prescribed for a recipient by a physician or other licensed practitioner of the healing arts authorized to prescribe medications and that are dispensed to the recipient by a licensed pharmacist or physician in accordance with applicable state and federal law.

(18) STATE HOSPITAL SERVICES.—The department may pay for all-inclusive psychiatric inpatient hospital care provided to a recipient age 65 or older in a state mental hospital.

(19) VISUAL SERVICES.—The department may pay for visual examinations, eyeglasses, and eyeglass repairs for a recipient, if they are prescribed by a licensed physician specializing in diseases of the eye or by a licensed optometrist.

Section 36. Section 409.907, Florida Statutes, is created to read:

409.907 Medicaid provider agreements.—The department may make payments for medical assistance and related services rendered to Medicaid recipients only to a person or entity who has a provider agreement in effect with the department, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the department.

(1) Each provider agreement shall require the provider to comply fully with all state and federal laws pertaining to the Medicaid program, as well as all federal, state, and local laws pertaining to licensure, if required, and the practice of any of the healing arts, and shall require the provider to provide services or goods of not less than the scope and quality it provides to the general public.

(2) Each provider agreement shall be a voluntary contract between the department and the provider, in which the provider agrees to comply with all laws and rules pertaining to the Medicaid program when furnishing a service or goods to a Medicaid recipient and the department agrees to pay a sum, determined by fee schedule, payment methodology, or other manner, for the service or goods provided to the Medicaid recipient. Each provider agreement shall be effective for a stipulated period of time, shall be terminable by either party after reasonable notice, and shall be renewable by mutual agreement.

(3) The provider agreement developed by the department, in addition to the requirements specified in subsections (1) and (2), shall require the provider to:

(a) Have in his possession at the time of signing the provider agreement, and maintain in good standing throughout the period of the agreement's effectiveness, a valid professional or facility license pertinent to the services or goods being provided, if required by the state or locality in which the provider is located, and the Federal Government, if applicable.

(b) Maintain in a systematic and orderly manner all medical and Medicaid-related records as the department may require and as it determines necessary for the services or goods being provided.

(c) Retain all medical and Medicaid-related records for a period of 5 years to satisfy all necessary inquiries by the department.

(d) Safeguard the use and disclosure of information pertaining to current or former Medicaid recipients and comply with all state and federal laws pertaining to confidentiality of patient information.

(e) Permit the department, the Auditor General, the Federal Government, and the authorized agents of each of these entities access to all Medicaid-related information, which may be in the form of records, logs, documents, or computer files, and other information pertaining to services or goods billed to the Medicaid program, including access to all patient records and other provider information if the provider cannot easily separate records for Medicaid patients from other records.

(f) Bill other insurers and third parties, including the Medicare program, before billing the Medicaid program, if the recipient is eligible for payment for health care or related services from another insurer or person, and comply with all other state and federal requirements in this regard.

(g) Promptly report any moneys received in error or in excess of the amount to which the provider is entitled from the Medicaid program, and promptly refund such moneys to the department.

(h) Be liable for and indemnify, defend, and hold the department harmless from all claims, suits, judgments, or damages, including court costs and attorney's fees, arising out of the negligence or omissions of the provider in the course of providing services to a recipient or a person believed to be a recipient.

(i) At the option of the department, provide proof of liability insurance and maintain such insurance in effect for any period during which services or goods are furnished to Medicaid recipients.

(j) Accept Medicaid payment as payment in full, and prohibit the provider from billing or collecting from the recipient or the recipient's responsible party any additional amount except, and only to the extent the department permits or requires, copayments, coinsurance, or deductibles to be paid by the recipient for the services or goods provided. The Medicaid payment-in-full policy does not apply to services or goods provided to a recipient if the services or goods are not covered by the Medicaid program.

(4) A provider agreement shall provide that, if the provider sells or transfers a business interest or practice that substantially constitutes the entity named as the provider in the provider agreement, or sells or transfers a facility that is of substantial importance to the entity named as the provider in the provider agreement, the provider is required to maintain and make available to the department Medicaid-related records that relate to the sale or transfer of the business interest, practice, or facility in the same manner as though the sale or transaction had not taken place, unless the provider enters into an agreement with the purchaser of the business interest, practice, or facility to fulfill this requirement.

(5) The department:

(a) Is required to make timely payment at the established rate for services or goods furnished to a recipient by the provider upon receipt of a properly completed claim form. The claim form shall require certification that the services or goods have been completely furnished to the recipient and that, with the exception of those services or goods specified by the department, the amount billed does not exceed the provider's usual and customary charge for the same services or goods.

(b) Is prohibited from demanding repayment from the provider in any instance in which the Medicaid overpayment is attributable to departmental error in the determination of eligibility of a recipient.

(c) May adopt, and include in the provider agreement, such other requirements and stipulations on either party as the department finds necessary to properly and efficiently administer the Medicaid program.

(6) A Medicaid provider agreement may be revoked, at the option of the department, as the result of a change of ownership of any facility, association, partnership, or other entity named as the provider in the provider agreement. A provider shall give the department 60 days' notice before making any change in ownership of the entity named in the provider agreement as the provider.

(7) The department may require, as a condition of participating in the Medicaid program and before entering into the provider agreement, that the provider submit information concerning the professional, business, and personal background of the provider. If the provider is a corporation, partnership, association, or other entity, the department may require the provider to submit information concerning the background of that entity and of any principal of the entity, including any partner or shareholder having an ownership interest in the entity equal to 5 percent or greater.

(8) Before signing a provider agreement, the department shall require the provider to submit:

(a) Proof of holding a valid license or operating certificate, as applicable, if required by the state or local jurisdiction in which the provider is located or if required by the Federal Government.

(b) Information concerning any prior violation, fine, suspension, termination, or other administrative action taken under the Medicaid laws, rules, or regulations of this state or of any other state or the Federal Government; any prior violation of the laws, rules, or regulations relating to the Medicare program; any prior violation of the rules or regulations of any other public or private insurer; and any prior violation of the laws, rules, or regulations of any regulatory body of this or any other state. The information required is that which pertains to the entity entering into the provider agreement with the department; to any principal, partner, or shareholder having an ownership interest in the entity of 5 percent or greater; and to any treating provider who participates or intends to participate in Medicaid through the entity acting as a group provider.

(c) Notice of and copies of court documents not sealed by the court of jurisdiction, related to any criminal charge brought in any court in the United States against the provider or the provider entity, or any principal, partner, or major shareholder thereof.

(d) Full and accurate disclosure of any financial or ownership interest that the provider, or any principal, partner, or major shareholder thereof, may hold in any other Medicaid provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(e) If a group provider, identification of all members of the group and attestation that all members of the group are enrolled in or have applied to enroll in the Medicaid program.

(9) All statements and information furnished by the prospective provider for background information before signing the provider agreement shall be true and complete. The filing of materially incomplete or false information is sufficient cause for immediate termination of the provider from the Medicaid program.

(10) Before signing a provider agreement and at the discretion of the department, other provisions of this section notwithstanding, an entity may become eligible to receive payment from the Medicaid program at the time it first furnishes services or goods, if:

(a) The services or goods provided are otherwise compensable;

(b) The entity meets all other requirements of a Medicaid provider at the time the services or goods were provided; and

(c) The entity agrees to abide by the provisions of the provider agreement effective from the date the services or goods were provided.

(11) A provider may not reenroll in the Medicaid program once suspended or terminated if any fine or overpayment properly assessed has not been repaid, unless the department has issued a specific letter of forgiveness or has approved a repayment schedule to which the provider agrees to adhere.

(12) A provider who does not adhere to an agreed-upon repayment schedule, whether previously suspended or terminated, may be terminated by the department for nonpayment or partial payment.

Section 37. Section 409.908, Florida Statutes, is created to read:

409.908 Reimbursement of Medicaid providers.—The department shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the department and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, and other mechanisms the department considers efficient and effective for purchasing services or goods on behalf of recipients. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216.

(1) Reimbursement to hospitals licensed under part I of chapter 395 must be made prospectively or on the basis of negotiation.

(a) Reimbursement for inpatient care is limited to 45 days per state fiscal year per recipient, except for children under age 21, in which case the only limitation is medical necessity or the payment amount. Reimbursement for hospital outpatient care is limited to $1,000 per state fiscal year per recipient, unless an exception has been made by the department, and with the exception of a Medicaid recipient under age 21 in which case the only limitation is medical necessity.

(b) Hospitals that provide services to a disproportionate share of low-income Medicaid recipients, or that participate in the regional perinatal intensive care center program under chapter 383, or that participate in the statutory teaching hospital disproportionate share program, or that participate in the extraordinary disproportionate share program, may receive additional reimbursement. The total amount of payment for disproportionate share hospitals shall be fixed by the general appropriations act. The computation of these payments must be made in compliance with all federal regulations and the methodologies described in ss. 409.911, 409.9112, 409.9113, and 409.9114.

(2)(a) Reimbursement to nursing homes licensed under part I of chapter 400 and intermediate care facilities for the mentally retarded licensed under chapter 393 must be made prospectively. Reimbursement to hospitals licensed under part I of chapter 395 for the provision of swing-bed nursing home services must be made on the basis of the average statewide nursing home payment.

(b) The department shall establish and implement a Florida Title XIX Long-Term Care Reimbursement Plan (Medicaid) for nursing home care which utilizes a rate-setting mechanism whereby the rates are reasonable and adequate to cover a nursing home's cost which must be incurred by an efficiently and economically operated facility in order to provide care and services in conformance with the applicable state and federal laws, rules, regulations, and quality and safety standards and to ensure that individuals eligible for medical assistance have reasonable geographic access to such care. In the establishment of any maximum rate of payment, whether overall or component, the department shall base the maximum rate of payment on the results of scientifically valid analysis and conclusions derived from objective statistical data pertinent to the particular maximum rate of payment.

(3) The following Medicaid services and goods shall be reimbursed on a fee-for-service basis. For each allowable service or goods furnished in accordance with Medicaid rules, policy manuals, handbooks, and state and federal law, the payment shall be the amount billed by the provider, the provider's usual and customary charge, or the maximum allowable fee established by the department, whichever amount is less, with the exception of those services or goods for which the department makes payment using a methodology based on average costs or negotiated fees.

(a) Advanced registered nurse practitioner services.

(b) Birth center services.

(c) Chiropractic services.

(d) Community mental health services.

(e) Dental services, including oral and maxillofacial surgery.

(f) Durable medical equipment.

(g) Hearing services.

(h) Occupational therapy for Medicaid recipients under age 21.

(i) Optometric services.

(j) Orthodontic services.

(k) Personal care for Medicaid recipients under age 21.

(l) Physical therapy for Medicaid recipients under age 21.

(m) Podiatric services.

(n) Portable X-ray services.

(o) Private-duty nursing for Medicaid recipients under age 21.

(p) Respiratory therapy for Medicaid recipients under age 21.

(q) Speech therapy for Medicaid recipients under age 21.

(r) Visual services.

(4) Alternative health plans, health maintenance organizations, and prepaid health plans shall be reimbursed a fixed, prepaid amount negotiated by the department and prospectively paid to the provider monthly for each Medicaid recipient enrolled. The amount may not exceed the average amount the department determines it would have paid, based on claims experience, for recipients in the same or similar category of eligibility.

(5) An ambulatory surgical center shall be reimbursed the lesser of the amount billed by the provider or the Medicare-established allowable amount for the facility.

(6) A provider of early and periodic screening, diagnosis, and treatment services to Medicaid recipients who are children under age 21 shall be reimbursed using an all-inclusive rate stipulated in a fee schedule established by the department. A provider of the visual, dental, and hearing components of such services shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the department.

(7) A provider of family planning services shall be reimbursed the lesser of the amount billed by the provider or an all-inclusive amount per type of visit for physicians and advanced registered nurse practitioners, as established by the department in a fee schedule.

(8) A provider of home-based or community-based services rendered pursuant to a federally approved waiver shall be reimbursed based on an established or negotiated rate for each service. These rates shall be established according to an analysis of the expenditure history and prospective budget developed by each contract provider participating in the waiver program, or under any other methodology adopted by the department and approved by the Federal Government in accordance with the waiver.

(9) A provider of home health care services or of medical supplies and appliances shall be reimbursed the lesser of the amount billed by the provider or the department's established maximum allowable amount, except that, in the case of the rental of durable medical equipment, the total rental payments may not exceed the purchase price of the equipment over its expected useful life or the department's established maximum allowable amount, whichever amount is less.

(10) A provider of hospice care services shall be reimbursed through a prospective-cost-reimbursement system for each Medicaid hospice provider.

(11) A provider of independent laboratory services shall be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the department.

(12)(a) A physician shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the department. Effective October 1, 1991, the department shall increase fees for surgical and other procedures for which fees have not been increased since 1987 to the median level of Medicare reimbursement in 1986 for Area B in this state.

(b) Reimbursement fees to physicians for providing total obstetrical services to Medicaid recipients, which includes prenatal, delivery, and postpartum care, shall be at least $1,500 per delivery for a pregnant woman with low medical risk and at least $2,000 per delivery for a pregnant woman with high medical risk, effective April 1, 1992. However, reimbursement to physicians working in Regional Perinatal Intensive Care Centers designated pursuant to chapter 383, for services to certain pregnant Medicaid recipients with a high medical risk, may be made according to obstetrical care and neonatal care groupings and rates established by the department. Nurse midwives licensed under chapter 464 and chapter 467 shall be reimbursed at no less than 80 percent of the low medical risk fee. The department shall by rule determine, for the purpose of this paragraph, what constitutes a high or low medical risk pregnant woman and shall not pay more based solely on the fact that a Caesarean section was performed, rather than a vaginal delivery. The department shall by rule determine a prorated payment for obstetrical services in cases where only part of the total prenatal, delivery, or postpartum care was performed.

(13) Premiums, deductibles, and coinsurance for Medicare services rendered to Medicaid eligible persons shall be reimbursed in accordance with fees established by Title XVIII of the Social Security Act.

(14) A provider of prescribed drugs shall be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the department, plus a dispensing fee.

(15) A provider of primary care case management services rendered pursuant to a federally approved waiver shall be reimbursed by payment of a fixed, prepaid monthly sum for each Medicaid recipient enrolled with the provider.

(16) A provider of rural health clinic services and federally qualified health center services shall be reimbursed a rate per visit based on total reasonable costs of the clinic, as determined by the department in accordance with federal regulations.

(17) A provider of targeted case management services shall be reimbursed pursuant to an established fee, except where the Federal Government requires a public provider be reimbursed on the basis of average actual costs.

(18) A provider of transportation services shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the department, except when the department has entered into a direct contract with the provider for the provision of an all-inclusive service, or when services are provided pursuant to an agreement negotiated between the department and the provider.

Section 38. Section 409.2665, Florida Statutes, 1990 Supplement, is transferred, renumbered as section 409.910, Florida Statutes, and amended to read:

409.910 ~~409.2665~~ Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(1) It is the intent of the Legislature that Medicaid be the payer of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. Principles of common law and equity as to assignment, lien, and subrogation are to be abrogated to the extent necessary to ensure full recovery by Medicaid from third-party resources. It is intended that if the resources of a liable third party become available at any time, the public treasury should not bear the burden of medical assistance to the extent of such resources.

(2) This section may be cited as the "Medicaid Third-Party Liability Act."

~~(3) As used in this section, the following words shall have the following meanings:~~

~~(a) "Applicant" means an individual whose written application for medical assistance provided by Medicaid under s. 409.266 has been submitted to the department, but has not received final action. This term includes an individual, who need not be alive at the time of application, whose application is submitted through a representative or a person acting for the individual.~~

~~(b) "Benefit" means any benefit, assistance, aid, obligation, promise, debt, liability, or the like, related to any covered injury, illness, or necessary medical care, good, or service.~~

~~(c) "Collateral" means:~~

~~1. Any and all causes of action, suits, claims, counterclaims, and demands which accrue to the recipient or to the recipient's legal representative, related to any covered injury, illness, or necessary medical care which necessitated that Medicaid provide medical assistance.~~

~~2. All judgments, settlements, and settlement agreements rendered or entered into and related to such causes of action, suits, claims, counterclaims, demands, or judgments.~~

~~3. Proceeds, as defined in this section.~~

~~(d) "Covered injury or illness" means any sickness, injury, disease, disability, deformity, abnormality disease, necessary medical care, pregnancy, or death for which a third party is, may be, could be, should be, or has been liable, and for which Medicaid is, or may be, obligated to provide, or has provided, medical assistance.~~

~~(e) "Department" means the Department of Health and Rehabilitative Services. The department is the Medicaid agency for the state, as provided under federal law.~~

~~(f) "Legal representative" means a guardian, conservator, survivor, or personal representative of a recipient or applicant, or of the property or estate of a recipient or applicant.~~

~~(g) "Lienholder" means the department, which has a lien under paragraph (7)(c).~~

~~(h) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, 42 U.S.C. s. 1396 et seq., and regulations thereunder, as administered in Florida by the department.~~

~~(i) "Medicaid agency" means the single state agency that administers or supervises the administration of the state Medicaid plan under federal law.~~

~~(j) "Medical assistance" means any provision of, payment for, or liability for medical services by Medicaid to, or on behalf of, any recipient.~~

~~(k) "Medical services" or "medical care" means medical or medically related institutional or noninstitutional care, goods, or services covered by the Florida Medicaid program. The term includes, without limitation, physician services, inpatient hospital services, outpatient hospital services, independent laboratory services, X ray services, and prescribed drug services, and such other services as are covered by the Florida Medicaid program.~~

~~(l) "Payment," as it relates to third party benefits, means performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery, provision, or transfer of third party benefits for medical services. To "pay" means to do any of the acts set forth in this paragraph.~~

~~(m) "Proceeds" means whatever is received upon the sale, exchange, collection, or other disposition of the collateral or proceeds thereon and includes insurance payable by reason of loss or damage to the collateral or proceeds. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."~~

~~(n) "Provider" means any entity, including, without limitation, any hospital, physician, or other health care practitioner, supplier, or facility, providing medical care and related goods or services to a recipient.~~

~~(o) "Recipient" means any individual who has been determined to be eligible for Medicaid or who is receiving, or has received, medical assistance, or any medical care, good, or service for which Medicaid has paid or may be obligated.~~

~~(p) "Third party" means an individual, entity, or program, excluding Medicaid, that is, may be, could be, should be, or has been liable for all or part of the cost of medical services related to any medical assistance covered by Medicaid.~~

~~(q) "Third party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the department, for any Medicaid covered injury, illness, good, or service, including costs of medical services related thereto, for personal injury or for death of the recipient, but specifically excluding policies of life insurance on the recipient. The term includes, without limitation, collateral, as defined in this section, health insurance, any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance, or personal injury protection coverage, medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.~~

(3)~~(4)~~ Third-party benefits for medical services shall be primary to medical assistance provided by Medicaid.

(4)~~(5)~~ After the department has provided medical assistance under *the Medicaid program* ~~s. 409.266~~, it shall seek recovery of reimbursement from third-party benefits to the limit of legal liability and for the full amount of third-party benefits, but not in excess of the amount of medical assistance paid by Medicaid, as to:

(a) Claims for which the department has a waiver pursuant to federal law; or

(b) Situations in which the department learns of the existence of a liable third party or in which third-party benefits are discovered or become available after medical assistance has been provided by Medicaid.

(5)~~(6)~~ An applicant, recipient, or legal representative shall inform the department of any rights the applicant or recipient has to third-party benefits and shall inform the department of the name and address of any person that is or may be liable to provide third-party benefits. When the department provides, pays for, or becomes liable for medical services provided by a hospital, the recipient receiving such medical services or his legal representative shall also provide the information as to third-party benefits, as defined in this section, to the hospital, which shall ~~periodically~~ provide notice thereof to the department in a manner specified by the department.

(6)~~(7)~~ When the department provides, pays for, or becomes liable for medical care under *the Medicaid program* ~~s. 409.266~~, it *has* ~~shall have~~ the following rights, as to which the department may assert independent principles of law, which shall nevertheless be construed together to provide the greatest recovery from third-party benefits:

(a) The department is automatically subrogated to any rights that an applicant, recipient, or legal representative has to any third-party benefit for the full amount of medical assistance provided by Medicaid. Recovery pursuant to the subrogation rights created hereby shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, but is to provide full recovery by the department from any and all third-party benefits. Equities of a recipient, his legal representative, a recipient's creditors, or health care providers shall not defeat, reduce, or prorate recovery by the department as to its subrogation rights granted under this paragraph.

(b) By applying for or accepting medical assistance, an applicant, recipient, or legal representative automatically assigns to the department any right, title, and interest such person has to any third-party benefit, excluding any Medicare benefit to the extent required to be excluded by federal law.

1. The assignment granted under this paragraph is absolute, and vests legal and equitable title to any such right in the department, but not in excess of the amount of medical assistance provided by the department.

2. The department is a bona fide assignee for value in the assigned right, title, or interest, and takes vested legal and equitable title free and clear of latent equities in a third person. Equities of a recipient, his legal representative, his creditors, or health care providers shall not defeat or reduce recovery by the department as to the assignment granted under this paragraph.

3. By accepting medical assistance, the recipient grants to the department the limited power of attorney to act in his name, place, and stead to perform specific acts with regard to third-party benefits, his assent being deemed to have been given, including:

a. Endorsing any draft, check, money order, or other negotiable instrument representing third-party benefits that are received on behalf of the recipient as a third-party benefit.

b. Compromising claims to the extent of the rights assigned, provided the recipient is not otherwise represented by an attorney as to the claim.

(c) The department is entitled to, and has, an automatic lien for the full amount of medical assistance provided by Medicaid to or on behalf of the recipient for medical care furnished as a result of any covered injury or illness for which a third party is or may be liable, upon the collateral, as defined in *s. 409.901* ~~this section~~.

1. The lien attaches automatically when a recipient first receives treatment for which the department may be obligated to provide medical assistance under *the Medicaid program* ~~s. 409.266~~. The lien is perfected automatically at the time of attachment.

2. The department is authorized to file a verified claim of lien. The claim of lien shall be signed by an authorized employee of the *department* ~~lienholder~~, and shall be verified as to the employee's knowledge and belief. The claim of lien may be filed and recorded with the clerk of the circuit court in the recipient's last known county of residence or in any county deemed appropriate by the department. The claim of lien, to the extent known by the department, shall contain:

a. The name and last known address of the person to whom medical care was furnished.

b. The date of injury.

c. The period for which medical assistance was provided.

d. The amount of medical assistance provided or paid, or for which Medicaid is otherwise liable.

e. The names and addresses of all persons claimed by the recipient to be liable for the covered injuries or illness.

3. The filing of the claim of lien pursuant to this section shall be notice thereof to all persons.

4. If the claim of lien is filed within 1 year after the later of the date when the last item of medical care relative to a specific covered injury or illness was paid, or the date of discovery by the department of the liability of any third party, or the date of discovery of a cause of action against a third party brought by a recipient or his legal representative, record notice shall relate back to the time of attachment of the lien.

5. If the claim of lien is filed after 1 year *after* ~~of~~ the later of the events specified in subparagraph 4., notice shall be effective as of the date of filing.

6. Only one claim of lien need be filed to provide notice as set forth in this paragraph and shall provide sufficient notice as to any additional or after-paid amount of medical assistance provided by Medicaid for any specific covered injury or illness. The department may, in its discretion, file additional, amended, or substitute claims of lien at any time after the initial filing, until the department has been repaid the full amount of medical assistance provided by Medicaid or otherwise has released the liable parties and recipient.

7. No release or satisfaction of any cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement shall be valid or effectual as against a lien created under this paragraph, unless the *department* ~~lienholder~~ joins in the release or satisfaction or executes a release of the lien. An acceptance of a release or satisfaction of any cause of action, suit, claim, counterclaim, demand, or judgment and any settlement of any of the foregoing in the absence of a release or satisfaction of a lien created under this paragraph shall prima facie constitute an impairment of the lien, and the *department is* ~~lienholder shall be~~ entitled to recover damages on account of such impairment. In an action on account of impairment of a lien, the *department* ~~lienholder~~ may recover from the person accepting the release or satisfaction or making the settlement the full amount of medical assistance provided by Medicaid. Nothing in this section shall be construed as creating a lien or other obligation on the part of an insurer which in good faith has paid a claim pursuant to its contract without knowledge or actual notice that the department has provided medical assistance for the recipient related to a particular covered injury or illness. However, notice or knowledge that an insured is, or has been a Medicaid recipient within 1 year from the date of service for which a claim is being paid creates a duty to inquire on the part of the insurer as to any injury or illness for which the insurer intends *or is otherwise required* to pay benefits.

8. The lack of a properly filed claim of lien shall not affect the department's assignment or subrogation rights provided in this subsection, nor shall it affect the existence of the lien, but only the effective date of notice as provided in subparagraph 5.

9. The lien created by this paragraph is a first lien and superior to the liens and charges of any provider, and shall exist for a period of 7 years, if recorded, *after* ~~from~~ the date of recording; and shall exist for a period of 7 years *after* ~~from~~ the date of attachment, if not recorded. If recorded, the lien may be extended for one additional period of 7 years by rerecording the claim of lien within the 90-day period preceding the expiration of the lien.

10. The clerk of the circuit court for each county in the state shall endorse on a claim of lien filed under this paragraph the date and hour of filing and shall record the claim of lien in the official records of the county as for other records received for filing. The clerk shall receive as his fee for filing and recording any claim of lien or release of lien under this paragraph the total sum of $2. Any fee required to be paid by the department shall not be required to be paid in advance of filing and recording, but may be billed to the department after filing and recording of the claim of lien or release of lien.

11. After satisfaction of any lien recorded under this paragraph, the department shall, within *60* ~~30~~ days *after* ~~of~~ satisfaction, either file with the appropriate clerk of the circuit court or mail to any appropriate party, or counsel representing such party, if represented, a satisfaction of lien in a form acceptable for filing in Florida.

(7)~~(8)~~ The department shall recover the full amount of all medical assistance provided by Medicaid on behalf of the recipient to the full extent of third-party benefits.

(a) Recovery of such benefits shall be collected directly from:

1. Any third party;

2. The recipient or legal representative, if he has received third-party benefits;

3. The provider of a recipient's medical services if third-party benefits have been recovered by the provider; notwithstanding any provision of this section, to the contrary, however, no provider shall be required to refund or pay to the department any amount in excess of the actual third-party benefits received by the provider from a third-party payor for medical services provided to the recipient; or

4. Any person who has received the third-party benefits.

(b) Upon receipt of any recovery or other collection pursuant to this section, the department shall distribute the amount collected as follows:

1. To itself, an amount equal to the state Medicaid expenditures for the recipient plus any incentive payment made in accordance with paragraph *(14)(a)*~~(15)(a)~~.

2. To the Federal Government, the federal share of the state Medicaid expenditures minus any incentive payment made in accordance with paragraph *(14)(a)*~~(15)(a)~~ and federal law, and minus any other amount permitted by federal law to be deducted.

3. To the recipient, after deducting any known amounts owed to the department for any related medical assistance or to health care providers, any remaining amount. This amount shall be treated as income or resources in determining eligibility for Medicaid.

(8)~~(9)~~ The department shall require an applicant or recipient, or the legal representative thereof, to cooperate in the recovery by the department of third-party benefits of a recipient and in establishing paternity and support of a recipient child born out of wedlock. As a minimal standard of cooperation, the recipient or person able to legally assign a recipient's rights shall:

(a) Appear at an office designated by the department to provide relevant information or evidence.

(b) Appear as a witness at a court or other proceeding.

(c) Provide information, or attest to lack of information, under penalty of perjury.

(d) Pay to the department any third-party benefit received.

(e) Take any additional steps to assist in establishing paternity or securing third-party benefits, or both.

(f) Paragraphs (a)-(e) notwithstanding, the department shall have the discretion to waive, in writing, the requirement of cooperation for good cause shown and as required by federal law.

(9)~~(10)~~ The department shall deny or terminate eligibility for any applicant or recipient who refuses to cooperate as required in subsection *(8)*~~(9)~~, unless cooperation has been waived in writing by the department as provided in paragraph *(8)(f)*. ~~(9)(f); provided,~~ However, ~~that~~ any denial or termination of eligibility shall not reduce medical assistance otherwise payable by the department to a provider for medical care provided to a recipient prior to denial or termination of eligibility.

(10)~~(11)~~ An applicant or recipient shall be deemed to have provided to the department the authority to obtain and release medical information and other records with respect to such medical care, for the sole purpose of obtaining reimbursement for medical assistance provided by Medicaid.

(11)~~(12)~~ The department may, as a matter of right, in order to enforce its rights under this section, institute, intervene in, or join any legal *or administrative* proceeding in its own name in one or more of the following capacities: individually, as subrogee of the recipient, as assignee of the recipient, or as lienholder of the collateral.

(a) If either the recipient, or his legal representative, or the department brings an action against a third party, the recipient, or his legal representative, or the department, or their attorneys, shall, within 30 days *after* ~~of~~ filing the action, provide to the other written notice, by personal delivery or registered mail, of the action, the name of the court in which the case is brought, the case number of such action, and a copy of the pleadings. If an action is brought by either the department, or the recipient or his legal representative, the other may, at any time before trial on the merits, become a party to, or shall consolidate his action with the other if brought independently. Unless waived by the other, the recipient, or his legal representative, or the department shall provide notice to the other of the intent to dismiss at least 21 days prior to voluntary dismissal of an action against a third party. Notice to the department shall be sent to an address set forth by rule. Notice to the recipient or his legal representative, if represented by an attorney, shall be sent to the attorney, and, if not represented, then to the last known address of the recipient or his legal representative.

(b) An action by the department to recover damages in tort under this subsection, which action is derivative of the rights of the recipient or his legal representative, shall not constitute a waiver of sovereign immunity pursuant to s. 768.14.

(c) In the event of judgment, award, or settlement in a claim or action against a third party, the court shall order the segregation of an amount sufficient to repay the department's expenditures for medical assistance, plus any other amounts permitted under this section, and shall order such amounts paid directly to the department.

(d) No judgment, award, or settlement in any action by a recipient or his legal representative to recover damages for injuries or other third-party benefits, when the department has an interest, shall be satisfied without first giving the department notice and a reasonable opportunity to file and satisfy its lien, and satisfy its assignment and subrogation rights or proceed with any action as permitted in this section.

(e) Except as otherwise provided in this section, notwithstanding any other provision of law, the entire amount of any settlement of the recipient's action or claim involving third-party benefits, with or without suit, is subject to the department's claims for reimbursement of the amount of medical assistance provided and any lien pursuant thereto.

(f) Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his legal representative is a party and in which the amount of any judgment, award, or settlement from third-party benefits, excluding medical coverage as defined in subparagraph 4., after reasonable costs and expenses of litigation, is an amount equal to or less than 200 percent of the amount of medical assistance provided by Medicaid less any medical coverage paid or payable to the department, then distribution of the amount recovered shall be as follows:

1. Any fee for services of an attorney retained by the recipient or his legal representative shall not exceed an amount equal to 25 percent of the recovery, after reasonable costs and expenses of litigation, from the judgment, award, or settlement.

2. After attorney's fees, two-thirds of the remaining recovery shall be designated for past medical care and paid to the department for medical assistance provided by Medicaid.

3. The remaining amount from the recovery shall be paid to the recipient.

4. For purposes of this paragraph, "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under coverage for workers' compensation, personal injury protection, and casualty.

(g) In the event that the recipient, his legal representative, or his estate brings an action against a third party, notice of institution of legal proceedings, notice of settlement, and all other notices required by this section or by rule shall be given to the department, in Tallahassee, in a manner set forth by rule. All such notices shall be given by the attorney retained to assert the recipient's or legal representative's claim, or, if no attorney is retained, by the recipient, his legal representative, or his estate.

(h) Except as otherwise provided in this section, actions to enforce the rights of the department under this section shall be commenced within 5 years *after* ~~of~~ the date a cause of action accrues, with the period running from the later of the date of discovery by the department of a case filed by a recipient or his legal representative, or of discovery of any judgment, award, or settlement contemplated in this section, or of discovery of facts giving rise to a cause of action under this section. Nothing in this paragraph affects or prevents a proceeding to enforce a lien during the existence of the lien as set forth in subparagraph *(6)(c)9.* ~~(7)(e)9.~~

(i) Upon the death of a recipient, and within the time prescribed by ss. 733.702 and 733.710, the department, in addition to any other available remedy, may file a claim against the estate of the recipient for the total amount of medical assistance provided by Medicaid for the benefit of the recipient. Claims so filed shall take priority as class 3 claims as provided by s. 733.707(1)(c). The filing of a claim pursuant to this paragraph shall neither reduce nor diminish the general claims of the department pursuant to s. 409.345, except that the department shall not receive double recovery for the same expenditure. Claims under this paragraph shall be superior to those under s. 409.345. The death of the recipient shall neither extinguish nor diminish any right of the department to recover third-party benefits from a third party or provider. Nothing in this paragraph affects or prevents a proceeding to enforce a lien created pursuant to this section or a proceeding to set aside a fraudulent conveyance as defined in subsection *(16)*~~(17)~~.

(12)~~(13)~~ No action taken by the department shall operate to deny the recipient's recovery of that portion of benefits not assigned or subrogated to the department, or not secured by the department's lien. The department's rights of recovery created by this section, however, shall not be limited to some portion of recovery from a judgment, award, or settlement. Only the following benefits are not subject to the rights of the department: benefits not related in any way to a covered injury or illness; proceeds of life insurance coverage on the recipient; proceeds of insurance coverage, such as coverage for property damage, which by its terms and provisions cannot be construed to cover personal injury, death, or a covered injury or illness; proceeds of disability coverage for lost income; and recovery in excess of the amount of medical benefits provided by Medicaid after repayment in full to the department.

(13)~~(14)~~ No action of the recipient shall prejudice the rights of the department under this section. No settlement, agreement, consent decree, trust agreement, annuity contract, pledge, security arrangement, or any other device, hereafter collectively referred to in this subsection as a "settlement agreement," entered into or consented to by the recipient or his legal representative shall impair the department's rights. Provided, however, that in a structured settlement, no settlement agreement by the parties shall be effective or binding against the department for benefits accrued without the express written consent of the department or an appropriate order of a court having personal jurisdiction over the department.

(14)~~(15)~~ The department is authorized to enter into agreements to enforce or collect medical support and other third-party benefits.

(a) If a cooperative agreement is entered into with any agency, program, or subdivision of the state, or any agency, program, or legal entity of or operated by a subdivision of the state, or with any other state, the department is authorized to make an incentive payment of up to 15 percent of the amount actually collected and reimbursed to the department, to the extent of medical assistance paid by Medicaid. Such incentive payment is to be deducted from the federal share of that amount, to the extent authorized by federal law. The department may pay such person an additional percentage of the amount actually collected and reimbursed to the department as a result of the efforts of the person, but no more than a maximum percentage established by the department. In no case shall the percentage exceed the lesser of a percentage determined to be commercially reasonable or 15 percent, in addition to the 15-percent incentive payment, of the amount actually collected and reimbursed to the department as a result of the efforts of the person under contract.

(b) If an agreement to enforce or collect third-party benefits is entered into by the department with any person other than those described in paragraph (a), including any attorney retained by the department who is not an employee or agent of any person named in paragraph (a), then the department may pay such person a percentage of the amount actually collected and reimbursed to the department as a result of the efforts of the person, to the extent of medical assistance paid by Medicaid. In no case shall the percentage exceed a maximum established by the department, which shall not exceed the lesser of a percentage determined to be commercially reasonable or 30 percent of the amount actually collected and reimbursed to the department as a result of the efforts of the person under contract.

(c) An agreement pursuant to this subsection may permit reasonable litigation costs or expenses to be paid from the department's recovery to a person under contract with the department.

(d) Contingency fees and costs incurred in recovery pursuant to an agreement under this subsection may, for purposes of determining state and federal share, be deemed to be administrative expenses of the state. To the extent permitted by federal law, such administrative expenses shall be shared with, or fully paid by, the Federal Government.

(15)~~(16)~~ Insurance and other third-party benefits may not contain any term or provision which purports to limit or exclude payment or provisions of benefits for an individual if the individual is eligible for, or a recipient of, medical assistance from Medicaid, and any such term or provision shall be void as against public policy.

(16)~~(17)~~ Any transfer or encumbrance of any right, title, or interest to which the department has a right pursuant to this section, with the intent, likelihood, or practical effect of defeating, hindering, or reducing recovery by the department for reimbursement of medical assistance provided by Medicaid, shall be deemed to be a fraudulent conveyance, and such transfer or encumbrance shall be void and of no effect against the claim of the department, unless the transfer was for adequate consideration and the proceeds of the transfer are reimbursed in full to the department, but not in excess of the amount of medical assistance provided by Medicaid.

(17)~~(18)~~ A recipient or his legal representative or any person representing, or acting as agent for, a recipient or his legal representative, who has notice, excluding notice charged solely by reason of the recording of the lien pursuant to paragraph *(6)(c)*~~(7)(c)~~, or who has actual knowledge of the department's rights to third-party benefits under this section, who receives any third-party benefit or proceeds therefrom for a covered illness or injury, is required either to pay the department the full amount of the third-party benefits, but not in excess of the total medical assistance provided by Medicaid, or to place the full amount of the third-party benefits in a trust account for the benefit of the department pending judicial *or administrative* determination of the department's right thereto. Proof that any such person had notice or knowledge that the recipient had received medical assistance from Medicaid, and that third-party benefits or proceeds therefrom were in any way related to a covered illness or injury for which Medicaid had provided medical assistance, and that any such person knowingly obtained possession or control of, or used, third-party benefits or proceeds and failed either to pay the department the full amount required by this section or to hold the full amount of third-party benefits or proceeds in trust pending judicial *or administrative* determination, unless adequately explained, gives rise to an inference that such person knowingly failed to credit the state or its agent for payments received from social security, insurance, or other sources, pursuant to s. 409.325(4)(b), and acted with the intent set forth in s. 812.014(1).

(a) In cases of suspected criminal violations or fraudulent activity, the department is authorized to take any civil action permitted at law or equity to recover the greatest possible amount, including, without limitation, treble damages under ss. 772.11 and 812.035(7).

(b) The department is authorized to investigate and to request appropriate officers or agencies of the state to investigate suspected criminal violations or fraudulent activity related to third-party benefits, including, without limitation, ss. 409.325 and 812.014. Such requests may be directed, without limitation, to the Medicaid Fraud Control Unit of the Office of the Auditor General, to the Attorney General, or to any state attorney. Pursuant to *s. 409.913* ~~s. 409.2664~~, the Auditor General has primary responsibility to investigate and control Medicaid fraud.

(c) In carrying out duties and responsibilities related to Medicaid fraud control, the department may subpoena witnesses or materials within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings.

(d) All information obtained and documents prepared pursuant to an investigation of a Medicaid recipient, the recipient's legal representative, or any other person relating to an allegation of recipient fraud or theft *is* ~~shall be~~ confidential and exempt from the provisions of s. 119.07(1):

1. Until such time as the department takes final agency action;

2. Until such time as the Auditor General refers the case for criminal prosecution;

3. Until such time as an indictment or criminal information is filed by a state attorney in a criminal case; or

4. At all times if otherwise protected by law.

This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

~~(19) Entities providing health insurance as defined in s. 624.603, shall, except as otherwise provided in this section, require that any check for third party benefits be made payable to, and endorsed by, both the insured recipient, or his legal representative, and the provider, to ensure that the provider receives such third-party payment, and, if otherwise required by this section, that the department recovers from the provider. As provided in this section, the department may endorse any check on behalf of a recipient or legal representative as assignee of the recipient. Where the recovery from the insurer has been the subject of a judgment, award, or settlement, or when otherwise necessary to protect the department's rights under this section, the department shall recover directly from a health insurer, which shall require that any check for medical assistance be made payable to the department.~~

(18)~~(20)~~ In recovering any payments in accordance with this section, the department is authorized to make appropriate settlements.

(19)~~(21)~~ Notwithstanding any provision in this section to the contrary, the department shall not be required to seek reimbursement from a liable third party on claims for which the department determines that the amount it reasonably expects to recover will be less than the cost of recovery, or that recovery efforts will otherwise not be cost-effective.

(20)~~(22)~~ Entities providing health insurance as defined in s. 624.603, and health maintenance organizations and prepaid health clinics as defined in chapter 641, shall provide such records and information as are necessary to accomplish the purpose of this section, unless such requirement results in an unreasonable burden.

(a) The secretary of the department and the Insurance Commissioner shall enter into a cooperative agreement for requesting and obtaining information necessary to effect the purpose and objective of this section.

1. The department shall request only that information necessary to determine whether health insurance as defined pursuant to s. 624.603, or those health services provided pursuant to chapter 641, could be, should be, or have been claimed and paid with respect to items of medical care and services furnished to any person eligible for services under this section.

2. All information obtained pursuant to subparagraph 1. *is* ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1). This exemption *is* ~~shall be~~ subject to the Open Government Sunset Review Act in accordance with s. 119.14.

3. The cooperative agreement or rules *adopted* ~~promulgated~~ under this subsection may include financial arrangements to reimburse the reporting entities for reasonable costs or a portion thereof incurred in furnishing the requested information. Neither the cooperative agreement nor the rules shall require the automation of manual processes to provide the requested information.

(b) The department and the Department of Insurance jointly shall *adopt* ~~promulgate~~ rules for the development and administration of the cooperative agreement. The rules shall include the following:

1. A method for identifying those entities subject to furnishing information under the cooperative agreement.

2. A method for furnishing requested information.

3. Procedures for requesting exemption from the cooperative agreement based on an unreasonable burden to the reporting entity.

(21)~~(23)~~ The department is authorized to adopt rules to implement the provisions of this section and federal requirements.

Section 39. Effective July 1, 1991, section 409.911, Florida Statutes, is created to read:

409.911 Disproportionate share program.—Subject to specific allocations established within the general appropriations act and any limitations established pursuant to chapter 216, the department shall distribute, pursuant to this section, moneys appropriated from the Public Medical Assistance Trust Fund to hospitals providing a disproportionate share of Medicaid or charity care services by making quarterly Medicaid payments as required. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) Definitions.—As used in this section and s. 409.9112:

(a) "Adjusted patient days" means the sum of acute care patient days and intensive care patient days as reported to the Department of Health and Rehabilitative Services, divided by the ratio of inpatient revenues generated from acute, intensive, ambulatory, and ancillary patient services to gross revenues.

(b) "Actual audited data" or "actual audited experience" means data reported to the Department of Health and Rehabilitative Services which has been audited in accordance with generally accepted auditing standards by the department or representatives under contract with the department.

(c) "Base Medicaid per diem" means the hospital's Medicaid per diem rate initially established by the Department of Health and Rehabilitative Services on July 1 of each state fiscal year. The base Medicaid per diem rate shall not include any additional per diem increases received as a result of the disproportionate share distribution.

(d) "Charity care" or "uncompensated charity care" means that portion of hospital charges reported to the Department of Health and Rehabilitative Services for which there is no compensation for care provided to a patient whose family income for the 12 months preceding the determination is less than or equal to 150 percent of the federal poverty level, unless the amount of hospital charges due from the patient exceeds 25 percent of the annual family income. However, in no case shall the hospital charges for a patient whose family income exceeds four times the federal poverty level for a family of four be considered charity.

(e) "Charity care days" means the sum of the deductions from revenues for charity care minus 50 percent of restricted and unrestricted revenues provided to a hospital by local governments or tax districts, divided by gross revenues per adjusted patient day.

(f) "Disproportionate share percentage" means a rate of increase in the Medicaid per diem rate as calculated under this section.

(g) "Hospital" means a health care institution licensed as a hospital pursuant to chapter 395, but does not include ambulatory surgical centers.

(h) "Medicaid days" means the number of actual days attributable to Medicaid patients as determined by the Department of Health and Rehabilitative Services.

(2) The Department of Health and Rehabilitative Services shall utilize the following criteria to determine if a hospital qualifies for a disproportionate share payment:

(a) A hospital's total Medicaid days when combined with its total charity care days must equal or exceed 7 percent of its total adjusted patient days.

(b) A hospital's total charity care days weighted by a factor of 4.5, plus its total Medicaid days weighted by a factor of 1, shall be equal to or greater than 10 percent of its total adjusted patient days.

(c) Additionally, in accordance with the Seventh Federal Omnibus Budget Reconciliation Act, a hospital with a Medicaid inpatient utilization rate greater than one standard deviation above the statewide mean or a hospital with a low-income utilization rate of 25 percent or greater shall qualify for reimbursement.

(3) In computing the disproportionate share rate:

(a) Per diem increases earned from disproportionate share shall be applied to each hospital's base Medicaid per diem rate and shall be capped at 100 percent.

(b) The department shall use the most recent calendar year audited data for the calculation of disproportionate share payments under this section.

(c) If the total amount earned by all hospitals under this section exceeds the amount appropriated, each hospital's share shall be reduced on a pro rata basis so that the total dollars distributed from the trust fund do not exceed the total amount appropriated.

(d) The total amount calculated to be distributed under this section shall be made in quarterly payments subsequent to each quarter during the fiscal year.

(4) Hospitals that qualify for a disproportionate share payment solely under paragraph (2)(c) shall have their payment calculated in accordance with the following formulas:

$$TAA = TA \times (1/5.5)$$
$$DSHP = (HMD/TSMD) \times TAA$$

Where:

TAA = total amount available.

TA = total appropriation.

DSHP = disproportionate share hospital payment.

HMD = hospital Medicaid days.

TSMD = total state Medicaid days.

(5) The following formula shall be utilized by the department to determine the maximum disproportionate share rate to be used to increase the Medicaid per diem rate for hospitals that qualify pursuant to paragraphs (2)(a) and (b):

$$DSR = \left(\left(\frac{CCD}{APD}\right) \times 4.5\right) + \left(\frac{MD}{APD}\right)$$

Where:

APD = adjusted patient days.

CCD = charity care days.

DSR = disproportionate share rate.

MD = Medicaid days.

(6) The following criteria shall be used in determining the disproportionate share percentage:

(a) If the disproportionate share rate is less than 10 percent, the disproportionate share percentage is zero and there is no additional payment.

(b) If the disproportionate share rate is greater than or equal to 10 percent, but less than 20 percent, then the disproportionate share percentage is 2.1544347.

(c) If the disproportionate share rate is greater than or equal to 20 percent, but less than 30 percent, then the disproportionate share percentage is 4.6415888766.

(d) If the disproportionate share rate is greater than or equal to 30 percent, but less than 40 percent, then the disproportionate share percentage is 10.0000001388.

(e) If the disproportionate share rate is greater than or equal to 40 percent, but less than 50 percent, then the disproportionate share percentage is 21.544347299.

(f) If the disproportionate share rate is greater than or equal to 50 percent, but less than 60 percent, then the disproportionate share percentage is 46.41588941.

(g) If the disproportionate share rate is greater than or equal to 60 percent, then the disproportionate share percentage is 100.

(7) The following formula shall be used by the department to calculate the total amount earned by all hospitals under this section:

$$TAE = BMPD \times MD \times DSP$$

Where:

TAE = total amount earned.

BMPD = base Medicaid per diem.

MD = Medicaid days.

DSP = disproportionate share percentage.

(8) The department is authorized to receive funds from local governments and other local political subdivisions for the purpose of making payments, including federal matching funds, through the Medicaid disproportionate share program. Funds received from local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner.

(9) Payments made by the department to hospitals eligible to participate in this program shall be made in accordance with federal rules and regulations.

(a) If the Federal Government prohibits, restricts, or changes in any manner the methods by which funds are distributed for this program, the department shall not distribute any additional funds and shall return all funds to the local government from which the funds were received, except as provided in paragraph (b).

(b) If the Federal Government imposes a restriction that still permits a partial or different distribution, the department may continue to disburse funds to hospitals participating in the disproportionate share program in a federally approved manner, provided:

1. Each local government which contributes to the disproportionate share program agrees to the new manner of distribution as shown by a written document signed by the governing authority of each local government; and

2. The Executive Office of the Governor, the Office of Planning and Budgeting, the House of Representatives, and the Senate are provided at least 7 days' prior notice of the proposed change in the distribution, and do not disapprove such change.

(c) No distribution shall be made under the alternative method specified in paragraph (b) unless all parties agree or unless all funds of those parties that disagree which are not yet disbursed have been returned to those parties.

(10) Notwithstanding the provisions of chapter 216, the Executive Office of the Governor is hereby authorized to establish sufficient trust fund authority to implement the disproportionate share program.

Section 40. Effective July 1, 1991, section 409.9112, Florida Statutes, is created to read:

409.9112 Disproportionate share program for regional perinatal intensive care centers.—In addition to the payments made under s. 409.911, the Department of Health and Rehabilitative Services shall design and implement a system of making disproportionate share payments to those hospitals that participate in the Regional Perinatal Intensive Care Center program established pursuant to chapter 383. This system of payments shall conform with federal requirements and shall distribute funds in each fiscal year for which an appropriation is made by making quarterly Medicaid payments. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) The following formula shall be used by the department to calculate the total amount earned for hospitals that participate in the Regional Perinatal Intensive Care Center program:

$$TAE = DSR \times BMPD \times MD$$

Where:

TAE = total amount earned by a Regional Perinatal Intensive Care Center.

DSR = disproportionate share rate.

BMPD = base Medicaid per diem.

MD = Medicaid days.

(2) The total additional payment for hospitals that participate in the Regional Perinatal Intensive Care Center program shall be calculated by the department as follows:

$$TAP = \left(\frac{TAE \times TA}{STAE}\right)$$

Where:

TAP = total additional payment for a Regional Perinatal Intensive Care Center.

TAE = total amount earned by a Regional Perinatal Intensive Care Center.

STAE = sum of total amount earned by each hospital that participates in the Regional Perinatal Intensive Care Center program.

TA = total appropriation for the Regional Perinatal Intensive Care disproportionate share program.

(3) In order to receive payments under this section, a hospital must be participating in the Regional Perinatal Intensive Care Center program, pursuant to chapter 383, and must meet the following additional requirements:

(a) Agree to conform to all departmental requirements to ensure high quality in the provision of services, including criteria adopted by departmental rule concerning staffing ratios, medical records, standards of care, equipment, space, and such other standards and criteria as the department deems appropriate as specified by rule.

(b) Agree to provide information to the department, in a form and manner to be prescribed by rule of the department, concerning the care provided to all patients in neonatal intensive care centers and high-risk maternity care.

(c) Agree to accept all patients for neonatal intensive care and high-risk maternity care, regardless of ability to pay, on a functional space-available basis.

(d) Agree to develop arrangements with other maternity and neonatal care providers in the hospital's region for the appropriate receipt and transfer of patients in need of specialized maternity and neonatal intensive care services.

(e) Agree to establish and provide a developmental evaluation and services program for certain high-risk neonates, as prescribed and defined by rule of the department.

(f) Agree to sponsor a program of continuing education in perinatal care for health care professionals within the region of the hospital, as specified by rule.

(g) Agree to provide backup and referral services to the department's county public health units and other low-income perinatal providers within the hospital's region, including the development of written agreements between these organizations and the hospital.

(h) Agree to arrange for transportation for high-risk obstetrical patients and neonates in need of transfer from the community to the hospital or from the hospital to another more appropriate facility.

(4) Hospitals which fail to comply with any of the conditions in subsection (3) or the applicable rules of the department shall not receive any payments under this section until full compliance is achieved. A hospital which is not in compliance in two or more consecutive quarters shall not receive its share of the funds. Any forfeited funds shall be distributed by the remaining participating Regional Perinatal Intensive Care Center program hospitals.

Section 41. Effective July 1, 1991, section 409.9113, Florida Statutes, is created to read:

409.9113 Disproportionate share program for teaching hospitals.—In addition to the payments made under ss. 409.911 and 409.9112, the Department of Health and Rehabilitative Services shall make disproportionate share payments to statutorily defined teaching hospitals for their increased costs associated with medical education programs and for tertiary health care services provided to the indigent. This system of payments shall conform with federal requirements and shall distribute funds in each fiscal year for which an appropriation is made by making quarterly Medicaid payments. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) On or before September 15 of each year, the Health Care Cost Containment Board shall calculate an allocation fraction to be used for distributing funds to state statutory teaching hospitals. Subsequent to the end of each quarter of the state fiscal year, the department shall distribute to each statutory teaching hospital, as defined in s. 407.002(27), an amount determined by multiplying one-fourth of the funds appropriated for this purpose by the Legislature times such hospital's allocation fraction. The allocation fraction for each such hospital shall be determined by the sum of three primary factors, divided by three. The primary factors are:

(a) The number of nationally accredited graduate medical education programs offered by the hospital, including programs accredited by the Accreditation Council for Graduate Medical Education and the combined Internal Medicine and Pediatrics programs acceptable to both the American Board of Internal Medicine and the American Board of Pediatrics at the beginning of the state fiscal year preceding the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the hospital represents of the total number of programs, where the total is computed for all state statutory teaching hospitals.

(b) The number of full-time equivalent trainees in the hospital, which comprises two components:

1. The number of trainees enrolled in nationally accredited graduate medical education programs, as defined in paragraph (a). Full-time equivalents are computed using the fraction of the year during which each trainee is primarily assigned to the given institution, over the state fiscal year preceding the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the hospital represents of the total number of full-time equivalent trainees enrolled in accredited graduate programs, where the total is computed for all state statutory teaching hospitals.

2. The number of medical students enrolled in accredited colleges of medicine and engaged in clinical activities, including required clinical clerkships and clinical electives. Full-time equivalents are computed using the fraction of the year during which each trainee is primarily assigned to the given institution, over the course of the state fiscal year preceding the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the given hospital represents of the total number of full-time equivalent students enrolled in accredited colleges of medicine, where the total is computed for all state statutory teaching hospitals.

The primary factor for full-time equivalent trainees is computed as the sum of these two components, divided by two.

(c) A service index which comprises three components:

1. The Health Care Cost Containment Board Service Index, computed by applying the standard Service Inventory Scores established by the Health Care Cost Containment Board to services offered by the given hospital, as reported on the Health Care Cost Containment Board Worksheet A-2 for the last fiscal year reported to the board before the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the given hospital represents of the total Health Care Cost Containment Board Service Index values, where the total is computed for all state statutory teaching hospitals.

2. A volume-weighted service index, computed by applying the standard Service Inventory Scores established by the Health Care Cost Containment Board to the volume of each service, expressed in terms of the standard units of measure reported on the Health Care Cost Containment Board Worksheet A-2 for the last fiscal year reported to the board before the date on which the allocation factor is calculated. The numerical value of this factor is the fraction that the given hospital represents of the total volume-weighted service index values, where the total is computed for all state statutory teaching hospitals.

3. Total Medicaid payments to each hospital for direct inpatient and outpatient services during the fiscal year preceding the date on which the allocation factor is calculated. This includes payments made to each hospital for such services by Medicaid prepaid health plans, whether the plan was administered by the hospital or not. The numerical value of this factor is the fraction that each hospital represents of the total of such Medicaid payments, where the total is computed for all state statutory teaching hospitals.

The primary factor for the service index is computed as the sum of these three components, divided by three.

(2) The following formula shall be utilized by the department to calculate the maximum additional disproportionate share payment for statutorily defined teaching hospitals:

$$TAP = THAF \times A$$

Where:

TAP = total additional payment.

THAF = teaching hospital allocation factor.

A = amount appropriated for a teaching hospital disproportionate share program.

(3) The Health Care Cost Containment Board shall report to the department the statutory teaching hospital allocation fraction prior to October 1 of each year.

Section 42. Effective upon this act becoming a law, section 409.9114, Florida Statutes, is created to read:

409.9114 Extraordinary disproportionate share program.—

(1) Subject to any limitations established within the general appropriations act or established pursuant to chapter 216, the department is authorized to make a special extraordinary contribution to the care of indigent persons in this state. In order to be eligible to receive these funds, a hospital must:

(a) Be qualified to participate in the disproportionate share program specified in s. 409.911, the "regular" disproportionate share program; and

(b) Be classified as a teaching hospital as defined in s. 407.002(27); or

(c) Be owned by a hospital district authority and have a ratio of net charity care expenditures to net operating revenues that exceeds 9 percent.

(2) The following formula shall be used by the department to calculate the total amount earned for hospitals that participate in the extraordinary disproportionate share program.

$$TAE = DSR \times BMPD \times MD$$

Where:

TAE = total amount earned by a hospital participating in the extraordinary disproportionate share program.

DSR = disproportionate share rate.

BMPD = base Medicaid per diem.

MD = Medicaid days.

(3) The total additional payment for hospitals that participate in the extraordinary disproportionate share program shall be calculated by the department as follows:

$$TAP = \left(\frac{TAE}{STAE}\right) \times TA$$

Where:

TAP = total additional payment for a hospital participating in the extraordinary disproportionate share program.

TAE = total amount earned by a hospital participating in the extraordinary disproportionate share program.

STAE = sum of total amount earned by each hospital that participates in the extraordinary disproportionate share program.

TA = total appropriation for the extraordinary disproportionate share program.

(4) The department is authorized to receive funds from hospitals participating in the extraordinary disproportionate share program, and from local governments in whose jurisdiction a participating hospital resides, for the purpose of making payments, including federal matching funds, through the Medicaid extraordinary disproportionate share program. Funds received from hospitals or local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner.

(5) Payments made by the department to hospitals eligible to participate in this program shall be made in accordance with federal rules and regulations.

(a) Should the Federal Government prohibit, restrict, or change in any manner the methods by which funds are distributed for this program, the department shall not distribute any additional funds, and shall return all funds to the entity from which the funds were received, except as provided in paragraph (b).

(b) Should the Federal Government impose a restriction which still permits a partial or different distribution, the department may continue to disburse funds to hospitals participating in the extraordinary disproportionate share program in a federally approved manner, provided:

1. Each entity which contributes to the extraordinary disproportionate share program agrees to the new manner of distribution as shown by a written document signed by the governing authority of each entity; and

2. The Executive Office of the Governor, Office of Planning and Budgeting, the House of Representatives and the Senate are provided at least 7 days' prior notice of the proposed change in the distribution and do not disapprove such change.

(c) No distribution shall be made under the alternative method specified in paragraph (b) unless all parties agree, or unless those parties who disagree have returned to them all funds not yet disbursed.

(6) Each hospital eligible to participate in the extraordinary disproportionate share program shall notify the department of its intention to participate, within a time period specified by the department, and according to such additional terms and conditions as may be specified by the department. Any hospital which does not notify the department within the specified time period, or according to the terms and conditions set forth by the department, shall not be eligible to participate in the extraordinary disproportionate share program. A notice of intention to withdraw from the program is revocable, once issued, only after the quarter in which funds have been distributed under this program.

Section 43. Effective October 1, 1991, section 409.912, Florida Statutes, is created to read:

409.912 Cost-effective purchasing of health care.—The department shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The department shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies designed to facilitate the cost-effective purchase of a case-managed continuum of care. The department shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(1) The department may enter into agreements with appropriate agents of other state agencies or of any agency of the Federal Government and accept such duties in respect to social welfare or public aid as may be necessary to implement the provisions of Title XIX of the Social Security Act and ss. 409.901-409.920.

(2) The department may contract with health maintenance organizations certified pursuant to part II of chapter 641 for the provision of services to recipients.

(3) The department may contract with county public health units and other entities authorized by chapter 154 to provide health care services on a prepaid or fixed-sum basis to recipients, which entities may provide such prepaid services either directly or through arrangements with other providers. Such prepaid health care services are exempt from the provisions of part II of chapter 641.

(4) The department may contract with any public or private entity on a prepaid or fixed-sum basis for the provision of health care services to recipients.

(a) An entity may provide prepaid services to recipients, either directly or through arrangements with other entities, if each entity involved in providing services:

1. Is organized primarily for the purpose of providing health care or other services of the type regularly offered to Medicaid recipients;

2. Ensures that services meet the standards set by the department for quality, appropriateness, and timeliness;

3. Makes provisions satisfactory to the department for insolvency protection and ensures that neither enrolled Medicaid recipients nor the department will be liable for the debts of the entity;

4. Submits to the department, if a private entity, a financial plan that the department finds to be fiscally sound and that provides for working capital in the form of cash or equivalent liquid assets excluding revenues from Medicaid premium payments equal to at least the first 3 months of operating expenses or $200,000, whichever is greater;

5. Furnishes evidence satisfactory to the department of adequate liability insurance coverage or an adequate plan of self-insurance to respond to claims for injuries arising out of the furnishing of health care;

6. Provides, through contract or otherwise, for periodic review of its medical facilities and services, as required by the department; and

7. Provides organizational, operational, financial, and other information required by the department.

(b) Entities that provide no prepaid health care services other than Medicaid services under contract with the department are exempt from the provisions of part II of chapter 641.

(5) The department may contract on a prepaid or fixed-sum basis with any health insurer that:

(a) Pays for health care services provided to enrolled Medicaid recipients in exchange for a premium payment paid by the department;

(b) Assumes the underwriting risk; and

(c) Is organized and licensed under applicable provisions of the Florida Insurance Code and is currently in good standing with the Department of Insurance.

(6) The department shall not contract on a prepaid or fixed-sum basis for Medicaid services with an entity which knows or reasonably should know that any officer, director, agent, managing employee, or owner of stock or beneficial interest in excess of 5 percent common or preferred stock, or the entity itself, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere, or guilty, to:

(a) Fraud;

(b) Violation of federal or state antitrust statutes, including those prescribing price fixing between competitors and the allocation of customers among competitors;

(c) Commission of a felony involving embezzlement, theft, forgery, income tax evasion, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(d) Any crime in any jurisdiction which directly relates to the provision of health services on a prepaid or fixed-sum basis.

(7) The department may apply for waivers of applicable federal laws and regulations as necessary to implement more appropriate systems of health care for Medicaid recipients and reduce the cost of the Medicaid program to the state and federal governments and shall implement such programs, after legislative approval, within a reasonable period of time after federal approval. These programs must be designed primarily to reduce the need for inpatient care, custodial care and other long-term or institutional care, and other high-cost services.

(8) The department shall establish a postpayment utilization control program designed to identify recipients who may inappropriately overuse or underuse Medicaid services and shall provide methods to correct such misuse.

(9) The department shall develop and provide coordinated systems of care for Medicaid recipients and may contract with public or private entities to develop and administer such systems of care among public and private health care providers in a given geographic area.

(10) The department shall operate or contract for the operation of utilization management and incentive systems designed to encourage cost-effective use services.

(11) The department shall identify health care utilization and price patterns within the Medicaid program that are not cost-effective or medically appropriate and assess the effectiveness of new or alternate methods of providing and monitoring service, and may implement such methods as it considers appropriate.

(12) An entity contracting on a prepaid or fixed-sum basis shall, in addition to meeting any applicable statutory surplus requirements, also maintain at all times in the form of cash, short-term investments allowable as admitted assets by the Department of Insurance, and restricted funds or deposits controlled by the department or the Department of Insurance, by January 1, 1992, an amount equal to its monthly prepaid Medicaid revenues; and by and after January 1, 1993, an amount equal to one-and-one-half times its monthly prepaid Medicaid revenues. In the event an entity's surplus falls below any applicable statutory requirements, or an entity's total of cash, short-term investments allowable as admitted assets by the Department of Insurance, and restricted funds or deposits controlled by the department or the Department of Insurance falls below one-and-one-half times its monthly prepaid Medicaid revenues, the department shall prohibit the entity from engaging in enrollment activities, shall cease to process new enrollments for the entity, and shall not renew the entity's contract until the required balance is achieved. The requirements of this subsection shall not apply:

(a) Where a public entity agrees to fund any deficit incurred by the contracting entity; or

(b) Where the entity's performance and obligations are guaranteed in writing by a nonprofit guaranteeing organization which:

1. Has been in operation for at least 5 years and has assets in excess of $50 million; or

2. Submits a written guarantee acceptable to the department which is irrevocable during the term of the contracting entity's contract with the department and, upon termination of the contract, until the department receives proof of satisfaction of all outstanding obligations incurred under the contract.

Section 44. Effective October 1, 1991, section 409.913, Florida Statutes, is created to read:

409.913 Oversight of the integrity of the Medicaid program.—The department shall operate a program to oversee the activities of Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible.

(1) The department shall conduct, or cause to be conducted by contract or otherwise, investigations, analyses, and audits of possible fraud, abuse, and neglect in the Medicaid program and shall report the findings therefrom in departmental audit reports as appropriate.

(2) The department may conduct, or may contract for, prepayment review of provider claims to ensure cost-effective purchasing, billing, and provision of care to Medicaid recipients. Such prepayment reviews may be conducted as determined appropriate by the department, without any suspicion or allegation of fraud, abuse, or neglect.

(3) Any suspected criminal violation or fraudulent activity by a provider, or by the representative or agent of a provider, identified by the department shall be referred to the Medicaid fraud control unit of the Office of the Auditor General for investigation.

(4) A Medicaid provider is subject to having goods and services that are paid for by the Medicaid program reviewed by an appropriate peer review organization designated by the department.

(5) When presenting a claim for payment under the Medicaid program, a provider has an affirmative duty to supervise the provision of, and be responsible for, goods and services claimed to have been provided, to supervise and be responsible for preparation and submission of the claim, and to present a claim that is true and accurate and that is for goods and services which:

(a) Have actually been furnished to the recipient by the provider prior to submitting the claim.

(b) Are necessary.

(c) Are of a quality comparable to those furnished to the general public by the provider's peers.

(d) Have not been billed in whole or in part to a recipient or a recipient's responsible party, except for such copayments, coinsurance, or deductibles as may be authorized by the department.

(e) Are provided in accord with applicable provisions of all Medicaid rules, regulations, handbooks, and policies and in accordance with federal, state, and local law.

(6) A Medicaid provider shall retain professional and financial records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for a period of 5 years after the date of furnishing such services or goods.

(7) The complaint and all information obtained pursuant to an investigation of a Medicaid provider, or the authorized representative or agent of a provider, relating to an allegation of fraud, abuse, or neglect are confidential and exempt from the provisions of s. 119.07(1):

(a) Until the department takes final agency action respecting the provider and requires repayment of any overpayment, or imposes an administrative sanction;

(b) Until the Auditor General refers the case for criminal prosecution;

(c) Until 10 days after the complaint is determined without merit; or

(d) At all times if the complaint or information is otherwise protected by law.

This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(8) The department may impose administrative sanctions against a Medicaid provider if:

(a) The provider has entered into a pretrial intervention or other first-offender agreement respecting a charge of, has pled nolo contendere or guilty to a charge of, has been found guilty regardless of adjudication of, or has been convicted of Medicaid fraud or any other Medicaid-related crime, such as theft, bribery, giving or receiving a kickback, or neglecting or physically abusing a recipient;

(b) The provider has pled guilty to, has been found guilty regardless of adjudication of, or has been convicted of a criminal offense under federal law or the law of any state relating to the practice of the provider's profession;

(c) The provider is excluded from the Medicare program for cause;

(d) The provider's license has not been renewed, or has been revoked, suspended, or terminated, by the licensing agency of any state;

(e) The provider is excluded from participation in the Medicaid or Medicare program by the Federal Government or any state;

(f) The provider has refused access to Medicaid-related records to an authorized auditor or investigator acting as an employee or agent of the department, the Auditor General, a state attorney, or the Federal Government;

(g) The provider has not furnished, upon reasonable notice, such Medicaid-related records as the department found necessary to determine whether Medicaid payments are or were due and the amounts thereof;

(h) The provider is not in compliance with provisions of departmental policy manuals or handbooks which have been adopted by reference as rules in the Florida Administrative Code, state laws, federal rules and regulations, a provider agreement between the department and the provider, or certifications found on claim forms submitted by the provider or authorized representative as such provisions apply to the Medicaid program;

(i) The provider has furnished or ordered the furnishing to a recipient of goods or services that are inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality. Such determinations must be based on competent peer judgments and evaluations;

(j) The provider or an authorized representative of the provider has submitted or caused to be submitted false or erroneous Medicaid claims that have resulted in payments to the provider in excess of those to which the provider was entitled under the Medicaid program;

(k) The provider or an authorized representative of the provider has submitted or caused to be submitted a Medicaid provider enrollment application, request for prior authorization for Medicaid services, or Medicaid cost report that contains materially false or incorrect information;

(l) The provider or an authorized representative of the provider has collected from or billed a recipient or a recipient's responsible party improperly for amounts that should not have been so collected or billed by reason of the provider's billing the Medicaid program for the same service;

(m) The provider or an authorized representative of the provider has included in a cost report costs that are not allowable under a Florida Title XIX reimbursement plan, after the provider or authorized representative had been advised in an audit exit conference or audit report that the costs were not allowable;

(n) The provider is indicted for fraudulent billing practices. The sanction applied for this reason is limited to suspension of the provider from the Medicaid program for the duration of the indictment;

(o) The provider is found liable for negligent practice resulting in death or injury to the provider's patient; or

(p) The provider fails to demonstrate that it had available during a specific audit or review period sufficient quantities of goods, or sufficient time in the case of services, to support the provider's billings to the Medicaid program.

(9) The department may impose any of the following sanctions on a provider for any of the acts described in subsection (8):

(a) Suspension for a specific period of time of not more than 1 year.

(b) Termination for a specific period of time of from more than 1 year to 20 years.

(c) Imposition of a fine of up to $1,000 for each violation not exceeding a total fine of $25,000 in connection with any one audit or investigation. Each day that an ongoing violation continues, such as refusing to furnish Medicaid-related records or refusing access to records, is considered, for the purposes of this section, to be a separate violation. Each instance of improper billing of a Medicaid recipient; each instance of including an unallowable cost on a hospital or nursing home Medicaid cost report after the provider or authorized representative has been advised in an audit exit conference or audit report of the cost unallowability; each instance of furnishing a Medicaid recipient goods or professional services that are inappropriate or of inferior quality as determined by competent peer judgment; each instance of knowingly submitting a materially false or erroneous Medicaid provider enrollment application, request for prior authorization for Medicaid services, or cost report; each instance of inappropriate prescribing of drugs for a Medicaid recipient as determined by competent peer judgment; and each false or erroneous Medicaid claim leading to an overpayment to a provider is considered, for the purposes of this section, to be a separate violation.

(10) In determining the appropriate administrative sanction to be applied, the department shall consider:

(a) The seriousness and extent of the violation or violations.

(b) Any prior history of violations by the provider.

(c) Evidence of continued violation within the provider's management control of Medicaid statutes, rules, regulations, or policies after written notification to the provider of improper practice or instance of violation.

(d) Any pain and suffering inflicted by the provider on a recipient.

(e) Any action by a licensing agency respecting the provider in any state in which the provider operates.

(f) The extent to which a lesser sanction is sufficient to remedy the violation by the provider, in the best judgment of the department.

(g) The apparent impact on access by recipients to Medicaid services if the provider is suspended or terminated, in the best judgment of the department.

(11) The department may take action to sanction, suspend, or terminate a particular provider working for a group provider, and may suspend or terminate Medicaid participation at a specific location, rather than or in addition to taking action against an entire group, if it determines such action is in the best interest of Medicaid recipients.

(12) In making a determination of overpayment to a provider, the department shall use appropriate and valid auditing, accounting, analytical, statistical, or peer review methods, or combinations thereof. Appropriate statistical methods may include, but are not limited to, sampling and extension to the population, nonparametric statistics, tests of hypotheses, and other generally accepted statistical methods. Appropriate analytical methods may include, but are not limited to, reviews to determine variances between the quantities of products that a provider had on hand and available to be purveyed to Medicaid recipients during the review period and the quantities of the same products paid for by the Medicaid program for the same period, taking into appropriate consideration sales of the same products to non-Medicaid customers during the same period.

(13) When making a determination that an overpayment has occurred, the department shall prepare and issue a departmental audit report to the provider showing the calculation of overpayments.

(14) The departmental audit report, supported by department work papers, showing an overpayment to a provider constitutes evidence of the overpayment. A provider may not present or elicit testimony, either on direct or cross examination in any court or administrative proceeding, regarding the purchase or acquisition by any means of drugs, goods, or supplies; sales or divestment by any means of drugs, goods or supplies; or inventory of drugs, goods or supplies, unless such acquisition, sales, divestment or inventory is documented by written invoices, written inventory records, or other competent written documentary evidence maintained in the normal course of the provider's business.

(15)(a) In an investigation of a violation by a provider pursuant to this section, the department is entitled to recover investigative and expert costs not exceeding $15,000 if a material violation is found and the department's findings were not contested by the provider or, if contested, the department ultimately prevailed.

(b) The department has the burden of documenting the investigative costs, which include salaries and employee benefits and out-of-pocket expenses. The amount of investigative costs that may be recovered must be reasonable in relation to the seriousness of the violation and must be set taking into consideration the financial resources, earning ability, and needs of the provider, who has the burden of demonstrating such factors.

(c) The provider may pay the investigative costs over a period to be determined by the department if the department determines that an extreme hardship would result to the provider from immediate full payment. Any default in payment of investigative costs may be collected by any means authorized by law for enforcement of a judgment.

(d) Investigative costs that are recovered must be returned to the department.

(16) If the department imposes an administrative sanction under this section for any of the acts described in subsection (8) upon any provider who is regulated by a state agency other than the department, the department shall notify that agency of the imposition of the sanction. Such notification must include the provider's name and license number and the specific reasons for sanction.

(17) The department may withhold Medicaid payments to a provider, up to the amount of the alleged overpayment, pending completion of an investigation under this section if it has reasonable cause to believe that the provider has committed one or more violations in relation to such payments. With the exception of providers terminated under the provisions of s. 120.59(3), in which case all payments shall be immediately terminated, the department may withhold payments under this provision, the monthly Medicaid payment may not be reduced by more than 10 percent, and the payments withheld must be paid to the provider within 60 days with interest at the rate of 10 percent a year upon determining that no such violation has occurred. If the amount of the alleged overpayment is in excess of $75,000, the department may reduce the Medicaid payments up to $25,000 per month.

Section 45. Effective October 1, 1991, section 409.914, Florida Statutes, is created to read:

409.914 Assistance for the uninsured.—The department shall use the claims payment systems, utilization control systems, cost control systems, case management systems, and other systems and controls that it has developed for the management and control of the Medicaid program to assist other agencies and entities, if appropriate, in paying claims and performing other activities necessary for the conduct of programs of state government, or for working with other public and private agencies to solve problems of lack of insurance, underinsurance, or uninsurability. When conducting these services, the department shall ensure:

(1) That full payment is received for services provided.

(2) That costs of providing these services are clearly segregated from costs necessary for the conduct of the Medicaid program.

(3) That the program conducted serves the interests of the state in ensuring that effective and quality health care at a reasonable cost is provided to the citizens of the state.

Section 46. Effective October 1, 1991, section 409.915, Florida Statutes, is created to read:

409.915 County contributions to Medicaid.—Although the state is responsible for the full portion of the state share of the matching funds required for the Medicaid program, in order to acquire a certain portion of these funds, the state shall charge the counties for certain items of care and service as provided in this section.

(1) Each county shall participate in the following items of care and service:

(a) Payments for inpatient hospitalization in excess of 12 days, but not in excess of 45 days, with the exception of pregnant women and children whose income is in excess of the federal poverty level and who do not participate in the Medicaid medically needy program.

(b) Payments for nursing home or intermediate facilities care in excess of $170 per month, with the exception of skilled nursing care for children under age 21.

(2) A county's participation must be 35 percent of the total cost of providing the items listed in subsection (1), except that the payments for items listed in paragraph (1)(b) may not exceed $55 per month per person.

(3) Each county shall set aside sufficient funds to pay for items of care and service provided to the county's eligible recipients for which county contributions are required, regardless of where in the state the care or service is rendered.

(4) Each county shall pay into the General Revenue Fund, unallocated, its pro rata share of the total county participation based upon statements rendered by the department in consultation with the counties.

(5) The Department of Banking and Finance shall withhold from the cigarette tax receipts or any other funds to be distributed to the counties the individual county share that has not been remitted within 60 days after billing.

(6) In any county in which a special taxing district or authority is located which will benefit from the medical assistance programs covered by this section, the board of county commissioners may divide the county's financial responsibility for this purpose proportionately, and each such district or authority must furnish its share to the board of county commissioners in time for the board to comply with the provisions of subsection (3). Any appeal of the proration made by the board of county commissioners must be made to the Department of Banking and Finance, which shall then set the proportionate share of each party.

Section 47. Effective July 1, 1991, section 409.916, Florida Statutes, is created to read:

409.916 Deposit of grants and rebates.—The department shall deposit any funds received from pharmaceutical manufacturers and all other funds received by the department from any other person as the result of a cost containment strategy, in the nature of a rebate, grant, or other similar mechanism into the Grants and Donations Trust Fund. Funds received from pharmaceutical manufacturers shall be used as the state portion for funding Medicaid prescribed drug services. However, at least $75,000 may be appropriated from the Grants and Donations Trust Fund for Medicaid research and development activities as specified in the General Appropriations Act.

Section 48. Effective upon this act becoming a law, section 409.2662, Florida Statutes, is renumbered as section 409.918, Florida Statutes, and amended to read:

409.918 ~~409.2662~~ Public Medical Assistance Trust Fund.—

~~(1)~~ It is declared that access to adequate health care is a right which should be available to all Floridians. However, rapidly increasing health care costs threaten to make such care unaffordable *for* ~~to~~ many citizens. The Legislature finds that unreimbursed health care services provided to persons who are unable to pay for such services cause the cost of services to paying patients to increase in a manner unrelated to the actual cost of services delivered. Further, the Legislature finds that inequities between hospitals in the provision of unreimbursed services prevent hospitals *that* ~~which~~ provide the bulk of such services from competing on an equitable economic basis with hospitals *that* ~~which~~ provide relatively little care to indigent persons. Therefore, it is the intent of the Legislature to provide a *method* ~~mechanism~~ for the funding *the provision* of health care services to indigent persons, the cost of which shall be borne by the state and by hospitals *that* ~~which~~ are granted the privilege of operating in this state.

(1)~~(2)~~ All moneys collected pursuant to s. 395.101 shall be deposited into the Public Medical Assistance Trust Fund, which is hereby created.

(2)~~(3)~~ There is hereby annually appropriated to the Public Medical Assistance Trust Fund $30 million from the General Revenue Fund.

(3)~~(4)~~ Moneys deposited into the Public Medical Assistance Trust Fund shall be used solely for the purposes *specified by law* ~~set out in s. 25, chapter 88-294, Laws of Florida, in s. 14, chapter 87-92, Laws of Florida, and in ss. 409.266(7), 409.2661, 409.2663, and 409.701 and as set forth in s. 3, chapter 89-355, Laws of Florida~~.

Section 49. Effective upon this act becoming a law, section 409.919, Florida Statutes, is created to read:

409.919 Rules.—The department shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.

Section 50. Effective October 1, 1991, section 409.920, Florida Statutes, is created to read:

409.920 Medicaid provider fraud.—

(1) For the purposes of this section, the term:

(a) "Fiscal agent" means any individual, firm, corporation, partnership, organization, or other legal entity that has contracted with the department to receive, process, and adjudicate claims under the Medicaid program.

(b) "Item or service" includes:

1. Any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment; or

2. In the case of a claim based on costs, any entry in the cost report, books of account, or other documents supporting such claim.

(c) "Knowingly" means done by a person who is aware or should be aware of the nature of his conduct and that his conduct is substantially certain to cause the intended result.

(2) Any person who:

(a) Knowingly makes, causes to be made, or aids and abets in the making of any false statement or false representation of a material fact, by commission or omission, in any claim submitted to the department or its fiscal agent for payment is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Knowingly makes, causes to be made, or aids and abets in the making of a claim for items or services that are not authorized to be reimbursed by the Medicaid program is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Knowingly charges, solicits, accepts, or receives anything of value, other than an authorized copayment from a Medicaid recipient, from any source in addition to the amount legally payable for an item or service provided to a Medicaid recipient under the Medicaid program or knowingly fails to credit the department or its fiscal agent for any payment received from a third-party source is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Knowingly makes or in any way causes to be made any false statement or false representation of a material fact, by commission or omission, in any document containing items of income and expense that is or may be used by the department to determine a general or specific rate of payment for an item or service provided by a provider is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Knowingly solicits, offers, pays, or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under the Medicaid program, or in return for obtaining, purchasing, leasing, ordering, or arranging for or recommending, obtaining, purchasing, leasing, or ordering any goods, facility, item, or service, for which payment may be made, in whole or in part, under the Medicaid program is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) Knowingly fails to bill, or attempt to collect from a Medicaid recipient an authorized copayment for a Medicaid service that requires a copayment in return for specific Medicaid reimbursement is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) Knowingly submits false or misleading information or statements to the Medicaid program for the purpose of being accepted as a Medicaid provider is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The repayment of Medicaid payments wrongfully obtained, or the offer or endeavor to repay Medicaid funds wrongfully obtained, does not constitute a defense to, or a ground for dismissal of, criminal charges brought under this section.

(4) All records in the custody of the department or its fiscal agent which relate to Medicaid provider fraud are business records within the meaning of s. 90.803(6).

(5) Proof that a claim was submitted to the department or its fiscal agent which contained a false statement or a false representation of a material fact, by commission or omission, unless satisfactorily explained, gives rise to an inference that the person whose signature appears as the provider's authorizing signature on the claim form, or whose signature appears on a department electronic claim submission agreement submitted for claims made to the fiscal agent by electronic means, had knowledge of the false statement or false representation. This subsection applies whether the signature appears on the claim form or the electronic claim submission agreement by means of handwriting, typewriting, facsimile signature stamp, computer impulse, initials, or otherwise.

(6) Proof of submission to the department or its fiscal agent of a document containing items of income and expense, which document is used or that may be used by the department or its fiscal agent to determine a general or specific rate of payment and which document contains a false statement or a false representation of a material fact, by commission or omission, unless satisfactorily explained, gives rise to the inference that the person who signed the certification of the document had knowledge of the false statement or representation. This subsection applies whether the signature appears on the document by means of handwriting, typewriting, facsimile signature stamp, electronic transmission, initials, or otherwise.

(7) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (2) is guilty of a misdemeanor of the first degree and is punishable as if he had actually committed such prohibited act. This subsection does not prohibit separate convictions and sentences for a violation of this subsection and a violation of any other provision of this section.

(8) A criminal action or proceeding under this section may be commenced at any time within 5 years after the cause of action accrues.

(9) The Auditor General shall conduct a statewide program of Medicaid fraud control. To accomplish this purpose, the Auditor General shall:

(a) Investigate the possible criminal violation of any applicable state law pertaining to fraud in the administration of the Medicaid program, in the provision of medical assistance, or in the activities of providers of health care under the Medicaid program.

(b) Investigate the alleged abuse or neglect of patients in health care facilities receiving payments under the Medicaid program, in coordination with the department.

(c) Investigate the alleged misappropriation of patients' private funds in health care facilities receiving payments under the Medicaid program.

(d) Refer to the appropriate state attorney all violations indicating a substantial potential for criminal prosecution.

(e) Refer to the department all suspected abusive activities not of a criminal nature.

(f) Refer to the department for collection each instance of overpayment to a provider of health care under the Medicaid program which he discovers during the course of an investigation.

(g) Safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records for any reason beyond the scope of a specific investigation for fraud or abuse, or both, without the patient's written consent.

(10) In carrying out his duties and responsibilities under this section, the Auditor General may:

(a) Enter upon the premises of any health care provider, excluding a physician, participating in the Medicaid program to examine all accounts and records that may, in any manner, be relevant in determining the existence of fraud in the Medicaid program, to investigate alleged abuse or neglect of patients, or to investigate alleged misappropriation of patients' private funds. A participating physician is required to make available any accounts or records that may, in any manner, be relevant in determining the existence of fraud in the Medicaid program. The accounts or records of a non-Medicaid patient may not be reviewed by, or turned over, to the Auditor General without the patient's written consent.

(b) Subpoena witnesses or materials within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings.

Section 51. There is hereby created within the Executive Office of the Governor the Task Force on County Contributions to Medicaid. The task force shall be composed of the following 11 members:

(1)(a) The Secretary of Health and Rehabilitative Services or his designee.

(b) Four members to be appointed by the Governor.

(c) Five members to be appointed by the Florida Association of Counties, who shall each represent a different county.

(d) The Comptroller or his designee.

(2) The task force shall study the current method for county Medicaid billing, as required by s. 409.915, Florida Statutes, shall prepare recommendations regarding the adequacy of these current procedures, and shall propose any revisions necessary to facilitate prompt payment and to assist counties in budgeting for this expense. A report containing the findings and recommendations of the task force shall be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Governor on or before February 1, 1992.

Section 52. The Department of Health and Rehabilitative Services is directed to conduct a study of Florida's Medicaid reimbursement to pharmacy providers and prepare a report with recommendations on the adequacy of reimbursement for pharmaceutical ingredients and for the dispensing of prescriptions. The department shall consult with and secure the participation of the Florida Pharmacy Association in regard to the development of its recommendations. The department shall, by December 15, 1991, submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 53. Paragraph (d) of subsection (3) of section 110.123, Florida Statutes, 1990 Supplement, is amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(d)1. A person eligible to participate in the state group health insurance plan may be authorized by rules adopted by the Department of Administration, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization plan which is under contract with the state in accordance with criteria established by this section and by said rules. The offer of optional membership in a health maintenance organization plan permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of state and federal laws.

2. The Department of Administration shall contract with health maintenance organizations to participate in the state group insurance program through a request for proposal based upon a premium and a minimum benefit package as follows:

a. The department shall establish a minimum benefit package to be provided by a participating HMO which shall include: physician services; inpatient and outpatient hospital services; emergency medical services, including out-of-area emergency coverage; diagnostic laboratory and diagnostic and therapeutic radiologic services; mental health, alcohol, and chemical dependency treatment services meeting the minimum requirements of state and federal law; skilled nursing facilities and services; prescription drugs; and other benefits as may be required by the department. Additional services may be provided subject to the contract between the department and the HMO.

b. The department may establish a uniform schedule for deductibles and copayments for all participating HMOs.

c. Based upon the minimum benefit package and copayments and deductibles contained in sub-subparagraphs a. and b., the department shall issue a request for proposal for all HMOs which are interested in participating in the state group insurance program. Upon receipt of all proposals, the department may, as it deems appropriate, enter into contract negotiations with HMOs submitting bids. As part of the request for proposal process, the department may require detailed financial data from each HMO which participates in the bidding process for the purpose of determining the financial stability of the HMO.

d. In determining which HMOs to contract with, the department shall, at a minimum, consider: each proposed contractor's previous experience and expertise in providing prepaid health benefits; each proposed contractor's historical experience in enrolling and providing health care services to participants in the state group insurance program; the cost of the premiums; the plan's ability to adequately provide service coverage and administrative support services as determined by the department; plan benefits in addition to the minimum benefit package; accessibility to providers; and the financial solvency of the plan. Nothing shall preclude the department from negotiating regional or statewide contracts with health maintenance organization plans when this is cost-effective and when the department determines the plan has the best overall benefit package for the service areas involved. However, no HMO shall be eligible for a contract if the HMO's retiree Medicare premium exceeds the retiree rate as set by the department for the state group health insurance plan.

e. The department may limit the number of HMOs that it contracts with in each service area based on the nature of the bids it receives, the number of state employees in the service area, and any unique geographical characteristics of the service area. The department shall establish by rule service areas throughout the state.

f. All persons participating in the state group insurance program who are required to contribute towards a total state group health premium shall be subject to the same dollar contribution regardless of whether the enrollee enrolls in the state group health insurance plan or in an HMO plan.

3. The department is authorized to negotiate and contract with specialty psychiatric hospitals for mental health benefits, on a regional basis, for alcohol, drug abuse, and mental and nervous disorders. The department may establish, subject to legislative approval pursuant to subsection (5), any such regional plan upon completion of an actuarial study to determine any impact on plan benefits and premiums. A report shall be submitted to the Legislature by February 1, 1990, regarding establishment of any regional plan and its effect on the State Group Health Trust Fund.

4. In addition to contracting pursuant to subparagraph 2., the department shall enter into contract with any HMO to participate in the state group insurance program which:

a. Serves greater than 5,000 recipients on a prepaid basis under *the Medicaid program* ~~s. 409.266~~;

b. Does not currently meet the 25 percent non-Medicare/non-Medicaid enrollment composition requirement established by the Department of Health and Human Services excluding participants enrolled in the state group insurance program;

c. Meets the minimum benefit package and copayments and deductibles contained in sub-subparagraphs 2.a. and b.;

d. Is willing to participate in the state group insurance program at a cost of premiums that is not greater than 95 percent of the cost of HMO premiums accepted by the department in each service area; and

e. Meets the minimum surplus requirements of s. 641.225.

The department is authorized to contract with HMOs that meet the requirements of sub-subparagraphs a. through d. prior to the open enrollment period for state employees. The department is not required to renew the contract with the HMOs as set forth in this paragraph more than twice. Thereafter, the HMOs shall be eligible to participate in the state group insurance program only through the request for proposal process described in subparagraph 2.

5. All enrollees in the state group health insurance plan or any health maintenance organization plan shall have the option of changing to any other health plan which is offered by the state within any open enrollment period designated by the department. Open enrollment shall be held at least once each calendar year.

6. Any HMO participating in the state group insurance program shall, upon the request of the department, submit to the department standardized data for the purpose of comparison of the appropriateness, quality, and efficiency of care provided by the HMO. Such standardized data shall include: membership profiles; inpatient and outpatient utilization by age and sex, type of service, provider type, and facility; and emergency care experience. Requirements and timetables for submission of such standardized data and such other data as the department deems necessary to evaluate the performance of participating HMOs shall be promulgated by rule.

Section 54. Subsection (1) of section 154.011, Florida Statutes, is amended to read:

154.011 Primary care services.—

(1) It is the intent of the Legislature that all 67 counties offer primary care services through contracts, as required by s. 154.01(3), for Medicaid recipients and other qualified low-income persons. Therefore, beginning July 1, 1987, the Department of Health and Rehabilitative Services is directed, to the extent that funds are appropriated, to develop a plan to implement a program in cooperation with each county. The department shall coordinate with the county's primary care panel, as created by s. 154.013, or with the county's governing body if no primary care panel is appointed. Such primary care programs shall be phased-in and made operational as additional resources are appropriated ~~pursuant to s. 409.266(7)(c)~~, and shall be subject to the following:

(a) The department shall enter into contracts with the county governing body for the purpose of expanding primary care coverage. The county governing body shall have the option of organizing the primary care programs through county public health units or through county public hospitals owned and operated directly by the county. The department shall, as its first priority, maximize the number of counties participating in the primary care programs under this section, but shall establish priorities for funding based on need and the willingness of counties to participate. The department shall select counties for programs through a formal request-for-proposal process that requires compliance with program standards for cost-effective quality care and seeks to maximize access throughout the county.

(b) Each county's primary care program may utilize any or all of the following options of providing services: offering services directly through the county public health units; contracting with individual or group practitioners for all or part of the service; or developing service delivery models which are organized through the county public health units but which utilize other service or delivery systems available, such as federal primary care programs or prepaid health plans. In addition, counties shall have the option of pooling resources and joining with neighboring counties in order to fulfill the intent of this section.

(c) Each primary care program shall conform to the requirements and specifications of the department, and shall at a minimum:

1. Adopt a minimum eligibility standard of at least 100 percent of the federal nonfarm poverty level.

2. Provide a comprehensive mix of preventive and illness care services.

3. Be family oriented and be easily accessible regardless of income, physical status, or geographical location.

4. Ensure 24-hour telephone access and offer evening and weekend clinic services.

5. Offer continuity of care over time.

6. Make maximum use of existing providers and closely coordinate its services and funding with existing federal primary care programs, especially in rural counties, to ensure efficient use of resources.

7. Have a sliding fee schedule based on income for eligible persons above 100 percent of the federal nonfarm poverty level.

8. Include quality assurance provisions and procedures for evaluation.

9. Provide early periodic screening diagnostic and treatment services for Medicaid-eligible children.

10. Fully utilize and coordinate with rural hospitals for outpatient services, including contracting for services when advisable in terms of cost-effectiveness and feasibility.

Section 55. Subsection (7) of section 394.4787, Florida Statutes, 1990 Supplement, is amended to read:

394.4787 Definitions.—As used in this act:

(7) "PMATF" means the Public Medical Assistance Trust Fund ~~as created in s. 409.2662~~.

Section 56. Subsection (2) of section 395.01465, Florida Statutes, 1990 Supplement, is amended to read:

395.01465 Emergency care hospitals.—

(2) For the purpose of Medicaid swing-bed reimbursement pursuant to *the Medicaid program* ~~s. 409.266(19)~~, the department shall treat emergency care hospitals in the same manner as hospitals defined in s. 395.102(2).

Section 57. Paragraph (b) of subsection (1) of section 400.126, Florida Statutes, is amended to read:

400.126 Receivership proceedings.—

(1) As an alternative to or in conjunction with an injunctive proceeding, the department may petition a court of competent jurisdiction for the appointment of a receiver, when any of the following conditions exist:

(b) The licensee is closing the facility or has informed the department that it intends to close the facility and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility. However, the failure on the part of the department, after receiving notice of the closing of a facility that is certified to provide services under Title XIX of the Social Security Act, a minimum of 90 days prior to the closing date, to make adequate arrangement for relocating those residents who are receiving assistance under *the Medicaid program* ~~s. 409.266~~ shall in and of itself not be grounds to petition for the appointment of a receiver. Under these circumstances, if a facility remains open beyond the closing date, the department shall reimburse the facility for all costs incurred, up to the cap, for those residents who are receiving assistance under *the Medicaid program* ~~s. 409.266~~, provided the facility continues to be licensed pursuant to this part and certified to provide services under Title XIX of the Social Security Act.

Section 58. Subsection (1) of section 400.18, Florida Statutes, is amended to read:

400.18 Closing of nursing facility.—

(1) Whenever a licensee voluntarily discontinues operation, and during the period when it is preparing for such discontinuance, it shall inform the department not less than 90 days prior to the discontinuance of operation. The licensee also shall inform the resident or the next of kin, legal representative, or agency acting on behalf of the resident of the fact, and the proposed time, of such discontinuance and give at least 90 days' notice so that suitable arrangements may be made for the transfer and care of the resident. In the event any resident has no such person to represent him, the licensee shall be responsible for securing a suitable transfer of the resident before the discontinuance of operation. The department shall be responsible for arranging for the transfer of those residents requiring transfer who are receiving assistance under *the Medicaid program* ~~s. 409.266~~.

Section 59. Section 400.332, Florida Statutes, is amended to read:

400.332 Funds received not revenues for purpose of *Medicaid* ~~medical assistance~~ program.—Any funds received by a nursing home in connection with its participation in the geriatric outpatient nurse clinic program shall not be considered as revenues for purposes of cost reports under the *Medicaid* ~~medical assistance~~ program ~~as set forth in s. 409.266~~.

Section 60. Subsection (2) of section 407.51, Florida Statutes, is amended to read:

407.51 Exceeding approved budget or previous year's actual experience by more than maximum rate of increase; allowing or authorizing operating revenue or expenditures to exceed amount in approved budget; penalties.—

(2) Penalties shall be assessed as follows:

(a) For the first occurrence within a 5-year period, the board shall prospectively reduce the current budget of the hospital by the amount of the excess up to 5 percent; and, if such excess is greater than 5 percent over the maximum allowable rate of increase, any amount in excess of 5 percent shall be levied by the board as a fine against such hospital to be deposited in the Public Medical Assistance Trust Fund~~, as created in s. 409.2662~~.

(b) For the second occurrence within the 5-year period following the first occurrence as set forth in paragraph (a), the board shall prospectively reduce the current budget of the hospital by the amount of the excess up to 2 percent; and, if such excess is greater than 2 percent over the maximum allowable rate of increase, any amount in excess of 2 percent shall be levied by the board as a fine against such hospital to be deposited in the Public Medical Assistance Trust Fund.

(c) For the third occurrence within the 5-year period following the first occurrence as set forth in paragraph (a), the board shall:

1. Levy a fine against the hospital in the total amount of the excess to be deposited in the Public Medical Assistance Trust Fund.

2. Notify the Department of Health and Rehabilitative Services of the violation, whereupon the department shall not accept any application for a certificate of need pursuant to ss. 381.701-381.7155 from or on behalf of such hospital until such time as the hospital has demonstrated to the satisfaction of the board that, following the date the penalty was imposed under subparagraph 1., the hospital has stayed within its projected or amended budget or its applicable maximum allowable rate of increase for a period of at least 1 year. However, this provision does not apply with respect to a certificate-of-need application filed to satisfy a life or safety code violation.

3. Upon a determination that the hospital knowingly and willfully generated such excess, notify the Department of Health and Rehabilitative Services, whereupon the department shall initiate disciplinary proceedings to deny, modify, suspend, or revoke the license of such hospital or impose an administrative fine on such hospital not to exceed $20,000.

The determination of the amount of any such excess shall be based upon net revenues per adjusted admission excluding funds distributed to the hospital *from the Public Medical Assistance Trust Fund* ~~pursuant to s. 409.266(7) or s. 409.2663~~. However, in making such determination, the board shall appropriately reduce the amount of the excess by the total amount of the assessment paid by such hospital pursuant to s. 395.101 minus the amount of revenues received by the hospital through the *Public Medical Assistance Trust Fund* ~~operation of s. 409.266(7) or s. 409.2663~~. It is the responsibility of the hospital to demonstrate to the satisfaction of the board its entitlement to such reduction. It is the intent of the Legislature that the Health Care Cost Containment Board, in levying any penalty imposed against a hospital for exceeding its maximum allowable rate of increase or its approved budget pursuant to this subsection, consider the effect of changes in the case mix of the hospital. It is the responsibility of the hospital to demonstrate to the satisfaction of the board any change in its case mix. For psychiatric hospitals, the board shall also reduce the amount of excess by utilizing as a proxy for case mix the change in a hospital's audited actual average length of stay as compared to the previous year's audited actual average length of stay without any thresholds or limitations.

Section 61. Paragraph (c) of subsection (6) of section 409.2673, Florida Statutes, 1990 Supplement, is amended to read:

409.2673 Shared county and state health care program for low-income persons; trust fund.—

(6)

(c) The state's portion of the funding shall be made available from the Public Medical Assistance Trust Fund~~, created under s. 409.2662, or from other funds appropriated by the Legislature~~.

Section 62. Subsection (10) of section 409.345, Florida Statutes, is amended to read:

409.345 Public assistance payments to constitute debt of recipient.—

(10) PUBLIC ASSISTANCE.—For the purposes of this section, the term "public assistance" *includes* ~~shall include~~ all money payments made to or on behalf of a recipient, including, but not limited to, assistance received under ss. 409.235 *and*~~,~~ 409.255, *the Medicaid program,* ~~and 409.266~~ and mandatory and optional supplement payments under the Social Security Act.

Section 63. Paragraph (d) of subsection (5) of section 409.701, Florida Statutes, 1990 Supplement, is amended to read:

409.701 The Florida Small Business Health Access Corporation Act.—

(5) LICENSING, FISCAL OPERATION.—

(d) The corporation may expend funds through direct reinsurance, by purchasing reinsurance, or by other means approved by the board for the program of health care services and benefits arranged through the corporation. The amount of such expenditure shall not exceed funds allocated from the Public Medical Assistance Trust Fund ~~as provided in s. 409.2662(4)~~ or other sources of funding arranged by the corporation. Notwithstanding the provisions of s. 216.301, any amount so provided, which is not annually required for such purposes, shall remain available to the corporation, to be supplemented by an annual amount equal to the amount expended in the prior year, for the purpose of meeting funding requirements in succeeding years. Any amount remaining upon the liquidation or dissolution of the corporation shall be returned to the Public Medical Assistance Trust Fund.

Section 64. Section 410.036, Florida Statutes, is amended to read:

410.036 Eligibility for services.—Criteria for determining eligibility for this program shall be the same as criteria used to determine eligibility for assistance under Title XVI of the Social Security Act, as the same exists on July 1, 1977, or shall be the same as financial criteria used to determine eligibility for nursing home care under *the Medicaid program* ~~s. 409.266~~.

Section 65. Paragraph (a) of subsection (9) of section 624.424, Florida Statutes, 1990 Supplement, is amended to read:

624.424 Annual statement and other information.—

(9)(a) Each authorized insurer shall, pursuant to *s. 409.910(21)* ~~s. 409.2665(22)~~, provide records and information to the Department of Health and Rehabilitative Services to identify potential insurance coverage for claims filed with that department and its fiscal agents for payment of medical services under *the Medicaid program* ~~s. 409.266~~.

Section 66. Subsection (4) of section 627.736, Florida Statutes, 1990 Supplement, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(4) BENEFITS; WHEN DUE.—Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Department of Health and Rehabilitative Services provides, pays, or becomes liable for medical assistance under *the* Medicaid *program* ~~pursuant to chapter 409,~~ related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of *the Medicaid program* ~~s. 409.2665~~.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.7405.

(b) Personal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. However, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of 10 percent per year.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state, but within the United States of America or its territories or possessions or Canada, by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405; or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person, the maximum payable shall be as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(f) Medical payments insurance, if available in a policy of motor vehicle insurance, shall pay the portion of any claim for personal injury protection medical benefits which is otherwise covered but is not payable due to the coinsurance provision of paragraph (1)(a), regardless of whether the full amount of personal injury protection coverage has been exhausted. The benefits shall not be payable for the amount of any deductible which has been selected.

Section 67. Section 631.813, Florida Statutes, is amended to read:

631.813 Application of part.—This part shall apply to HMO contractual obligations to residents of Florida by HMOs possessing a valid certificate of authority issued by the Florida Department of Insurance as provided by part II of chapter 641. The provisions of this part shall not apply to persons participating in medical assistance programs *under the Medicaid program* ~~created pursuant to s. 409.266~~.

Section 68. Subsection (1) of section 641.261, Florida Statutes, 1990 Supplement, is amended to read:

641.261 Other reporting requirements.—

(1) Each authorized health maintenance organization shall provide records and information to the Department of Health and Rehabilitative Services pursuant to *s. 409.910(21)* ~~s. 409.2665(22)~~ for the sole purpose of identifying potential coverage for claims filed with the Department of Health and Rehabilitative Services and its fiscal agents for payment of medical services under *the Medicaid program* ~~s. 409.266~~.

Section 69. Subsection (14) of section 641.31, Florida Statutes, 1990 Supplement, is amended to read:

641.31 Health maintenance contracts.—

(14) Whenever a subscriber of a health maintenance organization is also a Medicaid recipient, the health maintenance organization's coverage shall be primary to the recipient's Medicaid benefits and the organization shall be a third party subject to the provisions of *s. 409.910(4)* ~~s. 409.2665~~.

Section 70. Subsection (1) of section 641.411, Florida Statutes, 1990 Supplement, is amended to read:

641.411 Other reporting requirements.—

(1) Each prepaid health clinic shall provide records and information to the Department of Health and Rehabilitative Services pursuant to *s. 409.910(21)* ~~s. 409.2665(22)~~ for the sole purpose of identifying potential coverage for claims filed with the Department of Health and Rehabilitative Services and its fiscal agents for payment of medical services under *the Medicaid program* ~~s. 409.266~~.

Section 71. Paragraph (b) of subsection (2) of section 768.73, Florida Statutes, is amended to read:

768.73 Punitive damages; limitation.—

(2) In any civil action, an award of punitive damages shall be payable as follows:

(b) If the cause of action was based on personal injury or wrongful death, 60 percent of the award shall be payable to the Public Medical Assistance Trust Fund ~~created in s. 409.2662~~; otherwise, 60 percent of the award shall be payable to the General Revenue Fund.

Section 72. Effective October 1, 1991, subsection (1) of section 895.02, Florida Statutes, 1990 Supplement, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 403.727(3)(b), relating to environmental control.

3. Section 409.325, relating to public assistance fraud.

4. Section 409.920, relating to Medicaid provider fraud.

5.~~4.~~ Chapter 517, relating to sale of securities and investor protection.

6.~~5.~~ Section 550.24, s. 550.35, or s. 550.36, relating to dogracing, horseracing, and jai alai frontons.

7.~~6.~~ Section 551.09, relating to jai alai frontons.

8.~~7.~~ Chapter 552, relating to the manufacture, distribution, and use of explosives.

9.~~8.~~ Chapter 562, relating to beverage law enforcement.

10.~~9.~~ Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

11.~~10.~~ Chapter 687, relating to interest and usurious practices.

12.~~11.~~ Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.

13.~~12.~~ Chapter 782, relating to homicide.

14.~~13.~~ Chapter 784, relating to assault and battery.

15.~~14.~~ Chapter 787, relating to kidnapping.

16.~~15.~~ Chapter 790, relating to weapons and firearms.

17.~~16.~~ Section 796.01, s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

18.~~17.~~ Chapter 806, relating to arson.

19.~~18.~~ Chapter 812, relating to theft, robbery, and related crimes.

20.~~19.~~ Chapter 815, relating to computer-related crimes.

21.~~20.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

22.~~21.~~ Section 827.071, relating to commercial sexual exploitation of children.

23.~~22.~~ Chapter 831, relating to forgery and counterfeiting.

24.~~23.~~ Chapter 832, relating to issuance of worthless checks and drafts.

25.~~24.~~ Section 836.05, relating to extortion.

26.~~25.~~ Chapter 837, relating to perjury.

27.~~26.~~ Chapter 838, relating to bribery and misuse of public office.

28.~~27.~~ Chapter 843, relating to obstruction of justice.

29.~~28.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

30.~~29.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

31.~~30.~~ Chapter 893, relating to drug abuse prevention and control.

32.~~31.~~ Chapter 896, relating to offenses related to financial transactions.

33.~~32.~~ Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.

34.~~33.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1).

Section 73. For the purpose of incorporating the amendment to section 895.02, Florida Statutes, 1990 Supplement, in references thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, is reenacted to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency; when required; purpose; definitions; penalties.—

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

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 74. For the purpose of incorporating the amendment to section 895.02, Florida Statutes, 1990 Supplement, in references thereto, paragraph (g) of subsection (1) of section 896.101, Florida Statutes, 1990 Supplement, is reenacted to read:

896.101 Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.—

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

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 75. Any diagnosis-specific supplemental funding to nursing homes shall not operate to prevent or create a disincentive for an otherwise terminally ill individual residing in a nursing home from electing the Medicare or Medicaid hospice benefits.

Section 76. Rules adopted by the Department of Health and Rehabilitative Services prior to October 1, 1991, under the authority of any statutory provision amended or repealed by this part shall remain in effect and shall be administered by the department until the department adopts rules that supersede those rules.

Section 77. Section 21 of chapter 89-275, Laws of Florida; subsection (3) of section 400.23, Florida Statutes, as amended by section 1 of chapter 90-125, Laws of Florida; section 409.266, Florida Statutes, as amended by section 5 of chapter 90-232, Laws of Florida, section 10 of chapter 90-284, Laws of Florida, sections 17 and 34 of chapter 90-295, Laws of Florida, and section 6 of chapter 90-341, Laws of Florida; and sections 409.2663, 409.2664, 409.2666, 409.2667, 409.267, 409.2671, and 409.268, Florida Statutes, are hereby repealed.

Section 78. Effective upon this act becoming a law, subsections (2), (3), (5), (6), (8), and (13) of section 395.0335, Florida Statutes, 1990 Supplement, are amended to read:

395.0335 Selection of *state-approved* ~~state-sponsored~~ trauma centers.—

(2)(a) By September 1, 1990, the department shall notify each acute care general hospital in the state that the department is accepting letters of intent from hospitals which are interested in becoming state-sponsored trauma centers. In order to be considered by the department, letters of intent must be postmarked no later than midnight October 1, 1990.

(b) By October 15, 1990, the department shall send to all hospitals which submitted a letter of intent an application package which will provide the hospitals with instructions for submitting information to the department for selection as a state-sponsored trauma center. The standards for verification of trauma centers and pediatric trauma referral centers provided for in s. 395.031(5), as adopted by rule of the department, shall serve as the basis for these instructions.

(c) Those hospitals which have been verified trauma centers since December 1, 1989, shall have their current verification period extended to May 1, 1991.

(d) In order to be considered by the department, applications from those hospitals seeking selection as state-sponsored trauma centers, including those current verified trauma centers which seek to be state-sponsored trauma centers, must be received by the department no later than the close of business on April 1, 1991. The department shall conduct a preliminary review of each application for the purpose of determining that the hospital's application is complete and that the hospital has the critical elements to become a state-sponsored trauma center. This critical review will be based on trauma center verification standards and shall include, but not be limited to, a review of whether the hospital has:

1. Equipment and physical facilities necessary to provide trauma services.

2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.

3. An effective quality assurance process.

(e)1. Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all requirements as provided in paragraph (d) at the time of application if the number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department. An applicant that is granted additional time pursuant to this paragraph shall submit a plan for departmental approval, which includes timelines and activities, that the applicant proposes to complete in order to meet application requirements. Any applicant that demonstrates an ongoing effort to complete the activities within the timelines outlined in the plan shall be included in the number of state-sponsored trauma centers at such time that the department has conducted a preliminary review of the application and has determined that the application is complete and that the hospital has the critical elements to become a state-sponsored trauma center.

2. Timeframes provided in this section shall be stayed until the department determines that the application is complete and that the hospital has the critical elements to become a state-sponsored trauma center.

(3) After April 30, 1991, and until *state-approved* ~~state-sponsored~~ trauma centers are selected, any hospital which submitted an application found acceptable by the department based on preliminary review, *including all trauma centers verified as of December 1, 1989,* shall be eligible to operate as a provisional *state-approved* ~~state-sponsored~~ trauma center. A hospital with an application found to be unacceptable by the department shall be given opportunity to provide additional information or clarification, but shall not be included within the timeframes outlined in subsections (1)-(8).

(5) Beginning October 1, 1991, and ending no later than June 1, 1992, a review team of out-of-state experts assembled by the department shall make onsite visits to all provisional *state-approved* ~~state-sponsored~~ trauma centers. The department shall develop a survey instrument to be used by the expert team of reviewers. The instrument shall include objective criteria and guidelines for reviewers based on existing trauma center and pediatric trauma referral center verification standards such that all trauma centers and pediatric trauma referral centers are assessed equally. The survey instrument shall also include a uniform rating system which will be used by reviewers to indicate the degree of compliance of each center with specific standards, and to indicate the quality of care provided by each center as determined through an audit of patient charts. In addition, hospitals being considered as provisional *state-approved* ~~state-sponsored~~ trauma centers shall meet all the requirements of a verified trauma center or pediatric trauma referral center, and shall be located in a trauma service area which has a need for such a center.

(6) Based on recommendations from the review team, the department shall select *state-approved* ~~state-sponsored~~ trauma centers by July 1, 1992. Each *state-approved* ~~state-sponsored~~ trauma center shall be

granted a 7-year verification period during which time it must continue to maintain trauma center verification standards and acceptable patient outcomes as determined by department rule. A verification, unless sooner suspended or revoked, automatically expires 7 years after the date of issuance and is renewable upon application for renewal as prescribed by rule of the department. After July 1, 1992, only those hospitals selected as *state-approved* ~~state-sponsored~~ trauma centers may operate as trauma centers.

(8) Notwithstanding any provision of chapter 381, a hospital licensed under this chapter which operates a *state-approved* ~~state-sponsored~~ trauma center may not terminate or substantially reduce the availability of trauma service without providing at least 6 months' notice of its intent to terminate such service. Such notice shall be given to the Department of Health and Rehabilitative Services and to all *state-approved* ~~state-sponsored~~ trauma centers, hospitals, and emergency medical services providers in the trauma service area.

(13) The department is authorized to adopt, by rule, the procedures and process by which it will select *state-approved* ~~state-sponsored~~ trauma centers in situations other than those provided for in the initial process outlined in subsections (1)-(8). Such procedures and process shall be used in selecting *state-approved* ~~state-sponsored~~ trauma centers after the dates specified in subsections (1)-(8) and shall be consistent with subsections (1)-(8) in terms of timeframes and guidelines except in those situations in which it is in the best interest of, and mutually agreed to by, all applicants within a service area and the department to reduce the timeframes.

Section 79. Effective upon this act becoming a law, section 395.034, Florida Statutes, 1990 Supplement, is amended to read:

395.034 Reimbursement of state-sponsored trauma centers.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that many hospitals which provide services to trauma victims are not adequately compensated for such treatment. The Legislature also recognizes that the current verified trauma centers are providing such services without adequate reimbursement. Therefore, it is the intent of the Legislature to provide financial support to the current verified trauma centers and to establish a system of state-sponsored trauma centers as soon as feasibly possible. It is also the intent of the Legislature that this system of state-sponsored trauma centers be assisted financially based on the volume and acuity of uncompensated trauma care provided.

(2) DEFINITIONS.—As used in this section:

(a) "Board" means the Health Care Cost Containment Board.

(b) "Charity care" or "uncompensated charity care" means that portion of hospital charges reported to the department for which there is no compensation for care provided to a patient whose family income for the 12 months preceding the determination is less than or equal to 150 percent of the federal ~~nonfarm~~ poverty level, unless the amount of hospital charges due from the patient exceeds 25 percent of the annual family income. However, in no case shall the hospital charges for a patient whose family income exceeds 4 times the federal ~~nonfarm~~ poverty level for a family of four be considered charity.

(c) "Department" means the Department of Health and Rehabilitative Services.

(d) "Hospital" means a health care institution as defined in s. 395.002(6).

(e) "State-approved trauma center" means a hospital that has successfully completed the state-approved selection process pursuant to s. 395.0335 and has been approved by the department to operate as a trauma center in the state.

(f)~~(e)~~ "State-sponsored trauma center" means a *state-approved* ~~verified~~ trauma center *which receives* ~~selected by the department to receive~~ state funding ~~pursuant to s. 395.0335,~~ for ~~the purpose of furnishing~~ trauma care services.

(3) *All* provisional and *state-approved* ~~permanent state-sponsored~~ trauma centers *shall be considered state-sponsored trauma centers when state funds are specifically appropriated for state-sponsored trauma centers in the General Appropriations Act* ~~are eligible for state funding under this section~~.

(4) To receive state funding, a state-sponsored trauma center shall submit *a claim electronically via the Trauma Claims Processing System, designed, developed, implemented, and operated by the department's Medicaid program,* ~~a completed standard hospital claim form~~ to the department's Medicaid program upon discharge of a trauma patient. *When a hospital stay spans a state fiscal year, a separate hospital claim shall be submitted for the hospital days incurred in each fiscal year.*

(5)(a) State-sponsored trauma centers shall determine each trauma patient's eligibility for state funding prior to the submission of a claim.

(b) A trauma patient treated must meet the definition of charity care, have been designated as having an ISS score of 9 or greater, and have *received services that are medically necessary from* ~~been treated at~~ a state-sponsored trauma center in order for the state-sponsored trauma center to receive state funding for that patient.

(c) Each state-sponsored trauma center shall retain appropriate documentation showing a trauma patient's eligibility for state funding. Documentation recognized by the department as appropriate shall be limited to one of the following:

1. W-2 withholding forms.

2. Payroll stubs.

3. Income tax returns.

4. Forms approving or denying unemployment compensation or workers' compensation.

5. Written verification of wages from employer.

6. Written verification from public welfare agencies or any other governmental agency which can attest to the patient's income status for the past 12 months.

7. A witnessed statement signed by the patient or responsible party, as provided for in Pub. L. No. 79-725, as amended, known as the Hill-Burton Act, except that such statement need not be obtained within 48 hours of the patient's admission to the hospital as required by the Hill-Burton Act. The statement shall include acknowledgment that, in accordance with s. 817.50, providing false information to defraud a hospital for the purposes of obtaining goods or services is a misdemeanor of the second degree.

(d) The department shall conduct an audit or shall contract with an independent party to conduct an audit of each state-sponsored trauma center's claims to ensure that state funding was only provided for eligible trauma patients *and medically necessary services.*

(e) The *department's Medicaid program office* ~~fiscal agent~~ shall check each claim to confirm that the patient is not covered under the Medicaid program and shall pay the claim out of the Trauma Services Trust Fund. *Trauma patients who are eligible for the Medicaid program shall not be considered eligible for the state-sponsored trauma center program except for Medicaid noncovered services. If a claim is denied by the Trauma Claims Processing System as a result of Medicaid eligibility for Medicaid covered services, the hospital shall submit a claim to the Medicaid fiscal agent for payment.* ~~If the patient is eligible for Medicaid the claim shall be submitted for processing as a Medicaid claim.~~

(6) Effective October 1, 1990, state funding shall be at a per diem rate equal to $860.00 *to provisional state-approved and state-approved trauma centers.* This rate shall remain in effect until July 1, 1991, at which time payment to provisional *state-approved* and state-approved ~~state-sponsored~~ trauma centers shall be based on a trauma cost-based reimbursement methodology developed by the Department of Health and Rehabilitative Services. The department shall consult with representatives from the hospital industry including the Florida Hospital Association, the Association of Voluntary Hospitals of Florida, and the Florida League of Hospitals in the development of the reimbursement methodology.

(7)(a) To ensure a fair distribution of funds appropriated for state-sponsored trauma centers and to ensure that no state-sponsored trauma center gains an unfair advantage due solely to its ability to bill more quickly than another state-sponsored trauma center, the total amount of state funds appropriated *in the General Appropriations Act for* ~~under~~ this section shall be divided into 19 trauma fund accounts with an account for each service area established in s. 395.033(3). The amount of funds distributed to a service area shall be based on the following formula:

$$SAAA = \frac{SATD}{TTD} \times TA$$

where:

SAAA = service area appropriation amount.

SATD = *uncompensated* service area trauma days with ISS score of 9 or greater.

TTD = *uncompensated* total trauma days with ISS score of 9 or greater for all 19 service areas.

TA = total dollars appropriated for state-sponsored trauma centers.

(b) The data base to be used for this calculation shall be the detailed patient discharge data of the *most recently completed calendar year for which the* Health Care Cost Containment Board possesses data. *Out-of-state days that are included in the data base shall be allocated to the service area where the treating hospital is located.*

(c) Fifty percent of the funds allocated to those service areas which had one or more trauma centers as of December 1, 1989, shall be distributed to those verified trauma centers proportionately based on volume and acuity of uncompensated trauma care provided during *the most recently completed calendar year for which the Health Care Cost Containment Board possesses data* ~~calendar year 1988~~ in a lump sum payment on October 1, 1990. These trauma centers shall submit claims pursuant to subsection (4) in order to justify this funding. By June 30, 1991, any trauma center which fails to submit claims for reimbursement equal to or greater than the amount the trauma center received under the initial allocation shall return any unearned funds to the department for distribution pursuant to paragraph *(e)* ~~(d)~~. Once this 50-percent lump sum is depleted, a trauma center will be reimbursed from the remaining 50 percent of the service area's original allocation.

(d) The department shall pay trauma claims on a monthly basis. In a given month when the outstanding claims will exceed the unexpended funds allocated to a service area, the department shall pay all of the submitted claims for the service area on a pro rata basis.

(e)~~(d)~~ At the end of the fiscal year, the unexpended funds for each service area shall be placed in one large state trauma account from which all remaining claims are paid without regard to service area on a pro rata basis until such funds are depleted.

(f) For *any* ~~the~~ state fiscal year ~~1990-1991~~, reimbursement for any patient residing outside the trauma service area of the state-sponsored trauma center where the patient is treated shall be paid out of the funds allocated for the trauma service area where the patient resides. *Out-of-state days shall be paid from the service area where the treating hospital is located.*

(8) In order to receive payments under this section, a hospital shall be a state-sponsored trauma center and shall:

(a) Agree to conform to all departmental requirements as provided by rule to assure high quality trauma services.

(b) Agree to provide information concerning the provision of trauma services to the department, in a form and manner prescribed by rule of the department.

(c) Agree to accept all trauma patients, regardless of ability to pay, on a functional space-available basis.

~~(d) Agree to develop arrangements with other Level I and II trauma centers and other state-sponsored trauma centers and community hospitals for the appropriate receipt and transfer of patients in need of trauma services.~~

(9) A state-sponsored trauma center which fails to comply with any of the conditions listed in subsection (8) or the applicable rules of the department shall not receive payments under this section for the period in which it was not in compliance.

(10) *Funds distributed to a hospital pursuant to this section shall not be considered as net revenues of such hospital in determining whether an excess has occurred pursuant to s. 407.51.* ~~Beginning October 1, 1990, verified trauma centers shall be eligible for reimbursement for trauma services according to the formula specified in subsection (7) within funds specifically appropriated for that purpose for the period October 1, 1990, through April 30, 1991.~~

~~(11) Beginning May 1, 1991, provisional state-sponsored trauma centers shall be eligible for reimbursement for trauma services according to the formula specified in subsection (7) with funds specifically appropriated for that purpose for the periods of May and June of state fiscal year 1990-1991 and July through March of state fiscal year 1991-1992.~~

~~(12) In state fiscal year 1992-1993 and subsequent fiscal years, state-sponsored trauma centers shall be eligible for reimbursement for trauma services according to the formula specified in subsection (7) with funds specifically appropriated for that purpose.~~

Section 80. Effective upon this act becoming a law, section 395.0345, Florida Statutes, 1990 Supplement, is amended to read:

395.0345 Trauma Services Trust Fund.—

(1) There is hereby created the Trauma Services Trust Fund *in the State Treasury*, which shall be used exclusively for *the development and support of a system of state-sponsored trauma centers. Trust fund revenue shall be used for* the purpose of funding trauma patient care in a ~~verified trauma center, a~~ provisional state-sponsored trauma center, or a ~~permanent~~ state-sponsored trauma center as provided for in this act; for funding the associated trauma claims processing costs, including the costs for the *design,* development, *implementation, and operation* of a payment system~~, not to exceed $400,000~~; and for administration of this act~~, not to exceed $250,000. The department is authorized to establish 5 positions for administration of this act.~~

(2) Any funds appropriated in the General Appropriations Act for the implementation of this act, *and* ~~or~~ any other funds *that* ~~which~~ become available for the implementation of this act, may be deposited in the Trauma Services Trust Fund.

Section 81. Section 14 of chapter 90-284, Laws of Florida, is hereby repealed.

Section 82. Notwithstanding the provisions of section 401.113, Florida Statutes, there is hereby appropriated from the Emergency Medical Services Trust Fund to the Office of the Deputy Secretary for Health the sum of $200,000 to fund the review team of out-of-state experts pursuant to section 395.0335(5), Florida Statutes.

Section 83. Effective October 1, 1991, subsection (3) of section 641.48, Florida Statutes, is amended to read:

641.48 Purpose and application of part; exemption.—

(3) Any person or entity which enters into a contract with the department on a prepaid per capita or prepaid aggregate fixed-sum basis for the provision of health care services or social services, or both, to persons determined eligible for such services shall be exempt from the provisions of this part and shall be governed by the standards set forth by the department unless the person or entity provides health care service on a prepaid basis to persons other than those for which the department has contracted. However, any person or entity which is not *certified* ~~certificated~~ under the provisions of this chapter shall not use in its name, logo, contracts, or literature the phrases "health maintenance organization" or "prepaid health clinic" or the initials "HMO" or "PHC"; imply, directly or indirectly, that it is a health maintenance organization or prepaid health clinic; or hold itself out to be a health maintenance organization or prepaid health clinic. Subject to these restrictions, any such person or entity may advertise and market their prepaid health or social services using words or phrases similar to "prepaid health services" or "prepaid social services," so long as the services are accurately described and the advertisement and marketing literature clearly discloses that such services are available only to persons eligible for health care or social services through the department. The department shall set standards or promulgate rules for the conduct of a prepaid plan exempt under this subsection, which shall include provisions *whereby the entity shall* ~~for~~:

(a) Be organized primarily for the purpose of providing health care or other services of the type regularly offered to the department's enrolled clients.

(b)~~(a)~~ *Ensure that services meet the standards set by the department for* ~~The~~ quality, appropriateness, and timeliness ~~of services~~.

(c)~~(b)~~ *Make provisions satisfactory to the department for* insolvency protection and *ensure* ~~assurances~~ that neither *the department's* enrolled *clients* ~~recipients~~ nor the department shall be liable for the debts of the entity.

~~(c) A plan of operation which is actuarially sound and provides for working capital sufficient to carry all operating expenses for a period of 3 months.~~

(d) Submit to the department, if a private entity, a financial plan that the department finds to be fiscally sound and that provides for working capital in the form of cash or equivalent liquid assets, excluding revenues from the department premium payments, equal to at least the first 3 months of operating expenses or $200,000, whichever is greater.

(e)~~(d)~~ *Furnish* evidence *satisfactory to the department* of adequate *liability* insurance coverage or an adequate plan of self-insurance to respond to claims *for injuries* arising out of the furnishing of *health care* ~~contracted services~~.

(f)~~(e)~~ *Provide, through contract or otherwise, for* periodic *review* ~~reviews~~ of its medical facilities, services, and records, *as required by the department.*

(g)~~(f)~~ *Provide* ~~Making available to the department~~ organizational, financial, and other *information* ~~data~~ that may be required to ensure quality of care and financial solvency.

Section 84. Effective October 1, 1991, subsection (10) of section 641.495, Florida Statutes, 1990 Supplement, is amended to read:

641.495 Requirements for issuance and maintenance of certificate.—

(10) The provisions of part I of chapter 395 do not apply to a health maintenance organization *if, on or before January 1, 1991, the organization* ~~that~~ provides not more than 10 outpatient holding beds for short-term and hospice-type patients in an ambulatory care facility for its members, provided such health maintenance organization maintains current accreditation by the Joint Commission on Accreditation of *Health Care Organizations,* ~~Hospitals (JCAH) or~~ the Accreditation Association for Ambulatory Health Care, *or the National Committee for Quality Assurance* ~~(AAAHC)~~.

Section 85. Effective October 1, 1991, section 641.51, Florida Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion requirement.—

(1) The organization shall ensure that the health care services provided to subscribers shall be rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the community.

(2) Each organization shall have an ongoing internal quality assurance program for its health care services. The program shall include, but not be limited to, the following:

(a) A written statement of goals and objectives which stress health outcomes as the principal criteria for the evaluation of the quality of care rendered to subscribers;

(b) A written statement describing how state of the art methodology has been incorporated into an ongoing system for monitoring of care which is individual case oriented and, when implemented, can provide interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(c) Written procedures for taking appropriate remedial action whenever, as determined under the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided;

(d) A written plan for providing review of physicians and other licensed medical providers which includes ongoing review within the organization ~~and periodic review by an external review organization not less frequently than once every 3 years~~.

(3) The professional judgment of a physician licensed under *chapter 458, chapter 459, chapter 460, or chapter 461* ~~chapter 458 or chapter 459~~ concerning the proper course of treatment of a subscriber shall not be subject to modification by the organization or its board of directors, officers, or administrators, unless the course of treatment prescribed is inconsistent with the prevailing standards of medical practice in the community. However, this subsection shall not be considered to restrict a utilization management program established by an organization.

(4)*(a)* Each organization shall give the subscriber the right to a second medical opinion in any instance in which the subscriber disputes the organization's *or the physician's* opinion of the reasonableness or necessity of surgical procedures or is subject to a *serious* ~~life-threatening~~ injury or illness.

(b) The second opinion, if requested, is to be provided by a physician chosen by the subscriber *who may select:*

1. A contract or employed physician listed in a directory that shall be provided by the organization; or

2. A noncontract physician located in the same geographical service area of the organization.

(c) ~~For second opinions provided by a noncontract physician, the subscriber must use a physician located in the same geographical service area of the organization.~~ For second opinions provided by contract physicians the organization is prohibited from charging a fee to the subscriber in an amount in excess of the subscriber fees established by contract for referral contract physicians. The organization shall pay the amount of all charges, which are usual, reasonable, and customary in the community, for second opinion services performed by a physician not under contract with the organization, but may require the subscriber to be responsible for up to 40 percent of such amount. The organization may require that any tests deemed necessary by a noncontract physician shall be conducted by the organization. The organization may deny reimbursement rights granted under this section in the event the subscriber seeks in excess of three such referrals per year if such subsequent referral costs are deemed by the organization to be evidence that the subscriber has unreasonably overutilized the second opinion privilege. A subscriber thus denied reimbursement under this section shall have recourse to grievance procedures as specified in ss. 641.495, ~~and~~ 641.311, *and 641.511.* The organization's physician's professional judgment concerning the treatment of a subscriber derived after review of a second opinion shall be controlling as to the treatment obligations of the health maintenance organization. Treatment not authorized by the health maintenance organization shall be at the subscriber's expense.

Section 86. Effective October 1, 1991, section 641.511, Florida Statutes, is created to read:

641.511 Subscriber grievance reporting and resolution requirements.—

(1) The health maintenance organization shall maintain records of all grievances and shall report annually to the department a description of the total number of grievances handled, a categorization of the cases underlying the grievances, and the resolution of the grievances.

(2) Each health maintenance organization shall send to the department a copy of its annual and quarterly grievance reports submitted to the Department of Insurance pursuant to s. 641.311(1)(b).

(3) The department shall investigate all reports of unresolved quality of care grievances received from:

(a) Annual and quarterly grievance reports submitted by the health maintenance organization to the Department of Insurance.

(b) Appeals of subscribers whose grievances remain unresolved after the subscriber has followed the full grievance procedure of the organization.

(4) The department shall advise subscribers with grievances to follow the health maintenance organization formal grievance process for resolution prior to review by the department. However, this shall not preclude the department from investigating any complaint prior to completion of the health maintenance organization's formal grievance process.

(5) A quality of care grievance which remains unresolved after a subscriber has followed the full grievance procedure of the organization, after review by the department, may be presented to the Statewide Subscriber Assistance Program Panel as set forth in s. 641.311.

Section 87. Effective October 1, 1991, section 641.512, Florida Statutes, is created to read:

641.512 Accreditation and external quality assurance assessment.—

(1)(a) To promote the quality of health care services provided by health maintenance organizations and prepaid health clinics in this state,

the department shall require each health maintenance organization and prepaid health clinic to be accredited within 1 year of the organization's receipt of its certificate of authority and to maintain accreditation by an accreditation organization approved by the department, as a condition of doing business in the state.

(b) In the event that no accreditation organization can be approved by the department, the department shall require each health maintenance organization and prepaid health clinic to have an external quality assurance assessment performed by a review organization approved by the department, as a condition of doing business in the state. The assessment shall be conducted within 1 year of the organization's receipt of its certificate of authority and every 2 years thereafter, or when the department deems additional assessments necessary.

(2) The accreditation or review organization must have nationally recognized experience in health maintenance organization activities and in the appraisal of medical practice and quality assurance in a health maintenance organization setting. The accreditation or review organization shall not currently be involved in the operation of the health maintenance organization or prepaid health clinic, nor in the delivery of health care services to its subscribers. The accreditation or review organization shall not have contracted or conducted consultations within the last 2 years for other than accreditation purposes of the health maintenance organization or prepaid health clinic seeking accreditation or under quality assurance assessment.

(3) A representative of the department shall accompany the accreditation or review organization throughout the accreditation or assessment process, but shall not participate in the final accreditation or assessment determination. The accreditation or review organization shall monitor and evaluate the quality and appropriateness of patient care, the organization's pursuance of opportunities to improve patient care and resolve identified problems, and the effectiveness of the internal quality assurance program required for health maintenance organization and prepaid health clinic certification pursuant to s. 641.49(3)(o).

(4) The accreditation or assessment process shall include a review of:

(a) All documentation necessary to determine the current professional credentials of employed health care providers or physicians providing service under contract to the health maintenance organization or prepaid health clinic.

(b) At least a representative sample of not fewer than 50 medical records of individual subscribers. When selecting a sample, any and all medical records may be subject to review. The sample of medical records shall be representative of all subscribers' records.

(5) Every organization shall submit its books, documentations, and medical records and take appropriate action as may be necessary to facilitate the accreditation or assessment process.

(6) The accreditation or review organization shall issue a written report of its findings to the health maintenance organization's or prepaid health clinic's board of directors. A copy of the report shall be submitted to the department by the organization within 30 business days of its receipt by the health maintenance organization or prepaid health clinic.

(7) The expenses of the accreditation or assessment process of each organization, including any expenses incurred pursuant to s. 641.512, shall be paid by the organization.

Section 88. Effective October 1, 1991, section 641.515, Florida Statutes, is amended to read:

641.515 Examination by the department.—

(1) The department *shall investigate further any quality of care issue contained in recommendations and reports submitted pursuant to ss. 641.311 and 641.511. The department shall also investigate further any information that indicates that the organization does not meet accreditation standards or the standards of the review organization performing the external quality assurance assessment pursuant to reports submitted under s. 641.512* ~~shall examine each organization, regarding the quality of health care services being provided by the organization, as often as it deems necessary for the protection of the people of this state, but not less frequently than once every 3 years~~. Every organization shall submit its books and records and take other appropriate action as may be necessary to facilitate an examination. The department shall have access to the organization's medical records of individuals and records of employed *and contracted* physicians, *with the consent of the subscriber or by court order,* as necessary to carry out the provisions of this part. ~~These records shall also be made available to any outside source which conducts an examination pursuant to subsection (7).~~

~~(2) For the purpose of any examination conducted under this part, the Secretary of Health and Rehabilitative Services or the department's general counsel shall have the power to subpoena witnesses and compel their testimony, to subpoena the organization's medical records of individuals and records of employed health care providers, and, upon a showing of good cause, to subpoena medical records of subscribers from physicians providing service under contract to the organization, or other evidence which is relevant to the examination. Records obtained pursuant to this part shall be made available to any outside source which conducts an examination or investigation pursuant to subsection (7).~~

~~(3) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the circuit court of Leon County or of the county wherein such examination is being conducted, or of the county wherein such person resides, may, on the application of the department, issue an order requiring such person to comply with the subpoena and to testify.~~

(2)~~(4)~~ The examination report and the records obtained by the department or by an outside source pursuant to this section *and s. 641.512* shall be used solely for the purpose of the department in enforcing the requirements of this part and in disciplinary proceedings. These records and reports shall be otherwise sealed and shall not be available to the public pursuant to the provisions of s. 119.07 or any other statute providing access to public records. Further, these records and reports shall not be obtainable from the department through discovery or subpoena in civil actions.

~~(5) For the purpose of examinations, the department may administer oaths to and examine employees, officers, and agents of an organization concerning its business and affairs. The department may similarly examine nonemployee health care providers pursuant to subpoena issued by the secretary or the department's general counsel upon a showing of good cause under the provisions of this part.~~

~~(6) The expenses of examination of each organization by the department shall be paid by the organization, including any expenses incurred pursuant to subsection (7).~~

~~(7) The department may contract, at reasonable fees for work performed, with qualified, impartial outside sources to perform examinations or portions thereof pertaining to the qualification of an entity for issuance of a certificate or to determine continued compliance with the requirements of this part, including the examination of the quality of care provided. Any contracted assistance shall be under the direct supervision of the department. The results of any contracted assistance shall be subject to the review of and approval, disapproval, or modification by the department.~~

(3)~~(8)~~ If the department, through its examination or through any investigation, has a reasonable belief that conduct by a staff member or any other employee of an organization may constitute grounds for disciplinary action by the appropriate regulatory board, the department shall report this fact to such regulatory board.

(4) The department shall promulgate rules imposing upon physicians and hospitals performing services for a health maintenance organization standards of care generally applicable to physicians and hospitals. If the department determines that any physician or hospital is not adhering to such standards, it may immediately notify any health maintenance organization for which the physician or hospital performs services.

~~(9) In no event shall the expenses charged to any organization for examination under this section exceed $20,000 per year.~~

Section 89. Effective October 1, 1991, paragraph (g) is added to subsection (1) of section 641.52, Florida Statutes, to read:

641.52 Suspension, revocation of certificate; administrative fine; notice of action to the Department of Insurance; penalty for use of unlicensed providers.—

(1) The department may suspend the authority of an organization to enroll new subscribers or revoke the Health Care Provider Certificate of any organization, or order compliance within 60 days, if it finds that any of the following conditions exist:

(a) The organization is in substantial violation of its contracts.

(b) The organization is unable to fulfill its obligations under outstanding contracts entered into with its subscribers.

(c) The organization knowingly utilizes a provider who is furnishing or has furnished health care services and who does not have a subsisting license or other authority to practice or furnish health care services in this state.

(d) The organization no longer meets the requirements for the certificate as originally issued.

(e) The organization has violated any lawful rule or order of the department or any provision of this part.

(f) The organization has refused to be examined or to produce its accounts, records, and files for examination or to perform any other legal obligation as to such examination, when required by the department.

(g) The organization has not, after given reasonable notice, maintained accreditation or received favorable external quality assurance assessments pursuant to s. 641.512 or following an investigation pursuant to s. 641.515.

Section 90. Effective July 1, 1991, the Health Care Cost Containment Board is directed to conduct a study on competition and provider contracts in health maintenance organizations.

(1) The board shall prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by December 15, 1991, a report addressing the following issues:

(a) The impact of competition, patient care, physician-patient relationships, and consumer choice on contract provisions which do not permit physicians to enter into contracts with other health maintenance organizations.

(b) The impact of competition, patient care, physician-patient relationships, and consumer choice on contract provisions which require a physician to make payment for liquidated damages when a physician terminates an agreement with a health maintenance organization and a subscriber elects to receive care from the same physician through another health maintenance organization.

(2) The report shall contain recommendations for any changes in state requirements for health maintenance provider contracts.

(3) The board shall appoint a technical advisory panel to conduct the study, which shall have representation from the following groups:

(a) A representative of elderly health care consumers.

(b) A representative of the physician community.

(c) Two representatives of the health maintenance organization industry.

(d) The Secretary of Health and Rehabilitative Services or his designee.

(e) The Commissioner of Insurance or his designee.

(f) A representative of the hospital industry.

(4) The board may procure information and assistance from any officer or agency of the state or any subdivision thereof. All such officers and agencies shall give the board all relevant information and reasonable assistance on any matters of research within their knowledge and control.

(5)(a) There is hereby transferred from the Health Maintenance Organization Quality Care Trust Fund to the Health Care Cost Containment Trust Fund the sum of $60,000.

(b) There is hereby appropriated from the Health Care Cost Containment Trust Fund to the Health Care Cost Containment Board the sum of $60,000 for the purpose of conducting the study on competition and provider contracts in health maintenance organizations.

Section 91. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, part IV of chapter 641, Florida Statutes, shall not stand repealed on October 1, 1991, and part IV of chapter 641, including each section which is added to part IV of chapter 641, Florida Statutes, by this act, is repealed on October 1, 2001, and shall be reviewed by the Legislature pursuant to section 11.61, Florida Statutes.

Section 92. Effective July 1, 1991, there is hereby appropriated from the Health Maintenance Organization Quality Care Trust Fund the sum of $600,000 for nine Career Service positions in the Department of Health and Rehabilitative Services to carry out the provisions of this act relating to health maintenance organizations.

Section 93. Effective upon this act becoming a law, subsection (5) of section 154.01, Florida Statutes, is amended to read:

154.01 Public health unit delivery system.—

(5) In order to provide for the effective delivery of health services in keeping with expanding needs or modernization, the Legislature may authorize funding for construction or expansion projects to public health units *or other nonprofit primary health care providers who are under contract with the department*. The department shall submit a list of construction or expansion needs arranged in order of priority to the Legislature in conjunction with each biennial budget request. The priority list shall be based on the following criteria:

(a) The capacity of the health facility to efficiently provide the full set of authorized services for the number of patients who can be served with available funds;

(b) The capacity of the health facility to meet the anticipated growth in demand for service over the next 10 years; and

(c) The adequacy of the facility to ensure patient and staff safety, provide privacy during eligibility determination and examination, and enable an efficient movement of patients through service areas.

Section 94. The Florida Health Care Purchasing Cooperative Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Health Care Purchasing Cooperative Act."

(2) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(a) There is authorized the "Florida Health Care Purchasing Cooperative," which shall pool the purchasing power for health care services of state and local governmental entities, service providers under contract with such governmental entities, and other entities identified by the cooperative as potential participants in pooled purchasing arrangements. The Florida Health Care Purchasing Cooperative is a nonprofit private corporation organized pursuant to chapter 617, Florida Statutes, and has all powers necessary to carry out the purposes and provisions of this act, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept, from any source, contributions of money, property, labor, or any other thing of value.

(b) Members of the Florida Health Care Purchasing Cooperative are:

1. All state governmental entities that purchase health care services for clients or for employees through health care coverage;

2. Local governmental entities, including, but not limited to, counties, municipalities, school districts, and other special districts, that voluntarily become members;

3. Service providers under contract with governmental entities, which providers may voluntarily become members when the cooperative determines it is appropriate; and

4. Other entities identified as potential members by the cooperative, such as groups of small employers or part-time employees, which entities may voluntarily become members when the cooperative determines it is appropriate.

(c) The Florida Health Care Purchasing Cooperative shall:

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

2. Secure staff necessary to properly administer the corporation;

3. Develop and implement a plan to publicize the Florida Health Care Purchasing Cooperative, the eligibility requirements for membership, and the procedures for becoming members of the cooperative and to maintain public awareness of the cooperative and its services;

4. Identify third-party payers and health care provider networks that serve members of the cooperative;

5. Collect data on costs and utilization of health care services from members of the cooperative, health care providers that provide services to employees and clients of members of the cooperative, and third-party payers for members of the cooperative. The cooperative shall protect the confidentiality and regulate the disclosure of data and records collected and maintained by the cooperative when such data and records contain information:

a. Of a sensitive, personal or medical 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; or

b. That is used to protect or further a business advantage over those who do not know or use that information, and the disclosure of which would injure the affected entity in the marketplace.

Notwithstanding section 119.14, Florida Statutes, all information obtained prior to October 1, 2001, and determined to be confidential pursuant to subparagraph 5. is exempt from section 119.07(1), Florida Statutes. This exemption is subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes.

6. Compare cost and utilization data collected pursuant to subparagraph 5. with data collected by the Health Care Cost Containment Board. Because of the importance of data collection and analysis to the success of the cooperative, the cooperative shall carry out its responsibilities in conjunction with the Health Care Cost Containment Board and use that board's data gathering and analysis capabilities as the board of directors considers appropriate.

7. Establish criteria for evaluating health care provider networks and third-party payers, seeking advice from providers and third-party payers serving members of the cooperative.

8. Evaluate health care provider networks and third-party payers.

9. Inform members of the cooperative about the results of evaluations of health care provider networks and third-party payers.

(d) The Florida Health Care Purchasing Cooperative may:

1. Negotiate and enter into contracts on behalf of its members with health care provider networks and third-party payers for the delivery of health care services;

2. Negotiate and enter into contracts on behalf of its members with insurance carriers, reinsurers, and third-party administrators for insurance, aggregate stop loss, specific stop loss, and administrative services; and

3. In geographical areas where cost-effective health care provider networks that provide good quality services do not exist, assist members in developing health care provider networks and negotiate and contract directly with health care providers for the provision of health care services.

4. Assess the impact of existing or proposed mandated or mandatorily offered health care benefits on members and their employees to determine if such benefits promote the health and well-being of employees through prevention of illness, early detection and treatment of illness, and reduced long-term health care costs.

(3) BOARD OF DIRECTORS.—

(a) The Florida Health Care Purchasing Cooperative shall operate subject to the supervision and approval of a board of directors.

(b) The initial board of directors shall consist of:

1. The Director of the Division of State Employees Insurance of the Department of Administration;

2. The Assistant Secretary for Medicaid of the Department of Health and Rehabilitative Services;

3. The Assistant Secretary for Health Services of the Department of Corrections;

4. Two persons who are responsible for purchasing health benefits for municipal employees and who are appointed by the Florida League of Cities;

5. A person who is responsible for purchasing health care benefits for county employees or health care services for county clients and who is appointed by the Florida Association of Counties; and

6. A person who is responsible for purchasing health care benefits for school district employees and who is appointed by the Florida Association of School Administrators.

Appointments to the initial board of directors shall be made by August 1, 1991. The appointed members of the initial board of directors shall be appointed for 2 years and may be reappointed. The Director of the Division of State Employees Insurance shall chair the initial board of directors.

(c) The board shall adopt bylaws for the corporation which shall contain provisions for the selection of directors to represent members of the cooperative following the initial appointments. The board of directors may increase the number of its directors to provide for representation by members of the cooperative.

(d) Board members may be reimbursed from funds of the Florida Health Care Purchasing Cooperative, as prescribed by law, for actual and necessary expenses that they incur in performing their duties.

(e) A member of the board of directors or an employee or agent of the board incurs no liability, and no cause of action may arise against a board member or any employee or agent of the board, for any action taken by the member, employee, or agent in performing his powers and duties under this act.

(4) STAFF AND ADMINISTRATIVE SUPPORT.—The Health Care Cost Containment Board shall provide staff and administrative support to, and shall draft bylaws for, the Florida Health Care Purchasing Cooperative until the board of directors of the cooperative has organized itself and appointed an executive director. The board of directors shall conduct its first meeting on or before September 1, 1991.

Section 95. (1) Notwithstanding the provisions of section 110.123(6), Florida Statutes, the sum of $500,000 for fiscal year 1991-1992 and the sum of $500,000 for fiscal year 1992-1993 are appropriated from the State Employees Disability Trust Fund for transfer to the Health Care Cost Containment Trust Fund.

(2) Notwithstanding the provisions of section 407.04(1), Florida Statutes, the sum of $500,000 for fiscal year 1991-1992 and the sum of $500,000 for fiscal year 1992-1993 are appropriated from the Health Care Cost Containment Trust Fund to the Florida Health Care Purchasing Cooperative for the purpose of implementing the powers and duties of the cooperative.

Section 96. Effective October 1, 1991, section 627.4106, Florida Statutes, is created to read:

627.4106 Small group health insurance; rates; restrictions.—

(1) PURPOSE.—The intent of this section is to promote the availability of health insurance coverage to small employers through the participation of more insurers in the market, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals, and to improve the efficiency and fairness of the small group health insurance marketplace.

(2) DEFINITIONS.—As used in this section:

(a) "Small employer" means any person actively engaged in business that, on at least 50 percent of its working days during the preceding year, employed no more than 25 eligible employees. In determining the number of eligible employees, persons that are affiliated persons or that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer.

(b) "Carrier" means any person who provides health insurance in this state. "Carrier" includes a licensed insurance company, a health maintenance organization, a multiple-employer welfare arrangement, or any other person providing a plan of health insurance subject to state insurance regulation.

(c) "Health benefit plan" means any hospital or medical expense incurred policy or certificate, any hospital or medical service plan contract, or any health maintenance organization subscriber contract. "Health benefit plan" does not include accident-only, credit, dental, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation and employers' liability or similar insurance; or automobile medical-payment insurance.

(d) "Small employer carrier" means any carrier that offers health benefit plans covering the employees of a small employer.

(e) "Case characteristics" means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, that are considered by the carrier in the determination of premium rates for the small employer. Claim experience, health status and duration of coverage since issue are not case characteristics.

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

(g) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(h) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(i) "Index rate" means, for each class of business for small employers with similar case characteristics, the arithmetical average of the applicable base premium rate and the corresponding highest premium rate.

(j) "Class of business" means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

1. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans:

a. Are marketed and sold through individuals and organizations which are not participating in the marketing or sale of other distinct groupings of small employers for such small employer carrier;

b. Have been acquired from another small employer carrier as a distinct grouping of plans;

c. Are provided through an association with membership of not less than 25 small employers that has been formed for purposes other than obtaining insurance; or

d. Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in sub-subparagraph (4)(a)2.a.

2. A small employer carrier may establish no more than two additional groupings under each of the sub-subparagraphs in subparagraph 1. on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

3. The department may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the department that this action would enhance the efficiency and fairness of the small employer insurance marketplace.

(k) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individuals acceptable to the department that a small employer carrier is in compliance with the provisions of subsection (4), based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans.

(l) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

(3) HEALTH INSURANCE PLANS SUBJECT TO THIS SECTION.—

(a) Except as provided in paragraph (b) and notwithstanding any other provision of this part, the provisions of this section apply to any health benefit plan provided by a small employer carrier which provides coverage to one or more employees of a small employer.

(b) The provisions of this section do not apply to individual health insurance policies that are subject to part VI of chapter 627 which are subject to policy form and premium rate approval as provided in s. 627.410.

(c) Notwithstanding s. 627.401(2), the provisions of this section and ss. 627.410 and 627.411 apply to any health benefit plan provided by a small employer carrier which provides coverage to one or more employees of a small employer regardless of whether the policy, certificate, or contract is issued or delivered outside this state if the health benefit plan covers employees or their covered dependents who are residents of this state.

(4) RESTRICTIONS RELATING TO PREMIUM RATES.—

(a) Premium rates for health benefit plans subject to this section are subject to the following provisions:

1. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than 20 percent.

2. Subparagraph 1. does not apply to a class of business if all of the following apply:

a. The class of business is one for which the carrier does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status.

b. The carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefit plan into or out of the class of business.

c. The class of business is currently available for purchase.

3. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to these employers under the rating system for that class of business, may not vary from the index rate by more than 25 percent of the index rate.

4. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

a. The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate.

b. An adjustment, not to exceed 15 percent annually and adjusted pro rata for rating periods of less than 1 year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the carrier's rate manual for the class of business.

c. Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

5. In the case of health benefit plans issued prior to October 1, 1991, a premium rate for a rating period may exceed the ranges described in subparagraph 1. or subparagraph 3. until October 1, 1996. In this case, the percentage increase in the premium rate charged to a small employer in this class of business for a new rating period may not exceed the sum of the following:

a. The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate.

b. Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(b) Nothing in this section is intended to affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

(c) A small employer carrier shall not involuntarily transfer a small employer into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

(5) PROVISIONS ON RENEWABILITY OF COVERAGE.—

(a) Except as provided in paragraph (b), a health benefit plan subject to this section shall be renewable to all eligible employees and dependents at the option of the small employer, except for the following reasons:

1. Nonpayment of required premiums;

2. Fraud or misrepresentation of the small employer, or with respect to coverage of an insured individual or subscriber, or fraud or misrepresentation by the insured individual or subscriber or individual's or subscriber's representative;

3. Noncompliance with plan provisions;

4. The number of individuals covered under the plan is less than the number or percentage of eligible individuals required by percentage requirements under the plan; or

5. The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.

(b) A small employer carrier may cease to renew all plans under a class of business. The carrier shall provide notice to all affected health benefit plans and to the insurance regulatory agency in each state in which an affected insured individual is known to reside at least 90 days prior to termination of coverage. A carrier that exercises its right to cease to renew all plans in a class of business may not:

1. Establish a new class of business for a period of 5 years after the nonrenewal of the plans without prior approval of the department; or

2. Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the carrier offers to transfer or provide coverage to all affected employers and eligible employees and dependents without regard to case characteristics, claim experience, health status, or duration of coverage.

(6) DISCLOSURE OF RATING PRACTICES AND RENEWABILITY PROVISIONS.—Each small employer carrier shall make reasonable disclosure in solicitations and sales materials provided to small employers of all the following:

(a) The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status, or duration of coverage of the employees of the small employer or their dependents.

(b) The provisions concerning the carrier's right to change premium rates and the factors, including case characteristics, that affect changes in premium rates.

(c) A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans.

(d) The provisions relating to renewability of coverage.

(7) MAINTENANCE OF RECORDS.—

(a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the department each March 1 an actuarial certification that the carrier is in compliance with this section and that the rating methods of the carrier are actuarially sound. A copy of the certification shall be retained by the carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in paragraph (a) available to the department upon request. The information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the department to persons outside the department except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

(8) WAIVER OF REQUIREMENTS.—The department may suspend all or any part of the provisions of subsection (4) as to the premium rates applicable to one or more small employers for one or more rating periods upon a filing by the small employer carrier and a finding by the department that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

Section 97. Effective October 1, 1991, section 627.6693, Florida Statutes, 1990 Supplement, is amended to read:

627.6693 Small group basic health insurance policies.—

(1) As used in this section:

(a) "Small group basic health insurance policy" means a basic policy issued to any small employer or group of small employers.

(b) "Small employer" means one employer that employs fewer than 25 persons on a regular basis.

(c) "Group of small employers" means a group composed of two or more small employers that join together to purchase a small group basic health insurance policy.

~~(d) "Mandated benefits" means the benefits required under ss. 627.6573, 627.6574,627.6612, 627.6616, 627.6617, 627.6618, 627.668, and 627.669.~~

(d) ~~(e)~~ "Basic policy" means a group health insurance policy or health maintenance organization contract that *provides coverage for basic hospital benefits, surgical expense benefits, and other benefits specified in this section* ~~is not required to contain any mandated benefits; however, a basic policy may contain any such mandated benefits~~.

(e) "Hospital" means a health care institution as defined in s. 395.002(6).

(f) "Insurer" means any insurance company authorized to transact health insurance in this state.

(2) A group of individuals may be insured under a small group basic health insurance policy that complies with this section and other provisions of the Insurance Code.

(3) The basic policy shall provide:

(a) In-patient hospital coverage for basic hospital expense benefits including hospital room and board, daily expense benefits, and miscellaneous hospital expense benefits,

(b) In-patient and out-patient surgical expense benefits, provided in a hospital, physician's office, or ambulatory surgical center as defined in s 395 002(2) and

(c) Coverage and benefits required pursuant to ss. 627.6574, 627.6575, 627.6578, 627.6579, 627.6613, and 627.6615.

(4) Each insurer or health maintenance organization offering the basic policy to small employers shall offer the policyholder the option to purchase, for an additional premium, a comprehensive major medical expense rider.

(5) Each insurer offering a basic policy shall make available to the policyholder for an appropriate additional premium each of the benefits specified in ss. 627.6612, 627.6617, 627.6618, 627 668(2), and 627.669(2).

(6) The department shall adopt rules to establish the minimum standard of benefits to be provided in the basic policy and the comprehensive major medical rider which shall include, coinsurance provisions and deductibles.

(7) The basic policy is exempt from any benefit or coverage otherwise required by law that is not specified in this section. However, the basic policy may contain benefits and coverage in addition to those required by this section. If the policy covers the services of a physician, the policy shall be construed in accordance with s. 627.419.

~~(3) Each insurer and health maintenance organization transacting group health insurance or providing prepaid health care in this state shall make the following benefits available to the policyholder for an appropriate additional premium as part of the application under a small group basic health insurance policy:~~

~~(a) The coinsurance option provided under s. 627.6573.~~

~~(b) The maternity care coverage provided under s. 627.6574.~~

~~(c) The coverage for newborn children provided under s. 627.6575.~~

~~(d) The coverage for child health supervision services provided under s. 627.6579.~~

~~(e) The coverage for surgical procedures and devices incident to mastectomy provided under s. 627.6612.~~

~~(f) The coverage for handicapped children provided under s. 627.6615.~~

~~(g) The coverage for ambulatory surgical center services provided under s. 627.6616.~~

~~(h) The coverage for home health care services provided under s. 627.6617.~~

~~(i) The acupuncture coverage provided under s. 627.6618.~~

~~(j) Coverage for the level of benefits for mental and nervous disorders specified in s. 627.668(2) in addition to any other level of benefits that may be offered.~~

~~(k) Coverage for the level of benefits for alcoholism and drug dependency specified in s. 627.669(2) in addition to any other level of benefits that may be offered.~~

(8)~~(4)~~ A group of small employers may form a group for the limited purpose of purchasing a small group basic health insurance policy under this section. Such group shall be deemed to be an employee group under s. 627.653. No restriction shall be imposed on the formation of a group of small employers based on the location, profession, industry, or type of business conducted by the employers wishing to participate in the group.

(9)~~(5)~~ Any small group basic health insurance policy may insure the spouse or dependent children of an employee or group member, without regard to whether such employee or group member is insured under the policy.

Section 98. Effective April 1, 1992, the introductory paragraph and paragraph (c) of subsection (5) of section 20.19, Florida Statutes, 1990 Supplement, are amended to read:

20.19 Department of Health and Rehabilitative Services.—There is created a Department of Health and Rehabilitative Services.

(5) DEPUTY SECRETARY FOR PROGRAMS.—The secretary shall appoint a Deputy Secretary for Programs who shall serve at the pleasure of, and be directly responsible to, the secretary. The secretary shall appoint a Deputy Assistant Secretary for Programs~~, an Assistant Secretary for Regulation and Health Facilities,~~ and an Assistant Secretary for Medicaid, each of whom shall serve at the pleasure of the secretary and shall be directly responsible to the Deputy Secretary for Programs.

~~(c) The responsibilities of the Assistant Secretary for Regulation and Health Facilities shall include, but are not limited to, certificate-of-need determinations, Hill-Burton programs, and licensure and certification of programs external to the department for which the department has a major regulatory responsibility. The deputy secretary may assign or delegate other responsibilities of this office in keeping with the intent of this act.~~

Section 99. Except as otherwise provided in this act, all powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Assistant Secretary for Regulation and Health Facilities of the Department of Health and Rehabilitative Services are transferred by a type three transfer, as defined in s. 20.06(3), Florida Statutes, to the Health Care Commission. Such transfer shall take effect April 1, 1992. Any rules promulgated by or for the Assistant Secretary for Regulation and Health Facilities are included in such transfer.

Section 100. Effective April 1, 1992, paragraphs (c), (d), and (g) of subsection (3) of section 381.0612, Florida Statutes, 1990 Supplement, are amended to read:

381.0612 State Center for Health Statistics.—

(3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.—In order to produce comparable and uniform health information and statistics, the *commission* ~~department~~ shall perform the following functions:

(c) Review the statistical activities of the Department *of Health and Rehabilitative Services* to assure that they are consistent with the comprehensive health information system.

(d) Develop written agreements with local, state, and federal agencies for the sharing of health-care-related data or using the facilities and services of such agencies. State agencies, local health councils, and other agencies under contract with the Department *of Health and Rehabilitative Services* shall assist the center in obtaining, compiling, and transferring health-care-related data maintained by state and local agencies. Written agreements must specify the types, methods, and periodicity of data exchanges and specify the types of data that will be transferred to the center.

(g) Establish minimum health-care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data. The *commission* ~~department~~ shall periodically review ongoing health care data collections of the Department *of Health and Rehabilitative Services* and other state agencies to determine if the collections are being conducted in accordance with the established minimum sets of data.

Section 101. Except as otherwise provided in this act, all powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State Center for Health Statistics of the Department of Health and Rehabilitative Services are transferred by a type one transfer, as defined in s. 20.06(1), Florida Statutes, to the Health Care Commission and assigned to the Bureau of Data Management of the commission, as created by this act. Such transfer shall take effect on April 1, 1992. Any rules promulgated by or for the center are included in such transfer.

Section 102. Effective April 1, 1992, subsection (11) of section 381.609, Florida Statutes, 1990 Supplement, is amended to read:

381.609 Testing for human immunodeficiency virus.—

(11) TESTING AS A CONDITION OF TREATMENT OR ADMISSION.—

(a) It is unlawful for any facility the operation of which, or for any person engaged in an occupation the practice of which, requires a license by the Department of Health and Rehabilitative Services, *the Health Care Commission,* or the Department of Professional Regulation, to require any person to take or submit to a human immunodeficiency virus-related test as a condition of admission to any such facility or as a condition of purchasing or obtaining any service or product for which the license is required. This subsection shall not be construed to prohibit any physician in good faith from declining to provide a particular treatment requested by a patient if the appropriateness of that treatment can only be determined through a human immunodeficiency virus-related test.

(b) The Department of Health and Rehabilitative Services, *the Health Care Commission,* and the Department of Professional Regulation shall adopt rules implementing this section.

(c) Any violation of this section or the rules implementing it shall be punishable as provided in subsection (6).

Section 103. Effective April 1, 1992, sections 381.701 through 381.714, Florida Statutes, and section 381.715, Florida Statutes, 1990 Supplement, are renumbered as sections 408.301 through 408.315, respectively, and designated as part II of chapter 408, Florida Statutes.

Section 104. Effective April 1, 1992, section 381.709, Florida Statutes, is renumbered as section 408.309, Florida Statutes, and paragraph (d) of subsection (4), subsection (5), and paragraph (a) of subsection (6) of said section are amended, to read:

408.309 ~~381.709~~ Review process.—The review process for certificates of need shall be as follows:

(4) STAFF RECOMMENDATIONS.—

(d) If no ~~administrative~~ hearing is requested pursuant to subsection (5), the State Agency Action Report and the Notice of Intent shall become the final order of the *commission* ~~department~~. The *commission* ~~department~~ shall provide a copy of the final order to the appropriate local health council.

(5) ~~ADMINISTRATIVE~~ HEARINGS.—

(a) Within 21 days after publication of notice of the State Agency Action Report and Notice of Intent, any person authorized under paragraph (b) to participate in a hearing may file a request for ~~an administrative~~ hearing; failure to file a request for hearing within 21 days of publication of notice shall constitute a waiver of any right to a hearing and a waiver of the right to contest the final decision of the *commission* ~~department~~. A copy of the request for hearing shall be served on the applicant.

(b) Hearings shall be held in Tallahassee unless the *chairman* ~~hearing officer~~ determines that changing the location will facilitate the proceedings. In ~~administrative~~ proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the *commission* ~~department~~ in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in such ~~administrative~~ hearing upon a showing that an established program will be substantially affected by the issuance of a certificate of need to a competing proposed facility or program within the same district, provided that existing health care providers, other than the applicant, have no standing or right to initiate or intervene in *a* ~~an administrative~~ hearing involving a health care project which is subject to certificate-of-need review solely on the basis of s. *408.306(1)(c)* ~~381.706(1)(c)~~. The *chairman* ~~department~~ shall assign proceedings *to a panel of commissioners* ~~requiring hearings to the Division of Administrative Hearings of the Department of Administration~~ within 10 days after the time has run to request a hearing. Except upon unanimous consent of the parties or upon the granting by the *chairman* ~~hearing officer~~ of a motion of continuance, hearings shall commence within 60 days after the *commissioners have* ~~hearing officer has~~ been assigned. All nonstate-agency parties shall bear their own expense of preparing a transcript. In any application for a certificate of need, *the presiding commissioner shall, within 30 days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include findings of fact and conclusions of law, separately stated, and recommendation for final commission action. The commission* ~~which is referred to the Division of Administrative Hearings for hearing, the hearing officer shall complete and submit to the parties a recommended order as provided in s. 120.57(1)(b). The recommended order shall be issued within 30 days after the receipt of the proposed recommended orders or the deadline for submission of such proposed recommended orders, whichever is earlier. The division~~ shall adopt procedures for ~~administrative~~ hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony.

(c) The *commission* ~~department~~ shall issue its final order within 45 days after receipt of the recommended order~~.~~ *after providing participants opportunity to file exceptions. Exceptions shall be filed within 14 days of service of the recommended order. A party's failure to serve or file timely written exceptions shall constitute a waiver of any objections to the recommended order.*

(d) Any party to a proceeding who is adversely affected by an order of the commission may file a motion for reconsideration of that order. A final order shall not be deemed rendered for the purpose of judicial review until the commission disposes of any motion, but this provision does not serve automatically to stay the effectiveness of any such final order. A motion for reconsideration of a final order shall be filed within 15 days of service of the final order.

(e)~~(d)~~ If the *commission* ~~department~~ fails to take action within the time specified in paragraph (4)(a) or paragraph (5)(c), or as otherwise agreed to by the applicant and the *commission* ~~department~~, the applicant may take appropriate legal action to compel the *commission* ~~department~~ to act. When making a determination on an application for a certificate of need, the *commission* ~~department~~ is specifically exempt from the time limitations provided in s. 120.60(2).

(6) JUDICIAL REVIEW.—

(a) A party to *a* ~~an administrative~~ hearing for an application for a certificate of need has the right, within not more than 30 days after the date of the final order, to seek judicial review in the District Court of Appeal pursuant to s. 120.68. The *commission* ~~department~~ shall be a party in any such proceeding.

Section 105. Effective April 1, 1992, section 381.7155, Florida Statutes, is renumbered as section 408.3155, Florida Statutes, and amended to read:

408.3155 ~~381.7155~~ Effect of ss. *408.301-408.315* ~~381.701-381.715 as enacted by chapter 87-92, Laws of Florida; rules~~; health councils and plans; pending proceedings.—

(1) Nothing contained in ss. *408.301-408.315* ~~381.701-381.715~~ is intended to repeal or modify any of the existing rules of the Department of Health and Rehabilitative Services, *which shall remain in effect and shall be enforceable by the commission;* the existing composition of the local health councils and the Statewide Health Council,~~;~~ or the state health plan,~~;~~ or any of the local district health plans, unless, and only to the extent that, there is a direct conflict with the provisions of ss. *408.301-408.315* ~~381.701-381.715~~.

(2) The rules of the Department of Health and Rehabilitative Services in effect on July 1, 1987, which implement the provisions of ss. 381.493-381.499, shall remain in effect and shall be enforceable by the *commission* ~~department~~ until such rules are repealed or amended by the *commission* ~~department~~, and no judicial or administrative proceeding pending on July 1, 1987, shall be abated as a result of the provisions of ss. *408.301-408.313(1), (2); s. 408.314; or s. 408.315* ~~381.701-381.713(1), (2), (3); s. 381.714; or s. 381.715~~.

Section 106. All certificates of need valid on April 1, 1992, shall remain in full force and effect. On and after April 1, 1992, applications for certificates of need shall be made in accordance with the provisions of this act.

Section 107. Effective April 1, 1992, paragraphs (c) and (f) of subsection (3) and subsection (4) of section 395.017, Florida Statutes, 1990 Supplement, are amended to read:

395.017 Patient and personnel records; copies; examination.—

(3) Patient records shall be confidential and shall not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:

(c) The *commission* ~~Health Care Cost Containment Board~~.

(f) The *commission* ~~department~~ or its agent, for the purpose of establishing and maintaining a trauma registry and for the purpose of ensuring that hospitals and trauma centers are in compliance with the standards and rules established pursuant to ss. 395.031, 395.032, 395.035, and 395.036, and for the purpose of monitoring patient outcome at hospitals and trauma centers which provide trauma care services.

(4) The *commission* ~~department~~ may examine patient records of a licensed facility for the purpose of epidemiological investigations, provided that the unauthorized release of information by agents of the *commission* ~~department~~ which would identify an individual patient constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 108. Effective April 1, 1992, subsections (4) through (8), (10), and (12) through (14) of section 395.041, Florida Statutes, 1990 Supplement, are amended to read:

395.041 Internal risk management program.—

(4) The *commission* ~~Department of Health and Rehabilitative Services~~ shall, after consulting with the Department of Insurance, promulgate rules governing the establishment of such internal risk management programs to meet the needs of individual establishments. The Department of Insurance shall assist the *commission* ~~Department of Health and Rehabilitative Services~~ in preparing such rules. Each internal risk management program shall include the use of incident reports to be filed with

an individual of responsibility who is competent in risk management techniques in the employ of each establishment, such as an insurance coordinator, or who is retained by said establishment as a consultant. Said individual shall have free access to all establishment medical records, and the rules promulgated by the *commission* ~~Department of Health and Rehabilitative Services~~ shall so provide. The incident reports shall be considered to be a part of the workpapers of the attorney defending the establishment in litigation relating thereto and shall be subject to discovery, but shall not be admissible as evidence in court, nor shall any person filing an incident report be subject to civil suit by virtue of such incident report. As a part of each internal risk management program, the incident reports shall be utilized to develop categories of incidents which identify problem areas. Once identified, procedures shall be adjusted to correct said problem areas.

(5)(a) Each licensed facility subject to this section shall submit a quarterly report to the *commission* ~~department~~ summarizing the incident reports that have been filed in the facility for that quarter. The report shall be on a form prescribed by rule of the *commission* ~~department~~ and shall include:

1. The total number of adverse incidents causing injury to patients.

2. A listing, by category, of the types of operations, diagnostic or treatment procedures, or other actions causing the injuries, and the number of incidents occurring within each category.

3. A listing, by category, of the types of injuries caused and the number of incidents occurring within each category.

4. A code number utilizing the health care professional's licensure number and a separate code number identifying all other individuals directly involved in adverse incidents causing injury to patients, the relationship of the individual to the facility, and the number of incidents in which each individual has been directly involved. Each facility shall maintain names of the health care professionals and individuals identified by code numbers for purposes of this section.

5. A description of all malpractice claims filed against the facility, including the total number of pending and closed claims and the nature of the incident which led to, the persons involved in, and the status and disposition of each claim. Each report shall update status and disposition for all prior reports.

6. A report of all disciplinary actions pertaining to patient care taken against any medical staff member, including the nature and cause of the action.

(b) The information reported to the *commission* ~~department~~ pursuant to paragraph (a) which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall also be reported to the Department of Professional Regulation on a quarterly basis. The Department of Professional Regulation shall review the information and determine whether any of the incidents potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply.

(c) The report submitted to the *commission* ~~department~~ shall also contain the name of the risk manager of the facility, a copy of its policy and procedures which govern the measures taken by the facility and its risk manager to reduce the risk of injuries and adverse or untoward incidents, and the results of such measures. The quarterly reports shall be held confidential and shall not be available to the public pursuant to s. 119.07(1) or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the *commission* ~~department~~, the Department of Professional Regulation, and the appropriate regulatory board. The quarterly reports shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the *commission* ~~department~~, the Department of Professional Regulation, or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause.

(6) If an adverse or untoward incident, whether occurring in the facility or arising from health care prior to admission in the facility, results in:

(a) The death of a patient;

(b) Severe brain or spinal damage to a patient;

(c) A surgical procedure being performed on the wrong patient; or

(d) A surgical procedure unrelated to the patient's diagnosis or medical needs being performed on any patient, the facility shall report this incident to the *commission* ~~department~~ within 15 calendar days of its occurrence. The *commission* ~~department~~ may require an additional, final report. Reports under this subsection shall be sent immediately by the *commission* ~~department~~ to the Department of Professional Regulation whenever they involve a health care provider licensed under chapter 458, chapter 459, chapter 461, or chapter 466. These reports shall not be available to the public pursuant to s. 119.07(1) or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the *commission* ~~department~~, the Department of Professional Regulation, and the appropriate regulatory board, nor shall they be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause. The *commission* ~~department~~ may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The Department of Professional Regulation shall review each incident and determine whether it potentially involved conduct by the licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply.

(7) In addition to any penalty imposed pursuant to s. 395.018, the *commission* ~~department~~ may impose an administrative fine, not to exceed $5,000, for any violation of the reporting requirements of subsection (5) or subsection (6). This subsection shall take effect July 1, 1989.

(8) The *commission* ~~department~~ and, upon subpoena issued pursuant to s. 455.223, the Department of Professional Regulation shall have access to all facility records necessary to carry out the provisions of this section. The records obtained are not available to the public under s. 119.07(1), nor shall they be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the *commission* ~~department~~, the Department of Professional Regulation, and the appropriate regulatory board, nor shall records obtained pursuant to s. 455.223 be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause, except that, with respect to medical review committee records, the provisions of s. 766.101 shall control.

(10) The *commission* ~~department~~ shall review, no less than annually, the risk management program at each facility regulated by this section to determine whether the program meets standards established in statutes and rules, whether the program is being conducted in a manner designed to reduce adverse incidents, and whether the program is appropriately reporting incidents under subsections (5) and (6).

(12) If the *commission* ~~department~~, through its receipt of the annual reports prescribed in subsection (5) or through any investigation, has a reasonable belief that conduct by a staff member or employee of a facility may constitute grounds for disciplinary action by the appropriate regulatory board, the *commission* ~~department~~ shall report this fact to such regulatory board.

(13) The *commission* ~~department~~ shall send information bulletins to all facilities as necessary to disseminate trends and preventative data derived from its actions under this section. The gross data compiled shall be furnished by the *commission* ~~department~~ upon request to facilities to be utilized for risk management purposes.

(14) The *commission* ~~department~~ may promulgate rules necessary to carry out the provisions of this section.

Section 109. Effective April 1, 1992, paragraph (d) of subsection (2), paragraph (f) of subsection (3), paragraph (b) of subsection (5), and subsections (4) and (10) of section 400.304, Florida Statutes, are amended to read:

400.304 Establishment of a State Nursing Home and Long-Term Care Facility Ombudsman Council; duties; membership.—

(2) In order to ensure that the ombudsman program has the objectivity and independence required to qualify it for funding under the federal Older Americans Act, the State Unit on Aging of the Department of Health and Rehabilitative Services shall contract with the Commission on Aging for the operation of an Office of the State Long-Term Care Ombudsman to carry out the long-term care ombudsman program and advise the state and district councils. The contract shall be limited to provisions which assure compliance with and carry out the intent of the Older Americans Act. The State Unit on Aging shall:

(d) Submit annually to the Legislature a report of the status of the contract with the Commission on Aging, including a statement regarding any problems in the contractual arrangement; an assessment of the success of the ombudsman program during the preceding year; the degree of compliance by the program with the Older Americans Act; and an assessment of the level of cooperation between *the Health Care Commission,* the Department of Health and Rehabilitative Services, and the ombudsman program regarding shared responsibilities, including, but not limited to, access to records and actions taken on behalf of residents of long-term care facilities. The report shall be submitted in conjunction with the report submitted by the state ombudsman council required by this section. The first report shall be submitted to the Legislature on or before March 1, 1990.

(3) The state ombudsman council:

(f) Shall prepare an annual report to the President of the Senate, the Speaker of the House, and the Governor containing an appraisal of the problems of nursing home and long-term care facility residents, recommendations for improving nursing home and long-term care facility care and treatment, and an analysis of the success of the ombudsman program during the preceding year which should address, at a minimum, the relationship between the ombudsman program, *the Health Care Commission,* the Commission on Aging, and the Department of Health and Rehabilitative Services and an assessment of how successfully the ombudsman program has carried out its responsibilities under the Older Americans Act. The annual report shall be submitted on or before March 1 of each year.

(4) In performing the duties specified in state and federal law, the ombudsman councils shall be independent of *the Health Care Commission and* the Department of Health and Rehabilitative Services. However, *the commission,* the department, and the councils shall cooperate fully in the discharge of their responsibilities for identifying and correcting deficiencies in nursing homes and other long-term care facilities.

(5) The state ombudsman council shall be composed of 12 members appointed by the Governor. The council shall solicit nominations from appropriate professional organizations, consumer groups representing older or disabled persons and long-term care advocacy groups, and shall submit a list of nominees to the Governor for consideration.

(b) In no case may the medical director of a nursing home or a long-term care facility or an employee of *the Health Care Commission or* the Department of Health and Rehabilitative Services serve as a member or as an ex officio member of the council. Except for the nursing home administrator, adult congregate living facility owner or operator, medical or osteopathic physician, licensed pharmacist, registered dietitian, and registered nurse, each member of the state ombudsman council shall certify to having no association with a nursing home or long-term care facility for reward or profit.

(10) The state ombudsman council is authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, including assistance from any adult protective services programs of the Department *of Health and Rehabilitative Services* as provided for under s. 409.026 and ss. 415.101-415.113.

Section 110. Effective April 1, 1992, subsections (1) and (4) of section 400.307, Florida Statutes, are amended to read:

400.307 District nursing home and long-term care facility ombudsman councils; duties; membership.—

(1) There shall be at least one nursing home and long-term care facility ombudsman council in each of the districts of the Department *of Health and Rehabilitative Services,* which shall function under the direction of the state ombudsman council.

(4) Each district ombudsman council shall be composed of no less than 15 members and no more than 20 members from the district, to include the following: one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may have limited practice in a long-term care facility; one registered nurse who has geriatric experience, if possible; one nursing home administrator; one owner or operator of an adult congregate living facility; one licensed pharmacist; one registered dietitian; at least five nursing home residents or representative consumer advocates for nursing home residents; at least two long-term care facility residents or representative consumer advocates for long-term care facility residents; one attorney; and one professional social worker. In no case shall the medical director of a nursing home or a long-term care facility or an employee of *the Health Care Commission or* the Department of Health and Rehabilitative Services serve as a member or as an ex officio member of a council. Except for the nursing home administrator, adult congregate living facility owner or operator, medical or osteopathic physician, licensed pharmacist, registered dietitian, and registered nurse, each member of the council shall certify to having no association with a nursing home or long-term care facility for reward or profit. Any member who has an affiliation with a nursing home, adult congregate living facility, or adult foster home may not participate in any investigation or inspection of any facility with which he has such affiliation.

Section 111. Effective April 1, 1992, subsection (2) of section 400.401, Florida Statutes, is amended to read:

400.401 Short title; purpose.—

(2) The purpose of this act is to provide for the health, safety, and welfare of residents of adult congregate living facilities in the state, to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic, social, mental health, health, and leisure services are made available to residents of such facilities through the efforts of *the Health Care Commission,* the Department of Health and Rehabilitative Services, adult congregate living facilities, and other community agencies. The Legislature recognizes that adult congregate living facilities are an important part of the continuum of long-term care in the state. The services available in these facilities, either directly or through contract or agreement, are intended to help residents remain as independent as possible in order that premature nursing home or institutional placement may be avoided.

Section 112. Effective April 1, 1992, subsections (2) and (3) of section 400.408, Florida Statutes, are amended to read:

400.408 Referral of person for residency to unlicensed facility; penalty; verification of licensure status.—

(2) In at least one office in each district of the Department *of Health and Rehabilitative Services,* the *commission* ~~department~~ shall maintain a list of licensed facilities within that district and shall update the list at least monthly.

(3) At least annually, the *commission* ~~department~~ shall notify, in writing, every physician licensed pursuant to chapter 458, every osteopathic physician licensed pursuant to chapter 459, every hospital licensed pursuant to part I of chapter 395, every nursing home facility licensed pursuant to part I of this chapter, and every employee of the Department *of Health and Rehabilitative Services* having a responsibility for referring persons for residency that it is unlawful to knowingly refer a person for residency to an unlicensed adult congregate living facility and shall notify them of the penalty for violating such prohibition. Further, the notice must direct each noticed facility and individual to contact the *commission* ~~appropriate departmental office~~ in order to verify the licensure status of any facility prior to referring any person for residency. Each notice must include the name, telephone number, and mailing address of the appropriate office to contact.

Section 113. Effective April 1, 1992, section 400.623, Florida Statutes, is amended to read:

400.623 Recruitment.—The *commission* ~~department~~ shall recruit and license an appropriate number of adult foster homes to serve the ~~department's~~ clients *of the Department of Health and Rehabilitative Services.* When a licensed adult foster home accepts more than one resident not placed in the home by the Department *of Health and Rehabilitative Ser-*

vices, the *commission* ~~department~~ shall cancel the license issued pursuant to this section and require the home to make application for licensure as an adult congregate living facility in accordance with the provisions of part II of this chapter.

Section 114. Effective March 1, 1992, part I of chapter 408, Florida Statutes, consisting of sections 408.001, 408.01, 408.02, 408.025, 408.03, 408.04, 408.05, 408.06, 408.07, 408.08, 408.10, 408.11, 408.12, 408.20, 408.21, 408.22, 408.23, 408.24, 408.25, 408.26, and 408.27, is created to read:

408.001 Florida Health Care Commission.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that Florida is lacking a rational, continuous, and coordinated health planning and policy development process. Responsibility for health policy development and for the enforcement of this policy is dispersed throughout state and local government, and no single executive agency has been given authority for the coordination of health policy development. The Legislature further finds that, in expressing its ultimate authority as policymaker for the state, the Legislature has enacted conflicting health goals and objectives. Although programs have been enacted to regulate hospital reimbursement, health care capital expenditures, health financing, and the licensing of health professionals and facilities, and to establish planning and data management, there is little coordination among these activities, nor is there an overall policy directive for these programs. Therefore, it is the intent of the Legislature to establish a single state agency with overall responsibility for the state's health care planning, regulation, and policy development.

(2) CREATION OF COMMISSION; COMPREHENSIVE HEALTH PLAN.—The Florida Health Care Commission is hereby established as the single state agency with responsibility for all health regulation, health planning in conjunction with local governments, and the development of a health care data base. The commission shall be responsible for the planning, regulation, and data management of health care as established in this act. In meeting this responsibility, the commission shall consult with the State University System and independent health and medical professional schools. Further, the commission shall assist the Legislature in health policy development through the establishment of an integrated, rational, and comprehensive health plan. The plan shall contain health policy goals and objectives relating to health care cost containment, access to health care, and health care quality and shall be developed and updated in incremental steps. Included in the plan shall be specific proposals for regulatory policy to be considered by the Legislature for each of the areas under the commission's jurisdiction. Prior to developing its recommendations to the Legislature for reaching each health care goal, the commission shall conduct public hearings to permit interested parties the opportunity to provide input. The commission's proposals shall be submitted to the Legislature according to the schedule set forth in this act or as part of the Sunset Review process.

408.01 Health Care Commission goals.—The Legislature hereby establishes goals and objectives for the commission, to serve as a guide in the development of health policy recommendations to the Legislature. The commission is directed to achieve the health goals as set forth below:

(1) HEALTH CARE COST CONTAINMENT.—

(a) Legislative findings; goal.—Despite numerous efforts by the Legislature for at least the last decade to curb health spending, health care costs continue to increase at an unacceptable rate. The increase in health care costs is of concern to the Legislature not only because increasing costs threaten the ability of the private sector and state and local governments to pay for health care, but also because rapid cost escalations threaten the ability of Florida business to compete in national and international markets. Therefore, the Legislature hereby establishes the following cost containment goal: By the year 1996, per capita health care costs should be increasing by no more than the consumer price index. In addition, no single component of the health care system, be it capital expenditures for new beds or services, or the rate of increase in per capita spending for hospital or physician services, pharmacy, or long term care services, may increase faster on an annual basis than the consumer price index, unless such increase is vital to meeting a health priority as recommended by the commission.

(b) Plan.—By January 1, 1994, the commission shall submit to the Legislature and the Governor a plan for accomplishing the cost containment goal. This plan shall include a component related to the containment of costs associated with: capital expenditures, provider reimbursement, facility reimbursement, and health financing through the local and state health facilities financing authorities. The plan shall also include specific proposals in the form of draft legislation, as needed, for: reducing the cost of medical liability insurance; reforms to the tort system as it relates to medical care; and the establishment of practice parameters. In developing the cost containment plan, the commission shall rely on the use of market forces where such forces have in the past proven effective in containing health care costs. In those areas where market forces have not proven effective in containing costs, the commission shall rely upon regulatory strategies or other strategies which, in the commission's opinion, have the greatest prospect of proving effective in meeting the cost containment goal. It is the intent of the Legislature that, to the extent possible, the free enterprise system for the delivery of health services shall be preserved. However, the Legislature recognizes that managed care programs, regulated fee schedules for physicians and other practitioners, a statewide prospective payment system such as diagnostic related groups for all payers, the establishment of a health care budget for Florida, establishing aggregate total capital expenditure limits, or other related efforts may be necessary in order to accomplish the cost containment goal. In establishing its plan for cost containment, the commission shall include those cost containment mechanisms which are, in priority order from greatest to least priority, most likely to achieve the desired cost containment goal, least administratively complex, and least intrusive on private sector health care providers. All components of the health care system shall be included in the commission's health care cost containment plan.

(2) HEALTH CARE ACCESS.—

(a) Legislative findings; goal.—Access to health care is an increasing problem for many Floridians, especially for women and young children, part-time employees and employees of small businesses, and the unemployed. Failure of our health care system to provide access to all is not only unacceptable to the Legislature for humanitarian reasons, but also because it results in inappropriate and far more costly use of health resources, a less productive work force, and a less effective educational system. Therefore, the Legislature hereby establishes the following health care access goal: All Floridians should have access to primary health care by 1996.

(b) Plan.—By January 1, 1994, the commission shall submit to the Legislature and the Governor a plan for accomplishing the health care access goal. The plan shall address all aspects of the health care access problem and shall include a consideration of at least the following:

1. The role state and local government should assume in the provision of health services, including level of service, sources of funding, and delivery system models. By the year 1996, state and local governments, in cooperation with the private sector, shall ensure that all unemployed, low-income persons have access to primary health care services.

2. The role employers should assume, including whether employer mandates are needed to ensure access and the form such mandates should take. The plan should ensure that, by 1996, employees and their dependents have, at a level acceptable to the Legislature, primary health coverage or employers may be mandated to provide such coverage. However, in no event shall the Legislature consider any system of employer mandated health care coverage unless the Legislature finds that per capita health care costs are not increasing by more than the consumer price index and mandated coverage is still necessary. The implementing legislation shall consider the potential impact on employment levels and shall provide a mechanism through appeal to the commission for an exemption to mandated coverage upon a showing of hardship.

3. The role and responsibilities which each individual should assume in obtaining access to health care.

4. A mechanism to ensure coordination among programs, and an appropriate organizational structure for implementation and plan administration.

5. Reforms needed in insurance regulation, including mechanisms to ensure that any cost savings achieved by such reforms will result in lower insurance premiums.

6. The health coverage component of workers' compensation, personal injury protection, and other existing health coverage for possible consolidation into a single comprehensive health benefit plan.

7. Measures needed to ensure an adequate supply and distribution of health manpower, including, but not limited to, determining whether to expand licensure and reciprocity laws to provide for practice in the state by health care professionals licensed by other states.

8. The advantages and disadvantages of establishing a two-tier system of health care versus a system where all users have equal access regardless of economic status, and recommendations regarding which model best suits Florida.

9. Placing appropriate limitations on the liability exposure of physicians when treating indigent patients at no charge.

The commission shall include in its health care access plan a recommendation for the prioritization of various categories of health care services. In developing a priority plan, the commission shall consider the cost effectiveness of the service, how the service will contribute to the quality of life, and the humanitarian nature of the service. In developing this priority plan, the commission shall utilize persons with expertise in ethics, medicine, religion, and philosophy.

(3) HEALTH CARE QUALITY.—

(a) Legislative findings; goal.—The Legislature has committed significant resources to the collection and dissemination of health care cost data, but to date little has been done to evaluate the quality of health care. In a time of diminishing resources and increasing demands, it is essential that the quality of health services be evaluated. Therefore, the Legislature hereby establishes the following health care quality goal: By 1996, there shall be in place a mechanism to collect, evaluate, and disseminate information regarding the quality of health services. The commission shall publish annually an evaluation of the quality of health care services in hospitals and other health care facilities, and the quality of care given by physicians. The quality of care data shall be of a nature to evaluate the quality of care within medical and health care specialities, and to evaluate the efficacy of one modality of treatment versus other modalities of treatment. The Commission should encourage the use of nationally developed medical practice guidelines and outcomes research to measure and improve the quality of care and determine the appropriateness of medical procedures.

(b) Plan.—By January 1, 1994, the commission shall submit to the Legislature and the Governor a plan for accomplishing the health care quality goal.

(4) HEALTH PLANNING.—

(a) Legislative findings; goal.—The Legislature finds that in order to redesign the health care delivery system and to administer the redesigned system, broad input is needed from all levels, including state and local government, health providers, health consumers, health purchasers, and the general public. Mechanisms to accomplish health planning have been established in the past, but the Legislature finds that these mechanisms have been ineffective in accomplishing a rational, comprehensive, and coordinated health planning system. Therefore, the Legislature establishes the following health planning goal: By 1995, there shall be created in Florida a rational, comprehensive, and coordinated system of health planning which involves input from all aspects of the health care system, including government, purchasers, providers, consumers, business, and the general public.

(b) Plan.—By January 1, 1993, the commission shall submit to the Legislature and the Governor a plan for accomplishing the health planning goal. The plan shall ensure that all constituencies are represented in the planning process, but that no single constituency is over-represented. In addition, the plan shall include, but not be limited to:

1. A mechanism to ensure that health planning is integrated with all other state and local comprehensive planning.

2. Concise duties and responsibilities for local and statewide health planning.

408.02 Location of commission; appointment of commissioners; commission proceedings.—

(1) The Health Care Commission shall be located within the Department of Health and Rehabilitative Services for administrative purposes. However, the commission shall be a separate budget entity and shall not be subject to control, supervision, or direction by the department in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. The department shall provide reasonable administrative support and services to the commission to the extent requested by the commission chairman, who shall be the agency head of the commission for all purposes.

(2) The commission shall be composed of four part-time commissioners, and a full-time commissioner who shall serve as commission chairman, all appointed by the Governor from among persons who have demonstrated knowledge and expertise in Florida's health care system. All commissioners shall be confirmed by the Senate. If the Senate refuses to confirm or rejects any appointment, the Governor shall make a new appointment within 30 days. Each part-time commissioner shall be paid at a level equivalent to the compensation provided to a member of the Legislature pursuant to s. 11.13.

(3)(a) Each appointment to the commission shall be for a 4-year term, except that to ensure a staggering of terms, the initial term for two commissioners shall expire on January 1, 1993, the initial term for three commissioners shall expire on January 1, 1995.

(b) If a vacancy is created on the commission, the vacancy shall be filled within 120 days from the date the vacancy occurs, and the appointment shall be valid for the remainder of the unexpired term.

(4)(a) The initial appointment of commissioners shall be completed by March 1, 1992, at which time the commissioners shall assume the duties of the commission.

(b) The commission shall develop a plan for the administrative organization and operation of the commission, to take effect on April 1, 1992. The plan shall provide for integrating existing operations into the commission and for staffing and funding the operations of the commission.

(5) Any person serving on the commission who seeks to be reappointed shall submit to the Governor, at least 120 days before the expiration of his term, a statement that he desires to serve an additional term.

(6) The Governor may remove a commissioner for cause. All commissioners shall be subject to the ethics standards provided in this part.

(7) The primary duty of the chairman is to serve as chief administrative officer of the commission. However, the chairman may participate in any proceedings pending before the commission when administrative duties and time permit. In order to distribute the workload and expedite the commission's calendar, the chairman, in addition to other administrative duties, has authority to assign the various proceedings pending before the commission requiring hearings to two or more commissioners. Only those commissioners assigned to a proceeding requiring hearings are entitled to participate in the final decision of the commission as to that proceeding. However, if only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chairman shall cast the deciding vote for final disposition of the proceeding. If more than two commissioners are assigned to any proceeding, a majority of the members assigned shall constitute a quorum and a majority vote of the members assigned shall be essential to final commission disposition of those proceedings requiring actual participation by the commissioners. If a commissioner becomes unavailable after assignment to a particular proceeding, the chairman shall assign a substitute commissioner. In those proceedings assigned to a hearing examiner, following the conclusion of the hearings, the designated hearing examiner is responsible for preparing recommendations for final disposition by a majority vote of the commission. A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding.

(8) A majority of the commissioners may determine that the full commission shall sit in any proceeding. The Public Counsel or a person regulated by the Health Care Commission and substantially affected by a proceeding may file a petition that the proceeding be assigned to the full commission. Within 15 days of receipt by the commission of any petition or application, the full commission shall dispose of such petition by majority vote and render a written decision thereon prior to assignment of less than the full commission to a proceeding. In disposing of such petition, the commission shall consider the overall general public interest and impact of the pending proceeding, including, but not limited to, the following criteria: the magnitude of the proposed project, including the number of consumers affected; the amount of resources to be expended; the services rendered to the affected public; the needs of the affected consumers in the area to be served; regulatory policies; competition; and the precedential nature of the proposed project and its potential impact on overall health policy. If the petition is denied, the commission shall set forth the grounds for denial.

(9) This section does not prohibit a commissioner designated by the chairman from conducting a hearing as provided under s. 120.57(1) or s. 350.631, and any rules of the commission adopted pursuant thereto.

408.025 Organizational structure.—

(1) The commission shall employ an executive director, who shall serve at the pleasure of the commission. The executive director shall appoint a general counsel, and shall employ other staff as approved by the commission.

(2) The following divisions are established within the commission:

(a) The Division of Licensure, within which the following bureaus are established:

1. The Bureau of Facility Licensure.

2. The Bureau of Professional Licensure, which shall have responsibility for each profession regulated by the commission.

(b) The Division of Planning and Policy Development, within which the following bureaus are established:

1. The Bureau of Technical Assistance.

2. The Bureau of Data Management.

3. The Bureau of Planning.

(c) The Division of Financial Management, within which the following bureaus are established:

1. The Bureau of Facility Budgets.

2. The Bureau of Capital Expenditures.

3. The Bureau of Professional Fee Regulation.

(3) The commission shall have the authority to establish additional divisions and bureaus as necessary to properly implement the provisions of this act.

408.03 Qualifications of commissioners.—A commissioner may not, at the time of his appointment:

(1) Have any financial interest, other than ownership of shares in a mutual fund, in any business entity which, either directly or indirectly, owns or controls any entity regulated by the commission, in any entity regulated by the commission, or in any business entity which, either directly or indirectly, is an affiliate or subsidiary of any entity regulated by the commission.

(2) Be employed by, or engaged in, any business activity with any business entity which, either directly or indirectly, owns or controls any entity regulated by the commission, by any entity regulated by the commission, or by any business entity which, either directly or indirectly, is an affiliate or subsidiary of any entity regulated by the commission.

However, nothing in this section shall be construed to prohibit a health care practitioner, including a physician, from providing health care so long as he receives no income from his practice while employed as a commissioner.

408.04 Commissioners; standards of conduct.—

(1) STATEMENT OF INTENT.—In addition to the provisions of part III of chapter 112, which are applicable to health care commissioners by virtue of their being public officers and full-time employees of the executive branch of government, the conduct of health care commissioners shall be governed by the standards of conduct provided in this section. Nothing shall prohibit the standards of conduct from being more restrictive than the provisions of part III of chapter 112. Further, this section shall not be construed to contravene the restrictions of part III of chapter 112. In the event of a conflict between this section and part III of chapter 112, the more restrictive provision shall apply.

(2) STANDARDS OF CONDUCT.—

(a) A commissioner may not accept anything from any business entity which, either directly or indirectly, owns or controls any entity regulated by the commission, from any entity regulated by the commission, or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any entity regulated by the commission.

(b) A commissioner may not accept any form of employment with or engage in any business activity with any business entity which, either directly or indirectly, owns or controls any entity regulated by the commission, any entity regulated by the commission, or any business entity which, either directly or indirectly, is an affiliate or subsidiary of any health care facility regulated by the commission.

(c) A commissioner may not have any financial interest, other than shares in a mutual fund, in any entity regulated by the commission, in any business entity which, either directly or indirectly, owns or controls any entity regulated by the commission, or in any business entity which, either directly or indirectly, is an affiliate or subsidiary of any entity regulated by the commission. If a commissioner acquires any financial interest prohibited by this paragraph during his term of office as a result of events or actions beyond his control, he shall immediately sell such financial interest or place such financial interest in a blind trust at a financial institution. A commissioner may not attempt to influence, or exercise any control over, decisions regarding the blind trust.

(d) A commissioner may not accept anything from a party in a proceeding currently pending before the commission.

(e) A commissioner may not serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.

(f) A commissioner, during his term of office, may not make any public comment regarding the merits of any proceeding under s. 120.57 currently pending before the commission.

(g) A commissioner may not conduct himself in an unprofessional manner at any time during the performance of his official duties.

However, nothing in this subsection shall be construed to prohibit a health care practitioner from providing health care so long as he receives no income from his practice while employed as a commissioner.

(3) The Commission on Ethics shall accept and investigate any alleged violations of this section pursuant to the procedures contained in ss. 112.322-112.3241. The Commission on Ethics shall provide the Governor with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112. A health care commissioner may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), regarding the standards of conduct or prohibitions set forth in this section and ss. 408.03 and 408.05.

408.05 Ex parte communications.—

(1) A commissioner shall accord to every person who is legally interested in a proceeding, or his attorney, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he knows will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

(2) The provisions of this section shall not prohibit an individual from communicating with a commissioner, provided that the individual is representing only himself, without compensation.

(3) The provisions of this section shall not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.

(4) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in subsection (1), to which he is assigned, he shall place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed

on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he deems it necessary to eliminate the effect of an ex parte communication received by him, withdraw from the proceeding, in which case the chairman shall substitute another commissioner for the proceeding.

(5) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of such communication, to include the name of the person making the communication, the name of the commissioner or commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.

(6) Any commissioner who knowingly fails to place on the record any such communications, in violation of the section, within 15 days of the date of such communication is subject to removal and may be assessed a civil penalty not to exceed $5,000.

(7)(a) It shall be the duty of the Commission on Ethics to receive and investigate sworn complaints of violations of this section pursuant to the procedures contained in ss. 112.322-112.3241.

(b) If the Commission on Ethics finds that there has been a violation of this section by a health care commissioner, it shall provide the Governor with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112.

(c) If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to the provisions of this section, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

408.06 Enforcement and interpretation.—Any violation of s. 408.05 by a commissioner, former commissioner, or former employee of the commission shall be punishable as provided in ss. 112.317 and 112.324. The Commission on Ethics is hereby given the power and authority to investigate complaints of violation of this chapter in the manner provided in part III of chapter 112, as if this section were included in that part. A commissioner may request an advisory opinion from the Commission on Ethics as provided by s. 112.322(3)(a).

408.07 Oath of office.—Before entering upon the duties of his office, each commissioner shall subscribe to the following oath: "I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am qualified to hold office under the State Constitution, and that I will well and faithfully perform at all times the duties of Health Care Commissioner, which I am now about to assume in a professional, independent, objective, and nonpartisan manner; that I do not have any financial, employment, or business interest which is prohibited by chapter 408, Florida Statutes; and that I will abide by the standards of conduct required of me by chapters 112 and 408, Florida Statutes, so help me God." In case any commissioner should in any way become disqualified, he shall at once remove such disqualification or resign, and upon his failure to do so, he shall be suspended from office by the Governor and dealt with as provided by law.

408.08 Place of meeting; expenditures; employment of personnel; records availability and fees.—

(1) The offices of the Health Care Commission shall be in the vicinity of Tallahassee, but the commissioners may hold meetings anywhere in the state at their discretion.

(2) All sums of money authorized to be paid on account of the commissioners shall be paid out of the State Treasury only on the order of the Comptroller.

(3) The commissioners may employ clerical, technical, and professional personnel reasonably necessary for the performance of their duties.

(4) Upon request by the governing body of a municipal or county government within 7 days after completion of the transcript and its delivery to the commission, the commission shall provide copies of the transcripts of testimony at the cost of reproduction and mailing, but such copies need not be certified unless specifically requested.

(5) The commission shall make available to the Public Counsel the original copy of all transcripts for use and study in the commission offices. If the commission makes any copies of transcripts for internal use and if the Public Counsel has so requested in writing to the clerk of the commission at the time of his intervention, the commission shall supply the Public Counsel with a copy of the transcript at no charge. In all other cases, the Public Counsel may obtain a copy of the transcript from the commission for the cost of reproduction.

(6) The commission shall collect for copying, examining, comparing, correcting, verifying, certifying, or furnishing orders, records, transcripts of testimony, papers, or other instruments the same fees that are allowed clerks of the circuit courts of Florida. In cases where the fee would amount to less than $1, no fee shall be charged.

(7) Copies of commission orders furnished to public officials, newspapers, periodical publications, federal agencies, state officials of other states, and parties to the proceeding in which the order was entered and their attorneys shall be without charge. However, the commission may in its discretion charge fees for the furnishing of more than one copy of any order to any of the foregoing parties.

(8) The commission shall keep a book in which all fees collected by it as provided for in this section shall be recorded, together with the amount and purpose for which they were collected. This book shall be a public record. The commission shall prepare a statement of these fees in duplicate each month and remit one copy of the statement, together with all fees collected by it, to the Treasurer. All moneys collected pursuant to this section by the commission shall be deposited in the State Treasury to the credit of the Health Care Trust Fund.

408.10 Former commissioners and employees; representation of clients before the commission.—

(1) Any former commissioner of the Health Care Commission is prohibited from appearing before the commission representing any client or any industry regulated by the Health Care Commission for a period of 2 years following termination of service on the commission.

(2) Any former employee of the commission is prohibited from appearing before the commission representing any client regulated by the Health Care Commission on any matter which was pending at the time of termination and in which such former employee had participated.

408.11 Public Counsel; appointment; oath; restrictions on Public Counsel and his employees.—

(1) The Public Counsel as established in s. 350.061 is hereby directed to represent the general public of Florida before the Health Care Commission.

(2) The powers and duties granted to the Public Council under s. 350.0611 are hereby granted to it with respect to the Health Care Commission. Furthermore, the Joint Legislative Auditing Committee shall have the authority described in ss. 350.0613 and 350.0614 with respect to the Health Care Commission.

408.12 Health Care Trust Fund; moneys to be deposited therein.—

(1) There is hereby created in the State Treasury a special fund to be designated as the Health Care Trust Fund which shall be used in the operation of the commission in the performance of the various functions and duties required of it by law.

(2) All fees, licenses, and other charges collected by the commission shall be deposited in the State Treasury to the credit of the Health Care Trust Fund, to be used in the operation of the commission as authorized by the Legislature. However, penalties and interest assessed and collected by the commission shall not be deposited in the trust fund but shall be deposited in the General Revenue Fund. The Health Care Trust Fund shall be subject to the service charge imposed pursuant to chapter 215.

(3) The commission shall maintain separate revenue accounts in the Health Care Trust Fund for every profession regulated by the commission. The commission shall, to the extent practicable, provide for the proportionate allocation among the accounts of expenses incurred by the commission in the performance of its duties with respect to each regulated profession. The commission shall provide each profession regulated by the commission with an annual report of revenue and allocated expenses related to the regulation of that profession, and these reports shall be used by the board to determine the amount of licensing fees for each profession regulated by the commission.

(4) All other moneys in the Health Care Trust Fund shall be for the use of the commission in the performance of its functions and duties as provided by law, subject to the fiscal and budgetary provisions of general law.

408.20 Commission inquiries; confidentiality of business material.—If the commission undertakes an inquiry, any records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics, obtained by the commission incident to the inquiry are considered confidential and exempt from s. 119.07(1) while the inquiry is pending. If at the conclusion of an inquiry the commission undertakes a formal proceeding, any matter determined by the commission or by a judicial or administrative body, federal or state, to be trade secrets or proprietary confidential business information coming into its possession pursuant to such inquiry shall be considered confidential and exempt from s. 119.07(1). Such material may be used in any administrative or judicial proceeding so long as the confidential or proprietary nature of the material is maintained. The public records exemptions provided in this section are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

408.21 Oaths; depositions; protective orders.—The commission may administer oaths, take depositions, issue protective orders, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence necessary for the purpose of any investigation or proceeding. Challenges to, and enforcement of, such subpoenas and orders shall be handled as provided in s. 120.58.

408.22 Compelled testimony.—If any person called to testify in a commission proceeding shall refuse to testify because of a claim of possible self-incrimination, the commission, after consultation with the appropriate state attorney, may apply to the chief judge of the appropriate judicial circuit for a judicial grant of immunity ordering the testimony of such person notwithstanding his objection, but in such case no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal prosecution.

408.23 Administrative hearing officers.—Any provision of law to the contrary notwithstanding, the commission shall utilize hearing officers of the Division of Administrative Hearings of the Department of Administration to conduct hearings of the commission not assigned to members of the commission.

408.24 Penalties; rules; execution of contracts.—

(1) The commission may impose upon any entity regulated by the commission, that is found to have refused to comply with or willfully violated any lawful rule or order of the commission or any statute administered by the commission, a penalty for each such offense of not more than $5,000, to be fixed, imposed, and collected by the commission or the commission may, for any such violation, amend, suspend, or revoke any license or certificate issued by the commission. Each day that such refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The net proceeds from the enforcement of any such lien shall be deposited in the General Revenue Fund.

(2) The commission is authorized to adopt, by affirmative vote of a majority of the commission, rules reasonably necessary to implement any law which it administers.

(3) The commission may designate one or more employees to execute contracts on behalf of the commission.

408.25 Judicial review.—

(1) The District Court of Appeal, First District, shall, upon petition, review any action of the commission.

(2) Notice of such review shall be given by the petitioner to all parties who entered appearances of record in the proceedings before the commission in which the order sought to be reviewed was made.

(3) Such parties may file briefs in support of their interests, as such interests may appear, within the time and in the manner provided by the Florida Rules of Appellate Procedure.

(4) Such parties shall be entitled as a matter of right to make oral argument in support of their interests, as such interests may appear, in any case in which oral argument is granted by the court on the application of the petitioner or the respondent.

408.26 Administrative rules.—

(1) By September 1, 1992, the Health Care Commission shall file for proposed adoption of the necessary rules for the implementation of this act. The rules shall provide, among other things, an administrative procedure pursuant to chapter 120. However, nothing contained in this act is intended to prohibit the commission from adopting in full the existing rules of the Health Care Cost Containment Board or the Department of Health and Rehabilitative Services, unless there is a direct conflict with provisions of this act.

(2) Nothing contained in this act is intended to repeal or modify any of the existing composition of the local health councils and the Statewide Health Council, or the state health plan or any of the local district health plans, unless there is a direct conflict with the provisions of this act.

408.27 Medical Advisory Panel.—There is created within the commission a Medical Advisory Panel. The panel shall serve in an advisory capacity to the commission. The panel shall be composed of eight members who shall be appointed by the chairman of the commission.

(1) The members of the panel shall include:

(a) Four physicians, licensed under chapter 458, chapter 459, chapter 460 and chapter 461, respectively, each of whom has been actively engaged in private practice in Florida for the past 5 years.

(b) The Vice President for Health Affairs of the University of Florida.

(c) The Deputy Secretary for Health of the Department of Health and Rehabilitative Services.

(d) An individual with expertise in health care data collection.

(e) A representative from a hospital licensed under chapter 395 who has expertise in utilization review.

(2) The members of the panel shall serve without compensation, but shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(3) The duties of the panel shall be to advise the commission in the performance of its duties and to formulate general policies affecting access to and cost of health care in the state. The duties of the panel shall include:

(a) Recommending to the commission minimum utilization review standards that should be used for the utilization review programs of all carriers and hospitals.

(b) Recommending to the commission those health care procedures, services, drugs, or devices which are experimental, investigational, outmoded, or not efficacious, or otherwise not sufficiently cost-effective to be included in basic health care services.

(c) Analyzing the health care data currently being collected and developing recommendations for improved data collection to assist in the private and public sector purchasing of health care services.

(d) Assisting in the development of practice parameters and recommending to the commission ways in which such parameters can be used to enhance utilization management programs and reduce the costs of defensive medicine. The panel and commission should encourage the use of nationally developed medical practice guidelines and outcomes research to measure and improve the quality of care and determine the appropriateness of medical procedures.

(e) Performing such functions as may assist the commission in its activities.

Section 115. Health Care Work Group.—

(1) CREATION; MEMBERSHIP.—There is hereby created the Health Care Work Group, hereinafter referred to as the "work group."

(a) The work group shall be composed of 21 members to be appointed by the Governor, the majority of whom shall be representatives of purchasers of group health insurance in Florida. The Governor shall appoint a chairperson from among the members of the work group.

(b) The members of the work group shall be appointed within 15 days after the effective date of this section. The work group shall hold its first meeting within 30 days after the effective date of this section.

(2) ADMINISTRATION; COMPENSATION.—

(a) The work group shall be located within the Department of Health and Rehabilitative Services for administrative purposes. Staff assistance shall be provided by the department, and the department shall provide the work group with the services of an actuary and a certified public accountant. The department and the Health Care Cost Containment Board shall also provide any health-related data requested by the work group.

(b) Members of the work group shall not receive compensation for their service on the work group, but shall be entitled to reimbursement through the Department of Health and Rehabilitative Services for per diem or travel expenses as provided in s. 112.061, Florida Statutes.

(3) DUTIES AND RESPONSIBILITIES.—

(a) The work group shall systematically consider the range of health care issues facing Florida, review the available research, study the best practices of other states, listen to interested parties, identify the fundamental problems, and develop strategies for a long-term health care plan for Florida that addresses health care cost, financing, access, and quality of care issues, develops alternative solutions, and advises the Governor and the Legislature on long-term health care policies, proposed systemic reforms, and possible economies.

(b) On or before January 1, 1992, the work group shall prepare and submit a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, which shall include the following:

1. Recommendations for reviewing, monitoring, and evaluating the current status of, and proposals for changes to, health care policy, availability, access, quality, and financing.

2. Recommendations for identifying ways in which state tax policy can help maintain a healthy public and private health care industry.

3. Recommendations for planning for the health care requirements of a growing, diverse population.

4. Recommendations for determining supply and demand requirements for health care manpower, health professional training program needs, and other initiatives to ensure an adequate supply of well-trained health professionals.

5. Recommendations for revisions to the goals, mandates, plans, and timeframes for the Health Care Commission, as specified in s. 408.01, Florida Statutes.

6. Recommendations relating to the establishment of a Health Care Commission, including alternatives to establishing a Health Care Commission and, if a commission is recommended:

a. Whether a full-time or part-time commission is the most appropriate structure;

b. Whether any additional functions should be consolidated under the Health Care Commission, including the licensing of health professionals, the regulation of health insurance, or other related activities; and

c. Mechanisms to ensure that the commission does not become unduly influenced by regulated entities.

7. Recommendations for any revisions to the legislation which established the Health Care Commission.

(4) EFFECTIVE DATE; REPEAL.—This section shall take effect upon becoming a law and shall stand repealed on April 1, 1992.

Section 116. Effective April 1, 1992, section 407.01, Florida Statutes, as amended by chapters 88-394 and 90-295, Laws of Florida, and subsection (4) of section 407.04, Florida Statutes, as created by chapter 88-394, Laws of Florida, are hereby repealed.

Section 117. Effective April 1, 1992, sections 407.001, 407.003, 407.02 through 407.10, 407.13, 407.30, and 407.32 through 407.70, Florida Statutes, and sections 407.002, 407.11, 407.12, 407.23, and 407.31, Florida Statutes, 1990 Supplement, are renumbered as sections 408.501 through 408.90, respectively, and designated as part III of chapter 408, Florida Statutes.

Section 118. All powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Health Care Cost Containment Board are transferred by a type three transfer, as defined in s. 20.06(3), Florida Statutes, to the Health Care Commission, as created by this act. Such transfer shall take effect April 1, 1992. Any rules promulgated by or for the board are included in such transfer.

Section 119. Effective April 1, 1992, the introductory paragraph of subsection (2) of section 624.215, Florida Statutes, is amended to read:

624.215 Proposals for legislation which mandates health benefit coverage; review by Legislature.—

(2) MANDATED HEALTH COVERAGE; REPORT TO *HEALTH CARE COMMISSION AND* LEGISLATIVE COMMITTEES; GUIDELINES FOR ASSESSING IMPACT.—Every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, health care service contractor, or health maintenance organization as a component of individual or group policies, shall submit to *the Health Care Commission and the* legislative committees having jurisdiction a report which assesses the social and financial impacts of the proposed coverage. Guidelines for assessing the impact of a proposed mandated or mandatorily offered health coverage, to the extent that information is available, shall include:

Section 120. Except as otherwise specified in this act, in editing manuscript for the next edition of the official Florida Statutes, the Statutory Revision Division of the Joint Legislative Management Committee shall change "Department of Health and Rehabilitative Services" or "Secretary of Health and Rehabilitative Services" to "Health Care Commission," and "department," "secretary of the department," or "secretary" to "commission," wherever the terms appear in chapters 400 and 483, Florida Statutes, part II of section 408, Florida Statutes, as created by this act, and sections 381.0162, 395.002 through 395.008, 395.011, 395.0141, 395.0142, 395.0146, 395.02465(8) and (9), 395.015, 395.0175, 395.018, 395.0185, 395.031 through 395.037, 395.104, 407.002, 407.06, and 407.33, Florida Statutes, as consistent with the intent and purposes of this act.

Section 121. In editing manuscript for the next edition of the official Florida Statutes, the Statutory Revision Division of the Joint Legislative Management Committee shall change "Health Care Cost Containment Board" to "Health Care Commission," and "board" to "commission," wherever the terms appear in part III of chapter 408, Florida Statutes, as created by this act, and sections 112.153, 154.304, 381.703, 394.4787, 394.4788, 395.01465(6), 395.034, 395.101, 395.63, 400.609, 409.2673, 440.13, and 766.314, Florida Statutes, as consistent with the intent and purposes of this act.

Section 122. The Statutory Revision Division of the Joint Legislative Management Committee is hereby directed to prepare, with the assistance of the staffs of the appropriate substantive committees of the House of Representatives and the Senate, and in consultation with the Department of Health and Rehabilitative Services, appropriate legislation as needed to correct cross references and any other inconsistencies which may be found in the Florida Statutes as a result of the provisions of this act, in order to properly implement the legislative intent expressed herein, for submission to the 1992 Regular Session of the Legislature.

Section 123. Part I of chapter 408, Florida Statutes, is repealed on October 1, 1997, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 124. Section 408.27, Florida Statutes, is repealed on October 1, 1997, and the Medical Advisory Panel shall be reviewed by the Legislature pursuant to s. 11.611, Florida Statutes.

Section 125. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, section 381.703, Florida Statutes, renumbered as section 408.303, Florida Statutes, by this act, shall not stand repealed on October 1, 1997, and part II of section 408, Florida Statutes, is repealed on October 1, 1994, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 126. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, part I of chapter 395

and section 395.63, Florida Statutes, shall not stand repealed on October 1, 1992, and part I of chapter 395 and section 395.63, Florida Statutes, are repealed on October 1, 1993, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 127. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, and except as otherwise specifically provided herein, chapter 407, Florida Statutes, redesignated as part III of chapter 408, Florida Statutes, by this act, shall not stand repealed on October 1, 1992, and part III of chapter 408, Florida Statutes, is repealed on October 1, 1993, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 128. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, part VI of chapter 400, Florida Statutes, shall not stand repealed on October 1, 1995, and part VI of chapter 400, Florida Statutes, is repealed on October 1, 1993, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 129. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, chapters 457, 458, 459, 460, 461, 463, 464, 465, and 466, part II of chapter 468, and part I of chapter 484, Florida Statutes, shall not stand repealed on October 1, 1996, and chapters 457, 458, 459, 460, 461, 463, 464, 465, and 466, part II of chapter 468, and part I of chapter 484, Florida Statutes, are repealed on October 1, 1994, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 130. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, chapter 462, Florida Statutes, shall not stand repealed on October 1, 1995, and chapter 462, Florida Statutes, is repealed on October 1, 1994, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 131. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, part I of chapter 468 and chapters 490 and 491, Florida Statutes, shall not stand repealed on October 1, 2000, and part I of chapter 468 and chapters 490 and 491, Florida Statutes, are repealed on October 1, 1994, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 132. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, part X of chapter 468, Florida Statutes, shall not stand repealed on October 1, 1998, and part X of chapter 468, Florida Statutes, is repealed on October 1, 1994, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 133. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, parts I and II of chapter 483, Florida Statutes, shall not stand repealed on October 1, 1993, and parts I, II, and III of chapter 483, Florida Statutes, are repealed on October 1, 1994, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 134. Effective March 1, 1992, there is hereby appropriated from the Health Care Cost Containment Trust Fund to the Health Care Commission the lump sum of $100,000 to provide for the startup expenses of the commission.

Section 135. Section 766.205, Florida Statutes, is amended to read:

766.205 Presuit discovery of medical negligence claims and defenses.—

(1) Upon the completion of presuit investigation pursuant to s. 766.203, which investigation has resulted in the mailing of a notice of intent to initiate litigation in accordance with s. 766.106, corroborated by medical expert opinion that there exist reasonable grounds for a claim of negligent injury, each party shall provide to the other party reasonable access to information within its possession or control in order to facilitate evaluation of the claim.

(2) Such access shall be provided without formal discovery, pursuant to s. 766.106, and failure to so provide shall be grounds for dismissal of any applicable claim or defense ultimately asserted.

(3) As an exception to s. 455.241, any health care provider noticed pursuant to s. 766.106 (hereinafter referred to as prospective defendant), or the prospective defendant's legal representative or insurer, may request and obtain during the presuit period, or any time thereafter prior to verdict, medical information and records about the patient from any former or current treating health care provider of the patient, and such health care provider may furnish such medical information and records if such health care provider is willing to furnish such information and records voluntarily. However, this subsection does not require a former or current treating health care provider to furnish such medical information or records. Written notice of the furnishing of any such information or records must be provided to the patient or the patient's legal representative by the requestor within 3 business days after any such information or records are obtained. This subsection does not affect other rights or obligations of the parties or any former or current treating health care providers except as provided in this subsection.

(4)~~(3)~~ Failure of any party to comply with this section shall constitute evidence of failure of that party to comply with good-faith discovery requirements and shall waive the requirement of written medical corroboration by the party seeking production.

(5)~~(4)~~ No statement, discussion, written document, report, or other work product generated solely by the presuit investigation process is discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, hospitals and other medical facilities, and the officers, directors, trustees, employees, and agents thereof, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit investigation process. Such immunity from civil liability includes immunity for any acts by a medical facility in connection with providing medical records pursuant to s. 766.204(1) regardless of whether the medical facility is or is not a defendant.

Section 136. Effective July 1, 1991, paragraph (a) of subsection (11) of section 407.50, Florida Statutes, is amended to read:

407.50 Review of hospital budgets.—

(11) Notwithstanding any other provisions of this part:

(a) Any hospital operated by the Department of Health and Rehabilitative Services or the Department of Corrections;~~,~~ any comprehensive rehabilitative hospital as defined in s. 407.002(7);~~.~~ any rural hospital as defined in s. 407.002(24);~~,~~ *any intensive residential treatment program for children and adolescents as defined in s. 395 002(8) which received a certificate of need on or before January 1, 1991, and is licensed under chapter 395 for less than 33 beds, which is not part of a multifacility organization and which is part of a community mental health system;* and the Florida Elks Children's Hospital located in Umatilla shall be exempt from filing a budget, shall be exempt from budget review and approval for exceeding the maximum allowable rate of increase, and shall be exempt from any penalties arising therefrom. However, each such hospital shall be required to submit to the board its audited actual experience, as required by s. 407.05(7).

Section 137. Effective upon this act becoming a law, subsection (9) is added to section 186.003, Florida Statutes, to read:

186.003 Definitions.—As used in ss. 186.001-186.031 and 186.801-186.911, the term:

(9) "Statewide Health Council" means the Statewide Health Council established pursuant to s. 381.703.

Section 138. Effective upon this act becoming a law, subsection (2) of section 186.022, Florida Statutes, is amended to read:

186.022 State agency functional plans; consistency with state comprehensive plan.—

(2) The Executive Office of the Governor shall review the proposed state agency functional plans for consistency with the state *comprehensive* plan, and shall, within 60 days, return a proposed agency functional plan to the agency, together with any proposed revisions. *The Executive Office of the Governor shall consider the findings of the Statewide Health Council's review of the consistency of the health components of*

agency functional plans with the health element of the state comprehensive plan in formulating proposed revisions to the agency functional plans.

Section 139. Effective upon this act becoming a law, present subsection (7) of section 186.503, Florida Statutes, is redesignated as subsection (8) of that section and a new subsection (7) and subsection (9) are added to that section to read:

186.503 Definitions.—As used in this act, the term:

(7) "Local health council" means a regional agency established pursuant to s. 381.703.

(9) "Statewide Health Council" means the Statewide Health Council established pursuant to s. 381.703.

Section 140. Effective upon this act becoming a law, subsection (10) is added to section 186.507, Florida Statutes, to read:

186.507 Comprehensive regional policy plans.—

(10) Each regional planning council shall enter into a memorandum of agreement with each local health council in its comprehensive planning district to ensure the coordination of health planning. The memorandum of agreement shall specify the manner in which each regional planning council and local health council will coordinate their activities.

Section 141. Effective upon this act becoming a law, subsection (1) of section 186.508, Florida Statutes, is amended to read:

186.508 Comprehensive regional policy plan adoption; consistency with state comprehensive plan.—

(1) Within 18 months of the adoption of the state comprehensive plan, each regional planning council shall submit to the Executive Office of the Governor its proposed comprehensive regional policy plan. The Executive Office of the Governor, or its designee, shall review the proposed comprehensive regional policy plan for consistency with the adopted state comprehensive plan and shall, within 90 days, return the proposed comprehensive regional policy plan to the council, together with any revisions recommended by the Governor. *The Executive Office of the Governor must consider the findings of the Statewide Health Council's review of the consistency of the health elements of the comprehensive regional policy plans with the health element of the state comprehensive plan in formulating recommended revisions to the comprehensive regional policy plans.* The Governor's recommended revisions shall be included in the plans in a comment section. However, nothing herein shall preclude a regional planning council from adopting or rejecting any or all of the revisions as a part of its plan prior to the effective date of the plan. The rules adopting the regional policy plan shall not be subject to rule challenge under s. 120.54(4) or to drawout proceedings under s. 120.54(17), but, once adopted, shall be subject to an invalidity challenge under s. 120.56 by substantially affected persons, including the Executive Office of the Governor. The rules shall be adopted by the regional planning councils by July 1, 1987, and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(13).

Section 142. Effective upon this act becoming a law, section 186.511, Florida Statutes, is amended to read:

186.511 Evaluation of comprehensive regional policy plan; changes in plan.—The regional planning process shall be a continuous and ongoing process. Each regional planning council shall prepare an evaluation report on its comprehensive regional policy plan at least once every 3 years; assess the successes or failures of the plan; and prepare and adopt by rule amendments, revisions, or updates to the plan as needed. *Each regional planning council shall involve the appropriate local health councils in its region in the review of the health element of its plan.*

Section 143. Effective upon this act becoming a law, subsection (6) of section 187.201, Florida Statutes, 1990 Supplement, is amended to read:

187.201 State Comprehensive Plan adopted.—The Legislature hereby adopts as the State Comprehensive Plan the following specific goals and policies:

(Substantial rewording of subsection. See s. 187.201(6), F.S., for present text.)

(6) HEALTH.—

(a)1. Goal.—Healthy residents who protect their own health and the health of others and who actively participate in recovering their own health when they become ill.

2. Policies.—

a. Individuals are fundamentally responsible for their own health, but they need encouragement and may need financial support from government.

b. The state shall develop mechanisms whereby all Florida residents can participate in a plan of adequate health care coverage to which they contribute financially, based on their ability to pay.

c. All Florida residents should be supported through education and other means to develop and maintain healthy lifestyles.

d. All Florida students should be provided with comprehensive, continuous health education in pre-Kindergarten through grade 12 settings.

e. Treatment of illness is a partnership between health care providers and patients in which individual patients participate in decisions related to their health care. In this process, patients and health care providers have mutual rights and responsibilities.

(b)1. Goal.—An environment which supports a healthy population and which does not cause illness.

2. Policies.—

a. Every Florida resident has a right to breathe clean air, drink pure water, and eat nutritious food.

b. The state should assure a safe and healthful environment through monitoring and regulating activities which impact the quality of the state's air, water, and food.

c. Government shall ensure that future growth does not cause the environment to adversely affect the health of the population.

d. Every employer shall provide a safe and healthful workplace.

(c)1. Goal.—Health care services which are of high quality, reasonably accessible, and adequate to meet the needs of the public.

2. Policies.—

a. Where feasible, resources will be redirected to programs and services that prevent illness and intervene in the early stages of disease.

b. The public shall have access to affordable health care.

c. Each pregnant woman in this state has a right to adequate prenatal care in order to protect her health and to help her child begin life healthy.

d. The state shall promote the availability of needed health care professionals and services in medically underserved areas.

e. The responsibility for ensuring good quality, accessibility, and availability of health care services is shared among health care practitioners, institutions, patients, and government.

f. Government shall provide for the orderly growth and development of health care facilities and services through health planning, growth management, and regulation.

g. Government shall establish a public health infrastructure of facilities, equipment, and personnel necessary to provide for community health needs.

(d)1. Goal.—Health costs which are contained to a level appropriate to the financial resources of the state and its residents.

2. Policies.—

a. The primary long-range strategy for containing health care costs shall be prevention of avoidable illness and disability.

b. The state shall promote the development of a rational financing system for health care which minimizes the shifting of costs, discourages inappropriate utilization, reduces administrative costs, and contains the costs of new technology.

c. The state shall encourage the delivery of health care services in a manner that enables patients to establish reasonable expectations of outcome and enables health care providers to focus on the health of their patients.

Section 144. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 381.703, Florida Statutes, are amended to read:

381.703 Local and state health planning.—

(1) LOCAL HEALTH COUNCILS.—

(a) Local health councils are hereby established as public or private nonprofit agencies serving the counties of a district of the department. The members of each council shall be appointed in an equitable manner by the county commissions having jurisdiction in the respective district. Each council shall be composed of a number of persons equal to 1½ times the number of counties which compose the district or 12 members, whichever is greater. Each county in a district shall be entitled to at least one member on the council. The balance of the membership of the council shall be allocated among the counties of the district on the basis of population rounded to the nearest whole number; except that in a district composed of only two counties, no county shall have fewer than four members. ~~The department shall adopt a rule allocating membership of the various counties pursuant to this paragraph which designates the number of initial appointments from each county,~~ The appointees ~~who~~ shall be representatives of health care providers, health care purchasers, and nongovernmental health care consumers, but not excluding elected government officials~~, and which provides for an orderly rotation of the appointment of the various classifications of members among the counties in each district~~. The members of the consumer group shall include a representative number of persons over 60 years of age. A majority of council members shall consist of health care purchasers and health care consumers. *The local health council shall provide each county commission a schedule for appointing council members to ensure that council membership complies with the requirements of this paragraph.* The members of the local health council shall elect a chairman. Members shall serve for terms of 2 years and may be eligible for reappointment.

(b) Each local health council shall:

1. Develop a district *health* plan *which is consistent with the objectives and strategies in the state health plan, but*~~, using uniform methodology as set forth by the department,~~ which shall permit each local health council to develop *strategies and set priorities for implementation* ~~goals and criteria~~ based on its unique local health needs. *The district health plan must contain preferences for health services' and facilities' development which must be considered by the department in its review of certificate-of-need applications.* The district *health* plan shall be submitted to the department and updated periodically ~~and shall be in a form prescribed by the department~~. *The district health plans shall use a uniform format and be submitted to the department according to a schedule developed by the department in conjunction with the Statewide Health Council and the local health councils. The schedule must provide for coordination between the development of the state health plan and the district health plans and for the development of district health plans by major sections over a multiyear period.* The elements of a district plan which are necessary to the review of certificate-of-need applications for proposed projects within the district shall be adopted by the department as a part of its rules. ~~The district plan shall include, but need not be limited to:~~

~~a. The availability, quality of care, efficiency, appropriateness, accessibility, extent of utilization, and adequacy of existing health care facilities and services and hospices in the district.~~

~~b. The need, availability, and adequacy of other health care facilities and services and hospices in the district, including outpatient care and ambulatory or home care services, which may serve as less costly alternatives to proposed or available health care facilities and services.~~

~~c. The probable economies and improvements in services that may be derived from operation of joint, cooperative, or shared health care and health planning resources.~~

~~d. The need in the district for special equipment and services which are not reasonably and economically accessible in adjoining areas.~~

~~e. The need for research and educational facilities, including, but not limited to, institutional and community training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels, and for other health care practitioners.~~

~~f. A description of: the existing care and treatment network for persons with human immunodeficiency virus, acquired immune deficiency syndrome, and acquired immune deficiency syndrome related complex, as delineated in s. 381.612; an analysis of service and facility needs for the identified patient population; and recommendations on an annual basis to the department and the Legislature regarding additional service needs for such patients residing in the district.~~

~~2. Stimulate the development of cooperative arrangements relating to the health manpower training efforts of educational institutions and service institutions and the health manpower recruitment and retention efforts of medically underserved communities.~~

~~3. Identify and encourage community resources and mechanisms to facilitate consumer choice and market competition in health care by providing data, information, and analysis on charges, resource availability, and certification.~~

2.~~4.~~ Advise the district administrator of the department on health care *issues and* resource allocations~~, including federal block grant funds, and work with the district administrator; the district alcohol, drug abuse, and mental health planning councils; and the areawide agency on aging in developing and carrying out a health resources allocation plan~~.

3.~~5.~~ *Promote* ~~Implement activities to increase~~ public awareness of community health needs, *emphasizing health promotion* and ~~emphasize advantages of preventive health activities and~~ cost-effective health service selection.

4.~~6.~~ *Collect data and conduct analyses and studies related to health care needs of the district, including the needs of medically indigent persons, and* assist the department *and other state agencies* in carrying out data collection activities that relate to the functions ~~set forth~~ in this subsection.

5.~~7.~~ Monitor the onsite construction progress, if any, of *certificate-of-need approved* projects and report *council* ~~their~~ findings to the department on forms provided by the department.

6. Advise and assist regional planning councils within each district with the development of the health element of the comprehensive regional policy plan to address the health goals and policies in the State Comprehensive Plan.

7.~~8.~~ Advise and assist ~~regional planning councils and~~ local governments within each ~~respective~~ district on the development of *an* optional *health* plan *element of the comprehensive plan provided in chapter 163, to assure compatibility with* ~~elements to address~~ the health goals and policies in the State Comprehensive Plan, *and district health plan. To facilitate the implementation of this section, the local health council shall annually provide the local governments in its service area, upon request, with:*

a. A copy and appropriate updates of the district health plan;

b. A report of hospital and nursing home utilization statistics for facilities within the local government jurisdiction; and

c. Applicable department rules and calculated need methodologies for health facilities and services regulated under s. 381.704 for the district served by the local health council.

8.~~9.~~ Monitor and evaluate the adequacy, appropriateness, and effectiveness, within the district, of *local,* state, *federal, and private* funds distributed to meet the needs of the medically indigent *and other underserved population groups.* ~~A report on indigent care shall be prepared by each local health council and submitted to the Statewide Health Council no later than January 1 of each year. At a minimum, the report shall include the following elements:~~

~~a. An inventory of services within the district providing health care to Medicaid and medically indigent clients.~~

~~b. An assessment of the use of those services by Medicaid and medically indigent clients.~~

~~c. An evaluation of the population need within the district for indigent health care services and a determination of whether or not that need is being met.~~

~~d. A summary presentation of public opinion in communities throughout the district on the needs of the medically indigent and the services provided to meet these needs.~~

~~c. Recommendations for improving health care services for the medically indigent.~~

9.~~10. Have the responsibility~~ In conjunction with the Department of Health and Rehabilitative Services and Statewide Health Council, *plan for* ~~of planning and coordinating~~ services at the local level for persons *infected* with *the* human immunodeficiency virus~~, acquired immune deficiency syndrome, and acquired immune deficiency syndrome related complex~~.

10. Provide technical assistance to encourage and support activities by providers, purchasers, consumers, and local, regional, and state agencies in meeting the health care goals, objectives, and policies adopted by the local health council.

11. Provide the department with data required by rule for the review of certificate-of-need applications and the projection of need for health services and facilities in the district.

(c) Local health councils may conduct public hearings pursuant to s. 381.709(3)(b).

(d) Each local health council shall enter into a memorandum of agreement with each regional planning council in its district. In addition, each local health council shall enter into a memorandum of agreement with each local government that includes an optional health element in its comprehensive plan. Each memorandum of agreement must specify the manner in which each local government, regional planning council, and local health council will coordinate their activities to ensure a unified approach to health planning and implementation efforts.

(e)~~(d)~~ Local health councils may employ personnel to carry out the councils' purposes. Such personnel shall possess qualifications and be *compensated in a manner* ~~paid salaries~~ commensurate with comparable positions in the Career Service System. However, such personnel shall not be deemed to be state employees.

(f) Personnel of the local health councils shall provide an annual orientation to council members about council member responsibilities. The orientation shall include presentations and participation by department staff.

(g)~~(e)~~ Each local health council is authorized to accept and receive, in furtherance of its health planning functions, funds, grants, and services from governmental agencies and from private or civic sources and to perform studies related to local health planning in exchange for such funds, grants, or services. Each local health council shall, no later than January 30 of each year, render an accounting of the receipt and disbursement of such funds received by it to the department. The department shall consolidate all such reports and submit such consolidated report to the Legislature no later than March 1 of each year. Funds received by a local health council pursuant to this paragraph shall not be deemed to be a substitute for, or an offset against, any funding provided pursuant to subsection (3).

(2) STATEWIDE HEALTH COUNCIL.—The Statewide Health Council is hereby established as a state-level comprehensive health *planning and policy advisory board. For administrative purposes, the council shall be located within* ~~council which is advisory to~~ the department. The Statewide Health Council shall be composed of: the *State Health Officer, the Deputy Secretary for Programs, the Assistant Secretary for Medicaid, and the Assistant Secretary for Regulation and Health Facilities of the department; the executive director of the Health Care Cost Containment Board; the Insurance Commissioner or his designee; the Vice Chancellor for Health Affairs of the Board of Regents; three chairmen of regional planning councils, selected by the regional planning councils; five* ~~11~~ chairmen of ~~the~~ local health councils, *selected by the local health councils; four* ~~two~~ members appointed by the Governor, *one of whom is a consumer over 60 years of age, one of whom is a representative of organized labor, one of whom is a physician, and one of whom represents the nursing home industry; five* ~~two~~ members appointed by the President of the Senate, *one of whom is a representative of the insurance industry in this state, one of whom is the chief executive officer of a business with more than 300 employees in this state, one of whom represents the hospital industry, one of whom is a primary care physician, and one of whom is a nurse,* and *five* ~~two~~ members appointed by the Speaker of the House of Representatives, *one of whom is a consumer who represents a minority group in this state, one of whom represents the home health care industry in this state, one of whom is an allied health care professional, one of whom is the chief executive officer of a business with fewer than 25 employees in this state, and one of whom represents a county social services program that provides health care services to the indigent.* ~~At least one of the two members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, respectively, shall be a health care consumer or a health care purchaser.~~ Appointed members of the council shall serve for a 2-year *terms* ~~term~~ commencing *October* ~~on January~~ 1 of each *even-numbered* ~~odd-numbered~~ year. *The council shall elect a president from among the members who are not state employees.* The Statewide Health Council shall:

(a) Advise the Governor, the Legislature, and the department on state health policy issues, state and local health planning activities, and state health regulation programs;

(b) Prepare a state health plan that specifies subgoals, quantifiable objectives, strategies, and resource requirements to implement the goals and policies of the health element of the State Comprehensive Plan. The plan must assess the health status of residents of this state; evaluate the adequacy, accessibility, and affordability of health services and facilities; assess government-financed programs and private health care insurance coverages; and address other topical local and state health care issues. Within 2 years after the health element of the State Comprehensive Plan is amended, and by July 1 of every 3rd year, if it is not amended, the Statewide Health Council shall submit the state health plan to the Executive Office of the Governor, the secretary of the department, the President of the Senate, and the Speaker of the House of Representatives;

(c)~~(b)~~ Promote public awareness of state health care issues *and, in conjunction with the local health councils, conduct public forums throughout the state to solicit the comments and advice of the public on the adequacy, accessibility, and affordability of health care services in this state and other health care issues;*

(d)~~(c)~~ Consult with local health councils, the Health Care Cost Containment Board, the Department of Insurance, the Department of Health and Rehabilitative Services, and other appropriate public and private entities, including health care industry representatives regarding the development of health policies;

(e) Serve as a forum for the discussion of local health planning issues of concern to the local health councils and regional planning councils;

(f)~~(d)~~ Review district health plans for consistency with *the* State *Comprehensive Plan and the state* health *plan* ~~goals and policies~~;

(g) Review the health components of agency functional plans for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to agency functional plans to make them consistent with the State Comprehensive Plan;

(h) Review the comprehensive regional plans for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to comprehensive regional policy plans to make them consistent with the State Comprehensive Plan;

~~(e) Prepare a state report, which includes the evaluations by each local health council for its respective district, on the adequacy, appropriateness, and effectiveness of state funds distributed to meet the needs of the medically indigent;~~

(i)~~(f)~~ Assist the Department of Community Affairs in the review of local government comprehensive plans to ensure consistency with policy developed in the district health plans;

(j) With the assistance of the local health councils, conduct public forums and use other means to determine the opinions of health care consumers, providers, payers, and insurers regarding the state's health care goals and policies and develop suggested revisions to the health element of the State Comprehensive Plan. The council shall submit the proposed revisions to the health element of the State Comprehensive Plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 1993, and shall widely circulate the proposed revisions to affected parties. The council shall periodically assess the progress made in achieving the goals and policies

contained in the health element of the State Comprehensive Plan and reporting to the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives; and

(k)~~(g)~~ Conduct any other functions or studies and analyses falling under the *duties listed* ~~purview of the mission, goals, and objectives~~ above.~~; and~~

~~(h) Assist the local health councils in developing their analysis of service and facility needs for persons with acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus infection within their district and advise the department on additional service needs for such persons in the state.~~

(4) DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT.—

(a) The department, *in conjunction with the Statewide Health Council and the local health councils,* is responsible for the planning of all health care services in the state and for *assisting the Statewide Health Council in* the preparation of the state health plan.

(b) The department shall develop and maintain a comprehensive health care data base for the purpose of health planning and for certificate-of-need determinations. The department or its contractor is authorized to require the submission of information from health facilities, health service providers, and licensed health professionals which is determined by the department, through rule, to be necessary for meeting the department's responsibilities as established in this section.

(c) The department shall assist personnel of the local health councils in providing an annual orientation to council members about council member responsibilities.

(d)~~(c)~~ The department shall *contract with* ~~provide funding for~~ the local health councils *for the services specified in subsection (1)* ~~according to an allocation plan~~. All contract funds shall be distributed according to an allocation plan developed by the department that provides for a minimum and equal funding base for each local health council. Any remaining funds shall be distributed based on adjustments for workload. The department may also make grants to or reimburse local health councils from federal funds provided to the state for activities related to those functions set forth in this section. *The department may withhold funds from a local health council or cancel its contract with a local health council which does not meet performance standards agreed upon by the department and local health councils.*

Section 145. Effective upon this act becoming a law, subsection (2) of section 401.291, Florida Statutes, 1990 Supplement, is amended to read:

401.291 Automatic external defibrillators.—

(2) An automatic or semiautomatic defibrillator may be used by any individual who meets the requirements of this section and who is a member of a locally coordinated response team which is authorized to respond to a request for emergency assistance for the purpose of providing an assessment of the need for and appropriate use of an automatic or semiautomatic defibrillator, provided such individual has successfully completed an appropriate training course as approved by the local emergency medical services medical director. This requirement shall consist of certification in cardiopulmonary resuscitation *or*~~;~~ successful completion of an 8-hour basic first-aid course *that includes cardiopulmonary resuscitation training,* demonstrated proficiency in the use of an automatic or semiautomatic defibrillator, and successful completion of at least 6 hours of training in at least two sessions, to include instruction in:

(a) The proper use, maintenance, and periodic inspection of the automatic or semiautomatic defibrillator.

(b) Defibrillator safety precautions to enable the user to administer a shock without jeopardizing the safety of the patient, the user, or other persons.

(c) Assessment of an unconscious person to determine if cardiac arrest has occurred and the appropriateness of applying an automatic or semiautomatic defibrillator.

(d) Recognizing that an electrical shock has been delivered to the patient and that the defibrillator is no longer charged.

(e) Rapid, accurate assessment of the patient's postshock status to determine if further activation of the automatic or semiautomatic defibrillator is necessary.

(f) The operations of the local emergency medical services system, including methods of access to the emergency response system, and interaction with emergency medical services personnel.

(g) The role of the user and coordination with other emergency medical service providers in the provision of cardiopulmonary resuscitation, defibrillation, basic life support, and advanced life support.

(h) The responsibility of the user to continue care until the arrival of medically qualified personnel.

Section 146. Effective upon this act becoming a law, the sum of $70,000 is hereby appropriated from the Local and State Health Trust Fund to the Statewide Health Council for reviewing the agency functional plans and comprehensive regional policy plan for consistency with the health element of the state comprehensive plan, for the public hearings on the health element of the state comprehensive plan, and for staff support and expenses of the council.

Section 147. Effective upon this act becoming a law, section 381.025, Florida Statutes, is hereby repealed.

Section 148. Except as otherwise provided herein, this act shall take effect upon becoming a law.

House Amendment 2 to House Substitute Amendment 1—On page 200, between lines 6 and 7, insert:

(10) The provisions of s. 627.4106 shall not apply to a small group basic health insurance policy issued pursuant to this section prior to March 1, 1992.

House Amendment 3 to House Substitute Amendment 1—On page 256, between lines 20 and 21 insert:

Section . Effective upon this act becoming a law and applicable to incidents occurring on or after the effective date, section 766.1115, Florida Statutes, is created to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(1) This section may be cited as the "Access to Health Care Act of 1991."

(2) As used in this section:

(a) The term "health care provider" or "provider" means any:

1. Hospital licensed under chapter 395.

2. Physician licensed, or physician's assistant certified, under chapter 458.

3. Osteopathic physician licensed, or physician's assistant certified, under chapter 459.

4. Podiatrist licensed under chapter 461.

5. Health maintenance organization certificated under part II of chapter 641.

6. Ambulatory surgical center licensed under chapter 395.

7. Chiropractor licensed under chapter 460.

8. Psychologist licensed under chapter 490.

9. Optometrist licensed under chapter 463.

10. Optician licensed under chapter 484.

11. Physical therapy practitioner licensed under chapter 486.

12. Dentist licensed under chapter 466.

13. Pharmacist licensed under chapter 465.

14. Registered nurse, nurse midwife, licensed practical nurse, and advanced registered nurse practitioner licensed or registered under the provisions of chapter 464.

15. Midwife licensed under chapter 467.

16. Birth center licensed under chapter 383.

17. Other medical facility which is a facility the primary purpose of which is to provide human medical diagnostic services or a facility providing nonsurgical human medical treatment, and which includes an office maintained by a provider for the provision of health care services, including home health agencies, but excluding any other facility regulated pursuant to chapter 400.

The term includes any nonprofit corporation operating pursuant to section 501(c) of the Internal Revenue Code to provide health care services by licensed professionals as listed in this paragraph, and any volunteer corporation or health care provider providing such services. In order to be a provider as contemplated by this section, regardless of whether the provider is a volunteer or is compensated and, if compensated, regardless of the provider's election under subparagraph (3)(b)8., the provider must be selected by a governmental contractor to provide health care services pursuant to an agency agreement with the governmental contractor entered into in accordance with the requirements of this section. This section does not apply to physicians or corporate medical groups providing radiology or anesthesiology care pursuant to an exclusive care contract which prohibits competition by other similarly skilled medical specialists.

(b) "Contract" means an agreement entered into in compliance with the provisions of this section by a health care provider with any entity of state or local government, or of any political subdivision thereof, to provide health care services as an agent of such governmental contractor. The contract shall be either:

1. A contract for the provision of volunteer services, which for purposes of this section means uncompensated voluntary services provided to recipients selected by the governmental contractor, such as school team physicians selected and contracted with by the school board; or

2. A contract for the provision of compensated services, which for purposes of this section means services subject to paragraph (3)(b)8. provided to low-income recipients selected by the governmental contractor.

(c) "Governmental contractor" means any entity of state or local government, or of any political subdivision thereof, which enters into an agency agreement with a provider pursuant to the requirements of this section for the provision of health care services.

(d) "Low-income" means:

1. Medicaid-eligible under Florida law;

2. Medically indigent as defined in s. 407.002(18); or

3. Eligible for reduced-rate health care services pursuant to the terms of the governmental contract as approved by, and on a form promulgated by, the Department of Health and Rehabilitative Services.

(3)(a) A health care provider which enters into an agreement with any entity of state or local government, or of any political subdivision thereof, to provide health care services as an agent of such entity, shall be an agent for purposes of s. 768.28(9), while in compliance with the contract and acting within the scope of duties pursuant to the contract, so long as the contract contains the provisions required by this section.

(b) The agreement shall be pursuant to contract in terms approved by, and on a form promulgated by, the Department of Health and Rehabilitative Services. The contract shall provide for:

1. The right of control of the governmental contractor over the professional conduct of any health care provider providing services pursuant to the contract, including the power of dismissal or termination.

2. Access by the governmental contractor to the patient records of any health care provider providing services pursuant to the contract.

3. Reporting of adverse incidents and information on outcomes of treatment provided by any health care provider providing services pursuant to the contract. Patient medical records, adverse incidence reports, and information on outcome of treatments identifying specific patients obtained by governmental entities are confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

4. Payment for health care services of providers who have contracted for the provision of compensated services solely by the governmental contractor, subject to the provisions of subparagraph (3)(b)8.

5.a. Patient selection and initial referral solely by the governmental contractor, and acceptance by the provider of all referred patients. However, the number of patients to be accepted may be limited by agreement, and patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

b. If emergency care is required, the patient need not be referred prior to receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever is later.

c. If it is necessary that a patient be referred from a contract provider to a noncontract provider, the immunity of the contract provider shall extend to the noncontract provider until the patient is stabilized and medically capable of referral back to the contract provider.

d. The Department of Health and Rehabilitative Services shall promulgate rules which provide patient screening criteria, taking into consideration modalities of treatment, diagnostic groups, and other factors relevant to establishing an equitable process for medically appropriate patient referrals designed to maximize access to health care services.

6. Patient care, including any followup or hospital care, to be subject to approval by the governmental contractor.

7. Provider to be subject to supervision and regular inspection by the governmental contractor.

8. With respect to any provider which receives compensation under the contract and which is not a governmental entity or contractor:

a. Provider's Medicaid or other contract health care services compensation to be paid solely to or on behalf of the governmental contractor, the provider retaining a maximum of 90 percent of the applicable rate, with half the remaining amount deposited into a claims trust fund maintained by the governmental contractor for the payment of any defense costs or other claims handling expenses or loss payments, or for the payment of any premiums that may be required for any risk management program or insurance premium related to claims generated by this section; and the other half deposited into a claims trust fund established and maintained by the Department of Health and Rehabilitative Services for the payment of excess claims approved by the Legislature which have been generated by this section; or

b. At least 10 percent of the provider's contractually-provided health care services to be provided, without any compensation from any source, to nonMedicaid-eligible recipients who are medically indigent as defined in s. 407.002(18).

However, for the purpose of creating alternate compliance methodologies designed to maximize access to all health care services, the Department of Health and Rehabilitative Services shall have the discretion to develop rules that contemplate specialty practices which provide high-risk, high-cost, or difficult to obtain health care services.

9. A copy of the contract to the Department of Health and Rehabilitative Services and the Department of Professional Regulation.

All information, records, and reports required by this paragraph shall be available to the Department of Health and Rehabilitative Services for purposes of subsection (7).

(4) The governmental contractor shall provide written notice to all concerned persons that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider, or of any employee or agent thereof, acting within the scope of duties pursuant to the contract, or of any noncontract provider to which the patient is referred by the provider pursuant to subparagraph (3)(b)5., shall be by action pursuant to the provisions of s. 768.28.

(5) The governmental contractor shall establish a quality assurance program to monitor the quality of services provided under any contracts of agency with a provider pursuant to this section.

(6) The Department of Health and Rehabilitative Services shall adopt rules designed to implement this section in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. The Department of Professional Regulation and each governmental contractor shall assist the Department of Health and Rehabilitative Services as necessary in the development of rules needed for the implementation of agency agreements pursuant to the provisions of this section.

(7) A patient health care treatment and access evaluation methodology shall be developed as follows:

(a) Each entity which is a governmental contractor shall transmit to the Department of Health and Rehabilitative Services a copy of each contract entered into pursuant to this section, within 2 calendar weeks after the contract is executed.

(b) The Department of Health and Rehabilitative Services shall establish a patient health care treatment and access evaluation methodology which shall evaluate the efficacy of the provision of health care services to low-income persons by providers under contract with governmental entities pursuant to agency agreements entered into in compliance with the provisions of this section, and shall analyze and graph changes in patterns of access and treatment outcomes with respect to health care for low-income persons occurring as a result thereof.

(c) The methodology shall be designed to promote efficient and effective in-depth analysis of access and treatment outcomes with respect to health care for low-income persons pursuant to agency agreements as contemplated by this section. The department shall develop rules as necessary for the implementation of the methodology.

(d) Annually beginning January 1, 1994, the department shall provide to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders and relevant substantive committee chairs of both houses, a detailed summation of the information obtained through the patient health care treatment and access evaluation methodology.

(8) This section is repealed on July 1, 1996, and shall be reviewed by the Legislature prior to that date.

Section . Effective upon this act becoming a law and applicable to incidents occurring on or after the effective date, paragraph (b) of subsection (9) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.—

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of $200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $100,000 or $200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $100,000 or $200,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, *any health care provider when providing services pursuant to s. 766.1115; and* any public defender or his employee or agent, including, among others, an assistant public defender and an investigator.

Section . For the purpose of incorporating the amendment to section 768.28, Florida Statutes, in references thereto, the subdivisions of Florida Statutes set forth below are reenacted to read:

766.203 Presuit investigation of medical negligence claims and defenses by prospective parties.—

(1) Presuit investigation of medical negligence claims and defenses pursuant to this section and ss. 766.204-766.206 shall apply to all medical negligence, including dental negligence, claims and defenses. This shall include:

(a) Rights of action under s. 768.19 and defenses thereto.

(b) Rights of action involving the state or its agencies or subdivisions, or the officers, employees, or agents thereof, pursuant to s. 768.28 and defenses thereto.

766.207 Voluntary binding arbitration of medical negligence claims.—

(1) Voluntary binding arbitration pursuant to this section and ss. 766.208-766.212 shall not apply to rights of action involving the state or its agencies or subdivisions, or the officers, employees, or agents thereof, pursuant to s. 768.28.

(Renumber subsequent section.)

House Amendment 5 to House Substitute Amendment 1—On page 182, line 14 through page 188, line 2, strike all of said lines and insert:

Section 95. The Florida Health Care Purchasing Cooperative Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Health Care Purchasing Cooperative Act."

(2) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(a) There is authorized the "Florida Health Care Purchasing Cooperative," which shall pool the purchasing power for health care services of state governmental entities regarding the purchase of health care services includinginsurance. The Florida Health Care Purchasing Cooperative is a nonprofit private corporation organized pursuant to chapter 617, Florida Statutes, and has all powers necessary to carry out the purposes and provisions of this act, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept, from any source, contributions of money, property, labor, or any other thing of value.

(b) Members of the Florida Health Care Purchasing Cooperative are:

1. All state governmental entities that purchase health care services for clients or for employees through health care coverage;

2. Local governmental entities, including, but not limited to, counties, municipalities, school districts, and other special districts, that voluntarily become members;

(c) The Florida Health Care Purchasing Cooperative shall:

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

2. Secure staff necessary to properly administer the corporation;

3. Develop and implement a plan to publicize the Florida Health Care Purchasing Cooperative, the eligibility requirements for membership, and the procedures for becoming members of the cooperative and to maintain public awareness of the cooperative and its services;

4. Identify third-party payers and health care provider networks that serve members of the cooperative;

5. Collect data on costs and utilization of health care services from members of the cooperative, health care providers that provide services to employees and clients of members of the cooperative, and third-party payers for members of the cooperative. The cooperative shall protect the confidentiality and regulate the disclosure of data and records collected and maintained by the cooperative when such data and records contain information:

a. Of a sensitive, personal or medical 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; or

b. That is used to protect or further a business advantage over those who do not know or use that information, and the disclosure of which would injure the affected entity in the marketplace.

Notwithstanding section 119.14, Florida Statutes, all information obtained prior to October 1, 2001, and determined to be confidential pursuant to subparagraph 5. is exempt from section 119.07(1), Florida Statutes. This exemption is subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes.

6. Compare cost and utilization data collected pursuant to subparagraph 5. with data collected by the Health Care Cost Containment Board. Because of the importance of data collection and analysis to the success of the cooperative, the cooperative shall carry out its responsibilities in conjunction with the Health Care Cost Containment Board and use that board's data gathering and analysis capabilities as the board of directors considers appropriate.

7. Establish criteria for evaluating health care provider networks and third-party payers, seeking advice from providers and third-party payers serving members of the cooperative.

8. Evaluate health care provider networks and third-party payers.

9. Inform members of the cooperative about the results of evaluations of health care provider networks and third-party payers.

(d) The Florida Health Care Purchasing Cooperative may:

1. Negotiate and enter into contracts on behalf of its state governmental entities' members with health care provider networks and third-party payers for the delivery of health care services;

2. Negotiate and enter into contracts on behalf of its state governmental entities' members with insurance carriers, reinsurers, and third-party administrators for insurance, aggregate stop loss, specific stop loss, and administrative services; and

3. In geographical areas where cost-effective health care provider networks that provide good quality services do not exist, assist members in developing health care provider networks and negotiate and contract directly with health care providers for the provision of health care services.

4. Assess the impact of existing or proposed mandated or mandatorily offered health care benefits on members and their employees to determine if such benefits promote the health and well-being of employees through prevention of illness, early detection and treatment of illness, and reduced long-term health care costs.

(3) BOARD OF DIRECTORS.—

(a) The Florida Health Care Purchasing Cooperative shall operate subject to the supervision and approval of a board of directors.

(b) The initial board of directors shall consist of:

1. The Director of the Division of State Employees Insurance of the Department of Administration;

2. The Assistant Secretary for Medicaid of the Department of Health and Rehabilitative Services;

3. The Assistant Secretary for Health Services of the Department of Corrections;

4. Two persons who are responsible for purchasing health benefits for municipal employees and who are appointed by the Florida League of Cities;

5. A person who is responsible for purchasing health care benefits for county employees or health care services for county clients and who is appointed by the Florida Association of Counties; and

6. A person who is responsible for purchasing health care benefits for school district employees and who is appointed by the Florida Association of School Administrators.

Appointments to the initial board of directors shall be made by August 1, 1991. The appointed members of the initial board of directors shall be appointed for 2 years and may be reappointed. The Director of the Division of State Employees Insurance shall chair the initial board of directors.

(c) The board shall adopt bylaws for the corporation which shall contain provisions for the selection of directors to represent members of the cooperative following the initial appointments. The board of directors may increase the number of its directors to provide for representation by members of the cooperative.

(d) Board members may be reimbursed from funds of the Florida Health Care Purchasing Cooperative, as prescribed by law, for actual and necessary expenses that they incur in performing their duties.

(e) A member of the board of directors or an employee or agent of the board incurs no liability, and no cause of action may arise against a board member or any employee or agent of the board, for any action taken by the member, employee, or agent in performing his powers and duties under this act.

(4) STAFF AND ADMINISTRATIVE SUPPORT.—The Health Care Cost Containment Board shall provide staff and administrative support to, and shall draft bylaws for, the Florida Health Care Purchasing Cooperative until the board of directors of the cooperative has organized itself and appointed an executive director. The board of directors shall conduct its first meeting on or before September 1, 1991.

Section 96. Any freestanding Class III special psychiatric hospital or freestanding Class III specialty hospital which received a Certificate of Need prior to August 1, 1988 for long-term substance abuse services only, shall hereafter be licensed as a general psychiatric hospital licensed to treat psychiatric disorders and substance abuse.

Section 97. (1) Notwithstanding the provisions of section 110.123(6), Florida Statutes, the sum of $500,000 for fiscal year 1991-1992 and the sum of $500,000 for fiscal year 1992-1993 are appropriated from the State Employees Disability Trust Fund for transfer to the Health Care Cost Containment Trust Fund.

(2) Notwithstanding the provisions of section 407.04(1), Florida Statutes, the sum of $500,000 for fiscal year 1991-1992 and the sum of $500,000 for fiscal year 1992-1993 are appropriated from the Health Care Cost Containment Trust Fund to the Florida Health Care Purchasing Cooperative for the purpose of implementing the provisions of this section.

Section 98. This act shall take effect upon becoming a law.

House Amendment 9 to House Substitute Amendment 1—On page 254, lines 5-31, and on page 255, lines 1-28, strike all of said lines and renumber the subsequent sections.

House Amendment 10 to House Substitute Amendment 1—On page 50, lines 27-31, and on page 51, lines 1 and 2, strike all of said

lines and insert: setting possible. Such waiver shall include a request for the opportunity to pay for care in hospitals known under federal law as "institutions for mental disease" or "IMD's", and shall be conducted in District 6 and District 3 of the Department of Health and Rehabilitative Services. The waiver proposal shall propose no additional aggregate cost to the state or federal government. The waiver proposal may incorporate competitive

House Amendment 11 to House Substitute Amendment 1—On page 276, line 10, insert:

Section 1. Subsection (1) of section 766.102, Florida Statutes, is amended to read:

766.102 Medical negligence; standards of recovery.—

(1) In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that such death or injury resulted from the negligence of a health care provider as defined in *s. 766.1115(1)(a)* ~~s. 768.50(2)(b)~~, the claimant shall have the burden of proving by the greater weight of evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

(Renumber the subsequent sections.)

House Substitute Amendment 2—In title, on page 1, line 2 through page 3, line 13, strike all of said lines and insert: An act relating to health care; amending s. 381.702, F.S.; providing that, for the purposes of ss. 381.701-381.715, F.S., the Health Facility and Services Development Act, the term "capital expenditure" includes initial financing costs but excludes refinancing costs; amending s. 381.703, F.S.; increasing fees for certain abortion clinics, ambulatory surgical centers, birthing centers, clinical laboratories except community nonprofit blood banks, home health agencies, hospices, intermediate care facilities for the mentally retarded, multiphasic testing centers, health maintenance organizations, and prepaid health clinics to fund state and local health planning; providing for distribution of health care facilities assessments and certificate-of-need application fees among the Statewide Health Council, local health councils, and the Department of Health and Rehabilitative Services; amending s. 381.706, F.S.; revising projects subject to review under certificate of need; amending s. 381.708, F.S.; increasing application fees for certificates of need; amending s. 390.014, F.S.; increasing licensure fees for abortion clinics; amending s. 395.004, F.S.; increasing licensure fees for hospitals, cardiac catheterization facilities, and ambulatory surgical centers; amending s. 395.007, F.S.; increasing fees for plans and construction review for hospitals and ambulatory surgical centers; amending s. 400.062, F.S.; increasing nursing home licensure fees; amending s. 400.23, F.S.; increasing fees for plans and construction review for nursing homes; amending s. 400.407, F.S.; increasing adult congregate living facility licensure fees; amending s. 400.418, F.S.; revising a trust fund for deposit of fees and fines; amending s. 400.467, F.S.; increasing home health agency licensure fees; amending s. 400.605, F.S.; increasing hospice licensure fees; amending s. 483.172, F.S.; increasing clinical laboratory licensure fees; repealing s. 381.713(1), F.S., relating to an exemption from certificate-of-need review; limiting the effect of the repeal; repealing s. 381.706(3)(a), F.S., relating to exemptions from applicability of project review provisions for certain projects mandated by the Legislature; amending s. 11.45, F.S.; requiring the Auditor General to use agency functional plans in conducting performance audits of agencies; amending s. 20.055, F.S.; providing duties of agency internal auditors; creating s. 216.176, F.S.; requiring truth in budgeting; amending s. 216.136, F.S.; providing duties of the revenue estimating conference; providing legislative intent relating to healthy start for infants; amending s. 383.14, F.S.; requiring the screening of infants and their families for specified environmental risk factors; requiring the department to ensure that the screening information registry is integrated with the department's automated data systems; providing for rulemaking; providing for developing a risk-assessment instrument; providing for supplying nutrition education and foods to certain individuals; requiring the coordination of s. 383.14(3), F.S., with certain other legal provisions; amending s. 383.011, F.S.; adding duties of the Department of Health and Rehabilitative Services relating to maternal and child health; requiring the department to establish Healthy Start Care Coordination programs in the county public health units; providing for family outreach workers; requiring screening programs for families identified as being at risk; requiring the provision of services under this section to be consistent with other specified legal provisions and plans; amending s. 383.013, F.S.; adding duties of the Department of Health and Rehabilitative Services relating to prenatal care; amending s. 383.215, F.S.; providing for developmental intervention at hospitals with level II neonatal intensive care units; creating s. 383.216, F.S.; providing for the establishment of prenatal and infant health care coalitions, including establishment and incorporation of local prenatal and infant health care coalitions, and providing for membership, duties, and services; providing for cooperation and assistance from the Department of Health and Rehabilitative Services, and for contribution match percentages; creating s. 383.2161, F.S.; requiring the department annually to compile and analyze risk information and submit a report to the Legislature; providing requirements for the contents of the report; requiring the department to develop and submit to the Legislature a plan for decategorizing certain resources which includes an alternative reimbursement methodology for providers of certain services; amending s. 427.012, F.S.; adding a representative of maternal and child health care providers to the Transportation Disadvantaged Commission; providing effective dates; revising provisions relating to the Medicaid program; creating s. 409.901, F.S.; providing definitions; creating s. 409.902, F.S.; designating the Department of Health and Rehabilitative Services as the single state agency for administration of the Medicaid program; creating ss. 409.903 and 409.904, F.S.; specifying those persons who may be eligible for the Medicaid program; creating ss. 409.905 and 409.906, F.S.; providing for a federal waiver for certain Medicaid psychiatric services; enumerating federally mandated and optional services covered by the Medicaid program; creating s. 409.907, F.S.; establishing provisions for Medicaid provider agreements; creating s. 409.908, F.S.; establishing reimbursement standards for payment under the Medicaid program; renumbering s. 409.2665, F.S., relating to third-party payments on behalf of Medicaid eligible persons; deleting definitions made obsolete by this act; conforming cross references to changes made by this act; making technical, clarifying revisions; deleting certain requirements pertaining to the recovery of third-party resources for Medicaid benefits made payable by check; creating ss. 409.911, 409.9112, and 409.9113, F.S.; providing for disproportionate share programs for hospitals, regional perinatal intensive care centers, and teaching hospitals for purposes of indigent and obstetrical care; creating s. 409.9114, F.S.; providing for an extraordinary disproportionate share program; creating s. 409.912, F.S.; authorizing cost-effective purchasing of care, including contracts with prepaid group practices and establishment of waiver programs; requiring contracting entities to maintain a specified level of liquid assets; providing exceptions; creating s. 409.913, F.S.; setting forth criteria for oversight of goods and services to protect the integrity of the Medicaid program and providing authority to take appropriate action; creating s. 409.914, F.S.; authorizing agreements between the department and other entities to further health insurance coverage for citizens of this state; creating s. 409.915, F.S.; requiring county contributions on behalf of certain persons covered by the Medicaid program, including the establishment of limits thereon and methods for collection; creating s. 409.916, F.S.; providing for deposit of grants and rebates into the Grants and Donations Trust Fund; specifying certain uses for funds therein; amending s. 409.2662, F.S., relating to the Public Medical Assistance Trust Fund; creating s. 409.919, F.S.; authorizing the Department of Health and Rehabilitative Services to adopt rules; creating s. 409.920, F.S.; requiring the Auditor General to conduct a statewide program of Medicaid fraud control and establishing standards and criminal penalties; creating the Task Force on County Contributions to Medicaid; specifying members of the task force; requiring a study of county contributions to the Medicaid program; requiring a report; directing the department to prepare a report on the adequacy of Medicaid reimbursement to pharmacy providers; amending s. 110.123, F.S., to correct a cross reference, relating to the state group insurance program; amending s. 154.011, F.S., to correct a cross reference, relating to primary care services; amending s. 394.4787, F.S., to correct a cross reference, relating to definitions applicable to provision of acute care mental health services; amending s. 395.01465, F.S., to correct a cross reference, relating to emergency care hospitals; amending s. 400.126, F.S., to correct a cross reference, relating to receivership of nursing home facilities; amending s. 400.18, F.S., to correct a cross reference, relating to closing of nursing facilities; amending s. 400.332, F.S., to correct a cross reference, relating to certain funds received by a nursing home for participation in the geriatric outpatient nurse clinic program; amending s. 407.51, F.S., to correct a cross reference, relating to hospital budgets; amending s. 409.2673, F.S., to correct a cross reference, relating to the shared county and state health care program for low-income persons; amending s. 409.345, F.S., to correct a cross reference, relating to public assistance payments as debt of

the recipient; amending s. 409.701, F.S., to correct a cross reference, relating to the Florida Small Business Health Access Corporation Act; amending s. 410.036, F.S., to correct a cross reference, relating to eligibility for home care for disabled adults and the elderly; amending s. 624.424, F.S., to correct a cross reference, relating to statements and records of insurers; amending s. 627.736, F.S., to correct a cross reference, relating to personal injury protection benefits; amending s. 631.813, F.S., to correct a cross reference, relating to application of the Florida Health Maintenance Organization Consumer Assistance Plan; amending s. 641.261, F.S., to correct a cross reference, relating to reporting requirements of health maintenance organizations; amending s. 641.31, F.S., to correct a cross reference, relating to health maintenance contracts; amending s. 641.411, F.S., to correct a cross reference, relating to reporting requirements of prepaid health clinics; amending s. 768.73, F.S., to correct a cross reference, relating to punitive damages; amending s. 895.02, F.S.; adding Medicaid provider fraud to the definition of racketeering activity under the Florida RICO (Racketeer Influenced and Corrupt Organization) Act; reenacting ss. 655.50(3)(g) and 896.101(1)(g), F.S., relating to unlawful financial transactions, to incorporate the amendment to s. 895.02, F.S., in references; preserving election of Medicare and Medicaid hospice benefits; saving existing department rules until superseded; repealing s. 21, ch. 89-275, Laws of Florida, ss. 400.23(3), 409.266, 409.2663, 409.2664, 409.2666, 409.2667, 409.267, 409.2671, and 409.268, F.S., relating to the Medicaid program and payments thereunder; revising provisions relating to trauma care; amending s. 395.0335, F.S.; revising provisions relating to application for selection as state-sponsored trauma centers; providing requirements for selection of state-approved trauma centers; providing for provisional state-approved trauma centers; amending s. 395.034, F.S.; revising definitions relating to state-approved trauma centers and state-sponsored trauma centers; revising provisions relating to submission of claims and eligibility for receipt of funds; revising provisions relating to state funding; providing requirements for payment of claims; providing that funds shall not be considered as net revenues for certain purposes; deleting provisions relating to certain reimbursement with appropriated funds; amending s. 395.0345, F.S.; revising provisions relating to the Trauma Services Trust Fund; repealing s. 14, ch. 90-284, Laws of Florida, to conform; providing an appropriation; revising provisions relating to health maintenance organizations; amending s. 641.48, F.S.; revising quality of care and financial insolvency provisions for certain exempt prepaid health plans; amending s. 641.495, F.S., relating to exemption of health maintenance organizations with 10 or fewer holding beds from pt. I of ch. 395, F.S.; amending s. 641.51, F.S.; deleting requirement for certain periodic review by an external review organization; broadening scope of second medical opinions available to subscribers; creating s. 641.511, F.S.; providing subscriber grievance reporting requirements and resolution procedures; creating s. 641.512, F.S.; providing for accreditation and an external quality assurance assessment for health maintenance organizations and prepaid health clinics; providing requirements; providing for payment of expenses; amending s. 641.515, F.S.; providing for subsequent department investigations pursuant to ss. 641.311, 641.511, and 641.512, F.S.; providing for standards of care; amending s. 641.52, F.S.; providing an additional condition that may result in suspension of enrollment authority, revocation of certificate, or an order of compliance; providing for a study on provider contracts; providing an appropriation; rescheduling Sunset review and repeal of pt. IV of ch. 641, F.S.; providing an appropriation; amending s. 154.01, F.S.; expanding legislative funding authorization relating to the public health unit delivery system; creating the "Florida Health Care Purchasing Cooperative Act"; authorizing the Florida Health Care Purchasing Cooperative; providing for powers, membership, and duties of the cooperative; providing for the confidentiality of information gathered and maintained by the cooperative; providing for a board of directors; providing for board membership and reimbursement for expenses; providing immunity from liability; providing for initial staff support to the cooperative by the Health Care Cost Containment Board; providing appropriations; revising provisions relating to small group health insurance; creating s. 627.4106, F.S.; providing requirements, restrictions, and renewal and rating provisions that apply to health insurance coverage of certain groups; providing that the Department of Insurance may by rule limit certain rate increases; providing definitions; amending s. 627 6693, F.S.; revising benefits for small group basic health insurance policies; providing for a Florida Health Care Commission; revising and transferring various sections of statutes to place health care planning, regulation, and policy development under the commission; amending s. 20.19, F.S.; eliminating the Assistant Secretary for Regulation and Health Facilities of the Department of Health and Rehabilitative Services; transferring functions and duties to the commission; amending s. 381.0612, F.S.; providing duties of the commission regarding the State Center for Health Statistics; transferring the center from the department to the commission; amending s. 381.609, F.S.; providing commission duties regarding a prohibition against HIV testing; transferring ss. 381.701-381.7155, F.S., to pt. II of ch. 408, F.S.; transferring provisions relating to certificates of need and state health planning from the Department of Health and Rehabilitative Services to the commission; amending s. 381.709, F.S.; revising the certificate-of-need review process; amending s. 381.7155, F.S.; providing for enforcement of rules; providing a saving clause for certificates of need currently in effect; amending s. 395.017, F.S.; providing for disclosure of patient records to the commission; amending s. 395.041, F.S.; providing commission duties relating to internal risk management programs; amending ss. 400.304 and 400.307, F.S., relating to operation of the state and district long-term care facility ombudsman councils; amending ss. 400.401 and 400.408, F.S.; providing commission responsibilities relating to adult congregate living facilities; amending s. 400.623, F.S., relating to recruitment of adult foster homes; creating pt. I of ch. 408, F.S.; creating the Health Care Commission; providing for a comprehensive health plan; providing goals for health care cost containment, access, quality, and planning; providing for location within, but independence from, the Department of Health and Rehabilitative Services; providing for appointment of commissioners; providing for compensation; requiring an administrative plan; providing for commission proceedings; providing for a chairman, an executive director, a general counsel, and staff; establishing organizational structure; providing for administrative divisions and bureaus; specifying qualifications, standards for conduct and ex parte communications, and an oath of office for commissioners; providing for commission expenditures, personnel, recordkeeping, and fees for copies of records; restricting certain representation by former commissioners; providing duties of the Public Counsel; creating a trust fund and providing for the use of moneys therein; providing for inquiries and providing an exemption from public records law; providing for review and repeal; providing penalties; providing for rules; authorizing contracts; providing for judicial review; creating the Medical Advisory Panel; providing membership; providing duties; creating the Health Care Work Group; providing membership; providing for administration and compensation; providing duties and responsibilities; requiring a report; repealing ss. 407.01 and 407.04(4), F.S., relating to creation and budget requests of the Health Care Cost Containment Board; transferring the remainder of ch. 407, F.S., to pt. III of ch. 408, F.S.; transferring powers, duties, and operations of the board to the commission; amending s. 624.215, F.S.; requiring reports to the commission of legislative proposals mandating health insurance coverage; directing that changes in terminology in the Florida Statutes be made, relating to the commission's jurisdiction over nursing homes, adult congregate living facilities, home health agencies, adult day care centers, hospitals, and adult foster homes, in ch. 400, F.S.; and health testing services, in ch. 483, F.S.; and in specified sections of the Florida Statutes, to conform to the act; directing that a reviser's bill be prepared to correct cross references and other inconsistencies; providing for Sunset review and repeal of pt. I of ch. 408, F.S., relating to creation of the Health Care Commission; providing for Sundown review and repeal of the Medical Advisory Panel; providing for Sunset review and repeal of pt. II of ch. 408, F.S., relating to certificates of need; rescheduling review and repeal of provisions affected by the act and specified provisions regulating professional practices; providing an appropriation; amending s. 766.205, F.S.; providing for medical records of patients to be furnished to prospective defendants in medical malpractice actions under specified circumstances; amending s. 407.50, F.S.; providing an exemption from budget review; revising provisions relating to health planning; amending s. 186.003, F.S.; defining the term "Statewide Health Council"; amending s. 186.022, F.S.; requiring the Executive Office of the Governor to consider findings of the Statewide Health Council's review of agency functional plans; amending s. 186.503, F.S.; defining the terms "local health council" and "Statewide Health Council"; amending s. 186.507, F.S.; requiring memoranda of agreement between regional planning councils and local health councils; amending s. 186.508, F.S.; requiring the Executive Office of the Governor to consider findings of the Statewide Health Council's review of comprehensive regional policy plans; amending s. 186.511, F.S.; requiring involvement of local health councils in the evaluation of the health element of comprehensive regional policy plans; amending s. 187.201, F.S.; substantially rewording the health element of the state comprehensive plan; revising goals and policies; amending s. 381.703, F.S.; providing a schedule for appointing local health council members; revising the functions of the local health councils; changing the composition of the Statewide Health Council; revising the functions of the Statewide Health Council; requiring the Department of Health and Rehabilitative Services to assist the Statewide Health Council in preparing a state health plan and provide orienta-

tion to local health council members; authorizing the Department of Health and Rehabilitative Services to withhold funds from or cancel contracts with local health councils under certain circumstances; providing an appropriation; amending s. 401.291, F.S.; revising a training requirement for the use of an automatic external defibrillator; providing an appropriation from the health trust fund to the Statewide Health Council; repealing s. 381.025, F.S., relating to long-range health planning; providing effective dates.

House Amendment 1 to House Substitute Amendment 2—In title, on page 15, line 11, after the semicolon (;) insert: creating s. 766.1115, F.S.; creating the "Access to Health Care Act of 1991"; authorizing agreements by governmental contractors with health care providers selected and contracted with for the provision of health care services as agent of the governmental contractor; providing an exception; providing definitions; requiring contracts of agency and specifying terms thereof; providing for access to patient records by governmental contractors and exempting from the public records law patient records, adverse incident reports, and patient treatment outcome information obtained by governmental contractors; providing for future legislative review of this exemption pursuant to the Open Government Sunset Review Act; requiring governmental contractors to establish quality assurance programs; providing for right of control by the governmental contractor; requiring compensated providers to elect under such contracts either a percentage reduction in compensation or a percentage of care to be uncompensated; requiring the establishment of governmental contractor claims funds and excess claims funds; requiring adverse incident and treatment outcome reporting; requiring certain notice; providing for rulemaking; requiring a patient health care treatment and access evaluation methodology and reporting; providing for review and repeal; amending s. 768.28, F.S.; expanding agency to include providers of health care services pursuant to agency agreements with governmental contractors, and reenacting ss. 766.203(1) and 766.207(1), F.S., relating to presuit investigation and voluntary binding arbitration of medical negligence claims, to incorporate said amendment in references thereto;

House Amendment 2 to House Substitute Amendment 2—In title, on page 16, line 21, after the semicolon (;) insert: amending s. 766.102, F.S.; correcting a cross reference with respect to medical negligence;

House Amendment 3 to House Substitute Amendment 2—In title, on page 1, line 15, after the semicolon (;) insert: providing that certain freestanding hospitals which receive a certificate of need for long-term substance abuse services shall be licensed in a certain manner;

Senator Malchon moved the following amendment:

Senate Amendment 1 to House Substitute Amendment 1 as amended—On page 1, strike everything after "and insert" on line 14 and insert:

Section 1. Effective upon this act becoming a law, subsection (1) of section 381.702, Florida Statutes, is amended to read:

381.702 Definitions.—As used in ss. 381.701-381.715, the term:

(1) "Capital expenditure" means an expenditure, including an expenditure for a construction project undertaken by a health care facility as its own contractor, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or an expenditure which exceeds the minimum as specified in s. 381.706(1)(c), changes the bed capacity of the facility, or substantially changes the services or service area of the health care facility, health service provider, or hospice, and which includes the cost of the studies, surveys, designs, plans, working drawings, specifications, *initial financing* ~~refinancing~~ costs, and other activities essential to acquisition, improvement, expansion, or replacement of the plant and equipment. The department shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.

Section 2. Effective upon this act becoming a law, paragraphs (b), (c), and (g) of subsection (3) of section 381.703, Florida Statutes, are amended to read:

381.703 Local and state health planning.—

(3) FUNDING.—

(b)1. A hospital licensed under chapter 395, a nursing home licensed under chapter 400, and an adult congregate living facility licensed under chapter 400 shall be assessed an annual fee based on number of beds.

2. All other facilities and organizations listed in paragraph (a) shall each be assessed *an annual fee of $150* ~~a graduated annual fee based on volume of service~~.

3. Facilities operated by the Department of Health and Rehabilitative Services or the Department of Corrections and any hospital which meets the definition of rural hospital pursuant to s. 395.102(2) are exempt from the assessment required in this subsection.

(c)1. The department shall, by rule, establish fees for hospitals and nursing homes based on an assessment of $2 per bed. However, no such facility shall be assessed more than a total of $500 under this subsection.

2. The department shall, by rule, establish fees for adult congregate living facilities based on an assessment of $1 per bed. However, no such facility shall be assessed more than a total of $150 under this subsection.

3. The department shall, by rule, establish *an annual fee of $150* ~~graduated fees~~ for all other facilities and organizations listed in paragraph (a) ~~based on volume of service. Such fees shall not exceed a maximum of $150 for any facility or organization~~.

(g) The department shall *deposit in the Local and State Health Trust Fund all health care facility assessments that are assessed under this subsection and proceeds from the certificate-of-need application fees which are sufficient to maintain the aggregate funding level for the local health councils and the Statewide Health Council as specified in the General Appropriations Act for the 1990-1991 fiscal year, plus any increase specifically mandated by the Legislature for the Statewide Health Council. The remaining certificate-of-need application fees shall be deposited in a trust account administered by the department and may be used only for the purpose of administering the Health Facility and Services Development Act.*~~, on an ongoing basis, deposit 90 percent of all certificate-of-need application fees and 100 percent of health care facilities assessments assessed pursuant to this subsection in the Local and State Health Trust Fund.~~

Section 3. Effective upon this act becoming a law, paragraph (c) of subsection (1) of section 381.706, Florida Statutes, is amended to read:

381.706 Projects subject to review.—

(1) APPLICABILITY.—Unless exempt pursuant to subsection (3), all health-care-related projects, as described in paragraphs (a)-(n), *are* ~~shall be~~ subject to review and *must* ~~shall~~ file an application for a certificate of need with the department. The department is exclusively responsible for determining whether a health-care-related project is subject to review under ss. 381.701-381.715.

(c) A capital expenditure of $1 million or more by or on behalf of a health care facility or hospice for a purpose directly related to the furnishing of health services at such facility; provided that a certificate of need shall not be required for an expenditure to provide an outpatient health service, or to acquire equipment *or refinance debt*, for which a certificate of need is not otherwise required pursuant to this subsection. The department shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.

Section 4. Effective upon this act becoming a law, section 381.708, Florida Statutes, is amended to read:

381.708 Fees.—The department shall assess fees on certificate-of-need applications. Such fees shall be for the purpose of funding the Statewide Health Council, the functions of the local health councils, and the activities of the department *and shall be allocated as provided in s. 381.703.* The fee shall be determined as follows:

(1) A minimum base fee of *$5,000* ~~$750~~.

(2) In addition to the base fee of *$5,000* ~~$750~~, *0.015* ~~0.006~~ of each dollar of proposed expenditure, except that *a* ~~no~~ fee *may not* ~~shall~~ exceed *$22,000* ~~$10,000~~.

Section 5. Effective upon this act becoming a law, subsection (3) of section 390.014, Florida Statutes, is amended to read:

390.014 Licenses; fees, display, etc.—

(3) The annual license fee required for a clinic shall be nonrefundable and shall be *reasonably calculated to cover the cost of regulation under this chapter, but may* ~~equal to $1 times the authorized patient capacity of the clinic; however, the fee shall~~ not be less than $35~~,~~ nor more than *$250* ~~$75~~.

Section 6. Effective upon this act becoming a law, subsection (2) of section 395.004, Florida Statutes, is amended to read:

395.004 Application for license, disposition of fees; expenses.—

(2) Each application for a general hospital license, specialty hospital license, or ambulatory surgical center license, or renewal thereof, shall be accompanied by a license fee, in accordance with the following schedule:

(a) The biennial license and license renewal fee required of a facility licensed under this part *shall be reasonably calculated to cover the cost of regulation under this part and* shall be established by rule at the rate of not less than $9.50 per hospital bed, nor more than *$30* ~~$15~~ per hospital bed, except that the minimum license fee hereunder shall be *$1,500* ~~$475~~ and the total fees collected from all licensed facilities *may* ~~shall~~ not exceed the cost of properly carrying out the provisions of this part.

(b) Such fees shall be payable to the department and shall be deposited in the Hospital Licensure Trust Fund for the sole purpose of carrying out the provisions of this part.

Section 7. Effective upon this act becoming a law, paragraph (a) of subsection (2) of section 395.007, Florida Statutes, is amended to read:

395.007 Construction inspections; plan submission and approval; fees.—

(2)(a) The department is authorized to charge *an initial fee of $2,000 for review of plans and construction on all projects, no part of which is refundable. The department may also collect* a fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for *the portion of the review which encompasses initial review through the initial revised construction document review. The department is further authorized to collect its actual costs on all subsequent portions of the review and construction inspections. Initial* ~~services rendered in conducting the review of plans and specifications for each new project, in an amount sufficient to cover the cost of necessary architectural and engineering services to meet the requirements of this section.~~ fee payment shall accompany the initial submission of ~~final~~ plans and specifications. *Any subsequent payment that is due is payable upon receipt of the invoice from the department.*

Section 8. Effective upon this act becoming a law, subsection (3) of section 400.062, Florida Statutes, is amended to read:

400.062 License required; fee; disposition; display; transfer.—

(3) The annual license fee required for each license issued under this part shall be comprised of two parts. Part I of the license fee shall be the basic license fee. The rate per bed for the basic license fee shall be established annually~~;~~ and *must be reasonably calculated to cover the cost of regulation under this part, but may not exceed $35 per bed.*~~, in establishing such rate, the department shall divide one third of the total fiscal year's legislative appropriation for carrying out the provisions of this part by the total number of beds to be licensed under this part.~~ Part II of the license fee shall be the resident protection fee, which shall be at the rate of not less than 25 cents per bed. The rate per bed shall be the minimum rate per bed, and such rate shall remain in effect until the effective date of a rate per bed *adopted* ~~promulgated~~ by rule by the department pursuant to this part. At such time as the amount on deposit in the Resident Protection Trust Fund is less than $500,000, the department may *adopt* ~~promulgate~~ rules to establish a rate which may not exceed $10 per bed. The rate per bed shall revert back to the minimum rate per bed when the amount on deposit in the Resident Protection Trust Fund reaches $500,000, except that any rate established by rule shall remain in effect until such time as the rate has been equally required for each license issued under this part. Any amount in the fund in excess of $800,000 shall revert to the Nursing Home and Related Facilities Licensure Trust Fund and may not be expended without prior approval of the Legislature. The department may prorate the annual license fee for those licenses which it issues under this part for less than 1 year. Funds generated by license fees collected in accordance with this section shall be deposited in the following manner:

(a) The basic license fee collected shall be deposited in the Nursing Homes and Related Facilities Licensure Trust Fund, which is hereby established for the sole purpose of carrying out the provisions of this part.

(b) The resident protection fee collected shall be deposited in the Resident Protection Trust Fund for the sole purpose of paying, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a resident removed from a nursing home facility on a temporary, emergency basis or for the maintenance and care of residents in a nursing home facility pending removal and alternate placement.

Section 9. Effective upon this act becoming a law, subsection (8) of section 400.23, Florida Statutes, 1990 Supplement, is amended to read:

400.23 Rules; minimum standards; evaluation and rating system; fee for review of plans.—

(8) The department is authorized to charge *an initial fee of $2,000 for review of plans and construction on all projects, no part of which is refundable. The department may also collect* a fee, not to exceed *1* ~~0.5~~ percent of the estimated construction cost or the actual cost of review, whichever is less, for *the portion of the review which encompasses initial review through the initial revised construction document review. The department is further authorized to collect its actual costs on all subsequent portions of the review and construction inspections. Initial* ~~services rendered in conducting the review of plans and specifications for each new project, in an amount sufficient to cover the costs of purchasing necessary additional architectural and engineering services to meet the requirements of this section.~~ fee payment shall accompany the initial submission of plans and specifications. *Any subsequent payment that is due is payable upon receipt of the invoice from the department.* Notwithstanding any other provisions of law to the contrary, all money received by the department pursuant to the provisions of this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

Section 10. Effective upon this act becoming a law, paragraph (a) of subsection (4) of section 400.407, Florida Statutes, is amended to read:

400.407 License required; fee, display.—

(4)(a) The *biennial* ~~annual~~ license fee required of a facility shall be *$240* ~~$100~~ per license, with an additional fee of *$30* ~~$5~~ per resident based on the total licensed resident capacity of the facility, *except that a reduced additional fee of $10 per resident shall be assessed for beds designated for recipients of optional state supplementation payments provided for in s. 409.212.* The total fee shall not exceed *$10,000* ~~$1,000~~, no part of which shall be returned to the facility. ~~Beginning July 1, 1988, the department may adjust the $100 annual license fee and the maximum total license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.~~

Section 11. Effective upon this act becoming a law, section 400.418, Florida Statutes, is amended to read:

400.418 Disposition of fees and administrative fines.—Income from license fees, late fees, and administrative fines generated pursuant to ss. 400.407, 400.417 and 400.419 shall be deposited in *a trust fund administered by the* ~~the Licensure Fees Trust Fund of the~~ department. Such funds shall be directed to and used by the department for the following purposes:

(1) Up to 50 percent of the trust funds accrued each fiscal year may be used to offset the expenses of receivership, pursuant to s. 400.422, if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.

(2) An amount of $5,000 of the trust funds accrued each year shall be allocated to pay for inspection-related physical and mental health examinations requested by the department pursuant to s. 400.426 for residents who are either recipients of supplemental security income or have monthly incomes not in excess of the maximum combined federal and state cash subsidies available to supplemental security income recipients, as provided for in s. 409.212. Such funds shall only be used where the resident is ineligible for Medicaid.

(3) The balance of trust funds accrued each year may be used to offset the costs of the licensure program, including the costs of conducting background investigations, verifying information submitted, and defraying the costs of processing the names of applicants.

Section 12. Effective upon this act becoming a law, subsection (2) of section 400.467, Florida Statutes, 1990 Supplement, is amended to read:

400.467 License required; fee; display.—

(2) The license fee and annual renewal fee required of an agency shall be nonrefundable and in an amount determined by the department to be sufficient to cover the department's costs in carrying out its responsibilities under this part but not to exceed *$1,000* ~~$500~~. However, state, county, or municipal governments applying for licenses under this part are exempt from the payment of license fees.

Section 13. Effective upon this act becoming a law, subsection (2) of section 400.605, Florida Statutes, is amended to read:

400.605 Administration; forms; fees; rules; inspections; fines.—The administration of this act is vested in the Department of Health and Rehabilitative Services, which shall:

(2) Collect in advance (and the applicant so served shall pay to it in advance) at the time of filing an application for a license or at the time of renewal of a license a fee *which must be reasonably calculated to cover the cost of regulation under this part, but may not exceed $600 per program* ~~of $100~~.

Section 14. Effective upon this act becoming a law, subsection (5) of section 483.172, Florida Statutes, is amended to read:

483.172 License fees.—The department shall collect fees for all licenses issued under this part. The fee schedule for fiscal year 1983-1984 shall be the minimum fees provided herein, and such schedule shall remain in effect until the effective date of a fee schedule adopted by rule by the department pursuant to this part. The fee schedule for licensure of clinical laboratories shall be increased annually in substantially equal increments to produce, by fiscal year 1985-1986, an overall fee schedule in which fees from licensure of clinical laboratories are sufficient to carry out the responsibilities of the department for regulation of clinical laboratories and fees from licensure of clinical laboratory personnel are sufficient to carry out the responsibilities of the department for regulation of clinical laboratory personnel. Each fee shall be due at the time of application and shall be payable to the department to be deposited in a trust fund administered by the department and used only for the purposes of this chapter. The fee schedule is as follows:

(5) For licensure as a clinical laboratory, an annual fee of not less than $210 or more than *$1,200* ~~$1,000~~. No separate licensure fee shall be paid by any branch office, mobile donor unit, or transfusion service operated by a blood bank when the principal location of the blood bank is licensed under this part. For late filing of an application for renewal, a fee of $100. In any licensure period in which the department accepts an equivalent inspection of a blood bank pursuant to s. 483.061, such blood bank shall pay only a fee of $50.

Section 15. Effective upon this act becoming a law, subsection (1) of section 381.713, Florida Statutes, is hereby repealed. The repeal of subsection (1) of section 381.713, Florida Statutes, shall not in any manner divest, affect, abate, or terminate any exemption granted or the grant of any application for exemption submitted to the Department of Health and Rehabilitative Services pursuant to said subsection prior to April 17, 1991.

Section 16. Effective upon this act becoming a law, paragraph (a) of subsection (3) of section 381.706, Florida Statutes, as amended by chapter 89-527, Laws of Florida, is hereby repealed.

Section 17. Effective upon this act becoming a law, paragraph (a) of subsection (3) of section 11.45, Florida Statutes, 1990 Supplement, is amended to read:

11.45 Definitions; duties; audits; reports.—

(3)(a)1. The Auditor General shall annually make financial audits of the accounts and records of all state agencies, as defined in this section, of all district school boards, and of all district boards of trustees of community colleges. Nothing herein shall limit the Auditor General's discretionary authority to conduct performance audits of these governmental entities as authorized in subparagraph 2. Nothing in this section shall be construed as prohibiting a district school board from selecting an independent auditor to perform a financial audit as defined in paragraph (1)(b) notwithstanding the notification provisions of this section.

2. The Auditor General may at any time make financial audits and performance audits of the accounts and records of all governmental entities created pursuant to law. The audits referred to in this subparagraph shall be made whenever determined by the Auditor General, whenever directed by the Legislative Auditing Committee, or whenever otherwise required by law or concurrent resolution. District school boards and expressway and bridge authorities may require that the annual financial audit of its accounts and records be completed within 12 months after the end of its fiscal year. In the event that the Auditor General may not be able to meet that requirement, the Auditor General shall notify the school board or the expressway and bridge authority pursuant to subparagraph 4.

3.a. The Auditor General shall complete a performance audit of each new major program and each major modification to an existing program specifically identified in the General Appropriations Act, and any new major program or major modification to an existing program which becomes law but which is not specifically identified in the General Appropriations Act, within 3 years after the date when such program or modification becomes law, unless such program or modification has been subject during the 3-year period to an evaluation and review pursuant to ss. 11.513 and 216.0165. The chairmen of the appropriations committees and the appropriate substantive committees of the Senate and the House of Representatives shall provide the Legislative Auditing Committee with a list of the new major programs and major modifications to existing programs provided for in the General Appropriations Act or any other act within 10 days after the General Appropriations Act or the other act becomes law. The Legislative Auditing Committee shall arrange the lists of programs and modifications in order of priority before directing the Auditor General to conduct the performance audits. If the Auditor General conducts a preliminary review of a program or modification and determines that a performance audit is unnecessary, the Auditor General shall submit a letter stating the reasons why such audit is unnecessary to the Legislative Auditing Committee for its review and approval.

b. In addition to any other audits performed under subparagraph 2. and this subparagraph, the Auditor General shall perform an evaluation of the implementation of the recommendations prepared for each agency that has been reviewed under the provisions of s. 216.0165. Such evaluation must begin no later than 2 years after the beginning of the fiscal year that next follows the submission of the budget requests submitted pursuant to s. 216.023(7). The Auditor General shall maintain a schedule of performance audits of state programs sufficient to audit all major state programs within a 10-year period, taking into consideration the schedule established according to s. 216.0165(2) or the schedule determined by the Legislative Auditing Committee pursuant to s. 216.0165(3), unless directed otherwise by the Legislative Auditing Committee.

4. If by July 1 in any fiscal year a district school board or local governmental entity has not been notified that a financial audit for that fiscal year will be performed by the Auditor General pursuant to subparagraph 2., each municipality with either revenues or expenditures of more than $100,000, each special district with either revenues or expenditures of more than $25,000, each special district issuing, or which has outstanding, bonds with face value greater than $500,000 with an original maturity date in excess of 1 year from the time of issuance, and each county agency shall, and each district school board may, require that an annual financial audit of its accounts and records be completed, within 12 months after the end of its respective fiscal year, by an independent certified public accountant retained by it and paid from its public funds. A management letter shall be prepared and included as a part of each financial audit report. The county audit shall be one document which shall include a separate audit of each county agency. The county audit shall be a single report. The governing body of a county shall be responsible for selecting an independent certified public accountant to audit the county agencies of the county according to the following procedure:

a. In each noncharter county, an auditor selection committee shall be established, consisting of the county officers elected pursuant to s. 1(d), Art. VIII, State Constitution, and one member of the board of county commissioners or its designee.

b. The committee shall publicly announce, in a uniform and consistent manner, each occasion when auditing services are required to be purchased. Public notice shall include a general description of the audit and shall indicate how interested certified public accountants can apply for consideration.

c. The committee shall encourage firms engaged in the lawful practice of public accounting who desire to provide professional services to submit annually a statement of qualifications and performance data.

d. Any certified public accountant desiring to provide auditing services must first be qualified pursuant to law. The committee shall make a finding that the firm or individual to be employed is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

e. The committee shall adopt procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record, experience, and such other factors as may be determined by the committee to be applicable to its particular requirements.

f. The public shall not be excluded from the proceedings under this subparagraph.

g. The committee shall evaluate current statements of qualifications and performance data on file with the committee, together with those that may be submitted by other firms regarding the proposed audit, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the audit, and ability to furnish the required services.

h. The committee shall select no fewer than three firms deemed to be the most highly qualified to perform the required services after considering such factors as the ability of professional personnel; past performance; willingness to meet time requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to the firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. If fewer than three firms desire to perform the services, the committee shall recommend such firms as it determines to be qualified.

i. Nothing in this subparagraph shall be construed to prohibit a contract for a period in excess of 1 year.

j. If the board of county commissioners receives more than one proposal for the same engagement, the board may rank, in order of preference, the firms to perform the engagement. The firm ranked first may then negotiate a contract with the board giving, among other things, a basis of its fee for that engagement. Should the board be unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the board shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The board, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time. The board shall also negotiate on the scope and quality of services. In making such determination, the board shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For contracts over $50,000, the board shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that the rates of compensation and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Such certificate shall also contain a description and disclosure of any understanding that places a limit on current or future years' audit contract fees, including any arrangements under which fixed limits on fees will not be subject to reconsideration if unexpected accounting or auditing issues are encountered. Such certificate shall also contain a description of any services rendered by the certified public accountant or firm of certified public accountants at rates or terms that are not customary. Any auditing service contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the board determines the contract price was increased due to inaccurate or incomplete factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract. This sub-subparagraph shall apply to audits covering the 1982-1983 fiscal year, and the procedure in this sub-subparagraph may be used by any county for subsequent audits. If there is a conflict between this sub-subparagraph and s. 473.317, this sub-subparagraph shall prevail.

k. Should the board be unable to negotiate a satisfactory contract with any of the selected firms, the committee shall select additional firms, and the board shall continue negotiations in accordance with this subsection until an agreement is reached.

l. At the conclusion of the audit field work, the independent certified public accountant shall discuss with the head of each county agency and the chairman of the board of county commissioners or his designee or with the chairman of the district school board or his designee, as appropriate, all of the auditor's comments pertaining to that agency which will be included in the audit report containing the auditor's comments for the areas within their responsibility. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his office.

m. The officer's written statement of explanation or rebuttal concerning the auditor's comments, including corrective action to be taken, shall be filed with the governing body of the county and with the Auditor General within 30 days after the delivery of the financial audit report.

n. Each district school board or expressway and bridge authority that elects to utilize an independent audit shall select an auditor by using the same selection procedure as outlined under sub-subparagraphs b.-k. The district school board or expressway and bridge authority selection committee shall be set by policy of that respective district school board or expressway and bridge authority. The district school board reports shall be presented to the superintendent of schools and the chairman of the school board in that district and filed with the district school board and the Auditor General in conformity with sub-subparagraphs l. and m., and expressway and bridge authority reports shall be presented to the chairman of the expressway and bridge authority and the Auditor General.

o. The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all local governmental entity audits. Such rules shall include, but not be limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Government Financial Emergency and Accountability Act, chapter 79-183, Laws of Florida.

The procedures under sub-subparagraphs a.-k. do not apply to audit agreements or contracts entered into before July 1, 1983.

5. Any financial audit report required under subparagraph 4. shall be submitted to the Auditor General within 30 days after completion of the audit but no later than 12 months after the end of the fiscal year of the governmental entity and district school board. If the Auditor General does not receive the financial audit within such period, he shall notify the Legislative Auditing Committee that such governmental entity has not complied with this subparagraph. Following notification of failure to submit the required audit, a hearing shall be scheduled by the committee for the purpose of receiving testimony addressing the failure of local governmental entities to comply with the reporting requirements of this section. After the hearing, the committee shall determine which local governmental entities will be subjected to further state action. If it finds that one or more local governmental entities should be subjected to further state action, the committee shall:

a. In the case of a local governmental entity, request the Department of Revenue and the Department of Banking and Finance to withhold any funds payable to such governmental entity until the required financial audit is received by the Auditor General.

b. In the case of a special district, notify the Department of Community Affairs that the special district has failed to provide the required audits. Upon receipt of notification, the Department of Community Affairs shall proceed pursuant to ss. 189.421 and 189.422.

6. The Auditor General, in consultation with the Board of Accountancy, shall review all audits made pursuant to this paragraph by an independent certified public accountant.

7. In conducting a performance audit of any agency, the Auditor General shall use the Agency Functional Plan of the agency in evaluating the performance of the agency.

Section 18. Effective upon this act becoming a law, subsection (8) is added to section 20.055, Florida Statutes, 1990 Supplement, to read:

20.055 Agency chief internal auditors.—

(8) The chief internal auditor shall monitor the implementation of the agency's response to any audit of the agency conducted by the Auditor General pursuant to s. 11.45. No later than 6 months after the Auditor General publishes a report of his audit of the agency, the chief internal auditor shall report to the agency head on the status of corrective actions taken. A copy of such report shall be filed with the Joint Legislative Auditing Committee.

Section 19. Effective upon this act becoming a law, section 216.176, Florida Statutes, is created to read:

216.176 Truth in budgeting.—The Governor's recommended budget shall contain a "truth in budgeting" statement which shall display in summary form all currently estimated fees, taxes, revenues, or other income which need to be raised to fund the proposed budget and its annualized costs. The "truth in budgeting" statement for the General Appropriations Act shall be completed by the Legislature as soon as practicable but no later than 72 hours prior to the end of the period authorized by law for veto consideration by the Governor.

Section 20. Effective upon this act becoming a law, subsection (3) of section 216.136, Florida Statutes, 1990 Supplement, is amended to read:

216.136 Consensus estimating conferences; duties and principals.—

(3) REVENUE ESTIMATING CONFERENCE.—

(a) Duties.—The Revenue Estimating Conference shall develop such official information with respect to anticipated state and local government revenues as the conference determines is needed for the state planning and budgeting system. *Any principal may request the conference to review and estimate revenues for any trust fund.*

(b) Principals.—The Executive Office of the Governor, the director of the Division of Economic and Demographic Research of the Joint Legislative Management Committee, and professional staff of the Senate and House of Representatives who have forecasting expertise, or their designees, are the principals of the Revenue Estimating Conference. The responsibility of presiding over sessions of the conference shall be rotated among the principals.

Section 21. (1) The Legislature recognizes the importance of providing early prenatal care as a primary means to ensure healthy births. The Legislature also recognizes that one of the most effective weapons in the fight against infant mortality is early, high quality, and comprehensive prenatal care. Despite this convincing evidence that prenatal care is effective in improving pregnancy outcomes, access to prenatal care for all pregnant women has not been achieved in this state. Therefore, it is the intent of the Legislature to assure that the existing economic, social, and geographic barriers to health care are minimized, and that an adequate number of health care providers remain available to assist pregnant women and their infants.

(2) Therefore, it is the overall intent of the Legislature to promote and protect the health and well being of all pregnant women and their children through the provision and accessibility of health care programs to fully meet the health requirements of this population.

(3) The Legislature recognizes the importance of community-based coalitions that combine the resources and talents of its citizenry with involvement of its local business communities. The Legislature also believes that information derived through community involvement is a vital contribution to the success of any state initiative, and is desirous to use this information where available and accessible. Therefore, it is the intent of the Legislature to provide assistance in the establishment of such coalitions in order to ensure that the voice of Florida's communities be heard through the creation of prenatal and infant health care coalitions.

Section 22. Effective March 1, 1992, section 383.14, Florida Statutes, 1990 Supplement, is amended to read:

383.14 Screening ~~of infants~~ for metabolic *disorders,* ~~and~~ other hereditary and congenital disorders, *and environmental risk factors.*—

(1) SCREENING REQUIREMENTS.—To help ensure access to the maternal and child health care system, ~~It shall be the duty of~~ the Department of Health and Rehabilitative Services *shall* ~~to~~ promote the screening of all infants born in Florida for phenylketonuria and other metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. *The department shall also promote the identification and screening of all infants born in this state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care provider. Such efforts shall be conducted in hospitals, perinatal centers, county public health units, school health programs that provide prenatal care, and birthing centers, and reported to the Office of Vital Statistics.*

(a) Prenatal screening.—The department shall develop a multilevel screening process that includes a risk-assessment instrument to identify women at risk for a preterm birth or other high-risk condition. The primary health care provider shall complete the risk-assessment instrument and report the results to the Office of Vital Statistics so that the woman may immediately be notified and referred to appropriate health, education, and social services.

(b) Postnatal screening.—A risk-factor analysis using the department's designated risk-assessment instrument shall also be conducted as part of the medical screening process upon the birth of a child and submitted to the department's Office of Vital Statistics for recording and other purposes provided for in this chapter. The department's screening process for risk assessment shall include a scoring mechanism and procedures that establish thresholds for notification, further assessment, referral, and eligibility for services by professionals or paraprofessionals consistent with the level of risk. Procedures for developing and using the screening instrument, notification, referral, and care coordination services, reporting requirements, management information, and maintenance of a computer-driven registry in the Office of Vital Statistics which ensures privacy safeguards must be consistent with the provisions and plans established under chapter 411, Pub. L. No. 99-457, and this chapter. Procedures established for reporting information and maintaining a confidential registry must include a mechanism for a centralized information depository at the state and county levels. The department shall coordinate with existing risk-assessment systems and information registries. The department must ensure, to the maximum extent possible, that the screening information registry is integrated with the department's automated data systems, including the Florida On-line Recipient Integrated Data Access (FLORIDA) system. Tests *and screenings must* ~~shall~~ be performed at such times and in such manner as *is* ~~may be~~ prescribed by the department after consultation with the Genetics and Infant Screening Advisory Council *and the State Coordinating Council for Early Childhood Services.*

(2)~~(1)~~ RULES.—After consultation with the Genetics and Infant Screening Advisory Council, the department shall *adopt* ~~promulgate~~ and enforce rules requiring that every infant born in *this state* ~~Florida~~ shall, prior to becoming 2 weeks of age, be subjected to a test for phenylketonuria and, at the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary from time to time. *After consultation with the State Coordinating Council for Early Childhood Services, the department shall also adopt and enforce rules requiring every infant born in this state to be screened for environmental risk factors that place children and their families at risk for increased morbidity, mortality, and other negative outcomes.* The department is empowered to promulgate such additional rules as are found necessary for the administration of this section, including rules relating to the methods used and time or times for testing as accepted medical practice indicates, and rules requiring mandatory reporting of the results of tests *and screenings* for these conditions to the department.

(3)~~(2)~~ DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES; POWERS AND DUTIES.—The department shall administer and provide certain services to implement the provisions of this section and shall:

(a) Assure the availability and quality of the necessary laboratory tests and materials.

(b) Furnish all physicians, *county* public health units, *perinatal centers, birthing centers,* and hospitals forms on which *environmental*

screening and the results of tests for phenylketonuria and such other disorders for which testing may be required from time to time shall be reported to the department.

(c) Promote education of the public about the prevention and management of metabolic, hereditary, and congenital disorders *and dangers associated with environmental risk factors.*

(d) Maintain a confidential registry of cases, including information of importance for the purpose of followup services to prevent mental retardation, to correct or ameliorate physical handicaps, and for epidemiologic studies, if indicated. Such registry shall be exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(e) Supply the necessary dietary treatment products where practicable for diagnosed cases *of phenylketonuria and other metabolic diseases* for as long as medically indicated when the products are not otherwise available. *Provide nutrition education and supplemental foods to those families eligible for the Special Supplemental Food Program for Women, Infants, and Children as provided in s. 383.011.*

(f) Promote the availability of genetic studies and counseling in order that the parents, siblings, and affected infants may benefit from available knowledge of the condition.

All provisions of this subsection shall be coordinated with the provisions and plans established under this chapter, chapter 411, and Pub. L. No. 99-457.

(4)~~(3)~~ OBJECTIONS OF PARENT OR GUARDIAN.—The provisions of this section shall not apply when the parent or guardian of the child objects thereto. A written statement of such objection shall be presented to the physician or other person whose duty it is to administer and report ~~such~~ tests *and screenings* under ~~the provisions of~~ this section.

(5)~~(4)~~ ADVISORY COUNCIL.—There is established a Genetics and Infant Screening Advisory Council made up of 12 members appointed by the Secretary of Health and Rehabilitative Services. The council shall be composed of two consumer members, three practicing pediatricians, at least one of whom must be a pediatric hematologist, one representative from each of the four medical schools in the state, the Deputy Secretary for Health or his designee, one representative from the Children's Medical Services Program Office, and one representative from the Developmental Services Program Office. All appointments shall be for a term of 4 years. The chairperson of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon the call of the chairperson. The council may establish ad hoc or temporary technical advisory groups to assist the council with specific topics which come before the council. Council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members are entitled to be reimbursed for per diem and travel expenses. It is the purpose of the council to advise the department about:

(a) Conditions for which testing should be included under the screening program and the genetics program;

(b) Procedures for collection and transmission of specimens and recording of results; and

(c) Methods whereby screening programs and genetics services for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

Section 23. Effective upon this act becoming a law, subsection (1) of section 383.011, Florida Statutes, is amended to read:

383.011 Administration of maternal and child health programs.—

(1) The Department of Health and Rehabilitative Services is designated as the state agency for:

(a) Administering or providing for maternal and child health services to provide periodic prenatal care for patients who are at low or medium risk of complications during pregnancy and to provide referrals to higher level medical facilities for those patients who develop medical conditions for which treatment is beyond the scope and capabilities of the county public health units.

(b) Administering or providing for periodic medical examinations, nursing appraisals, and nutrition counseling on infant and child patients to assess developmental progress and general health conditions; administering or providing for treatment for health complications when such treatment is within the scope and capabilities of the county public health units or Children's Medical Services.

(c) Administering and providing for the expansion of the maternal and child health services to include pediatric primary care programs subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.

(d) Administering and providing for prenatal and infant health care delivery services through county public health units or subcontractors for the provision of the following enhanced services for medically and socially high-risk clients subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216:

1. Case finding or outreach.

2. Assessment of health, social, environmental, and behavioral risk factors.

3. Case management utilizing a service delivery plan.

4. Home visiting to support the delivery of and participation in prenatal and infant primary health care services.

5. Childbirth and parenting education.

(e) The department shall establish in each county public health unit a Healthy Start Care Coordination Program in which a care coordinator is responsible for receiving screening reports and risk-assessment reports from the Office of Vital Statistics; conducting assessments as part of a multidisciplinary team, where appropriate; providing technical assistance to the district prenatal and infant care coalitions; directing family outreach efforts; and coordinating the provision of services within and outside the department using the plan developed by the coalition. The care coordination process must include, at a minimum, family outreach workers and health paraprofessionals who will assist in providing the following enhanced services to pregnant women, infants, and their families that are determined to be at potential risk by the department's screening instrument: case finding or outreach; assessment of health, social, environmental, and behavioral risk factors; case management utilizing the family support plan; home visiting to support the delivery of and participation in prenatal and infant primary care services; childbirth and parenting education; counseling; and social services, as appropriate. Family outreach workers may include social work professionals or nurses with public health education and counseling experience. Paraprofessionals may include resource mothers and fathers, trained health aides, and parent educators. The care coordination program shall be developed in a coordinated, nonduplicative manner with the Developmental Evaluation and Intervention Program of Children's Medical Services, using the local assessment findings and plans of the prenatal and infant care coalitions and the programs and services established in chapter 411, Pub. L. No. 99-457, and this chapter.

1. Families determined to be at potential risk based on the thresholds established in the department's screening instrument must be notified by the department of the determination and recommendations for follow-up services. All Medicaid-eligible families shall receive Early Periodic Screening, Diagnosis and Treatment (EPSDT) Services of the Florida Medicaid Program to help ensure continuity of care. All other families identified at potential risk shall be directed to seek additional health care follow-up visits as provided under s. 627.6579. A family identified as a family at potential risk is eligible for enhanced services under the care coordination process within the resources allocated, if it is not already receiving services from the Developmental Evaluation and Intervention Program. The department shall adopt rules regulating the assignment of family outreach workers and paraprofessionals based on the thresholds established in the department's risk-assessment tool.

2. As part of the care coordination process, the department must ensure that subsequent screenings are conducted for those families identified as families at potential risk. Procedures for subsequent screenings of all infants and toddlers must be consistent with the established periodicity schedule and the level of risk. Screening programs must be conducted in accessible locations, such as child care centers, local schools, teenage pregnancy programs, community centers, and

county public health units. Care coordination must also include initiatives to provide immunizations in accessible locations. Such initiatives must address ways to ensure that children not currently being served by immunization efforts are reached.

3. The provision of services under this section must be consistent with the provisions and plans established under chapter 411, Pub. L. No. 99-457, and this chapter.

(f)~~(e)~~ Receiving the federal maternal and child health and preventive health services block grant funds.

(g)~~(d)~~ Receiving the federal funds for the "Special Supplemental Food Program for Women, Infants, and Children," or WIC, authorized by the Child Nutrition Act of 1966, as amended, and for administering the statewide WIC program. (The WIC program provides nutrition education and supplemental foods, by means of food instruments called checks that are redeemed by authorized food vendors, to participants certified by the department as pregnant, breast-feeding, or postpartum women; infants; or children.)

Section 24. Effective upon this act becoming a law, subsection (7) is added to section 383.013, Florida Statutes, to read:

383.013 Prenatal care.—The Department of Health and Rehabilitative Services shall:

(7) Provide regional perinatal intensive care satellite clinics to deliver level III obstetric outpatient services to women diagnosed as being high risk, which includes an interdisciplinary team to deliver specialized high-risk obstetric care. The provision of satellite clinics is subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.

Section 25. Effective upon this act becoming a law, subsections (2) and (4) of section 383.215, Florida Statutes, are amended to read:

383.215 Developmental intervention and parent support and training programs.—

(2) It is the intent of the Legislature to establish developmental intervention and parent support and training programs at all Level III regional perinatal intensive care centers and *at hospitals with level II neonatal* ~~stepdown perinatal~~ intensive care *units* ~~centers~~, in order that families with high-risk or handicapped infants may gain the services and skills they need to support their infant. *It is also the intent of the Legislature to establish Developmental Evaluation and Intervention (DEI) programs at hospitals with level II neonatal intensive care units. The provision of developmental evaluation and intervention care units is subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.*

(4) The developmental intervention and family support and training programs shall be established in conjunction with the Level III regional perinatal intensive care centers. *Developmental Evaluation and Intervention (DEI)* ~~Additional~~ programs *shall also* ~~may~~ be established at *hospitals with level II neonatal* ~~stepdown perinatal~~ intensive care *units* ~~centers~~ based on geographic location and population. *The provision of developmental evaluation and intervention care units is subject to the availability of moneys and the limitations established by the General Appropriations Act or chapter 216.* Each program shall have a program director and the necessary staff. The program director shall establish and coordinate the developmental intervention and family support and training program. The program shall include:

(a) In-hospital intervention services, parent support and training, and individual and family service planning.

(b) Interdisciplinary team meetings on a regular basis to develop and update the individual and family service plan.

(c) Discharge planning by the interdisciplinary team.

(d) Education and training for neonatal intensive care unit staff, volunteers, and others, as needed, in order to expand the services provided to high-risk or handicapped infants and their families.

(e) Followup intervention services after hospital discharge, to aid the family and high-risk or handicapped infant's transition into the community. These services shall include home intervention services and non-home-based intervention services, both contractual and voluntary.

(f) Coordination of services with community providers.

(g) Educational materials about infant care, infant growth and development, community resources, medical conditions and treatments, and family advocacy.

Section 26. Effective upon this act becoming a law, section 383.216, Florida Statutes, is created to read:

383.216 Community-based prenatal and infant health care.—

(1) The Department of Health and Rehabilitative Services shall cooperate with localities which wish to establish prenatal and infant health care coalitions, and shall acknowledge and incorporate, if appropriate, existing community children's services organizations, pursuant to this section within the resources allocated. The purpose of this program is to establish a partnership among the private sector, the public sector, state government, local government, community alliances, and maternal and child health care providers, for the provision of coordinated community-based prenatal and infant health care. The prenatal and infant health care coalitions must work in a coordinated, nonduplicative manner with local health planning councils established pursuant to s. 381.703.

(2) Each prenatal and infant health care coalition shall develop, in coordination with the Department of Health and Rehabilitative Services, a plan which shall include at a minimum provision to:

(a) Perform community assessments, using the Planned Approach to Community Health (PATCH) process, to identify the local need for comprehensive preventive and primary prenatal and infant health care. These assessments shall be used to:

1. Determine the priority target groups for receipt of care.

2. Determine outcome performance objectives jointly with the department.

3. Identify potential local providers of services.

4. Determine the type of services required to serve the identified priority target groups.

5. Identify the unmet need for services for the identified priority target groups.

(b) Design a prenatal and infant health care services delivery plan which is consistent with local community objectives and this section.

(c) Solicit and select local service providers based on reliability and availability, and define the role of each in the services delivery plan.

(d) Determine the allocation of available federal, state, and local resources to prenatal and infant health care providers.

(e) Review, monitor, and advise the department concerning the performance of the services delivery system, and make any necessary annual adjustments in the design of the delivery system, the provider composition, the targeting of services, and other factors necessary for achieving projected outcomes.

(f) Build broad-based community support.

(3) Supervision of the prenatal and infant health care coalitions is the responsibility of the department. The department shall:

(a) Assist in the formation and development of the coalitions.

(b) Define the core services package so that it is consistent with the prenatal and infant health care services delivery plan.

(c) Provide data and technical assistance.

(d) Assure implementation of a quality management system within the provider coalition.

(e) Define statewide, uniform eligibility and fee schedules.

(f) Evaluate provider performance based on outcome measures established by the prenatal and infant health care coalition and the department.

(4) In those communities which do not elect to establish a prenatal and infant health care coalition, the Department of Health and Rehabilitative Services is responsible for all of the functions delegated to the coalitions in this section.

(5) The membership of each prenatal and infant health care coalition shall represent health care providers, the recipient community, and the community at large; shall represent the racial, ethnic, and gender composition of the community; and shall include at least the following:

(a) Consumers of family planning, primary care, or prenatal care services, at least two of whom are low-income or Medicaid eligible.

(b) Health care providers, including:

1. County public health units.

2. Migrant and community health centers.

3. Hospitals.

4. Local medical societies.

5. Local health planning organizations.

(c) Local health advocacy interest groups and community organizations.

(d) County and municipal governments.

(e) Social service organizations.

(f) Local education communities.

(6) Prenatal and infant health care coalitions may be established for single counties or for services delivery catchment areas. A prenatal and infant health care coalition shall be initiated at the local level on a voluntary basis. Once a coalition has been organized locally and includes the membership specified in subsection (5), the coalition must submit a list of its members to the Secretary of Health and Rehabilitative Services to carry out the responsibilities outlined in this section.

(7) Effective January 1, 1992, the Department of Health and Rehabilitative Services shall provide up to $150,000 to each prenatal and infant health care coalition that petitions for recognition, meets the membership criteria, demonstrates the commitment of all the designated members to participate in the coalition, and provides a local cash or in-kind contribution match of 25 percent of the costs of the coalition. An in-kind contribution match may be in the form of staff time, office facilities, or supplies or other materials necessary for the functioning of the coalition.

(8) Local prenatal and infant health care coalitions may hire staff or contract for independent staffing and support to enable them to carry out the objectives of this section. Staff shall have knowledge and expertise in community health and related resources and planning, grant writing, public information and communication techniques, organizational development, and data compilation and analysis.

(9) Local prenatal and infant health care coalitions shall incorporate as not-for-profit corporations for the purpose of seeking and receiving grants from federal, state, and local government and other contributors.

(10) The Department of Health and Rehabilitative Services shall adopt rules as necessary to implement this section, including rules defining acceptable "in-kind" contributions.

Section 27. Effective upon this act becoming a law, section 383.2161, Florida Statutes, is created to read:

383.2161 Maternal and child health report.—Beginning in 1993, the Department of Health and Rehabilitative Services annually shall compile and analyze the risk information collected by the Office of Vital Statistics and the district prenatal and infant care coalitions and shall prepare and submit to the Legislature by January 2 a report that includes, but is not limited to:

(1) The number of families identified as families at potential risk;

(2) The number of families that receive family outreach services;

(3) The increase in demand for services; and

(4) The unmet need for services for identified target groups.

Section 28. (1) The Department of Health and Rehabilitative Services shall develop, for submission to the Legislature by December 1, 1991, a plan for decategorizing the resources provided to two districts into a single child and maternal health budget. The plan must establish procedures to allow for allocating resources on the basis of child and maternal welfare concerns, as opposed to specific program categories, using the assessment findings of the district prenatal and infant care coalitions established in section 383.135, Florida Statutes.

(2) The department shall develop, as a part of this plan, an alternative reimbursement methodology for providers that provide performance-based payment and payment that rewards providers who develop social services and educational linkages and support services. The methodology shall be designed to enhance services by increasing resource flexibility within current budgetary levels. The department shall develop this plan in consultation with the appropriate substantive committees in the Legislature and state advisory councils.

Section 29. Effective upon this act becoming a law, paragraph (k) is added to subsection (1) of section 427.012, Florida Statutes, to read:

427.012 Transportation Disadvantaged Commission.—There is created a Transportation Disadvantaged Commission in the Department of Transportation.

(1) The commission shall consist of the following members:

(k) One member of the Early Childhood Council. Such person shall be appointed by the Governor to represent maternal and child health care providers and shall be appointed to serve a term of 4 years.

Section 30. Section 409.901, Florida Statutes, is created to read:

409.901 Definitions.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(1) "Applicant" means an individual whose written application for medical assistance provided by Medicaid under ss. 409.903-409.906 has been submitted to the department, but has not received final action. This term includes an individual, who need not be alive at the time of application, whose application is submitted through a representative or a person acting for the individual.

(2) "Benefit" means any benefit, assistance, aid, obligation, promise, debt, liability, or the like, related to any covered injury, illness, or necessary medical care, goods, or services.

(3) "Claim" means any communication, whether oral, written, or electronic (electronic impulse or magnetic), which is used by any person to apply for payment from the Medicaid program or its fiscal agent for each item or service purported by any person to have been provided by a person to any Medicaid recipient.

(4) "Collateral" means:

(a) Any and all causes of action, suits, claims, counterclaims, and demands which accrue to the recipient or to the recipient's legal representative, related to any covered injury, illness, or necessary medical care, goods, or services which necessitated that Medicaid provide medical assistance.

(b) All judgments, settlements, and settlement agreements rendered or entered into and related to such causes of action, suits, claims, counterclaims, demands, or judgments.

(c) Proceeds, as defined in this section.

(5) "Covered injury or illness" means any sickness, injury, disease, disability, deformity, abnormality disease, necessary medical care, pregnancy, or death for which a third party is, may be, could be, should be, or has been liable, and for which Medicaid is, or may be, obligated to provide, or has provided, medical assistance.

(6) "Department" means the Department of Health and Rehabilitative Services. The department is the Medicaid agency for the state, as provided under federal law.

(7) "Legal representative" means a guardian, conservator, survivor, or personal representative of a recipient or applicant, or of the property or estate of a recipient or applicant.

(8) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, 42 U.S.C. s. 1396 et seq., and regulations thereunder, as administered in this state by the department.

(9) "Medicaid agency" means the single state agency that administers or supervises the administration of the state Medicaid plan under federal law.

(10) "Medicaid program" means the program authorized under Title XIX of the federal Social Security Act that provides for payments for medical items or services, or both, on behalf of any person who is determined by the department to be eligible on the date of service for Medicaid assistance.

(11) "Medicaid provider" or "provider" means a person or entity that has a Medicaid provider agreement in effect with the department and is in good standing with the department.

(12) "Medicaid provider agreement" or "provider agreement" means a contract between the department and a provider for the provision of services or goods, or both, to Medicaid recipients pursuant to Medicaid.

(13) "Medicaid recipient" or "recipient" means an individual whom the department determines is eligible, pursuant to federal and state law, to receive medical assistance and related services for which the department may make payments under the Medicaid program. For the purposes of determining third-party liability, the term includes an individual formerly determined to be eligible for Medicaid, an individual who has received medical assistance under the Medicaid program, or an individual on whose behalf Medicaid has become obligated.

(14) "Medicaid-related records" means records that relate to the provider's business or profession and to a Medicaid recipient. Medicaid-related records include records related to non-Medicaid customers, clients, or patients but only to the extent that the documentation is shown by the department to be necessary to determine a provider's entitlement to payments under the Medicaid program.

(15) "Medical assistance" means any provision of, payment for, or liability for medical services by Medicaid to, or on behalf of, any recipient.

(16) "Medical services" or "medical care" means medical or medically related institutional or noninstitutional care, goods, or services covered by the Medicaid program. The term includes, without limitation, physician services, inpatient hospital services, outpatient hospital services, independent laboratory services, X-ray services, and prescribed drug services, and such other services as are covered by the Medicaid program.

(17) "Payment," as it relates to third-party benefits, means performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery, provision, or transfer of third-party benefits for medical services. To "pay" means to do any of the acts set forth in this subsection.

(18) "Proceeds" means whatever is received upon the sale, exchange, collection, or other disposition of the collateral or proceeds thereon and includes insurance payable by reason of loss or damage to the collateral or proceeds. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(19) "Third party" means an individual, entity, or program, excluding Medicaid, that is, may be, could be, should be, or has been liable for all or part of the cost of medical services related to any medical assistance covered by Medicaid.

(20) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the department, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for personal injury or for death of the recipient, but specifically excluding policies of life insurance on the recipient, unless available under terms of the policy to pay medical expenses prior to death. The term includes, without limitation, collateral, as defined in this section, health insurance, any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance or personal injury protection coverage, medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.

Section 31. Section 409.902, Florida Statutes, is created to read:

409.902 Designated single state agency; payment requirements; program title.—The Department of Health and Rehabilitative Services is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. These payments shall be made only for services included in the program, shall be made only on behalf of eligible individuals, and shall be made only to qualified providers in accordance with federal requirements for Title XIX of the Social Security Act and the provisions of state law. This program of medical assistance is designated the "Medicaid program."

Section 32. Section 409.903, Florida Statutes, is created to read:

409.903 Mandatory payments for eligible persons.—The department shall make payments for medical assistance and related services on behalf of the following persons who the department determines to be eligible, subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216.

(1) Persons who receive payments from or are determined eligible for the federal and state program known as Aid to Families with Dependent Children (AFDC), and certain persons who were eligible for that program but who became ineligible or who would be eligible but do not meet certain technical requirements. This group includes, but is not limited to:

(a) Low-income, single-parent families and their children.

(b) Low-income, two-parent families in which at least one parent is disabled or otherwise incapacitated.

(c) Certain unemployed two-parent families and their children.

(2) A person who receives payments from, who is determined eligible for, or who was eligible for but lost cash benefits from the federal program known as the Supplemental Security Income program (SSI). This category includes a low-income person age 65 or over and a low-income person under age 65 considered to be permanently and totally disabled.

(3) A child under age 21 living in a low-income, two-parent family, and a child under age 7 living with a nonrelative, if the income and assets of the family or child, as applicable, do not exceed the cash-assistance limits under the Aid to Families with Dependent Children program.

(4) A child who is eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care, or adoption subsidies, and a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption.

(5) A pregnant woman for the duration of her pregnancy and for the post partum period as defined in federal law and rule, or a child under age 1, if either is living in a family that has an income which is at or below 150 percent of the most current federal poverty level, or, effective January 1, 1992, that has an income which is at or below 185 percent of the most current federal poverty level. Such a person is not subject to an assets test. Further, a pregnant woman who applies for eligibility for the Medicaid program through a qualified Medicaid provider must be offered the opportunity, subject to federal rules, to be made presumptively eligible for the Medicaid program.

(6) A child born after September 30, 1983, living in a family that has an income which is at or below 100 percent of the current federal poverty level, who has attained the age of 6, but has not attained the age of 19. In determining the eligibility of such a child, an assets test is not required.

(7) A child living in a family that has an income which is at or below 133 percent of the current federal poverty level, who has attained the age of 1, but has not attained the age of 6. In determining the eligibility of such a child, an assets test is not required.

(8) A person who is age 65 or over or is determined by the department to be disabled, whose income is at or below 100 percent of the most current federal poverty level and whose assets do not exceed limitations established by the department. However, the department may only pay for premiums, coinsurance, and deductibles, as required by federal law, unless additional coverage is provided for any or all members of this group by s. 409.904(1).

Section 33. Section 409.904, Florida Statutes, is created to read:

409.904 Optional payments for eligible persons.—The department may make payments for medical assistance and related services on behalf of the following persons who the department determines to be eligible subject to the income, assets, and categorical eligibility tests set forth in

federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216.

(1) A person who is age 65 or older or is determined by the department to be disabled, whose income is at or below 100 percent of federal poverty level, and whose assets do not exceed limitations established by the department.

(2) A family, a pregnant woman, a child under age 18, a person age 65 or over, or a blind or disabled person who would be eligible under any group listed in s. 409.903(1), (2), or (3), except that the income or assets of such family or person exceed limitations established by the department. For a family or person in this group, medical expenses are deductible from income in accordance with federal requirements in order to make a determination of eligibility. A family or person in this group, which group is known as the "medically needy," is eligible to receive the same services as other Medicaid recipients, with the exception of services in skilled nursing facilities and intermediate care facilities for the mentally retarded.

(3) A person who is in need of the services of a licensed nursing facility, a licensed intermediate care facility for the mentally retarded, or a state mental hospital, whose income does not exceed 300 percent of the SSI income standard, and who meets the assets standards established under federal and state law.

(4) A low-income person who meets all other requirements for Medicaid eligibility except citizenship and who is in need of emergency medical services. The eligibility of such a recipient is limited to the period of the emergency, in accordance with federal regulations.

Section 34. Section 409.905, Florida Statutes, is created to read:

409.905 Mandatory Medicaid services.—The department may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined by the department to be eligible on the dates on which the services were provided. Any service under this section may be provided only when medically necessary, shall be provided in accordance with state and federal law, and is subject to the availability of moneys and any limitation established by the general appropriations act or chapter 216.

(1) ADVANCED REGISTERED NURSE PRACTITIONER SERVICES.—The department shall pay for services provided to a recipient by a licensed advanced registered nurse practitioner who has a valid collaboration agreement with a licensed physician on file with the Department of Professional Regulation or who provides anesthesia services in accordance with established protocol required by state law and approved by the medical staff of the facility in which the anesthetic service is performed. Reimbursement for such services must be provided in an amount that equals not less than 80 percent of the reimbursement to a physician who provides the same services.

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.—The department shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the department to be medically necessary for the treatment, correction, or amelioration of these problems, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

(3) FAMILY PLANNING SERVICES.—The department shall pay for services necessary to enable a recipient voluntarily to plan family size or to space children. These services include information, education, drugs and supplies, and necessary medical care and followup. Each recipient participating in the family planning portion of the Medicaid program must be provided freedom to choose any alternative method of family planning, as required by federal law.

(4) HOME HEALTH CARE SERVICES.—The department shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home. An entity that provides services pursuant to this subsection shall be licensed under part III of chapter 400 or part II of chapter 499, if appropriate. These services, equipment, and supplies may be limited as provided in the general appropriations act and do not include services, equipment, or supplies provided to a person residing in a hospital or nursing facility.

(5) HOSPITAL INPATIENT SERVICES.—The department shall pay for all services provided for the medical care and treatment of a recipient who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395. However, payment for inpatient hospital services in excess of 45 days for a Medicaid recipient 21 years of age or older is dependent upon the availability of sufficient county contributions. A licensed hospital maintained primarily for the care and treatment of patients having mental disorders or mental diseases is not eligible to participate in the hospital inpatient portion of the Medicaid program except as provided in federal law. However, the department shall apply for a waiver, within 9 months after the effective date of this part, designed to provide hospitalization services for mental health reasons to children and adults in the most cost effective and lowest cost setting possible. Such waiver shall include a request for the opportunity to pay for care in hospitals known under federal law as "institutions for mental disease" or "IMD's." The waiver proposal shall propose no additional aggregate cost to the state or federal government, and shall be conducted in District 6 of the Department of Health and Rehabilitative Services. The waiver proposal may incorporate competitive bidding for hospital services, comprehensive brokering, prepaid capitated arrangements, or other mechanisms deemed by the department to show promise in reducing the cost of acute care and increasing the effectiveness of preventive care. When developing the waiver proposal, the department shall take into account price, quality, accessibility, linkages of the hospital to community services and family support programs, plans of the hospital to ensure the earliest discharge possible, and the comprehensiveness of the mental health and other health care services offered by participating providers. The department is directed to monitor and evaluate the implementation of this waiver program if it is granted and report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives by February 1, 1992.

(6) HOSPITAL OUTPATIENT SERVICES.—The department shall pay for preventive, diagnostic, therapeutic, or palliative care and other services provided to a recipient in the outpatient portion of a hospital licensed under part I of chapter 395, and provided under the direction of a licensed physician or licensed dentist, except that payment for such care and services is limited to $1,000 per state fiscal year per recipient, unless an exception has been made by the department, and with the exception of a Medicaid recipient under age 21 in which case the only limitation is medical necessity.

(7) INDEPENDENT LABORATORY SERVICES.—The department shall pay for medically necessary diagnostic laboratory procedures ordered by a licensed physician or other licensed practitioner of the healing arts which are provided for a recipient in a laboratory that meets the requirements for Medicare participation and is licensed under chapter 483, if required.

(8) NURSING FACILITY SERVICES.—The department shall pay for 24-hour-a-day nursing and rehabilitative services for a recipient in a nursing facility licensed under part I of chapter 400, which are ordered by and provided under the direction of a licensed physician.

(9) PHYSICIAN SERVICES.—The department shall pay for services and procedures rendered to a recipient by, or under the personal supervision of, a person licensed under state law to practice medicine or osteopathy. These services may be furnished in the physician's office, the Medicaid recipient's home, a hospital, a nursing facility, or elsewhere, but shall be medically necessary for the treatment of an injury, illness, or disease within the scope of the practice of medicine or osteopathy as defined by state law. The department shall not pay for services that are clinically unproven, experimental, or for purely cosmetic purposes.

(10) PORTABLE X-RAY SERVICES.—The department shall pay for professional and technical portable radiological services ordered by a licensed physician or other licensed practitioner of the healing arts which are provided by a licensed professional in a setting other than a hospital, clinic, or office of a physician or practitioner of the healing arts, on behalf of a recipient.

(11) RURAL HEALTH CLINIC SERVICES.—The department shall pay for outpatient primary health care services for a recipient provided by a clinic certified by and participating in the Medicare program which is located in a federally designated, rural, medically underserved area and

has on its staff one or more licensed primary care nurse practitioners or physician assistants, and a licensed staff supervising physician or a consulting supervising physician.

(12) TRANSPORTATION SERVICES.—The department shall ensure that transportation services are available for a Medicaid recipient in need of transport to a qualified Medicaid provider for necessary and Medicaid-compensable services. The department may pay for transportation and other related travel expenses as necessary if these services are not otherwise available.

Section 35. Section 409.906, Florida Statutes, is created to read:

409.906 Optional Medicaid services.—The department may make payments for the following services, which are optional to the state under Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined by the department to be eligible on the dates on which the services were provided. Any service that is provided under this section may be provided only when medically necessary, must be provided in accordance with state and federal law, and is subject to any limitation established by the general appropriations act or chapter 216.

(1) ADULT DENTURE SERVICES.—The department may pay for dentures, the procedures required to seat dentures, and the repair and reline of dentures, provided by or under the direction of a licensed dentist, for a recipient who is age 21 or older.

(2) ADULT HEALTH SCREENING SERVICES.—The department may pay for an annual routine physical examination, conducted by or under the direction of a licensed physician, for a recipient age 21 or older, without regard to medical necessity, in order to detect and prevent disease, disability, or other health condition or its progression.

(3) AMBULATORY SURGICAL CENTER SERVICES.—The department may pay for services provided to a recipient in an ambulatory surgical center licensed under part I of chapter 395, by or under the direction of a licensed physician or dentist.

(4) BIRTH CENTER SERVICES.—The department may pay for examinations and delivery, recovery, and newborn assessment, and related services, provided in a licensed birth center staffed with licensed physicians, certified nurse midwives, and midwives licensed in accordance with chapter 467, to a recipient expected to experience a low-risk pregnancy and delivery.

(5) CASE MANAGEMENT SERVICES.—The department may pay for primary care case management services rendered to a recipient pursuant to a federally approved waiver, and targeted case management services for specific groups of targeted recipients, which services are rendered pursuant to federal guidelines.

(6) CHILDREN'S DENTAL SERVICES.—The department may pay for diagnostic, preventive, or corrective procedures, including orthodontia in severe cases, provided to a recipient under age 21, by or under the supervision of a licensed dentist. Services provided under this program include treatment of the teeth and associated structures of the oral cavity, as well as treatment of disease, injury, or impairment that may affect the oral or general health of the individual.

(7) CHIROPRACTIC SERVICES.—The department may pay for manual manipulation of the spine and initial services, screening, and X rays provided to a recipient by a licensed chiropractic physician.

(8) COMMUNITY MENTAL HEALTH SERVICES.—The department may pay for rehabilitative services provided to a recipient in a mental health, drug abuse, or alcohol abuse center licensed by and under contract to the department, which are psychiatric in nature and rendered or recommended by a psychiatrist or which are medical in nature and rendered or recommended by a physician or psychiatrist.

(9) DURABLE MEDICAL EQUIPMENT.—The department may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary.

(10) HEARING SERVICES.—The department may pay for hearing and related services, including hearing evaluations, hearing aid devices, dispensing of the hearing aid, and related repairs, if provided to a recipient by a licensed hearing aid specialist, otolaryngologist, otologist, audiologist, or physician.

(11) HOME AND COMMUNITY-BASED SERVICES.—The department may pay for home-based or community-based services that are rendered to a recipient in accordance with a federally approved waiver program.

(12) HOSPICE CARE SERVICES.—The department may pay for all reasonable and necessary services for the palliation or management of a recipient's terminal illness, if the services are provided by a hospice that is licensed under the provisions of part V of chapter 400 and meets Medicare certification requirements.

(13) INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED SERVICES.—The department may pay for health-related care and services provided on a 24-hour-a-day basis by a facility licensed under chapter 393, to a recipient who needs such care because of his mental or physical condition.

(14) INTERMEDIATE CARE SERVICES.—The department may pay for 24-hour-a-day intermediate care nursing and rehabilitation services rendered to a recipient in a nursing facility licensed under part I of chapter 400, if the services are ordered by and provided under the direction of a physician.

(15) OPTOMETRIC SERVICES.—The department may pay for services provided to a recipient, including examination, diagnosis, treatment, and management, related to ocular pathology, if the services are provided by a licensed optometrist or physician.

(16) PODIATRIC SERVICES.—The department may pay for services, including diagnosis and medical, surgical, palliative, and mechanical treatment, related to ailments of the human foot and lower leg, if provided to a recipient by a podiatrist licensed under state law.

(17) PRESCRIBED DRUG SERVICES.—The department may pay for medications that are prescribed for a recipient by a physician or other licensed practitioner of the healing arts authorized to prescribe medications and that are dispensed to the recipient by a licensed pharmacist or physician in accordance with applicable state and federal law.

(18) STATE HOSPITAL SERVICES.—The department may pay for all-inclusive psychiatric inpatient hospital care provided to a recipient age 65 or older in a state mental hospital.

(19) VISUAL SERVICES.—The department may pay for visual examinations, eyeglasses, and eyeglass repairs for a recipient, if they are prescribed by a licensed physician specializing in diseases of the eye or by a licensed optometrist.

Section 36. Section 409.907, Florida Statutes, is created to read:

409.907 Medicaid provider agreements.—The department may make payments for medical assistance and related services rendered to Medicaid recipients only to a person or entity who has a provider agreement in effect with the department, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the department.

(1) Each provider agreement shall require the provider to comply fully with all state and federal laws pertaining to the Medicaid program, as well as all federal, state, and local laws pertaining to licensure, if required, and the practice of any of the healing arts, and shall require the provider to provide services or goods of not less than the scope and quality it provides to the general public.

(2) Each provider agreement shall be a voluntary contract between the department and the provider, in which the provider agrees to comply with all laws and rules pertaining to the Medicaid program when furnishing a service or goods to a Medicaid recipient and the department agrees to pay a sum, determined by fee schedule, payment methodology, or other manner, for the service or goods provided to the Medicaid recipient. Each provider agreement shall be effective for a stipulated period of time, shall be terminable by either party after reasonable notice, and shall be renewable by mutual agreement.

(3) The provider agreement developed by the department, in addition to the requirements specified in subsections (1) and (2), shall require the provider to:

(a) Have in his possession at the time of signing the provider agreement, and maintain in good standing throughout the period of the agreement's effectiveness, a valid professional or facility license pertinent to the services or goods being provided, if required by the state or locality in which the provider is located, and the Federal Government, if applicable.

(b) Maintain in a systematic and orderly manner all medical and Medicaid-related records as the department may require and as it determines necessary for the services or goods being provided.

(c) Retain all medical and Medicaid-related records for a period of 5 years to satisfy all necessary inquiries by the department.

(d) Safeguard the use and disclosure of information pertaining to current or former Medicaid recipients and comply with all state and federal laws pertaining to confidentiality of patient information.

(e) Permit the department, the Auditor General, the Federal Government, and the authorized agents of each of these entities access to all Medicaid-related information, which may be in the form of records, logs, documents, or computer files, and other information pertaining to services or goods billed to the Medicaid program, including access to all patient records and other provider information if the provider cannot easily separate records for Medicaid patients from other records.

(f) Bill other insurers and third parties, including the Medicare program, before billing the Medicaid program, if the recipient is eligible for payment for health care or related services from another insurer or person, and comply with all other state and federal requirements in this regard.

(g) Promptly report any moneys received in error or in excess of the amount to which the provider is entitled from the Medicaid program, and promptly refund such moneys to the department.

(h) Be liable for and indemnify, defend, and hold the department harmless from all claims, suits, judgments, or damages, including court costs and attorney's fees, arising out of the negligence or omissions of the provider in the course of providing services to a recipient or a person believed to be a recipient.

(i) At the option of the department, provide proof of liability insurance and maintain such insurance in effect for any period during which services or goods are furnished to Medicaid recipients.

(j) Accept Medicaid payment as payment in full, and prohibit the provider from billing or collecting from the recipient or the recipient's responsible party any additional amount except, and only to the extent the department permits or requires, copayments, coinsurance, or deductibles to be paid by the recipient for the services or goods provided. The Medicaid payment-in-full policy does not apply to services or goods provided to a recipient if the services or goods are not covered by the Medicaid program.

(4) A provider agreement shall provide that, if the provider sells or transfers a business interest or practice that substantially constitutes the entity named as the provider in the provider agreement, or sells or transfers a facility that is of substantial importance to the entity named as the provider in the provider agreement, the provider is required to maintain and make available to the department Medicaid-related records that relate to the sale or transfer of the business interest, practice, or facility in the same manner as though the sale or transaction had not taken place, unless the provider enters into an agreement with the purchaser of the business interest, practice, or facility to fulfill this requirement.

(5) The department:

(a) Is required to make timely payment at the established rate for services or goods furnished to a recipient by the provider upon receipt of a properly completed claim form. The claim form shall require certification that the services or goods have been completely furnished to the recipient and that, with the exception of those services or goods specified by the department, the amount billed does not exceed the provider's usual and customary charge for the same services or goods.

(b) Is prohibited from demanding repayment from the provider in any instance in which the Medicaid overpayment is attributable to departmental error in the determination of eligibility of a recipient.

(c) May adopt, and include in the provider agreement, such other requirements and stipulations on either party as the department finds necessary to properly and efficiently administer the Medicaid program.

(6) A Medicaid provider agreement may be revoked, at the option of the department, as the result of a change of ownership of any facility, association, partnership, or other entity named as the provider in the provider agreement. A provider shall give the department 60 days' notice before making any change in ownership of the entity named in the provider agreement as the provider.

(7) The department may require, as a condition of participating in the Medicaid program and before entering into the provider agreement, that the provider submit information concerning the professional, business, and personal background of the provider. If the provider is a corporation, partnership, association, or other entity, the department may require the provider to submit information concerning the background of that entity and of any principal of the entity, including any partner or shareholder having an ownership interest in the entity equal to 5 percent or greater.

(8) Before signing a provider agreement, the department shall require the provider to submit:

(a) Proof of holding a valid license or operating certificate, as applicable, if required by the state or local jurisdiction in which the provider is located or if required by the Federal Government.

(b) Information concerning any prior violation, fine, suspension, termination, or other administrative action taken under the Medicaid laws, rules, or regulations of this state or of any other state or the Federal Government; any prior violation of the laws, rules, or regulations relating to the Medicare program; any prior violation of the rules or regulations of any other public or private insurer; and any prior violation of the laws, rules, or regulations of any regulatory body of this or any other state. The information required is that which pertains to the entity entering into the provider agreement with the department; to any principal, partner, or shareholder having an ownership interest in the entity of 5 percent or greater; and to any treating provider who participates or intends to participate in Medicaid through the entity acting as a group provider.

(c) Notice of and copies of court documents not sealed by the court of jurisdiction, related to any criminal charge brought in any court in the United States against the provider or the provider entity, or any principal, partner, or major shareholder thereof.

(d) Full and accurate disclosure of any financial or ownership interest that the provider, or any principal, partner, or major shareholder thereof, may hold in any other Medicaid provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(e) If a group provider, identification of all members of the group and attestation that all members of the group are enrolled in or have applied to enroll in the Medicaid program.

(9) All statements and information furnished by the prospective provider for background information before signing the provider agreement shall be true and complete. The filing of materially incomplete or false information is sufficient cause for immediate termination of the provider from the Medicaid program.

(10) Before signing a provider agreement and at the discretion of the department, other provisions of this section notwithstanding, an entity may become eligible to receive payment from the Medicaid program at the time it first furnishes services or goods, if:

(a) The services or goods provided are otherwise compensable;

(b) The entity meets all other requirements of a Medicaid provider at the time the services or goods were provided; and

(c) The entity agrees to abide by the provisions of the provider agreement effective from the date the services or goods were provided.

(11) A provider may not reenroll in the Medicaid program once suspended or terminated if any fine or overpayment properly assessed has not been repaid, unless the department has issued a specific letter of forgiveness or has approved a repayment schedule to which the provider agrees to adhere.

(12) A provider who does not adhere to an agreed-upon repayment schedule, whether previously suspended or terminated, may be terminated by the department for nonpayment or partial payment.

Section 37. Section 409.908, Florida Statutes, is created to read:

409.908 Reimbursement of Medicaid providers.—The department shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the department and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, and other mechanisms the department considers efficient and effective for purchasing services or goods on behalf of recipients. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216.

(1) Reimbursement to hospitals licensed under part I of chapter 395 must be made prospectively or on the basis of negotiation.

(a) Reimbursement for inpatient care is limited to 45 days per state fiscal year per recipient, except for children under age 21, in which case the only limitation is medical necessity or the payment amount. Reimbursement for hospital outpatient care is limited to $1,000 per state fiscal year per recipient, unless an exception has been made by the department, and with the exception of a Medicaid recipient under age 21 in which case the only limitation is medical necessity.

(b) Hospitals that provide services to a disproportionate share of low-income Medicaid recipients, or that participate in the regional perinatal intensive care center program under chapter 383, or that participate in the statutory teaching hospital disproportionate share program, or that participate in the extraordinary disproportionate share program, may receive additional reimbursement. The total amount of payment for disproportionate share hospitals shall be fixed by the general appropriations act. The computation of these payments must be made in compliance with all federal regulations and the methodologies described in ss. 409.911, 409.9112, 409.9113, and 409.9114.

(2)(a) Reimbursement to nursing homes licensed under part I of chapter 400 and intermediate care facilities for the mentally retarded licensed under chapter 393 must be made prospectively. Reimbursement to hospitals licensed under part I of chapter 395 for the provision of swing-bed nursing home services must be made on the basis of the average statewide nursing home payment.

(b) The department shall establish and implement a Florida Title XIX Long-Term Care Reimbursement Plan (Medicaid) for nursing home care which utilizes a rate-setting mechanism whereby the rates are reasonable and adequate to cover a nursing home's cost which must be incurred by an efficiently and economically operated facility in order to provide care and services in conformance with the applicable state and federal laws, rules, regulations, and quality and safety standards and to ensure that individuals eligible for medical assistance have reasonable geographic access to such care. In the establishment of any maximum rate of payment, whether overall or component, the department shall base the maximum rate of payment on the results of scientifically valid analysis and conclusions derived from objective statistical data pertinent to the particular maximum rate of payment.

(3) The following Medicaid services and goods shall be reimbursed on a fee-for-service basis. For each allowable service or goods furnished in accordance with Medicaid rules, policy manuals, handbooks, and state and federal law, the payment shall be the amount billed by the provider, the provider's usual and customary charge, or the maximum allowable fee established by the department, whichever amount is less, with the exception of those services or goods for which the department makes payment using a methodology based on average costs or negotiated fees.

(a) Advanced registered nurse practitioner services.

(b) Birth center services.

(c) Chiropractic services.

(d) Community mental health services.

(e) Dental services, including oral and maxillofacial surgery.

(f) Durable medical equipment.

(g) Hearing services.

(h) Occupational therapy for Medicaid recipients under age 21.

(i) Optometric services.

(j) Orthodontic services.

(k) Personal care for Medicaid recipients under age 21.

(l) Physical therapy for Medicaid recipients under age 21.

(m) Podiatric services.

(n) Portable X-ray services.

(o) Private-duty nursing for Medicaid recipients under age 21.

(p) Respiratory therapy for Medicaid recipients under age 21.

(q) Speech therapy for Medicaid recipients under age 21.

(r) Visual services.

(4) Alternative health plans, health maintenance organizations, and prepaid health plans shall be reimbursed a fixed, prepaid amount negotiated by the department and prospectively paid to the provider monthly for each Medicaid recipient enrolled. The amount may not exceed the average amount the department determines it would have paid, based on claims experience, for recipients in the same or similar category of eligibility.

(5) An ambulatory surgical center shall be reimbursed the lesser of the amount billed by the provider or the Medicare-established allowable amount for the facility.

(6) A provider of early and periodic screening, diagnosis, and treatment services to Medicaid recipients who are children under age 21 shall be reimbursed using an all-inclusive rate stipulated in a fee schedule established by the department. A provider of the visual, dental, and hearing components of such services shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the department.

(7) A provider of family planning services shall be reimbursed the lesser of the amount billed by the provider or an all-inclusive amount per type of visit for physicians and advanced registered nurse practitioners, as established by the department in a fee schedule.

(8) A provider of home-based or community-based services rendered pursuant to a federally approved waiver shall be reimbursed based on an established or negotiated rate for each service. These rates shall be established according to an analysis of the expenditure history and prospective budget developed by each contract provider participating in the waiver program, or under any other methodology adopted by the department and approved by the Federal Government in accordance with the waiver.

(9) A provider of home health care services or of medical supplies and appliances shall be reimbursed the lesser of the amount billed by the provider or the department's established maximum allowable amount, except that, in the case of the rental of durable medical equipment, the total rental payments may not exceed the purchase price of the equipment over its expected useful life or the department's established maximum allowable amount, whichever amount is less.

(10) A provider of hospice care services shall be reimbursed through a prospective-cost-reimbursement system for each Medicaid hospice provider.

(11) A provider of independent laboratory services shall be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the department.

(12)(a) A physician shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the department. Effective October 1, 1991, the department shall increase fees for surgical and other procedures for which fees have not been increased since 1987 to the median level of Medicare reimbursement in 1986 for Area B in this state.

(b) Reimbursement fees to physicians for providing total obstetrical services to Medicaid recipients, which includes prenatal, delivery, and

postpartum care, shall be at least $1,500 per delivery for a pregnant woman with low medical risk and at least $2,000 per delivery for a pregnant woman with high medical risk, effective April 1, 1992. However, reimbursement to physicians working in Regional Perinatal Intensive Care Centers designated pursuant to chapter 383, for services to certain pregnant Medicaid recipients with a high medical risk, may be made according to obstetrical care and neonatal care groupings and rates established by the department. Nurse midwives licensed under chapter 464 and chapter 467 shall be reimbursed at no less than 80 percent of the low medical risk fee. The department shall by rule determine, for the purpose of this paragraph, what constitutes a high or low medical risk pregnant woman and shall not pay more based solely on the fact that a Caesarean section was performed, rather than a vaginal delivery. The department shall by rule determine a prorated payment for obstetrical services in cases where only part of the total prenatal, delivery, or postpartum care was performed.

(13) Premiums, deductibles, and coinsurance for Medicare services rendered to Medicaid eligible persons shall be reimbursed in accordance with fees established by Title XVIII of the Social Security Act.

(14) A provider of prescribed drugs shall be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the department, plus a dispensing fee.

(15) A provider of primary care case management services rendered pursuant to a federally approved waiver shall be reimbursed by payment of a fixed, prepaid monthly sum for each Medicaid recipient enrolled with the provider.

(16) A provider of rural health clinic services and federally qualified health center services shall be reimbursed a rate per visit based on total reasonable costs of the clinic, as determined by the department in accordance with federal regulations.

(17) A provider of targeted case management services shall be reimbursed pursuant to an established fee, except where the Federal Government requires a public provider be reimbursed on the basis of average actual costs.

(18) A provider of transportation services shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the department, except when the department has entered into a direct contract with the provider for the provision of an all-inclusive service, or when services are provided pursuant to an agreement negotiated between the department and the provider.

Section 38. Section 409.2665, Florida Statutes, 1990 Supplement, is transferred, renumbered as section 409.910, Florida Statutes, and amended to read:

409.910 ~~409.2665~~ Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(1) It is the intent of the Legislature that Medicaid be the payer of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. Principles of common law and equity as to assignment, lien, and subrogation are to be abrogated to the extent necessary to ensure full recovery by Medicaid from third-party resources. It is intended that if the resources of a liable third party become available at any time, the public treasury should not bear the burden of medical assistance to the extent of such resources.

(2) This section may be cited as the "Medicaid Third-Party Liability Act."

~~(3) As used in this section, the following words shall have the following meanings:~~

~~(a) "Applicant" means an individual whose written application for medical assistance provided by Medicaid under s. 409.266 has been submitted to the department, but has not received final action. This term includes an individual, who need not be alive at the time of application, whose application is submitted through a representative or a person acting for the individual.~~

~~(b) "Benefit" means any benefit, assistance, aid, obligation, promise, debt, liability, or the like, related to any covered injury, illness, or necessary medical care, good, or service.~~

~~(c) "Collateral" means:~~

~~1. Any and all causes of action, suits, claims, counterclaims, and demands which accrue to the recipient or to the recipient's legal representative, related to any covered injury, illness, or necessary medical care which necessitated that Medicaid provide medical assistance.~~

~~2. All judgments, settlements, and settlement agreements rendered or entered into and related to such causes of action, suits, claims, counterclaims, demands, or judgments.~~

~~3. Proceeds, as defined in this section.~~

~~(d) "Covered injury or illness" means any sickness, injury, disease, disability, deformity, abnormality disease, necessary medical care, pregnancy, or death for which a third party is, may be, could be, should be, or has been liable, and for which Medicaid is, or may be, obligated to provide, or has provided, medical assistance.~~

~~(e) "Department" means the Department of Health and Rehabilitative Services. The department is the Medicaid agency for the state, as provided under federal law.~~

~~(f) "Legal representative" means a guardian, conservator, survivor, or personal representative of a recipient or applicant, or of the property or estate of a recipient or applicant.~~

~~(g) "Lienholder" means the department, which has a lien under paragraph (7)(c).~~

~~(h) "Medicaid" means the medical assistance program authorized by Title XIX of the Social Security Act, 42 U.S.C. s. 1396 et seq., and regulations thereunder, as administered in Florida by the department.~~

~~(i) "Medicaid agency" means the single state agency that administers or supervises the administration of the state Medicaid plan under federal law.~~

~~(j) "Medical assistance" means any provision of, payment for, or liability for medical services by Medicaid to, or on behalf of, any recipient.~~

~~(k) "Medical services" or "medical care" means medical or medically related institutional or noninstitutional care, goods, or services covered by the Florida Medicaid program. The term includes, without limitation, physician services, inpatient hospital services, outpatient hospital services, independent laboratory services, X-ray services, and prescribed drug services, and such other services as are covered by the Florida Medicaid program.~~

~~(l) "Payment," as it relates to third-party benefits, means performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery, provision, or transfer of third-party benefits for medical services. To "pay" means to do any of the acts set forth in this paragraph.~~

~~(m) "Proceeds" means whatever is received upon the sale, exchange, collection, or other disposition of the collateral or proceeds thereon and includes insurance payable by reason of loss or damage to the collateral or proceeds. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."~~

~~(n) "Provider" means any entity, including, without limitation, any hospital, physician, or other health care practitioner, supplier, or facility, providing medical care and related goods or services to a recipient.~~

~~(o) "Recipient" means any individual who has been determined to be eligible for Medicaid or who is receiving, or has received, medical assistance, or any medical care, good, or service for which Medicaid has paid or may be obligated.~~

~~(p) "Third party" means an individual, entity, or program, excluding Medicaid, that is, may be, could be, should be, or has been liable for all or part of the cost of medical services related to any medical assistance covered by Medicaid.~~

~~(q) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the department, for any Medicaid-covered injury, illness, good, or service, including costs of medical services related thereto, for personal injury or for death of the recipient, but specifically excluding policies of life insurance on the recipient. The term includes, without limitation, collateral, as defined in this section, health insurance, any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance, or personal injury protection coverage, medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.~~

(3)~~(4)~~ Third-party benefits for medical services shall be primary to medical assistance provided by Medicaid.

(4)~~(5)~~ After the department has provided medical assistance under *the Medicaid program* ~~s. 409.266~~, it shall seek recovery of reimbursement from third-party benefits to the limit of legal liability and for the full amount of third-party benefits, but not in excess of the amount of medical assistance paid by Medicaid, as to:

(a) Claims for which the department has a waiver pursuant to federal law; or

(b) Situations in which the department learns of the existence of a liable third party or in which third-party benefits are discovered or become available after medical assistance has been provided by Medicaid.

(5)~~(6)~~ An applicant, recipient, or legal representative shall inform the department of any rights the applicant or recipient has to third-party benefits and shall inform the department of the name and address of any person that is or may be liable to provide third-party benefits. When the department provides, pays for, or becomes liable for medical services provided by a hospital, the recipient receiving such medical services or his legal representative shall also provide the information as to third-party benefits, as defined in this section, to the hospital, which shall ~~periodically~~ provide notice thereof to the department in a manner specified by the department.

(6)~~(7)~~ When the department provides, pays for, or becomes liable for medical care under *the Medicaid program* ~~s. 409.266~~, it *has* ~~shall have~~ the following rights, as to which the department may assert independent principles of law, which shall nevertheless be construed together to provide the greatest recovery from third-party benefits:

(a) The department is automatically subrogated to any rights that an applicant, recipient, or legal representative has to any third-party benefit for the full amount of medical assistance provided by Medicaid. Recovery pursuant to the subrogation rights created hereby shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, but is to provide full recovery by the department from any and all third-party benefits. Equities of a recipient, his legal representative, a recipient's creditors, or health care providers shall not defeat, reduce, or prorate recovery by the department as to its subrogation rights granted under this paragraph.

(b) By applying for or accepting medical assistance, an applicant, recipient, or legal representative automatically assigns to the department any right, title, and interest such person has to any third-party benefit, excluding any Medicare benefit to the extent required to be excluded by federal law.

1. The assignment granted under this paragraph is absolute, and vests legal and equitable title to any such right in the department, but not in excess of the amount of medical assistance provided by the department.

2. The department is a bona fide assignee for value in the assigned right, title, or interest, and takes vested legal and equitable title free and clear of latent equities in a third person. Equities of a recipient, his legal representative, his creditors, or health care providers shall not defeat or reduce recovery by the department as to the assignment granted under this paragraph.

3. By accepting medical assistance, the recipient grants to the department the limited power of attorney to act in his name, place, and stead to perform specific acts with regard to third-party benefits, his assent being deemed to have been given, including:

a. Endorsing any draft, check, money order, or other negotiable instrument representing third-party benefits that are received on behalf of the recipient as a third-party benefit.

b. Compromising claims to the extent of the rights assigned, provided the recipient is not otherwise represented by an attorney as to the claim.

(c) The department is entitled to, and has, an automatic lien for the full amount of medical assistance provided by Medicaid to or on behalf of the recipient for medical care furnished as a result of any covered injury or illness for which a third party is or may be liable, upon the collateral, as defined in *s. 409.901* ~~this section~~.

1. The lien attaches automatically when a recipient first receives treatment for which the department may be obligated to provide medical assistance under *the Medicaid program* ~~s. 409.266~~. The lien is perfected automatically at the time of attachment.

2. The department is authorized to file a verified claim of lien. The claim of lien shall be signed by an authorized employee of the *department* ~~lienholder~~, and shall be verified as to the employee's knowledge and belief. The claim of lien may be filed and recorded with the clerk of the circuit court in the recipient's last known county of residence or in any county deemed appropriate by the department. The claim of lien, to the extent known by the department, shall contain:

a. The name and last known address of the person to whom medical care was furnished.

b. The date of injury.

c. The period for which medical assistance was provided.

d. The amount of medical assistance provided or paid, or for which Medicaid is otherwise liable.

e. The names and addresses of all persons claimed by the recipient to be liable for the covered injuries or illness.

3. The filing of the claim of lien pursuant to this section shall be notice thereof to all persons.

4. If the claim of lien is filed within 1 year after the later of the date when the last item of medical care relative to a specific covered injury or illness was paid, or the date of discovery by the department of the liability of any third party, or the date of discovery of a cause of action against a third party brought by a recipient or his legal representative, record notice shall relate back to the time of attachment of the lien.

5. If the claim of lien is filed after 1 year *after* ~~of~~ the later of the events specified in subparagraph 4., notice shall be effective as of the date of filing.

6. Only one claim of lien need be filed to provide notice as set forth in this paragraph and shall provide sufficient notice as to any additional or after-paid amount of medical assistance provided by Medicaid for any specific covered injury or illness. The department may, in its discretion, file additional, amended, or substitute claims of lien at any time after the initial filing, until the department has been repaid the full amount of medical assistance provided by Medicaid or otherwise has released the liable parties and recipient.

7. No release or satisfaction of any cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement shall be valid or effectual as against a lien created under this paragraph, unless the *department* ~~lienholder~~ joins in the release or satisfaction or executes a release of the lien. An acceptance of a release or satisfaction of any cause of action, suit, claim, counterclaim, demand, or judgment and any settlement of any of the foregoing in the absence of a release or satisfaction of a lien created under this paragraph shall prima facie constitute an impairment of the lien, and the *department is* ~~lienholder shall be~~ entitled to recover damages on account of such impairment. In an action on account of impairment of a lien, the *department* ~~lienholder~~ may recover from the person accepting the release or satisfaction or making the settlement the full amount of medical assistance provided by Medicaid. Nothing in this section shall be construed as creating a lien or other obligation on the part of an insurer which in good faith has paid a claim pursuant to its contract without knowledge or actual notice that the department has provided medical assistance for the recipient related to a particular covered injury or illness. However, notice or knowledge that an insured is, or has been a Medicaid recipient within 1 year from the date of service

for which a claim is being paid creates a duty to inquire on the part of the insurer as to any injury or illness for which the insurer intends *or is otherwise required* to pay benefits.

8. The lack of a properly filed claim of lien shall not affect the department's assignment or subrogation rights provided in this subsection, nor shall it affect the existence of the lien, but only the effective date of notice as provided in subparagraph 5.

9. The lien created by this paragraph is a first lien and superior to the liens and charges of any provider, and shall exist for a period of 7 years, if recorded, *after* ~~from~~ the date of recording; and shall exist for a period of 7 years *after* ~~from~~ the date of attachment, if not recorded. If recorded, the lien may be extended for one additional period of 7 years by rerecording the claim of lien within the 90-day period preceding the expiration of the lien.

10. The clerk of the circuit court for each county in the state shall endorse on a claim of lien filed under this paragraph the date and hour of filing and shall record the claim of lien in the official records of the county as for other records received for filing. The clerk shall receive as his fee for filing and recording any claim of lien or release of lien under this paragraph the total sum of $2. Any fee required to be paid by the department shall not be required to be paid in advance of filing and recording, but may be billed to the department after filing and recording of the claim of lien or release of lien.

11. After satisfaction of any lien recorded under this paragraph, the department shall, within *60* ~~30~~ days *after* ~~of~~ satisfaction, either file with the appropriate clerk of the circuit court or mail to any appropriate party, or counsel representing such party, if represented, a satisfaction of lien in a form acceptable for filing in Florida.

(7)~~(8)~~ The department shall recover the full amount of all medical assistance provided by Medicaid on behalf of the recipient to the full extent of third-party benefits.

(a) Recovery of such benefits shall be collected directly from:

1. Any third party;

2. The recipient or legal representative, if he has received third-party benefits;

3. The provider of a recipient's medical services if third-party benefits have been recovered by the provider; notwithstanding any provision of this section, to the contrary, however, no provider shall be required to refund or pay to the department any amount in excess of the actual third-party benefits received by the provider from a third-party payor for medical services provided to the recipient; or

4. Any person who has received the third-party benefits.

(b) Upon receipt of any recovery or other collection pursuant to this section, the department shall distribute the amount collected as follows:

1. To itself, an amount equal to the state Medicaid expenditures for the recipient plus any incentive payment made in accordance with paragraph *(14)(a)*~~(15)(a)~~.

2. To the Federal Government, the federal share of the state Medicaid expenditures minus any incentive payment made in accordance with paragraph *(14)(a)*~~(15)(a)~~ and federal law, and minus any other amount permitted by federal law to be deducted.

3. To the recipient, after deducting any known amounts owed to the department for any related medical assistance or to health care providers, any remaining amount. This amount shall be treated as income or resources in determining eligibility for Medicaid.

(8)~~(9)~~ The department shall require an applicant or recipient, or the legal representative thereof, to cooperate in the recovery by the department of third-party benefits of a recipient and in establishing paternity and support of a recipient child born out of wedlock. As a minimal standard of cooperation, the recipient or person able to legally assign a recipient's rights shall:

(a) Appear at an office designated by the department to provide relevant information or evidence.

(b) Appear as a witness at a court or other proceeding.

(c) Provide information, or attest to lack of information, under penalty of perjury.

(d) Pay to the department any third-party benefit received.

(e) Take any additional steps to assist in establishing paternity or securing third-party benefits, or both.

(f) Paragraphs (a)-(e) notwithstanding, the department shall have the discretion to waive, in writing, the requirement of cooperation for good cause shown and as required by federal law.

(9)~~(10)~~ The department shall deny or terminate eligibility for any applicant or recipient who refuses to cooperate as required in subsection *(8)*~~(9)~~, unless cooperation has been waived in writing by the department as provided in paragraph *(8)(f)*. ~~(9)(f); provided,~~ However, ~~that~~ any denial or termination of eligibility shall not reduce medical assistance otherwise payable by the department to a provider for medical care provided to a recipient prior to denial or termination of eligibility.

(10)~~(11)~~ An applicant or recipient shall be deemed to have provided to the department the authority to obtain and release medical information and other records with respect to such medical care, for the sole purpose of obtaining reimbursement for medical assistance provided by Medicaid.

(11)~~(12)~~ The department may, as a matter of right, in order to enforce its rights under this section, institute, intervene in, or join any legal *or administrative* proceeding in its own name in one or more of the following capacities: individually, as subrogee of the recipient, as assignee of the recipient, or as lienholder of the collateral.

(a) If either the recipient, or his legal representative, or the department brings an action against a third party, the recipient, or his legal representative, or the department, or their attorneys, shall, within 30 days *after* ~~of~~ filing the action, provide to the other written notice, by personal delivery or registered mail, of the action, the name of the court in which the case is brought, the case number of such action, and a copy of the pleadings. If an action is brought by either the department, or the recipient or his legal representative, the other may, at any time before trial on the merits, become a party to, or shall consolidate his action with the other if brought independently. Unless waived by the other, the recipient, or his legal representative, or the department shall provide notice to the other of the intent to dismiss at least 21 days prior to voluntary dismissal of an action against a third party. Notice to the department shall be sent to an address set forth by rule. Notice to the recipient or his legal representative, if represented by an attorney, shall be sent to the attorney, and, if not represented, then to the last known address of the recipient or his legal representative.

(b) An action by the department to recover damages in tort under this subsection, which action is derivative of the rights of the recipient or his legal representative, shall not constitute a waiver of sovereign immunity pursuant to s. 768.14.

(c) In the event of judgment, award, or settlement in a claim or action against a third party, the court shall order the segregation of an amount sufficient to repay the department's expenditures for medical assistance, plus any other amounts permitted under this section, and shall order such amounts paid directly to the department.

(d) No judgment, award, or settlement in any action by a recipient or his legal representative to recover damages for injuries or other third-party benefits, when the department has an interest, shall be satisfied without first giving the department notice and a reasonable opportunity to file and satisfy its lien, and satisfy its assignment and subrogation rights or proceed with any action as permitted in this section.

(e) Except as otherwise provided in this section, notwithstanding any other provision of law, the entire amount of any settlement of the recipient's action or claim involving third-party benefits, with or without suit, is subject to the department's claims for reimbursement of the amount of medical assistance provided and any lien pursuant thereto.

(f) Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his legal representative is a party and in which the amount of any judgment, award, or settlement from third-party benefits, excluding medical coverage as defined in subparagraph 4., after reasonable costs and expenses of litigation, is an amount equal to or less than 200 percent of

the amount of medical assistance provided by Medicaid less any medical coverage paid or payable to the department, then distribution of the amount recovered shall be as follows:

1. Any fee for services of an attorney retained by the recipient or his legal representative shall not exceed an amount equal to 25 percent of the recovery, after reasonable costs and expenses of litigation, from the judgment, award, or settlement.

2. After attorney's fees, two-thirds of the remaining recovery shall be designated for past medical care and paid to the department for medical assistance provided by Medicaid.

3. The remaining amount from the recovery shall be paid to the recipient.

4. For purposes of this paragraph, "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under coverage for workers' compensation, personal injury protection, and casualty.

(g) In the event that the recipient, his legal representative, or his estate brings an action against a third party, notice of institution of legal proceedings, notice of settlement, and all other notices required by this section or by rule shall be given to the department, in Tallahassee, in a manner set forth by rule. All such notices shall be given by the attorney retained to assert the recipient's or legal representative's claim, or, if no attorney is retained, by the recipient, his legal representative, or his estate.

(h) Except as otherwise provided in this section, actions to enforce the rights of the department under this section shall be commenced within 5 years *after* ~~of~~ the date a cause of action accrues, with the period running from the later of the date of discovery by the department of a case filed by a recipient or his legal representative, or of discovery of any judgment, award, or settlement contemplated in this section, or of discovery of facts giving rise to a cause of action under this section. Nothing in this paragraph affects or prevents a proceeding to enforce a lien during the existence of the lien as set forth in subparagraph *(6)(c)9.* ~~(7)(c)9.~~

(i) Upon the death of a recipient, and within the time prescribed by ss. 733.702 and 733.710, the department, in addition to any other available remedy, may file a claim against the estate of the recipient for the total amount of medical assistance provided by Medicaid for the benefit of the recipient. Claims so filed shall take priority as class 3 claims as provided by s. 733.707(1)(c). The filing of a claim pursuant to this paragraph shall neither reduce nor diminish the general claims of the department pursuant to s. 409.345, except that the department shall not receive double recovery for the same expenditure. Claims under this paragraph shall be superior to those under s. 409.345. The death of the recipient shall neither extinguish nor diminish any right of the department to recover third-party benefits from a third party or provider. Nothing in this paragraph affects or prevents a proceeding to enforce a lien created pursuant to this section or a proceeding to set aside a fraudulent conveyance as defined in subsection *(16)*~~(17)~~.

(12)~~(13)~~ No action taken by the department shall operate to deny the recipient's recovery of that portion of benefits not assigned or subrogated to the department, or not secured by the department's lien. The department's rights of recovery created by this section, however, shall not be limited to some portion of recovery from a judgment, award, or settlement. Only the following benefits are not subject to the rights of the department: benefits not related in any way to a covered injury or illness; proceeds of life insurance coverage on the recipient; proceeds of insurance coverage, such as coverage for property damage, which by its terms and provisions cannot be construed to cover personal injury, death, or a covered injury or illness; proceeds of disability coverage for lost income; and recovery in excess of the amount of medical benefits provided by Medicaid after repayment in full to the department.

(13)~~(14)~~ No action of the recipient shall prejudice the rights of the department under this section. No settlement, agreement, consent decree, trust agreement, annuity contract, pledge, security arrangement, or any other device, hereafter collectively referred to in this subsection as a "settlement agreement," entered into or consented to by the recipient or his legal representative shall impair the department's rights. Provided, however, that in a structured settlement, no settlement agreement by the parties shall be effective or binding against the department for benefits accrued without the express written consent of the department or an appropriate order of a court having personal jurisdiction over the department.

(14)~~(15)~~ The department is authorized to enter into agreements to enforce or collect medical support and other third-party benefits.

(a) If a cooperative agreement is entered into with any agency, program, or subdivision of the state, or any agency, program, or legal entity of or operated by a subdivision of the state, or with any other state, the department is authorized to make an incentive payment of up to 15 percent of the amount actually collected and reimbursed to the department, to the extent of medical assistance paid by Medicaid. Such incentive payment is to be deducted from the federal share of that amount, to the extent authorized by federal law. The department may pay such person an additional percentage of the amount actually collected and reimbursed to the department as a result of the efforts of the person, but no more than a maximum percentage established by the department. In no case shall the percentage exceed the lesser of a percentage determined to be commercially reasonable or 15 percent, in addition to the 15-percent incentive payment, of the amount actually collected and reimbursed to the department as a result of the efforts of the person under contract.

(b) If an agreement to enforce or collect third-party benefits is entered into by the department with any person other than those described in paragraph (a), including any attorney retained by the department who is not an employee or agent of any person named in paragraph (a), then the department may pay such person a percentage of the amount actually collected and reimbursed to the department as a result of the efforts of the person, to the extent of medical assistance paid by Medicaid. In no case shall the percentage exceed a maximum established by the department, which shall not exceed the lesser of a percentage determined to be commercially reasonable or 30 percent of the amount actually collected and reimbursed to the department as a result of the efforts of the person under contract.

(c) An agreement pursuant to this subsection may permit reasonable litigation costs or expenses to be paid from the department's recovery to a person under contract with the department.

(d) Contingency fees and costs incurred in recovery pursuant to an agreement under this subsection may, for purposes of determining state and federal share, be deemed to be administrative expenses of the state. To the extent permitted by federal law, such administrative expenses shall be shared with, or fully paid by, the Federal Government.

(15)~~(16)~~ Insurance and other third-party benefits may not contain any term or provision which purports to limit or exclude payment or provisions of benefits for an individual if the individual is eligible for, or a recipient of, medical assistance from Medicaid, and any such term or provision shall be void as against public policy.

(16)~~(17)~~ Any transfer or encumbrance of any right, title, or interest to which the department has a right pursuant to this section, with the intent, likelihood, or practical effect of defeating, hindering, or reducing recovery by the department for reimbursement of medical assistance provided by Medicaid, shall be deemed to be a fraudulent conveyance, and such transfer or encumbrance shall be void and of no effect against the claim of the department, unless the transfer was for adequate consideration and the proceeds of the transfer are reimbursed in full to the department, but not in excess of the amount of medical assistance provided by Medicaid.

(17)~~(18)~~ A recipient or his legal representative or any person representing, or acting as agent for, a recipient or his legal representative, who has notice, excluding notice charged solely by reason of the recording of the lien pursuant to paragraph *(6)(c)*~~(7)(e)~~, or who has actual knowledge of the department's rights to third-party benefits under this section, who receives any third-party benefit or proceeds therefrom for a covered illness or injury, is required either to pay the department the full amount of the third-party benefits, but not in excess of the total medical assistance provided by Medicaid, or to place the full amount of the third-party benefits in a trust account for the benefit of the department pending judicial *or administrative* determination of the department's right thereto. Proof that any such person had notice or knowledge that the recipient had received medical assistance from Medicaid, and that third-party benefits or proceeds therefrom were in any way related to a covered illness or injury for which Medicaid had provided medical assistance, and that any such person knowingly obtained possession or control of, or used, third-party benefits or proceeds and failed either to pay the department the full amount required by this section or to hold the full amount of third-party benefits or proceeds in trust pending judicial *or administrative determination, unless adequately explained, gives rise to an*

inference that such person knowingly failed to credit the state or its agent for payments received from social security, insurance, or other sources, pursuant to s. 409.325(4)(b), and acted with the intent set forth in s. 812.014(1).

(a) In cases of suspected criminal violations or fraudulent activity, the department is authorized to take any civil action permitted at law or equity to recover the greatest possible amount, including, without limitation, treble damages under ss. 772.11 and 812.035(7).

(b) The department is authorized to investigate and to request appropriate officers or agencies of the state to investigate suspected criminal violations or fraudulent activity related to third-party benefits, including, without limitation, ss. 409.325 and 812.014. Such requests may be directed, without limitation, to the Medicaid Fraud Control Unit of the Office of the Auditor General, to the Attorney General, or to any state attorney. Pursuant to *s. 409.913* ~~s. 409.2664~~, the Auditor General has primary responsibility to investigate and control Medicaid fraud.

(c) In carrying out duties and responsibilities related to Medicaid fraud control, the department may subpoena witnesses or materials within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings.

(d) All information obtained and documents prepared pursuant to an investigation of a Medicaid recipient, the recipient's legal representative, or any other person relating to an allegation of recipient fraud or theft *is* ~~shall be~~ confidential and exempt from the provisions of s. 119.07(1):

1. Until such time as the department takes final agency action;

2. Until such time as the Auditor General refers the case for criminal prosecution;

3. Until such time as an indictment or criminal information is filed by a state attorney in a criminal case; or

4. At all times if otherwise protected by law.

This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

~~(19) Entities providing health insurance as defined in s. 624.603, shall, except as otherwise provided in this section, require that any check for third-party benefits be made payable to, and endorsed by, both the insured recipient, or his legal representative, and the provider, to ensure that the provider receives such third-party payment, and, if otherwise required by this section, that the department recovers from the provider. As provided in this section, the department may endorse any check on behalf of a recipient or legal representative as assignee of the recipient. Where the recovery from the insurer has been the subject of a judgment, award, or settlement, or when otherwise necessary to protect the department's rights under this section, the department shall recover directly from a health insurer, which shall require that any check for medical assistance be made payable to the department.~~

(18)~~(20)~~ In recovering any payments in accordance with this section, the department is authorized to make appropriate settlements.

(19)~~(21)~~ Notwithstanding any provision in this section to the contrary, the department shall not be required to seek reimbursement from a liable third party on claims for which the department determines that the amount it reasonably expects to recover will be less than the cost of recovery, or that recovery efforts will otherwise not be cost-effective.

(20)~~(22)~~ Entities providing health insurance as defined in s. 624.603, and health maintenance organizations and prepaid health clinics as defined in chapter 641, shall provide such records and information as are necessary to accomplish the purpose of this section, unless such requirement results in an unreasonable burden.

(a) The secretary of the department and the Insurance Commissioner shall enter into a cooperative agreement for requesting and obtaining information necessary to effect the purpose and objective of this section.

1. The department shall request only that information necessary to determine whether health insurance as defined pursuant to s. 624.603, or those health services provided pursuant to chapter 641, could be, should be, or have been claimed and paid with respect to items of medical care and services furnished to any person eligible for services under this section.

2. All information obtained pursuant to subparagraph 1. *is* ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1). This exemption *is* ~~shall be~~ subject to the Open Government Sunset Review Act in accordance with s. 119.14.

3. The cooperative agreement or rules *adopted* ~~promulgated~~ under this subsection may include financial arrangements to reimburse the reporting entities for reasonable costs or a portion thereof incurred in furnishing the requested information. Neither the cooperative agreement nor the rules shall require the automation of manual processes to provide the requested information.

(b) The department and the Department of Insurance jointly shall *adopt* ~~promulgate~~ rules for the development and administration of the cooperative agreement. The rules shall include the following:

1. A method for identifying those entities subject to furnishing information under the cooperative agreement.

2. A method for furnishing requested information.

3. Procedures for requesting exemption from the cooperative agreement based on an unreasonable burden to the reporting entity.

(21)~~(23)~~ The department is authorized to adopt rules to implement the provisions of this section and federal requirements.

Section 39. Effective July 1, 1991, section 409.911, Florida Statutes, is created to read:

409.911 Disproportionate share program.—Subject to specific allocations established within the general appropriations act and any limitations established pursuant to chapter 216, the department shall distribute, pursuant to this section, moneys appropriated from the Public Medical Assistance Trust Fund to hospitals providing a disproportionate share of Medicaid or charity care services by making quarterly Medicaid payments as required. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) Definitions.—As used in this section and s. 409.9112:

(a) "Adjusted patient days" means the sum of acute care patient days and intensive care patient days as reported to the Department of Health and Rehabilitative Services, divided by the ratio of inpatient revenues generated from acute, intensive, ambulatory, and ancillary patient services to gross revenues.

(b) "Actual audited data" or "actual audited experience" means data reported to the Department of Health and Rehabilitative Services which has been audited in accordance with generally accepted auditing standards by the department or representatives under contract with the department.

(c) "Base Medicaid per diem" means the hospital's Medicaid per diem rate initially established by the Department of Health and Rehabilitative Services on July 1 of each state fiscal year. The base Medicaid per diem rate shall not include any additional per diem increases received as a result of the disproportionate share distribution.

(d) "Charity care" or "uncompensated charity care" means that portion of hospital charges reported to the Department of Health and Rehabilitative Services for which there is no compensation for care provided to a patient whose family income for the 12 months preceding the determination is less than or equal to 150 percent of the federal poverty level, unless the amount of hospital charges due from the patient exceeds 25 percent of the annual family income. However, in no case shall the hospital charges for a patient whose family income exceeds four times the federal poverty level for a family of four be considered charity.

(e) "Charity care days" means the sum of the deductions from revenues for charity care minus 50 percent of restricted and unrestricted revenues provided to a hospital by local governments or tax districts, divided by gross revenues per adjusted patient day.

(f) "Disproportionate share percentage" means a rate of increase in the Medicaid per diem rate as calculated under this section.

(g) "Hospital" means a health care institution licensed as a hospital pursuant to chapter 395, but does not include ambulatory surgical centers.

(h) "Medicaid days" means the number of actual days attributable to Medicaid patients as determined by the Department of Health and Rehabilitative Services.

(2) The Department of Health and Rehabilitative Services shall utilize the following criteria to determine if a hospital qualifies for a disproportionate share payment:

(a) A hospital's total Medicaid days when combined with its total charity care days must equal or exceed 7 percent of its total adjusted patient days.

(b) A hospital's total charity care days weighted by a factor of 4.5, plus its total Medicaid days weighted by a factor of 1, shall be equal to or greater than 10 percent of its total adjusted patient days.

(c) Additionally, in accordance with the Seventh Federal Omnibus Budget Reconciliation Act, a hospital with a Medicaid inpatient utilization rate greater than one standard deviation above the statewide mean or a hospital with a low-income utilization rate of 25 percent or greater shall qualify for reimbursement.

(3) In computing the disproportionate share rate:

(a) Per diem increases earned from disproportionate share shall be applied to each hospital's base Medicaid per diem rate and shall be capped at 100 percent.

(b) The department shall use the most recent calendar year audited data for the calculation of disproportionate share payments under this section.

(c) If the total amount earned by all hospitals under this section exceeds the amount appropriated, each hospital's share shall be reduced on a pro rata basis so that the total dollars distributed from the trust fund do not exceed the total amount appropriated.

(d) The total amount calculated to be distributed under this section shall be made in quarterly payments subsequent to each quarter during the fiscal year.

(4) Hospitals that qualify for a disproportionate share payment solely under paragraph (2)(c) shall have their payment calculated in accordance with the following formulas:

$$TAA = TA \times (1/5.5)$$
$$DSHP = (HMD/TSMD) \times TAA$$

Where:

TAA = total amount available.

TA = total appropriation.

DSHP = disproportionate share hospital payment.

HMD = hospital Medicaid days.

TSMD = total state Medicaid days.

(5) The following formula shall be utilized by the department to determine the maximum disproportionate share rate to be used to increase the Medicaid per diem rate for hospitals that qualify pursuant to paragraphs (2)(a) and (b):

$$DSR = \left(\left(\frac{CCD}{APD}\right) \times 4.5\right) + \left(\frac{MD}{APD}\right)$$

Where:

APD = adjusted patient days.

CCD = charity care days.

DSR = disproportionate share rate.

MD = Medicaid days.

(6) The following criteria shall be used in determining the disproportionate share percentage:

(a) If the disproportionate share rate is less than 10 percent, the disproportionate share percentage is zero and there is no additional payment.

(b) If the disproportionate share rate is greater than or equal to 10 percent, but less than 20 percent, then the disproportionate share percentage is 2.1544347.

(c) If the disproportionate share rate is greater than or equal to 20 percent, but less than 30 percent, then the disproportionate share percentage is 4.6415888766.

(d) If the disproportionate share rate is greater than or equal to 30 percent, but less than 40 percent, then the disproportionate share percentage is 10.0000001388.

(e) If the disproportionate share rate is greater than or equal to 40 percent, but less than 50 percent, then the disproportionate share percentage is 21.544347299.

(f) If the disproportionate share rate is greater than or equal to 50 percent, but less than 60 percent, then the disproportionate share percentage is 46.41588941.

(g) If the disproportionate share rate is greater than or equal to 60 percent, then the disproportionate share percentage is 100.

(7) The following formula shall be used by the department to calculate the total amount earned by all hospitals under this section:

$$TAE = BMPD \times MD \times DSP$$

Where:

TAE = total amount earned.

BMPD = base Medicaid per diem.

MD = Medicaid days.

DSP = disproportionate share percentage.

(8) The department is authorized to receive funds from local governments and other local political subdivisions for the purpose of making payments, including federal matching funds, through the Medicaid disproportionate share program. Funds received from local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner.

(9) Payments made by the department to hospitals eligible to participate in this program shall be made in accordance with federal rules and regulations.

(a) If the Federal Government prohibits, restricts, or changes in any manner the methods by which funds are distributed for this program, the department shall not distribute any additional funds and shall return all funds to the local government from which the funds were received, except as provided in paragraph (b).

(b) If the Federal Government imposes a restriction that still permits a partial or different distribution, the department may continue to disburse funds to hospitals participating in the disproportionate share program in a federally approved manner, provided:

1. Each local government which contributes to the disproportionate share program agrees to the new manner of distribution as shown by a written document signed by the governing authority of each local government; and

2. The Executive Office of the Governor, the Office of Planning and Budgeting, the House of Representatives, and the Senate are provided at least 7 days' prior notice of the proposed change in the distribution, and do not disapprove such change.

(c) No distribution shall be made under the alternative method specified in paragraph (b) unless all parties agree or unless all funds of those parties that disagree which are not yet disbursed have been returned to those parties.

(10) Notwithstanding the provisions of chapter 216, the Executive Office of the Governor is hereby authorized to establish sufficient trust fund authority to implement the disproportionate share program.

Section 40. Effective July 1, 1991, section 409.9112, Florida Statutes, is created to read:

409.9112 Disproportionate share program for regional perinatal intensive care centers.—In addition to the payments made under s. 409.911, the Department of Health and Rehabilitative Services shall design and implement a system of making disproportionate share payments to those hospitals that participate in the Regional Perinatal Intensive Care Center program established pursuant to chapter 383. This system of payments shall conform with federal requirements and shall distribute funds in each fiscal year for which an appropriation is made by making quarterly Medicaid payments. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) The following formula shall be used by the department to calculate the total amount earned for hospitals that participate in the Regional Perinatal Intensive Care Center program:

$$TAE = DSR \times BMPD \times MD$$

Where:

TAE = total amount earned by a Regional Perinatal Intensive Care Center.

DSR = disproportionate share rate.

BMPD = base Medicaid per diem.

MD = Medicaid days.

(2) The total additional payment for hospitals that participate in the Regional Perinatal Intensive Care Center program shall be calculated by the department as follows:

$$TAP = \left(\frac{TAE \times TA}{STAE}\right)$$

Where:

TAP = total additional payment for a Regional Perinatal Intensive Care Center.

TAE = total amount earned by a Regional Perinatal Intensive Care Center.

STAE = sum of total amount earned by each hospital that participates in the Regional Perinatal Intensive Care Center program.

TA = total appropriation for the Regional Perinatal Intensive Care disproportionate share program.

(3) In order to receive payments under this section, a hospital must be participating in the Regional Perinatal Intensive Care Center program, pursuant to chapter 383, and must meet the following additional requirements:

(a) Agree to conform to all departmental requirements to ensure high quality in the provision of services, including criteria adopted by departmental rule concerning staffing ratios, medical records, standards of care, equipment, space, and such other standards and criteria as the department deems appropriate as specified by rule.

(b) Agree to provide information to the department, in a form and manner to be prescribed by rule of the department, concerning the care provided to all patients in neonatal intensive care centers and high-risk maternity care.

(c) Agree to accept all patients for neonatal intensive care and high-risk maternity care, regardless of ability to pay, on a functional space-available basis.

(d) Agree to develop arrangements with other maternity and neonatal care providers in the hospital's region for the appropriate receipt and transfer of patients in need of specialized maternity and neonatal intensive care services.

(e) Agree to establish and provide a developmental evaluation and services program for certain high-risk neonates, as prescribed and defined by rule of the department.

(f) Agree to sponsor a program of continuing education in perinatal care for health care professionals within the region of the hospital, as specified by rule.

(g) Agree to provide backup and referral services to the department's county public health units and other low-income perinatal providers within the hospital's region, including the development of written agreements between these organizations and the hospital.

(h) Agree to arrange for transportation for high-risk obstetrical patients and neonates in need of transfer from the community to the hospital or from the hospital to another more appropriate facility.

(4) Hospitals which fail to comply with any of the conditions in subsection (3) or the applicable rules of the department shall not receive any payments under this section until full compliance is achieved. A hospital which is not in compliance in two or more consecutive quarters shall not receive its share of the funds. Any forfeited funds shall be distributed by the remaining participating Regional Perinatal Intensive Care Center program hospitals.

Section 41. Effective July 1, 1991, section 409.9113, Florida Statutes, is created to read:

409.9113 Disproportionate share program for teaching hospitals.—In addition to the payments made under ss. 409.911 and 409.9112, the Department of Health and Rehabilitative Services shall make disproportionate share payments to statutorily defined teaching hospitals for their increased costs associated with medical education programs and for tertiary health care services provided to the indigent. This system of payments shall conform with federal requirements and shall distribute funds in each fiscal year for which an appropriation is made by making quarterly Medicaid payments. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) On or before September 15 of each year, the Health Care Cost Containment Board shall calculate an allocation fraction to be used for distributing funds to state statutory teaching hospitals. Subsequent to the end of each quarter of the state fiscal year, the department shall distribute to each statutory teaching hospital, as defined in s. 407.002(27), an amount determined by multiplying one-fourth of the funds appropriated for this purpose by the Legislature times such hospital's allocation fraction. The allocation fraction for each such hospital shall be determined by the sum of three primary factors, divided by three. The primary factors are:

(a) The number of nationally accredited graduate medical education programs offered by the hospital, including programs accredited by the Accreditation Council for Graduate Medical Education and the combined Internal Medicine and Pediatrics programs acceptable to both the American Board of Internal Medicine and the American Board of Pediatrics at the beginning of the state fiscal year preceding the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the hospital represents of the total number of programs, where the total is computed for all state statutory teaching hospitals.

(b) The number of full-time equivalent trainees in the hospital, which comprises two components:

1. The number of trainees enrolled in nationally accredited graduate medical education programs, as defined in paragraph (a). Full-time equivalents are computed using the fraction of the year during which each trainee is primarily assigned to the given institution, over the state fiscal year preceding the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the hospital represents of the total number of full-time equivalent trainees enrolled in accredited graduate programs, where the total is computed for all state statutory teaching hospitals.

2. The number of medical students enrolled in accredited colleges of medicine and engaged in clinical activities, including required clinical clerkships and clinical electives. Full-time equivalents are computed using the fraction of the year during which each trainee is primarily assigned to the given institution, over the course of the state fiscal year preceding the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the given hospital represents of the total number of full-time equivalent students enrolled in accredited colleges of medicine, where the total is computed for all state statutory teaching hospitals.

The primary factor for full-time equivalent trainees is computed as the sum of these two components, divided by two.

(c) A service index which comprises three components:

1. The Health Care Cost Containment Board Service Index, computed by applying the standard Service Inventory Scores established by the Health Care Cost Containment Board to services offered by the given hospital, as reported on the Health Care Cost Containment Board Worksheet A-2 for the last fiscal year reported to the board before the date on which the allocation fraction is calculated. The numerical value of this factor is the fraction that the given hospital represents of the total Health Care Cost Containment Board Service Index values, where the total is computed for all state statutory teaching hospitals.

2. A volume-weighted service index, computed by applying the standard Service Inventory Scores established by the Health Care Cost Containment Board to the volume of each service, expressed in terms of the standard units of measure reported on the Health Care Cost Containment Board Worksheet A-2 for the last fiscal year reported to the board before the date on which the allocation factor is calculated. The numerical value of this factor is the fraction that the given hospital represents of the total volume-weighted service index values, where the total is computed for all state statutory teaching hospitals.

3. Total Medicaid payments to each hospital for direct inpatient and outpatient services during the fiscal year preceding the date on which the allocation factor is calculated. This includes payments made to each hospital for such services by Medicaid prepaid health plans, whether the plan was administered by the hospital or not. The numerical value of this factor is the fraction that each hospital represents of the total of such Medicaid payments, where the total is computed for all state statutory teaching hospitals.

The primary factor for the service index is computed as the sum of these three components, divided by three.

(2) The following formula shall be utilized by the department to calculate the maximum additional disproportionate share payment for statutorily defined teaching hospitals:

$$TAP = THAF \times A$$

Where:

TAP = total additional payment.

THAF = teaching hospital allocation factor.

A = amount appropriated for a teaching hospital disproportionate share program.

(3) The Health Care Cost Containment Board shall report to the department the statutory teaching hospital allocation fraction prior to October 1 of each year.

Section 42. Effective upon this act becoming a law, section 409.9114, Florida Statutes, is created to read:

409.9114 Extraordinary disproportionate share program.—

(1) Subject to any limitations established within the general appropriations act or established pursuant to chapter 216, the department is authorized to make a special extraordinary contribution to the care of indigent persons in this state. In order to be eligible to receive these funds, a hospital must:

(a) Be qualified to participate in the disproportionate share program specified in s. 409.911, the "regular" disproportionate share program; and

(b) Be classified as a teaching hospital as defined in s. 407.002(27); or

(c) Be owned by a hospital district authority and have a ratio of net charity care expenditures to net operating revenues that exceeds 9 percent.

(2) The following formula shall be used by the department to calculate the total amount earned for hospitals that participate in the extraordinary disproportionate share program.

$$TAE = DSR \times BMPD \times MD$$

Where:

TAE = total amount earned by a hospital participating in the extraordinary disproportionate share program.

DSR = disproportionate share rate.

BMPD = base Medicaid per diem.

MD = Medicaid days.

(3) The total additional payment for hospitals that participate in the extraordinary disproportionate share program shall be calculated by the department as follows:

$$TAP = \left(\frac{TAE}{STAE}\right) \times TA$$

Where:

TAP = total additional payment for a hospital participating in the extraordinary disproportionate share program.

TAE = total amount earned by a hospital participating in the extraordinary disproportionate share program.

STAE = sum of total amount earned by each hospital that participates in the extraordinary disproportionate share program.

TA = total appropriation for the extraordinary disproportionate share program.

(4) The department is authorized to receive funds from hospitals participating in the extraordinary disproportionate share program, and from local governments in whose jurisdiction a participating hospital resides, for the purpose of making payments, including federal matching funds, through the Medicaid extraordinary disproportionate share program. Funds received from hospitals or local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner.

(5) Payments made by the department to hospitals eligible to participate in this program shall be made in accordance with federal rules and regulations.

(a) Should the Federal Government prohibit, restrict, or change in any manner the methods by which funds are distributed for this program, the department shall not distribute any additional funds, and shall return all funds to the entity from which the funds were received, except as provided in paragraph (b).

(b) Should the Federal Government impose a restriction which still permits a partial or different distribution, the department may continue to disburse funds to hospitals participating in the extraordinary disproportionate share program in a federally approved manner, provided:

1. Each entity which contributes to the extraordinary disproportionate share program agrees to the new manner of distribution as shown by a written document signed by the governing authority of each entity; and

2. The Executive Office of the Governor, Office of Planning and Budgeting, the House of Representatives and the Senate are provided at least 7 days' prior notice of the proposed change in the distribution and do not disapprove such change.

(c) No distribution shall be made under the alternative method specified in paragraph (b) unless all parties agree, or unless those parties who disagree have returned to them all funds not yet disbursed.

(6) Each hospital eligible to participate in the extraordinary disproportionate share program shall notify the department of its intention to participate, within a time period specified by the department, and according to such additional terms and conditions as may be specified by the department. Any hospital which does not notify the department within the specified time period, or according to the terms and conditions set forth by the department, shall not be eligible to participate in the extraordinary disproportionate share program. A notice of intention to withdraw from the program is revocable, once issued, only after the quarter in which funds have been distributed under this program.

Section 43. Effective October 1, 1991, section 409.912, Florida Statutes, is created to read:

409.912 Cost-effective purchasing of health care.—The department shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The department shall maximize the use of prepaid per capita and

prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies designed to facilitate the cost-effective purchase of a case-managed continuum of care. The department shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(1) The department may enter into agreements with appropriate agents of other state agencies or of any agency of the Federal Government and accept such duties in respect to social welfare or public aid as may be necessary to implement the provisions of Title XIX of the Social Security Act and ss. 409.901-409.920.

(2) The department may contract with health maintenance organizations certified pursuant to part II of chapter 641 for the provision of services to recipients.

(3) The department may contract with county public health units and other entities authorized by chapter 154 to provide health care services on a prepaid or fixed-sum basis to recipients, which entities may provide such prepaid services either directly or through arrangements with other providers. Such prepaid health care services are exempt from the provisions of part II of chapter 641.

(4) The department may contract with any public or private entity on a prepaid or fixed-sum basis for the provision of health care services to recipients.

(a) An entity may provide prepaid services to recipients, either directly or through arrangements with other entities, if each entity involved in providing services:

1. Is organized primarily for the purpose of providing health care or other services of the type regularly offered to Medicaid recipients;

2. Ensures that services meet the standards set by the department for quality, appropriateness, and timeliness;

3. Makes provisions satisfactory to the department for insolvency protection and ensures that neither enrolled Medicaid recipients nor the department will be liable for the debts of the entity;

4. Submits to the department, if a private entity, a financial plan that the department finds to be fiscally sound and that provides for working capital in the form of cash or equivalent liquid assets excluding revenues from Medicaid premium payments equal to at least the first 3 months of operating expenses or $200,000, whichever is greater;

5. Furnishes evidence satisfactory to the department of adequate liability insurance coverage or an adequate plan of self-insurance to respond to claims for injuries arising out of the furnishing of health care;

6. Provides, through contract or otherwise, for periodic review of its medical facilities and services, as required by the department; and

7. Provides organizational, operational, financial, and other information required by the department.

(b) Entities that provide no prepaid health care services other than Medicaid services under contract with the department are exempt from the provisions of part II of chapter 641.

(5) The department may contract on a prepaid or fixed-sum basis with any health insurer that:

(a) Pays for health care services provided to enrolled Medicaid recipients in exchange for a premium payment paid by the department;

(b) Assumes the underwriting risk; and

(c) Is organized and licensed under applicable provisions of the Florida Insurance Code and is currently in good standing with the Department of Insurance.

(6) The department shall not contract on a prepaid or fixed-sum basis for Medicaid services with an entity which knows or reasonably should know that any officer, director, agent, managing employee, or owner of stock or beneficial interest in excess of 5 percent common or preferred stock, or the entity itself, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere, or guilty, to:

(a) Fraud;

(b) Violation of federal or state antitrust statutes, including those prescribing price fixing between competitors and the allocation of customers among competitors;

(c) Commission of a felony involving embezzlement, theft, forgery, income tax evasion, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(d) Any crime in any jurisdiction which directly relates to the provision of health services on a prepaid or fixed-sum basis.

(7) The department may apply for waivers of applicable federal laws and regulations as necessary to implement more appropriate systems of health care for Medicaid recipients and reduce the cost of the Medicaid program to the state and federal governments and shall implement such programs, after legislative approval, within a reasonable period of time after federal approval. These programs must be designed primarily to reduce the need for inpatient care, custodial care and other long-term or institutional care, and other high-cost services.

(8) The department shall establish a postpayment utilization control program designed to identify recipients who may inappropriately overuse or underuse Medicaid services and shall provide methods to correct such misuse.

(9) The department shall develop and provide coordinated systems of care for Medicaid recipients and may contract with public or private entities to develop and administer such systems of care among public and private health care providers in a given geographic area.

(10) The department shall operate or contract for the operation of utilization management and incentive systems designed to encourage cost-effective use services.

(11) The department shall identify health care utilization and price patterns within the Medicaid program that are not cost-effective or medically appropriate and assess the effectiveness of new or alternate methods of providing and monitoring service, and may implement such methods as it considers appropriate.

(12) An entity contracting on a prepaid or fixed-sum basis shall, in addition to meeting any applicable statutory surplus requirements, also maintain at all times in the form of cash, short-term investments allowable as admitted assets by the Department of Insurance, and restricted funds or deposits controlled by the department or the Department of Insurance, by January 1, 1992, an amount equal to its monthly prepaid Medicaid revenues; and by and after January 1, 1993, an amount equal to one-and-one-half times its monthly prepaid Medicaid revenues. In the event an entity's surplus falls below any applicable statutory requirements, or an entity's total of cash, short-term investments allowable as admitted assets by the Department of Insurance, and restricted funds or deposits controlled by the department or the Department of Insurance falls below one-and-one-half times its monthly prepaid Medicaid revenues, the department shall prohibit the entity from engaging in enrollment activities, shall cease to process new enrollments for the entity, and shall not renew the entity's contract until the required balance is achieved. The requirements of this subsection shall not apply:

(a) Where a public entity agrees to fund any deficit incurred by the contracting entity; or

(b) Where the entity's performance and obligations are guaranteed in writing by a nonprofit guaranteeing organization which:

1. Has been in operation for at least 5 years and has assets in excess of $50 million; or

2. Submits a written guarantee acceptable to the department which is irrevocable during the term of the contracting entity's contract with the department and, upon termination of the contract, until the department receives proof of satisfaction of all outstanding obligations incurred under the contract.

Section 44. Effective October 1, 1991, section 409.913, Florida Statutes, is created to read:

409.913 Oversight of the integrity of the Medicaid program.—The department shall operate a program to oversee the activities of Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible.

(1) The department shall conduct, or cause to be conducted by contract or otherwise, investigations, analyses, and audits of possible fraud, abuse, and neglect in the Medicaid program and shall report the findings therefrom in departmental audit reports as appropriate.

(2) The department may conduct, or may contract for, prepayment review of provider claims to ensure cost-effective purchasing, billing, and provision of care to Medicaid recipients. Such prepayment reviews may be conducted as determined appropriate by the department, without any suspicion or allegation of fraud, abuse, or neglect.

(3) Any suspected criminal violation or fraudulent activity by a provider, or by the representative or agent of a provider, identified by the department shall be referred to the Medicaid fraud control unit of the Office of the Auditor General for investigation.

(4) A Medicaid provider is subject to having goods and services that are paid for by the Medicaid program reviewed by an appropriate peer review organization designated by the department.

(5) When presenting a claim for payment under the Medicaid program, a provider has an affirmative duty to supervise the provision of, and be responsible for, goods and services claimed to have been provided, to supervise and be responsible for preparation and submission of the claim, and to present a claim that is true and accurate and that is for goods and services which:

(a) Have actually been furnished to the recipient by the provider prior to submitting the claim.

(b) Are necessary.

(c) Are of a quality comparable to those furnished to the general public by the provider's peers.

(d) Have not been billed in whole or in part to a recipient or a recipient's responsible party, except for such copayments, coinsurance, or deductibles as may be authorized by the department.

(e) Are provided in accord with applicable provisions of all Medicaid rules, regulations, handbooks, and policies and in accordance with federal, state, and local law.

(6) A Medicaid provider shall retain professional and financial records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for a period of 5 years after the date of furnishing such services or goods.

(7) The complaint and all information obtained pursuant to an investigation of a Medicaid provider, or the authorized representative or agent of a provider, relating to an allegation of fraud, abuse, or neglect are confidential and exempt from the provisions of s. 119.07(1):

(a) Until the department takes final agency action respecting the provider and requires repayment of any overpayment, or imposes an administrative sanction;

(b) Until the Auditor General refers the case for criminal prosecution;

(c) Until 10 days after the complaint is determined without merit; or

(d) At all times if the complaint or information is otherwise protected by law.

This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(8) The department may impose administrative sanctions against a Medicaid provider if:

(a) The provider has entered into a pretrial intervention or other first-offender agreement respecting a charge of, has pled nolo contendere or guilty to a charge of, has been found guilty regardless of adjudication of, or has been convicted of Medicaid fraud or any other Medicaid-related crime, such as theft, bribery, giving or receiving a kickback, or neglecting or physically abusing a recipient;

(b) The provider has pled guilty to, has been found guilty regardless of adjudication of, or has been convicted of a criminal offense under federal law or the law of any state relating to the practice of the provider's profession;

(c) The provider is excluded from the Medicare program for cause;

(d) The provider's license has not been renewed, or has been revoked, suspended, or terminated, by the licensing agency of any state;

(e) The provider is excluded from participation in the Medicaid or Medicare program by the Federal Government or any state;

(f) The provider has refused access to Medicaid-related records to an authorized auditor or investigator acting as an employee or agent of the department, the Auditor General, a state attorney, or the Federal Government;

(g) The provider has not furnished, upon reasonable notice, such Medicaid-related records as the department found necessary to determine whether Medicaid payments are or were due and the amounts thereof;

(h) The provider is not in compliance with provisions of departmental policy manuals or handbooks which have been adopted by reference as rules in the Florida Administrative Code, state laws, federal rules and regulations, a provider agreement between the department and the provider, or certifications found on claim forms submitted by the provider or authorized representative as such provisions apply to the Medicaid program;

(i) The provider has furnished or ordered the furnishing to a recipient of goods or services that are inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality. Such determinations must be based on competent peer judgments and evaluations;

(j) The provider or an authorized representative of the provider has submitted or caused to be submitted false or erroneous Medicaid claims that have resulted in payments to the provider in excess of those to which the provider was entitled under the Medicaid program;

(k) The provider or an authorized representative of the provider has submitted or caused to be submitted a Medicaid provider enrollment application, request for prior authorization for Medicaid services, or Medicaid cost report that contains materially false or incorrect information;

(l) The provider or an authorized representative of the provider has collected from or billed a recipient or a recipient's responsible party improperly for amounts that should not have been so collected or billed by reason of the provider's billing the Medicaid program for the same service;

(m) The provider or an authorized representative of the provider has included in a cost report costs that are not allowable under a Florida Title XIX reimbursement plan, after the provider or authorized representative had been advised in an audit exit conference or audit report that the costs were not allowable;

(n) The provider is indicted for fraudulent billing practices. The sanction applied for this reason is limited to suspension of the provider from the Medicaid program for the duration of the indictment;

(o) The provider is found liable for negligent practice resulting in death or injury to the provider's patient; or

(p) The provider fails to demonstrate that it had available during a specific audit or review period sufficient quantities of goods, or sufficient time in the case of services, to support the provider's billings to the Medicaid program.

(9) The department may impose any of the following sanctions on a provider for any of the acts described in subsection (8):

(a) Suspension for a specific period of time of not more than 1 year.

(b) Termination for a specific period of time of from more than 1 year to 20 years.

(c) Imposition of a fine of up to $1,000 for each violation not exceeding a total fine of $25,000 in connection with any one audit or investigation. Each day that an ongoing violation continues, such as refusing to furnish Medicaid-related records or refusing access to records, is considered, for the purposes of this section, to be a separate violation. Each instance of improper billing of a Medicaid recipient; each instance of including an unallowable cost on a hospital or nursing home Medicaid cost report after the provider or authorized representative has been advised in an audit exit conference or audit report of the cost unallowability; each instance of furnishing a Medicaid recipient goods or profes-

sional services that are inappropriate or of inferior quality as determined by competent peer judgment; each instance of knowingly submitting a materially false or erroneous Medicaid provider enrollment application, request for prior authorization for Medicaid services, or cost report; each instance of inappropriate prescribing of drugs for a Medicaid recipient as determined by competent peer judgment; and each false or erroneous Medicaid claim leading to an overpayment to a provider is considered, for the purposes of this section, to be a separate violation.

(10) In determining the appropriate administrative sanction to be applied, the department shall consider:

(a) The seriousness and extent of the violation or violations.

(b) Any prior history of violations by the provider.

(c) Evidence of continued violation within the provider's management control of Medicaid statutes, rules, regulations, or policies after written notification to the provider of improper practice or instance of violation.

(d) Any pain and suffering inflicted by the provider on a recipient.

(e) Any action by a licensing agency respecting the provider in any state in which the provider operates.

(f) The extent to which a lesser sanction is sufficient to remedy the violation by the provider, in the best judgment of the department.

(g) The apparent impact on access by recipients to Medicaid services if the provider is suspended or terminated, in the best judgment of the department.

(11) The department may take action to sanction, suspend, or terminate a particular provider working for a group provider, and may suspend or terminate Medicaid participation at a specific location, rather than or in addition to taking action against an entire group, if it determines such action is in the best interest of Medicaid recipients.

(12) In making a determination of overpayment to a provider, the department shall use appropriate and valid auditing, accounting, analytical, statistical, or peer review methods, or combinations thereof. Appropriate statistical methods may include, but are not limited to, sampling and extension to the population, nonparametric statistics, tests of hypotheses, and other generally accepted statistical methods. Appropriate analytical methods may include, but are not limited to, reviews to determine variances between the quantities of products that a provider had on hand and available to be purveyed to Medicaid recipients during the review period and the quantities of the same products paid for by the Medicaid program for the same period, taking into appropriate consideration sales of the same products to non-Medicaid customers during the same period.

(13) When making a determination that an overpayment has occurred, the department shall prepare and issue a departmental audit report to the provider showing the calculation of overpayments.

(14) The departmental audit report, supported by department work papers, showing an overpayment to a provider constitutes evidence of the overpayment. A provider may not present or elicit testimony, either on direct or cross examination in any court or administrative proceeding, regarding the purchase or acquisition by any means of drugs, goods, or supplies; sales or divestment by any means of drugs, goods or supplies; or inventory of drugs, goods or supplies, unless such acquisition, sales, divestment or inventory is documented by written invoices, written inventory records, or other competent written documentary evidence maintained in the normal course of the provider's business.

(15)(a) In an investigation of a violation by a provider pursuant to this section, the department is entitled to recover investigative and expert costs not exceeding $15,000 if a material violation is found and the department's findings were not contested by the provider or, if contested, the department ultimately prevailed.

(b) The department has the burden of documenting the investigative costs, which include salaries and employee benefits and out-of-pocket expenses. The amount of investigative costs that may be recovered must be reasonable in relation to the seriousness of the violation and must be set taking into consideration the financial resources, earning ability, and needs of the provider, who has the burden of demonstrating such factors.

(c) The provider may pay the investigative costs over a period to be determined by the department if the department determines that an extreme hardship would result to the provider from immediate full payment. Any default in payment of investigative costs may be collected by any means authorized by law for enforcement of a judgment.

(d) Investigative costs that are recovered must be returned to the department.

(16) If the department imposes an administrative sanction under this section for any of the acts described in subsection (8) upon any provider who is regulated by a state agency other than the department, the department shall notify that agency of the imposition of the sanction. Such notification must include the provider's name and license number and the specific reasons for sanction.

(17) The department may withhold Medicaid payments to a provider, up to the amount of the alleged overpayment, pending completion of an investigation under this section if it has reasonable cause to believe that the provider has committed one or more violations in relation to such payments. With the exception of providers terminated under the provisions of s. 120.59(3), in which case all payments shall be immediately terminated, the department may withhold payments under this provision, the monthly Medicaid payment may not be reduced by more than 10 percent, and the payments withheld must be paid to the provider within 60 days with interest at the rate of 10 percent a year upon determining that no such violation has occurred. If the amount of the alleged overpayment is in excess of $75,000, the department may reduce the Medicaid payments up to $25,000 per month.

Section 45. Effective October 1, 1991, section 409.914, Florida Statutes, is created to read:

409.914 Assistance for the uninsured.—The department shall use the claims payment systems, utilization control systems, cost control systems, case management systems, and other systems and controls that it has developed for the management and control of the Medicaid program to assist other agencies and entities, if appropriate, in paying claims and performing other activities necessary for the conduct of programs of state government, or for working with other public and private agencies to solve problems of lack of insurance, underinsurance, or uninsurability. When conducting these services, the department shall ensure:

(1) That full payment is received for services provided.

(2) That costs of providing these services are clearly segregated from costs necessary for the conduct of the Medicaid program.

(3) That the program conducted serves the interests of the state in ensuring that effective and quality health care at a reasonable cost is provided to the citizens of the state.

Section 46. Effective October 1, 1991, section 409.915, Florida Statutes, is created to read:

409.915 County contributions to Medicaid.—Although the state is responsible for the full portion of the state share of the matching funds required for the Medicaid program, in order to acquire a certain portion of these funds, the state shall charge the counties for certain items of care and service as provided in this section.

(1) Each county shall participate in the following items of care and service:

(a) Payments for inpatient hospitalization in excess of 12 days, but not in excess of 45 days, with the exception of pregnant women and children whose income is in excess of the federal poverty level and who do not participate in the Medicaid medically needy program.

(b) Payments for nursing home or intermediate facilities care in excess of $170 per month, with the exception of skilled nursing care for children under age 21.

(2) A county's participation must be 35 percent of the total cost of providing the items listed in subsection (1), except that the payments for items listed in paragraph (1)(b) may not exceed $55 per month per person.

(3) Each county shall set aside sufficient funds to pay for items of care and service provided to the county's eligible recipients for which county contributions are required, regardless of where in the state the care or service is rendered.

(4) Each county shall pay into the General Revenue Fund, unallocated, its pro rata share of the total county participation based upon statements rendered by the department in consultation with the counties.

(5) The Department of Banking and Finance shall withhold from the cigarette tax receipts or any other funds to be distributed to the counties the individual county share that has not been remitted within 60 days after billing.

(6) In any county in which a special taxing district or authority is located which will benefit from the medical assistance programs covered by this section, the board of county commissioners may divide the county's financial responsibility for this purpose proportionately, and each such district or authority must furnish its share to the board of county commissioners in time for the board to comply with the provisions of subsection (3). Any appeal of the proration made by the board of county commissioners must be made to the Department of Banking and Finance, which shall then set the proportionate share of each party.

Section 47. Effective July 1, 1991, section 409.916, Florida Statutes, is created to read:

409.916 Deposit of grants and rebates.—The department shall deposit any funds received from pharmaceutical manufacturers and all other funds received by the department from any other person as the result of a cost containment strategy, in the nature of a rebate, grant, or other similar mechanism into the Grants and Donations Trust Fund. Funds received from pharmaceutical manufacturers shall be used as the state portion for funding Medicaid prescribed drug services. However, at least $75,000 may be appropriated from the Grants and Donations Trust Fund for Medicaid research and development activities as specified in the General Appropriations Act.

Section 48. Effective upon this act becoming a law, section 409 2662, Florida Statutes, is renumbered as section 409.918, Florida Statutes, and amended to read:

409.918 ~~409.2662~~ Public Medical Assistance Trust Fund.—

~~(1)~~ It is declared that access to adequate health care is a right which should be available to all Floridians. However, rapidly increasing health care costs threaten to make such care unaffordable *for* ~~to~~ many citizens. The Legislature finds that unreimbursed health care services provided to persons who are unable to pay for such services cause the cost of services to paying patients to increase in a manner unrelated to the actual cost of services delivered. Further, the Legislature finds that inequities between hospitals in the provision of unreimbursed services prevent hospitals *that* ~~which~~ provide the bulk of such services from competing on an equitable economic basis with hospitals *that* ~~which~~ provide relatively little care to indigent persons. Therefore, it is the intent of the Legislature to provide a *method* ~~mechanism~~ for the funding *the provision* of health care services to indigent persons, the cost of which shall be borne by the state and by hospitals *that* ~~which~~ are granted the privilege of operating in this state.

(1)~~(2)~~ All moneys collected pursuant to s. 395.101 shall be deposited into the Public Medical Assistance Trust Fund, which is hereby created.

(2)~~(3)~~ There is hereby annually appropriated to the Public Medical Assistance Trust Fund $30 million from the General Revenue Fund.

(3)~~(4)~~ Moneys deposited into the Public Medical Assistance Trust Fund shall be used solely for the purposes *specified by law* ~~set out in s. 25, chapter 88-294, Laws of Florida, in s. 14, chapter 87-92, Laws of Florida, and in ss. 409.266(7), 409.2661, 409.2663, and 409.701 and as set forth in s. 3, chapter 89-355, Laws of Florida~~.

Section 49. Effective upon this act becoming a law, section 409.919, Florida Statutes, is created to read:

409.919 Rules.—The department shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.

Section 50. Effective October 1, 1991, section 409.920, Florida Statutes, is created to read:

409.920 Medicaid provider fraud.—

(1) For the purposes of this section, the term:

(a) "Fiscal agent" means any individual, firm, corporation, partnership, organization, or other legal entity that has contracted with the department to receive, process, and adjudicate claims under the Medicaid program.

(b) "Item or service" includes:

1. Any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment; or

2. In the case of a claim based on costs, any entry in the cost report, books of account, or other documents supporting such claim.

(c) "Knowingly" means done by a person who is aware or should be aware of the nature of his conduct and that his conduct is substantially certain to cause the intended result.

(2) Any person who:

(a) Knowingly makes, causes to be made, or aids and abets in the making of any false statement or false representation of a material fact, by commission or omission, in any claim submitted to the department or its fiscal agent for payment is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Knowingly makes, causes to be made, or aids and abets in the making of a claim for items or services that are not authorized to be reimbursed by the Medicaid program is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Knowingly charges, solicits, accepts, or receives anything of value, other than an authorized copayment from a Medicaid recipient, from any source in addition to the amount legally payable for an item or service provided to a Medicaid recipient under the Medicaid program or knowingly fails to credit the department or its fiscal agent for any payment received from a third-party source is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Knowingly makes or in any way causes to be made any false statement or false representation of a material fact, by commission or omission, in any document containing items of income and expense that is or may be used by the department to determine a general or specific rate of payment for an item or service provided by a provider is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Knowingly solicits, offers, pays, or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under the Medicaid program, or in return for obtaining, purchasing, leasing, ordering, or arranging for or recommending, obtaining, purchasing, leasing, or ordering any goods, facility, item, or service, for which payment may be made, in whole or in part, under the Medicaid program is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) Knowingly fails to bill, or attempt to collect from a Medicaid recipient an authorized copayment for a Medicaid service that requires a copayment in return for specific Medicaid reimbursement is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) Knowingly submits false or misleading information or statements to the Medicaid program for the purpose of being accepted as a Medicaid provider is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The repayment of Medicaid payments wrongfully obtained, or the offer or endeavor to repay Medicaid funds wrongfully obtained, does not constitute a defense to, or a ground for dismissal of, criminal charges brought under this section.

(4) All records in the custody of the department or its fiscal agent which relate to Medicaid provider fraud are business records within the meaning of s. 90.803(6).

(5) Proof that a claim was submitted to the department or its fiscal agent which contained a false statement or a false representation of a

material fact, by commission or omission, unless satisfactorily explained, gives rise to an inference that the person whose signature appears as the provider's authorizing signature on the claim form, or whose signature appears on a department electronic claim submission agreement submitted for claims made to the fiscal agent by electronic means, had knowledge of the false statement or false representation. This subsection applies whether the signature appears on the claim form or the electronic claim submission agreement by means of handwriting, typewriting, facsimile signature stamp, computer impulse, initials, or otherwise.

(6) Proof of submission to the department or its fiscal agent of a document containing items of income and expense, which document is used or that may be used by the department or its fiscal agent to determine a general or specific rate of payment and which document contains a false statement or a false representation of a material fact, by commission or omission, unless satisfactorily explained, gives rise to the inference that the person who signed the certification of the document had knowledge of the false statement or representation. This subsection applies whether the signature appears on the document by means of handwriting, typewriting, facsimile signature stamp, electronic transmission, initials, or otherwise.

(7) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (2) is guilty of a misdemeanor of the first degree and is punishable as if he had actually committed such prohibited act. This subsection does not prohibit separate convictions and sentences for a violation of this subsection and a violation of any other provision of this section.

(8) A criminal action or proceeding under this section may be commenced at any time within 5 years after the cause of action accrues.

(9) The Auditor General shall conduct a statewide program of Medicaid fraud control. To accomplish this purpose, the Auditor General shall:

(a) Investigate the possible criminal violation of any applicable state law pertaining to fraud in the administration of the Medicaid program, in the provision of medical assistance, or in the activities of providers of health care under the Medicaid program.

(b) Investigate the alleged abuse or neglect of patients in health care facilities receiving payments under the Medicaid program, in coordination with the department.

(c) Investigate the alleged misappropriation of patients' private funds in health care facilities receiving payments under the Medicaid program.

(d) Refer to the appropriate state attorney all violations indicating a substantial potential for criminal prosecution.

(e) Refer to the department all suspected abusive activities not of a criminal nature.

(f) Refer to the department for collection each instance of overpayment to a provider of health care under the Medicaid program which he discovers during the course of an investigation.

(g) Safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records for any reason beyond the scope of a specific investigation for fraud or abuse, or both, without the patient's written consent.

(10) In carrying out his duties and responsibilities under this section, the Auditor General may:

(a) Enter upon the premises of any health care provider, excluding a physician, participating in the Medicaid program to examine all accounts and records that may, in any manner, be relevant in determining the existence of fraud in the Medicaid program, to investigate alleged abuse or neglect of patients, or to investigate alleged misappropriation of patients' private funds. A participating physician is required to make available any accounts or records that may, in any manner, be relevant in determining the existence of fraud in the Medicaid program. The accounts or records of a non-Medicaid patient may not be reviewed by, or turned over, to the Auditor General without the patient's written consent.

(b) Subpoena witnesses or materials within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings.

Section 51. There is hereby created within the Executive Office of the Governor the Task Force on County Contributions to Medicaid. The task force shall be composed of the following 11 members:

(1)(a) The Secretary of Health and Rehabilitative Services or his designee.

(b) Four members to be appointed by the Governor.

(c) Five members to be appointed by the Florida Association of Counties, who shall each represent a different county.

(d) The Comptroller or his designee.

(2) The task force shall study the current method for county Medicaid billing, as required by s. 409.915, Florida Statutes, shall prepare recommendations regarding the adequacy of these current procedures, and shall propose any revisions necessary to facilitate prompt payment and to assist counties in budgeting for this expense. A report containing the findings and recommendations of the task force shall be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Governor on or before February 1, 1992.

Section 52. The Department of Health and Rehabilitative Services is directed to conduct a study of Florida's Medicaid reimbursement to pharmacy providers and prepare a report with recommendations on the adequacy of reimbursement for pharmaceutical ingredients and for the dispensing of prescriptions. The department shall consult with and secure the participation of the Florida Pharmacy Association in regard to the development of its recommendations. The department shall, by December 15, 1991, submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 53. Paragraph (d) of subsection (3) of section 110.123, Florida Statutes, 1990 Supplement, is amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(d)1. A person eligible to participate in the state group health insurance plan may be authorized by rules adopted by the Department of Administration, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization plan which is under contract with the state in accordance with criteria established by this section and by said rules. The offer of optional membership in a health maintenance organization plan permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of state and federal laws.

2. The Department of Administration shall contract with health maintenance organizations to participate in the state group insurance program through a request for proposal based upon a premium and a minimum benefit package as follows:

a. The department shall establish a minimum benefit package to be provided by a participating HMO which shall include: physician services; inpatient and outpatient hospital services; emergency medical services, including out-of-area emergency coverage; diagnostic laboratory and diagnostic and therapeutic radiologic services; mental health, alcohol, and chemical dependency treatment services meeting the minimum requirements of state and federal law; skilled nursing facilities and services; prescription drugs; and other benefits as may be required by the department. Additional services may be provided subject to the contract between the department and the HMO.

b. The department may establish a uniform schedule for deductibles and copayments for all participating HMOs.

c. Based upon the minimum benefit package and copayments and deductibles contained in sub-subparagraphs a. and b., the department shall issue a request for proposal for all HMOs which are interested in participating in the state group insurance program. Upon receipt of all proposals, the department may, as it deems appropriate, enter into contract negotiations with HMOs submitting bids. As part of the request for proposal process, the department may require detailed financial data from each HMO which participates in the bidding process for the purpose of determining the financial stability of the HMO.

d. In determining which HMOs to contract with, the department shall, at a minimum, consider: each proposed contractor's previous expe-

rience and expertise in providing prepaid health benefits; each proposed contractor's historical experience in enrolling and providing health care services to participants in the state group insurance program; the cost of the premiums; the plan's ability to adequately provide service coverage and administrative support services as determined by the department; plan benefits in addition to the minimum benefit package; accessibility to providers; and the financial solvency of the plan. Nothing shall preclude the department from negotiating regional or statewide contracts with health maintenance organization plans when this is cost-effective and when the department determines the plan has the best overall benefit package for the service areas involved. However, no HMO shall be eligible for a contract if the HMO's retiree Medicare premium exceeds the retiree rate as set by the department for the state group health insurance plan.

e. The department may limit the number of HMOs that it contracts with in each service area based on the nature of the bids it receives, the number of state employees in the service area, and any unique geographical characteristics of the service area. The department shall establish by rule service areas throughout the state.

f. All persons participating in the state group insurance program who are required to contribute towards a total state group health premium shall be subject to the same dollar contribution regardless of whether the enrollee enrolls in the state group health insurance plan or in an HMO plan.

3. The department is authorized to negotiate and contract with specialty psychiatric hospitals for mental health benefits, on a regional basis, for alcohol, drug abuse, and mental and nervous disorders. The department may establish, subject to legislative approval pursuant to subsection (5), any such regional plan upon completion of an actuarial study to determine any impact on plan benefits and premiums. A report shall be submitted to the Legislature by February 1, 1990, regarding establishment of any regional plan and its effect on the State Group Health Trust Fund.

4. In addition to contracting pursuant to subparagraph 2., the department shall enter into contract with any HMO to participate in the state group insurance program which:

a. Serves greater than 5,000 recipients on a prepaid basis under *the Medicaid program* ~~s. 409.266~~;

b. Does not currently meet the 25 percent non-Medicare/non-Medicaid enrollment composition requirement established by the Department of Health and Human Services excluding participants enrolled in the state group insurance program;

c. Meets the minimum benefit package and copayments and deductibles contained in sub-subparagraphs 2.a. and b.;

d. Is willing to participate in the state group insurance program at a cost of premiums that is not greater than 95 percent of the cost of HMO premiums accepted by the department in each service area; and

e. Meets the minimum surplus requirements of s. 641.225.

The department is authorized to contract with HMOs that meet the requirements of sub-subparagraphs a. through d. prior to the open enrollment period for state employees. The department is not required to renew the contract with the HMOs as set forth in this paragraph more than twice. Thereafter, the HMOs shall be eligible to participate in the state group insurance program only through the request for proposal process described in subparagraph 2.

5. All enrollees in the state group health insurance plan or any health maintenance organization plan shall have the option of changing to any other health plan which is offered by the state within any open enrollment period designated by the department. Open enrollment shall be held at least once each calendar year.

6. Any HMO participating in the state group insurance program shall, upon the request of the department, submit to the department standardized data for the purpose of comparison of the appropriateness, quality, and efficiency of care provided by the HMO. Such standardized data shall include: membership profiles; inpatient and outpatient utilization by age and sex, type of service, provider type, and facility; and emergency care experience. Requirements and timetables for submission of such standardized data and such other data as the department deems necessary to evaluate the performance of participating HMOs shall be promulgated by rule.

Section 54. Subsection (1) of section 154.011, Florida Statutes, is amended to read:

154.011 Primary care services.—

(1) It is the intent of the Legislature that all 67 counties offer primary care services through contracts, as required by s. 154.01(3), for Medicaid recipients and other qualified low-income persons. Therefore, beginning July 1, 1987, the Department of Health and Rehabilitative Services is directed, to the extent that funds are appropriated, to develop a plan to implement a program in cooperation with each county. The department shall coordinate with the county's primary care panel, as created by s. 154.013, or with the county's governing body if no primary care panel is appointed. Such primary care programs shall be phased-in and made operational as additional resources are appropriated ~~pursuant to s. 409.266(7)(c)~~, and shall be subject to the following:

(a) The department shall enter into contracts with the county governing body for the purpose of expanding primary care coverage. The county governing body shall have the option of organizing the primary care programs through county public health units or through county public hospitals owned and operated directly by the county. The department shall, as its first priority, maximize the number of counties participating in the primary care programs under this section, but shall establish priorities for funding based on need and the willingness of counties to participate. The department shall select counties for programs through a formal request-for-proposal process that requires compliance with program standards for cost-effective quality care and seeks to maximize access throughout the county.

(b) Each county's primary care program may utilize any or all of the following options of providing services: offering services directly through the county public health units; contracting with individual or group practitioners for all or part of the service; or developing service delivery models which are organized through the county public health units but which utilize other service or delivery systems available, such as federal primary care programs or prepaid health plans. In addition, counties shall have the option of pooling resources and joining with neighboring counties in order to fulfill the intent of this section.

(c) Each primary care program shall conform to the requirements and specifications of the department, and shall at a minimum:

1. Adopt a minimum eligibility standard of at least 100 percent of the federal nonfarm poverty level.

2. Provide a comprehensive mix of preventive and illness care services.

3. Be family oriented and be easily accessible regardless of income, physical status, or geographical location.

4. Ensure 24-hour telephone access and offer evening and weekend clinic services.

5. Offer continuity of care over time.

6. Make maximum use of existing providers and closely coordinate its services and funding with existing federal primary care programs, especially in rural counties, to ensure efficient use of resources.

7. Have a sliding fee schedule based on income for eligible persons above 100 percent of the federal nonfarm poverty level.

8. Include quality assurance provisions and procedures for evaluation.

9. Provide early periodic screening diagnostic and treatment services for Medicaid-eligible children.

10. Fully utilize and coordinate with rural hospitals for outpatient services, including contracting for services when advisable in terms of cost-effectiveness and feasibility.

Section 55. Subsection (7) of section 394.4787, Florida Statutes, 1990 Supplement, is amended to read:

394.4787 Definitions.—As used in this act:

(7) "PMATF" means the Public Medical Assistance Trust Fund ~~as created in s. 409.2662~~.

Section 56. Subsection (2) of section 395.01465, Florida Statutes, 1990 Supplement, is amended to read:

395.01465 Emergency care hospitals.—

(2) For the purpose of Medicaid swing-bed reimbursement pursuant to *the Medicaid program* ~~s. 409.266(19)~~, the department shall treat emergency care hospitals in the same manner as hospitals defined in s. 395.102(2).

Section 57. Paragraph (b) of subsection (1) of section 400.126, Florida Statutes, is amended to read:

400.126 Receivership proceedings.—

(1) As an alternative to or in conjunction with an injunctive proceeding, the department may petition a court of competent jurisdiction for the appointment of a receiver, when any of the following conditions exist:

(b) The licensee is closing the facility or has informed the department that it intends to close the facility and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility. However, the failure on the part of the department, after receiving notice of the closing of a facility that is certified to provide services under Title XIX of the Social Security Act, a minimum of 90 days prior to the closing date, to make adequate arrangement for relocating those residents who are receiving assistance under *the Medicaid program* ~~s. 409.266~~ shall in and of itself not be grounds to petition for the appointment of a receiver. Under these circumstances, if a facility remains open beyond the closing date, the department shall reimburse the facility for all costs incurred, up to the cap, for those residents who are receiving assistance under *the Medicaid program* ~~s. 409.266~~, provided the facility continues to be licensed pursuant to this part and certified to provide services under Title XIX of the Social Security Act.

Section 58. Subsection (1) of section 400.18, Florida Statutes, is amended to read:

400.18 Closing of nursing facility.—

(1) Whenever a licensee voluntarily discontinues operation, and during the period when it is preparing for such discontinuance, it shall inform the department not less than 90 days prior to the discontinuance of operation. The licensee also shall inform the resident or the next of kin, legal representative, or agency acting on behalf of the resident of the fact, and the proposed time, of such discontinuance and give at least 90 days' notice so that suitable arrangements may be made for the transfer and care of the resident. In the event any resident has no such person to represent him, the licensee shall be responsible for securing a suitable transfer of the resident before the discontinuance of operation. The department shall be responsible for arranging for the transfer of those residents requiring transfer who are receiving assistance under *the Medicaid program* ~~s. 409.266~~.

Section 59. Section 400.332, Florida Statutes, is amended to read:

400.332 Funds received not revenues for purpose of *Medicaid* ~~medical assistance~~ program.—Any funds received by a nursing home in connection with its participation in the geriatric outpatient nurse clinic program shall not be considered as revenues for purposes of cost reports under the *Medicaid* ~~medical assistance~~ program ~~as set forth in s. 409.266~~.

Section 60. Subsection (2) of section 407.51, Florida Statutes, is amended to read:

407.51 Exceeding approved budget or previous year's actual experience by more than maximum rate of increase; allowing or authorizing operating revenue or expenditures to exceed amount in approved budget; penalties.—

(2) Penalties shall be assessed as follows:

(a) For the first occurrence within a 5-year period, the board shall prospectively reduce the current budget of the hospital by the amount of the excess up to 5 percent; and, if such excess is greater than 5 percent over the maximum allowable rate of increase, any amount in excess of 5 percent shall be levied by the board as a fine against such hospital to be deposited in the Public Medical Assistance Trust Fund~~, as created in s. 409.2662~~.

(b) For the second occurrence within the 5-year period following the first occurrence as set forth in paragraph (a), the board shall prospectively reduce the current budget of the hospital by the amount of the excess up to 2 percent; and, if such excess is greater than 2 percent over the maximum allowable rate of increase, any amount in excess of 2 percent shall be levied by the board as a fine against such hospital to be deposited in the Public Medical Assistance Trust Fund.

(c) For the third occurrence within the 5-year period following the first occurrence as set forth in paragraph (a), the board shall:

1. Levy a fine against the hospital in the total amount of the excess to be deposited in the Public Medical Assistance Trust Fund.

2. Notify the Department of Health and Rehabilitative Services of the violation, whereupon the department shall not accept any application for a certificate of need pursuant to ss. 381.701-381.7155 from or on behalf of such hospital until such time as the hospital has demonstrated to the satisfaction of the board that, following the date the penalty was imposed under subparagraph 1., the hospital has stayed within its projected or amended budget or its applicable maximum allowable rate of increase for a period of at least 1 year. However, this provision does not apply with respect to a certificate-of-need application filed to satisfy a life or safety code violation.

3. Upon a determination that the hospital knowingly and willfully generated such excess, notify the Department of Health and Rehabilitative Services, whereupon the department shall initiate disciplinary proceedings to deny, modify, suspend, or revoke the license of such hospital or impose an administrative fine on such hospital not to exceed $20,000.

The determination of the amount of any such excess shall be based upon net revenues per adjusted admission excluding funds distributed to the hospital *from the Public Medical Assistance Trust Fund* ~~pursuant to s. 409.266(7) or s. 409.2663~~. However, in making such determination, the board shall appropriately reduce the amount of the excess by the total amount of the assessment paid by such hospital pursuant to s. 395.101 minus the amount of revenues received by the hospital through the *Public Medical Assistance Trust Fund* ~~operation of s. 409.266(7) or s. 409.2663~~. It is the responsibility of the hospital to demonstrate to the satisfaction of the board its entitlement to such reduction. It is the intent of the Legislature that the Health Care Cost Containment Board, in levying any penalty imposed against a hospital for exceeding its maximum allowable rate of increase or its approved budget pursuant to this subsection, consider the effect of changes in the case mix of the hospital. It is the responsibility of the hospital to demonstrate to the satisfaction of the board any change in its case mix. For psychiatric hospitals, the board shall also reduce the amount of excess by utilizing as a proxy for case mix the change in a hospital's audited actual average length of stay as compared to the previous year's audited actual average length of stay without any thresholds or limitations.

Section 61. Paragraph (c) of subsection (6) of section 409.2673, Florida Statutes, 1990 Supplement, is amended to read:

409.2673 Shared county and state health care program for low-income persons; trust fund.—

(6)

(c) The state's portion of the funding shall be made available from the Public Medical Assistance Trust Fund~~, created under s. 409.2662, or from other funds appropriated by the Legislature~~.

Section 62. Subsection (10) of section 409.345, Florida Statutes, is amended to read:

409.345 Public assistance payments to constitute debt of recipient.—

(10) PUBLIC ASSISTANCE.—For the purposes of this section, the term "public assistance" *includes* ~~shall include~~ all money payments made to or on behalf of a recipient, including, but not limited to, assistance received under ss. 409.235 *and*~~,~~ 409.255, *the Medicaid program,* ~~and 409.266~~ and mandatory and optional supplement payments under the Social Security Act.

Section 63. Paragraph (d) of subsection (5) of section 409.701, Florida Statutes, 1990 Supplement, is amended to read:

409.701 The Florida Small Business Health Access Corporation Act.—

(5) LICENSING, FISCAL OPERATION.—

(d) The corporation may expend funds through direct reinsurance, by purchasing reinsurance, or by other means approved by the board for the program of health care services and benefits arranged through the corporation. The amount of such expenditure shall not exceed funds allocated from the Public Medical Assistance Trust Fund ~~as provided in s.~~

~~409.2662(4)~~ or other sources of funding arranged by the corporation. Notwithstanding the provisions of s. 216.301, any amount so provided, which is not annually required for such purposes, shall remain available to the corporation, to be supplemented by an annual amount equal to the amount expended in the prior year, for the purpose of meeting funding requirements in succeeding years. Any amount remaining upon the liquidation or dissolution of the corporation shall be returned to the Public Medical Assistance Trust Fund.

Section 64. Section 410.036, Florida Statutes, is amended to read:

410.036 Eligibility for services.—Criteria for determining eligibility for this program shall be the same as criteria used to determine eligibility for assistance under Title XVI of the Social Security Act, as the same exists on July 1, 1977, or shall be the same as financial criteria used to determine eligibility for nursing home care under *the Medicaid program* ~~s. 409.266~~.

Section 65. Paragraph (a) of subsection (9) of section 624.424, Florida Statutes, 1990 Supplement, is amended to read:

624.424 Annual statement and other information.—

(9)(a) Each authorized insurer shall, pursuant to *s. 409.910(21)* ~~s. 409.2665(22)~~, provide records and information to the Department of Health and Rehabilitative Services to identify potential insurance coverage for claims filed with that department and its fiscal agents for payment of medical services under *the Medicaid program* ~~s. 409.266~~.

Section 66. Subsection (4) of section 627.736, Florida Statutes, 1990 Supplement, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(4) BENEFITS; WHEN DUE.—Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Department of Health and Rehabilitative Services provides, pays, or becomes liable for medical assistance under *the* Medicaid *program* ~~pursuant to chapter 409,~~ related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of *the Medicaid program* ~~s. 409.2665~~.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.7405.

(b) Personal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. However, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of 10 percent per year.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state, but within the United States of America or its territories or possessions or Canada, by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405; or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person, the maximum payable shall be as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(f) Medical payments insurance, if available in a policy of motor vehicle insurance, shall pay the portion of any claim for personal injury protection medical benefits which is otherwise covered but is not payable due to the coinsurance provision of paragraph (1)(a), regardless of whether the full amount of personal injury protection coverage has been exhausted. The benefits shall not be payable for the amount of any deductible which has been selected.

Section 67. Section 631.813, Florida Statutes, is amended to read:

631.813 Application of part.—This part shall apply to HMO contractual obligations to residents of Florida by HMOs possessing a valid certificate of authority issued by the Florida Department of Insurance as provided by part II of chapter 641. The provisions of this part shall not apply to persons participating in medical assistance programs *under the Medicaid program* ~~created pursuant to s. 409.266~~.

Section 68. Subsection (1) of section 641.261, Florida Statutes, 1990 Supplement, is amended to read:

641.261 Other reporting requirements.—

(1) Each authorized health maintenance organization shall provide records and information to the Department of Health and Rehabilitative Services pursuant to *s. 409.910(21)* ~~s. 409.2665(22)~~ for the sole purpose of identifying potential coverage for claims filed with the Department of Health and Rehabilitative Services and its fiscal agents for payment of medical services under *the Medicaid program* ~~s. 409.266~~.

Section 69. Subsection (14) of section 641.31, Florida Statutes, 1990 Supplement, is amended to read:

641.31 Health maintenance contracts.—

(14) Whenever a subscriber of a health maintenance organization is also a Medicaid recipient, the health maintenance organization's coverage shall be primary to the recipient's Medicaid benefits and the organization shall be a third party subject to the provisions of *s. 409.910(4)* ~~s. 409.2665~~.

Section 70. Subsection (1) of section 641.411, Florida Statutes, 1990 Supplement, is amended to read:

641.411 Other reporting requirements.—

(1) Each prepaid health clinic shall provide records and information to the Department of Health and Rehabilitative Services pursuant to *s. 409.910(21)* ~~s. 409.2665(22)~~ for the sole purpose of identifying potential coverage for claims filed with the Department of Health and Rehabilitative Services and its fiscal agents for payment of medical services under *the Medicaid program* ~~s. 409.266~~.

Section 71. Paragraph (b) of subsection (2) of section 768.73, Florida Statutes, is amended to read:

768.73 Punitive damages; limitation.—

(2) In any civil action, an award of punitive damages shall be payable as follows:

(b) If the cause of action was based on personal injury or wrongful death, 60 percent of the award shall be payable to the Public Medical Assistance Trust Fund ~~created in s. 409.2662~~; otherwise, 60 percent of the award shall be payable to the General Revenue Fund.

Section 72. Effective October 1, 1991, subsection (1) of section 895.02, Florida Statutes, 1990 Supplement, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 403.727(3)(b), relating to environmental control.

3. Section 409.325, relating to public assistance fraud.

4. Section 409.920, relating to Medicaid provider fraud.

5.~~4.~~ Chapter 517, relating to sale of securities and investor protection.

6.~~5.~~ Section 550.24, s. 550.35, or s. 550.36, relating to dogracing, horseracing, and jai alai frontons.

7.~~6.~~ Section 551.09, relating to jai alai frontons.

8.~~7.~~ Chapter 552, relating to the manufacture, distribution, and use of explosives.

9.~~8.~~ Chapter 562, relating to beverage law enforcement.

10.~~9.~~ Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

11.~~10.~~ Chapter 687, relating to interest and usurious practices.

12.~~11.~~ Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.

13.~~12.~~ Chapter 782, relating to homicide.

14.~~13.~~ Chapter 784, relating to assault and battery.

15.~~14.~~ Chapter 787, relating to kidnapping.

16.~~15.~~ Chapter 790, relating to weapons and firearms.

17.~~16.~~ Section 796.01, s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

18.~~17.~~ Chapter 806, relating to arson.

19.~~18.~~ Chapter 812, relating to theft, robbery, and related crimes.

20.~~19.~~ Chapter 815, relating to computer-related crimes.

21.~~20.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

22.~~21.~~ Section 827.071, relating to commercial sexual exploitation of children.

23.~~22.~~ Chapter 831, relating to forgery and counterfeiting.

24.~~23.~~ Chapter 832, relating to issuance of worthless checks and drafts.

25.~~24.~~ Section 836.05, relating to extortion.

26.~~25.~~ Chapter 837, relating to perjury.

27.~~26.~~ Chapter 838, relating to bribery and misuse of public office.

28.~~27.~~ Chapter 843, relating to obstruction of justice.

29.~~28.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

30.~~29.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

31.~~30.~~ Chapter 893, relating to drug abuse prevention and control.

32.~~31.~~ Chapter 896, relating to offenses related to financial transactions.

33.~~32.~~ Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.

34.~~33.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1).

Section 73. For the purpose of incorporating the amendment to section 895.02, Florida Statutes, 1990 Supplement, in references thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, is reenacted to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency; when required; purpose; definitions; penalties.—

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

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 74. For the purpose of incorporating the amendment to section 895.02, Florida Statutes, 1990 Supplement, in references thereto, paragraph (g) of subsection (1) of section 896.101, Florida Statutes, 1990 Supplement, is reenacted to read:

896.101 Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.—

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

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 75. Any diagnosis-specific supplemental funding to nursing homes shall not operate to prevent or create a disincentive for an otherwise terminally ill individual residing in a nursing home from electing the Medicare or Medicaid hospice benefits.

Section 76. Rules adopted by the Department of Health and Rehabilitative Services prior to October 1, 1991, under the authority of any statutory provision amended or repealed by this part shall remain in effect and shall be administered by the department until the department adopts rules that supersede those rules.

Section 77. Section 21 of chapter 89-275, Laws of Florida; subsection (3) of section 400.23, Florida Statutes, as amended by section 1 of chapter 90-125, Laws of Florida; section 409.266, Florida Statutes, as amended by section 5 of chapter 90-232, Laws of Florida, section 10 of chapter 90-284, Laws of Florida, sections 17 and 34 of chapter 90-295, Laws of Florida, and section 6 of chapter 90-341, Laws of Florida; and sections 409.2663, 409.2664, 409.2666, 409.2667, 409.267, 409.2671, and 409.268, Florida Statutes, are hereby repealed.

Section 78. Effective upon this act becoming a law, subsections (2), (3), (5), (6), (8), and (13) of section 395.0335, Florida Statutes, 1990 Supplement, are amended to read:

395.0335 Selection of *state-approved* ~~state-sponsored~~ trauma centers.—

(2)(a) By September 1, 1990, the department shall notify each acute care general hospital in the state that the department is accepting letters of intent from hospitals which are interested in becoming state-sponsored trauma centers. In order to be considered by the department, letters of intent must be postmarked no later than midnight October 1, 1990.

(b) By October 15, 1990, the department shall send to all hospitals which submitted a letter of intent an application package which will pro-

vide the hospitals with instructions for submitting information to the department for selection as a state-sponsored trauma center. The standards for verification of trauma centers and pediatric trauma referral centers provided for in s. 395.031(5), as adopted by rule of the department, shall serve as the basis for these instructions.

(c) Those hospitals which have been verified trauma centers since December 1, 1989, shall have their current verification period extended to May 1, 1991.

(d) In order to be considered by the department, applications from those hospitals seeking selection as state-sponsored trauma centers, including those current verified trauma centers which seek to be state-sponsored trauma centers, must be received by the department no later than the close of business on April 1, 1991. The department shall conduct a preliminary review of each application for the purpose of determining that the hospital's application is complete and that the hospital has the critical elements to become a state-sponsored trauma center. This critical review will be based on trauma center verification standards and shall include, but not be limited to, a review of whether the hospital has:

1. Equipment and physical facilities necessary to provide trauma services.

2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.

3. An effective quality assurance process.

(e)1. Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all requirements as provided in paragraph (d) at the time of application if the number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department. An applicant that is granted additional time pursuant to this paragraph shall submit a plan for departmental approval, which includes timelines and activities, that the applicant proposes to complete in order to meet application requirements. Any applicant that demonstrates an ongoing effort to complete the activities within the timelines outlined in the plan shall be included in the number of state-sponsored trauma centers at such time that the department has conducted a preliminary review of the application and has determined that the application is complete and that the hospital has the critical elements to become a state-sponsored trauma center.

2. Timeframes provided in this section shall be stayed until the department determines that the application is complete and that the hospital has the critical elements to become a state-sponsored trauma center.

(3) After April 30, 1991, and until *state-approved* ~~state-sponsored~~ trauma centers are selected, any hospital which submitted an application found acceptable by the department based on preliminary review, *including all trauma centers verified as of December 1, 1989,* shall be eligible to operate as a provisional *state-approved* ~~state-sponsored~~ trauma center. A hospital with an application found to be unacceptable by the department shall be given opportunity to provide additional information or clarification, but shall not be included within the timeframes outlined in subsections (1)-(8).

(5) Beginning October 1, 1991, and ending no later than June 1, 1992, a review team of out-of-state experts assembled by the department shall make onsite visits to all provisional *state-approved* ~~state-sponsored~~ trauma centers. The department shall develop a survey instrument to be used by the expert team of reviewers. The instrument shall include objective criteria and guidelines for reviewers based on existing trauma center and pediatric trauma referral center verification standards such that all trauma centers and pediatric trauma referral centers are assessed equally. The survey instrument shall also include a uniform rating system which will be used by reviewers to indicate the degree of compliance of each center with specific standards, and to indicate the quality of care provided by each center as determined through an audit of patient charts. In addition, hospitals being considered as provisional *state-approved* ~~state-sponsored~~ trauma centers shall meet all the requirements of a verified trauma center or pediatric trauma referral center, and shall be located in a trauma service area which has a need for such a center.

(6) Based on recommendations from the review team, the department shall select *state-approved* ~~state-sponsored~~ trauma centers by July 1, 1992. Each *state-approved* ~~state-sponsored~~ trauma center shall be granted a 7-year verification period during which time it must continue to maintain trauma center verification standards and acceptable patient outcomes as determined by department rule. A verification, unless sooner suspended or revoked, automatically expires 7 years after the date of issuance and is renewable upon application for renewal as prescribed by rule of the department. After July 1, 1992, only those hospitals selected as *state-approved* ~~state-sponsored~~ trauma centers may operate as trauma centers.

(8) Notwithstanding any provision of chapter 381, a hospital licensed under this chapter which operates a *state-approved* ~~state-sponsored~~ trauma center may not terminate or substantially reduce the availability of trauma service without providing at least 6 months' notice of its intent to terminate such service. Such notice shall be given to the Department of Health and Rehabilitative Services and to all *state-approved* ~~state-sponsored~~ trauma centers, hospitals, and emergency medical services providers in the trauma service area.

(13) The department is authorized to adopt, by rule, the procedures and process by which it will select *state-approved* ~~state-sponsored~~ trauma centers in situations other than those provided for in the initial process outlined in subsections (1)-(8). Such procedures and process shall be used in selecting *state-approved* ~~state-sponsored~~ trauma centers after the dates specified in subsections (1)-(8) and shall be consistent with subsections (1)-(8) in terms of timeframes and guidelines except in those situations in which it is in the best interest of, and mutually agreed to by, all applicants within a service area and the department to reduce the timeframes.

Section 79. Effective upon this act becoming a law, section 395.034, Florida Statutes, 1990 Supplement, is amended to read:

395.034 Reimbursement of state-sponsored trauma centers.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that many hospitals which provide services to trauma victims are not adequately compensated for such treatment. The Legislature also recognizes that the current verified trauma centers are providing such services without adequate reimbursement. Therefore, it is the intent of the Legislature to provide financial support to the current verified trauma centers and to establish a system of state-sponsored trauma centers as soon as feasibly possible. It is also the intent of the Legislature that this system of state-sponsored trauma centers be assisted financially based on the volume and acuity of uncompensated trauma care provided.

(2) DEFINITIONS.—As used in this section:

(a) "Board" means the Health Care Cost Containment Board.

(b) "Charity care" or "uncompensated charity care" means that portion of hospital charges reported to the department for which there is no compensation for care provided to a patient whose family income for the 12 months preceding the determination is less than or equal to 150 percent of the federal ~~nonfarm~~ poverty level, unless the amount of hospital charges due from the patient exceeds 25 percent of the annual family income. However, in no case shall the hospital charges for a patient whose family income exceeds 4 times the federal ~~nonfarm~~ poverty level for a family of four be considered charity.

(c) "Department" means the Department of Health and Rehabilitative Services.

(d) "Hospital" means a health care institution as defined in s. 395.002(6).

(e) "State-approved trauma center" means a hospital that has successfully completed the state-approved selection process pursuant to s. 395.0335 and has been approved by the department to operate as a trauma center in the state.

(f)~~(e)~~ "State-sponsored trauma center" means a *state-approved* ~~verified~~ trauma center *which receives* ~~selected by the department to receive~~ state funding ~~pursuant to s. 395.0335,~~ for ~~the purpose of furnishing~~ trauma care services.

(3) *All* provisional and *state-approved* ~~permanent state-sponsored~~ trauma centers *shall be considered state-sponsored trauma centers when state funds are specifically appropriated for state-sponsored trauma centers in the General Appropriations Act* ~~are eligible for state funding under this section~~.

(4) To receive state funding, a state-sponsored trauma center shall submit *a claim electronically via the Trauma Claims Processing System, designed, developed, implemented, and operated by the department's Medicaid program,* ~~a completed standard hospital claim form~~ to the department's Medicaid program upon discharge of a trauma patient. *When a hospital stay spans a state fiscal year, a separate hospital claim shall be submitted for the hospital days incurred in each fiscal year.*

(5)(a) State-sponsored trauma centers shall determine each trauma patient's eligibility for state funding prior to the submission of a claim.

(b) A trauma patient treated must meet the definition of charity care, have been designated as having an ISS score of 9 or greater, and have *received services that are medically necessary from* ~~been treated at~~ a state-sponsored trauma center in order for the state-sponsored trauma center to receive state funding for that patient.

(c) Each state-sponsored trauma center shall retain appropriate documentation showing a trauma patient's eligibility for state funding. Documentation recognized by the department as appropriate shall be limited to one of the following:

1. W-2 withholding forms.

2. Payroll stubs.

3. Income tax returns.

4. Forms approving or denying unemployment compensation or workers' compensation.

5. Written verification of wages from employer.

6. Written verification from public welfare agencies or any other governmental agency which can attest to the patient's income status for the past 12 months.

7. A witnessed statement signed by the patient or responsible party, as provided for in Pub. L. No. 79-725, as amended, known as the Hill-Burton Act, except that such statement need not be obtained within 48 hours of the patient's admission to the hospital as required by the Hill-Burton Act. The statement shall include acknowledgment that, in accordance with s. 817.50, providing false information to defraud a hospital for the purposes of obtaining goods or services is a misdemeanor of the second degree.

(d) The department shall conduct an audit or shall contract with an independent party to conduct an audit of each state-sponsored trauma center's claims to ensure that state funding was only provided for eligible trauma patients *and medically necessary services.*

(e) The *department's Medicaid program office* ~~fiscal agent~~ shall check each claim to confirm that the patient is not covered under the Medicaid program and shall pay the claim out of the Trauma Services Trust Fund. *Trauma patients who are eligible for the Medicaid program shall not be considered eligible for the state-sponsored trauma center program except for Medicaid noncovered services. If a claim is denied by the Trauma Claims Processing System as a result of Medicaid eligibility for Medicaid covered services, the hospital shall submit a claim to the Medicaid fiscal agent for payment.* ~~If the patient is eligible for Medicaid the claim shall be submitted for processing as a Medicaid claim.~~

(6) Effective October 1, 1990, state funding shall be at a per diem rate equal to $860.00 *to provisional state-approved and state-approved trauma centers.* This rate shall remain in effect until July 1, 1991, at which time payment to provisional *state-approved* and state-approved ~~state-sponsored~~ trauma centers shall be based on a trauma cost-based reimbursement methodology developed by the Department of Health and Rehabilitative Services. The department shall consult with representatives from the hospital industry including the Florida Hospital Association, the Association of Voluntary Hospitals of Florida, and the Florida League of Hospitals in the development of the reimbursement methodology.

(7)(a) To ensure a fair distribution of funds appropriated for state-sponsored trauma centers and to ensure that no state-sponsored trauma center gains an unfair advantage due solely to its ability to bill more quickly than another state-sponsored trauma center, the total amount of state funds appropriated *in the General Appropriations Act for* ~~under~~ this section shall be divided into 19 trauma fund accounts with an account for each service area established in s. 395.033(3). The amount of funds distributed to a service area shall be based on the following formula:

$$SAAA = \frac{SATD}{TTD} \times TA$$

where:

SAAA = service area appropriation amount.

SATD = *uncompensated* service area trauma days with ISS score of 9 or greater.

TTD = *uncompensated* total trauma days with ISS score of 9 or greater for all 19 service areas.

TA = total dollars appropriated for state-sponsored trauma centers.

(b) The data base to be used for this calculation shall be the detailed patient discharge data of the *most recently completed calendar year for which the* Health Care Cost Containment Board possesses data. *Out-of-state days that are included in the data base shall be allocated to the service area where the treating hospital is located.*

(c) Fifty percent of the funds allocated to those service areas which had one or more trauma centers as of December 1, 1989, shall be distributed to those verified trauma centers proportionately based on volume and acuity of uncompensated trauma care provided during *the most recently completed calendar year for which the Health Care Cost Containment Board possesses data* ~~calendar year 1988~~ in a lump sum payment on October 1, 1990. These trauma centers shall submit claims pursuant to subsection (4) in order to justify this funding. By June 30, 1991, any trauma center which fails to submit claims for reimbursement equal to or greater than the amount the trauma center received under the initial allocation shall return any unearned funds to the department for distribution pursuant to paragraph *(e)* ~~(d)~~. Once this 50-percent lump sum is depleted, a trauma center will be reimbursed from the remaining 50 percent of the service area's original allocation.

(d) The department shall pay trauma claims on a monthly basis. In a given month when the outstanding claims will exceed the unexpended funds allocated to a service area, the department shall pay all of the submitted claims for the service area on a pro rata basis.

(e)~~(d)~~ At the end of the fiscal year, the unexpended funds for each service area shall be placed in one large state trauma account from which all remaining claims are paid without regard to service area on a pro rata basis until such funds are depleted.

(f) For *any* ~~the~~ state fiscal year ~~1990-1991~~, reimbursement for any patient residing outside the trauma service area of the state-sponsored trauma center where the patient is treated shall be paid out of the funds allocated for the trauma service area where the patient resides. *Out-of-state days shall be paid from the service area where the treating hospital is located.*

(8) In order to receive payments under this section, a hospital shall be a state-sponsored trauma center and shall:

(a) Agree to conform to all departmental requirements as provided by rule to assure high quality trauma services.

(b) Agree to provide information concerning the provision of trauma services to the department, in a form and manner prescribed by rule of the department.

(c) Agree to accept all trauma patients, regardless of ability to pay, on a functional space-available basis.

~~(d) Agree to develop arrangements with other Level I and II trauma centers and other state-sponsored trauma centers and community hospitals for the appropriate receipt and transfer of patients in need of trauma services.~~

(9) A state-sponsored trauma center which fails to comply with any of the conditions listed in subsection (8) or the applicable rules of the department shall not receive payments under this section for the period in which it was not in compliance.

(10) *Funds distributed to a hospital pursuant to this section shall not be considered as net revenues of such hospital in determining whether an excess has occurred pursuant to s. 407.51.* ~~Beginning October 1, 1990, verified trauma centers shall be eligible for reimbursement for trauma services according to the formula specified in subsection (7) within funds specifically appropriated for that purpose for the period October 1, 1990, through April 30, 1991.~~

~~(11) Beginning May 1, 1991, provisional state-sponsored trauma centers shall be eligible for reimbursement for trauma services according to the formula specified in subsection (7) with funds specifically appropriated for that purpose for the periods of May and June of state fiscal year 1990-1991 and July through March of state fiscal year 1991-1992.~~

~~(12) In state fiscal year 1992-1993 and subsequent fiscal years, state-sponsored trauma centers shall be eligible for reimbursement for trauma services according to the formula specified in subsection (7) with funds specifically appropriated for that purpose.~~

Section 80. Effective upon this act becoming a law, section 395.0345, Florida Statutes, 1990 Supplement, is amended to read:

395.0345 Trauma Services Trust Fund.—

(1) There is hereby created the Trauma Services Trust Fund *in the State Treasury*, which shall be used exclusively for *the development and support of a system of state-sponsored trauma centers. Trust fund revenue shall be used for* the purpose of funding trauma patient care in a ~~verified trauma center, a~~ provisional state-sponsored trauma center, or a ~~permanent~~ state-sponsored trauma center as provided for in this act; for funding the associated trauma claims processing costs, including the costs for the *design,* development, *implementation, and operation* of a payment system~~, not to exceed $400,000~~; and for administration of this act~~, not to exceed $250,000. The department is authorized to establish 5 positions for administration of this act.~~

(2) Any funds appropriated in the General Appropriations Act for the implementation of this act, *and* ~~or~~ any other funds *that* ~~which~~ become available for the implementation of this act, may be deposited in the Trauma Services Trust Fund.

Section 81. Section 14 of chapter 90-284, Laws of Florida, is hereby repealed.

Section 82. Notwithstanding the provisions of section 401.113, Florida Statutes, there is hereby appropriated from the Emergency Medical Services Trust Fund to the Office of the Deputy Secretary for Health the sum of $200,000 to fund the review team of out-of-state experts pursuant to section 395.0335(5), Florida Statutes.

Section 83. Effective October 1, 1991, subsection (3) of section 641.48, Florida Statutes, is amended to read:

641.48 Purpose and application of part; exemption.—

(3) Any person or entity which enters into a contract with the department on a prepaid per capita or prepaid aggregate fixed-sum basis for the provision of health care services or social services, or both, to persons determined eligible for such services shall be exempt from the provisions of this part and shall be governed by the standards set forth by the department unless the person or entity provides health care service on a prepaid basis to persons other than those for which the department has contracted. However, any person or entity which is not *certified* ~~certificated~~ under the provisions of this chapter shall not use in its name, logo, contracts, or literature the phrases "health maintenance organization" or "prepaid health clinic" or the initials "HMO" or "PHC"; imply, directly or indirectly, that it is a health maintenance organization or prepaid health clinic; or hold itself out to be a health maintenance organization or prepaid health clinic. Subject to these restrictions, any such person or entity may advertise and market their prepaid health or social services using words or phrases similar to "prepaid health services" or "prepaid social services," so long as the services are accurately described and the advertisement and marketing literature clearly discloses that such services are available only to persons eligible for health care or social services through the department. The department shall set standards or promulgate rules for the conduct of a prepaid plan exempt under this subsection, which shall include provisions *whereby the entity shall* ~~for~~:

(a) Be organized primarily for the purpose of providing health care or other services of the type regularly offered to the department's enrolled clients.

(b)~~(a)~~ *Ensure that services meet the standards set by the department for* ~~The~~ quality, appropriateness, and timeliness ~~of services~~.

(c)~~(b)~~ *Make provisions satisfactory to the department for* insolvency protection and *ensure* ~~assurances~~ that neither *the department's* enrolled *clients* ~~recipients~~ nor the department shall be liable for the debts of the entity.

~~(c) A plan of operation which is actuarially sound and provides for working capital sufficient to carry all operating expenses for a period of 3 months.~~

(d) Submit to the department, if a private entity, a financial plan that the department finds to be fiscally sound and that provides for working capital in the form of cash or equivalent liquid assets, excluding revenues from the department premium payments, equal to at least the first 3 months of operating expenses or $200,000, whichever is greater.

(e)~~(d)~~ *Furnish* evidence *satisfactory to the department* of adequate *liability* insurance coverage or an adequate plan of self-insurance to respond to claims *for injuries* arising out of the furnishing of *health care* ~~contracted services~~.

(f)~~(e)~~ *Provide, through contract or otherwise, for* periodic *review* ~~reviews~~ of its medical facilities, services, and records, *as required by the department.*

(g)~~(f)~~ *Provide* ~~Making available to the department~~ organizational, financial, and other *information* ~~data~~ that may be required to ensure quality of care and financial solvency.

Section 84. Effective October 1, 1991, subsection (10) of section 641.495, Florida Statutes, 1990 Supplement, is amended to read:

641.495 Requirements for issuance and maintenance of certificate.—

(10) The provisions of part I of chapter 395 do not apply to a health maintenance organization *if, on or before January 1, 1991, the organization* ~~that~~ provides not more than 10 outpatient holding beds for short-term and hospice-type patients in an ambulatory care facility for its members, provided such health maintenance organization maintains current accreditation by the Joint Commission on Accreditation of *Health Care Organizations,* ~~Hospitals (JCAH) or~~ the Accreditation Association for Ambulatory Health Care, *or the National Committee for Quality Assurance* ~~(AAAHC)~~.

Section 85. Effective October 1, 1991, section 641.51, Florida Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion requirement.—

(1) The organization shall ensure that the health care services provided to subscribers shall be rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the community.

(2) Each organization shall have an ongoing internal quality assurance program for its health care services. The program shall include, but not be limited to, the following:

(a) A written statement of goals and objectives which stress health outcomes as the principal criteria for the evaluation of the quality of care rendered to subscribers;

(b) A written statement describing how state of the art methodology has been incorporated into an ongoing system for monitoring of care which is individual case oriented and, when implemented, can provide interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(c) Written procedures for taking appropriate remedial action whenever, as determined under the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided;

(d) A written plan for providing review of physicians and other licensed medical providers which includes ongoing review within the organization ~~and periodic review by an external review organization not less frequently than once every 3 years~~.

(3) The professional judgment of a physician licensed under *chapter 458, chapter 459, chapter 460, or chapter 461* ~~chapter 458 or chapter 459~~ concerning the proper course of treatment of a subscriber shall not be subject to modification by the organization or its board of directors, officers, or administrators, unless the course of treatment prescribed is inconsistent with the prevailing standards of medical practice in the community. However, this subsection shall not be considered to restrict a utilization management program established by an organization.

(4)*(a)* Each organization shall give the subscriber the right to a second medical opinion in any instance in which the subscriber disputes the organization's *or the physician's* opinion of the reasonableness or necessity of surgical procedures or is subject to a *serious* ~~life threatening~~ injury or illness.

(b) The second opinion, if requested, is to be provided by a physician chosen by the subscriber *who may select:*

1. A contract or employed physician listed in a directory that shall be provided by the organization; or

2. A noncontract physician located in the same geographical service area of the organization.

(c) ~~For second opinions provided by a noncontract physician, the subscriber must use a physician located in the same geographical service area of the organization.~~ For second opinions provided by contract physicians the organization is prohibited from charging a fee to the subscriber in an amount in excess of the subscriber fees established by contract for referral contract physicians. The organization shall pay the amount of all charges, which are usual, reasonable, and customary in the community, for second opinion services performed by a physician not under contract with the organization, but may require the subscriber to be responsible for up to 40 percent of such amount. The organization may require that any tests deemed necessary by a noncontract physician shall be conducted by the organization. The organization may deny reimbursement rights granted under this section in the event the subscriber seeks in excess of three such referrals per year if such subsequent referral costs are deemed by the organization to be evidence that the subscriber has unreasonably overutilized the second opinion privilege. A subscriber thus denied reimbursement under this section shall have recourse to grievance procedures as specified in ss. 641.495, ~~and~~ 641.311, *and 641.511.* The organization's physician's professional judgment concerning the treatment of a subscriber derived after review of a second opinion shall be controlling as to the treatment obligations of the health maintenance organization. Treatment not authorized by the health maintenance organization shall be at the subscriber's expense.

Section 86. Effective October 1, 1991, section 641.511, Florida Statutes, is created to read:

641.511 Subscriber grievance reporting and resolution requirements.—

(1) The health maintenance organization shall maintain records of all grievances and shall report annually to the department a description of the total number of grievances handled, a categorization of the cases underlying the grievances, and the resolution of the grievances.

(2) Each health maintenance organization shall send to the department a copy of its annual and quarterly grievance reports submitted to the Department of Insurance pursuant to s. 641.311(1)(b).

(3) The department shall investigate all reports of unresolved quality of care grievances received from:

(a) Annual and quarterly grievance reports submitted by the health maintenance organization to the Department of Insurance.

(b) Appeals of subscribers whose grievances remain unresolved after the subscriber has followed the full grievance procedure of the organization.

(4) The department shall advise subscribers with grievances to follow the health maintenance organization formal grievance process for resolution prior to review by the department. However, this shall not preclude the department from investigating any complaint prior to completion of the health maintenance organization's formal grievance process.

(5) A quality of care grievance which remains unresolved after a subscriber has followed the full grievance procedure of the organization, after review by the department, may be presented to the Statewide Subscriber Assistance Program Panel as set forth in s. 641.311.

Section 87. Effective October 1, 1991, section 641.512, Florida Statutes, is created to read:

641.512 Accreditation and external quality assurance assessment.—

(1)(a) To promote the quality of health care services provided by health maintenance organizations and prepaid health clinics in this state, the department shall require each health maintenance organization and prepaid health clinic to be accredited within 1 year of the organization's receipt of its certificate of authority and to maintain accreditation by an accreditation organization approved by the department, as a condition of doing business in the state.

(b) In the event that no accreditation organization can be approved by the department, the department shall require each health maintenance organization and prepaid health clinic to have an external quality assurance assessment performed by a review organization approved by the department, as a condition of doing business in the state. The assessment shall be conducted within 1 year of the organization's receipt of its certificate of authority and every 2 years thereafter, or when the department deems additional assessments necessary.

(2) The accreditation or review organization must have nationally recognized experience in health maintenance organization activities and in the appraisal of medical practice and quality assurance in a health maintenance organization setting. The accreditation or review organization shall not currently be involved in the operation of the health maintenance organization or prepaid health clinic, nor in the delivery of health care services to its subscribers. The accreditation or review organization shall not have contracted or conducted consultations within the last 2 years for other than accreditation purposes of the health maintenance organization or prepaid health clinic seeking accreditation or under quality assurance assessment.

(3) A representative of the department shall accompany the accreditation or review organization throughout the accreditation or assessment process, but shall not participate in the final accreditation or assessment determination. The accreditation or review organization shall monitor and evaluate the quality and appropriateness of patient care, the organization's pursuance of opportunities to improve patient care and resolve identified problems, and the effectiveness of the internal quality assurance program required for health maintenance organization and prepaid health clinic certification pursuant to s. 641.49(3)(o).

(4) The accreditation or assessment process shall include a review of:

(a) All documentation necessary to determine the current professional credentials of employed health care providers or physicians providing service under contract to the health maintenance organization or prepaid health clinic.

(b) At least a representative sample of not fewer than 50 medical records of individual subscribers. When selecting a sample, any and all medical records may be subject to review. The sample of medical records shall be representative of all subscribers' records.

(5) Every organization shall submit its books, documentations, and medical records and take appropriate action as may be necessary to facilitate the accreditation or assessment process.

(6) The accreditation or review organization shall issue a written report of its findings to the health maintenance organization's or prepaid health clinic's board of directors. A copy of the report shall be submitted to the department by the organization within 30 business days of its receipt by the health maintenance organization or prepaid health clinic.

(7) The expenses of the accreditation or assessment process of each organization, including any expenses incurred pursuant to s. 641.512, shall be paid by the organization.

Section 88. Effective October 1, 1991, section 641.515, Florida Statutes, is amended to read:

641.515 Examination by the department.—

(1) The department *shall investigate further any quality of care issue contained in recommendations and reports submitted pursuant to ss. 641.311 and 641.511. The department shall also investigate further any information that indicates that the organization does not meet accreditation standards or the standards of the review organization performing the external quality assurance assessment pursuant to reports submitted under s. 641.512* ~~shall examine each organization, regarding the quality of health care services being provided by the organization, as often as it deems necessary for the protection of the people of this state, but not less frequently than once every 3 years.~~ Every organization shall submit its books and records and take other appropriate action as may be necessary to facilitate an examination. The department shall have access

to the organization's medical records of individuals and records of employed *and contracted* physicians, *with the consent of the subscriber or by court order,* as necessary to carry out the provisions of this part. ~~These records shall also be made available to any outside source which conducts an examination pursuant to subsection (7).~~

~~(2) For the purpose of any examination conducted under this part, the Secretary of Health and Rehabilitative Services or the department's general counsel shall have the power to subpoena witnesses and compel their testimony, to subpoena the organization's medical records of individuals and records of employed health care providers, and, upon a showing of good cause, to subpoena medical records of subscribers from physicians providing service under contract to the organization, or other evidence which is relevant to the examination. Records obtained pursuant to this part shall be made available to any outside source which conducts an examination or investigation pursuant to subsection (7).~~

~~(3) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the circuit court of Leon County or of the county wherein such examination is being conducted, or of the county wherein such person resides, may, on the application of the department, issue an order requiring such person to comply with the subpoena and to testify.~~

(2)~~(4)~~ The examination report and the records obtained by the department or by an outside source pursuant to this section *and s. 641.512* shall be used solely for the purpose of the department in enforcing the requirements of this part and in disciplinary proceedings. These records and reports shall be otherwise sealed and shall not be available to the public pursuant to the provisions of s. 119.07 or any other statute providing access to public records. Further, these records and reports shall not be obtainable from the department through discovery or subpoena in civil actions.

~~(5) For the purpose of examinations, the department may administer oaths to and examine employees, officers, and agents of an organization concerning its business and affairs. The department may similarly examine nonemployee health care providers pursuant to subpoena issued by the secretary or the department's general counsel upon a showing of good cause under the provisions of this part.~~

~~(6) The expenses of examination of each organization by the department shall be paid by the organization, including any expenses incurred pursuant to subsection (7).~~

~~(7) The department may contract, at reasonable fees for work performed, with qualified, impartial outside sources to perform examinations or portions thereof pertaining to the qualification of an entity for issuance of a certificate or to determine continued compliance with the requirements of this part, including the examination of the quality of care provided. Any contracted assistance shall be under the direct supervision of the department. The results of any contracted assistance shall be subject to the review of and approval, disapproval, or modification by the department.~~

(3)~~(8)~~ If the department, through its examination or through any investigation, has a reasonable belief that conduct by a staff member or any other employee of an organization may constitute grounds for disciplinary action by the appropriate regulatory board, the department shall report this fact to such regulatory board.

(4) The department shall promulgate rules imposing upon physicians and hospitals performing services for a health maintenance organization standards of care generally applicable to physicians and hospitals. If the department determines that any physician or hospital is not adhering to such standards, it may immediately notify any health maintenance organization for which the physician or hospital performs services.

~~(9) In no event shall the expenses charged to any organization for examination under this section exceed $20,000 per year.~~

Section 89. Effective October 1, 1991, paragraph (g) is added to subsection (1) of section 641.52, Florida Statutes, to read:

641.52 Suspension, revocation of certificate; administrative fine; notice of action to the Department of Insurance; penalty for use of unlicensed providers.—

(1) The department may suspend the authority of an organization to enroll new subscribers or revoke the Health Care Provider Certificate of any organization, or order compliance within 60 days, if it finds that any of the following conditions exist:

(a) The organization is in substantial violation of its contracts.

(b) The organization is unable to fulfill its obligations under outstanding contracts entered into with its subscribers.

(c) The organization knowingly utilizes a provider who is furnishing or has furnished health care services and who does not have a subsisting license or other authority to practice or furnish health care services in this state.

(d) The organization no longer meets the requirements for the certificate as originally issued.

(e) The organization has violated any lawful rule or order of the department or any provision of this part.

(f) The organization has refused to be examined or to produce its accounts, records, and files for examination or to perform any other legal obligation as to such examination, when required by the department.

(g) The organization has not, after given reasonable notice, maintained accreditation or received favorable external quality assurance assessments pursuant to s. 641.512 or following an investigation pursuant to s. 641.515.

Section 90. Effective July 1, 1991, the Health Care Cost Containment Board is directed to conduct a study on competition and provider contracts in health maintenance organizations.

(1) The board shall prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by December 15, 1991, a report addressing the following issues:

(a) The impact of competition, patient care, physician-patient relationships, and consumer choice on contract provisions which do not permit physicians to enter into contracts with other health maintenance organizations.

(b) The impact of competition, patient care, physician-patient relationships, and consumer choice on contract provisions which require a physician to make payment for liquidated damages when a physician terminates an agreement with a health maintenance organization and a subscriber elects to receive care from the same physician through another health maintenance organization.

(2) The report shall contain recommendations for any changes in state requirements for health maintenance provider contracts.

(3) The board shall appoint a technical advisory panel to conduct the study, which shall have representation from the following groups:

(a) A representative of elderly health care consumers.

(b) A representative of the physician community.

(c) Two representatives of the health maintenance organization industry.

(d) The Secretary of Health and Rehabilitative Services or his designee.

(e) The Commissioner of Insurance or his designee.

(f) A representative of the hospital industry.

(4) The board may procure information and assistance from any officer or agency of the state or any subdivision thereof. All such officers and agencies shall give the board all relevant information and reasonable assistance on any matters of research within their knowledge and control.

(5)(a) There is hereby transferred from the Health Maintenance Organization Quality Care Trust Fund to the Health Care Cost Containment Trust Fund the sum of $60,000.

(b) There is hereby appropriated from the Health Care Cost Containment Trust Fund to the Health Care Cost Containment Board the sum of $60,000 for the purpose of conducting the study on competition and provider contracts in health maintenance organizations.

Section 91. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, part IV of chapter 641, Florida Statutes, shall not stand repealed on October 1, 1991, and part IV of chapter 641, including each section which is added to part IV of chapter 641, Florida Statutes, by this act, is repealed on October 1, 2001, and shall be reviewed by the Legislature pursuant to section 11.61, Florida Statutes.

Section 92. Effective July 1, 1991, there is hereby appropriated from the Health Maintenance Organization Quality Care Trust Fund the sum of $600,000 for nine Career Service positions in the Department of Health and Rehabilitative Services to carry out the provisions of this act relating to health maintenance organizations.

Section 93. Effective upon this act becoming a law, subsection (5) of section 154.01, Florida Statutes, is amended to read:

154.01 Public health unit delivery system.—

(5) In order to provide for the effective delivery of health services in keeping with expanding needs or modernization, the Legislature may authorize funding for construction or expansion projects to public health units *or other nonprofit primary health care providers who are under contract with the department*. The department shall submit a list of construction or expansion needs arranged in order of priority to the Legislature in conjunction with each biennial budget request. The priority list shall be based on the following criteria:

(a) The capacity of the health facility to efficiently provide the full set of authorized services for the number of patients who can be served with available funds;

(b) The capacity of the health facility to meet the anticipated growth in demand for service over the next 10 years; and

(c) The adequacy of the facility to ensure patient and staff safety, provide privacy during eligibility determination and examination, and enable an efficient movement of patients through service areas.

Section 94. The Florida Health Care Purchasing Cooperative Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Health Care Purchasing Cooperative Act."

(2) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(a) There is authorized the "Florida Health Care Purchasing Cooperative," which shall pool the purchasing power for health care services of state and local governmental entities, service providers under contract with such governmental entities, and other entities identified by the cooperative as potential participants in pooled purchasing arrangements. The Florida Health Care Purchasing Cooperative is a nonprofit private corporation organized pursuant to chapter 617, Florida Statutes, and has all powers necessary to carry out the purposes and provisions of this act, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept, from any source, contributions of money, property, labor, or any other thing of value.

(b) Members of the Florida Health Care Purchasing Cooperative are:

1. All state governmental entities that purchase health care services for clients or for employees through health care coverage;

2. Local governmental entities, including, but not limited to, counties, municipalities, school districts, and other special districts, that voluntarily become members;

3. Service providers under contract with governmental entities, which providers may voluntarily become members when the cooperative determines it is appropriate; and

4. Other entities identified as potential members by the cooperative, such as groups of small employers or part-time employees, which entities may voluntarily become members when the cooperative determines it is appropriate.

(c) The Florida Health Care Purchasing Cooperative shall:

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

2. Secure staff necessary to properly administer the corporation;

3. Develop and implement a plan to publicize the Florida Health Care Purchasing Cooperative, the eligibility requirements for membership, and the procedures for becoming members of the cooperative and to maintain public awareness of the cooperative and its services;

4. Identify third-party payers and health care provider networks that serve members of the cooperative;

5. Collect data on costs and utilization of health care services from members of the cooperative, health care providers that provide services to employees and clients of members of the cooperative, and third-party payers for members of the cooperative. The cooperative shall protect the confidentiality and regulate the disclosure of data and records collected and maintained by the cooperative when such data and records contain information:

a. Of a sensitive, personal or medical 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; or

b. That is used to protect or further a business advantage over those who do not know or use that information, and the disclosure of which would injure the affected entity in the marketplace.

Notwithstanding section 119.14, Florida Statutes, all information obtained prior to October 1, 2001, and determined to be confidential pursuant to subparagraph 5. is exempt from section 119.07(1), Florida Statutes. This exemption is subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes.

6. Compare cost and utilization data collected pursuant to subparagraph 5. with data collected by the Health Care Cost Containment Board. Because of the importance of data collection and analysis to the success of the cooperative, the cooperative shall carry out its responsibilities in conjunction with the Health Care Cost Containment Board and use that board's data gathering and analysis capabilities as the board of directors considers appropriate.

7. Establish criteria for evaluating health care provider networks and third-party payers, seeking advice from providers and third-party payers serving members of the cooperative.

8. Evaluate health care provider networks and third-party payers.

9. Inform members of the cooperative about the results of evaluations of health care provider networks and third-party payers.

(d) The Florida Health Care Purchasing Cooperative may:

1. Negotiate and enter into contracts on behalf of its members with health care provider networks and third-party payers for the delivery of health care services;

2. Negotiate and enter into contracts on behalf of its members with insurance carriers, reinsurers, and third-party administrators for insurance, aggregate stop loss, specific stop loss, and administrative services; and

3. In geographical areas where cost-effective health care provider networks that provide good quality services do not exist, assist members in developing health care provider networks and negotiate and contract directly with health care providers for the provision of health care services.

4. Assess the impact of existing or proposed mandated or mandatorily offered health care benefits on members and their employees to determine if such benefits promote the health and well-being of employees through prevention of illness, early detection and treatment of illness, and reduced long-term health care costs.

(3) BOARD OF DIRECTORS.—

(a) The Florida Health Care Purchasing Cooperative shall operate subject to the supervision and approval of a board of directors.

(b) The initial board of directors shall consist of:

1. The Director of the Division of State Employees Insurance of the Department of Administration;

2. The Assistant Secretary for Medicaid of the Department of Health and Rehabilitative Services;

3. The Assistant Secretary for Health Services of the Department of Corrections;

4. Two persons who are responsible for purchasing health benefits for municipal employees and who are appointed by the Florida League of Cities;

5. A person who is responsible for purchasing health care benefits for county employees or health care services for county clients and who is appointed by the Florida Association of Counties; and

6. A person who is responsible for purchasing health care benefits for school district employees and who is appointed by the Florida Association of School Administrators.

Appointments to the initial board of directors shall be made by August 1, 1991. The appointed members of the initial board of directors shall be appointed for 2 years and may be reappointed. The Director of the Division of State Employees Insurance shall chair the initial board of directors.

(c) The board shall adopt bylaws for the corporation which shall contain provisions for the selection of directors to represent members of the cooperative following the initial appointments. The board of directors may increase the number of its directors to provide for representation by members of the cooperative.

(d) Board members may be reimbursed from funds of the Florida Health Care Purchasing Cooperative, as prescribed by law, for actual and necessary expenses that they incur in performing their duties.

(e) A member of the board of directors or an employee or agent of the board incurs no liability, and no cause of action may arise against a board member or any employee or agent of the board, for any action taken by the member, employee, or agent in performing his powers and duties under this act.

(4) STAFF AND ADMINISTRATIVE SUPPORT.—The Health Care Cost Containment Board shall provide staff and administrative support to, and shall draft bylaws for, the Florida Health Care Purchasing Cooperative until the board of directors of the cooperative has organized itself and appointed an executive director. The board of directors shall conduct its first meeting on or before September 1, 1991.

Section 95. (1) Notwithstanding the provisions of section 110.123(6), Florida Statutes, the sum of $500,000 for fiscal year 1991-1992 and the sum of $500,000 for fiscal year 1992-1993 are appropriated from the State Employees Disability Trust Fund for transfer to the Health Care Cost Containment Trust Fund.

(2) Notwithstanding the provisions of section 407.04(1), Florida Statutes, the sum of $500,000 for fiscal year 1991-1992 and the sum of $500,000 for fiscal year 1992-1993 are appropriated from the Health Care Cost Containment Trust Fund to the Florida Health Care Purchasing Cooperative for the purpose of implementing the powers and duties of the cooperative.

Section 96. Section 766.205, Florida Statutes, is amended to read:

766.205 Presuit discovery of medical negligence claims and defenses.—

(1) Upon the completion of presuit investigation pursuant to s. 766.203, which investigation has resulted in the mailing of a notice of intent to initiate litigation in accordance with s. 766.106, corroborated by medical expert opinion that there exist reasonable grounds for a claim of negligent injury, each party shall provide to the other party reasonable access to information within its possession or control in order to facilitate evaluation of the claim.

(2) Such access shall be provided without formal discovery, pursuant to s. 766.106, and failure to so provide shall be grounds for dismissal of any applicable claim or defense ultimately asserted.

(3) As an exception to s. 455.241, any health care provider noticed pursuant to s. 766.106 (hereinafter referred to as prospective defendant), or the prospective defendant's legal representative or insurer, may request and obtain during the presuit period, or any time thereafter prior to verdict, medical information and records about the patient from any former or current treating health care provider of the patient, and such health care provider may furnish such medical information and records if such health care provider is willing to furnish such information and records voluntarily. However, this subsection does not require a former or current treating health care provider to furnish such medical information or records. Written notice of the furnishing of any such information or records must be provided to the patient or the patient's legal representative by the requestor within 3 business days after any such information or records are obtained. This subsection does not affect other rights or obligations of the parties or any former or current treating health care providers except as provided in this subsection.

(4)~~(3)~~ Failure of any party to comply with this section shall constitute evidence of failure of that party to comply with good-faith discovery requirements and shall waive the requirement of written medical corroboration by the party seeking production.

(5)~~(4)~~ No statement, discussion, written document, report, or other work product generated solely by the presuit investigation process is discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, hospitals and other medical facilities, and the officers, directors, trustees, employees, and agents thereof, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit investigation process. Such immunity from civil liability includes immunity for any acts by a medical facility in connection with providing medical records pursuant to s. 766.204(1) regardless of whether the medical facility is or is not a defendant.

Section 97. Effective July 1, 1991, paragraph (a) of subsection (11) of section 407.50, Florida Statutes, is amended to read:

407.50 Review of hospital budgets.—

(11) Notwithstanding any other provisions of this part:

(a) Any hospital operated by the Department of Health and Rehabilitative Services or the Department of Corrections;~~,~~ any comprehensive rehabilitative hospital as defined in s. 407.002(7);~~,~~ any rural hospital as defined in s. 407.002(24);~~,~~ *any intensive residential treatment program for children and adolescents as defined in s. 395.002(8) which received a certificate of need on or before January 1, 1991, and is licensed under chapter 395 for less than 33 beds, which is not part of a multifacility organization and which is part of a community mental health system;* and the Florida Elks Children's Hospital located in Umatilla shall be exempt from filing a budget, shall be exempt from budget review and approval for exceeding the maximum allowable rate of increase, and shall be exempt from any penalties arising therefrom. However, each such hospital shall be required to submit to the board its audited actual experience, as required by s. 407.05(7).

Section 98. Effective upon this act becoming a law, subsection (9) is added to section 186.003, Florida Statutes, to read:

186.003 Definitions.—As used in ss. 186.001-186.031 and 186.801-186.911, the term:

(9) "Statewide Health Council" means the Statewide Health Council established pursuant to s. 381.703.

Section 99. Effective upon this act becoming a law, subsection (2) of section 186.022, Florida Statutes, is amended to read:

186.022 State agency functional plans; consistency with state comprehensive plan.—

(2) The Executive Office of the Governor shall review the proposed state agency functional plans for consistency with the state *comprehensive* plan, and shall, within 60 days, return a proposed agency functional plan to the agency, together with any proposed revisions. *The Executive Office of the Governor shall consider the findings of the Statewide Health Council's review of the consistency of the health components of agency functional plans with the health element of the state comprehensive plan in formulating proposed revisions to the agency functional plans.*

Section 100. Effective upon this act becoming a law, present subsection (7) of section 186.503, Florida Statutes, is redesignated as subsection (8) of that section and a new subsection (7) and subsection (9) are added to that section to read:

186.503 Definitions.—As used in this act, the term:

(7) "Local health council" means a regional agency established pursuant to s. 381.703.

(9) "Statewide Health Council" means the Statewide Health Council established pursuant to s. 381.703.

Section 101. Effective upon this act becoming a law, subsection (10) is added to section 186.507, Florida Statutes, to read:

186.507 Comprehensive regional policy plans.—

(10) Each regional planning council shall enter into a memorandum of agreement with each local health council in its comprehensive planning district to ensure the coordination of health planning. The memorandum of agreement shall specify the manner in which each regional planning council and local health council will coordinate their activities.

Section 102. Effective upon this act becoming a law, subsection (1) of section 186.508, Florida Statutes, is amended to read:

186.508 Comprehensive regional policy plan adoption; consistency with state comprehensive plan.—

(1) Within 18 months of the adoption of the state comprehensive plan, each regional planning council shall submit to the Executive Office of the Governor its proposed comprehensive regional policy plan. The Executive Office of the Governor, or its designee, shall review the proposed comprehensive regional policy plan for consistency with the adopted state comprehensive plan and shall, within 90 days, return the proposed comprehensive regional policy plan to the council, together with any revisions recommended by the Governor. *The Executive Office of the Governor must consider the findings of the Statewide Health Council's review of the consistency of the health elements of the comprehensive regional policy plans with the health element of the state comprehensive plan in formulating recommended revisions to the comprehensive regional policy plans.* The Governor's recommended revisions shall be included in the plans in a comment section. However, nothing herein shall preclude a regional planning council from adopting or rejecting any or all of the revisions as a part of its plan prior to the effective date of the plan. The rules adopting the regional policy plan shall not be subject to rule challenge under s. 120.54(4) or to drawout proceedings under s. 120.54(17), but, once adopted, shall be subject to an invalidity challenge under s. 120.56 by substantially affected persons, including the Executive Office of the Governor. The rules shall be adopted by the regional planning councils by July 1, 1987, and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(13).

Section 103. Effective upon this act becoming a law, section 186.511, Florida Statutes, is amended to read:

186.511 Evaluation of comprehensive regional policy plan; changes in plan.—The regional planning process shall be a continuous and ongoing process. Each regional planning council shall prepare an evaluation report on its comprehensive regional policy plan at least once every 3 years; assess the successes or failures of the plan; and prepare and adopt by rule amendments, revisions, or updates to the plan as needed. *Each regional planning council shall involve the appropriate local health councils in its region in the review of the health element of its plan.*

Section 104. Effective upon this act becoming a law, subsection (6) of section 187.201, Florida Statutes, 1990 Supplement, is amended to read:

187.201 State Comprehensive Plan adopted.—The Legislature hereby adopts as the State Comprehensive Plan the following specific goals and policies:

(Substantial rewording of subsection. See s. 187.201(6), F.S., for present text.)

(6) HEALTH.—

(a)1. Goal.—Healthy residents who protect their own health and the health of others and who actively participate in recovering their own health when they become ill.

2. Policies.—

a. Individuals are fundamentally responsible for their own health, but they need encouragement and may need financial support from government.

b. The state shall develop mechanisms whereby all Florida residents can participate in a plan of adequate health care coverage to which they contribute financially, based on their ability to pay.

c. All Florida residents should be supported through education and other means to develop and maintain healthy lifestyles.

d. All Florida students should be provided with comprehensive, continuous health education in pre-Kindergarten through grade 12 settings.

e. Treatment of illness is a partnership between health care providers and patients in which individual patients participate in decisions related to their health care. In this process, patients and health care providers have mutual rights and responsibilities.

(b)1. Goal.—An environment which supports a healthy population and which does not cause illness.

2. Policies.—

a. Every Florida resident has a right to breathe clean air, drink pure water, and eat nutritious food.

b. The state should assure a safe and healthful environment through monitoring and regulating activities which impact the quality of the state's air, water, and food.

c. Government shall ensure that future growth does not cause the environment to adversely affect the health of the population.

d. Every employer shall provide a safe and healthful workplace.

(c)1. Goal.—Health care services which are of high quality, reasonably accessible, and adequate to meet the needs of the public.

2. Policies.—

a. Where feasible, resources will be redirected to programs and services that prevent illness and intervene in the early stages of disease.

b. The public shall have access to affordable health care.

c. Each pregnant woman in this state has a right to adequate prenatal care in order to protect her health and to help her child begin life healthy.

d. The state shall promote the availability of needed health care professionals and services in medically underserved areas.

e. The responsibility for ensuring good quality, accessibility, and availability of health care services is shared among health care practitioners, institutions, patients, and government.

f. Government shall provide for the orderly growth and development of health care facilities and services through health planning, growth management, and regulation.

g. Government shall establish a public health infrastructure of facilities, equipment, and personnel necessary to provide for community health needs.

(d)1. Goal.—Health costs which are contained to a level appropriate to the financial resources of the state and its residents.

2. Policies.—

a. The primary long-range strategy for containing health care costs shall be prevention of avoidable illness and disability.

b. The state shall promote the development of a rational financing system for health care which minimizes the shifting of costs, discourages inappropriate utilization, reduces administrative costs, and contains the costs of new technology.

c. The state shall encourage the delivery of health care services in a manner that enables patients to establish reasonable expectations of outcome and enables health care providers to focus on the health of their patients.

Section 105. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 381.703, Florida Statutes, are amended to read:

381.703 Local and state health planning.—

(1) LOCAL HEALTH COUNCILS.—

(a) Local health councils are hereby established as public or private nonprofit agencies serving the counties of a district of the department. The members of each council shall be appointed in an equitable manner by the county commissions having jurisdiction in the respective district. Each council shall be composed of a number of persons equal to 1½ times the number of counties which compose the district or 12 members, whichever is greater. Each county in a district shall be entitled to at least one member on the council. The balance of the membership of the council shall be allocated among the counties of the district on the basis of population rounded to the nearest whole number; except that in a district composed of only two counties, no county shall have fewer than four members. ~~The department shall adopt a rule allocating membership of the various counties pursuant to this paragraph which designates the number of initial appointments from each county.~~ The appointees ~~who~~ shall be representatives of health care providers, health care purchasers, and nongovernmental health care consumers, but not excluding elected government officials~~, and which provides for an orderly rotation of the appointment of the various classifications of members among the counties in each district~~. The members of the consumer group shall include a representative number of persons over 60 years of age. A majority of council members shall consist of health care purchasers and health care consumers. *The local health council shall provide each county commission a schedule for appointing council members to ensure that council membership complies with the requirements of this paragraph.* The members of the local health council shall elect a chairman. Members shall serve for terms of 2 years and may be eligible for reappointment.

(b) Each local health council shall:

1. Develop a district *health* plan *which is consistent with the objectives and strategies in the state health plan, but*~~, using uniform methodology as set forth by the department,~~ which shall permit each local health council to develop *strategies and set priorities for implementation* ~~goals and criteria~~ based on its unique local health needs. *The district health plan must contain preferences for health services' and facilities' development which must be considered by the department in its review of certificate-of-need applications.* The district *health* plan shall be submitted to the department and updated periodically ~~and shall be in a form prescribed by the department~~. *The district health plans shall use a uniform format and be submitted to the department according to a schedule developed by the department in conjunction with the Statewide Health Council and the local health councils. The schedule must provide for coordination between the development of the state health plan and the district health plans and for the development of district health plans by major sections over a multiyear period.* The elements of a district plan which are necessary to the review of certificate-of-need applications for proposed projects within the district shall be adopted by the department as a part of its rules. ~~The district plan shall include, but need not be limited to:~~

~~a. The availability, quality of care, efficiency, appropriateness, accessibility, extent of utilization, and adequacy of existing health care facilities and services and hospices in the district.~~

~~b. The need, availability, and adequacy of other health care facilities and services and hospices in the district, including outpatient care and ambulatory or home care services, which may serve as less costly alternatives to proposed or available health care facilities and services.~~

~~c. The probable economies and improvements in services that may be derived from operation of joint, cooperative, or shared health care and health planning resources.~~

~~d. The need in the district for special equipment and services which are not reasonably and economically accessible in adjoining areas.~~

~~e. The need for research and educational facilities, including, but not limited to, institutional and community training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels, and for other health care practitioners.~~

~~f. A description of: the existing care and treatment network for persons with human immunodeficiency virus, acquired immune deficiency syndrome, and acquired immune deficiency syndrome related complex, as delineated in s. 381.612; an analysis of service and facility needs for the identified patient population; and recommendations on an annual basis to the department and the Legislature regarding additional service needs for such patients residing in the district.~~

~~2. Stimulate the development of cooperative arrangements relating to the health manpower training efforts of educational institutions and service institutions and the health manpower recruitment and retention efforts of medically underserved communities.~~

~~3. Identify and encourage community resources and mechanisms to facilitate consumer choice and market competition in health care by providing data, information, and analysis on charges, resource availability, and certification.~~

2.~~4.~~ Advise the district administrator of the department on health care *issues and* resource allocations~~, including federal block grant funds, and work with the district administrator; the district alcohol, drug abuse, and mental health planning councils; and the areawide agency on aging in developing and carrying out a health resources allocation plan.~~

3.~~5.~~ *Promote* ~~Implement activities to increase~~ public awareness of community health needs, *emphasizing health promotion* and ~~emphasize advantages of preventive health activities and~~ cost-effective health service selection.

4.~~6.~~ *Collect data and conduct analyses and studies related to health care needs of the district, including the needs of medically indigent persons, and* assist the department *and other state agencies* in carrying out data collection activities that relate to the functions ~~set forth~~ in this subsection.

5.~~7.~~ Monitor the onsite construction progress, if any, of *certificate-of-need approved* projects and report *council* ~~their~~ findings to the department on forms provided by the department.

6. Advise and assist regional planning councils within each district with the development of the health element of the comprehensive regional policy plan to address the health goals and policies in the State Comprehensive Plan.

7.~~8.~~ Advise and assist ~~regional planning councils and~~ local governments within each ~~respective~~ district on the development of *an* optional *health* plan *element of the comprehensive plan provided in chapter 163, to assure compatibility with* ~~elements to address~~ the health goals and policies in the State Comprehensive Plan, *and district health plan. To facilitate the implementation of this section, the local health council shall annually provide the local governments in its service area, upon request, with:*

a. A copy and appropriate updates of the district health plan;

b. A report of hospital and nursing home utilization statistics for facilities within the local government jurisdiction; and

c. Applicable department rules and calculated need methodologies for health facilities and services regulated under s. 381.704 for the district served by the local health council.

8.~~9.~~ Monitor and evaluate the adequacy, appropriateness, and effectiveness, within the district, of *local,* state, *federal, and private* funds distributed to meet the needs of the medically indigent *and other underserved population groups.* ~~A report on indigent care shall be prepared by each local health council and submitted to the Statewide Health Council no later than January 1 of each year. At a minimum, the report shall include the following elements:~~

~~a. An inventory of services within the district providing health care to Medicaid and medically indigent clients.~~

~~b. An assessment of the use of those services by Medicaid and medically indigent clients.~~

~~c. An evaluation of the population need within the district for indigent health care services and a determination of whether or not that need is being met.~~

~~d. A summary presentation of public opinion in communities throughout the district on the needs of the medically indigent and the services provided to meet these needs.~~

~~e. Recommendations for improving health care services for the medically indigent.~~

9.~~10. Have the responsibility~~ In conjunction with the Department of Health and Rehabilitative Services and Statewide Health Council, *plan for* ~~of planning and coordinating~~ services at the local level for persons

infected with *the* human immunodeficiency virus~~, acquired immune deficiency syndrome, and acquired immune deficiency syndrome related~~ complex.

10. Provide technical assistance to encourage and support activities by providers, purchasers, consumers, and local, regional, and state agencies in meeting the health care goals, objectives, and policies adopted by the local health council.

11. Provide the department with data required by rule for the review of certificate-of-need applications and the projection of need for health services and facilities in the district.

(c) Local health councils may conduct public hearings pursuant to s. 381.709(3)(b).

(d) Each local health council shall enter into a memorandum of agreement with each regional planning council in its district. In addition, each local health council shall enter into a memorandum of agreement with each local government that includes an optional health element in its comprehensive plan. Each memorandum of agreement must specify the manner in which each local government, regional planning council, and local health council will coordinate their activities to ensure a unified approach to health planning and implementation efforts.

(e)~~(d)~~ Local health councils may employ personnel to carry out the councils' purposes. Such personnel shall possess qualifications and be *compensated in a manner* ~~paid salaries~~ commensurate with comparable positions in the Career Service System. However, such personnel shall not be deemed to be state employees.

(f) Personnel of the local health councils shall provide an annual orientation to council members about council member responsibilities. The orientation shall include presentations and participation by department staff.

(g)~~(e)~~ Each local health council is authorized to accept and receive, in furtherance of its health planning functions, funds, grants, and services from governmental agencies and from private or civic sources and to perform studies related to local health planning in exchange for such funds, grants, or services. Each local health council shall, no later than January 30 of each year, render an accounting of the receipt and disbursement of such funds received by it to the department. The department shall consolidate all such reports and submit such consolidated report to the Legislature no later than March 1 of each year. Funds received by a local health council pursuant to this paragraph shall not be deemed to be a substitute for, or an offset against, any funding provided pursuant to subsection (3).

(2) STATEWIDE HEALTH COUNCIL.—The Statewide Health Council is hereby established as a state-level comprehensive health *planning and policy advisory board. For administrative purposes, the council shall be located within* ~~council which is advisory to~~ the department. The Statewide Health Council shall be composed of*:* the *State Health Officer, the Deputy Secretary for Programs, the Assistant Secretary for Medicaid, and the Assistant Secretary for Regulation and Health Facilities of the department; the executive director of the Health Care Cost Containment Board; the Insurance Commissioner or his designee; the Vice Chancellor for Health Affairs of the Board of Regents; three chairmen of regional planning councils, selected by the regional planning councils; five* ~~11~~ chairmen of ~~the~~ local health councils, *selected by the local health councils; four* ~~two~~ members appointed by the Governor, *one of whom is a consumer over 60 years of age, one of whom is a representative of organized labor, one of whom is a physician, and one of whom represents the nursing home industry; five* ~~two~~ members appointed by the President of the Senate, *one of whom is a representative of the insurance industry in this state, one of whom is the chief executive officer of a business with more than 300 employees in this state, one of whom represents the hospital industry, one of whom is a primary care physician, and one of whom is a nurse,* and *five* ~~two~~ members appointed by the Speaker of the House of Representatives, *one of whom is a consumer who represents a minority group in this state, one of whom represents the home health care industry in this state, one of whom is an allied health care professional, one of whom is the chief executive officer of a business with fewer than 25 employees in this state, and one of whom represents a county social services program that provides health care services to the indigent.* ~~At least one of the two members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, respectively, shall be a health care consumer or a health care purchaser.~~ Appointed members of the council shall serve for ~~a~~ 2-year *terms* ~~term~~ commencing *October* ~~on January~~ 1 of each *even-numbered* ~~odd-numbered~~ year. *The council shall elect a president from among the members who are not state employees.* The Statewide Health Council shall:

(a) Advise the Governor, the Legislature, and the department on state health policy issues, state and local health planning activities, and state health regulation programs;

(b) Prepare a state health plan that specifies subgoals, quantifiable objectives, strategies, and resource requirements to implement the goals and policies of the health element of the State Comprehensive Plan. The plan must assess the health status of residents of this state; evaluate the adequacy, accessibility, and affordability of health services and facilities; assess government-financed programs and private health care insurance coverages; and address other topical local and state health care issues. Within 2 years after the health element of the State Comprehensive Plan is amended, and by July 1 of every 3rd year, if it is not amended, the Statewide Health Council shall submit the state health plan to the Executive Office of the Governor, the secretary of the department, the President of the Senate, and the Speaker of the House of Representatives;

(c)~~(b)~~ Promote public awareness of state health care issues *and, in conjunction with the local health councils, conduct public forums throughout the state to solicit the comments and advice of the public on the adequacy, accessibility, and affordability of health care services in this state and other health care issues;*

(d)~~(c)~~ Consult with local health councils, the Health Care Cost Containment Board, the Department of Insurance, the Department of Health and Rehabilitative Services, and other appropriate public and private entities, including health care industry representatives regarding the development of health policies;

(e) Serve as a forum for the discussion of local health planning issues of concern to the local health councils and regional planning councils;

(f)~~(d)~~ Review district health plans for consistency with *the* State *Comprehensive Plan and the state* health *plan* ~~goals and policies~~;

(g) Review the health components of agency functional plans for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to agency functional plans to make them consistent with the State Comprehensive Plan;

(h) Review the comprehensive regional plans for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to comprehensive regional policy plans to make them consistent with the State Comprehensive Plan;

~~(e) Prepare a state report, which includes the evaluations by each local health council for its respective district, on the adequacy, appropriateness, and effectiveness of state funds distributed to meet the needs of the medically indigent;~~

(i)~~(f)~~ Assist the Department of Community Affairs in the review of local government comprehensive plans to ensure consistency with policy developed in the district health plans;

(j) With the assistance of the local health councils, conduct public forums and use other means to determine the opinions of health care consumers, providers, payers, and insurers regarding the state's health care goals and policies and develop suggested revisions to the health element of the State Comprehensive Plan. The council shall submit the proposed revisions to the health element of the State Comprehensive Plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 1993, and shall widely circulate the proposed revisions to affected parties. The council shall periodically assess the progress made in achieving the goals and policies contained in the health element of the State Comprehensive Plan and reporting to the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives; and

(k)~~(g)~~ Conduct any other functions or studies and analyses falling under the *duties listed* ~~purview of the mission, goals, and objectives~~ above.~~; and~~

~~(h) Assist the local health councils in developing their analysis of service and facility needs for persons with acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus infection within their district and advise the department on additional service needs for such persons in the state.~~

(4) DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT.—

(a) The department, *in conjunction with the Statewide Health Council and the local health councils,* is responsible for the planning of all health care services in the state and for *assisting the Statewide Health Council in* the preparation of the state health plan.

(b) The department shall develop and maintain a comprehensive health care data base for the purpose of health planning and for certificate-of-need determinations. The department or its contractor is authorized to require the submission of information from health facilities, health service providers, and licensed health professionals which is determined by the department, through rule, to be necessary for meeting the department's responsibilities as established in this section.

(c) The department shall assist personnel of the local health councils in providing an annual orientation to council members about council member responsibilities.

(d)~~(c)~~ The department shall *contract with* ~~provide funding for~~ the local health councils *for the services specified in subsection (1)* ~~according to an allocation plan~~. All contract funds shall be distributed according to an allocation plan developed by the department that provides for a minimum and equal funding base for each local health council. Any remaining funds shall be distributed based on adjustments for workload. The department may also make grants to or reimburse local health councils from federal funds provided to the state for activities related to those functions set forth in this section. *The department may withhold funds from a local health council or cancel its contract with a local health council which does not meet performance standards agreed upon by the department and local health councils.*

Section 106. Effective upon this act becoming a law, subsection (2) of section 401.291, Florida Statutes, 1990 Supplement, is amended to read:

401.291 Automatic external defibrillators.—

(2) An automatic or semiautomatic defibrillator may be used by any individual who meets the requirements of this section and who is a member of a locally coordinated response team which is authorized to respond to a request for emergency assistance for the purpose of providing an assessment of the need for and appropriate use of an automatic or semiautomatic defibrillator, provided such individual has successfully completed an appropriate training course as approved by the local emergency medical services medical director. This requirement shall consist of certification in cardiopulmonary resuscitation *or*~~,~~ successful completion of an 8-hour basic first-aid course *that includes cardiopulmonary resuscitation training*, demonstrated proficiency in the use of an automatic or semiautomatic defibrillator, and successful completion of at least 6 hours of training in at least two sessions, to include instruction in:

(a) The proper use, maintenance, and periodic inspection of the automatic or semiautomatic defibrillator.

(b) Defibrillator safety precautions to enable the user to administer a shock without jeopardizing the safety of the patient, the user, or other persons.

(c) Assessment of an unconscious person to determine if cardiac arrest has occurred and the appropriateness of applying an automatic or semiautomatic defibrillator.

(d) Recognizing that an electrical shock has been delivered to the patient and that the defibrillator is no longer charged.

(e) Rapid, accurate assessment of the patient's postshock status to determine if further activation of the automatic or semiautomatic defibrillator is necessary.

(f) The operations of the local emergency medical services system, including methods of access to the emergency response system, and interaction with emergency medical services personnel.

(g) The role of the user and coordination with other emergency medical service providers in the provision of cardiopulmonary resuscitation, defibrillation, basic life support, and advanced life support.

(h) The responsibility of the user to continue care until the arrival of medically qualified personnel.

Section 107. Effective upon this act becoming a law, the sum of $70,000 is hereby appropriated from the Local and State Health Trust Fund to the Statewide Health Council for reviewing the agency functional plans and comprehensive regional policy plan for consistency with the health element of the state comprehensive plan, for the public hearings on the health element of the state comprehensive plan, and for staff support and expenses of the council.

Section 108. Effective upon this act becoming a law, section 381.025, Florida Statutes, is hereby repealed.

Section 109. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Senator Malchon moved the following amendments which were adopted:

Senate Amendment 1A to Senate Amendment 1 to House Substitute Amendment 1 as amended—On page 210, between lines 2 and 3, insert:

Section 109. Health Care Work Group.—

(1) CREATION; MEMBERSHIP.—There is hereby created the Health Care Work Group, hereinafter referred to as the "work group."

(a) The work group shall be composed of 21 members to be appointed by the Governor, the majority of whom shall be representatives of purchasers of group health insurance in Florida. The Governor shall appoint a chairperson from among the members of the work group.

(b) The members of the work group shall be appointed within 15 days after the effective date of this section. The work group shall hold its first meeting within 30 days after the effective date of this section.

(2) ADMINISTRATION; COMPENSATION.—

(a) The work group shall be located within the Department of Health and Rehabilitative Services for administrative purposes. Staff assistance shall be provided by the department, and the department shall provide the work group with the services of an actuary and a certified public accountant. The department and the Health Care Cost Containment Board shall also provide any health-related data requested by the work group.

(b) Members of the work group shall not receive compensation for their service on the work group, but shall be entitled to reimbursement through the Department of Health and Rehabilitative Services for per diem or travel expenses as provided in s. 112.061, Florida Statutes.

(3) DUTIES AND RESPONSIBILITIES.—

(a) The work group shall systematically consider the range of health care issues facing Florida, review the available research, study the best practices of other states, listen to interested parties, identify the fundamental problems, and develop strategies for a long-term health care plan for Florida that addresses health care cost, financing, access, and quality of care issues, develops alternative solutions, and advises the Governor and the Legislature on long-term health care policies, proposed systemic reforms, and possible economies.

(b) On or before January 1, 1992, the work group shall prepare and submit a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, which shall include the following:

1. Recommendations for reviewing, monitoring, and evaluating the current status of, and proposals for changes to, health care policy, availability, access, quality, and financing.

2. Recommendations for identifying ways in which state tax policy can help maintain a healthy public and private health care industry.

3. Recommendations for planning for the health care requirements of a growing, diverse population.

4. Recommendations for determining supply and demand requirements for health care manpower, health professional training program needs, and other initiatives to ensure an adequate supply of well-trained health professionals.

5. Recommendations relating to the establishment of a Health Care Commission, including alternatives to establishing a Health Care Commission and, if a commission is recommended:

a. Whether a full-time or part-time commission is the most appropriate structure;

b. What functions should be consolidated under the Health Care Commission, including the licensing of health professionals, the regulation of health insurance, or other related activities; and

c. Mechanisms to ensure that the commission does not become unduly influenced by regulated entities.

(4) EFFECTIVE DATE; REPEAL.—This section shall take effect upon becoming a law and shall stand repealed on April 1, 1992.

(Renumber subsequent section.)

Senate Amendment 1B to Senate Amendment 1 to House Substitute Amendment 1 as amended—On page 188, line 3, through page 189, line 26, strike all of said lines and renumber subsequent sections.

Senate Amendment 1C to Senate Amendment 1 to House Substitute Amendment 1 as amended—On page 210, between lines 2 and 3, insert:

Section 109. Each applicant who qualified to take, and before 1989 successfully completed, a course of study approved by the Department of Professional Regulation pursuant to chapter 86-90, Laws of Florida, relating to the subject matter within the jurisdiction of the board provided for in section 466.004, Florida Statutes, may apply for licensure as provided for under section 455.218, Florida Statutes, without having to meet the requirement under section 455.218(1)(f), Florida Statutes, if the applicant meets all other eligibility requirements for licensure under section 455.218, Florida Statutes. This provision shall take effect upon becoming law.

(Renumber subsequent sections.)

Senate Amendment 1D to Senate Amendment 1 to House Substitute Amendment 1 as amended—On page 210, between lines 2 and 3, insert:

Section 109. Effective October 1, 1991, section 627.4106, Florida Statutes, is created to read:

627.4106 Small group health insurance; rates; restrictions.—

(1) PURPOSE.—The intent of this section is to promote the availability of health insurance coverage to small employers through the participation of more insurers in the market, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals, and to improve the efficiency and fairness of the small group health insurance marketplace.

(2) DEFINITIONS.—As used in this section:

(a) "Small employer" means any person actively engaged in business that, on at least 50 percent of its working days during the preceding year, employed no more than 25 eligible employees. In determining the number of eligible employees, persons that are affiliated persons or that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer.

(b) "Carrier" means any person who provides health insurance in this state. "Carrier" includes a licensed insurance company, a health maintenance organization, a multiple-employer welfare arrangement, or any other person providing a plan of health insurance subject to state insurance regulation.

(c) "Health benefit plan" means any hospital or medical expense incurred policy or certificate, any hospital or medical service plan contract, or any health maintenance organization subscriber contract. "Health benefit plan" does not include accident-only, credit, dental, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation and employers' liability or similar insurance; or automobile medical-payment insurance.

(d) "Small employer carrier" means any carrier that offers health benefit plans covering the employees of a small employer.

(e) "Case characteristics" means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, that are considered by the carrier in the determination of premium rates for the small employer. Claim experience, health status and duration of coverage since issue are not case characteristics.

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

(g) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(h) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(i) "Index rate" means, for each class of business for small employers with similar case characteristics, the arithmetical average of the applicable base premium rate and the corresponding highest premium rate.

(j) "Class of business" means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

1. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans:

a. Are marketed and sold through individuals and organizations which are not participating in the marketing or sale of other distinct groupings of small employers for such small employer carrier;

b. Have been acquired from another small employer carrier as a distinct grouping of plans;

c. Are provided through an association with membership of not less than 25 small employers that has been formed for purposes other than obtaining insurance; or

d. Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in sub-subparagraph (4)(a)2.a.

2. A small employer carrier may establish no more than two additional groupings under each of the sub-subparagraphs in subparagraph 1. on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

3. The department may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the department that this action would enhance the efficiency and fairness of the small employer insurance marketplace.

(k) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individuals acceptable to the department that a small employer carrier is in compliance with the provisions of subsection (4), based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans.

(l) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

(3) HEALTH INSURANCE PLANS SUBJECT TO THIS SECTION.—

(a) Except as provided in paragraph (b) and notwithstanding any other provision of this part, the provisions of this section apply to any health benefit plan provided by a small employer carrier which provides coverage to one or more employees of a small employer.

(b) The provisions of this section do not apply to individual health insurance policies that are subject to part VI of chapter 627 which are subject to policy form and premium rate approval as provided in s. 627.410.

(c) Notwithstanding s. 627.401(2), the provisions of this section and ss. 627.410 and 627.411 apply to any health benefit plan provided by a small employer carrier which provides coverage to one or more employees of a small employer regardless of whether the policy, certificate, or contract is issued or delivered outside this state if the health benefit plan covers employees or their covered dependents who are residents of this state.

(4) RESTRICTIONS RELATING TO PREMIUM RATES.—

(a) Premium rates for health benefit plans subject to this section are subject to the following provisions:

1. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than 20 percent.

2. Subparagraph 1. does not apply to a class of business if all of the following apply:

a. The class of business is one for which the carrier does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status.

b. The carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefit plan into or out of the class of business.

c. The class of business is currently available for purchase.

3. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to these employers under the rating system for that class of business, may not vary from the index rate by more than 25 percent of the index rate.

4. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

a. The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate.

b. An adjustment, not to exceed 15 percent annually and adjusted pro rata for rating periods of less than 1 year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the carrier's rate manual for the class of business.

c. Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

5. In the case of health benefit plans issued prior to October 1, 1991, a premium rate for a rating period may exceed the ranges described in subparagraph 1. or subparagraph 3. until October 1, 1996. In this case, the percentage increase in the premium rate charged to a small employer in this class of business for a new rating period may not exceed the sum of the following:

a. The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate.

b. Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(b) Nothing in this section is intended to affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

(c) A small employer carrier shall not involuntarily transfer a small employer into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

(5) PROVISIONS ON RENEWABILITY OF COVERAGE.—

(a) Except as provided in paragraph (b), a health benefit plan subject to this section shall be renewable to all eligible employees and dependents at the option of the small employer, except for the following reasons:

1. Nonpayment of required premiums;

2. Fraud or misrepresentation of the small employer, or with respect to coverage of an insured individual or subscriber, or fraud or misrepresentation by the insured individual or subscriber or individual's or subscriber's representative;

3. Noncompliance with plan provisions;

4. The number of individuals covered under the plan is less than the number or percentage of eligible individuals required by percentage requirements under the plan; or

5. The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.

(b) A small employer carrier may cease to renew all plans under a class of business. The carrier shall provide notice to all affected health benefit plans and to the insurance regulatory agency in each state in which an affected insured individual is known to reside at least 90 days prior to termination of coverage. A carrier that exercises its right to cease to renew all plans in a class of business may not:

1. Establish a new class of business for a period of 5 years after the nonrenewal of the plans without prior approval of the department; or

2. Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the carrier offers to transfer or provide coverage to all affected employers and eligible employees and dependents without regard to case characteristics, claim experience, health status, or duration of coverage.

(6) DISCLOSURE OF RATING PRACTICES AND RENEWABILITY PROVISIONS.—Each small employer carrier shall make reasonable disclosure in solicitations and sales materials provided to small employers of all the following:

(a) The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status, or duration of coverage of the employees of the small employer or their dependents.

(b) The provisions concerning the carrier's right to change premium rates and the factors, including case characteristics, that affect changes in premium rates.

(c) A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans.

(d) The provisions relating to renewability of coverage.

(7) MAINTENANCE OF RECORDS.—

(a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the department each March 1 an actuarial certification that the carrier is in compliance with this section and that the rating methods of the carrier are actuarially sound. A copy of the certification shall be retained by the carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in paragraph (a) available to the department upon request. The information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the department to persons outside the department except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

(8) WAIVER OF REQUIREMENTS.—The department may suspend all or any part of the provisions of subsection (4) as to the premium rates applicable to one or more small employers for one or more rating periods upon a filing by the small employer carrier and a finding by the department that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

(Renumber subsequent section.)

Senate Amendment 1 as amended to House Substitute Amendment 1 as amended was adopted.

Senator Malchon moved the following amendment:

Senate Amendment 1 to House Substitute Amendment 2 as amended—In title, on page 1, strike everything after "and insert" on line 14 and insert: An act relating to health care; amending s. 381.702, F.S.; providing that, for the purposes of ss. 381.701-381.715, F.S., the Health Facility and Services Development Act, the term "capital expenditure" includes initial financing costs but excludes refinancing costs; amending s. 381.703, F.S.; increasing fees for certain abortion clinics, ambulatory surgical centers, birthing centers, clinical laboratories except community nonprofit blood banks, home health agencies, hospices, intermediate care facilities for the mentally retarded, multiphasic testing centers, health maintenance organizations, and prepaid health clinics to fund state and local health planning; providing for distribution of health care facilities assessments and certificate-of-need application fees among the Statewide Health Council, local health councils, and the Department of Health and Rehabilitative Services; amending s. 381.706, F.S.; revising projects subject to review under certificate of need; amending s. 381.708, F.S.; increasing application fees for certificates of need; amending s. 390.014, F.S.; increasing licensure fees for abortion clinics; amending s. 395.004, F.S.; increasing licensure fees for hospitals, cardiac catheterization facilities, and ambulatory surgical centers; amending s. 395.007, F.S.; increasing fees for plans and construction review for hospitals and ambulatory surgical centers; amending s. 400.062, F.S.; increasing nursing home licensure fees; amending s. 400.23, F.S.; increasing fees for plans and construction review for nursing homes; amending s. 400.407, F.S.; increasing adult congregate living facility licensure fees; amending s. 400.418, F.S.; revising a trust fund for deposit of fees and fines; amending s. 400.467, F.S.; increasing home health agency licensure fees; amending s. 400.605, F.S.; increasing hospice licensure fees; amending s. 483.172, F.S.; increasing clinical laboratory licensure fees; repealing s. 381.713(1), F.S., relating to an exemption from certificate-of-need review; limiting the effect of the repeal; repealing s. 381.706(3)(a), F.S., relating to exemptions from applicability of project review provisions for certain projects mandated by the Legislature; amending s. 11.45, F.S.; requiring the Auditor General to use agency functional plans in conducting performance audits of agencies; amending s. 20.055, F.S.; providing duties of agency internal auditors; creating s. 216.176, F.S.; requiring truth in budgeting; amending s. 216.136, F.S.; providing duties of the revenue estimating conference; providing legislative intent relating to healthy start for infants; amending s. 383.14, F.S.; requiring the screening of infants and their families for specified environmental risk factors; requiring the department to ensure that the screening information registry is integrated with the department's automated data systems; providing for rulemaking; providing for developing a risk-assessment instrument; providing for supplying nutrition education and foods to certain individuals; requiring the coordination of s. 383.14(3), F.S., with certain other legal provisions; amending s. 383.011, F.S.; adding duties of the Department of Health and Rehabilitative Services relating to maternal and child health; requiring the department to establish Healthy Start Care Coordination programs in the county public health units; providing for family outreach workers; requiring screening programs for families identified as being at risk; requiring the provision of services under this section to be consistent with other specified legal provisions and plans; amending s. 383.013, F.S.; adding duties of the Department of Health and Rehabilitative Services relating to prenatal care; amending s. 383.215, F.S.; providing for developmental intervention at hospitals with level II neonatal intensive care units; creating s. 383.216, F.S.; providing for the establishment of prenatal and infant health care coalitions, including establishment and incorporation of local prenatal and infant health care coalitions, and providing for membership, duties, and services; providing for cooperation and assistance from the Department of Health and Rehabilitative Services, and for contribution match percentages; creating s. 383.2161, F.S.; requiring the department annually to compile and analyze risk information and submit a report to the Legislature; providing requirements for the contents of the report; requiring the department to develop and submit to the Legislature a plan for decategorizing certain resources which includes an alternative reimbursement methodology for providers of certain services; amending s. 427.012, F.S.; adding a representative of maternal and child health care providers to the Transportation Disadvantaged Commission; providing effective dates; revising provisions relating to the Medicaid program; creating s. 409.901, F.S.; providing definitions; creating s. 409.902, F.S.; designating the Department of Health and Rehabilitative Services as the single state agency for administration of the Medicaid program; creating ss. 409.903 and 409.904, F.S.; specifying those persons who may be eligible for the Medicaid program; creating ss. 409.905 and 409.906, F.S.; providing for a federal waiver for certain Medicaid psychiatric services; enumerating federally mandated and optional services covered by the Medicaid program; creating s. 409.907, F.S.; establishing provisions for Medicaid provider agreements; creating s. 409.908, F.S.; establishing reimbursement standards for payment under the Medicaid program; renumbering s. 409.2665, F.S., relating to third-party payments on behalf of Medicaid eligible persons; deleting definitions made obsolete by this act; conforming cross references to changes made by this act; making technical, clarifying revisions; deleting certain requirements pertaining to the recovery of third-party resources for Medicaid benefits made payable by check; creating ss. 409.911, 409.9112, and 409.9113, F.S.; providing for disproportionate share programs for hospitals, regional perinatal intensive care centers, and teaching hospitals for purposes of indigent and obstetrical care; creating s. 409.9114, F.S.; providing for an extraordinary disproportionate share program; creating s. 409.912, F.S.; authorizing cost-effective purchasing of care, including contracts with prepaid group practices and establishment of waiver programs; requiring contracting entities to maintain a specified level of liquid assets; providing exceptions; creating s. 409.913, F.S.; setting forth criteria for oversight of goods and services to protect the integrity of the Medicaid program and providing authority to take appropriate action; creating s. 409.914, F.S.; authorizing agreements between the department and other entities to further health insurance coverage for citizens of this state; creating s. 409.915, F.S.; requiring county contributions on behalf of certain persons covered by the Medicaid program, including the establishment of limits thereon and methods for collection; creating s. 409.916, F.S.; providing for deposit of grants and rebates into the Grants and Donations Trust Fund; specifying certain uses for funds therein; amending s. 409.2662, F.S., relating to the Public Medical Assistance Trust Fund; creating s. 409.919, F.S.; authorizing the Department of Health and Rehabilitative Services to adopt rules; creating s. 409.920, F.S.; requiring the Auditor General to conduct a statewide program of Medicaid fraud control and establishing standards and criminal penalties; creating the Task Force on County Contributions to Medicaid; specifying members of the task force; requiring a study of county contributions to the Medicaid program; requiring a report; directing the department to prepare a report on the adequacy of Medicaid reimbursement to pharmacy providers; amending s. 110.123, F.S., to correct a cross reference, relating to the state group insurance program; amending s. 154.011, F.S., to correct a cross reference, relating to primary care services; amending s. 394.4787, F.S., to correct a cross reference, relating to definitions applicable to provision of acute care mental health services; amending s. 395.01465, F.S., to correct a cross reference, relating to emergency care hospitals; amending s. 400.126, F.S., to correct a cross reference, relating to receivership of nursing home facilities; amending s. 400.18, F.S., to correct a cross reference, relating to closing of nursing facilities; amending s. 400.332, F.S., to correct a cross reference, relating to certain funds received by a nursing home for participation in the geriatric outpatient nurse clinic program; amending s. 407.51, F.S., to correct a cross reference, relating to hospital budgets; amending s. 409.2673, F.S., to correct a cross reference, relating to the shared county and state health care program for low-income persons; amending s. 409.345, F.S., to correct a cross reference, relating to public assistance payments as debt of the recipient; amending s. 409.701, F.S., to correct a cross reference, relating to the Florida Small Business Health Access Corporation Act; amending s. 410.036, F.S., to correct a cross reference, relating to eligibility for home care for disabled adults and the elderly; amending s. 624.424, F.S., to correct a cross reference, relating to statements and records of insurers; amending s. 627.736, F.S., to correct a cross reference, relating to personal

injury protection benefits; amending s. 631.813, F.S., to correct a cross reference, relating to application of the Florida Health Maintenance Organization Consumer Assistance Plan; amending s. 641.261, F.S., to correct a cross reference, relating to reporting requirements of health maintenance organizations; amending s. 641.31, F.S., to correct a cross reference, relating to health maintenance contracts; amending s. 641.411, F.S., to correct a cross reference, relating to reporting requirements of prepaid health clinics; amending s. 768.73, F.S., to correct a cross reference, relating to punitive damages; amending s. 895.02, F.S.; adding Medicaid provider fraud to the definition of racketeering activity under the Florida RICO (Racketeer Influenced and Corrupt Organization) Act; reenacting ss. 655.50(3)(g) and 896.101(1)(g), F.S., relating to unlawful financial transactions, to incorporate the amendment to s. 895.02, F.S., in references; preserving election of Medicare and Medicaid hospice benefits; saving existing department rules until superseded; repealing s. 21, ch. 89-275, Laws of Florida, ss. 400.23(3), 409.266, 409.2663, 409.2664, 409.2666, 409.2667, 409.267, 409.2671, and 409.268, F.S., relating to the Medicaid program and payments thereunder; revising provisions relating to trauma care; amending s. 395.0335, F.S.; revising provisions relating to application for selection as state-sponsored trauma centers; providing requirements for selection of state-approved trauma centers; providing for provisional state-approved trauma centers; amending s. 395.034, F.S.; revising definitions relating to state-approved trauma centers and state-sponsored trauma centers; revising provisions relating to submission of claims and eligibility for receipt of funds; revising provisions relating to state funding; providing requirements for payment of claims; providing that funds shall not be considered as net revenues for certain purposes; deleting provisions relating to certain reimbursement with appropriated funds; amending s. 395.0345, F.S.; revising provisions relating to the Trauma Services Trust Fund; repealing s. 14, ch. 90-284, Laws of Florida, to conform; providing an appropriation; revising provisions relating to health maintenance organizations; amending s. 641.48, F.S.; revising quality of care and financial insolvency provisions for certain exempt prepaid health plans; amending s. 641.495, F.S., relating to exemption of health maintenance organizations with 10 or fewer holding beds from pt. I of ch. 395, F.S.; amending s. 641.51, F.S.; deleting requirement for certain periodic review by an external review organization; broadening scope of second medical opinions available to subscribers; creating s. 641.511, F.S.; providing subscriber grievance reporting requirements and resolution procedures; creating s. 641.512, F.S.; providing for accreditation and an external quality assurance assessment for health maintenance organizations and prepaid health clinics; providing requirements; providing for payment of expenses; amending s. 641.515, F.S.; providing for subsequent department investigations pursuant to ss. 641.311, 641.511, and 641.512, F.S.; providing for standards of care; amending s. 641.52, F.S.; providing an additional condition that may result in suspension of enrollment authority, revocation of certificate, or an order of compliance; providing for a study on provider contracts; providing an appropriation; rescheduling Sunset review and repeal of pt. IV of ch. 641, F.S.; providing an appropriation; amending s. 154.01, F.S.; expanding legislative funding authorization relating to the public health unit delivery system; creating the "Florida Health Care Purchasing Cooperative Act"; authorizing the Florida Health Care Purchasing Cooperative; providing for powers, membership, and duties of the cooperative; providing for the confidentiality of information gathered and maintained by the cooperative; providing for a board of directors; providing for board membership and reimbursement for expenses; providing immunity from liability; providing for initial staff support to the cooperative by the Health Care Cost Containment Board; providing appropriations; amending s. 766.205, F.S.; providing for medical records of patients to be furnished to prospective defendants in medical malpractice actions under specified circumstances; amending s. 407.50, F.S.; providing an exemption from budget review; revising provisions relating to health planning; amending s. 186.003, F.S.; defining the term "Statewide Health Council"; amending s. 186.022, F.S.; requiring the Executive Office of the Governor to consider findings of the Statewide Health Council's review of agency functional plans; amending s. 186.503, F.S.; defining the terms "local health council" and "Statewide Health Council"; amending s. 186.507, F.S.; requiring memoranda of agreement between regional planning councils and local health councils; amending s. 186.508, F.S.; requiring the Executive Office of the Governor to consider findings of the Statewide Health Council's review of comprehensive regional policy plans; amending s. 186.511, F.S.; requiring involvement of local health councils in the evaluation of the health element of comprehensive regional policy plans; amending s. 187.201, F.S.; substantially rewording the health element of the state comprehensive plan; revising goals and policies; amending s. 381.703, F.S.; providing a schedule for appointing local health council members; revising the functions of the local health councils; changing the composition of the Statewide Health Council; revising the functions of the Statewide Health Council; requiring the Department of Health and Rehabilitative Services to assist the Statewide Health Council in preparing a state health plan and provide orientation to local health council members; authorizing the Department of Health and Rehabilitative Services to withhold funds from or cancel contracts with local health councils under certain circumstances; providing an appropriation; amending s. 401.291, F.S.; revising a training requirement for the use of an automatic external defibrillator; providing an appropriation from the health trust fund to the Statewide Health Council; repealing s. 381.025, F.S., relating to long-range health planning; providing effective dates.

Senator Malchon moved the following amendments which were adopted:

Senate Amendment 1A to Senate Amendment 1 to House Substitute Amendment 2 as amended—In title, on page 12, line 30, following the semicolon (;) insert: creating the Health Care Work Group; providing membership; providing for administration and compensation; providing duties and responsibilities; requiring a report;

Senate Amendment 1B to Senate Amendment 1 to House Substitute Amendment 2 as amended—In title, on page 11, strike all of lines 13-17, and insert: appropriations; amending s. 407.50, F.S.;

Senate Amendment 1C to Senate Amendment 1 to House Substitute Amendment 2 as amended—In title, on page 12, line 30, after the semicolon (;) insert: providing an exemption from a continuing education requirement;

Senate Amendment 1D to Senate Amendment 1 to House Substitute Amendment 2 as amended—In title, on page 12, line 30, following the semicolon (;) insert: revising provisions relating to small group health insurance; creating s. 627.4106, F.S.; providing requirements, restrictions, and renewal and rating provisions that apply to health insurance coverage of certain groups; providing that the Department of Insurance may by rule limit certain rate increases;

Senate Amendment 1 as amended to House Substitute Amendment 2 as amended was adopted.

On motions by Senator Malchon, the Senate concurred in the House amendments as amended and the House was requested to concur in the Senate amendments to the House amendments.

CS for SB's 1000, 1234 and 2158 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—39 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for CS for CS for SB's 1042, 142, 366, and 1070 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for CS for CS for SB's 1042, 142, 366 and 1070—A bill to be entitled An act relating to public officers, candidates for public office, and public employees; amending s. 112.312, F.S.; providing additional definitions and redefining the term "gift" for purposes of part III of ch. 112, F.S., and s. 8, Art. II of the State Constitution; amending s. 112.313, F.S.; clarifying a prohibition; including provisions regulating representation before certain agencies by legislators, statewide elected officers, and agency employees, and standards of conduct for legislators and employees; removing provisions relating to disclosure of certain specified interests; providing exemptions from the prohibition against a public officer or employee doing business with his own company or entering into a conflicting employment relationship; repealing s. 112.3141, F.S., relating to additional standards of conduct for public officers and employees; amending s. 112.3143, F.S.; revising provisions relating to voting conflicts and disclosure with respect thereto; amending s. 112.3145, F.S.; requiring certain officers, candidates, and employees who hold a specified relationship with business entities authorized to operate in this state to file a disclosure statement as part of their financial statements; amending ss. 112.3146, 112.3147, F.S.; conforming cross-references; amending s. 112.3148, F.S.; removing a prohibition on governmental entities and direct-support organizations making certain gifts to persons who must file disclosure of financial interests and procurement employees; provid-

ing for the valuation of gifts; conforming a cross-reference; amending s. 112.3149, F.S.; redefining "honorarium"; providing applicability; amending s. 112.317, F.S.; providing penalties for officers, employees, and candidates who violate s. 8, Art. II of the State Constitution; providing penalties for former public officers or former employees who violated provisions of part III of ch. 112, F.S., or s. 8, Art. II of the State Constitution; removing prohibition against certain disclosures of information; amending s. 112.320, F.S.; providing that the Commission on Ethics is the commission provided for in s. 8(f), Art. II of the State Constitution; amending s. 112.3215, F.S.; providing for registration by lobbyists of principals; increasing the lobbyist's registration fee; providing for semi-annual reports by lobbyists; providing for receipt and disposition of complaints against lobbyists; providing investigation procedures; amending s. 112.322, F.S.; providing authority of the commission with respect to breaches of the public trust; authorizing the commission to delegate to its investigators the authority to administer oaths; authorizing the commission to delegate its subpoena powers to its chairman; authorizing the commission to allow its employees to serve such subpoenas; providing authority for the commission to make rules; creating s. 112.3231, F.S.; providing time limitations for complaint filing; amending s. 112.324, F.S.; modifying procedures on complaints of violations of part III of ch. 112, F.S., or s. 8, Art. II of the State Constitution; providing procedures for complaints against former officers, former employees, and former candidates; providing procedures for complaints against candidates; amending s. 876.05, F.S.; revising language with respect to the loyalty oath required of public employees; amending s. 350.0605, F.S.; providing restrictions on employment by former Public Service Commissioners for a period of 2 years; providing for prospective applicability of specified provisions; providing effective dates for lobbyist registration fees; providing an effective date.

House Amendment 1—On page 3, line 26, through page 60, line 23, strike everything after the enacting clause and insert:

Section 1. Section 11.045, Florida Statutes, as amended by section 1 of chapter 90-502, Laws of Florida, is amended to read:

11.045 Lobbyists; registration and reporting; exemptions; penalties.—

(1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the committee of each house charged by the presiding officer with responsibility for ethical conduct of lobbyists.

(b) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) Each house of the Legislature shall provide by rule, *or may provide by a joint rule adopted by both houses, for the registration of lobbyists who lobby the Legislature. The rule may provide for the payment of a registration fee. The rule may provide for exemptions from registration or registration fees. The rule shall provide that:*

~~(a) Except as provided in paragraph (f), and except for members of the Florida Legislature or duly authorized staff of the Legislature designated in writing by such members, all persons who seek to encourage the passage, defeat, or modification of any legislation in such house of the Legislature, or any committee thereof, shall, before engaging in such lobbying activity, register with the respective house of the Legislature.~~

~~(b) Every person required to register as a lobbyist shall register on identical forms prepared by the respective houses and shall state under oath his name and business address, the name and business address of each principal represented, and the general and specific areas of his legislative interest.~~

(a)~~(c)~~ *Registration* ~~Separate registration~~ is required for each principal represented.

(b)~~(d)~~ Every registrant shall be required to state ~~under oath~~ the extent of any direct business association or partnership with any current member of the Legislature.

(c)~~(e)~~ All registrations shall be open to the public.

(d)~~(f)~~ Any person who *is exempt from registration under the rule* ~~merely appears before a member or committee of the House of Representatives or Senate in his individual capacity for the purpose of self-representation without compensation or reimbursement to express support of or opposition to any legislation, and who shall so declare to the legislator or legislative committee with whom he discusses any proposed legislation, shall not be required to register as a lobbyist and~~ shall not be considered a lobbyist for any purpose.

(3) Each house of the Legislature shall provide by rule:

(a) A procedure by which statements shall be filed semiannually by all registered lobbyists, which statements shall disclose all lobbying expenditures and the source of funds for such expenditures. The statement of session expenditures shall be filed by July 15 of each year and shall include expenditures for the period from January 1 through June 30. The statement of interim expenditures shall be filed by January 15 and shall include expenditures for the period from July 1 through December 31, including expenditures for any special sessions. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. A statement shall be filed even if there have been no expenditures during a reporting period.

(b) That lobbying expenditures shall not include personal expenses for lodging, meals, and travel.

(4) Each house of the Legislature shall provide by rule a procedure by which a lobbyist, when in doubt about the applicability and interpretation of this section in a particular context, may submit in writing the facts for an advisory opinion to the committee of the respective house and may appear in person before the committee. The rule shall provide a procedure by which:

(a) The committee shall render advisory opinions to any lobbyist who seeks advice as to whether the facts in a particular case would constitute a violation of this section.

(b) The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions.

(c) All advisory opinions of the committee shall be numbered, dated, and open to public inspection.

(5) Each house of the Legislature shall keep all advisory opinions of the committees relating to lobbyists and lobbying activities, as well as a current list of registered lobbyists and their respective reports required under this section, all of which shall be open for public inspection.

(6) The committee of the respective house shall investigate any person engaged in legislative lobbying upon receipt of a sworn complaint alleging a violation of this section, s. 112.3148, or s. 112.3149 by such person. Such proceedings shall be conducted pursuant to the rules of the respective houses. If the committee finds that there has been a violation of this section, s. 112.3148, or s. 112.3149, it shall report its findings to the President of the Senate or the Speaker of the House of Representatives, as appropriate, together with a recommended penalty, to include a fine of not more than $5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months. Upon the receipt of such report, the President of the Senate or the Speaker of the House of Representatives shall cause the committee report and recommendations to be brought before the respective house and a final determination shall be made by a majority of said house.

(7) Any person required to be registered pursuant to this section or pursuant to rules established in conformity with this section who knowingly fails to disclose any material fact required by this section or by rules established in conformity with this section commits a noncriminal infraction, punishable by a fine not to exceed $5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (6).

(8) There is hereby created the Legislative Lobbyist Registration Trust Fund, to be used for the purpose of funding any office established for the purpose of funding the administration of the registration of lobbyist lobbying the Legislature, including the payment of salaries and other expenses. The trust fund is not subject to the service charge to General Revenue provisions of ch. 215. Fees collected pursuant to rules established in accordance with subsection (2) shall be deposited into the Legislative Lobbyist Registration Trust Fund.

Section 2. All lobbyist registration fees collected on or after January 7, 1991, that have been deposited into the General Revenue Fund, to the extent that these funds are not expended or obligated on June 30, 1991, shall be transferred to the Legislative Lobbyist Trust Fund. There is hereby apppropriated from the Trust Fund $150,000 for the operations of lobbyist registration within the Joint Legislative Management Committee for 1991-92.

Section 3. Paragraph (b) of subsection (1) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a full-time state employee who serves as counsel or assistant counsel to any state agency, a judge of compensation claims, or a hearing officer.

2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions.

3. Each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the superintendent or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.

5. Business managers, purchasing agents having the power to make any purchase exceeding $1,000, finance and accounting directors, personnel officers, or grants coordinators for any state agency.

6. Any person, *other than a legislative assistant,* employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.

7. Each employee of the Commission on Ethics.

Section 4. Subsections (5), (6), and (8) of Section 112.3148, Florida Statutes, as amended by Chapter 90-502, Laws of Florida, are amended to read:

112.3148 Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and procurement employees.—

(5)*(a)* A political committee or a committee of continuous existence, as defined in s. 106.011; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of $100 to the reporting individual or procurement employee or any other person on his behalf; however, such person may give a gift having a value in excess of $100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or a charitable organization.

(b) However, a person who is regulated by this subsection, who is not regulated by subsection (6), and who makes, or directs another to make, an individual gift having a value in excess of $25, but not in excess of $100, other than a gift which the donor knows will be accepted on behalf of a governmental entity or charitable organization, must file a report on the last day of each calendar quarter, for the previous calendar quarter in which a reportable gift is made. The report shall be filed with the Secretary of State, except with respect to gifts to reporting individuals of the legisaltive branch, in which case the report shall be filed with the Joint Legislative Management Committee. The report must contain a description of each gift, the monetary value thereof, the name and address of the person making such gift, the name and adress of the recipient of the gift, and the date such gift is given. In addition, when a gift is made which requires the filing of a report under this subsection, the donor must notify the intended recipient at the time the gift is made that the donor, or another on his behalf, will report the gift under this subsection. Under this paragraph, a gift need not be reported by more than one person or entity.

(6)(a) Notwithstanding the provisions of subsection (5), an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, *an airport authority,* or a school board may give, either directly or indirectly, a gift having a value in excess of $100 to any reporting individual or procurement employee if a public purpose can be shown for the gift; and a direct-support organization specifically authorized by law to support a governmental entity may give such a gift to a reporting individual or procurement employee who is an officer or employee of such governmental entity.

(b) Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of $100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, *an airport authority,* or a school board if a public purpose can be shown for the gift; and a reporting individual or procurement employee who is an officer or employee of a governmental entity supported by a direct-support organization specifically authorized by law to support such governmental entity may accept such a gift from such direct-support organization.

(c) No later than March 1 of each year, each governmental entity or direct-support organization specifically authorized by law to support a governmental entity which has given a gift to a reporting individual or procurement employee under paragraph (a) shall provide the reporting individual or procurement employee with a statement of each gift having a value in excess of $100 given to such reporting individual or procurementemployee by the governmental entity or direct-support organization during the preceding calendar year. Such report shall contain a description of each gift, the date on which the gift was given, and the value of the total gifts given by the governmental entity or direct-support organization to the reporting individual or procurement employee during the calendar year for which the report is made. A governmental entity may provide a single report to the reporting individual or procurement employee of gifts provided by the governmental entity and any direct-support organization specifically authorized by law to support such governmental entity.

(d) No later than July 1 of each year, each reporting individual or procurement employee shall file a statement listing each gift having a value in excess of $100 received by the reporting individual or procurement employee, either directly or indirectly, from a governmental entity or a direct-support organization specifically authorized by law to support a governmental entity. The statement shall list the name of the person providing the gift, a description of the gift, the date or dates on which the gift was given, and the value of the total gifts given during the calendar year for which the report is made. The reporting individual or procurement employee shall attach to such statement any report received by him in accordance with paragraph (c), which report shall become a public record when filed with the statement of the reporting individual or procurement employee. The reporting individual or procurement employee may explain any differences between the report of the reporting individual or procurement employee and the attached reports. The annual report filed by a reporting individual shall be filed with the financial disclosure statement required by either s. 8, Art. II of the State Constitution or s. 112.3145, as applicable to the reporting individual. The annual report filed by a procurement employee shall be filed with the Department of State.

(8)(a) Each reporting individual or procurement employee shall file a statement with the Secretary of State on the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he believes to be in excess of $100 in value, if any, accepted by him, except the following:

1. Gifts from relatives *or bona fide friends.*

2. Gifts prohibited by subsection (4) or s. 112.313(4).

3. Gifts otherwise required to be disclosed by this section.

(b) The statement shall include:

1. A description of the gift; the monetary value of the gift; the name and address of the person making the gift; and the dates thereof. If any of these facts, other than the gift description, are unknown or not applicable, the report shall so state.

2. A copy of any receipt for such gift provided to the reporting individual or procurement employee by the donor.

(c) The statement may include an explanation of any differences between the reporting individual's or procurement employee's statement and the receipt provided by the donor.

(d) The reporting individual's or procurement employee's statement shall be sworn to by such person as being a true, accurate, and total listing of all such gifts.

(e) If a reporting individual or procurement employee has not received any gifts described in paragraph (a) during a calendar quarter, he is not required to file a statement under this subsection for that calendar quarter.

Section 5. Notwithstanding the provisions of Chapter 90-502, Laws of Florida, a person who, but for the amendments to Section 112.3145(1)(b)6., Florida Statutes, as provided in Chapter 90-502, Laws of Florida, would not be required to file a statement of financial interests during calendar year 1991, shall not be required to file a statement of financial interests prior to July 1, 1992.

Section 6. This act shall take effect upon becoming law, except that section 4 of this act shall take effect October 1, 1991.

House Amendment 2—In title, on page 1, line 1, through page 3, line 22, strike everything before the enacting clause and insert: A bill to be entitled An act relating to ethics in government; amending s. 11.045, F.S.; providing authority for the Legislature to provide for registration of lobbyists by rule; authorizing the Legislture to charge a lobbyist registration fee; providing authority for Legislature to provide for exemptions from registration or the payment of fees; establishing the Legislative Lobbyist Registration Trust Fund; providing for use of such trust fund; providing for transfer of certain funds into the trust fund; amending s. 112.3145, F.S.; redefining specified state employee by exempting legislative assistants from definition; amending s. 112.3148, F.S.; providing that certain persons must report gifts with a value over $25; providing exceptions; adding airport authorities to list of governmental entities that may provide gifts in excess of $100; clarifying that certain person need not file statements of financial interests prior to July 1, 1992; providing effective dates.

On motions by Senator Girardeau, the Senate refused to concur in the House amendments and the House was requested to recede. The action of the Senate was certified to the House.

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 1094 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 1094—A bill to be entitled An act relating to Indian River Mosquito Control District; amending chapter 24600, Laws of Florida, as amended; establishing new boundaries; increasing the amount with respect to which the board of commissioners may purchase goods and services without bids under certain conditions; providing for a referendum; providing an effective date.

House Amendment 1—On page 1, lines 13-17, strike all of said lines and renumber subsequent sections.

House Amendment 2—On page 4, lines 1-3, strike all of said lines and insert:

Section 5. This act, except for Section 2, shall take effect upon becoming a law. Section 2 shall take effect only upon approval by a

House Amendment 3—On page 4, line 10, after the period (.) insert: The election required by this section shall be paid for by the Indian River Mosquito Control District, and the expenditure of funds for this purpose is a proper district expense.

On motions by Senator Kurth, the Senate concurred in the House amendments.

SB 1094 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for CS for SB 1120 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for CS for SB 1120—A bill to be entitled An act relating to environmental regulation; amending s. 20.261, F.S.; providing for a Division of Technical Services within the Department of Environmental Regulation; amending s. 213.053, F.S.; allowing the Department of Environmental Regulation to obtain certain tax information from the Department of Revenue in the conduct of its duties; amending s. 252.87, F.S.; requiring certain employers to notify the local fire department in writing within a certain time if there is a discontinuance or abandonment of business activities that could affect any stored hazardous materials; amending s. 325.223, F.S.; providing for the assessment by the department of certain noncompliance fees for violations of refrigerant recycling equipment certification requirements; amending s. 373.459, F.S., relating to the Surface Water Improvement and Management Trust Fund; deleting an erroneous cross-reference; amending s. 403.061, F.S.; deleting certain provisions regarding the designation of special waters as Outstanding Florida Waters; amending s. 403.101, F.S.; increasing fees for certification and renewal of certification for operators of water purification plants and wastewater treatment plants; revising provisions providing for renewal of certification; deleting a provision requiring that such fees be deposited into the General Revenue Fund; amending s. 403.1815, F.S.; authorizing the Department of Environmental Regulation to allow counties and municipalities to independently regulate construction of certain water mains and sewage collection and transmission systems; amending s. 403.1835, F.S.; redesignating the wastewater facilities and stormwater management systems revolving loan program as the sewage treatment program; repealing provisions that provide for loans under the program for stormwater management programs and estuary conservation and management plans; requiring the Department of Environmental Regulation to reserve loans made under the program for small communities; redesignating the Wastewater Treatment and Stormwater Management Revolving Loan Fund as the Sewage Treatment Revolving Loan Fund; providing that the Sewage Treatment Revolving Loan Fund is a nonlapsing trust fund; exempting the fund from s. 216.301, F.S.; relating to undisbursed appropriations; repealing a provision authorizing the use of moneys in the fund to pay debt service on bonds issued pursuant to the program; repealing the authorization of the issuance of such bonds; amending s. 403.414, F.S.; replacing the pollution control awards program with an environmental award program; amending s. 403.7215, F.S.; providing for additional uses of the tax levied on the gross receipts of certain hazardous waste facilities; amending s. 403.7225, F.S.; authorizing counties to impose a small quantity generator notification and verification surcharge on the business or occupational license or renewal of certain persons under certain circumstances; authorizing a county to enter an agreement with the county tax collector to collect the surcharge; amending s. 403.852, F.S.; revising the definition of "public water system" as used in the Florida Safe Drinking Water Act to include nontransient noncommunity systems; amending s. 403.854, F.S.; allowing the Department of Environmental Regulation to waive any requirement for a certified operator for a nontransient noncommunity water system; amending s. 403.087, F.S.; revising the schedule of maximum fees imposed by the Department of Environmental Regulation for permits for certain pollution sources; deleting provisions authorizing certain reduced fees; authorizing the department to impose permit fees for waste collection systems and drinking water distribution systems; amending s. 403.861, F.S.; authorizing the department to issue permits for public water supply systems; increasing the amount the department may require for public water supply system permit applications; amending ss. 381.2615, 403.0871, 403.862, F.S.; correcting cross-references to conform to changes made by the act; authorizing the department to conduct a study; providing an effective date.

House Amendment 1—On page 4, strike everything after the enacting clause and insert:

Section 1. Subsection (2) of section 20.261, Florida Statutes, is amended to read:

20.261 Department of Environmental Regulation.—There is created a Department of Environmental Regulation.

(2) The following divisions of the Department of Environmental Regulation are established:

(a) Division of Administrative ~~and Technical~~ Services.

(b) Division of Water Management.

(c) Division of Water Facilities.

(d) Division of Waste Management.

(e) Division of Air Resources Management.

(f) Division of Technical Services.

Section 2. Subsections (4) and (6) of section 206.9925, Florida Statutes, are amended to read:

206.9925 Definitions.—As used in this part:

(4) "Petroleum product" means any refined liquid commodity made wholly or partially from oil or gas, or blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, or blends or mixtures of two or more liquid products or byproducts derived from oil or gas, and includes, but is not limited to, motor gasoline, gasohol, aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, motor oil and other lubricants, naphtha of less than 400 °F for petroleum feed, special naphthas, road oil, still gas, unfinished oils, motor gas blending components, including *petroleum-derived* ethanol when used for such purpose, and aviation gas blending components.

(6) "Solvents" means the following organic compounds, if the listed organic compound is in liquid form: acetamide, acetone, acetonitrile, acetophenone, amyl acetates (all), aniline, benzene, butyl acetates (all), butyl alcohols (all), butyl benzyl phthalate, carbon disulfide, carbon tetrachloride, chlorobenzene, chloroform, cumene, cyclohexane, cyclohexanone, dibutyl phthalate, dichlorobenzenes (all), dichlorodifluoromethane, diethyl phthalate, dimethyl phthalate, dioctyl phthalate (di2-ethyl hexyl phthalate), n-dioctyl phthalate, 1,4-dioxane, *petroleum-derived* ethanol, ethyl acetate, ethyl benzene, ethylene dichloride, 2-ethoxy ethanol (ethylene glycol ethyl ether), ethylene glycol, furfural, formaldehyde, n-hexane, isophorone, isopropyl alcohol, methanol, 2-methoxy ethanol (ethylene glycol methyl ether), methyl tert-butyl ether, methylene chloride (dichloromethane), methyl ethyl ketone, methyl isobutyl ketone, mineral spirits, 140-F naphtha, naphthalene, nitrobenzene, 2-nitropropane, pentachlorobenzene, phenol, perchloroethylene (tetrachloroethylene), stoddard solvent, tetrahydrofuran, toluene, 1,1,1-trichloroethane, trichloroethylene, 1,1,2-trichloro-1,2,2-trifluoroethane, and xylenes (all).

Section 3. Subsection (3) of section 206.9935, Florida Statutes, 1990 Supplement, is amended to read:

206.9935 Taxes imposed.—

(3) TAX FOR INLAND PROTECTION.—

(a)1. There is hereby levied an excise tax for the privilege of producing in, importing into, or causing to be imported into this state pollutants for sale, use, or otherwise.

2. The tax shall be imposed only once on each barrel of pollutant when first produced in or imported into this state. The tax on pollutants first imported into or produced in this state shall be imposed when the product is first sold or first removed from storage. The tax shall be paid or remitted by any person who is licensed by the department to engage in the production or importation of motor fuel, special fuel, aviation fuel, or other pollutants.

(b)1. The excise tax per barrel of pollutant, or equivalent measure as established by the department, produced in or imported into this state shall be:

a. Ten cents if the unobligated balance of the fund is between $35 million and $50 million.

b. Twenty cents if the unobligated balance of the fund is above $5 million, but below $35 million.

c. Thirty cents if the unobligated balance of the fund is $5 million or less.

2. Any change in the tax rate shall be effective for a minimum of 6 months, unless the unobligated balance of the fund requires that a higher rate be levied.

3. If the unobligated balance of the fund exceeds $50 million, the tax shall be discontinued until such time as the unobligated balance of the fund reaches $35 million.

4. Changes in the tax rates pursuant to this subsection shall take effect on the first day of the month after 30 days' notification to the Department of Revenue by the Secretary of Environmental Regulation when the unobligated balance of the fund falls below or exceeds a limit set pursuant to this subsection.

(c) This subsection ~~expires on October 1, 1997, and~~ shall be reviewed by the Legislature during the *2007* ~~1997~~ regular legislative session.

Section 4. Subsection (7) of section 213.053, Florida Statutes, 1990 Supplement, is amended to read:

213.053 Confidentiality and information sharing.—

(7) The provisions of this section apply to all sections of chapter 207, the Florida Special Fuel and Motor Fuel Use Tax Act of 1981, except for s. 207.025, exchange of information. However, nothing in this section shall prevent the department from providing information relative to chapter 211, chapter 376, or chapter 377 to the proper state agency in the conduct of its official duties, from providing information relative to the commencement of business activities of a foreign corporation to the Division of Corporations of the Department of State in the conduct of its official duties, or from providing information relative to chapter 212 to the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation in the conduct of its official duties or to the Department of Environmental Regulation~~, names and addresses only,~~ in the conduct of its official duties, or from providing information relative to chapter 88-282, Laws of Florida, to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation in the conduct of its official duties. Such state agencies shall be bound by the same requirements of confidentiality as the Department of Revenue. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 5. Subsection (4) of section 252.87, Florida Statutes, is amended to read:

252.87 Supplemental state reporting requirements.—

(4) Each employer that owns or operates a facility in this state at which hazardous materials are produced, used, or stored in quantities at or above the thresholds established under subsections 311(b) and 312(b) of Title III shall comply with the reporting requirements of s. 311 and s. 312 of Title III. *Such employer shall also be responsible for notifying the department and the local fire department in writing within 30 days if there is a discontinuance or abandonment of the employer's business activities that could affect any stored hazardous materials.*

Section 6. Paragraph (c) is added to subsection (3) of section 253.033, Florida Statutes, to read:

253.033 Inter-American Center property; transfer to board; continued use for government purposes.—

(3)

(c) As a result of state funding assistance to be provided as specified in this paragraph, the City of North Miami shall use such funding in connection with necessary measures to construct and thereafter maintain and operate a remedial action facility and necessary components thereof to protect and safeguard that certain 130-acre portion of "the Graves tract" which presently exists as a State Mangrove Preserve (as a consequence of the conveyance thereof from the City of North Miami to the Board of Trustees of the Internal Improvement Trust Fund on June 15, 1976) from adverse environmental impact. The State of Florida through its Board of Trustees of the Internal Improvement Trust Fund shall contribute to the cost of all such remedial action an amount of not more than $4.5 million under this contribution authorization. These funds are to be applied toward the cost of constructing, maintaining, and operating the remedial action facility during the remedial action. It shall be a condition of such funding assistance that the remedial action facility and the components thereof be approved by the State Department of Environmental Regulation.

Section 7. Section 325.223, Florida Statutes, 1990 Supplement, is amended to read:

325.223 Training and certification requirements; penalties.—

(1) On and after July 1, 1991, no ~~business~~ establishment that installs or services motor vehicle air conditioners or that, in the course of doing collision repair or changing parts of or salvaging or dismantling motor vehicles, releases or may release refrigerants shall perform that activity without the use of approved refrigerant recycling equipment. Such establishments may not intentionally vent or dispose of chlorofluorocarbons or their halogenated substances into the atmosphere. Each establishment shall have mechanics, trained in the proper operation and maintenance of refrigerant recycling equipment and in the proper procedures for recovering and recycling used refrigerants from motor vehicle air conditioners, performing or supervising these services at all times.

(2) The Department of Environmental Regulation shall establish and administer a program to ensure the installation and proper use of refrigerant recycling equipment and to certify *establishments* ~~businesses~~ and persons who are trained in the use of that equipment. All applicants for certification for the operation of approved refrigerant recycling equipment shall be required to obtain a compliance certificate from the department.

(3) On and after July 1, 1991, a person who is convicted of a violation of subsection (1) is liable for a civil penalty of $100 per incident, not to exceed a total of $1,000 per day.

(4) The requirements of subsection (1) shall not apply until June 1, 1992, to *an* ~~a business~~ establishment with two or fewer service bays or one service bay dedicated to automobile air conditioner repairs or with five or fewer employees on any one shift.

(5) Not later than July 31, 1991, each ~~business~~ establishment which performs service on motor vehicle air conditioners shall certify to the department that either of the following is correct:

(a) That the establishment has acquired and is properly using approved refrigerant recycling equipment in any service on a motor vehicle air conditioner involving a refrigerant for the air conditioner and that each person authorized by the establishment to perform that service is properly trained and certified; or

(b) That the establishment contains two or fewer service bays or one service bay dedicated to automobile air conditioner repairs or with five or fewer employees on any one shift.

Each certification shall contain the name and address of the ~~business~~ establishment and shall be signed by the owner or another responsible corporate officer. Certifications under paragraph (a) may be made by submitting the required information to the department on a standard form provided by the manufacturer of approved refrigerant recycling equipment.

(6) The department shall establish appropriate fees for the issuance and annual renewal of certificates of compliance. In setting these fees, the department shall take into consideration the cost to the department of administering and enforcing this section, provided such fees shall not exceed $50 per annum.

(7) In addition to any judicial or administrative remedy authorized by law, the department may assess a noncompliance fee for failure to comply with the annual certification requirements of subsections (5) and (6), or the rules adopted pursuant thereto. For a first or second violation of the certification requirements, the fee may not be assessed until the alleged violator has failed to comply following notice of noncompliance and has been given a reasonable time to comply. However, for a third or any subsequent violation, a violator shall be assessed the fee without prior notification. After notice of a first or second violation and failure to achieve compliance, a fee of $100 shall be assessed. For a third or subsequent violation, a fee of $250 shall be assessed.

Section 8. Section 373.309, Florida Statutes, is amended to read:

373.309 Authority to adopt rules~~, regulations,~~ and procedures.—

(1) The department shall adopt, and may from time to time amend, rules ~~and regulations~~ governing the location, construction, repair, and abandonment of water wells and shall be responsible for the administration of this part. With respect thereto, the department shall:

(a)~~(1)~~ Enforce the provisions of this part and any rules ~~and regulations~~ adopted pursuant thereto.

(b)~~(2)~~ Delegate, by interagency agreement adopted pursuant to s. 373.046, to water management districts, the Department of Health and Rehabilitative Services, or any other political subdivision any of its authority under this part in the administration of the rules ~~and regulations~~ adopted hereunder under such terms and conditions as may be agreed upon, and may rescind such delegation upon a determination that the program is not being adequately administered.

(c)~~(3)~~ Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this part.

(d)~~(4)~~ Require at its discretion the making and filing of logs, and the saving of cuttings and cores, which shall be delivered to the department.

(e)~~(5)~~ ~~To~~ Encourage prevention of potable water well contamination and promote cost-effective remediation of contaminated potable water supplies by use of the Water Quality Assurance Trust Fund as provided in s. 376.307(4)(b)3. and (c) *and*~~, the department shall~~ establish by rule:

1.~~(a)~~ Delineation of *special protection areas and* areas of groundwater contamination for implementation of well location and construction, testing, ~~and~~ permitting, *and clearance* requirements as set forth in *subparagraphs 2., 3., 4., 5., and 6.* ~~paragraphs (b), (c), and (d).~~ *Such protection areas shall be delineated based on the detection of residues in groundwater from the storage, use, or disposal and the subsequent movement in groundwater of pesticides, plant nutrients, or animal wastes.* The department shall make available to water management districts, regional planning councils, the Department of Health and Rehabilitative Services, and county building and zoning departments, maps or other information on *special protection areas and* areas of contamination, including *areas of* ethylene dibromide contamination. Such maps or other information shall be made available to property owners, realtors, real estate associations, property appraisers, and other interested persons upon request and upon payment of appropriate costs.

2.~~(b)~~ Requirements for testing for suspected contamination in *special protection areas and* areas of known contamination, as a prerequisite for *clearance* ~~use~~ of a water well for drinking purposes.

3. Requirements for mandatory connection to available potable water systems in special protection areas and areas of known contamination, wherein the department may prohibit the permitting and construction of new potable water wells.

4.~~(c)~~ Location and construction standards for public and all other potable water wells permitted in *special protection areas and* areas of contamination. Such standards shall be designed to minimize the effects of such contamination.

5.~~(d)~~ A procedure for permitting all potable water wells in *special protection areas and* areas of known contamination. *Any new water well that is to be used for drinking water purposes and that does not meet construction standards pursuant to subparagraph 4. must be abandoned and plugged by the owner. Water management districts shall implement, through delegation from the department, the permitting and enforcement responsibilities of this subparagraph.* ~~The department shall delegate this permitting responsibility to the greatest extent possible to water management districts, the Department of Health and Rehabilitative Services, or other political subdivisions.~~

6. A procedure for clearing for use all potable water wells, except wells that serve a public water supply system, in special protection areas and areas of known contamination. If contaminants are found upon testing pursuant to *subparagraph 2., a* ~~paragraph (b), no~~ well *may not* ~~shall~~ be ~~permitted or~~ cleared for use ~~nor shall a certificate of occupancy be issued or approved for the residences to be served~~ without a filter or other means of preventing the users of *the well* ~~such wells~~ from being exposed to deleterious amounts of contaminants. *The Department of Health and Rehabilitative Services shall implement the responsibilities of this subparagraph.*

7.~~(e)~~ Fees to be paid for ~~application for~~ well *construction* permits *and clearance for use.* The fees shall be based on the actual costs incurred by the water management districts, the Department of Health and Rehabilitative Services, or other political subdivisions in carrying out the responsibilities related to potable water well permitting and *clearance for use*

~~shall be based on department estimates or estimates provided by the delegated entities of the revenue required to implement this part.~~ The fees shall *provide revenue to cover all such costs and shall* be set according to the following schedule:

a.~~1.~~ The *well construction* permit fee *may* ~~for any single family residence shall~~ not exceed *$500* ~~$100~~.

b.~~2.~~ The *clearance* ~~permit~~ fee *may* ~~for any community, noncommunity, or other public system shall~~ not exceed *$50* ~~$500~~.

All fees and funds collected by each delegated entity pursuant to this part shall be deposited in the appropriate operating account of that entity.

~~(f) Notwithstanding ss. 373.219 and 373.326 or any other provision of this chapter or any rule adopted pursuant to this chapter, in any area identified by department rule pursuant to paragraph (a) as an area of groundwater contamination, the department may by rule require a permit to construct or use any well which is or may be used as a source of drinking water.~~

~~Rules adopted pursuant to subsection (5) shall specifically provide for uniformity in permitting of potable water wells in areas of groundwater contamination and shall be adopted by each delegated party.~~

(f)~~(6)~~ Issue such additional regulations and take such other actions as may be necessary to carry out the provisions of this part.

(2) Notwithstanding ss. 373.219 and 373.326 or any other provision of this chapter or any rule adopted pursuant to this chapter, in any area identified by department rule pursuant to subparagraph (1)(e)1. as a special protection area or an area of known groundwater contamination, the department may by rule require a permit to construct or use any well which is or may be used as a source of drinking water. Rules adopted pursuant to paragraph (1)(e) shall specifically provide for uniformity in permitting of potable water wells in areas of groundwater contamination and shall be adopted by each delegated party.

Section 9. Subsection (1) of section 373.342, Florida Statutes, is amended to read:

373.342 Permits.—

(1) The governing board of any water management district which, pursuant to the authority delegated to it by the department under s. 373.308 or *s. 373.309* ~~s. 373.309(2)~~, regulates water wells may in its discretion authorize its executive director to issue permits for the construction, repair, or modification of any water well.

Section 10. Subsection (2) of section 373.459, Florida Statutes, is amended to read:

373.459 Surface Water Improvement and Management Trust Fund.—

(2) The secretary of the department shall authorize the release of money from the Surface Water Improvement and Management Trust Fund within 30 days after receipt of a request adopted by the governing board of a water management district or by the executive director when authority has been delegated by the governing board, certifying that the money is needed for detailed planning for or implementation of plans approved pursuant to ss. ~~373.425,~~ 373.453, 373.455, and 373.456. A water management district may not receive more than 50 percent of the moneys in the Surface Water Improvement and Management Trust Fund in any fiscal year unless otherwise provided for by law. Beginning in fiscal year 1990-1991, and each year after funds are appropriated, each water management district shall receive the amount requested pursuant to s. 373.453(4) or 10 percent of the money in the appropriation, whichever is less. The department shall allocate the remaining money in the appropriation annually, based upon the specific needs of the districts. The department, at its discretion, may include any funds allocated to a district in previous years which remain unencumbered by the district on July 1, to the amount of money to be distributed based upon specific needs of the districts.

Section 11. Subsection (12) of section 376.301, Florida Statutes, 1990 Supplement, is amended to read:

376.301 Definitions of terms used in ss. 376.30-376.319.—When used in ss. 376.30-376.319, unless the context clearly requires otherwise, the term:

(12) "Person responsible for conducting site rehabilitation" means the site owner, operator, or the person designated by the site owner or operator on the reimbursement application. *Mortgage holders and trust holders may be eligible to participate in the reimbursement program pursuant to s. 376.3071(12).*

Section 12. Paragraphs (b), (c), and (d) of subsection (7) of section 376.305, Florida Statutes, 1990 Supplement, are amended and paragraph (f) is added to that subsection to read:

376.305 Removal of prohibited discharges.—

(7)

(b) For purposes of this section, the term "abandoned petroleum storage system" shall mean any petroleum storage system that has not stored petroleum products for consumption, use, or sales after March 1, 1990, and:

1. Was not required to be registered with the department when said system was in service;

2. Was registered by a previous owner who is not the current owner or operator~~, and the person responsible for the petroleum storage system when it was used for consumption, use, or sale of petroleum products cannot be established after reasonable inquiry~~; or

3. Was placed out of service after December 31, 1988, due to the responsible person's decision not to continue in business at that site for storing petroleum products for consumption, use, or sale.

(c) The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems under the restoration program of the Petroleum Liability Insurance and Restoration Program in s. 376.3072. To be included in the Abandoned Tank Restoration Program, the responsible person *must close the storage tank system in accordance with rules adopted pursuant to s. 376.303, and* shall submit an application to the department on forms supplied by the department, by *June 30, 1992* ~~March 31, 1991~~, demonstrating that:

1. The abandoned storage system was placed out of service due to the responsible person's decision not to continue in business ~~and the system has been closed in accordance with rules promulgated pursuant to s. 376.303~~; and

2. The site with the abandoned petroleum storage system is not otherwise eligible for cleanup pursuant to s. 376.3071(9) or s. 376.3072.

(d) Sites accepted into the program will be eligible for reimbursement of cleanup costs as provided in s. 376.3071*(5) and* (12) after satisfying the criteria of s. 376.3072(2). Eligible responsible persons who provide certification that they qualify as a small business under s. 288.703(1) or corporation not for profit under chapter 617 may choose to be incorporated into the state-contracted cleanup prioritization in accordance with the rule promulgated pursuant to s. 376.3071(5)(a) and shall also be subject to the criteria in s. 376.3072(2). All site rehabilitation shall comply with the cleanup criteria and procedures adopted pursuant to s. 376.3071. *The Abandoned Tank Restoration Program shall use the Inland Protection Trust Fund authorized pursuant to s. 376.3071 to carry out this section.* Eligibility in the Abandoned Tank Restoration Program shall be determined by the department.

(f) Notwithstanding other criteria set forth in this section, any petroleum storage system that was not required to be registered with the department when such system was in service, was purchased by the current owner after the system was abandoned, was never returned to service, and is not otherwise eligible for cleanup pursuant to s. 376.3071(9) or s. 376.3072 is eligible for the Abandoned Tank Restoration Program.

Section 13. Paragraph (c) of subsection (4) of section 376.307, Florida Statutes, 1990 Supplement, is amended to read:

376.307 Water Quality Assurance Trust Fund.—

(4)

(c) However, ~~after January 1, 1989,~~ funds used as provided in this section shall be expended for water supply systems or filters for contaminated potable water wells only as follows:

1. Persons with contaminated potable water wells that were permitted and constructed after January 1, 1989, in accordance with standards adopted pursuant to s. 373.309 shall be eligible for:

a. Subsidies for connecting to existing water supply systems or extensions thereof, provided that no such subsidy shall exceed the present worth of the 10-year cost of providing and maintaining filters for the residents served by the connections; or

b. Filters and filter maintenance to provide treatment for water from contaminated wells sufficient to assure its potability. However, no filter shall be provided for a potable water well designed to provide water to a household that is part of a subdivision or development of a size that would, according to the department, be more effectively served by a water supply system, if such subdivision or development received its development order after January 1, 1989.

2. Subsidies to persons developing new water supply systems to be permitted and constructed after January 1, 1989, in accordance with standards adopted pursuant to *s. 373.309* ~~s. 373.309(5)~~ because of actual or potential contamination of potable water wells, provided that no such subsidy shall exceed one-half of the present worth of the 10-year cost of providing and maintaining filters for the residents to be served by said system.

3. The most cost-effective remedy, as determined by the department, for wells drilled prior to January 1, 1989.

Section 14. Paragraphs (i) and (j) of subsection (4) of section 376.3071, Florida Statutes, 1990 Supplement, are amended, and paragraph (k) is added to that subsection; paragraph (c) is added to subsection (7) of that section; and subsections (9) and (12) of that section are amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(i) Funding of the provisions of *ss. 376.305(7) and* ~~s.~~ 376.3072; and

(j) Activities related to removal and replacement of *petroleum storage systems* ~~tanks~~, exclusive of costs of any tank, piping, dispensing unit, or related hardware; and activities related to reimbursement application examination by a certified public accountant. Moneys may only be made available for these activities for sites at which site rehabilitation program tasks are being completed pursuant to subsection (12).

(k) The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.319.

Nothing in this subsection shall authorize the use of the Inland Protection Trust Fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or special fuels as defined in ss. 206.01(13) and 206.86(1) shall be presumed not to be excluded from eligibility pursuant to this section.

(7) DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

(c) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party is financially unable to undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by the responsible party conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to reimburse the cleanup cost or a portion of the cleanup cost. The reimbursement request shall be processed pursuant to the provisions of subsection (12). However, the department shall be obligated to reimburse only such cleanup or portion of the cleanup as the parties have agreed is beyond the financial capability of the responsible party or property owner, taking into consideration the party's net worth and the economic impact on the party.

(9) EARLY DETECTION INCENTIVE PROGRAM.—To encourage early detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program which shall provide for a 30-month grace period ending on December 31, 1988. Pursuant thereto:

(a) The department shall establish reasonable requirements for the written reporting of petroleum contamination incidents and shall distribute forms to registrants under s. 376.303(1)(b) and to other interested parties upon request to be used for such purpose. Until such forms are available for distribution, the department shall take reports of such incidents, however made, but shall notify any person making such a report that a complete written report of the incident will be required by the department at a later time, the form for which will be provided by the department.

(b) When reporting forms become available for distribution, all sites involving incidents of contamination from petroleum storage systems initially reported to the department at any time from midnight on June 30, 1986, to midnight on December 31, 1988, shall be qualified sites, provided that such a complete written report is filed with respect thereto within a reasonable time. Subject to the delays which may occur as a result of the prioritization of sites under paragraph (5)(a) for any qualified site, costs for activities described in paragraphs (4)(a)-(e) shall be absorbed at the expense of the fund, without recourse to reimbursement or recovery, with the following exceptions:

1. The provisions of this subsection shall not apply to any site where the department has been denied site access to implement the provisions of this section.

2. The provisions of this subsection shall not be construed to authorize or require reimbursement from the fund for costs expended prior to the beginning of the grace period, except as provided in subsection (12).

3.a. Upon discovery by the department that the owner or operator of a petroleum storage system has been grossly negligent in the maintenance of such petroleum storage system; has, with willful intent to conceal the existence of a serious discharge, falsified inventory or reconciliation records maintained with respect to the site at which such system is located; or has intentionally damaged such petroleum storage system, the site at which such system is located shall be ineligible for participation in the incentive program and the owner shall be liable for all costs due to discharges from petroleum storage systems at that site, any other provisions of chapter 86-159, Laws of Florida, to the contrary notwithstanding. For the purposes of this paragraph, willful failure to maintain inventory and reconciliation records, willful failure to make monthly monitoring system checks where such systems are in place, and failure to meet monitoring and retrofitting requirements within the schedules established under chapter 17-61, Florida Administrative Code, or violation of similar rules adopted by the Department of Natural Resources under this chapter, shall be construed to be gross negligence in the maintenance of a petroleum storage system.

b. The department shall redetermine the eligibility of petroleum storage systems for which a timely EDI application was filed, but which were deemed ineligible by the department, under the following conditions:

(I) The owner or operator, on or before March 31, 1991, shall submit, in writing, notification that the storage system is now in compliance with department rules adopted pursuant to s. 376.303, and which requests the department to reevaluate the storage system eligibility; and

(II) The department verifies the storage system compliance based on a compliance inspection.

Provided, however, that a site may be determined eligible by the department for good cause shown, including, but not limited to, demonstration by the owner or operator that to achieve compliance would cause an increase in the potential for the spread of the contamination.

c. Redetermination of eligibility pursuant to sub-subparagraph b. shall not be available to:

(I) Petroleum storage systems owned or operated by the Federal Government.

(II) Facilities that denied site access to the department.

(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

(A) Absence of contamination, *unless any such facility subsequently establishes that contamination did exist at that facility on or before December 31, 1988.*

(B) Contamination from substances that were not petroleum or a petroleum product.

(C) Contamination that was not from a petroleum storage system.

d. EDI applicants who demonstrate compliance for a site pursuant to sub-subparagraph b. are eligible for the Early Detection Incentive Program and the Reimbursement Program. Unless the responsible person certifies to the department in writing that he qualifies as a small business under s. 288.703(1), the eligible applicant shall initiate and complete site rehabilitation and seek reimbursement pursuant to subsection (12). The requirements of this sub-subparagraph shall not apply if the responsible person can demonstrate to the department an economic hardship due to the number of sites or the lack of revenue or credit. In such a situation, the department may approve a plan that will require the responsible person to complete some or all of the tasks for the applicable sites. The plan shall include which tasks and sites shall be required to seek reimbursement pursuant to the provisions of subsection (12) and which tasks and sites shall be subject to the provisions of this subsection.

If, in order to avoid prolonged delay, the department in its discretion deems it necessary to expend sums from the fund to cover ineligible sites or costs as set forth in this paragraph, the department may do so and seek recovery and reimbursement therefor in the same manner and in accordance with the same procedures as are established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(c) No report of a discharge made to the department by any person in accordance with this subsection, or any rules promulgated pursuant hereto, shall be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(d) The provisions of this subsection shall not apply to petroleum storage systems owned or operated by the Federal Government.

(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—

(a) Legislative findings.—The Legislature finds and declares that, in order to provide for rehabilitation of as many contamination sites as possible, as soon as possible, voluntary rehabilitation of contamination sites should be encouraged, provided that such rehabilitation is conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment.

(b) Entitlement; conditions.—To accomplish this purpose, for sites initially reported on or prior to midnight on December 31, 1988, any person conducting site rehabilitation under this subsection, either through his own personnel or through responsible response action contractors or subcontractors, shall be entitled to reimbursement from the fund at reasonable rates for allowable costs incurred on or after January 1, 1985, in connection with such site rehabilitation, subject to the following conditions:

1. Nothing in this subsection shall be construed to authorize reimbursement of any person or for any site excluded from participation in the Early Detection Incentive Program under subparagraph 1. or subparagraph 3. of paragraph (9)(b) or paragraph (9)(d).

2. The provisions of this subsection shall not apply to any site initially reported prior to July 1, 1986, where the department has initiated an administrative or civil enforcement action with respect to such site, unless the responsible party has, prior to July 1, 1986, undertaken, and made a reasonable effort to carry out, one or more of the following remedial actions at the site:

a. Product recovery;

b. Groundwater restoration; or

c. Soil removal.

3. Reimbursement under this subsection shall not be considered a state contract and shall not be subject to the provisions of chapter 287.

4. Site rehabilitation shall be completed in accordance with cleanup criteria established by the department pursuant to paragraph (5)(b).

5. Procedural requirements of this subsection shall have been met.

(c) Legislative intent.—It is the intent of the Legislature that those responsible persons who possess adequate financial ability should conduct site rehabilitation and seek reimbursement pursuant to this subsection, rather than allow the state to conduct the cleanup pursuant to subsection (9). To encourage participation in the reimbursement program in lieu of state cleanup and to facilitate the reimbursement of costs and expenses to eligible participants under this subsection, the department may establish an incentive program which would allow at its discretion:

1. Reimbursement of actual and reasonable costs for site rehabilitation;

2. Reimbursement of interest costs incurred by the responsible party as a result of that party's conducting site rehabilitation in lieu of state cleanup, at an interest rate not to exceed 1 percent per month. *If the department fails to meet the applicable review and payment schedules established by statute or rule, the time for which interest is paid by the department shall be extended beyond the applicable review and schedules;*

3. Partial payments upon the receipt of a reimbursement request; and

4. The provision of those additional incentives that the department finds will increase private-sector participation in the reimbursement program and encourage sites eligible for state rehabilitation to convert to voluntary rehabilitation with reimbursement under this subsection.

Due to the value of Florida's potable water, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector. The department is authorized to adopt necessary rules to carry out the intent of this subsection. The department shall report to the Speaker of the House of Representatives, the President of the Senate, and the Governor on the effectiveness of the reimbursement and incentive program by January 1, 1993. ~~The incentive program established pursuant to the provisions of this subsection shall expire on July 1, 1993.~~

(d) Procedure to initiate and conduct site rehabilitation.—Any person initiating site rehabilitation pursuant to this section between January 1, 1985, and December 31, 1988, who intends to file for reimbursement shall submit written notice of such intent to the department prior to midnight on December 31, 1988, together with documentation of site conditions prior to initiation of cleanup. Within 60 days after receipt of such notice and sufficient documentation of site conditions prior to initiation of cleanup, the department shall determine whether the person is ineligible to apply for reimbursement under subparagraph (b)1. or subparagraph (b)2. and shall notify the applicant as to his eligibility in writing.

(e) Records.—The person responsible for conducting site rehabilitation, or his agent, shall keep and preserve suitable records of hydrological and other site investigations and assessments; site rehabilitation plans; contracts and contract negotiations; and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the department during regular business hours and at other times upon written request of the department. In addition, the department may from time to time request submission of such site-specific information as it may require. All records of costs actually incurred for cleanup shall be certified by affidavit to the department as being true and correct.

(f) Application for reimbursement.—Any eligible person who performs a site rehabilitation program or performs site rehabilitation program tasks such as preparation of site rehabilitation plans or assessments; product recovery; cleanup of groundwater or inland surface water; soil treatment or removal; or any other tasks identified by department rule developed pursuant to paragraph (5)(b), may apply for reimbursement. Such applications for reimbursement must be submitted to the department on forms provided by the department, together with evidence documenting that site rehabilitation program tasks were conducted or completed in accordance with department rule developed pursuant to paragraph (5)(b), and other such records or information as the department requires. The reimbursement application and supporting documentation shall be examined by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. A copy of the accountant's report shall be submitted with the reimbursement application. Applications for reimbursement may not

be approved for site rehabilitation program tasks which have not been completed, except for the task of *remedial action* ~~groundwater cleanup~~. Applications for reimbursement for the task of *remedial action* ~~groundwater cleanup~~ may be authorized by the department not less than quarterly. However, the department shall not require an application for reimbursement for the task of *remedial action* ~~groundwater cleanup~~ to be submitted less than annually.

(g) Review.—

1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that the department may require within such 60-day period.

2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.

3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to s. 120.57.

(h) Schedule for reimbursement.—Upon approval of an application for reimbursement, reimbursement for reasonable expenditures of a site rehabilitation program or site rehabilitation program tasks documented therein shall be due and payable within 90 days of approval of the application, provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund. Payment shall be made in the order in which the department receives completed applications. Reimbursement payment for a site rehabilitation program or program tasks shall be made for activities completed in accordance with department rule developed pursuant to paragraph (5)(b), except that a person who undertakes the program task of *remedial action* ~~groundwater cleanup~~ and is working toward meeting the applicable *remedial* ~~cleanup~~ criteria for completion shall be allowed to receive, upon request, interim reimbursement annually while the *remedial action* ~~cleanup~~ is taking place.

~~(i) Obligated funds.—Any funds obligated for reimbursement of expenditures for a site rehabilitation program task prior to July 1, 1989, shall remain obligated until July 1, 1990. If completed applications for such program tasks are not received by that date, the obligated amount will revert to the unobligated balance of the Inland Protection Trust Fund.~~

(i)~~(j)~~ Liberal construction.—With respect to site rehabilitation initiated prior to July 1, 1986, the provisions of this subsection shall be given such liberal construction by the department as will accomplish the purposes set forth in this subsection. With regard to the keeping of particular records or the giving of certain notice, the department may accept as compliance action by a person which meets the intent of the requirements set forth in this subsection.

Section 15. Subsection (2) of section 376.3072, Florida Statutes, 1990 Supplement, is amended, paragraphs (a) and (b) of subsection (3) of that section are amended, and paragraph (f) is added to that subsection, to read:

376.3072 Florida Petroleum Liability Insurance and Restoration Program.—

(2) SCOPE AND TYPE OF COVERAGE.—The Florida Petroleum Liability Insurance and Restoration Program must provide up to $1 million of liability insurance for each incident of inland contamination related to the storage of petroleum products. A site upon which a discharge was discovered prior to January 1, 1989, shall not be eligible to participate in the third-party insurance program until such time as the site shall be restored as required by the department or until the department determines that the site does not require restoration or the department's insurance carrier agrees to assume the risk for a new incident at the site. The third-party liability program shall provide up to $1 million per incident with an annual aggregate of $1 million of third-party liability insurance for owners or operators who have 100 or fewer petroleum storage tanks, and the program shall provide up to $1 million per incident of third-party liability insurance coverage with an annual aggregate of $2 million of liability insurance for owners or operators who have more than 100 storage tanks. The department may provide storage tank owners or operators who do not market petroleum products and whose output of petroleum products is less than 10,000 gallons per month with reduced third-party liability insurance of $500,000 per incident with an annual aggregate of $1 million for owners and operators with less than 100 tanks and $2 million for owners and operators with more than 100 tanks. The program shall have a deductible of $500 per incident and may offer higher deductibles for third-party insurance to be paid by the insured for the first two premium years. The department shall adopt a deductible schedule for the remainder of the program that shall not exceed $100,000 per year to be paid by the insured. The department shall issue policies to eligible owners and operators. The policies shall be in compliance with the federal underground storage tank financial responsibility requirement contained in 40 C.F.R. 280.97. In order to implement the restoration program, the department may contract with an insurance company, a reinsurance company, or an insurance consultant to issue policies, to verify compliance with this section, to determine reasonable rates for allowable costs, and to manage response action contractors. The department must approve any insurance company, self-insurance, or any other mechanism used to achieve the third-party liability insurance requirements of the Florida Petroleum Liability Insurance and Restoration Program. In order to be approved by the department, an insurance company, self-insurance or other mechanism must meet the minimum criteria established by the Environmental Protection Agency for financial responsibility and, if required, shall be registered or licensed by the Department of Insurance. The purchase of the insurance services is not subject to chapter 287. A site at which an incident has occurred shall be eligible for restoration if the owner or operator of the site is a participant in the third-party liability insurance program or meets the self-insurance requirements of this section. A site which had a discharge reported prior to January 1, 1989, for which notice was given pursuant to s. 376.3071(9) or (12), and which is ineligible for the third-party liability insurance program solely due to that discharge shall be eligible for participation in the restoration program for any incident occurring on or after January 1, 1989, provided the facility is in compliance with the rules of the department pertaining to storage tanks adopted pursuant to s. 376.303, and the owner or operator submits a completed affidavit and all pertinent application forms for the program. A site which had a discharge prior to January 1, 1989, and which is eligible for the third-party liability insurance program is also eligible for participation in the restoration program for any new incident occurring on or after January 1, 1989. Restoration funding for an eligible contaminated site will be provided without participation in the third-party liability insurance program until the site is restored as required by the department or until the department determines that the site does not require restoration. A site where a discharge was reported between January 1, 1989, and September 1, 1989, and which is in compliance with the rules of the department pertaining to storage tanks adopted pursuant to s. 376.303, may participate in the restoration program for said discharge with or without participation in the third-party liability insurance program or self-insurance. The cost of restoration shall be paid through the Inland Protection Trust Fund. In order for an eligible owner or operator to participate in the restoration program, the owner or operator must, upon discovery of evidence of a discharge of petroleum product at a facility, drain and remove from service the suspected petroleum storage system, if necessary, and complete initial remedial action as defined by department rules. The cost of restoration will be paid through the Inland Protection Trust Fund. The restoration must be conducted using the criteria and procedures established pursuant to s. 376.3071. *However, unless the responsible person certifies to the department in writing that he qualifies as a small business under s. 288.703(1) or a corporation not for profit under chapter 617, the eligible applicant shall initiate and complete site rehabilitation and seek reimbursement pursuant to s. 376.3071(12). This requirement applies to all sites where a discharge occurs after July 1, 1991, and restoration coverage is requested. This requirement does not apply if the responsible person can demonstrate to the department an economic hardship due to the number of sites or the lack of revenue or credit. In such a situation, the department may approve a plan that requires the responsible person to complete some or all of the tasks for the applicable sites. The plan must include which tasks and sites are required to seek reimbursement pursuant to s. 376.3071(12) and which tasks and sites are subject to this subsection.* The Florida Petroleum Liability Insurance and Restoration Program must provide up to $1 million of restoration for each incidence of

inland contamination related to the storage of petroleum products regulated by department rules pertaining to storage tanks adopted pursuant to s. 376.303. The restoration program shall have an annual aggregate limit of $2 million of restoration per facility. The restoration program shall have a $500 deductible per incident until January 1, 1991. The department shall adopt a deductible schedule for the remainder of the restoration program that shall not exceed $25,000 per year to be paid by the participants in the restoration program. The $1 million amount is a limitation and is meant to apply in the aggregate for all restoration costs or third-party claims arising from any one incident. For purposes of this section, the term:

(a) "Restoration" means rehabilitation of contaminated sites both on and off the property of the owner or operator of the petroleum storage system and shall consist of investigation and assessment, cleanup of affected soil, groundwater and surface water in accordance with the site selection and cleanup criteria established by the department pursuant to s. 376.3071(5), and maintenance and monitoring of the contaminated sites. The term "restoration" also means the department's expeditious rehabilitation or replacement of potable water supplies as provided in s. 376.30(3)(c)1. In the event the department does not provide bottled water, or a replacement water supply within 3 days, the owner, operator, or their designee may provide bottled water to an affected third party, and that cost shall be reimbursable. The term "restoration" does not mean cost which may be associated with site rehabilitation such as the cost of compliance with rules relating to stationary tanks adopted pursuant to s. 376.303.

(b) "Third-party liability" means the insured's liability, other than for restoration costs, for bodily injury or property damage caused by an incident of inland contamination related to the storage of petroleum product.

(c) "Incident" means the reporting of any sudden or gradual discharge of petroleum product arising from operating a storage system containing petroleum product that results in a need for restoration or results in bodily injury or property damage neither expected nor intended by the petroleum storage system owner or operator.

(d) "Petroleum products" means petroleum products as defined by s. 376.301.

(3)(a) ELIGIBILITY FOR PARTICIPATION.—*Any owner or operator of a petroleum storage system, as defined in s. 376.301, who is subject to and in substantial compliance with this chapter and applicable rules relating to petroleum storage systems or petroleum contamination site cleanup adopted pursuant to s. 376.303 with respect to a particular location is eligible to participate in the Florida Petroleum Liability Insurance and Restoration Program for that location.* ~~Any owner or operator of a petroleum storage system, as defined in s. 376.301, who is subject to and in compliance with this chapter and the rules relating to stationary tanks adopted pursuant to s. 376.303 with respect to a particular location, as determined by the department, is eligible to participate in the Florida Petroleum Liability Insurance and Restoration Program for that location. For purposes of this section, any owner or operator of a stationary storage tank that has a storage capacity of 550 gallons or less, or any facility owner or operator who stores petroleum products and who is required to demonstrate financial responsibility under the Federal Financial Responsibility Requirements contained in 40 C.F.R. s. 280, who otherwise meets the requirements adopted by the department under the rules relating to stationary tanks adopted pursuant to s. 376.303 is eligible to participate in the program.~~ In order to participate in the insurance and restoration program, an owner or operator must file an affidavit with the department, which affidavit states that the owner or operator has read and is familiar with this chapter and the rules relating to *petroleum storage systems or petroleum contamination site cleanup* ~~stationary tanks~~ adopted pursuant to s. 376.303 and that *the* ~~his~~ facility is in compliance with this chapter and *applicable* ~~the~~ rules adopted pursuant to s. 376.303. The owner or operator must file the affidavit upon enrollment in the program and must file an affidavit each year upon the scheduled date of payment of the annual registration fee assessed pursuant to s. 376.303; or, upon the date of installation of the facility or enrollment in the program and each year thereafter, if the facility is a petroleum storage system that is not subject to the registration fee. The department may require an owner or operator to submit documentation that is certified as true and correct to verify compliance with this section.

(b) The failure of any owner or operator of a storage system containing petroleum products to maintain compliance with this chapter and rules relating to stationary tanks adopted pursuant to s. 376.303 at any location will result in the cancellation of liability insurance provided through the program and eligibility for the restoration program for that location. Any owner or operator of a facility that receives a notice of cancellation for the liability insurance or restoration program that seeks reinstatement for that facility shall pay a reinstatement inspection fee of $200 per facility to be deposited in the Inland Protection Trust Fund. For purposes of this paragraph, the department may, in its discretion, waive minor violations of this chapter or of rules adopted pursuant to s. 376.303, including, without limitation, violations of provisions relating to the form of inventory or reconciliation records or violations of registration requirements, *or other violations if the owner or operator can demonstrate that he is making a good faith effort to achieve and maintain compliance and has taken prompt action to correct any violation, as required by the department.*

(f) A financial or lending institution that has loaned money to a participant in the Florida Petroleum Liability Insurance and Restoration Program (FPLIRP) or has received an involuntary trust from a participant in the program for the purpose of site rehabilitation shall have the right to conduct cleanup of the site, if a foreclosure of the loan on that property has occurred and if:

1. The owner or operator provided the lender with proof that the facility is eligible for FPLIRP at the time of the loan or before the discharge occurred; and

2. The lender completes site rehabilitation and seeks reimbursement pursuant to s. 376.3071(12).

Section 16. Section 376.3073, Florida Statutes, is amended to read:

376.3073 Local programs *and state agency programs* for control of contamination.—

(1) The department shall, to the greatest extent possible, contract with local governments to provide for the administration of its departmental responsibilities under ss. *376.305,* 376.3071(4)(a)-(e), (h), 376.3072, and 376.3077 through locally administered programs. *The department may also contract with state agencies to carry out the restoration activities authorized pursuant to ss. 376.3071, 376.3072, and 376.305.* However, no such contract shall be entered into unless the local government *or state agency* is deemed capable of carrying out such responsibilities to the department's satisfaction.

(2) To this end, the department shall inform local governments as to the provisions of *chapters* ~~chapter~~ 86-159, *88-331, and 90-98,* Laws of Florida, and as to their options hereunder. At its own option, any local government may apply to the department for such purpose, on forms to be provided by the department, and shall supply such information as the department may require.

(3) Upon approval of its application, an eligible local government shall be entitled, through written contract with the department, to receive sufficient funds to administer the local program. This contract shall provide that reasonable costs, as determined by the department and the local government, of administration, investigation, rehabilitation, other related activities, including the restoration or replacement of potable water supplies of affected persons, and implementation of a compliance verification program, shall be paid to the eligible local government from the Inland Protection Trust Fund created under s. 376.3071 and shall stipulate the method of payment. The contract may provide for an advance of working capital to the local government *or state agency* in order to expedite the cleanup program and in order for local government to contract for cleanup.

(4) Under no circumstances shall the cleanup criteria employed in locally administered programs *or state agency programs* be more stringent than the criteria established by the department pursuant to s. 376.3071(5)(b).

(5) Whenever the department makes a clear determination that a local government *or state agency* has breached a contract to the extent that the local program *or state agency program* is, in the department's estimation, inadequate to prevent or control inland petroleum contamination in such jurisdiction or that such program is being carried out in a manner inconsistent with the requirements of the contract, the department shall require that necessary corrective measures be taken by the local government *or state agency* within a reasonable period of time, not to exceed 45 days.

(6) If the local government *or state agency* fails to take such necessary corrective action within the time required, the department may reassume any or all responsibilities undertaken by the local government *or state agency* pursuant to this section.

Section 17. Section 376.3077, Florida Statutes, is amended to read:

376.3077 Unlawful to deposit motor fuel in tank required to be registered, without proof of registration display.—It is unlawful for any *owner, operator, or supplier* ~~person engaged in commerce in this state~~ to ~~sell any motor fuel and~~ pump or otherwise deposit *any* ~~such~~ motor fuel into a tank required to be registered under s. 376.303 unless proof of valid registration is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located. The Department of Environmental Regulation shall enforce the provisions of this section pursuant to this chapter. The department may enter into an interagency agreement with the Department of Agriculture and Consumer Services to enforce the provisions of this section.

Section 18. Sections 12 and 13 of chapter 88-331, Laws of Florida, are amended to read:

Section 12. The Department of Insurance is hereby directed to compile a report on the availability and cost of pollution liability *and restoration* insurance issued by private insurers. The department shall submit this report to the President of the Senate and the Speaker of the House Representatives on or before January 1, 1993, *and on or before January 1, 1998.*

Section 13. This act shall take effect upon becoming a law. ~~The Florida Petroleum Liability Insurance Program expires July 1, 1993.~~

Section 19. Paragraphs (f) and (g) are added to subsection (24) of section 380.06, Florida Statutes, 1990 Supplement, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(f) Any increase in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators is exempt from the provisions of this section, provided that such an increase does not increase permanent seating capacity by more than 5 percent per year and not to exceed a total of 10 percent in any 5-year period, and provided that the sports facility notifies the appropriate local government within which the facility is located of the increase at least 6 months prior to the initial use of the increased seating, in order to permit the appropriate local government to develop a traffic management plan for the traffic generated by the increase. Any traffic management plan shall be consistent with the local comprehensive plan, the regional policy plan and the state comprehensive plan.

(g) Any expansion in the permanent seating capacity or additional improved parking facilities of an existing sports facility is exempt from the provisions of this section, if the following conditions exist:

1.a. The sports facility had a permanent seating capacity on January 1, 1991, of at least 41,000 spectator seats;

b. The sum of such expansions in permanent seating capacity does not exceed a total of 10 percent in any 5-year period and does not exceed a cumulative total of 20 percent for any such expansions; or

c. The increase in additional improved parking facilities is a one-time addition and does not exceed 3,500 parking spaces serving the sports facility; and

2. The local government having jurisdiction of the sports facility includes in the development order or development permit approving such expansion under this paragraph a finding of fact that the proposed expansion is consistent with the transportation, water, sewer and stormwater drainage provisions of the approved local comprehensive plan and local land development regulations relating to those provisions.

Any owner or developer who intends to rely on this statutory exemption shall provide to the department a copy of the local government application for a development permit. Within 45 days of receipt of the application, the department shall render to the local government an advisory and nonbinding opinion, in writing, stating whether, in the department's opinion, the prescribed conditions exist for an exemption under this paragraph. The local government shall render the development order approving each such expansion to the department. The owner, developer, or department may appeal the local government development order pursuant to s. 380.07, within 45 days after the order is rendered. The scope of review shall be limited to the determination of whether the conditions prescribed in this paragraph exist. If any sports facility expansion undergoes development of regional impact review, all previous expansions which were exempt under this paragraph shall be included in the development of regional impact review.

Section 20. Section 381.2615, Florida Statutes, 1990 Supplement, is amended to read:

381.2615 Drinking water funds.—All fees and penalties received from suppliers of water pursuant to ss. 403.860(5) and *403.861(8)* ~~403.861(7)~~ shall be deposited in the appropriate Public Health Unit Trust Fund to be used by the department to pay the costs of expenditures required pursuant to ss. 381.261 and 403.862(1)(c).

Section 21. Present subsections (8), (9), (10), (11), (12), (13), (14), (15), (16), and (17) of section 403.031, Florida Statutes, are redesignated as subsections (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18), respectively, and a new subsection (8) is added to that section, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(8) "Pollution prevention" means the steps taken by a potential generator of contamination or pollution to eliminate or reduce the contamination or pollution before it is discharged into the environment. The term includes nonmandatory steps taken to use alternative forms of energy, conserve or reduce the use of energy, substitute nontoxic materials for toxic materials, conserve or reduce the use of toxic materials and raw materials, reformulate products, modify manufacturing or other processes, improve in-plant maintenance and operations, implement environmental planning before expanding a facility, and recycle toxic or other raw materials.

Section 22. Subsection (27) of section 403.061, Florida Statutes, 1990 Supplement, is amended, and subsection (34) is added to said section, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules and regulations adopted and promulgated by it and, for this purpose, to:

(27)~~(a)~~ Establish rules which provide for a special category of water bodies within the state, to be referred to as "Outstanding Florida Waters," which water bodies shall be worthy of special protection because of their natural attributes. Nothing in this subsection shall affect any existing rule of the department.

~~(b) Waters within the following aquatic preserves which have not been designated as Outstanding Florida Waters as of June 1, 1986, may be designated as Outstanding Florida Waters only where the Environmental Regulation Commission determines that the natural attributes of such waters are of exceptional recreational or ecological significance pursuant to the procedures established by rules for designating special waters as Outstanding Florida Waters:~~

~~1. Guana River Marsh Aquatic Preserve.~~

~~2. Big Bend Aquatic Preserve.~~

~~3. Terra Ceia Aquatic Preserve.~~

~~4. Rookery Bay Aquatic Preserve.~~

~~5. Banana River Aquatic Preserve.~~

~~6. Wekiva River Aquatic Preserve.~~

~~7. Indian River-Malabar to Vero Beach Aquatic Preserve.~~

~~8. Loxahatchee River-Lake Worth Creek Aquatic Preserve.~~

(34) Establish and administer programs providing appropriate incentives that have the following goals, in order of importance:

(a) Preventing and reducing pollution at its source.

(b) Recycling contaminants that have the potential to pollute.

(c) Treating and neutralizing contaminants that are difficult to recycle.

(d) Disposing of contaminants only after other options have been used to the greatest extent practicable.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 23. Section 403.072, Florida Statutes, is created to read:

403.072 Pollution Prevention Act.—Sections 403.072-403.074 may be cited as the "Pollution Prevention Act."

Section 24. Section 403.073, Florida Statutes, is created to read:

403.073 Pollution prevention; state goal; agency programs; public education.—

(1) It is a goal of the state that all its agencies, the State University System, the State Board of Community Colleges, and all municipalities, counties, regional agencies, and special districts develop and implement strategies to prevent pollution, including public information programs and education programs.

(2) It is the policy of the state that pollution prevention is necessary for all materials and waste management activities. However, until the Pollution Prevention Council, created by section 26 of this act, issues its report and recommendations, the department shall concentrate upon preventing pollution caused by toxic and hazardous wastes.

Section 25. Section 403.074, Florida Statutes, is created to read:

403.074 Technical assistance by the department.—

(1) To help develop effective programs to eliminate or reduce the use of materials that are toxic to humans, plants, or animals and to prevent pollution at its source, the department shall implement and administer a program of technical assistance in pollution prevention to business, industry, agriculture, and state and local government.

(2) The program shall include on-site, nonregulatory technical assistance and shall promote and sponsor conferences on pollution prevention techniques. The program may be conducted in cooperation with trade associations, trade schools, the State University System, the State Board of Community Colleges, or other appropriate entities.

(3) Proprietary information obtained by the department during a visit to provide on-site technical assistance requested under ss. 403.072-403.074 is confidential pursuant to s. 403.111 unless the confidentiality is waived by the party who requested the assistance.

Section 26. Pollution Prevention Council; members; duties; repeal.—

(1) There is created within the Department of Environmental Regulation the Florida Pollution Prevention Council.

(2) The council shall have 12 members. Labor, business, industry, agriculture, government, and the environmental community shall be represented. Appointments shall be made as follows:

(a) Three members shall be appointed by the Governor;

(b) Two members shall be appointed by the President of the Senate;

(c) Two members shall be appointed by the Speaker of the House of Representatives; and

(d) The Secretary of Environmental Regulation, the Secretary of Labor and Employment Security, the Secretary of Commerce, the Secretary of Community Affairs, and the Commissioner of Agriculture, or their respective designees, shall serve as members.

(3) The council shall conduct a study of all aspects of pollution prevention in the state and shall prepare a report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 1, 1992. The report shall include, but need not be limited to:

(a) A recommendation on overall statewide guidelines for pollution prevention;

(b) Using specific information supplied by the department on quantities of hazardous or toxic materials used and generated in the state, a recommended statewide goal for pollution prevention, together with appropriate milestones which must be met to reach that goal;

(c) An evaluation of opportunities and incentives for preventing pollution in the state and for cooperation among generators and users of hazardous or toxic materials, the treatment and disposal industries, and state and local government;

(d) An evaluation of the need for and scope of technical assistance to be made available by the department;

(e) Recommendations on administering and enforcing the statewide pollution prevention program; and

(f) Recommendations for a permanent source of funds that will encourage pollution prevention and support state, regional, and local pollution prevention programs.

(4) The council is abolished July 1, 1992.

Section 27. Subsection (5) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(5)(a) The department *shall* ~~may~~ require a processing fee in an amount sufficient, *to the greatest extent possible,* to cover the costs of reviewing and acting upon any application for a permit or request for site-specific alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and other field services *and related support activities* associated with any permit issued pursuant to this chapter. However, when an application is received without the required fee, the department shall acknowledge receipt of the application and shall immediately return the unprocessed application to the applicant and shall take no further action until the application is received with the appropriate fee. *The department shall adopt a schedule of fees* ~~The amount of the fees shall be adopted~~ by rule, subject to the following limitations:

1. The permit fee for any of the following permits may not exceed $32,500:

a. Hazardous waste, construction permit.

b. Hazardous waste, operation permit.

c. Hazardous waste, closure permit.

2. The permit fee for a Class I injection well construction permit may not exceed $12,500.

3. The permit fee for any of the following permits may not exceed $10,000:

a. Solid waste, construction permit.

b. Solid waste, operation permit.

c. Class I injection well, operation permit.

4. The permit fee for any of the following permits may not exceed $7,500:

a. Air pollution, construction permit.

b. Solid waste, closure permit.

c. Drinking water, construction or operation permit.

d. Domestic waste residuals, construction or operation permit.

e. Industrial waste, operation permit.

f. Industrial waste, construction permit.

5. The permit fee for any of the following permits may not exceed $5,000:

a. Domestic waste, operation permit.

b. Domestic waste, construction permit.

6. The permit fee for any of the following permits may not exceed $4,000:

a. Wetlands resource management - (dredge and fill), standard form permit.

b. Hazardous waste, research and development permit.

c. Air pollution, operation permit.

d. Class III injection well, construction, operation, or abandonment permits.

7. The permit fee for Class V injection wells, construction, operation, and abandonment permits may not exceed $750.

8. The permit fee for any of the following permits may not exceed $500:

a. Domestic waste, collection system permits.

b. Wetland resource management - (dredge and fill and mangrove alterations), short permit form.

c. Drinking water, distribution system permit.

9. The permit fee for stormwater operation permits may not exceed $100.

10. The general permit fees for permits that require certification by a registered professional engineer or professional geologist may not exceed $500. The general permit fee for other permit types may not exceed $100.

11. For applicants for a temporary operation permit, the department shall add a surcharge of 20 percent over the fees for the operation permit for the activity to be permitted.

~~1. The permit fee for any of the following permits shall not exceed $5,000:~~

~~a. Air pollution, construction permit.~~

~~b. Hazardous waste, construction permit.~~

~~c. Hazardous waste, closure permit.~~

~~d. Solid waste, construction permit.~~

~~e. Industrial waste, construction permit.~~

~~f. Deep injection well, construction permit.~~

~~2. The permit fee for a temporary operation permit for an industrial waste source shall not exceed $4,000.~~

~~3. The permit fee for any of the following permits shall not exceed $3,000:~~

~~a. Domestic waste, temporary operation permit.~~

~~b. Dredge and fill, standard form permit.~~

~~c. Hazardous waste, temporary operation permit.~~

~~d. Hazardous waste, research and development permit.~~

~~e. Solid waste, temporary operation permit.~~

~~f. Solid waste, operation permit.~~

~~g. Solid waste, closure permit.~~

~~h. Deep injection well, operation permit.~~

~~4. The fee for any of the following permits shall not exceed $2,000:~~

~~a. Air pollution, temporary operation permit.~~

~~b. Air pollution, operation permit.~~

~~c. Domestic waste, operation permit.~~

~~d. Domestic waste, construction permit.~~

~~e. Hazardous waste, operation permit.~~

~~f. Industrial waste, operation permit.~~

~~5. The permit fee for a drinking water facility construction permit shall not exceed $1,000.~~

~~6. The permit fee for any of the following permits shall not exceed $500:~~

~~a. Domestic waste, collection systems.~~

~~b. Dredge and fill, short form.~~

~~c. Drinking water, distribution system.~~

~~d. Other injection wells, construction and operation.~~

~~7. The permit fee for any of the following permits shall not exceed $100:~~

~~a. Domestic waste, general permit.~~

~~b. Dredge and fill, general permit.~~

~~c. Mangrove alteration.~~

~~d. Solid waste, general permit.~~

~~e. Industrial waste, general permit.~~

~~f. Drinking water, general permit.~~

~~g. Injection well, general permit.~~

~~h. Injection well, abandonment.~~

~~i. Stormwater.~~

12.~~8.~~ The fee for a permit issued pursuant to s. 403.816 is $5,000, and the fee for any modification of such permit requested by the applicant is $1,000.

(b) Where new or existing multiple air pollution sources located at the same facility are substantially similar in nature, the applicant may submit a single application and permit fee for construction or operation of the sources at that facility. The department may develop by rule criteria for determining what constitutes substantially similar sources.

(c) The fee schedule shall be adopted by rule ~~based on a sliding scale relating to the size or type of installation which is proposed or operated by the applicant. The fee schedule shall provide for a reduced fee where the applicant seeks to renew an existing permit and there is no significant change in the authorized activity, and may provide for maximum permit fees to be paid during any 5-year period by the owner or operator of a single facility.~~ The amount of each fee shall be reasonably related to the costs of permitting, ~~and~~ field services, *and related support activities* for the particular *permitting* activity taking into consideration *consistently applied* standard cost-accounting principles and economies of scale. If the department requires by rule or by permit condition that a permit be renewed more frequently than once every 5 years, the permit fee shall be prorated based upon the permit fee schedule in effect at the time of permit renewal.

(d) Nothing in this subsection authorizes the construction or expansion of any stationary installation except to the extent specifically authorized by department permit or rule.

(e) For all domestic waste collection system permits and drinking water distribution system permits, the department shall adopt a fee schedule, by rule, based on a sliding scale relating to pipe diameter, length of the proposed main, or equivalent dwelling units, or any combination of these factors. The department shall require a separate permit application and fee for each noncontiguous project within the system.

Section 28. Section 403.0871, Florida Statutes, is amended to read:

403.0871 Florida Permit Fee Trust Fund.—There is established within the Department of Environmental Regulation a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received from applicants for permits pursuant to ss. 403.087(5) and *403.861(8)* ~~403.861(7)~~ shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter. In no case shall funds from the Florida Permit Fee Trust Fund be used for salary increases without the approval of the Legislature.

Section 29. Section 403.0877, Florida Statutes, is amended to read:

403.0877 Certification by professionals regulated by the Department of Professional Regulation.—

(1) Nothing in this section shall be construed as specific authority for a water management district or the department to require certification by a professional engineer licensed under chapter 471, a professional landscape architect licensed under part II of chapter 481, a professional geologist licensed under chapter 492, or a professional land surveyor licensed under chapter 472, for an activity that is not within the definition or scope of practice of the regulated profession.

(2) If an application for a permit or license to conduct an activity regulated under this chapter, chapter 373, chapter 376, or any permitting program delegated to a water management district by a state agency, *or to undertake corrective action of such activity or program ordered by the department or a water management district,* requires the services of a professional as enumerated in subsection (1), the department or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, *or in conjunction with the order of corrective action,* such certification by the professional as *is* ~~may be~~ necessary to ensure that the proposed activity *or corrective action* is designed, constructed, operated, and maintained in accordance with applicable law and rules of the department or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the department or district. The department or governing board of a water management district may further require as a condition of granting a permit or license, *or in conjunction with ordering corrective action* that the professional certify upon completion of the permitted or licensed activity *or corrective action* that such activity *or corrective action* has, to the best of his knowledge, been completed in substantial conformance with the plans and specifications approved by the department or board.

(3) The cost of such certifications by the professional shall be borne by the permittee *or the person ordered to correct the permitted activity.*

(4) *A* ~~No~~ permitted or licensed activity *or corrective action that* ~~which~~ is required to be so certified upon completion of the activity *or action may not* ~~shall~~ be placed into use or operation until the professional's certificate is filed with the department or board.

Section 30. Section 403.101, Florida Statutes, is amended to read:

403.101 Classification and reporting; regulation of operators of *public water systems,* ~~water purification plants and~~ wastewater treatment *works, and sewerage systems* ~~plants~~.—

(1) The department, by rule, may classify air and water contaminant sources, which sources in its judgment may cause or contribute to air or water pollution, according to levels and types of emissions and other characteristics which relate to air or water pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be made for application to the state as a whole or to any designated area of the state, and shall be made with special reference to physical effects on property and effects on health, economic, social, and recreational factors.

(2) Any person operating, or responsible for the operation of, air or water contaminant sources of any class for which the rules of the department require reporting shall make reports containing information as may be required concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time period or duration of emissions, and such other information as is relevant to air and water pollution and available or reasonably capable of being assembled.

(3) The department is authorized to establish qualifications for, and to examine and certify, *public* water *system* and wastewater treatment *works or sewerage system* ~~plant~~ operators; to issue, deny, revoke, and suspend operator certificates pursuant to its rules and chapter 120; to charge a fee not in excess of *$50* ~~$15~~ for *processing an application for* certification; and to charge a fee not in excess of *$50* ~~$30~~ for ~~application processing and~~ renewal of certification. In assessing fees authorized by this subsection, the department is directed to adjust the fees as needed within the established limits to ensure that generated revenues from the certification program will equal or exceed the cost of operation. Certificate renewal shall be biennial *from the date of the original certification. This provision on the timing of renewals applies both retroactively and prospectively to all operators, whenever certified,* ~~effective January 1, 1980~~. A fee not to exceed $5 may be charged for the issuance of a duplicate certificate. Such fees shall be nonrefundable. Renewals of certification, issued as requested by the applicant pursuant to this section, shall be exempt from the provisions of s. 120.60(3), if the department provides each applicant with written notice either personally or by mail of the certification or renewal.

(4) No person shall perform the duties of operator of a *public* water *system* or wastewater treatment *works or sewerage system* ~~plant~~ unless he holds a current operator's certificate issued by the department. However, this section shall not apply to public lodging establishments licensed under chapter 509. No owner of a *public* water *system* or wastewater *treatment works or sewerage system* ~~plant~~ shall employ any person to perform the duties of an operator unless such person possesses a valid certificate at the required level of certification.

~~(5) All funds collected pursuant to this section shall be deposited in the General Revenue Fund.~~

(5)~~(6)~~ The department may promulgate rules and minimum standards to effectuate the provisions of this section and to ensure efficient, hygienic water purification and wastewater treatment operations in this state.

(6)~~(7)~~ For purposes of this section,~~:~~

(a) "Operator" means any person, including the owner, who is principally engaged in or, ~~and~~ is in charge of~~,~~ the actual operation, supervision, and maintenance of a *public water system or a* ~~drinking water purification plant or a domestic~~ wastewater treatment *works* ~~plant~~ and includes the person in charge of a shift or period of operation during any part of the day.

(b) "Public water system" shall have the same meaning provided in s. 403.852(2).

Section 31. Section 403.1815, Florida Statutes, is amended to read:

403.1815 Construction of water distribution mains and sewage collection *and transmission systems* ~~laterals~~; local regulation.—Notwithstanding any other provision of this chapter to the contrary, the department may, upon request, allow any county or municipality to *independently* regulate ~~independently~~ the construction of water distribution mains *of 12 inches or less, gravity sewage collection systems of 12 inches or less, and sewage force mains of 12 inches or less, and pump stations appurtenant to such force mains, provided the plant is* ~~and sewage collection laterals of 10 inches or less in size which may be connected to any water system or sewerage system~~ owned by the county or municipality *making the request for approval. The approval may apply to all or any part of such systems.* In considering such request, the department shall determine the administrative and engineering ability of a county or municipality to administer and comply with the requirements of this section. In the event the department allows any county or municipality to *independently* regulate ~~independently~~ the construction of such *systems* ~~water distribution mains and sewage collection laterals~~, these ~~types of~~ construction projects shall be exempt from department permit requirements. However, nothing in this section shall relieve a county or a municipality from any requirement to obtain the necessary permits for construction activities in waters of the state or of the United States or from complying with all other provisions of this chapter and rules promulgated thereunder. The exemption provided by this section shall not apply to any ~~lateral~~ connection to any water or sewerage system which the department has deemed to be in substantial noncompliance with applicable laws and standards if the department has so notified the respective county or municipality. Each county or municipality granted such authority shall submit monthly reports to the department of the number of connections and geographical location of such connections made to any *water or* sewerage system owned by such county or municipality and shall, not later than July 1 of each year, submit an updated map of any water distribution system and sewage collection *and transmission* system owned by the county or municipality. Such map shall indicate the extensions of such *systems* ~~water mains and sewer laterals~~ constructed for the preceding year.

Section 32. Section 403.1835, Florida Statutes, is amended to read:

403.1835 *Sewage treatment* ~~Wastewater~~ facilities ~~and stormwater management systems~~ revolving loan program.—

(1) The purpose of this section is to assist in implementing the legislative declaration of public policy as contained in s. 403.021 by establishing a loan program to accelerate construction of *sewage treatment* ~~wastewater~~ facilities and ~~stormwater management systems~~ by local governmental agencies and to assist local governmental agencies ~~in implementing stormwater management programs and to develop and implement estuary conservation and management plans~~.

(2) For the purposes of this section, the *term* ~~following terms, unless the context otherwise indicates, shall have the meanings ascribed to them in this subsection~~:

(a) "Local governmental agencies" means local governmental agencies as defined in s. 403.1822(3).

(b) "*Sewage treatment* ~~Wastewater~~ facilities" means all facilities necessary, including land, for the collection, treatment, or disposal of domestic wastewater.

(c) "Bonds" means state bonds, certificates, or other obligations of indebtedness issued by the Division of Bond Finance of the Department of General Services pursuant to this section and the State Bond Act.

(3) The department is authorized to make loans to local governmental agencies to assist *them* ~~said agencies~~ in ~~the~~ planning, designing, and *constructing sewage treatment* ~~construction of wastewater~~ facilities ~~and stormwater management systems and in the acquisition of land necessary for such construction~~. ~~The department is also authorized to make loans to local governmental agencies for the implementation of stormwater management programs under s. 319 of the Federal Water Pollution Control Act and for development and implementation of estuary conservation and management plans under s. 320 of the Federal Water Pollution Control Act, as amended.~~ The department is authorized to use the funds to provide loan guarantees, to purchase loan insurance, and to refinance local debt through the issue of new loans for projects approved by the department. Local governmental agencies are authorized to borrow funds made available pursuant to this section and may pledge any revenue available to them to repay any funds borrowed. *The department shall administer loans to local governmental agencies so that at least 15 percent of each annual allocation for loans is reserved for small communities.*

(4) The term of loans made pursuant to this section shall not exceed 30 years. The interest rate on loans shall be no greater than that paid on the last bonds sold pursuant to s. 14, Art. VII, State Constitution.

(5)(a) The department is authorized to make rules necessary to carry out the purpose of this section, including rules to administer the state revolving fund authorized pursuant to the Federal Water Pollution Control Act, as amended.

(b) The department shall prepare an annual report detailing the amount loaned, interest earned, and loans outstanding at the end of each fiscal year.

(6) Prior to approval of a loan, the local government shall:

(a) Provide a repayment schedule.

(b) Submit plans and specifications for *sewage treatment* ~~wastewater~~ facilities ~~or stormwater management systems~~.

(c) Provide assurance that records will be kept using accepted government accounting standards and that the department, the Auditor General, or their agents will have access to all records pertaining to the loan.

(d) Provide assurance that the facility will be properly operated and maintained.

(e) Document that the revenues generated will be sufficient to ensure that the facilities will be self-supporting.

(f) Provide assurance that annual financial audit reports, and a separate project audit prepared by an independent certified public accountant upon project completion, will be submitted to the department.

(7) Eligible projects shall be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health.

(8) *If* ~~In the event~~ a local governmental agency becomes delinquent on its loan, the department shall so certify to the Comptroller who shall forward the amount delinquent to the department from any unobligated funds due to the local governmental agency under any revenue sharing or tax sharing fund established by the state, except as otherwise provided by the State Constitution. Certification of delinquency shall not limit the department from pursuing other remedies available for default on a loan. The department may impose a penalty for delinquent loan payments in the amount of 6 percent of the amount due in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(9) A *nonlapsing* trust fund with revolving loan provisions to be known as the "*Sewage* ~~Wastewater~~ Treatment ~~and Stormwater Management~~ Revolving Loan Fund" is hereby established in the State Treasury to be used as a revolving fund by the department to carry out the purpose of this section. Any funds therein which are not needed on an immediate basis for loans may be invested pursuant to s. 215.49. The cost of administering the program shall, to the extent possible, be paid from federal funds and, when federal funds become no longer available, from reasonable service fees that may be imposed upon loans. Grants awarded by the Federal Government to fund revolving loans for local governmental agencies' *sewage treatment* ~~wastewater~~ facilities ~~and stormwater management systems~~ shall be deposited *into* ~~in~~ the fund. All *moneys* ~~funds~~ available in the fund are hereby designated to carry out the purpose of this section. The principal and interest of all loans repaid and investment earnings shall be deposited into this fund.

~~(10) Funds available in, or to become available in, the Wastewater Treatment and Stormwater Management Revolving Loan Fund and loan repayments to the department from local governmental agencies may be used to pay debt service on, or fund debt service reserve funds, rebate obligations, or other amounts with respect to bonds issued for purposes of the Wastewater Treatment and Stormwater Management Facilities Revolving Loan Program. Such bonds are hereby authorized to be issued pursuant to the provisions of s. 14, Art. VII of the State Constitution and s. 403.1834. All bonds issued pursuant to this section shall be issued by the Division of Bond Finance pursuant to the State Bond Act. Such bonds shall be secured by a debt service reserve which shall be funded at a level which is equal to the maximum annual debt service or the maximum sinking fund requirement where there are no annual payments of principal and interest, but shall not exceed the maximum amount allowed pursuant to the Internal Revenue Code of 1986, as amended. In lieu of such debt service reserve, the Division of Bond Finance may obtain a letter of credit, insurance policy, or other credit enhancement facility at the required level.~~

Section 33. Section 403.414, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 403.414, F.S., for present text.)

403.414 Environmental award program.—

(1) The department shall administer an environmental award program to recognize outstanding efforts in the protection, conservation, or restoration of the air, water, or other natural resources of the state by agencies, municipalities, counties, and other governmental units; private organizations, institutions, and industries; the communications media; and individuals.

(2) Awards may be approved by the secretary in the following areas:

(a) Water resources and quality.

(b) Air quality.

(c) Solid and hazardous waste management.

(d) Communications through any media.

(3) The department shall adopt rules to govern administration of the program. An agency, municipality, county, or other governmental unit; a private organization, institution, or industry; the communications media; or an individual may submit a nomination for an award to the department at any time. A nomination must be submitted on a form adopted by the department and must include information required by the department to consider that nomination.

(4) The department may accept money from any public agency or other source to be used for the environmental award program.

Section 34. Subsection (3) of section 403.7215, Florida Statutes, is amended to read:

403.7215 Tax on gross receipts of commercial hazardous waste facilities.—

(3) All moneys received by the appropriate local government pursuant to subsection (2) shall be appropriated and used to pay for:

(a) The costs of collecting the tax;

(b) Any local inspection costs incurred by the local government to ensure that the facility is operated pursuant to the provisions of this part and any rule adopted pursuant thereto;

(c) Additional security costs incurred as a result of operating the facility, including monitoring, fire protection, and police protection;

(d) Hazardous waste contingency planning implementation;

(e) Road construction or repair costs for public roads adjacent to and within 1,000 feet of the facility; ~~and~~

(f) Any other cost incurred by the local government as a result of the operation of the facility, if all other costs specified in *paragraphs (a) through (e) of* this section have been paid*; and.*

(g) Any other purposes relating to environmental protection within the jurisdiction of the local government, including, but not limited to, the establishment of a system for the collection and disposal of household, agricultural and other types of hazardous waste, the protection or improvement of the quality of the air or water, or the acquisition of environmentally sensitive lands, provided all other costs specified in this section have been paid.

Section 35. Subsection (17) is added to section 403.7225, Florida Statutes, to read:

403.7225 Local hazardous waste management assessments.—

(17) The Legislature recognizes the expense incurred by county governments in the proper identification and notification of small quantity generators of hazardous waste within their jurisdictions. When required to support the local hazardous waste assessments required by this section, the small quantity generator notification program required pursuant to s. 403.7234, and the reporting requirements of s. 403.7236, a county may impose a small quantity generator notification and verification surcharge of up to $50 on the business or occupational license or renewal of any firm that is identified as a small quantity generator of hazardous wastes. A county may contract with or otherwise enter into an agreement with the county tax collector to collect the annual surcharge.

Section 36. Subsection (2) of section 403.852, Florida Statutes, is amended to read:

403.852 Definitions.—As used in ss. 403.850-403.864:

(2) "Public water system" means a community, *nontransient noncommunity,* or noncommunity system for the provision to the public of piped water for human consumption, provided that such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. The term includes:

(a) Any collection, treatment, storage, and distribution facility or facilities under control of the operator of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facility or facilities not under control of the operator of such system but used primarily in connection with such system.

Section 37. Subsection (5) of section 403.854, Florida Statutes, 1990 Supplement, is amended to read:

403.854 Variances, exemptions, and waivers.—

(5) The department shall, except upon a showing of good cause, waive on a case-by-case basis any requirement for a certified operator for a *nontransient noncommunity or* noncommunity water system having a design flow of less than 10,000 gallons per day upon an affirmative showing by the supplier of water that the system can be properly maintained without a certified operator. The department shall consider:

(a) The results of a sanitary survey if deemed necessary;

(b) The operation and maintenance records for the year preceding an application for waiver;

(c) The adequacy of monitoring procedures for maximum contaminant levels included in primary drinking water regulations;

(d) The feasibility of the supplier of water becoming a certified operator; and

(e) Any threat to public health that could result from nonattendance of the system by a certified operator.

Section 38. Section 403.861, Florida Statutes, is amended to read:

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(1) Administer and enforce the provisions of this act and all rules and orders adopted, issued, or made effective hereunder.

(2) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as it deems appropriate, with other local, state, federal, or interstate agencies; municipalities; political subdivisions; educational institutions; or other organizations or persons.

(3) Receive financial and technical assistance from the Federal Government and other public or private agencies.

(4) Participate in related programs conducted by federal agencies, other states, interstate agencies, or other public or private agencies or organizations.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of, and accounting for, funds appropriated or otherwise provided for the purpose of carrying out provisions of this act.

(6) Delegate those responsibilities and duties deemed appropriate for the purpose of administering requirements of this act.

(7) Issue permits for constructing or operating a public water supply system, based upon the size, type of treatment, or population served by the system.

(8)~~(7)~~ Require a fee in an amount sufficient to cover the costs of viewing and acting upon any application for the construction and operation of a public water supply system and the costs of surveillance and other field services associated with any permit issued, but the amount in no case shall exceed *$7,500* ~~$1,000~~. The fee schedule shall be adopted by rule based on a sliding scale relating to the size, ~~or~~ type of treatment, *or population served by the system that* ~~which~~ is proposed by the applicant.

(9)~~(8)~~ Adopt, modify, and repeal such rules as are necessary or appropriate to carry out its functions under this act.

(10)~~(9)~~ Require department or county health department review and approval of complete plans and specifications prior to the installation, operation, alteration, or extension of any public water system.

(11)~~(10)~~ Establish and maintain laboratories for radiological, microbiological, and chemical analyses of water samples from public water systems, if the department determines that an additional laboratory capability beyond that provided by the Department of Health and Rehabilitative Services is necessary.

(12)~~(11)~~ Plan, develop, and coordinate program activities for the management and implementation of the state primary and secondary drinking water regulations, including taking sanitary surveys.

(13)~~(12)~~ Collect and disseminate information and conduct educational and training programs relating to drinking water and public water systems.

(14)~~(13)~~ Conduct data management activities to maintain essential records needed for administration of the public water system supervision program and for submission to the administrator, including the maintenance of an inventory for all public water systems.

(15)~~(14)~~ Establish and collect fees for conducting state laboratory analyses as may be necessary, to be collected and used by either the department or the Department of Health and Rehabilitative Services in conducting its public water supply laboratory functions.

(16)~~(15)~~ Require suppliers of water to collect samples of water as required by state primary drinking water regulations, to submit such samples to an appropriate laboratory for analysis, and to keep sampling records as required under the federal act and make such records available to the department upon request.

(17)~~(16)~~ Require suppliers of water to submit periodic operating reports and testing data which the department determines are reasonably necessary to ascertain the adequacy of water supply systems.

(18)~~(17)~~ Issue such orders as may be necessary to effectuate the intent and purposes of this act.

(19)~~(18)~~ Assist state and local agencies in the determination and investigation of suspected waterborne disease outbreaks, including diseases associated with chemical contaminants.

(20)~~(19)~~ Encourage public involvement and participation in the planning and implementation of the state public water system supervisory plans.

Section 39. Subsection (7) of section 403.862, Florida Statutes, 1990 Supplement, is amended to read:

403.862 Department of Health and Rehabilitative Services; public water supply duties and responsibilities; coordinated budget requests with Department of Environmental Regulation.—

(7) Fees received from suppliers of water pursuant to ss. 403.860(5) and *403.861(8)* ~~403.861(7)~~ in counties where county public health units have been approved by the department pursuant to s. 403.862(1)(c) shall be deposited in the appropriate Public Health Unit Trust Fund to be used for the purposes stated in s. 403.862(1)(c).

Section 40. The Department of Environmental Regulation shall conduct a study to determine the full cost of accepting delegation of the National Pollutant Discharge Elimination System permitting program from the U.S. Environmental Protection Agency including savings from elimination of duplicative permitting. It is the intent of the Legislature that such delegation should be fully paid for by permit fees, and the study should reflect this policy. The study shall be presented to the Governor, the Senate and the House of Representatives no later than January 1, 1992. The proposed timetable for obtaining the delegation of the National Pollutant Discharge Elimination System permitting program shall also be submitted with the report and recommended fee schedule.

Section 41. Section 489.133, Florida Statutes, is amended to read:

489.133 Pollutant storage systems specialty contractors; definitions; certification; restrictions.—

(1) As used in this part:

(a) "Pollutant storage systems specialty contractor" means a contractor who installs or removes a pollutant storage tank.

(b) "Pollutant storage tank" means a tank, together with associated piping or dispensing facilities, which is or could be used for the storage or supply of pollutants as defined in s. 376.301 and which is required to be registered under chapter 17-61 of the Florida Administrative Code or for which notification must be submitted under Subtitle I of the Resource Conservation and Recovery Act.

(c) "Registered internal pollutant storage tank lining applicator" means any person who has registered with the department pursuant to subsection (3).

(d)~~(c)~~ "Tank" means any container other than one which is aboveground and either elevated or situated upon an impermeable surface, or which is located in an accessible underground area and either elevated or situated upon an impermeable surface therein, in such manner that any leak in such container may be readily detected.

(e)~~(d)~~ "Registered precision tank tester" means any precision tank tester who has registered with the department pursuant to subsection (2). ~~This registration shall be exempt from the provisions of prior municipality, county, or development district registration, as required under s. 489.117, and shall be registered on a statewide basis.~~

(2) The board shall adopt rules providing standards for registration of precision tank testers who precision test a pollutant storage tank. The Department of Environmental Regulation shall review and comment on such rules prior to adoption. *A person who registers under this subsection is exempt from municipal, county, or development district registration under s. 489.117 and may operate as a precision tank tester statewide.*

(3) The board shall adopt rules providing standards for registration of internal pollutant storage tank lining applicators who internally line a storage tank as a method of upgrading or repairing a pollutant storage tank to prevent a discharge of pollutants. The Department of Environmental Regulation shall approve the methodology, procedures, and equipment used and shall approve the applicant as being eligible for registration as a registered internal pollutant storage tank lining applicator. A registered internal pollutant storage tank lining applicator is subject to the provisions of ss. 489.129 and 489.132, and shall be considered a contractor operating as a primary qualifying agent for the business entity employing him, which entity shall be considered a contracting firm for the purposes of ss. 489.129 and 489.132.

(4)~~(3)~~ The board shall adopt rules providing standards for certification of pollutant storage systems specialty contractors ~~and~~, *including* ~~by July 1, 1988, amend such rules to include~~ persons who remove such systems. The board shall provide the proposed rules to the Department of Environmental Regulation for review and comment prior to adoption. The rules shall include, but not be limited to:

(a) Standards for operating as a pollutant storage systems specialty contractor.

(b) Requirements for certification as a pollutant storage systems specialty contractor.

(c) Requirements for certification without examination of pollutant storage systems specialty contractors for any person who has passed a local licensure examination, a licensure examination in another state, or a licensure examination of a national organization, which is at least as stringent as the examination adopted by the board.

(d) Requirements for certification without examination of pollutant storage systems specialty contractors for any certified mechanical contractor, any certified plumbing contractor, and any registered mechanical or plumbing contractor who has passed a local examination judged by the board to be at least as stringent as the equivalent state mechanical or plumbing contractor's examination, provided that such contractor has been certified prior to July 1, 1986, or has been registered and passed such local examination prior to July 1, 1986.

(e) Requirements for certification by practical examination, demonstrating the ability to competently install or remove pollutant storage tanks, of pollutant storage systems specialty contractors for any person who has received a temporary certificate under paragraph *(5)(a)* ~~(4)(a)~~ and has operated as a pollutant storage systems specialty contractor since September 1, 1981, provided that such person pays for the actual cost of the practical examination.

(f) Requirements for certification without examination of pollutant storage systems specialty contractors for any person who satisfactorily shows to the board evidence of having operated as a pollutant storage systems specialty contractor continuously for 10 years prior to July 1, 1990: statements from local officials in the areas where the person performs most of his work that such work has been competently and safely performed; and a statement from the Department of Environmental Regulation that it has taken no legal or administrative action against such person related to public health and safety issues resulting from pollutant storage systems. Application for certification without examination of pollutant storage systems specialty contractor shall be made to the board prior to July 1, 1990.

The board may use standards and examinations of national organizations if such standards and examinations are adequate to ensure competent installation and removal of pollutant storage tanks. All such standards and examinations shall be designed to ensure that leaks and other discharges are eliminated to the greatest extent possible.

(5)~~(4)~~(a) Any person who has operated as a pollutant storage systems specialty contractor during the 5 years preceding September 1, 1986, shall receive within 30 days after written request a temporary certificate permitting such person to continue operating without certification until July 1, 1990, if such person:

1. Notifies the department in writing that he intends to continue such operation and submits an application fee set by the board not to exceed $50.

2. Provides a history of successful operation as a pollutant storage systems specialty contractor within such time period.

(b) A contractor seeking to be certified pursuant to paragraph *(4)(d)* ~~(3)(d)~~ shall receive within 30 days after written request a temporary certificate permitting such contractor to continue operating without certification until the board determines whether he qualifies for a certificate under paragraph *(4)(d)* ~~(3)(d)~~, provided that such contractor:

1. Notifies the department in writing that he intends to apply for certification under paragraph *(4)(d)* ~~(3)(d)~~.

2. Provides the board sufficient information to determine that such contractor qualifies on the basis of certification or registration and the passage of an examination.

The board may revoke or refuse to issue such temporary certificate for violation of s. 489.127 or s. 489.129.

(6)~~(5)~~(a) Notwithstanding any provision of this part to the contrary, no person shall engage in contracting as a pollutant storage systems specialty contractor unless such person is certified as a pollutant storage systems specialty contractor pursuant to this part, nor shall any official authorized to issue building or other related permits issue a permit or permits for the installation or removal of a pollutant storage tank unless such official ascertains that the applicant for such permit or permits is certified as a pollutant storage systems specialty contractor.

(b) Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(7)~~(6)~~ Any person who operates as a pollutant storage systems specialty contractor, *precision tank tester, or internal pollutant storage tank lining applicator* in violation of this section or any person who violates subsection *(6) commits* ~~(5) is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 42. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 43. Except as otherwise provided herein, this act shall take effect July 1, 1991, or upon becoming a law, whichever occurs later, except that section 6 of this act shall take effect January 1, 1992, or when funds have been appropriated from the Water Quality Assurance Trust Fund or the General Revenue Fund to administer the provisions of section 6. Section 376.3072(3)(b), Florida Statutes, as amended by chapter 90-54, Laws of Florida, and this act, shall apply retroactively to January 1, 1989.

House Amendment 1 to House Amendment 1—On page 42, line 25, insert:

Section 22. Paragraph (c) is added to subsection (4) of Section 403.927, Florida Statutes, to read:

403.927 Use of water in farming and forestry activities.—

(4) As used in this section, the term:

(c) "Farm pond" means a pond located on a farm, used for farm purposes, as determined by water management district rule.

(Renumber subsequent sections.)

House Amendment 2 to House Amendment 1—On page 6, line 12, after the period (.) insert: *The provision of funding pursuant to this paragraph shall not be construed as an admission of liability on the part of the state or any political subdivision thereof.*

House Amendment 3 to House Amendment 1—On page 56, line 16, after "actual" insert: *on-site*

House Amendment 4 to House Amendment 1—On page 4, line 9, after the period (.) insert:

Section 4. Subsection (2) of section 211.3103, Florida Statutes, is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(2) The proceeds of all taxes, interest, and penalties imposed under this section shall be paid into the State Treasury as follows:

(a) For the period beginning July 1, 1987, and ending June 30, 1989:

1. To the credit of the General Revenue Fund, 95 percent.

2. For payment to counties in proportion to the number of tons of phosphate produced from a phosphate rock matrix located within such political boundary, 5 percent. The department shall distribute this portion of the proceeds based on production information reported by producers on the most recent annual returns filed prior to the beginning of the fiscal year. Any such proceeds received by a county shall be used only for phosphate-related expenses.

(b) Beginning July 1, 1989, the proceeds of all taxes, interest, and penalties imposed under this section shall be paid into the State Treasury as follows:

1. The first $10 million in revenue collected from the tax during each fiscal year shall be paid to the credit of the Conservation and Recreation Lands Trust Fund.

2. The remaining revenues collected from the tax during that fiscal year, after the required payment under subparagraph 1., shall be paid into the State Treasury as follows:

a. To the credit of the General Revenue Fund of the state, 60 percent.

b. To the credit of the Nonmandatory Land Reclamation Trust Fund which is established for reclamation and acquisition of unreclaimed lands disturbed by phosphate mining and not subject to mandatory reclamation, *20* ~~25~~ percent.

c. To the credit of the Phosphate Research Trust Fund which is created to carry out the purposes set forth in s. 378.101, *10* ~~5~~ percent.

d. For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 10 percent. The department shall distribute this portion of the proceeds based on production information reported by producers on the most recent annual returns filed prior to the beginning of the fiscal year. Any such proceeds received by a county shall be used only for phosphate-related expenses.

Section 5. Subsection (8) of section 378.034, Florida Statutes, is amended and subsection (13) is added to said section to read:

378.034 Submission of a reclamation program request; procedures.—

(8) Until 1995, the funds available for approved reclamation contracts and acquisitions of nonmandatory lands shall not exceed *20* ~~10~~ percent of the uncommitted fund balance of the trust fund at the beginning of each year. The prioritized list approved by the committee may contain more reclamation program applications than there are funds available during the year.

(13) The department shall require by rule that owners of eligible properties who intend to seek approval of a reclamation program submit, not later than December 31, 1993, a notice of intent to file an application for approval, indicating the date upon which the application will be filed.

(Renumber subsequent sections.)

House Amendment 5 to House Amendment 1—On page 12, lines 28 and 29, strike "*a special protection area or*"

House Amendment 6 to House Amendment 1—On page 9, line 27; page 10, lines 8, 15, 19, 23, 24 and 28; page 11, line 10, strike "*special protection areas and*"

House Amendment 7 to House Amendment 1—On page 9, line 31, and on page 10, lines 1-4, strike all of said lines and insert: *4., 5., and 6.* ~~paragraphs (b), (c), and (d).~~ The department shall make

House Amendment 8 to House Amendment 1—On page 75, lines 9-13, strike all of said lines and insert: whichever occurs later. Section 376.3072(3)(b), Florida Statutes, as

House Amendment 9 to House Amendment 1—On page 5, lines 19-31, and on page 6, lines 1-12, strike all of said lines and renumber subsequent sections.

House Amendment 11 to House Amendment 1—On page 54, line 13 through page 56, line 22, strike all of said lines and insert:

403.101 Classification and reporting; regulation of operators of water purification plants and wastewater treatment plants.—

(1) The department, by rule, may classify air and water contaminant sources, which sources in its judgment may cause or contribute to air or water pollution, according to levels and types of emissions and other characteristics which relate to air or water pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be made for application to the state as a whole or to any designated area of the state, and shall be made with special reference to physical effects on property and effects on health, economic, social, and recreational factors.

(2) Any person operating, or responsible for the operation of, air or water contaminant sources of any class for which the rules of the department require reporting shall make reports containing information as may be required concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time period or duration of emissions, and such other information as is relevant to air and water pollution and available or reasonably capable of being assembled.

(3) The department is authorized to establish qualifications for, and to examine and certify, water and wastewater treatment plant operators; to issue, deny, revoke, and suspend operator certificates pursuant to its rules and chapter 120; to charge a fee not in excess of *$50* ~~$15~~ for *processing an application for* certification; and to charge a fee not in excess of *$50* ~~$30~~ for ~~application processing and~~ renewal of certification. In assessing fees authorized by this subsection, the department is directed to adjust the fees as needed within the established limits to ensure that generated revenues from the certification program will equal or exceed the cost of operation. Certificate renewal shall be biennial *from the date of the original certification. This provision on the timing of renewals applies both retroactively and prospectively to all operators, whenever certified*~~, effective January 1, 1980~~. A fee not to exceed $5 may be charged for the issuance of a duplicate certificate. Such fees shall be nonrefundable. Renewals of certification, issued as requested by the applicant pursuant to this section, shall be exempt from the provisions of s. 120.60(3), if the department provides each applicant with written notice either personally or by mail of the certification or renewal.

(4) No person shall perform the duties of operator of a water or wastewater treatment plant unless he holds a current operator's certificate issued by the department. However, this section shall not apply to public lodging establishments licensed under chapter 509. No owner of a water or wastewater plant shall employ any person to perform the duties of an operator unless such person possesses a valid certificate at the required level of certification.

~~(5) All funds collected pursuant to this section shall be deposited in the General Revenue Fund.~~

(5)~~(6)~~ The department may promulgate rules and minimum standards to effectuate the provisions of this section and to ensure efficient, hygienic water purification and wastewater treatment operations in this state.

(6)~~(7)~~ For purposes of this section,~~:~~

(a) "Operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a drinking water purification plant or a domestic wastewater treatment plant and includes the person in charge of a shift or period of operation during any part of the day.

(b) "Public water system" shall have the same meaning provided in s. 403.852(2).

House Amendment 2—On page 4, strike everything before the enacting clause and insert: A bill to be entitled An act relating to environmental regulation; amending s. 20.261, F.S.; providing for a Division of Technical Services within the Department of Environmental Regulation; amending s. 206.9925, F.S.; specifying petroleum-derived ethanol in certain definitions; amending s. 206.9935, F.S.; extending the operation of the tax for inland protection; amending s. 213.053, F.S.; allowing the Department of Environmental Regulation to obtain certain tax information from the Department of Revenue in the conduct of its duties; amending s. 252.87, F.S.; requiring certain employers to notify the local fire department in writing within a certain time if there is a discontinuance or abandonment of business activities that could affect any stored hazardous materials; amending s. 253.033, F.S., relating to "the Graves Tract," former Inter-American Center property; providing for protection of a State Mangrove Preserve; providing for a cost-sharing arrangement with the City of North Miami for protective measures; amending s. 325.223, F.S.; providing for the assessment by the department of certain noncompliance fees for violations of refrigerant recycling equipment certification requirements; amending s. 373.309, F.S.; requiring the Department of Environmental Regulation to establish special protection areas for implementing certain water well regulations; providing for delegation of permitting and enforcement responsibilities to the water management districts; providing for the department to establish rules requiring the use of potable water systems and the abandonment of wells under certain circumstances; requiring the Department of Health and Rehabilitative Services to implement certain testing procedures; providing for fees to be collected by the entities that regulate water wells; amending s. 373.342, F.S.; conforming cross-references to changes made by the act; amending s. 373.459, F.S., relating to the Surface Water Improvement and Management Trust Fund; deleting an erroneous cross-reference; amending s. 376.301, F.S.; revising the definition of the term "person responsible for conducting site rehabilitation" for the purposes of the Pollutant Spill Prevention and Control Act; allowing mortgage holders and trust holders to participate in reimbursement; amending s. 376.305, F.S.; revising the definition of the term "abandoned petroleum storage system"; increasing the time period for the submission of applications under the Abandoned Tank Restoration Program; providing for the usage of certain funds; amending s. 376.307, F.S.; conforming cross-references; amending s. 376.3071, F.S.; authorizing the use of the Inland Protection Trust Fund for the Abandoned Tank Restoration Program; limiting the uses of funds from that trust fund; authorizing the Department of Environmental Regulation to enter into certain agreements regarding reimbursement of cleanup costs; allowing the responsible party to be eligible for the reimbursement program, under certain conditions; revising terms to conform to current usage; allowing certain facilities to be eligible for redetermination; eliminating the expiration of an incentive program; extending the time interest would be paid by the department on reimbursements under certain conditions; repealing obsolete s. 376.3071(12)(i), F.S., relating to obligated funds; amending s. 376.3072, F.S.; requiring the responsible party to conduct the total restoration after a specified date; providing exceptions; providing that certain petroleum storage systems owners and operators are eligible for the restoration program under certain conditions; expanding waiver provisions; authorizing certain lending institutions under the Florida Petroleum Liability Insurance and Restoration Program to conduct certain cleanup operations; providing for the retroactivity of s. 376.3072(2)(b), F.S.; amending s. 376.3073, F.S.; allowing the department to contract with state agencies for control of contamination; providing guidelines for state agency programs for control of contamination; amending s. 376.3077, F.S.; clarifying who is prohibited from depositing motor fuel into certain tanks; amending ch. 88-331, Laws of Florida; providing an additional time period for the compilation of a report to legislative leaders on pollution liability and restoration insurance; deleting the automatic expiration of the Florida Petroleum Liability Insurance Program; amending s. 380.06, F.S.; exempting from provisions governing developments of regional impact certain increases in the seating capacity of certain sports facilities under certain circumstances; providing for development and criteria of a traffic management plan by the appropriate local government; requiring consistency with certain provisions of the approved local comprehensive plan; providing procedures for applying for and issuing development orders and development permits; amending s. 381.2615, F.S.; conforming cross-references; amending s. 403.031, F.S.; defining the term "pollution prevention" for purposes of ch. 403, F.S.; amending s. 403.061, F.S.; deleting certain provisions regarding the designation of special waters as Outstanding Florida Waters; providing additional duties of the Department of Environmental Regulation in establishing pollution prevention and reduction programs; creating s. 403.072, F.S.; providing a short title; creating s. 403.073, F.S.; providing goals and policies of the state in preventing pollution; creating s. 403.074, F.S.; requiring the department to implement a program for providing technical assistance in pollution prevention; creating the Pollution Prevention

Council within the department; providing for appointment of council members; requiring the council to make recommendations for a statewide pollution prevention program; providing for abolishment of the council; amending s. 403.087, F.S.; revising the schedule of maximum fees imposed by the Department of Environmental Regulation for permits for certain pollution sources; deleting provisions authorizing certain reduced fees; authorizing the department to impose permit fees for waste collection systems and drinking water distribution systems; amending s. 403.0871, F.S.; conforming cross-references; amending s. 403.0877, F.S.; authorizing the Department of Environmental Regulation or the governing board of a water management district to require certification of certain professionals performing services as part of corrective action of activity regulated under ch. 373, F.S., ch. 376, F.S., or ch. 403, F.S.; amending s. 403.101, F.S.; providing for certification and renewal of certification for operators of public water systems, wastewater treatment works, and sewerage systems; providing for fees for certification and renewal of certification; revising provisions providing for renewal of certification; deleting a provision requiring that such fees be deposited into the General Revenue Fund; providing definitions; amending s. 403.1815, F.S.; authorizing the Department of Environmental Regulation to allow counties and municipalities to independently regulate construction of certain water mains and sewage collection and transmission systems; amending s. 403.1835, F.S.; redesignating the wastewater facilities and stormwater management systems revolving loan program as the sewage treatment program; repealing provisions that provide for loans under the program for stormwater management programs and estuary conservation and management plans; requiring the Department of Environmental Regulation to reserve loans made under the program for small communities; redesignating the Wastewater Treatment and Stormwater Management Revolving Loan Fund as the Sewage Treatment Revolving Loan Fund; providing that the Sewage Treatment Revolving Loan Fund is a nonlapsing trust fund; exempting the fund from s. 216.301, F.S.; relating to undisbursed appropriations; repealing a provision authorizing the use of moneys in the fund to pay debt service on bonds issued pursuant to the program; repealing the authorization of the issuance of such bonds; amending s. 403.414, F.S.; replacing the pollution control awards program with an environmental award program; amending s. 403.7215, F.S.; providing for additional uses of the tax levied on the gross receipts of certain hazardous waste facilities; amending s. 403.7225, F.S.; authorizing counties to impose a small quantity generator notification and verification surcharge on the business or occupational license or renewal of certain persons under certain circumstances; authorizing a county to enter an agreement with the county tax collector to collect the surcharge; amending s. 403.852, F.S.; revising the definition of "public water system" as used in the Florida Safe Drinking Water Act to include nontransient noncommunity systems; amending s. 403.854, F.S.; allowing the Department of Environmental Regulation to waive any requirement for a certified operator for a nontransient noncommunity water system; amending s. 403.861, F.S.; authorizing the department to issue permits for public water supply systems; increasing the amount the department may require for public water supply system permit applications; amending s. 403.862, F.S.; conforming cross-references; requiring the department to conduct a study; requiring the department to report to the Legislature; amending s. 489.133, F.S.; providing the area of operations for certain registered precision tank testers; requiring the registration of internal pollutant storage tank lining applicators by the Construction Industry Licensing Board of the Department of Professional Regulation; requiring the Department of Environmental Regulation to review rules requiring such registration; correcting cross-references; providing criminal penalties for conducting business as a precision tank tester or an internal pollutant tank lining applicator without registration; providing severability; providing effective dates.

House Amendment 1 to House Amendment 2—In title, on page 1, line 23, after the first semicolon (;) insert: amending s. 211.3103, F.S.; changing the distribution of the tax on severance of phosphate rock; amending s. 378.034, F.S.; increasing the portion of the uncommitted Nonmandatory Land Reclamation Trust Fund balance available for approved reclamation contracts on an annual basis; directing the Department of Natural Resources to require notice of intent to file an application for approval of reclamation projects;

House Amendment 2 to House Amendment 2—In title, on page 8, line 8, after "study;" insert: amending s. 403.927, F.S.; defining term "farm pond";

On motions by Senator Kirkpatrick, the Senate concurred in the House amendments.

CS for CS for SB 1120 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House The vote on passage was:

Yeas—37 Nays—None

On motion by Senator Thurman, the following statement was printed in the Journal:

STATEMENT OF INTENT

I was the prime sponsor of the 1986 legislation that is now s. 206.9925. We did not intend that non-petroleum products fall within the definition of petroleum products when we passed the original legislation. That should be clear from existing language. What we did with SB 122 and again today with **CS for CS for SB 1120** was simply to clarify our original intent.

Karen L. Thurman, 4th District

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 1146 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1146—A bill to be entitled An act relating to personnel of the school system; amending s. 231.15, F.S.; exempting volunteer athletic coaches from certain certification requirements; providing for supervision; providing an effective date.

House Amendment 1—On page 2, lines 9-13, strike said lines and insert: *service in a voluntary capacity and who is not employed by any public school of any district in this state.*

(2) A commissioned or noncommissioned military officer who is an instructor of junior reserve officer training shall be exempt from requirements for teacher certification, except for the filing of fingerprints pursuant to s. 231.1712, if he meets the following qualifications:

(a) Is retired from active military duty with at least 20 years of service and draws retirement pay or is retired, or transferred to retired reserve status, with at least 20 years of active service and draws retirement pay or retainer pay.

(b) Satisfies criteria established by the appropriate military service for certification by the service as a junior reserve officer training instructor.

(c) Has an exemplary military record.

If such instructor is assigned instructional duties other than junior reserve officer training, he shall hold the certificate required by law and rules of the state board for the type of service rendered.

House Amendment 2—In title, on page 1, lines 5-6, strike "providing for supervision" and insert: exempting certain instructors of junior reserve officer training from certification requirements; providing qualifications; requiring fingerprinting

On motions by Senator Kirkpatrick, the Senate concurred in the House amendments.

CS for SB 1146 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—37 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 1274 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 1274—A bill to be entitled An act relating to the North Brevard County Hospital District; amending chapter 28924, Laws of Florida, 1953, as amended; authorizing the hospital board to establish, own, or participate in health maintenance organizations and other health-care-related activities; authorizing the hospital board to establish, operate, support,

and fund a not-for-profit support corporation to further the purposes of the hospital district; specifying certain conditions and limitations on the expenditure of funds by the hospital board and on its exercise of authority; providing an effective date.

House Amendment 1—On page 1, strike everything after the enacting clause and insert:

Section 1. Section 20 is added to chapter 28924, Laws of Florida, 1953, as amended, to read:

Section 20. The North Brevard County Hospital District Board is hereby authorized and empowered:

(1) To the extent permitted by the Constitution and laws of this state, to establish, operate, and support a not-for-profit support corporation to assist the hospital board in fulfilling its declared public purpose of provision for the healthcare needs of the people of the hospital district and the financial stability and well-being of Parrish Medical Center through physician recruitment, patient acquisition, and the providing of medical goods and services; to accomplish such establishment, operation, or support of such not-for-profit support corporation by means of the lending of funds at reasonable rates of interest, leases of real or personal property at reasonable rental rates, grants of funds or guarantees of indebtedness of such not-for-profit support corporation. The establishment, operation, or support of a not-for-profit support corporation is hereby found and declared to be a public purpose and necessary for the preservation of the public health and for a public use and for the welfare of the hospital board and people of the hospital district. It is the intent of the Legislature to authorize the formation of the support corporation described in this section to further the interests of the residents of the North Brevard County Hospital District in maintaining the financial well-being of Parrish Medical Center by providing for the delivery, financing, and support of hospital and nonhospital healthcare services and related activities to the extent consistent with the financial, patient acquisition, and development needs of the North Brevard County Hospital District.

(2) Notwithstanding the foregoing grant of authority and powers, the North Brevard County Hospital District Board shall expend funds to the support corporation of the North Brevard County Hospital District only in accordance with the following provisions:

(a) That the disbursement of any funds by the North Brevard County Hospital District in any form authorized by this act shall only be pursuant to a resolution specifying the healthcare related activity for which such funds are to be applied and adopted at any regular or special public meeting of the North Brevard County Hospital District Board.

(b) That the maximum allowable amount of funds which the North Brevard County Hospital District shall be authorized to expend to or for the benefit of the support corporation of the North Brevard County Hospital District either in the form of grants, capital or equity contributions, or loans at reasonable rates of interest shall not exceed in any fiscal year the lesser of the net revenue of the North Brevard County Hospital District for its preceding fiscal year, or 2 1/2 percent of the gross revenue of the North Brevard County Hospital District for its preceding fiscal year; provided further, that any public tax revenue of the North Brevard County Hospital district shall be disregarded in the foregoing formula and such tax revenue shall only be applied to indigent care and the purchase of capital improvements or capital equipment to be owned by the North Brevard County Hospital District.

(c) That the support corporation of the North Brevard County Hospital District shall, consistent with the requirements of chapter 119, Florida Statutes, submit to the hospital board and to public inspection all records except to the extent exempt from the requirements of chapter 119, Florida Statutes, or except to the extent that any private individual or organization having contractual privity with such support corporation has prohibited disclosure in order to maintain the confidentiality of proprietary information of such private individual or organization.

(d) That the support corporation of the North Brevard County Hospital District shall, consistent with the requirements of chapter 286, Florida Statutes, conduct all meetings open to the public except, and only to the extent a meeting is scheduled and conducted in executive session, in order to discuss the following:

1. Property acquisitions;

2. Strategic planning;

3. Pending or threatened litigation; or

4. Matters otherwise exempt by general or special law from the public meeting requirements of chapter 286, Florida Statutes.

(e) That the support corporation of the North Brevard County Hospital District shall, at least annually, present a report to the City Council of the City of Titusville and a report to the District One (1) County Commissioner of the Brevard County Board of County Commissioners and conduct a public meeting to advise the general public as to its activities in conjunction with and in support of the North Brevard County Hospital District.

(f) That the support corporation of the North Brevard County Hospital District shall, consistent with the procedures and requirements of s. 11.45, Florida Statutes, submit to the hospital board and to public inspection, an annual financial report certified by an independent certified public accountant.

(g) That the support corporation of the North Brevard County Hospital District shall adopt and maintain without amendment in its articles of incorporation and corporation bylaws, the following express provisions:

1. That the support corporation shall exist and conduct its affairs solely to benefit and further the interests of the North Brevard County Hospital District;

2. That membership in the support corporation shall consist of the following seven voting and nonvoting directors who shall hold office for a 2-year term and may be reappointed:

a. The Chairman of the North Brevard County Hospital District, or his designee who is a member of the North Brevard County Hospital District Board of Directors;

b. The Chairman of the Jess Parrish Medical Foundation, Inc., Board of Directors, or his designee who is a member of the Jess Parrish Medical Foundation, Inc., Board of Directors;

c. The Chief Executive Officer of Parrish Medical Center;

d. Two residents of the North Brevard County Hospital District who shall be elected by a majority vote of the other voting directors and who shall not be members of the North Brevard County Hospital District Board of Directors or employees of Parrish Medical Center;

e. One ex officio nonvoting director appointed by the City Council of the City of Titusville and who shall be a resident of the City of Titusville and not a member of the North Brevard County Hospital District Board of Directors; and

f. One ex officio nonvoting director appointed by the District One (1) Commissioner of the Board of County Commissioners of Brevard County, Florida, and who shall be a resident of District One (1) and not a member of the North Brevard County Hospital District Board of Directors.

That the officers and the directors of the support corporation shall comply with all the State of Florida requirements for financial disclosure, provisions for voting on conflicts and reporting of gifts as is provided by chapters 112, 119, and 286, Florida Statutes, except as provided herein.

3. That the support corporation shall be expressly prohibited from distributing or providing any financial benefit to or for any director or officer other than reimbursement of reasonable expenses incurred except reasonable compensation for services rendered by the executive director employed by the support corporation;

4. That the support corporation shall be expressly prohibited from employing or otherwise compensating in any manner any current member of the North Brevard County Hospital District Board of Directors or any person who has been a former member of the North Brevard County Hospital District Board of Directors for a period of less than 3 years; and

5. That the support corporation shall be expressly prohibited from conducting or carrying on propaganda or otherwise attempting to influence the Legislature, or intervening in any political campaign on behalf

of any candidate for public office, or any other activity not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or any other corresponding provisions of any future Internal Revenue law).

(h) That the support corporation of the North Brevard County Hospital District shall not in any event adopt any amendment to its articles of incorporation or corporation bylaws inconsistent with the provisions of paragraph (g) or adopt any amendment otherwise permitted until a public notice of such amendment is published in accordance with s. 11.02, Florida Statutes, and shall further not implement any such amendment in the event a public referendum is initiated by the signed petition of at least 10 percent of the registered electors residing in the North Brevard County Hospital District within such notice period and in accordance with the procedures of s. 100.371, Florida Statutes.

(i) That the support corporation of the North Brevard County Hospital District shall adopt and maintain without amendment its articles of incorporation and corporation bylaws, a provision that in the event of the disposition of any surplus or abandoned property by or dissolution of such support corporation, then such property or residual assets shall revert back and be distributed to the North Brevard County Hospital District or its lawful successor.

(j) To the extent of assets and other financial support transferred to or provided to the support corporation by the North Brevard County Hospital District, the support corporation shall be required to provide toward charity care, indigent care, and Medicaid, not less than the same percentage of such support corporation's financial support as received from the North Brevard County Hospital District as equals the percentage provided directly by the North Brevard County Hospital District itself toward charity care, indigent care, and Medicaid.

Further and notwithstanding the foregoing grant of authority and powers, nothing under any authorization granted by chapter 28924, Laws of Florida, 1953, as amended, shall authorize or permit any transfer or delegation by the North Brevard Hospital District Board of any ownership, lease, management, control, and operating authority of the North Brevard Hospital District Board to any subsidiary, affiliate, or other entity except as to assets transferred to the support corporation, as provided for in this section 20, and any other such transfer or delegation is expressly prohibited.

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

House Amendment 2—Strike the entire title and insert: A bill to be entitled An act relating to Brevard County; amending chapter 28924, Laws of Florida, 1953, as amended, relating to the North Brevard County Hospital District; providing authority for the hospital board to establish, operate, support, and fund a not-for-profit support corporation to further the purposes of the district; specifying certain conditions on the exercise of such authority; providing an effective date.

On motions by Senator Gardner, the Senate concurred in the House amendments.

SB 1274 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has refused to concur in Senate Amendment 1 to House Amendment 1, Senate Amendments 2, 3, 4, and 5 to House Amendment 3, Senate Amendments 2 and 3 to House Amendment 4, Senate Amendments 1 and 2 to House Amendment 5, and Senate Amendments 1, 2, and 3 to House Amendment 6 and requests the Senate to recede; has amended Senate Amendment 1 to House Amendment 2 and Senate Amendment 3 to House Amendment 5, concurred in same as amended and requests the Senate to concur; has concurred in Senate Amendment 1 to House Amendment 3 and Senate Amendment 1 to House Amendment 4; has passed CS for SB 1336, as further amended, and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1336—A bill to be entitled An act relating to the local option tourist development tax; amending s. 125.0104, F.S.; revising provisions which authorize the levy of an additional tax to pay debt service on bonds for the construction or renovation of a professional sports franchise facility, to provide for use of the tax for such debt service for a motorsport racing or testing facility or for construction of tourist-oriented capital facilities; amending s. 288.1162, F.S., to conform; amending s. 212.0305, F.S.; allowing an authority to invest and reinvest tax proceeds in the same manner that the municipality in which the authority is located may invest surplus funds; providing an effective date.

House Amendment 1 to Senate Amendment 1 to House Amendment 2—In title, on page 1, lines 20 through 24, strike all of said lines and insert: service on bonds for the construction or renovation of a professional sports franchise facility, to provide for use of the tax for such debt service for a motorsport racing or testing facility or for construction of tourist-oriented capital facilities; amending s. 212.08, F.S.; providing an exemption from said tax for works of art sold to or used by nonprofit libraries, art galleries, museums, or other educational institutions; providing an exemption for such property purchased or imported for the purpose of being loaned to any such institution or organization located in this state; providing applicability; extending the date for filing for a specified tax exemption;

House Amendment 1 to Senate Amendment 3 to House Amendment 5—On page 1, line 7, insert:

Section 5. Paragraph (bb) is added to subsection (7) of section 212.08, Florida Statutes, 1990 Supplement, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this part.

(7) MISCELLANEOUS EXEMPTIONS.—

(bb) Works of art.—

1. Also exempt are works of art sold to or used by an educational institution, as defined in sub-subparagraph (o)2.d.

2. This exemption also applies to the sale to or use in this state of any work of art by any person if it was purchased or imported exclusively for the purpose of being loaned to and made available for display by any educational institution.

3. A work of art is presumed to have been purchased in or imported into this state exclusively for loan as provided in subparagraph 2., if it is so loaned or placed in storage in preparation for such a loan within 90 days after purchase or importation, whichever is later; but a work of art is not deemed to be placed in storage for purposes of this exemption if it is displayed at any place other than an educational institution.

4. The exemptions provided by this paragraph are allowed only if the person who purchased the work of art gives to the vendor an affidavit meeting the requirements, established by rule, to document entitlement to the exemption. The person who purchased the work of art shall forward a copy of such affidavit to the Department of Revenue at the time it is issued to the vendor.

5. The exemption provided by subparagraph 2. applies only for the period during which a work of art is in the possession of the educational institution or is in storage before transfer of possession to that institution; and when it ceases to be so possessed or held, tax based upon the sales price paid by the owner is payable, and the statute of limitations provided in s. 95.091 shall begin to run at that time.

6. For purposes of the exemptions provided by this paragraph, the term "work of art" includes pictorial representations, sculpture, jewelry, antiques, stamp collections and coin collections, and other tangible personal property, the value of which is attributable predominantly to its artistic, historical, political, cultural, or social importance.

7. This paragraph is a remedial clarification of legislative intent and applies to all taxes that remain open to assessment or contest on July 1, 1991.

(Renumber subsequent sections.)

On motions by Senator Jenne, the Senate concurred in **House Amendment 1 to Senate Amendment 1 to House Amendment 2; House Amendment 1 to Senate Amendment 3 to House Amendment 5;** and receded from **Senate Amendment 1 to House Amendment 1; Senate Amendments 2, 3, 4** and **5 to House Amendment 3; Senate Amendments 2** and **3 to House Amendment 4; Senate Amendments 1** and **2 to House Amendment 5;** and **Senate Amendments 1, 2** and **3 to House Amendment 6.**

CS for SB 1336 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—33 Nays—1

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives requests the return of CS for SB 1342.

John B. Phelps, Clerk

On motion by Senator Thurman, **CS for SB 1342** was returned to the House as requested.

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 1400 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1400—A bill to be entitled An act relating to plant industry; amending s. 581.131, F.S.; increasing the maximum fee for a certificate of registration to sell or distribute nursery stock and specifying a fee schedule; providing an effective date.

House Amendment 1—On page 1, strike everything after the enacting clause and insert:

Section 1. Section 581.131, Florida Statutes, is amended to read:

581.131 Certificate of registration.—Before any nurseryman shall sell or distribute, or offer for sale or for distribution, any nursery stock in this state, he shall make application to the director of the division, on forms supplied by the division, to obtain a certificate of registration. Before any stock dealer, agent, or plant broker shall sell or distribute, or offer for sale or for distribution, any nursery stock in this state, he shall make application to the director of the division, on forms supplied by the division, to obtain a certificate of registration for each outlet. Each application for a certificate of registration shall be accompanied by a certificate fee in such amount as shall be determined by the department. Upon the issuance of such certificate, it shall be renewed annually thereafter on its anniversary date upon satisfactory showing to the director of the division that the provisions of this law and the rules of the department have been complied with and upon the payment of an annual renewal fee in such amount as shall be determined by the department. However, neither the certificate of registration fee nor the annual renewal fee shall exceed *$460* ~~$400~~. Further, the department may exempt from the payment of a certificate fee those governmental agency nurseries whose nursery stock is used exclusively for planting on their own property. All applications for annual renewal of certificates of registration required by this section shall be made not later than the anniversary date of the certificate being renewed, and any such application received after such date shall be accompanied by a penalty or late filing fee not to exceed $10.

Section 2. Subsections (5) and (6) of section 581.185, Florida Statutes, as amended by chapter 89-199, Laws of Florida, are hereby repealed and section 581.185, Florida Statutes, is amended to read:

581.185 Preservation of native flora of Florida.—

(1) LEGISLATIVE DECLARATION.—The Legislature finds and declares that it shall be the public policy of this state to: provide recognition of those plant species native to the state that are endangered, threatened, or commercially exploited; protect the native flora from unlawful harvesting on both public and privately owned lands; provide an orderly and controlled procedure for restricted harvesting of native flora from the wild, thus preventing wanton exploitation or destruction of native plant populations; encourage the propagation of native species of flora; and provide the people of this state with the information necessary to legally harvest native plants so as to ultimately transplant those plants with the greatest possible chance of survival.

(2) DEFINITIONS.—

(a) "Commercially exploited plants" means species native to the state which are subject to being removed in significant numbers from native habitats in the state and sold or transported for sale.

(b) "Endangered plants" means species of plants native to the state that are in imminent danger of extinction within the state, *the survival of which is unlikely if the causes of a decline in the number of plants continue,* and includes all species determined to be endangered or threatened pursuant to the federal Endangered Species Act of 1973, as amended, Pub. L. No. 93-205 (87 Stat. 884).

(c) "Harvest" means to dig up, remove, or cut and remove from the place where grown.

(d) "Landowner" includes the public agency administering any public lands.

(e) "Plant" means any member of the plant kingdom, including reproductive and vegetative parts thereof.

(f) "Regulated Plant Index" means the total number of species native to the state that are listed *in rules of the department* as commercially exploited plants, endangered plants, and threatened plants.

(g) "Species" means a category used in classification of plants by the binomial system of nomenclature which differentiates between plants of a given genus. This includes any subordinate subspecies or variety.

(h) "Threatened plants" means species native to the state that are in rapid decline in the number of plants within the state, but which have not so decreased in such number as to cause them to be endangered.

(3) PROHIBITIONS; PERMITS.—

(a) With regard to any plant listed as an endangered plant on the Regulated Plant Index, *as* provided in *rules of the department* ~~subsection (5)~~, it is unlawful for any person to willfully destroy or harvest any such plant growing on the private land of another or on any public land without first obtaining the written permission of the landowner or legal representative thereof and a permit from the department as provided in this section. However, permits ~~cannot be~~ issued for species listed on the federal Endangered Species List under the federal Endangered Species Act of 1973, as amended, *must be consistent with federal standards.*

(b) With regard to any plant listed as a threatened plant on the Regulated Plant Index, *as* provided in *rules of the department* ~~subsection (5)~~, it is unlawful for any person to willfully destroy or harvest any such plant growing on the private land of another or on any public land without first obtaining the written permission of the landowner or legal representative thereof.

(c) With regard to any plant listed as a commercially exploited plant on the Regulated Plant Index, *as* provided in *rules of the department* ~~subsection (5)~~, it is unlawful for any person to willfully destroy or harvest one or two such plants growing on the private land of another or on any public land without first obtaining the written permission of the landowner or legal representative thereof or to destroy or harvest three or more such plants without first obtaining permission from the landowner or legal representative thereof and a permit from the department.

(d) Any person transporting for the purpose of sale, selling, or offering for sale any plant listed on the Regulated Plant Index, except for those plants listed as threatened, which is harvested from such person's own property must have a permit from the department in his immediate possession when engaged in any of the described activities.

(e) With regard to any plant listed on the Regulated Plant Index, *as* provided in *rules of the department* ~~subsection (5)~~, it shall be unlawful for any person to falsify any paper or document issued to give permission for any person to destroy or harvest such plants, or to fail to comply with all conditions or stipulations of any permit issued, or to transport, carry, or convey on any public road or highway or sell or offer for sale in any place any such plant collected in violation of this section.

(f) Any person willfully destroying or harvesting; transporting, carrying, or conveying on any public road or highway; or selling or offering for sale any plant listed in the Regulated Plant Index must have a permit, if applicable, and the written permission required by this section in his immediate possession at all times when engaged in any of such activities.

(4) RULES.—*The department is authorized to establish rules relating to the listing, delisting, and changing from one category to another category any plant on the Regulated Plant Index. Any such changes shall consider the recommendation, if any, of the Endangered Plant Advisory Council and shall consider the best environmental and commercial data available.* The department is authorized to establish rules relating to the issuing of permits required by this section. The department may also establish by rule specific cutting, harvesting, and plant care criteria which shall include the most favorable and practical horticultural methods and seasons to assure the survival of the plants, minimize environmental damage, and provide for natural regeneration. Such rules shall be consistent with the legislative intent cited in this section and with the provisions and requirements of the federal Endangered Species Act of 1973, as amended.

(5)~~(7)~~ REVIEW.—

(a) Beginning in 1984, a comprehensive review of this section and of the Regulated Plant Index, *as* provided in *rules of the department,* ~~subsection (5)~~ shall be made by the department and the Endangered Plant Advisory Council at 4-year intervals. ~~The department shall report its findings and recommendations and those of the Endangered Plant Advisory Council to the Legislature by January 31 prior to the convening of the regular legislative session following each such review.~~

(b) The department shall *consider* ~~notify the Legislature prior to the next ensuing regular legislative session of~~ any species of plant that should be placed on the Regulated Plant Index which is in danger of disappearing from its native habitat within the foreseeable future throughout all or a significant portion of the range of the species because of:

1. Present or threatened destruction, modification, or curtailment of the range of the species.

2. Overutilization of the species for commercial, scientific, or educational purposes.

3. Disease or predation.

4. Any other natural or manmade factor affecting the continued existence of the species.

(c) In carrying out reviews and arriving at recommendations under paragraphs (a) and (b), the department and the advisory council shall use the best scientific and commercial data available and shall consult with interested persons and organizations.

(6)~~(8)~~ DEFENSES.—In any prosecution under this section, it shall be a defense that plants or the flowers, roots, bulbs, or other parts thereof transported, carried, or conveyed, or sold or offered for sale, by the party were legally imported from another country. In any prosecution under this section involving the destruction or harvesting of any plant on the Threatened Plant List, or one or two plants on the Commercially Exploited Plant List, without written permission, it shall be an affirmative defense that actual permission was given prior to such destruction or harvesting. In any prosecution under this section involving the destruction or harvesting of any plant on the Endangered Plant List, or three or more plants on the Commercially Exploited Plant List, without written permission and a permit, it shall be an affirmative defense that written permission and a permit had in fact been granted prior to such destruction or harvesting.

(7)~~(9)~~ SALES BY NURSERYMEN.—Licensed, certified nurserymen who grow from seeds or by vegetative propagation any of the native plants on the Regulated Plant Index, *as* provided in *rules of the department,* ~~subsection (5)~~ are specifically permitted to sell these commercially grown plants and shall not be in violation of this section if they do so, as it is the intent of this section to preserve and encourage the propagation of these native plants which are rapidly disappearing from the state.

(8)~~(10)~~ EXEMPTIONS.—No provision of this section shall apply to:

(a) The clearing or other disturbance of land for agricultural or silvicultural purposes, fire control measures, or required mining assessment work.

(b) The clearing or removal of regulated plants from a canal, ditch, survey line, building site, or road or other right-of-way by the landowner or his or her agent.

(c) The clearing of land by a public agency or a publicly or privately owned public utility when acting in the performance of its obligation to provide service to the public.

(9)~~(11)~~ DUTIES AND AUTHORITY OF DEPARTMENT.—The department shall:

(a) As part of the regular inspection of nurseries and stock dealer establishments, be on the alert for any of the native plants on the Regulated Plant Index, *as* provided in *rules of the department,* ~~subsection (5)~~ which appear suddenly at a given nursery or stock dealer establishment in a mature stage or a stage showing several years of growth, and the department is empowered to request proof of where and how such plants were obtained.

(b) Have the authority to enter upon properties where harvesting or storage of regulated plants is suspected, to inspect vehicles or other means of transporting such plants, and to preserve and take custody of plants harvested or moved in violation of this section, in order to assure compliance with the provisions of this section.

(c) Have the authority to conduct investigations of plants native, or thought to be native, to the state for the purpose of compiling information relative to plant populations, distributions, habitats, climatic factors, and other biological ecological data, and to determine conservation measures and requirements necessary for their survival.

(10)~~(12)~~ NOTICE OF HIGHWAY CONSTRUCTION.—The Department of Transportation shall notify the Department of Agriculture and Consumer Services and the Endangered Plant Advisory Council created by s. 581.186 of advertised bids for highway construction at the time those bids are first advertised, describing the project, the location of the project, and the representative of the Department of Transportation who can answer questions regarding the project and the plant life immediately affected by the construction. The Department of Agriculture and Consumer Services shall seek and utilize the services of the Endangered Plant Advisory Council and of any other state agencies, clubs, associations, organizations, or individuals that may offer support and services for the preservation of the plants on the Regulated Plant Index that may be affected by the construction project and shall provide by rule for the appropriate disposal of such plants.

Section 3. Section 585.003, Florida Statutes, 1990 Supplement, is amended to read:

585.003 Power of department to enter private premises for purpose of inspection, *testing,* etc.—

(1) For the purpose of carrying out the provisions and requirements of this chapter, and all rules made pursuant thereto, the department, through its duly authorized employees, is empowered to enter upon any grounds or premises in this state *to:*

(a) Inspect, test, dip, identify, treat, destroy, quarantine, disinfect, or conduct such other required procedures as are contemplated by this chapter;

(b) Examine any records or ~~for the purpose of inspection, quarantine, or disinfection; for the examination of records and~~ documents which facilitate efforts to determine locations where an animal may have been during the previous 120 days for the purpose of animal disease control *eradication* programs over which any authority is conferred by law upon the department; or ~~to~~

(c) Carry out any other provisions of this chapter.

(2) After reasonable notice from the department or the department's representative, owners or agents having jurisdiction over animals shall present them for such procedures as contemplated by this chapter in accordance with the directions of the department's representative.

Section 4. Section 585.01, Florida Statutes, 1990 Supplement, is amended to read:

585.01 Definitions.—In construing this part, where the context permits, the word, phrase, or term:

(1) "Approved brucella vaccine" means a Brucella abortus Strain 19 immunization product approved and licensed by the United States Department of Agriculture for injection into cattle and bison to enhance their resistance to brucellosis infection.

(2) "Beef cattle" means animals of the genus Bos of various breeds which are raised primarily for the production of meat.

(3) "Biological product" is a complex substance, preparation, or agent, derived from living organisms or animals, depending for its action on the processes effecting immunity, which is used as a vaccine or in the diagnosis and treatment of a disease. This term includes synthesized products of similar intended usage.

(4) "Biological or chemical residues" means potentially harmful substances and their metabolites not normally present in animal tissues, which result from treatment or exposure to a pesticide, organic or inorganic compound, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, vaccine, or other therapeutic or prophylactic agent.

(5)~~(4)~~ "Carcass" means *the body of* any animal which dies other than by slaughter, or any part of such animal.

(6)~~(5)~~ "Cattle" shall include any bull, steer, ox, cow, heifer, calf, or any other *bovine* animal subject to infestation by cattle fever ticks (Boophilus annulatus, or other species).

(7)~~(6)~~ "Dairy cattle" means animals of the genus Bos of various breeds which are raised primarily for the production of milk or milk products.

(8)~~(7)~~ "Director" means the director of the Division of Animal Industry of the Department of Agriculture and Consumer Services. The director is also known as the State Veterinarian, the Chief Animal Health Official of the state, and the Chief Livestock Regulatory Official of the state.

(9)~~(8)~~ "Domestic animal" shall include any equine or bovine animal, goat, sheep, swine, domestic cat, dog, poultry, or other domesticated beast or bird. The term "animal," as used in this chapter, shall include wild or game animals whenever necessary to effectively control or eradicate dangerous transmissible diseases or pests which threaten the agricultural interests of the state.

(10)~~(9)~~ "Emergency" means any situation in which the department has declared a pest, ~~or~~ a communicable, contagious, or infectious disease of animals, *or the presence of biological or chemical residue* to be a public nuisance or any situation in which, in the opinion of the department, a pest, ~~or~~ disease, *or residue* endangers or threatens the animals or citizens of the state.

(11)~~(10)~~ "Garbage" means all refuse matter, animal or vegetable, byproducts of a restaurant, kitchen, or slaughterhouse; and shall include every accumulation of animal, fruit, or vegetable matter, liquid, or otherwise. "Garbage" shall also include "swill" as commonly used; provided, however, "garbage" shall not include fruit or vegetable matter which does not contain or has not been in contact or mixed with *meat or meat parts* ~~raw meats~~.

(12)~~(11)~~ "Livestock" means grazing animals, such as cattle, horses, sheep, swine, goats, and other hoofed animals which are raised for private use or commercial purposes.

(13)~~(12)~~ "Owner" shall include any owner, custodian, or other person in charge of any animal, domestic or otherwise.

(14)~~(13)~~ "Pathogenic organisms" means microorganisms, such as bacteria, viruses, rickettsia, etc., capable of causing diseases in animals or man. "Virulent organisms" are pathogenic organisms that are extremely dangerous and are characterized by being highly contagious.

(15)~~(14)~~ "Quarantine" means a strict isolation imposed on animals, or premises or other defined geographic areas, to prevent the spread of disease or pests.

(16)~~(15)~~ "Technical council" means the Animal Industry Technical Council.

(17)~~(16)~~ "Transmissible," "communicable," "contagious," and "infectious" all refer to diseases which are readily transferred between or among animals in a group or to susceptible animals in proximity to diseased animals. Such transference may be directly from one animal to another, by contact with objects contaminated by disease-causing agents, or by insect (vector) transmission of disease-causing agents from diseased animals into susceptible animals or man.

(18) "Violative levels" means levels above the tolerances established by the United States Food and Drug Administration or the United States Environmental Protection Agency, as adopted by department rule.

Section 5. Subsection (2) of section 585.145, Florida Statutes, 1990 Supplement, is amended, and subsection (3) is added to said section, to read:

585.145 Control of animal diseases.—

(2) No animal shall be imported into the state, moved within the state, or the ownership thereof transferred within the state without the owner, broker, or transferor first obtaining such health tests, *official* ~~and~~ certificates *of veterinary inspection, or other certificates and documents* as shall be required by rules adopted by the department. Evidence of compliance with this subsection shall accompany the owner or agent having jurisdiction of such animals imported, moved intrastate, or to which ownership is being transferred. However, unless an emergency is declared, the department may not require Florida residents to carry evidence of compliance in intrastate travel for privately owned domestic canines or domestic felines which are not offered for sale. The department may provide by rule specific exceptions to this subsection upon finding that certain importations, intrastate movements, or transfers pose no threat to affected industries in Florida.

(3) A person who forges, counterfeits, simulates or alters, or who knowingly possesses, uses, presents or utters, any forged, counterfeited, altered or simulated official certificate of veterinary inspection or any other document relating to animal health requirements commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Section 585.68, Florida Statutes, is created to read:

585.68 Animals suspected of harboring biological or chemical residues; inspection, testing, and restriction of premises and animals; notice to owners.—

(1) The department or its duly authorized representatives are hereby authorized to enter, inspect, and test any premises and animals where such animals exist, which are duly suspected of harboring biological or chemical residues, where such residues present the potential likelihood that the resultant meat or poultry products would be deemed adulterated.

(2) The department or its duly authorized representatives may issue and enforce a restricted premises/restricted animal movement order for premises and animals suspected of harboring biological or chemical residues. This order of restriction prohibits the ingress or egress of animals until there exists full compliance with this section and with the regulations of the department, and until a written notice of release has been issued by the department.

(3) If any animals that have been restricted pursuant to subsection (2) harbor such biological or chemical residues at violative levels for human or animal consumption, the department is hereby authorized to order the animals destroyed and disposed of in a manner prescribed for the particular biological or chemical residue. Tolerances established by the United States Food and Drug Administration or the United States Environmental Protection Agency shall be complied with in enforcing this law.

Section 7. Subsections (11), (12), (13), (14), (15), and (16) of section 585.70, Florida Statutes, 1990 Supplement, are renumbered as subsections (12), (13), (14), (15), (16), and (17), respectively, and a new subsection (11) is added to said section to read:

585.70 Definitions.—In construing this part, where the context permits, the word, phrase, or term:

(11) "Pet food" means any article intended for use as food for dogs, cats, or other animals, derived wholly or in part from the carcass, or parts or products of the carcass of any dead, dying, disabled, or diseased animal. The term "pet food" shall not include processed dry pet food or animal feeds, such as meat meal tankage, bloodmeal, and feed-grade animal fat.

Section 8. Section 585.85, Florida Statutes, 1990 Supplement, is amended to read:

585.85 Prohibited transportation of certain animals and animal products.—

(1) No person shall engage in the business of buying, selling, transporting, or receiving for transportation in intrastate commerce any dead, dying, disabled, or diseased animal, any product of an animal that died otherwise than by slaughter, or any inedible animal product that is capable of use as human food unless such animal product has been visibly denatured by an approved method such as dye, except in accordance with such rules as the department may prescribe to ensure that such animal product shall be prevented from being used for human food purposes. *A* ~~Any~~ person who *violates* ~~is convicted of a violation of~~ this *subsection commits* ~~section is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It shall be unlawful for any person to sell or transport, offer for sale or transportation, or receive for transportation in intrastate commerce, undenatured pet food for human consumption. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Pet food denatured pursuant to subsection (1) shall be sold in packages and bear a label as prescribed by rules of the department.

Section 9. Section 828.31, Florida Statutes, 1990 Supplement, is renumbered as section 585.95, Florida Statutes, designated as part IV of chapter 585, Florida Statutes, entitled "Dogs and Cats," and amended to read:

PART IV
DOGS AND CATS

585.95 ~~828.31~~ Dogs and cats transported or offered for sale; health requirements; consumer guarantee.—

(1)(a) *For each dog transported into the state for sale, the tests, vaccines, and anthelmintics required by this section shall be administered by or under the direction of a veterinarian, licensed by the state of origin and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics shall be administered no more than 30 days and no less than 14 days before the dog's entry into the state. The official certificate of veterinary inspection certifying compliance with this section shall accompany each dog transported into the state for sale.* ~~If a dog is transported into the state for sale, it shall be inoculated and dewormed, as provided in this section, no more than 30 days and no less than 14 days before entry into the state.~~

(b) *For each dog offered for sale within the state, the tests, vaccines, and anthelmintics required by this section shall be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics shall be administered prior to the dog being offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the dog is not in the best medical interest of the dog, in which case the vaccine or anthelmintic shall not be administered to that particular dog.* ~~Each dog offered for sale within the state shall be inoculated and dewormed, prior to being offered for sale, by or under the supervision of a veterinarian licensed by the state, unless the veterinarian certifies on the certificate of veterinary inspection that to inoculate the dog is not in the best medical interest of the animal, in which case the inoculum shall not be administered to that particular animal.~~ Each dog shall *receive vaccines and anthelmintics* ~~be inoculated and dewormed~~ against the following diseases and internal parasites:

1. Canine distemper.

2. Leptospirosis.

3. Bordetella (by intranasal inoculation, which shall be administered in this state once before sale).

4. Parainfluenza.

5. Hepatitis.

6. Canine parvo.

7. Rabies, provided the dog is over *3* 4 months of age and the inoculation is administered by a licensed veterinarian.

8. Roundworms.

9. Hookworms.

If the dog is under 4 months of age, *the tests, vaccines, and anthelmintics required by this section shall be administered* ~~it shall be inoculated and dewormed~~ no more than 21 days prior to sale within the state. If the dog is 4 months of age or older, *the tests, vaccines, and anthelmintics required by this section shall be administered at or after 3 months of age, but* ~~it shall be inoculated and dewormed~~ no more than 1 year prior to sale within the state.

(2)(a) *For each cat transported into the state for sale, the tests, vaccines, and anthelmintics required by this section shall be administered by or under the direction of a veterinarian, licensed by the state of origin and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics shall be administered no more than 30 days and no less than 14 days before the cat's entry into the state. The official certificate of veterinary inspection certifying compliance with this section shall accompany each cat transported into the state for sale.* ~~If a cat is transported into the state for sale, it shall be inoculated and dewormed, as provided in this section, no more than 30 days and no less than 14 days before entry into the state.~~

(b) *For each cat offered for sale within the state, the tests, vaccines, and anthelmintics required by this section shall be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics shall be administered prior to the cat being offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the cat is not in the best medical interest of the cat, in which case the vaccine or anthelmintic shall not be administered to that particular cat.* ~~Each cat offered for sale within the state shall be inoculated and dewormed, prior to being offered for sale, by or under the supervision of a veterinarian licensed by the state, unless the veterinarian certifies on the certificate of veterinary inspection that to inoculate the cat is not in the best medical interest of the animal, in which case the inoculum shall not be administered to that particular animal.~~ Each cat shall *receive vaccines and anthelmintics* ~~be inoculated and dewormed~~ against the following diseases and internal parasites:

1. Panleukopenia.

2. Feline viral rhinotracheitis.

3. Calici virus.

4. Rabies, provided the cat is over *3* 4 months of age and the inoculation is administered by a licensed veterinarian.

5. Hookworms.

6. Roundworms.

If the cat is under 4 months of age, *the tests, vaccines, and anthelmintics required by this section shall be administered* ~~it shall be inoculated and dewormed~~ no more than 21 days prior to sale within the state. If the cat is 4 months of age or older, *the tests, vaccines, and anthelmintics required by this section shall be administered at or after 3 months of age, but* ~~it shall be inoculated and dewormed~~ no more than 1 year prior to sale within the state.

(3)(a) Each dog or cat subject to subsection (1) or subsection (2) shall be accompanied by a *current official* certificate of veterinary inspection at all times while being offered for sale within the state. The examining veterinarian shall retain one copy of the *official* certificate *of veterinary inspection* on file for at least 1 year after the date of examination. At the time of sale of the animal, one copy of the *official* certificate *of veterinary inspection* shall be given to the buyer. The seller shall retain one copy of the *official* certificate *of veterinary inspection* on record for at least 1 year after the date of sale.

(b) The term "*official* certificate of veterinary inspection" means a *legible* certificate *of veterinary inspection* signed by the examining veterinarian licensed by the state *of origin and accredited by the United States Department of Agriculture*, that shows the age, sex, breed, color, and health record of the dog or cat, the printed or typed names and addresses of the person or business from whom the animal was obtained, the consignor or seller, the consignee or purchaser, and the examining

veterinarian, and the veterinarian's license number. The *official* certificate *of veterinary inspection* shall list all vaccines and deworming medications administered to the dog or cat, including the manufacturer, vaccine, type, lot number, expiration date, and the dates of administration thereof, and shall state that the examining veterinarian warrants that, to the best of his knowledge, the animal has no *sign of* contagious or infectious diseases and has no *evidence of* internal or external parasites, including coccidiosis and ear mites, but excluding fleas and ticks. *The Department of Agriculture and Consumer Services shall supply the official intrastate certificate of veterinary inspection required by this section at cost.*

(c) The examination of each dog and cat by a veterinarian shall take place no more than 21 days prior to sale within the state. *The* ~~Such~~ examination shall include, but not be limited to, a fecal test to determine if the dog or cat is free of internal parasites, including hookworms, roundworms, tapeworms, and whipworms. If the examination *warrants, the dog or cat shall be treated with a specific anthelmintic. In the absence of a definitive parasitic diagnosis, each dog or cat shall be given a broad spectrum anthelmintic* ~~reveals the animal is not free of internal parasites, the animal subsequently shall be treated for the specific parasites.~~ Each dog over 6 months of age shall also be tested for heartworms. Each cat shall also be tested for feline leukemia before being offered for sale in the state. *All of these* ~~Such~~ tests shall be performed by or under the supervision of a licensed veterinarian, and the results of *the* ~~such~~ tests shall be listed on the *official* certificate of veterinary inspection.

(d) All dogs and cats offered for sale and copies of certificates held by the seller and veterinarian shall be subject to inspection by *any agent of the Department of Agriculture and Consumer Services, any agent of the United States Department of Agriculture,* any law enforcement officer, or any agent appointed under s. 828.03.

(4) No person shall transport into the state for sale or offer for sale within the state any dog or cat that is less than 8 weeks of age.

(5) If, within 14 days following the sale by a pet dealer of an animal subject to this section, a licensed veterinarian of the consumer's choosing certifies that, at the time of the sale, such animal was unfit for purchase due to illness or disease, the presence of symptoms of a contagious or infectious disease, or the presence of internal or external parasites, excluding fleas and ticks; or if, within 1 year following the sale of an animal subject to this section, a licensed veterinarian of the consumer's choosing certifies such animal to be unfit for purchase due to a congenital or hereditary disorder which adversely affects the health of the animal; or if, within 1 year following the sale of an animal subject to this section, the breed, sex, or health of such animal is found to have been misrepresented to the consumer, the pet dealer shall afford the consumer the right to choose one of the following options:

(a) The right to return the animal and receive a refund of the purchase price, including the sales tax, and reimbursement for reasonable veterinary costs directly related to the veterinarian's examination and certification that the dog or cat is unfit for purchase pursuant to this section and directly related to necessary emergency services and treatment undertaken to relieve suffering;

(b) The right to return the animal and receive an exchange dog or cat of the consumer's choice of equivalent value, and reimbursement for reasonable veterinary costs directly related to the veterinarian's examination and certification that the dog or cat is unfit for purchase pursuant to this section and directly related to necessary emergency services and treatment undertaken to relieve suffering; or

(c) The right to retain the animal and receive reimbursement for reasonable veterinary costs for necessary services and treatment related to the attempt to cure or curing of the dog or cat.

Reimbursement for veterinary costs shall not exceed the purchase price of the animal. The cost of veterinary services is reasonable if comparable to the cost of similar services rendered by other licensed veterinarians in proximity to the treating veterinarian and the services rendered are appropriate for the certification by the veterinarian.

(6) A consumer may sign a waiver relinquishing his right to return the dog or cat for congenital or hereditary disorders. In the case of such waiver, the consumer has 48 normal business hours, excluding weekends and holidays, in which to have the animal examined by a licensed veterinarian of the consumer's choosing. If the veterinarian certifies that, at the time of sale, the dog or cat was unfit for purchase due to a congenital or hereditary disorder, the pet dealer shall afford the consumer the right to choose one of the following options:

(a) The right to return the animal and receive a refund of the purchase price, including sales tax, but excluding the veterinary costs related to the certification that the dog or cat is unfit; or

(b) The right to return the animal and receive an exchange dog or cat of the consumer's choice of equivalent value, but not a refund of the veterinary costs related to the certification that the dog or cat is unfit.

(7) A pet dealer may specifically state at the time of sale, in writing to the consumer, the presence of specific congenital or hereditary disorders, in which case the consumer has no right to any refund or exchange for those disorders.

(8) The refund or exchange required by subsection (5) or subsection (6) shall be made by the pet dealer not later than 10 business days following receipt of a signed veterinary certification as required in subsection (5) or subsection (6). The consumer shall notify the pet dealer within 2 business days of the veterinarian's determination that the animal is unfit. The written certification of unfitness shall be presented to the pet dealer not later than 3 business days following receipt thereof by the consumer.

(9) An animal may not be determined unfit for sale on account of an injury sustained or illness contracted subsequent to the consumer's taking possession thereof. A veterinary finding of intestinal or external parasites shall not be grounds for declaring a dog or cat unfit for sale unless the animal is clinically ill due to such condition.

(10) In the event that a pet dealer wishes to contest a demand for veterinary expenses, refund, or exchange made by a consumer pursuant to this section, the dealer shall have the right to require the consumer to produce the animal for examination by a licensed veterinarian designated by the dealer. Upon such examination, if the consumer and the dealer are unable to reach an agreement which constitutes one of the options set forth in subsection (5) or subsection (6) within 10 business days following receipt of the animal for such examination, the consumer may initiate an action in a court of competent jurisdiction to recover or obtain such reimbursement of veterinary expenses, refund, or exchange.

(11) Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(12) Every pet dealer who sells an animal to a consumer shall provide the consumer at the time of sale with a written notice, printed or typed, which reads as follows:

> It is the consumer's right, pursuant to section *585.95* ~~828.31~~, Florida Statutes, to receive a certificate of veterinary inspection with each dog or cat purchased from a pet dealer. Such certificate shall list all vaccines and deworming medications administered to the animal and shall state that the animal has been examined by a Florida licensed veterinarian who certifies that, to the best of his knowledge, the animal was found to have been healthy at the time of the veterinary examination. In the event that the consumer purchases the animal and finds it to have been unfit for purchase as provided in section *585.95(5)* ~~828.31(5)~~, Florida Statutes, the consumer must notify the pet dealer within 2 business days of the veterinarian's determination that the animal was unfit. The consumer has the right to retain, return, or exchange the animal and receive reimbursement for certain related veterinary services rendered to the animal, subject to the right of the dealer to have the animal examined by another veterinarian.

(13) For the purposes of *subsections (5)-(12) and (16)* ~~this section~~, "pet dealer" means any person, firm, partnership, corporation, or other association which, in the ordinary course of business, engages in the sale of more than two litters, or 20 dogs or cats, per year, whichever is greater, ~~for profit,~~ to the public. Such definition includes breeders of animals who sell such animals directly to a consumer.

(14) The state attorney may bring an action to enjoin any violator of this section or s. 828.12 or s. 828.13 from being a pet dealer.

(15) County-operated or city-operated animal control agencies and registered nonprofit humane organizations shall be exempt from the provisions of this section.

(16) No pet dealer shall knowingly misrepresent the breed, sex, or health of any dog or cat offered for sale within the state.

(17) *Except as otherwise provided in this chapter,* a person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 10. Section 531.41, Florida Statutes, 1990 Supplement, is amended to read:

531.41 Powers and duties of the department.—The department shall:

(1) Maintain traceability of the state standards to the National Institute of Standards and Technology.

(2) Enforce the provisions of this chapter.

(3) Adopt reasonable rules to implement, interpret, or make specific the provisions of this chapter, which rules shall have the force and effect of law.

(4) Establish, by rule, standards of weight, measure, or count and reasonable standards of fill for any commodity in package form, as necessary.

(5) Make, by rule, any exemptions from the provisions of this chapter when appropriate to the maintenance of good commercial practices within this state.

(6) Conduct investigations necessary to ensure compliance with this chapter.

(7) Delegate to appropriate personnel all duties and responsibilities necessary for the proper administration of this chapter.

(8) Test annually the standards of weight and measure used by any city or county and approve the same when found to be correct and reject same when found to be incorrect.

(9) Inspect and test all weights and measures kept or offered or exposed for sale.

(10) Inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) In determining the weight, measure, or count of commodities or things sold or offered or exposed for sale, on the basis of weight, measure, or count; or

(b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

In compliance with rules of the department, tests may be made on representative samples of such devices, and the lots of which samples are representative shall be held to be correct or incorrect on the basis of the results of the inspection and tests of such samples.

(11) Test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which funds are appropriated by the Legislature of this state.

(12) Approve for use, and mark, such weights and measures as it finds to be correct, and reject, and mark as rejected, such weights and measures as it finds to be incorrect. Weights and measures that have been rejected may be seized if not corrected within a reasonable time, or if used or disposed of in a manner not specifically authorized. The department shall condemn, and may seize, weights and measures found to be incorrect that are not capable of being made correct.

(13) Weigh, measure, or inspect packaged commodities kept or offered or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept or offered or exposed for sale in accordance with this chapter or the rules adopted pursuant thereto. In carrying out the provisions of this subsection, the department may employ recognized sampling procedures such as are designated in National Institute of Standards and Technology, Handbook 133, "Checking Prepackaged Commodities."

(14) Prescribe, by rule, the appropriate term or unit of weight or measure to be used, whenever it determines in the case of a specific commodity that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion.

(15) Inspect and test every grain moisture measuring device used to determine the moisture of corn, soybeans, and grains offered for sale, sold, purchased, or in the process of being purchased. The department shall also have authority to establish tolerances and specifications for the accuracy and condition of these devices.

The provisions of this chapter and rules adopted thereunder notwithstanding, scales routinely used by providers of weight control services shall not be considered commercial weights and measures when used to determine human weight or to compute charges or payments for services rendered by such providers on the basis of said weight, measure, or count.

Section 11. This act shall take effect October 1, 1991.

House Amendment 2—On page 1, strike the entire title and insert: A bill to be entitled An act relating to the Department of Agriculture and Consumer Services; amending s. 581.131, F.S.; increasing the maximum annual registration fee for nurserymen; amending s. 581.185, F.S., and repealing s. 581.185(5) and (6), F.S.; deleting the Regulated Plant Index and provisions conforming state law to the federal Endangered Species Act of 1973; authorizing the Department of Agriculture and Consumer Services to establish and maintain the Regulated Plant Index in rules; providing considerations; specifying that certain permits consistent with federal standards may be issued with respect to listed endangered species; amending s. 585.003, F.S.; providing additional powers of the department when entering private premises; amending s. 585.01, F.S.; providing definitions; amending s. 585.145, F.S.; clarifying authority with respect to importation, intrastate movement, and transfer of ownership of animals; providing a penalty for certain offenses; creating s. 585.68, F.S.; providing authority to enter, inspect, and test premises and animals where animals are suspected of harboring biological or chemical residues; authorizing the restriction of premises and animal movement when harmful biological or chemical residues are suspected; authorizing destruction of certain animals; amending s. 585.70, F.S.; defining the term "pet food"; amending s. 585.85, F.S.; prohibiting the sale and transportation of specified pet food for human consumption; providing labeling requirements; providing penalties; amending and renumbering s. 828.31, F.S., and designating said section as part IV of chapter 585, F.S., entitled "Dogs and Cats"; revising language with respect to dogs and cats transported or offered for sale; amending s. 531.41, F.S.; providing that scales used by providers of weight control services shall not be considered commercial weights and measures under specified circumstances; providing an effective date.

On motions by Senator Dantzler, the Senate concurred in the House amendments.

CS for SB 1400 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has receded from House Amendment 1; has passed CS for SB 1428, with additional amendments, and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1428—A bill to be entitled An act relating to the collection of ad valorem taxes; amending s. 192.091, F.S.; increasing the commission the tax collector is entitled to receive for the collection of all real and tangible personal property taxes and assessments; amending s. 193.085, F.S.; providing for the certification of railroad property valuations by the Department of Revenue to the property appraiser; providing for notice of such valuations and an informal hearing if requested; amending ss. 197.182, 197.432, 197.443, F.S.; allowing tax refunds resulting from the correction of tax certificates; exempting such refunds from a statute of limitations; providing for retroactivity; repealing s. 197.364, F.S., relating to collection by the Department of Revenue, as the agent of county tax collectors, of ad valorem taxes assessed against the operating property of railroads and private railroad car lines; amending s. 194.171, F.S.; providing limitations with respect to actions to contest the denial of tax refunds; amending s. 194.181, F.S.; prescribing parties to actions contesting the denial of tax refunds; amending s. 197.182, F.S.; providing for denial of refund in writing; providing an effective date.

House Amendment 6—On page 7, line 24, through page 8, line 2, strike all of said lines and renumber subsequent sections.

House Amendment 7—In title, on page 1, lines 24 through 26, strike all of said lines and insert: to contest the denial of tax refunds;

On motions by Senator Forman, the Senate concurred in the House amendments.

CS for SB 1428 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—34 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 1430 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1430—A bill to be entitled An act relating to insurance; amending s. 626.99, F.S.; applying certain disclosure requirements to annuities; amending s. 627.404, F.S.; authorizing certain charitable organizations to own or purchase life insurance on a consenting insured; amending s. 627.613, F.S.; specifying the period within which a health insurer must notify an insured that a claim is contested or denied and must pay or deny a contested claim; requiring investigation by insurers for improper billing by health care providers; providing for certain rebates to insureds; amending s. 627.662, F.S.; revising requirements for group policies; amending s. 627.9407, F.S.; requiring long-term care policies to provide coverage for at least 24 months for nursing home care; creating s. 627.4134, F.S.; providing requirements for preferred provider networks; creating s. 627.6145, F.S.; requiring disclosure of specific methodology for payment of claims; repealing ss. 627.6375, 627.6695, F.S., relating to contracts for alternative rates of payment; providing for future repeal and review of ss. 627.4134, 627.6145, F.S., pursuant to the Regulatory Sunset Act; providing an effective date.

House Amendment 1—Strike everything after the enacting clause and insert:

Section 1. Section 626.7451, Florida Statutes, 1990 Supplement, is amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(1) The insurer or managing general agent may terminate the contract for cause as provided in the contract upon written notice to the terminated party. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination. The insurer or managing general agent must fulfill any obligations on policies, regardless of any dispute.

(2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under *the terms of* the contract to the insurer on a monthly or more frequent basis.

(3) All funds collected for the account of the insurer shall be held by the managing general agent in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account shall be used for all payment as directed by the insurer. The managing general agent may retain no more than 60 days of estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent shall be maintained unless the managing general agent is a controlled or controlling person. The insurer shall have access and the right to copy all accounts and records related to its business in a form usable by the insurer, and the department shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the department. The records shall be retained according to s. 626.561.

(5) The contract may not be assigned in whole or part by the managing general agent.

(6) The contract shall specify appropriate underwriting guidelines, including:

(a) The maximum annual premium volume.

(b) The basis of the rates to be charged.

(c) The types of risks which may be written.

(d) Maximum limits of liability.

(e) Applicable exclusions.

(f) Territorial limitations.

(g) Policy cancellation provisions.

(h) The maximum policy period.

This subsection shall not apply when the managing general agent is a controlled or controlling person.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the company in a timely manner and all claims must be adjusted by properly licensed persons.

(b) Notice shall be sent by the managing general agent to the insurer as soon as it becomes known that the claim:

1. Exceeds the limit set by the insurer;

2. Involves a coverage dispute;

3. *Exceeds* ~~May exceed~~ the managing general agent's claims settlement authority;

4. Is open for more than 6 months; or

5. Is closed by payment of an amount set by the department or an amount set by the insurer, whichever is less.

(c) All claims files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer the claims and related application files shall become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(8) If electronic claims files exist, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing *the total of all* loss reserves, *including IBNR if any, used in calculating the interim profits,* ~~or controlling claims payments or in any other manner,~~ interim profits shall not be paid to the managing general agent until 1 year after the profits are earned for property insurance business and 5 years after they are earned on casualty business and not until the profits have been verified.

(10) The managing general agent shall not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance ~~contracts pursuant to obligatory facultative agreements~~ if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers ~~with~~ which ~~such automatic agreements~~ are *authorized* ~~in effect~~, the coverages and amounts or percentages that may be reinsured, and commission schedules *and that the insurer has put each reinsurer on notice of the authorization by providing the reinsurer and reinsurance intermediary, if any, with a copy of this section of the contract and that the reinsurer will send confirmation of reinsurance placement directly to the insurer and the managing general agent.*

(b) Commit the insurer to participate in insurance or reinsurance syndicates.

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed.

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds 1 percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year.

(e) Collect any payment from a reinsurer or commit the insurer to any claims settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer.

(f) Permit its subproducer to serve on its board of directors.

~~(g) Jointly employ an individual who is employed with the insurer; however, this paragraph does not apply to a managing general agent that is a controlled or controlling person.~~

(g)~~(h)~~ Appoint a submanaging general agent.

(11) A licensed managing general agent, when placing business with an insurer under this code, may charge a per-policy fee not to exceed $25. In no instance shall the aggregate of per-policy fees for a placement of business authorized under this section, when combined with any other per-policy fee charged by the insurer, result in per-policy fees which exceed the aggregate amount of $25. The per-policy fee shall be a component of the insurer's rate filing and shall be fully earned ~~upon payment only if the associated premium is earned on a pro rata basis. The per-policy fee may not be charged with respect to any policy of less than 4 months' duration.~~

For the purposes of this section and ss. 626.7453 and 626.7454, the term "controlling person" or "controlling" has the meaning set forth in s. 625.012(5)(b)1., and the term "controlled person" or "controlled" has the meaning set forth in s. 625.012(5)(b)2.

Section 2. Section 626.7454, Florida Statutes, 1990 Supplement, is amended to read:

626.7454 Managing general agents; duties of insurers.—

(1) The insurer shall have on file for each managing general agent with which it has done business an independent financial examination in a form acceptable to the department.

(2) If a managing general agent establishes *total* loss reserves, *including IBNR if any,* the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This subsection is in addition to any other requirement of loss reserve certification.

(3) The insurer shall, at least *annually* ~~semiannually~~, conduct an onsite review of the underwriting and claims processing operations of the managing general agent, *however, the insurer shall conduct an onsite review of the underwriting and claims processing operations of a newly engaged managing general agent within six months after he is engaged.*

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

(5) Within 30 days after entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the department. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the department may request.

(6) An insurer shall review its books and records on a quarterly basis to determine if any producer has become a managing general agent as defined in s. 626.091. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the department of such determination and the insurer and producer must fully comply with the provisions of this section and ss. 626.7451, 626.7452, and 626.7453 within 30 days after such determination.

~~(7) An insurer shall not appoint to its board of directors an officer, director, employee, or controlling shareholder of any of its managing general agents. This subsection does not apply to relationships governed by the holding company regulation under ss. 628.801-628.803.~~

Subsections (1), (3), *and* (4)~~, and (7)~~ do not apply to a managing general agent that is a controlled or controlling person.

Section 3. Paragraph (b) of subsection (2) and subsection (4) of section 626.99, Florida Statutes, 1990 Supplement, are amended to read:

626.99 Life insurance solicitation.—

(2) SCOPE; EXEMPTIONS.—

(b) Unless they are otherwise specifically included, this section shall not apply to:

1. Annuities.~~;~~

2. Credit life insurance.~~;~~

3. Group life insurance.~~;~~

4. Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).~~; or~~

5. Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer's guide and a policy summary prior to accepting any applicant's initial premium or premium deposit, unless the policy for which application is made contains a provision for an unconditional refund for a period of at least *10* ~~30~~ days, or unless the policy summary contains an offer of such an unconditional refund, in which event the buyer's guide and policy summary must be delivered with the policy or prior to delivery of the policy. *With respect to fixed annuities, the insurer shall provide to each prospective purchaser a buyer's guide to annuities and a contract summary as provided in the National Association of Insurance Commissioners (NAIC) Model Annuity and Deposit Fund Regulation and the policy shall contain a provision for an unconditional refund for a period of at least 10 days.*

(b) The insurer shall provide a buyer's guide and a policy summary to any prospective purchaser upon request.

Section 4. Subsection (4) is added to section 627.452, Florida Statutes, to read:

627.452 Standard provisions required.—

(4) Except as otherwise required under this code or rules adopted pursuant thereto, the style, arrangement, and overall appearance of the policy shall give no undue prominence to any portion of the text. Every printed portion of the text of the policy and any endorsements or attached papers shall be plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than 10 points with a lower-case, unspaced alphabet length of not less than 120 points. As used in this subsection, "text" includes all printed matter except the name and address of the insurer, the name or title of the policy, the brief description of the coverage provided, if any, and captions and subcaptions.

Section 5. Section 627.613, Florida Statutes, 1990 Supplement, is amended to read:

627.613 Time of payment of claims.—

(1) The contract shall include the following provision:

"Time of Payment of Claims: After receiving written proof of loss, the insurer will pay monthly all benefits then due for . . . (type of benefit) . . .. Benefits for any other loss covered by this policy will be paid as soon as the insurer receives proper written proof."

(2) Health insurers shall reimburse all claims or any portion of any claim from an insured or an insured's assignees, for payment under a health insurance policy, within *45* ~~30~~ days after receipt of the claim by the health insurer. If a claim or a portion of a claim is contested by the health insurer, the insured or the insured's assignees shall be notified, in writing, that the claim is contested or denied, within *45* ~~30 working~~ days after receipt of the claim by the health insurer. The notice that a claim is contested shall identify the contested portion of the claim and the reasons for contesting the claim.

(3) A health insurer, upon receipt of the additional information requested from the insured or the insured's assignees shall pay or deny the contested claim or portion of the contested claim, within 60 ~~working~~ days.

(4) An insurer shall pay or deny any claim no later than 120 days after receiving the claim.

(5) ~~(4)~~ Payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery.

(6) ~~(5)~~ All overdue payments shall bear simple interest at the rate of 10 percent per year.

(7) Upon written notification by an insured, an insurer shall investigate any claim of improper billing by a physician, hospital, or other health care provider. The insurer shall determine if the insured was properly billed for only those procedures and services that the insured actually received. If the insurer determines that the insured has been improperly billed, the insurer shall notify the insured and the provider of its findings and shall reduce the amount of payment to the provider by the amount determined to be improperly billed. If a reduction is made due to such notification by the insured, the insurer shall pay to the insured 20 percent of the amount of the reduction up to $500

Section 6. Section 627.662, Florida Statutes, 1990 Supplement, is amended to read:

627.662 Other provisions applicable.—The following sections from part VI also apply to group health insurance, blanket health insurance, and franchise health insurance:

(1) Section 627.602(1)(f) and (2).

(2) Section 627.635.

(3) Section 627.638.

(4) Section 627.640.

(5) Section 627.645(1).

(6) Section 627.613~~(2) and (3)~~.

Section 7. Paragraph (d) of subsection (3) of section 627.9407, Florida Statutes, is amended to read:

627.9407 Disclosure, advertising, and performance standards for long-term care insurance.—

(3) RESTRICTIONS.—No long-term care insurance policy may:

(d) Provide coverage for less than 24 consecutive months for *nursing home care for* each covered person.

Section 8. Section 627.4134, Florida Statutes, is created to read:

627.4134 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(1) As used in this section:

(a) "Insurer" means an insurer as defined in s. 624.03 or a multiple-employer welfare arrangement as defined in 624.437.

(b) "Preferred provider" means any licensed health care provider with which the insurer has negotiated and entered into a contract for a reduced rate of payment, which shall include any health care provider listed in s. 627.419(3) and (4) and shall provide reasonable access to such health care providers.

(c) "Preferred provider network" means a group of licensed health care providers with whom the insurer has negotiated and entered into contracts for alternative or reduced rates of payment.

(2) Any insurer issuing a policy for health insurance in this state, which insurance includes the services of a preferred provider network, shall provide each policyholder and certificateholder with a current list of health care providers in the network under contract with the insurer to provide services at alternative or reduced rates under the policy and shall make the list available for public inspection during regular business hours at the principal office of the insurer within the state.

(3) A policy may limit payments regardless of the providers chosen by an insured and may offer alternative or reduced rates to an insured who selects preferred providers.

(4) Any policy which provides different schedules of payments for services provided by preferred providers and by providers with which the insurer does not have a contract for an alternative or reduced rate of payment is subject to the following limitations:

(a) The amount of any annual deductible for treatment in a facility which is not a preferred provider shall not exceed four times the amount of a corresponding annual deductible for treatment in a facility which is a preferred provider. If the policy has no deductible for treatment in a preferred provider facility, the annual deductible for treatment received in a facility which is not a preferred provider facility shall not exceed $500 per visit.

(b) The amount of any annual deductible for treatment, other than inpatient treatment, by a provider which is not a preferred provider shall not exceed four times the amount of a corresponding annual deductible for treatment, other than inpatient treatment, by a preferred provider. If the policy has no deductible for treatment by a preferred provider, the annual deductible for treatment received from a provider which is not a preferred provider shall not exceed $500.

(c) The percentage amount of any coinsurance to be paid by an insured to a provider which is not a preferred provider shall not exceed by more than 30 percentage points the percentage amount of any coinsurance payment to be paid to a preferred provider.

(d) The amount of any deductible and payment of coinsurance paid by the insured shall be applied to the reduced charge negotiated between the insurer and a preferred provider.

(e) If any service or treatment is not within the scope of services provided by the network of preferred providers but is within the scope of services or treatment covered by the policy, the service or treatment shall be deemed to be provided by a preferred provider.

Section 9. Section 627.6145 is created to read:

627.6145 Use of a specific methodology for payment of claims.—

(1) Each insurance policy that provides for payment of claims based on a specific methodology, including but not limited to, usual and customary charges, reasonable and customary charges, or charges based upon the prevailing rate in the community, shall specify the formula or criteria used by the insurer in determining the amount to be paid.

(2) Each insurer issuing a policy that provides for payment of claims based on a specific methodology shall provide to an insured, upon his written request, an estimate of the amount the insurer will pay for a particular medical procedure or service. This estimated amount may be in the form of a range of payments or an average payment. The insurer may require the insured to provide detailed information regarding the procedure or service to be performed including the procedure or service code number provided by the health care provider. An insurer who provides an insured with a good faith estimate shall not be bound by such estimate. However, if the department finds that the insurer has demonstrated a pattern of providing estimates that vary significantly from the ultimate insurance payment, such practice shall be considered a violation of the code.

Section 10. Section 626.2815, Florida Statutes, 1990 Supplement, is amended to read:

626.2815 Continuing education required; application; exceptions; requirements; penalties.—

(1) The purpose of this section is to establish requirements and standards for continuing education courses for persons licensed to solicit or sell insurance in the state.

(2) The provisions of this section apply to persons licensed to engage in the sale of insurance in this state for all lines of insurance for which an examination is required for licensing. The provisions of this section shall not apply to any person holding a license for the sale of any line of insurance for which an examination is not required by the laws of this state, nor shall the provisions of this section apply to any limited license as the department may exempt by rule.

(3)(a) Beginning with the renewal of appointments in *1993* ~~1992~~ and thereafter, each person subject to the provisions of this section must have completed a minimum of *14* ~~16~~ hours of continuing education courses every year or *28* ~~32~~ hours of continuing education courses every 2 years

in courses prescribed by this section or in other courses approved by the department. Compliance with continuing education requirements is a condition precedent to the renewal of any appointment subject to the provisions of this section. *A licensee who has been licensed for 25 years or more and is a CLU or a CPCU, any person who holds a license as a customer representative, solicitor, or motor vehicle physical damage and mechanical breakdown insurance agent, as a crop, hail, and multiple-peril crop insurance agent, or as an industrial fire insurance or burglary insurance agent and who is not a licensed life or health agent, shall be required to complete 7 hours of continuing education courses every year or 14 hours of continuing education courses every two years.*

(b) Any person who holds a license to solicit or sell life or health insurance and a license to solicit or sell property, casualty, surety, or surplus lines insurance must complete the continuing education requirements by completing courses in life or health insurance for one-half of the total hours required and courses in property, casualty, surety, or surplus lines insurance for one-half of the total hours required. *However, a licensee who holds an industrial fire or burglary insurance license and who is a licensed life or health agent shall be required to complete every two years 4 hours of continuing education courses related to industrial fire or burglary insurance and 24 hours of continuing education courses related to life or health insurance.*

(c) A person teaching any approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar, or program. Credit shall be limited to the number of hours actually taught unless a person attends the entire course or seminar.

(d) Excess classroom hours accumulated during any 1-year period may be carried forward to the next year.

(e) For good cause shown, the department may grant an extension of time during which the requirements imposed by this section may be completed, but such extension of time may not exceed 1 year.

(f) A nonresident who must complete continuing education requirements in his home state may use his home state requirements to meet this state's continuing education requirements as well, if the resident's state recognizes reciprocity with this state's continuing education requirements. A nonresident whose home state does not have such continuing education requirements must meet the continuing education requirements of this state.

(4) The following courses may be completed in order to meet the continuing education course requirements:

(a) Any part of the Life Underwriter Training Council Life Course Curriculum: *28* ~~32~~ hours; Health Course: *14* ~~16~~ hours.

(b) Any part of the American College "CLU" diploma curriculum: *28* ~~32~~ hours.

(c) Any part of the Insurance Institute of America's program in general insurance: *14* ~~16~~ hours.

(d) Any part of the American Institute for Property and Liability Underwriters' Chartered Property Casualty Underwriter (CPCU) professional designation program: *28* ~~32~~ hours.

(e) Any part of the Certified Insurance Counselor program: *21* ~~24~~ hours.

(f) Any part of the Accredited Advisor in Insurance: *21* ~~24~~ hours.

(g) Any insurance-related course which is approved by the department and taught by an accredited college or university per credit hour granted: *14* ~~16~~ hours.

(h) Any course developed or sponsored by any authorized insurer or recognized agents' association or insurance trade association or any independent study program of instruction, subject to approval by the department, qualifies for the equivalency of the number of classroom hours assigned thereto by the department. However, unless otherwise provided in this section, continuing education credit may not be given unless the course is provided by classroom instruction or results in a monitored examination.

(i) Each person subject to this section must furnish, in a form satisfactory to the department or its designee, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by such person. Such certification must be executed by or on behalf of the organization sponsoring the course, program, or seminar of instruction.

(5) The Department of Insurance shall refuse to renew the appointment of any agent who has not had his continuing education requirements certified unless the agent has been granted an extension by the department. The department may not issue a new appointment of the same or similar type, with any insurer, to an agent who was denied a renewal appointment for failure to complete continuing education as required until the agent completes his continuing education requirement.

(6)(a) There is created a nine-member continuing education advisory board to be appointed by the Insurance Commissioner and Treasurer. The purpose of the board is to advise the Department of Insurance in developing necessary rules to carry out this section.

(b) The board members shall be appointed as follows:

1. Five members representing agents of which at least one must be from the Florida Association of Insurance Agents; one must be from the Florida Association of Life Underwriters; and one must be from the Professional Insurance Agents of Florida, Inc.

2. Three members representing insurance companies at least one of whom must represent a Florida Domestic Company.

3. One member representing the general public who is not directly employed in the insurance industry.

(c) The board is abolished June 30, 1992.

(d) The members of the board shall serve at the pleasure of the Insurance Commissioner and Treasurer. Each board member shall be entitled to reimbursement for expenses pursuant to s. 112.061. The board shall designate one member as chairman. The board shall meet at the call of the Insurance Commissioner and Treasurer.

Section 11. Sections 627.6375 and 627.6695, Florida Statutes, as amended by chapter 90-164, Laws of Florida, are hereby repealed.

Section 12. Section 627.4134 and section 627.6145, Florida Statutes, are repealed on October 1, 1992, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 13. Section 627.404, Florida Statutes, is amended to read:

627.404 Insurable interest; personal insurance.

(1) An insurer shall be entitled to rely upon all statements, declarations, and representations made by an applicant for insurance relative to the insurable interest which such applicant has in the insured; and no insurer shall incur any legal liability except as set forth in the policy, by virtue of any untrue statements, declarations, or representations so relied upon in good faith by the insurer.

(2) A charitable organization that meets the requirements of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended, may own or purchase life insurance on an insured who consents to the ownership or purchase of that insurance.

Section 14. This act shall take effect October 1, 1991, and shall apply to policies issued, renewed, or delivered on or after that date.

House Amendment 2—In title, on page 1, lines 2-27, strike all of said lines and insert: An act relating to insurance; amending ss. 626.7451 and 626.7454, F.S.; revising required contract provisions and duties of insurers provisions relating to managing general agents; amending s. 626.99, F.S.; applying certain disclosure requirements to annuities; amending s. 627.452, F.S.; providing standards for style, arrangement, and overall appearance of life insurance policies; amending s. 627.613, F.S.; specifying the period within which a health insurer must notify an insured that a claim is contested or denied and must pay or deny a contested claim; requiring investigation by insurers for improper billing by health care providers; providing for certain rebates to insureds; amending s. 627.662, F.S.; revising requirements for group policies; amending s. 627.9407, F.S.; requiring long-term care policies to provide coverage for at least 24 months for nursing home care; creating s. 627.4134, F.S.; providing requirements for preferred provider networks; creating s. 627.6145,

F.S.; requiring disclosure of specific methodology for payment of claims; amending s. 626.2815, F.S.; changing certain continuing education requirements for insurance agents and other licensees; repealing ss. 627.6375 and 627.6695, F.S., relating to contracts for alternative rates of payment; amending s. 627.404, F.S.; authorizing certain charitable organizations to own or purchase insurance on certain persons; providing an

House Amendment 3—On page 8, between lines 26 and 27, insert:

Section 10. Section 627.674, Florida Statutes, 1990 Supplement, is amended to read:

627.674 Minimum standards; filing requirements.—

(1) An insurance policy or subscriber contract may not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless it meets the minimum standards. Such minimum standards do not preclude other provisions or benefits which are not inconsistent with these standards.

(2)(a) The department shall issue rules so that the combination of this law and such rules shall be no less comprehensive or beneficial to persons insured or covered under Medicare supplement policies issued, delivered, or issued for delivery in this state, including certificates under such group or blanket policies, which policies have been issued, delivered, or issued for delivery, than under the provisions pertaining to Medicare supplement policies contained in the NAIC Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act adopted by the National Association of Insurance Commissioners on December 7, 1989, *or the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).*

(b) The department shall issue rules to establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of group, blanket, franchise, and individual Medicare supplement policies and Medicare supplement subscriber contracts of dental service plans and nonprofit health care services plans. The standards may cover, but not be limited to:

1. Terms of renewability;

2. Initial and subsequent conditions of eligibility;

3. Nonduplication of coverage;

4. Probationary periods;

5. Benefit limitations, exceptions, and reductions;

6. Elimination periods;

7. Requirements for replacement coverage;

8. Recurrent conditions;

9. Definitions of terms; and

10. Application forms.

(c) The department may issue rules that specify prohibited policies or policy provisions not otherwise specifically authorized by statute which in the opinion of the commissioner are unjust, unfair, or unfairly discriminatory to the policyholder, the person insured under the policy, or the beneficiary.

(d) For policies issued on or after January 1, 1991, the department may adopt rules to establish minimum policy standards and any optional benefits to facilitate policy comparisons. ~~The rules shall not limit the providing of Medicare supplement insurance optional benefits.~~

(3) No policy shall be filed with the department as a Medicare supplement policy unless the policy meets or exceeds, either in a single policy or, in the case of nonprofit health care services plans, in one or more policies issued in conjunction with one another, the requirements of the NAIC Medicare Supplement Insurance Minimum Standards Model Act, adopted by the National Association of Insurance Commissioners on December 7, 1989, *and the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).*

(4) A policy filed with the department as a Medicare supplement policy must:

(a) Have a definition of "Medicare eligible expense" that is not more restrictive than health care expenses of the kinds covered by Medicare or to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

(b) Provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factor. Premiums may be modified to correspond with such changes *subject to approval by the department.*

(c) Be written in simplified language, be easily understood by purchasers, and be otherwise in accordance with s. 627.602.

(d) Contain a prominently displayed no-loss cancellation clause enabling the applicant to return the policy within 30 days of the date of receipt of the policy, or the certificate issued thereunder, with return in full of any premium paid. Any refund made pursuant to this paragraph shall be paid in a timely manner by the insurer, directly to the individual who paid the premium.

(e) Contain a prominently displayed notice of any coordination-of-benefits clause which might in any way restrict payment under the policy.

(f) Be accompanied by a copy of the Medicare Supplement Buyer's Guide developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration of the United States Department of Health and Human Services. Delivery of the buyer's guide shall be made whether or not the policy qualifies as a Medicare supplement coverage in accordance with this act. Except in the case of a direct response insurer, delivery of the buyer's guide shall be made at the time of application, and acknowledgment of receipt or certification of delivery of the buyer's guide shall be provided to the insurer. Direct response insurers shall deliver the buyer's guide upon request but not later than at the time the policy is delivered.

(g) Be accompanied by an outline of coverage as to such policy, in the form prescribed by the National Association of Insurance Commissioners in the NAIC Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, adopted by the National Association of Insurance Commissioners on December 7, 1989, and as prescribed in s. 627.6743, and:

1. The outline shall be delivered to the applicant at the time application is made, and, except for the direct response policy, acknowledgment of receipt or certification of delivery of the outline of coverage shall be provided to the insurer.

2. If the policy is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy, contract, or group certificate must accompany the policy, when it is delivered, and contain the following statement, in no less than 12-point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued."

3. Outlines of coverage delivered in conjunction with individual policies of hospital confinement insurance; indemnity insurance; specified disease insurance; specified accident insurance; supplemental health insurance, other than Medicare supplement insurance; or nonconventional health insurance coverage as defined by law in this state to persons eligible for Medicare by reason of age shall contain the following language which shall be printed on or attached to the first page: "This policy IS NOT A MEDICARE SUPPLEMENT policy. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

(5) A Medicare supplement policy shall not contain benefits which duplicate benefits provided by Medicare.

Section 11. Section 627.6741, Florida Statutes, 1990 Supplement, is amended to read:

627.6741 *Issuance,* cancellation, nonrenewal, and replacement.—

(1) An insurer issuing Medicare supplement policies in this state shall offer to any individual who is 65 years of age or older and who resides in this state, upon the request of the individual during the

6-month period beginning with the first month in which the individual has attained such age and is enrolled in Medicare part B, the opportunity of enrolling in a Medicare supplement policy, without conditioning the issuance or effectiveness of such a policy on, and without discriminating in the price of such policy based on, the medical or health status or receipt of health care by the individual.

(2)~~(1)~~ For both individual and group Medicare supplement policies:

(a) ~~Except as authorized by the department,~~ An insurer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If it is not replacing an existing policy, a Medicare supplement policy shall not limit or preclude liability under the policy for a period longer than 6 months because of a health condition existing before the policy is effective. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(c) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

(3)~~(2)~~ For group Medicare supplement policies:

(a) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (c), the insurer shall offer certificateholders an individual Medicare supplement policy. The insurer shall offer the certificateholder at least the following choices:

1. An individual Medicare supplement policy which provides for continuation of the benefits contained in the group policy.

2. An individual Medicare supplement policy which provides only the benefits required to meet the minimum standards.

(b) If membership in a group is terminated, the insurer shall:

1. Offer the certificateholder conversion opportunities described in paragraph (a); or

2. At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(c) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(4) In the event of cancellation, the insurer must return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of the cancellation.

Section 12. Section 627.6744, Florida Statutes, 1990 Supplement, is amended to read:

(Substantial rewording of section. See s. 627.6744, F.S., 1990 Supp., for present text.)

627.6744 Recommended purchase and excessive insurance.—

(1) No person shall issue or sell Medicare supplement insurance, whether directly, through the mail, or otherwise, to an individual unless the issuer or seller obtains from the individual, as a part of the application, a written statement signed by the individual stating what Medicare supplement policies the individual has, from what source, and whether the individual has applied for and been determined to be entitled to Medicaid. The written statement must be accompanied by a written acknowledgment, signed by the seller, of the request for and receipt of the statement. The written acknowledgment does not constitute a verification or affirmation by the seller of the truth of any information supplied by the individual in the written statement. The written statement shall be on forms prescribed by the department in accordance with the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).

(2) No person shall issue or sell Medicare supplement insurance to an individual if:

(a) An individual's written statement indicates that the individual is entitled to Medicaid; or

(b) The sale of Medicare supplement coverage will provide an individual more than one Medicare supplement policy or certificate.

(3) This section does not prohibit the sale of a Medicare supplement policy to an individual who has another Medicare supplement policy if:

(a) The individual indicates in writing that the policy replaces the other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective; and

(b) The insurer providing the replacement policy forwards the statement to the insurer whose policy is being replaced.

(4) Upon a request of the policyholder, an insurer shall suspend the benefits and premiums of the Medicare supplement policy for the period in which the policyholder indicates that they have applied for and been determined to be entitled to Medicaid. The period of suspension shall not exceed 24 months. If the policyholder loses entitlement to Medicaid and the policyholder provides notice within 90 days after the loss of entitlement, the policy shall be automatically reinstated as of the termination of Medicaid entitlement.

Section 13. Section 627.6745, Florida Statutes, is amended to read:

627.6745 Loss ratio standards*; public rate hearings.*—

(1) Medicare supplement policies shall return to policyholders in the form of aggregate benefits under the policy, as for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience, or incurred health care expenses if coverage is provided by a health maintenance organization based on service rather than reimbursement, and earned premiums for such period and in accordance with accepted actuarial principles and practices:

(a) At least 75 percent of the aggregate amount of premiums earned in the case of group policies; and

(b) For individual policies issued or renewed prior to July 1, 1989, at least 60 percent of the aggregate amount of premiums earned and for individual policies issued on or after July 1, 1989, at least 65 percent of the aggregate amount of premiums earned. *For the purposes of this section, policies issued as a result of solicitations of individuals through the mail or by mass media advertising shall be deemed to be individual policies.*

(2) Every entity providing Medicare supplement policies or certificates in this state shall file annually its rates, rating schedules, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this state. All filings of rates and rating schedules shall demonstrate that the actual and expected losses in relation to premiums comply with the requirements of this section.

(3) For the purposes of this section, policy forms shall be deemed to comply with the loss ratio standards if:

(a) For the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for 3 years or more is greater than or equal to the applicable percentages contained in this section; and

(b) The expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section.

An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than 3 years. *Loss ratios shall be calculated in accordance with a uniform methodology, including uniform reporting standards specified by the National Association of Insurance Commissioners pursuant to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).*

(4) Every insurer providing Medicare supplement insurance to residents of this state shall annually submit to the department information on actual loss ratios on forms prescribed by the National Association of Insurance Commissioners pursuant to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).

(5) Every insurer providing Medicare supplement insurance to residents of this state shall provide a proportional refund, or a credit against future premiums of a proportional amount, based on premiums paid, or the amount of premiums received necessary to assure that the loss ratio (net of any refunds or credits) complies with the loss ratio requirements. Such refunds or credits shall be applied to each type of policy by policy form number, and shall not apply for the first 2 years of a policy. The refund or credit shall be made to each policyholder insured under the policy as of the last day of the year involved. The refund or credit shall include interest from the end of the policy year involved until the date of the refund or credit at a rate that is not less than the average rate of interest for 13-week Treasury notes. Refunds or credits against premiums due shall be made no later than the third quarter of the succeeding policy year.

(6) Every insurer providing Medicare supplement insurance to residents of this state shall maintain and make available to interested persons a copy of each Medicare supplement policy, its most recent premium, and its loss ratios for the most recent 3-year period.

(7) The department shall adopt a written policy statement regarding the holding of public hearings prior to approval of any premium increases for Medicare supplement insurance policies.

Section 14. Section 627.6746, Florida Statutes, 1990 Supplement, is amended to read:

627.6746 Compliance with Omnibus Budget Reconciliation *Acts* ~~Act~~.— Each entity that provides Medicare supplement policies or contracts must comply with all provisions of section 4081 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) (OBRA) *and the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).*

(Renumber subsequent section.)

House Amendment 4—In title, on page 1, line 27, after the semicolon (;) insert: amending s. 627.674, F.S.; requiring Medicare supplement policies to provide certain benefits; providing that rules of the Department of Insurance may limit the providing of Medicare supplement insurance optional benefits; amending s. 627.6741, F.S.; requiring insurers to offer Medicare supplement policies to all persons who meet certain criteria; requiring return of unearned premium; amending s. 627.6744, F.S.; prohibiting the sale of Medicare supplement policies to persons eligible for Medicaid and certain persons who have other Medicare supplement insurance; amending s. 627.6745, F.S.; requiring Medicare supplement policies to meet specified loss ratio standards; providing for refunds or credits to policyholders; requiring that certain information be available to the public; requiring public hearings prior to approval of premium increases; amending s. 627.6746, F.S.; requiring compliance with the Omnibus Budget Reconciliation Act of 1990;

On motions by Senator Forman, the Senate concurred in the House amendments.

CS for SB 1430 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—35 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for CS for SB 1436 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for CS for SB 1436—A bill to be entitled An act relating to public health; revising and reorganizing the provisions of ch. 381, F.S.; creating s. 381.001, F.S.; providing legislative intent; creating s. 381.0011, F.S.; providing duties and powers of the Department of Health and Rehabilitative Services; creating s. 381.0012, F.S., relating to enforcement authority; transferring, renumbering, and amending s. 381.062, F.S., relating to eminent domain; transferring, renumbering, and amending s. 381.071, F.S., relating to regulations and ordinances superseded; transferring, renumbering, and amending s. 381.081, F.S., relating to presumptions; transferring, renumbering, and amending s. 381.101, F.S., relating to municipal regulations and ordinances; transferring, renumbering, and amending s. 381.171, F.S., relating to purchase, lease, and sale of real property; transferring, renumbering, and amending s. 381.201, F.S., relating to application for and acceptance of gifts or grants; transferring, renumbering, and amending s. 381.211, F.S., relating to disposition of equipment and material; transferring, renumbering, and amending s. 381.213, F.S., relating to grant of title to prescriptive medical personal property; transferring, renumbering, and amending s. 381.411, F.S., relating to penalties; creating s. 381.003, F.S.; providing for communicable disease and acquired immune deficiency syndrome prevention and control; transferring and renumbering s. 381.231, F.S., relating to report of diseases of public health significance; transferring, renumbering, and amending s. 381.614, F.S., relating to epidemiological research; renumbering ss. 381.043, 381.044, 381.607, 381.608, 381.609, 381.6081, 381.6105, 381.612, F.S., relating to HIV and AIDS education programs and patient care networks and testing requirements; creating s. 381.005, F.S.; providing a primary and preventive health care program; renumbering s. 381.382, F.S., relating to family planning; creating s. 381.0052, F.S.; creating the Public Health Dental Program Act; creating s. 381.006, F.S.; establishing an environmental health program; transferring, renumbering, and amending s. 381.112, F.S., relating to administrative fines; transferring, renumbering, and amending s. 381.261, F.S., relating to supervision of private and certain public water systems; providing for fees; transferring, renumbering, and amending s. 381.2615, F.S., relating to drinking water funds; transferring, renumbering, and amending s. 381.262, F.S., relating to continuing education courses for septic tank contractors and others; transferring, renumbering, and amending s. 381.272, F.S., relating to onsite sewage disposal systems; providing for a fee; transferring, renumbering, and amending s. 381.273, F.S., relating to wastewater permitting fees; increasing fees and providing new fees; transferring, renumbering, and amending s. 381.291, F.S., relating to corrective orders for water systems or individual sewage disposal systems; transferring, renumbering, and amending s. 381.294, F.S., relating to bottled water plants; increasing a fee; transferring, renumbering, and amending s. 381.295, F.S., relating to water vending machines; increasing a fee; creating s. 381.0072, F.S.; providing for food protection and the regulation of food service establishments; providing for licenses, certifications, inspections, and variances; providing fees; providing for penalties, seizures, and stop-sale orders; establishing an advisory council; providing for reimbursement of expenses; transferring, renumbering, and amending s. 381.422, F.S.; providing definitions; transferring, renumbering, and amending s. 381.432, F.S.; requiring a permit from the department to operate residential migrant housing; transferring, renumbering, and amending s. 381.442, F.S.; providing for migrant housing permit applications; transferring, renumbering, and amending s. 381.452, F.S.; providing for issuance of permits to operate migrant housing; transferring, renumbering, and amending s. 381.455, F.S.; providing application fees; transferring, renumbering, and amending s. 381.462, F.S.; providing for revocation and reinstatement of permits for migrant labor camps and housing; transferring, renumbering, and amending s. 381.472, F.S.; providing rulemaking authority; creating s. 381.0087, F.S.; providing for citations, fines, and penalties; providing authority of the Department of Labor and Employment Security; creating s. 381.00873, F.S.; prohibiting retaliation against tenants; providing penalties; creating s. 381.00875, F.S.; providing for administrative complaints; transferring, renumbering, and amending s. 381.482, F.S.; authorizing the department and specified other persons the right of entry to migrant labor camps and residential migrant housing; transferring and renumbering s. 381.522, F.S., relating to free public toilets; transferring and renumbering s. 381.523, F.S., relating to separate restrooms for males and females; transferring, renumbering, and amending s. 381.80, F.S., relating to biohazardous waste; requiring permits; providing for fees; preempting regulation to the state; creating s. 381.0101, F.S.; providing for certification of environmental health professionals; providing definitions; creating an advisory board; providing standards; providing exemptions; providing fees; creating s. 381.0201, F.S.; providing for technical and support programs; transferring, renumbering, and amending s. 381.321, F.S., relating to laboratory services; creating s. 381.0203, F.S.; providing a pharmacy services program; creating s. 381.0204, F.S.; providing for a statewide vital statistics program; creating s. 381.0205, F.S.; providing for a statewide emergency medical services program; creating s. 381.0301, F.S.; providing for health professional education and resource development; transferring and renumbering ss. 381.0612, 409.2661, 381.503, 385.504, F.S., relating to the State Center for Health Statistics, the area health education center network, the Commu-

nity Hospital Education Act, and the Center for Health Technologies; creating s. 381.0405, F.S.; establishing an Office of Rural Health; providing functions and responsibilities; providing for funding; transferring and renumbering ss. 381.0615, 381.601, 381.6015, 381.602, 381.492, 381.4945, F.S., relating to Children, Youth, and Families Program outcome evaluation, blood transfusions, direct-donor blood programs, the Organ Transplant Advisory Council, federally prescribed survey of state hospitals, and certificate-of-need exemption for certain correctional facilities; amending ss. 386.03, 450.191, 489.554, 509.036, 513.10, F.S.; correcting cross-references to conform to changes made by the act; revising certain continuing education requirements; repealing ss. 381.025, 381.031, 381.061, 381.091, 381.111, 381.121, 381.241, 381.311, 381.331, 381.351, 381.6082, 381.6083, F.S., relating to legislative intent and long-range planning; additional duties of the department; construction, rules, and regulations; quarantine regulations; contagious and infectious disease management; reports on the impact of AIDS on insurance and on adolescents; regulations for municipal and county sanitation; and analysis of human or animal bodies; providing for future legislative review and repeal of ss. 381.0072 and 381.0101, F.S., pursuant to the Regulatory Sunset Act and the Sundown Act; providing for a reviser's bill to correct cross-references; providing for interdepartmental review of food establishment inspection processes and for reports; providing an effective date.

House Amendment 1—On page 63, line 1, through page 87, line 22, strike all of said lines and insert: of the department the necessary permit in writing on a form to be prescribed by the department. The permit, unless sooner revoked, shall expire on September 30 next after the date of issuance ~~unless renewed,~~ and it shall not be transferable. An application for *a permit* ~~renewal~~ shall be filed with the department 30 days prior to *operation. No municipality shall prohibit the construction or operation of residential housing on the basis that it shall house migrant farm workers.* ~~its expiration on form blanks furnished by the department.~~

Section 35. Section 381.455, Florida Statutes, is transferred, renumbered as section 381.0084, Florida Statutes, and amended to read:

381.0084 ~~381.455~~ *Application* ~~Annual~~ fees for migrant labor camps *and residential migrant housing.*—

(1) Each migrant labor camp operator *or owner of residential migrant housing* subject to the provisions of *s. 381.0081* ~~s. 331.432~~ shall pay to the department the following annual *application* fees, which shall be set by ~~the~~ department ~~by~~ rule within the ranges specified herein:

(a) Camps *or residential migrant housing* with *capacity* ~~facilities~~ for *5* ~~1~~ to 50 occupants: Not less than *$75* ~~$50~~, or more than *$125* ~~$75~~.

(b) Camps *or residential migrant housing* with *capacity* ~~facilities~~ for 51 to 100 occupants: Not less than *$150* ~~$100~~, or more than *$225* ~~$150~~.

(c) Camps *or residential migrant housing* with *capacity* ~~facilities~~ for 101 or more occupants: Not less than *$250* ~~$150~~, or more than *$500* ~~$225~~.

(2) ~~Notwithstanding s. 154.06,~~ Fees collected under this section shall be deposited in *the County Public Health Unit Trust Fund for use in the migrant labor camp program* ~~a trust fund administered by the department~~ and shall be used solely for actual costs incurred in implementing and enforcing *ss. 381.008-381.0088* ~~this act~~.

(3) Until the department adopts rules establishing fees under subsection (1), the lowest amount in each range shall apply.

(4) Fees established pursuant to subsection (1) shall be based on the actual costs incurred by the department in carrying out its regulatory responsibilities under *ss. 381.008-381.0088* ~~ss. 381.422-381.482~~.

Section 36. Section 381.462, Florida Statutes, is transferred, renumbered as section 381.0085, Florida Statutes, and amended to read:

381.0085 ~~381.462~~ Revocation of permit to operate migrant labor camp *or residential migrant housing*~~; notice~~.—The department may revoke a permit authorizing the operation of a migrant labor camp *or residential migrant housing* if it finds the holder has failed to comply with any provision of this law or ~~of~~ any rule *adopted* ~~issued~~ hereunder. *To reinstate a permit for migrant labor camp or residential migrant housing from which a permit has been revoked, the operator shall submit another application with the appropriate fee and satisfy the department that he is in compliance with all applicable rules.*

Section 37. Section 381.472, Florida Statutes, is transferred, renumbered as section 381.0086, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 381.472, F.S., for present text.)

381.0086 Rules; penalties.—The department shall adopt rules necessary to protect the health and safety of migrant farm workers and other migrant labor camp or residential migrant housing occupants, including provisions relating to plan review of the construction of new, expanded, or remodeled camps, personal hygiene facilities, lighting, sewage disposal, safety, minimum living space per occupant, garbage, heating equipment, water supply, maintenance and operation of the camp or housing, and such other matters as the department may determine to be appropriate or necessary for the protection of the life and health of the occupants. A person who violates any provision of ss. 381.008-381.0088 or rules adopted under such sections shall be subject to the penalties provided in ss. 381.0012, 381.0025, and 381.0061.

Section 38. Section 381.0087, Florida Statutes, is created to read:

381.0087 Enforcement; citations.—

(1) Department personnel or crew chief compliance officers employed by the Bureau of Agricultural Programs of the Florida Department of Labor and Employment Security are authorized to issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.008-381.0088 or the field sanitation facility rules adopted by the department when a violation of said sections or rules is enforceable by an administrative or civil remedy, or when a violation of said sections or rules is a misdemeanor of the second degree. A citation issued pursuant to this section shall be considered to be a notice of proposed agency action.

(2) Citations shall be in writing and shall describe the particular nature of the violation, including specific reference to the provision of statute or rule allegedly violated.

(3) In no event shall the fines imposed by a citation issued by the department exceed $500 for each violation. Each day the violation exists shall constitute a separate violation for which a citation may be issued.

(4) The citing official shall inform the recipient, by written notice pursuant to s. 120.57, of the right to an administrative hearing to contest the citation of the agency within 21 days from the date of receipt of the citation. The citation shall contain a conspicuous statement that if the citation recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient shall be deemed to have waived the right to contest the citation and shall be required to pay an amount up to the maximum fine or penalty.

(5) The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department shall give due consideration to such factors as the gravity of the violation, the good faith of the person who has allegedly committed the violation, and the person's history of previous violations, including violations for which enforcement actions were taken under this section or other provisions of state law.

(6) Any person who willfully refuses to sign and accept a citation issued by the department or the Department of Labor and Employment Security is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Any fines collected by the department pursuant to ss. 381.008-381.0088 shall be deposited in the County Public Health Unit Trust Fund for use of the migrant labor camp inspection program and shall be used to improve migrant labor camp and residential migrant housing as described in s. 381.0086.

(8) The provisions of this section are an alternative means of enforcing ss. 381.008-381.0088 and the field sanitation facility rules. Nothing contained in this section shall prohibit the department from enforcing said sections or rules by any other means. However, the agency shall elect to use only the procedure for enforcement under this section or another method of civil or administrative enforcement for a single violation.

Section 39. Section 381.482, Florida Statutes, is transferred, renumbered as section 381.0088, Florida Statutes, and amended to read:

381.0088 ~~381.482~~ Right of entry.—The department or its inspectors may enter and inspect migrant labor camps *or residential* ~~and~~ migrant *housing* ~~dwelling units~~ at reasonable hours and investigate such facts, conditions, and practices or matters, as may be necessary or appropriate to determine whether any person has violated any provisions of *applicable statutes* ~~this law~~ or rules adopted *pursuant thereto* by the department. The right of entry shall ~~also~~ extend to any premises which the department has reason to believe is being established, maintained, or operated as a migrant labor camp *or residential migrant housing* without a permit, but no such entry shall be made without the permission of the owner or person in charge thereof, unless *an inspection* ~~a~~ warrant is first obtained from the circuit court authorizing the entry. The department may from time to time at its discretion publish the reports of such inspections.

Section 40. Sections 381.522 and 381.523, Florida Statutes, are transferred and renumbered as sections 381.009 and 381.0091, Florida Statutes, respectively.

Section 41. Section 381.80, Florida Statutes, is transferred, renumbered as section 381.0098, Florida Statutes, and amended to read:

381.0098 ~~381.80~~ Biohazardous waste.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of biohazardous waste. The Department of Health and Rehabilitative Services shall regulate the packaging, storage, and treatment of biohazardous waste which occurs at facilities where biohazardous waste is generated. The Department of Environmental Regulation shall regulate biohazardous waste from the point at which the waste is transported from the facility where it was generated. The Department of Environmental Regulation shall also regulate on-site and off-site incineration of biohazardous waste and its off-site transport, storage, treatment, or disposal. An interagency agreement between the Department of Environmental Regulation and the Department of Health and Rehabilitative Services shall be developed to ensure maximum efficiency in coordinating, administering, and regulating biohazardous wastes.

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

(a) "Biohazardous waste" means any solid or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste which contains human-disease-causing agents; used disposable sharps; human blood, blood products, and body fluids; and other materials which in the opinion of the department represent a significant risk of infection to persons outside the generating facility.

(b) "Biohazardous waste generator" means a facility or person that produces or generates biohazardous waste. The term includes, but is not limited to, hospitals, skilled nursing or convalescent hospitals, intermediate care facilities, clinics, dialysis clinics, dental offices, health maintenance organizations, surgical clinics, medical buildings, physicians' offices, laboratories, veterinary clinics, and funeral homes.

(c) "Department" means the Department of Health and Rehabilitative Services.

(d) "Sharps" mean those biohazardous wastes which as a result of their physical characteristics are capable of puncturing, lacerating, or otherwise breaking the skin when handled.

(e) "Treatment" means any process, including steam sterilization, chemical treatment, and incineration, which changes the character or composition of biohazardous waste so as to render it noninfectious.

(3) OPERATING STANDARDS.—The department shall adopt rules necessary to protect the health, safety, and welfare of the public and to carry out the purpose of this section. Such rules shall address, but need not be limited to, the packaging of biohazardous waste, including specific requirements for the segregation of the waste at the point of generation; the safe packaging of sharps; the placement of the waste in containers that will protect waste handlers and the public from exposure; the appropriate labeling of containers of waste to identify the generator; and the storage, treatment, and disposal of biohazardous wastes at the facilities in which such waste is generated.

(4) PERMITS AND FEES.—

(a) All biohazardous waste generators shall obtain an annual permit from the department, except that a physician's office generating less than 25 pounds of biohazardous waste in each 30-day period shall be exempt from the registration and fee requirements of this subsection. Application for such permit shall be made on an application form provided by the department, providing the following information:

1. Type and estimated weight of biohazardous waste expected to be generated.

2. Brief description of how biohazardous waste shall be handled within the facility.

3. Method of disposition of biohazardous waste generated at the facility.

4. Other pertinent information determined necessary by the department to fulfill the requirements of this section.

(b) Once the department determines that the biohazardous waste generator is capable of operating in compliance with this section and the rules adopted under this section, the department shall grant the operating permit.

(c) If the department determines that the biohazardous waste generator does not meet the provisions outlined in this section or the rules adopted under this section, the department shall deny the application for the operating permit pursuant to provisions of chapter 120. Such denial shall be in writing and shall list the circumstances for denial. Upon correction of such violations the operating permit shall be issued.

(d) The operating permit shall not be transferred from one owner to another. When the ownership or name of a biohazardous waste generator is changed and continues to operate, the new owner shall apply to the department, upon forms provided by the department, for issuance of an operating permit.

(e) The department shall establish a schedule of fees for the annual operating permit. Fees assessed under this section shall be in an amount sufficient to meet the costs of carrying out the provisions of this section and rules adopted under this section. The fee schedule for an annual operating permit shall not be less than $50 or more than $200. The department shall assess the minimum fees provided in this subsection until a fee schedule is promulgated by rule of the department. Facilities owned and operated by the state shall be exempt from the payment of any fees.

(f) Fees collected by the department in accordance with provisions of this section and the rules adopted under this section shall be deposited into a trust fund administered by the department for the payment of costs incurred in the administration of this section.

(5)~~(4)~~ ENFORCEMENT AND PENALTIES.—Any person or public body in violation of this section or rules adopted under this section is subject to penalties provided in ss. *381.0012, 381.0025,* ~~381.112~~ and *381.0061.* ~~381.411;~~ However, an administrative fine not to exceed $2,500 may be imposed for each day such person or public body is in violation of this section.

(6) PREEMPTION OF AUTHORITY TO REGULATE.—The regulation and inspection of biohazardous waste generators is hereby preempted by the state. Nothing in this chapter shall be construed to affect a local government's zoning and land use authority over biohazardous waste generators.

Section 42. Section 381.0101, Florida Statutes, is created to read:

381.0101 Environmental health professionals.—

(1) LEGISLATIVE INTENT.—Persons specifically responsible for providing technical and scientific evaluations of environmental health and sanitary conditions in business establishments and communities throughout the state may create a danger to the public health if they are not skilled or competent to perform such evaluations. The public relies on the judgment of environmental health professionals employed by both government agencies and industries to assure them that environmental hazards are identified and removed before they endanger the health or safety of the public. The purpose of this section is to assure the public that persons specifically responsible for performing environmental health and sanitary evaluations have been certified by examination as competent to perform such work.

(2) DEFINITIONS.—As used in this section:

(a) "Board" means the Environmental Health Professionals Certification Board.

(b) "Department" means the Department of Health and Rehabilitative Services.

(c) "Environmental health" means that segment of public health work which deals with the examination of those factors in the human environment which may impact adversely on the health status of an individual or the public.

(d) "Environmental health professional" means a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks.

(e) "Certified" means a person who has displayed competency by examination to perform evaluations of environmental or sanitary conditions.

(f) "Registered sanitarian" or "R.S." means a person who has been certified by either the National Environmental Health Association or the Florida Environmental Health Association as knowledgeable in the environmental health profession.

(g) "Primary environmental health program" means those programs determined by the department to be essential for providing basic environmental and sanitary protection to the public. At a minimum, these programs shall include food hygiene evaluations and onsite wastewater disposal system evaluations.

(3) CERTIFICATION REQUIRED.—No person shall perform environmental health or sanitary evaluations in any primary program area of environmental health without being certified by the department as competent to perform such evaluations. The requirements of this section shall not be mandatory for persons performing inspections of public food service establishments licensed under chapter 509.

(4) ENVIRONMENTAL HEALTH PROFESSIONALS ADVISORY BOARD.—The State Health Officer shall appoint an advisory board to assist the department in the promulgation of rules for certification, testing, establishing standards, and seeking enforcement actions against certified professionals.

(a) The board shall be comprised of the Assistant Health Officer for Environmental Health or his designee, one individual who will be certified under this section, one individual not employed in a governmental capacity who will or does employ a certified environmental health professional, one individual whose business is or will be evaluated by a certified environmental health professional, a citizen of the state who neither employs nor is routinely evaluated by a person certified under this section.

(b) The board shall advise the department as to the minimum standards of competency and proficiency necessary to obtain certification in a primary area of environmental health practice.

1. The board shall recommend primary areas of environmental health practice in which environmental health professionals should be required to obtain certification.

2. The board shall recommend minimum standards of practice which the department shall incorporate into rule.

3. The board shall evaluate and recommend to the department existing registrations and certifications which meet or exceed minimum department standards and should, therefore, exempt holders of such certificates or registrations from compliance with this section.

4. The board shall hear appeals of certificate denials, revocation, or suspension and shall advise the department as to the disposition of such an appeal.

5. The board shall meet as often as necessary, but no less than semiannually, handle appeals to the department and conduct other duties of the board.

6. Members of the board shall receive no compensation but shall be reimbursed for per diem and travel expenses in accordance with s. 112.061.

(5) STANDARDS FOR CERTIFICATION.—The department shall adopt rules that establish minimum standards of education, training, or experience for those persons subject to this section. The rules shall also address ethical standards of practice for the profession.

(a) Persons employed as environmental health professionals shall exhibit a knowledge of rules and principles of environmental and public health law in Florida through examination. No person shall conduct environmental health evaluations in a primary program area unless he is currently certified in that program area or works under the direct supervision of a certified environmental health professional. All such persons who begin employment in a primary environmental health program after the effective date of this section shall be certified in that program within 6 months after employment. Persons employed in a primary environmental health program prior to the effective date of this section are exempt from certification requirements while employed in that position.

(b) At a minimum, the department shall establish standards for professionals in the areas of food hygiene and onsite sewage treatment and disposal.

(c) Those persons conducting primary environmental health evaluations shall be certified by examination to be knowledgeable in any primary area of environmental health in which they are routinely assigned duties.

(d) Persons who are certified shall renew their certification biennially by completing not less than 6 contact hours of continuing education for each program area in which they maintain certification.

(e) Applicants for certification shall have graduated from an accredited 4-year college or university with major course work in environmental health, environmental science, or a physical or biological science.

(6) EXEMPTIONS.—A person who conducts primary environmental evaluation activities and maintains a current registration or certification from another state agency which examined the person's knowledge of the primary program area and requires comparable continuing education to maintain the certificate shall not be required to be certified by this section. Examples of persons not subject to certification are physicians, registered dietitians, certified laboratory personnel, and nurses. Registered sanitarians are deemed to have met the certification requirements of this section.

(7) FEES.—The department shall charge fees in amounts necessary to meet the cost of providing certification. Application fees for certification in a program area shall be no less than $25 nor more than $100. Examination costs shall be included in this fee. Certification fees shall be no less than $25 nor more than $50 per biennium. Fees for renewal of a certificate shall be no less than $25 nor more than $50 per biennium.

Section 43. Section 381.0201, Florida Statutes, is created to read:

381.0201 Technical and support services.—The department shall establish certain technical and support programs to enable the county public health units and other public or private agencies to carry out the public health mission. These programs shall include, but not be limited to, laboratory, pharmacy, vital statistics, and emergency medical services.

Section 44. Section 381.321, Florida Statutes, is transferred, renumbered as section 381.0202, Florida Statutes, and amended to read:

381.0202 ~~381.321~~ *Laboratory services* ~~Laboratories.~~—

(1) The department ~~of Health and Rehabilitative Services~~ may establish and maintain, in suitable and convenient places in the state, laboratories for microbiological and chemical analyses and any other purposes it determines necessary for the protection of the public health.

~~(2) The Department of Health and Rehabilitative Services shall contract with the Department of Natural Resources for laboratory services related to, but not limited to, the regulation of shellfish.~~

—*(2)*~~(3)~~ The department ~~of Health and Rehabilitative Services~~ may contract or agree with any person *or public or private agency*~~, either natural or corporate,~~ to provide laboratory services relating to *or having potential impact on* the public health *or relating* ~~of the citizens of the state or~~ to the health of clients directly under the care of the state.

(3)~~(4)~~ The department ~~of Health and Rehabilitative Services~~ is authorized to establish and collect reasonable fees and charges for labora-

tory services provided. Such fees and charges shall be deposited in a trust fund administered by the department *and shall be used solely for this* purpose ~~for this activity~~.

Section 45. Section 381.0203, Florida Statutes, is created to read:

381.0203 Pharmacy services.—The department may establish and maintain a pharmacy services program, including, but not limited to:

(1) A central pharmacy to support pharmaceutical services provided by the county public health units, including pharmaceutical repackaging, dispensing, and the purchase and distribution of immunizations and other pharmaceuticals.

(2) Regulation of drugs, cosmetics, and household products pursuant to chapter 499.

(3) An investigational drug program.

(4) Consultation to county public health units as required by s. 154.04(1)(d).

Section 46. Section 381.0204, Florida Statutes, is created to read:

381.0204 Vital statistics.—The department shall provide for a statewide vital statistics program pursuant to chapter 382.

Section 47. Section 381.0205, Florida Statutes, is created to read:

381.0205 Emergency medical services.—The department shall provide for a statewide emergency medical services program pursuant to chapters 395 and 401.

Section 48. Section 381.0301, Florida Statutes, is created to read:

381.0301 Education and resource development.—

(1) The department shall foster the recruitment, retention, and continuing education and training of health professionals and managers needed to administer the public health mission. This responsibility shall be conducted in cooperation with federal, state, and local agencies whose purpose is to prepare persons for service in public health, especially the Centers for Disease Control, the State University System, Florida medical schools, and the College of Public Health of the University of South Florida. To support the department in this endeavor:

(2) The Legislature intends that the College of Public Health of the University of South Florida assume a leadership role within the public health system through the development of academic programs intended to meet this state's unique health care, environmental, economic, political, and social service needs. Beyond its roles as educator of public health professionals in this state and as sponsor of relevant academic research, the School of Public Health shall be consulted by the public officials of this state in the management of public health affairs.

Section 49. Sections 381.0612 and 409.2661, Florida Statutes, 1990 Supplement, and sections 381.503 and 381.504, Florida Statutes, are transferred and renumbered as sections 381.0401, 381.0402, 381.0403, and 381.0404, Florida Statutes, respectively.

Section 50. Section 381.0405, Florida Statutes, is created to read:

381.0405 Office of Rural Health.—

(1) ESTABLISHMENT.—The department shall establish an Office of Rural Health within the State Health Office. The Office of Rural Health shall coordinate its activities with the area health education center network established pursuant to s. 381.0402 and with any appropriate research and policy development centers within universities that have state-approved medical schools. The Office of Rural Health may enter into a formal relationship with any center that designates the office as an affiliate of the center.

(2) PURPOSE.—The Office of Rural Health shall actively foster the provision of health care services in rural areas and serve as a catalyst for improved health services to citizens in rural areas of the state.

(3) GENERAL FUNCTIONS.—The office shall:

(a) Integrate policies related to physician manpower, hospitals, public health, and state regulatory functions.

(b) Propose solutions to problems affecting health care delivery in rural areas.

(c) Seek grant funds from foundations and the Federal Government.

(4) COORDINATION.—The office shall:

(a) Identify federal and state rural health programs and provide technical assistance to rural providers regarding participation in such programs.

(b) Act as a clearinghouse for collecting and disseminating information on rural health care issues, research findings on rural health care, and innovative approaches to the delivery of health care in rural areas.

(c) Foster the creation of regional health care systems that promote cooperation, rather than competition.

(d) Coordinate the department's rural health care activities, programs, and policies.

(e) Design initiatives to improve access to emergency medical services in rural areas.

(f) Assume responsibility for state coordination of the Rural Hospital Transition Grant Program, the Essential Access Community Hospital Program, and other federal rural health care programs.

(5) TECHNICAL ASSISTANCE.—The office shall:

(a) Help rural health care providers obtain health care practitioners by promoting the location and relocation of health care practitioners in rural areas.

(b) Provide technical assistance to hospitals, community and migrant health centers, and other health care providers.

(c) Design strategies to improve health care manpower recruitment and placement programs.

(6) RESEARCH PUBLICATIONS AND SPECIAL STUDIES.—The office shall:

(a) Conduct policy and research studies.

(b) Conduct health status studies of rural residents.

(c) Collect relevant data on rural health care issues for use in department policy development.

(7) APPROPRIATION.—The Legislature shall appropriate such sums as are necessary to support the Office of Rural Health.

Section 51. Sections 381.0615, 381.6015, 381.602, 381.492, and 381.4945, Florida Statutes, and section 381.601, Florida Statutes, 1990 Supplement, are transferred and renumbered as sections 381.0505, 381.0601, 381.0602, 381.0605, 381.695, and 381.698, Florida Statutes, respectively.

Section 52. Paragraphs (c) and (d) of subsection (2) of section 386.03, Florida Statutes, are amended to read:

386.03 Notice to remove nuisances; authority of Department of Health and Rehabilitative Services and local health authorities.—

(2) If the sanitary nuisance condition is not removed by such person or persons within the time prescribed in said notice, the department, its agents or deputies or local health authorities, may within the county where the nuisance exists, remove, cause to remove, or prevent the continuing sanitary nuisance condition in the following manner:

(c) Institute legal proceedings authorized by the department as set forth in *s. 381.0012* ~~s. 381.031(3)~~.

(d) Institute administrative proceedings authorized by the department as set forth in *s. 381.0061* ~~s. 381.112~~.

Section 53. Subsection (1) of section 450.191, Florida Statutes, is amended to read:

450.191 Executive Office of the Governor; powers and duties.—

(1) The Executive Office of the Governor is authorized and directed to:

(a) Advise and consult with employers of migrant workers as to the ways and means of improving living conditions of seasonal workers;

(b) Cooperate with the Department of Health and Rehabilitative Services in establishing minimum standards of preventive and curative health and of housing and sanitation in migrant labor camps and in making surveys to determine the adequacy of preventive and curative health services available to occupants of migrant labor camps;

(c) Provide coordination for the enforcement of *ss. 381.008-381.0088* ~~ss. 381.422-381.482~~;

(d) Cooperate with the other departments of government in coordinating all applicable labor laws, including, but not limited to, those relating to private employment agencies, child labor, wage payments, wage claims, and crew leaders;

(e) Cooperate with the Department of Education to provide educational facilities for the children of migrant laborers;

(f) Cooperate with the Department of Highway Safety and Motor Vehicles to establish minimum standards for the transporting of migrant laborers;

(g) Cooperate with the Department of Agriculture and Consumer Services to conduct an education program for employers of migrant laborers pertaining to the standards, methods, and objectives of the office;

(h) Cooperate with the Department of Health and Rehabilitative Services in coordinating all public assistance programs as they may apply to migrant laborers;

(i) Coordinate all federal, state, and local programs pertaining to migrant laborers;

(j) Cooperate with the farm labor office of the Florida State Employment Service in the recruitment and referral of migrant laborers and other persons for the planting, cultivation, and harvesting of agricultural crops in Florida.

Section 54. Section 489.554, Florida Statutes, is amended to read:

489.554 Registration renewal.—The department shall prescribe by rule the method for renewal of annual registration which shall include continuing education requirements not to exceed *two 6-classroom-hour courses* ~~12 classroom hours~~ annually as set forth in *s. 381.0064* ~~s. 381.262~~.

Section 55. Paragraph (b) of subsection (1) of section 509.036, Florida Statutes, 1990 Supplement, is amended to read:

509.036 Public food service inspector standardization.—

(1) Any person performing required inspections of licensed public food service establishments for the division or its agent must:

(b) Pass the food protection practices test prescribed by *s. 381.0072(8)* ~~s. 381.061(9)~~; and

Section 56. Subsection (2) of section 513.10, Florida Statutes, is amended to read:

513.10 Enforcement and penalties.—

(2) This chapter or rules adopted under this chapter may be enforced in the manner provided in *s. 381.0012* ~~s. 381.031(3)~~ and as provided in this chapter. ~~Sanitary rules adopted pursuant to s. 381.031(1) and this chapter are a part of the Sanitary Code of Florida created by s. 381.031(1)(g).~~ Violations of this chapter and the rules adopted under this chapter are subject to the penalties provided in this chapter and in ss. *381.0025* ~~381.112~~ and *381.0061* ~~381.411~~.

Section 57. Sections 381.025, 381.031, 381.061, 381.091, 381.111, 381.121, 381.241, 381.311, 381.331, 381.351, 381.6082, and 381.6083, Florida Statutes, are repealed.

Section 58. Subsections (1)-(8) of section 381.0072, Florida Statutes, are repealed effective October 1, 2001, and must be reviewed by the Legislature prior to that date pursuant to the Regulatory Sunset Act, section 11.61, Florida Statutes.

Section 59. Subsection (9) of section 381.0072, Florida Statutes, is repealed effective October 1, 2001, and the Food Standards Advisory Council must be reviewed by the Legislature prior to that date pursuant to the Sundown Act, section 11.611, Florida Statutes.

Section 60. Subsections (1), (2), (3), (5), (6), and (7) of section 381.0101, Florida Statutes, are repealed effective October 1, 2001, and must be reviewed by the Legislature prior to that date pursuant to the Regulatory Sunset Act, section 11.61, Florida Statutes.

Section 61. Subsection (4) of section 381.0101, Florida Statutes, is repealed effective October 1, 2001, and the Environmental Health Professionals Advisory Board must be reviewed by the Legislature prior to that date pursuant to the Sundown Act, section 11.611, Florida Statutes.

Section 62. The Division of Statutory Revision of the Joint Legislative Management Committee is directed to prepare reviser's bills to correct in the Florida Statutes cross-references to sections of the Florida Statutes transferred and renumbered by this act.

Section 63. Nothing in this act shall affect any existing provisions of chapter 370 or chapter 509, Florida Statutes.

Section 64. The Department of Agriculture and Consumer Services, the Department of Business Regulation, the Department of Health and Rehabilitative Services, and the Department of Natural Resources shall cooperatively review each department's process for inspection of food establishments and, to the extent possible, delineate procedures necessary to minimize duplication of effort for such inspections and any fees charged for such inspections. The departments shall submit a joint report with recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 15, 1991. The Department of Health and Rehabilitative Services shall serve as the lead agency for purposes of report preparation.

Section 65. Section 381.0053, Florida Statutes, is created to read:

381.0053 Comprehensive nutrition program.—

(1) It is the intent of the Legislature to make available nutrition information to promote health and prevent disease for the citizens of the state and to provide nutrition assessment and diet counseling services to improve the nutritional status of indigent persons.

(2) The department shall implement a comprehensive nutrition program which shall include, but not be limited to, the following:

(a) Nutritional assessment and diet counseling for persons with nutritional risk factors who are provided health services through public health programs.

(b) Nutrition education to promote optimum health of the citizens of the state.

(c) Consultative nutrition services to group care facilities that promote the provision of safe and nutritionally adequate diets.

(3) Services shall be available to eligible persons in accordance with eligibility criteria adopted by the department. Fees for services shall be developed by the department.

(4) The department may promulgate rules to implement the provisions of this section.

Section 66. Paragraph (a) of subsection (3) of section 381.609, Florida Statutes, is amended to read:

381.609 Testing for human immunodeficiency virus.—

(3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in paragraph (i). Informed consent shall be preceded by an explanation of ~~the test, including its purpose, potential uses, and limitations and the meaning of its results, and an explanation of the procedures to be followed, including the voluntary nature of the test, the right to withdraw consent to the testing process at any time prior to the HIV test, and~~ the right to confidential treatment of information identifying the subject of the test and the results of the test to the extent provided by law. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.

Section 67. Section 381.0034, Florida Statutes, is created to read:

381.0034 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) As of July 1, 1991, the Department of Health and Rehabilitative Services shall require each person licensed or certified under chapter 401, chapter 467, part IV of chapter 468, or chapter 483, as a condition of biennial relicensure, to complete an educational course approved by the department on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients. Each such licensee or certificateholder shall submit confirmation of having completed said course, on a form as provided by the department, when submitting fees or application for each biennial renewal.

(2) Failure to complete the requirements of this section shall be grounds for disciplinary action contained in the chapters specified in subsection (1). In addition to discipline by the department, the licensee or certificateholder shall be required to complete said course.

(3) The department shall require, as a condition of granting a license under the chapters specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the department on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(4) The department shall have the authority to adopt rules to carry out the provisions of this section.

(5) Any professional holding two or more licenses or certificates subject to the provisions of this section shall be permitted to show proof of having taken one department-approved course on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for the additional licenses.

(6) The department shall report to the Speaker of the House of Representatives and the President of the Senate by March 1 of each year as to the implementation of and compliance with the requirements of this section.

Section 68. Section 381.043, Florida Statutes, is renumbered as section 381.0035, Florida Statutes, and amended to read:

381.0035 ~~381.043~~ Educational course on human immunodeficiency virus and acquired immune deficiency syndrome; employees and clients of certain health care facilities.—

(1) The Department of Health and Rehabilitative Services shall require all employees and clients of facilities licensed under chapters 393, 394, and 397 and employees of facilities licensed under chapter 395 and parts I, II, III, and V of chapter 400 to complete, *biennially, a continuing educational course on the modes of transmission, infection control procedures, clinical management,* ~~an educational course on the transmission, control, treatment,~~ and prevention of human immunodeficiency virus and acquired immune deficiency syndrome with an emphasis on appropriate behavior and attitude change. *Such instruction shall include information on current Florida law and its impact on testing, confidentiality of test results, and treatment of patients.* ~~The department may adopt rules to carry out the provisions of this section.~~

(2) New employees shall be required to complete a course on human immunodeficiency virus and acquired immune deficiency syndrome, with instruction to include information on current Florida law and its impact on testing, confidentiality of test results, and treatment of patients.

(3) Facilities licensed under chapters 393, 394, 395, 397, and parts I, II, III, and V of chapter 400 shall maintain a record of employees and dates of attendance at human immunodeficiency virus and acquired immune deficiency syndrome educational courses.

(4) The department shall have the authority to review the records of each facility to determine compliance with the requirements of this section. The department may adopt rules to carry out the provisions of this section.

Section 69. Section 381.045, Florida Statutes, is created to read:

381.045 Hepatitis B or human immunodeficiency carriers.—The Department of Health and Rehabilitative Services shall have the authority to establish procedures to handle, counsel, and provide other services to health care professionals licensed or certified under chapter 401, chapter 467, part IV of chapter 468, and chapter 483 who are infected with hepatitis B or the human immunodeficiency virus.

Section 70. Section 455.2226, Florida Statutes, is amended to read:

455.2226 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) *As of July 1, 1991,* the board shall require each person licensed or certified under *chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter* 463, chapter 464, chapter 465, *chapter 466,* part II, part III, or part V of chapter 468, *chapter 470, or chapter 486* ~~chapter 490, or chapter 491~~ to complete *a continuing* ~~an~~ educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome *as part of biennial relicensure or recertification.* ~~Each licensee under chapter 463, chapter 464, chapter 465, part II or part V of chapter 468, chapter 490, or chapter 491 shall submit confirmation on a form as provided by the board of having completed said course by July 1, 1989. Each person licensed under part III of chapter 468 shall submit confirmation on a form as provided by the board of having completed said course by December 31, 1989.~~ The course shall consist of education on the *modes of* transmission, *infection* control *procedures, clinical management,* ~~treatment,~~ and prevention of human immunodeficiency virus and acquired immune deficiency syndrome~~, with emphasis on appropriate behavior and attitude change~~. *Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients.*

(2) Each such licensee or certificateholder shall submit confirmation of having completed said course, on a form as provided by the board, course when submitting fees for each biennial renewal.

~~(2) The board shall require each person licensed or certified under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 466, or chapter 470 to complete an educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome. Each licensee shall submit confirmation on a form as provided by the board of having completed said course by December 31, 1989. The course shall consist of education on the transmission, control, treatment, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome with emphasis on appropriate behavior and attitude change.~~

~~(3) The board shall require each person licensed or certified under chapter 486 to complete an educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome. Each licensee shall submit, on a form provided by the board, confirmation of having completed the course by December 31, 1990. The course shall consist of education on the transmission, control, treatment, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with emphasis on appropriate behavior and attitude change.~~

(3)~~(4)~~ The board shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsections (1), (2), and (3). Each licensing board that requires a licensee to complete an educational course pursuant to this section may count the hours required for completion of the course included in the total continuing educational requirements as required by law.

(4) Any professional holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

(5) Failure to comply with the above requirements shall constitute grounds for disciplinary action under each respective licensing chapter and s. 455.227(1)(g). In addition to discipline by the board, the licensee shall be required to complete said course.

(6) ~~As of July 1, 1989,~~ The board shall require as a condition of granting a license under the chapters specified in *subsection (1)* ~~subsections~~

~~(1) and (2), and as of July 1, 1990, the board shall require as a condition of granting a license under the chapter specified in subsection (3),~~ that an applicant making initial application for licensure complete an educational course acceptable to the board on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(7) The board shall have the authority to adopt rules to carry out the provisions of this section.

(8) The board shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

Section 71. Notwithstanding subsection (9) of section 455.2226, Florida Statutes, as amended by chapter 89-350, Laws of Florida, the provisions of section 455.2226, Florida Statutes, shall not expire July 1, 1991, but shall continue in full force and effect as amended herein.

Section 72. Section 455.2228, Florida Statutes, is amended to read:

455.2228 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) The board shall require each person licensed or certified under chapter 476, chapter 477, or chapter 480 to complete *a continuing* ~~an~~ educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome *as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.* ~~Each licensee shall be notified at the time of the next biennial renewal from July 5, 1989, that said educational course shall be required and completed by the subsequent biennial renewal period.~~

(2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed said course, on a form provided by the board or the by department if there is no board. At the time of the subsequent biennial renewal when course work is to be completed, if the licensee has not submitted confirmation which has been received and recorded by the board, or department if there is no board, the department shall not renew the license. ~~The course shall consist of education on the transmission, control, treatment, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with emphasis on appropriate behavior and attitude change.~~

(3)~~(2)~~ The board shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).

(4)~~(3)~~ As of December 31, 1992, the board shall require, as a condition of granting a license under the chapters specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the board on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(5)~~(4)~~ The board shall have the authority to adopt rules to carry out the provisions of this section.

(6)~~(5)~~ The board shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

(7) Any professional holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

Section 73. Notwithstanding subsection (6) of section 455.2228, Florida Statutes, as created by chapter 80-350, Laws of Florida, section 455.2228, Florida Statutes, shall not stand repealed on December 31, 1993, and shall continue in full force and effect as amended herein.

Section 74. Section 455.2224, Florida Statutes, is created to read:

455.2224 Hepatitis B or human immunodeficiency carriers.—The Department of Professional Regulation and each appropriate board within the Division of Medical Quality Assurance shall have the authority to establish procedures to handle, counsel, and provide other services to health care professionals within their respective boards who are infected with hepatitis B or the human immunodeficiency virus.

Section 75. Subsection (5) of section 154.01, Florida Statutes, is amended to read:

154.01 Public health unit delivery system.—

(5) In order to provide for the effective delivery of health services in keeping with expanding needs or modernization, the Legislature may authorize funding for construction or expansion projects to public health units *or other nonprofit primary health care providers who are under contract with the department.* The department shall submit a list of construction or expansion needs arranged in order of priority to the Legislature in conjunction with each biennial budget request. The priority list shall be based on the following criteria:

(a) The capacity of the health facility to efficiently provide the full set of authorized services for the number of patients who can be served with available funds;

(b) The capacity of the health facility to meet the anticipated growth in demand for service over the next 10 years; and

(c) The adequacy of the facility to ensure patient and staff safety, provide privacy during eligibility determination and examination, and enable an efficient movement of patients through service areas.

Section 76. The Department of Health and Rehabilitative Services may conduct studies concerning the epidemiology of health risk associated with electromagnetic radiation, such as cancer, leukemia, and other diseases. Until scientific agreement occurs about the effect of such radiation, the public is advised and should make prudent decisions concerning its exposure to such radiation in the workplace and throughout their private endeavors. Every effort shall be made to mitigate such exposure in an effort to protect the public health.

(Renumber subsequent section.)

House Amendment 2—In title, on page 4, line 11, through page 6, line 20, strike all of said lines and insert: transferring, renumbering, and amending s. 381.482, F.S.; authorizing the department the right of entry to migrant labor camps and residential migrant housing; transferring and renumbering s. 381.522, F.S., relating to free public toilets; transferring and renumbering s. 381.523, F.S., relating to separate restrooms for males and females; transferring, renumbering, and amending s. 381.80, F.S., relating to biohazardous waste; requiring permits; providing for fees; preempting regulation to the state; preserving local government zoning and land use authority; creating s. 381.0101, F.S.; providing for certification of environmental health professionals; providing definitions; creating an advisory board; providing standards; providing exemptions; providing fees; creating s. 381.0201, F.S.; providing for technical and support programs; transferring, renumbering, and amending s. 381.321, F.S., relating to laboratory services; creating s. 381.0203, F.S.; providing a pharmacy services program; creating s. 381.0204, F.S.; providing for a statewide vital statistics program; creating s. 381.0205, F.S.; providing for a statewide emergency medical services program; creating s. 381.0301, F.S.; providing for health professional education and resource development; transferring and renumbering ss. 381.0612, 409.2661, 381.503, 385.504, F.S., relating to the State Center for Health Statistics, the area health education center network, the Community Hospital Education Act, and the Center for Health Technologies; creating s. 381.0405, F.S.; establishing an Office of Rural Health; providing functions and responsibilities; providing for funding; transferring and renumbering ss. 381.0615, 381.601, 381.6015, 381.602, 381.492, 381.4945, F.S., relating to Children, Youth, and Families Program outcome evaluation, blood transfusions, direct-donor blood programs, the Organ Transplant Advisory Council, federally prescribed survey of state hospitals, and certificate-of-need exemption for certain correctional facilities; amending ss. 386.03, 450.191, 489.554, 509.036, 513.10, F.S.; correcting cross-references to conform to changes made by the act; revising certain continuing education requirements; repealing ss. 381.025, 381.031, 381.061, 381.091, 381.111, 381.121, 381.241, 381.311, 381.331, 381.351, 381.6082, 381.6083, F.S., relating to legislative intent and long-range planning; additional duties of the department; construction, rules, and regulations; quarantine regulations; contagious and infectious disease management; reports on the impact of

AIDS on insurance and on adolescents; regulations for municipal and county sanitation; and analysis of human or animal bodies; providing for future legislative review and repeal of ss. 381.0072 and 381.0101, F.S., pursuant to the Regulatory Sunset Act and the Sundown Act; providing for a reviser's bill to correct cross-references; providing for interdepartmental review of food establishment inspection processes and for reports; creating s. 381.0053, F.S.; providing for a comprehensive nutrition program; amending s. 381.609, F.S.; deleting certain informed consent requirements; requiring HIV and AIDS education as a condition for licensure for specified health care personnel; providing for disciplinary action; amending s. 381.043, F.S.; modifying HIV and AIDS education requirements for employees and clients of certain health care facilities; requiring recordkeeping; creating s. 381.045, F.S.; authorizing the Department of Health and Rehabilitative Services to establish procedures to provide services to certain health care professionals infected with hepatitis B virus or human immunodeficiency virus; amending ss. 455.2226 and 455.2228, F.S.; providing HIV and AIDS education requirements for specified health care professionals; saving ss. 455.2226 and 455.2228, F.S., from scheduled repeal; creating s. 455.2224, F.S.; authorizing the Department of Professional Regulation and certain boards within the Division of Medical Quality Assurance to establish procedures to provide services to health care professionals infected with hepatitis B virus or human immunodeficiency virus; amending s. 154.01, F.S.; expanding the list of health care facilities which may be funded by the Department of Health and Rehabilitative Services; authorizing the department to conduct epidemiological studies of health risk associated with electromagnetic radiation; providing

House Amendment 3—On page 57, line 3, strike all of said line and insert: However, any theater, if the primary use is as a theater and patron service is limited to food items customarily served to the admittees of theaters, hospitals licensed under chapter 395, nursing homes

Substitute House Amendment 4—On page 53, between lines 14 and 15, insert:

(e) The department or other appropriate regulatory entity may inspect theaters exempted in subsection (1) to ensure compliance with applicable laws and rules pertaining to minimum sanitation standards. A fee for inspection shall be prescribed by rule, but the aggregate amount charged per year per theater establishment shall not exceed $300, regardless of the entity providing the inspection.

House Amendment 5—On page 52, line 2, strike all of said line and insert: drink for public consumption; nor does the term include any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

House Amendment 6—On page 57, line 4, after "400," insert: and a child care facility as defined under s. 402.301, Florida Statutes,

House Amendment 7—On page 6, line 24, insert:

Section 1. (1) This section may be cited as the "Insect Sting Emergency Treatment Act."

(2) The purpose of this section is to provide for the certification of persons who administer life-saving treatment to persons who have severe adverse reactions to insect stings when a physician is not immediately available.

(3) The Department of Health and Rehabilitative Services may:

(a) Adopt rules necessary to administer this section.

(b) Conduct educational training programs as described in subsection (4), and to approve programs conducted by other persons or governmental agencies.

(c) Issue and renew certificates of training to persons who have complied with this section and the rules adopted by the department.

(d) Collect fees necessary to administer this section.

(4) Educational training programs required by this section must be conducted by a physician licensed to practice medicine in this state. The curriculum must include at a minimum:

(a) Recognition of the symptoms of systemic reactions to insect stings; and

(b) The proper administration of a subcutaneous injection of epinephrine.

(5) A certificate of training may be given to a person who:

(a) Is 18 years of age or older;

(b) Has, or reasonably expect to have, responsibility for at least one other person who has severe adverse reactions to insect stings as a result of his occupational or volunteer status, including a camp counselor, scout leader, school teacher, forest ranger, tour guide, or chaperone;

(c) Has successfully completed an educational training program as described in subsection (4).

(6) A person who successfully completes an educational training program may obtain a certificate upon payment of an application fee of $25.

(7) A certificate issued pursuant to this section authorizes the holder thereof to receive, upon presentment of the certificate, from any physician licensed in this state or from the department, a prescription for premeasured doses of epinephrine and the necessary paraphernalia for administration. The certificate also authorizes the holder thereof to possess and administer, in an emergency situation when a physician is not immediately available, the prescribed epinephrine to a person suffering a severe adverse reaction to an insect sting.

(Renumber subsequent sections.)

House Amendment 9—In title on page 1, line 2, after the semicolon (;) insert: providing for certification of persons to administer life-saving treatment to a person who is suffering a severe adverse reaction to an insect sting; providing for administration by the Department of Health and Rehabilitative Services; authorizing the department to adopt rules and collect fees;

Senator Weinstock moved that the Senate concur in **Amendments 1, 2, 7** and **9**; and refuse to concur in **Amendments 3, 4, 5** and **6.**

Senator Langley offered a substitute motion that the Senate concur in the House amendments. The motion was adopted. The vote was:

Yeas—23 Nays—9

CS for CS for SB 1436 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—21 Nays—None

MOTION TO RECONSIDER

Senator Casas moved that the Senate reconsider the vote by which **CS for CS for SB 1436** passed. The motion failed. The vote was:

Yeas—13 Nays—22

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 1850 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1850—A bill to be entitled An act relating to inmate labor; creating s. 236.0836, F.S.; providing for the renovation of public school buses under the correctional work program; amending s. 287.042, F.S.; requiring the Division of Purchasing of the Department of General Services to issue commodity numbers for certain products of the correctional work program; requiring the division to include corporation products on any listing prepared by the division which lists term contracts executed by the division; authorizing the corporation established under ch. 946, F.S., to submit products to the division for review; exempting purchases of such products and services by a local government from competitive-bid requirements; amending s. 946.511, F.S.; revising the priority of assigning inmates to correctional and public works programs; amending s. 944.09, F.S.; requiring the Department of Corrections to maintain specified information regarding victim restitution orders and the status of restitution payments; amending s. 946.512, F.S.; creating a Productivity Enhancement Trust Fund for deposit of a percentage of correctional work program corporation annual sales; providing for private corporations operating corrections facilities to have access to victim information

for purposes of victim restitution; requiring the department to adopt rules governing the transfer of such information; amending s. 946.515, F.S.; providing that the Department of Corrections must certify that products and services produced by the correctional work program meet specifications and requirements of a state agency in order for the agency to be prohibited from purchasing the product or service from any other source; providing for administrative hearings to resolve disputes arising from contracts for the purchase of products or services of the program; amending s. 946.009, F.S.; repealing provisions relating to the priority assignment of inmates to work programs; authorizing the corporation to contract with counties and municipalities; providing for a study by the corporation on vocational training programs; providing an appropriation; providing an effective date.

House Amendment 1—On page 2, strike everything after the enacting clause and insert:

Section 1. Paragraphs (d), (e), and (f) are added to subsection (1) of section 287.042, Florida Statutes, 1990 Supplement, and paragraph (a) of subsection (2) of that section is amended to read:

287.042 Powers, duties, and functions.—The division shall have the following powers, duties, and functions:

(1)

(d) The division shall issue commodity numbers for all products of the corporation operating the correctional industry program which meet or exceed division specifications.

(e) The division shall, beginning October 1, 1991, include the products offered by the corporation on any listing prepared by the division which lists term contracts executed by the division. The products or services shall be placed on such list in a category based upon specification criteria developed through a joint effort of the division and the corporation and approved by the division.

(f) The corporation may submit products and services to the division for testing, analysis, and review relating to the quality and cost comparability. If, after review and testing, the division approves of the products and services, the division shall give written notice thereof to the corporation. The corporation shall pay a reasonable fee charged for testing its products by the Department of Agriculture and Consumer Services.

(2)(a) To plan and coordinate purchases in volume and to negotiate and execute purchasing agreements and contracts for commodities and contractual services under which the division shall require state agencies to make purchases and under which a county, municipality, or other local public agency may make purchases. Purchases by any county, municipality, or other local public agency under the provisions in the state purchasing contracts, *and purchases, from the corporation operating the correctional work programs, of products or services that are subject to paragraph (1)(f), are* ~~shall be~~ exempt from the competitive sealed bid requirements otherwise applying to their purchases.

Section 2. Section 946.511, Florida Statutes, is amended to read:

946.511 Provision of inmate labor to operate correctional work programs; ~~rules;~~ policies and procedures.—

(1) Inmates shall be evaluated and identified during the reception process to determine basic literacy, employment skills, academic skills, vocational skills, and remedial and rehabilitative needs. The evaluation shall prescribe educational, work, and work-training for each inmate. Assignment to programs shall be based on the evaluation and the length of time the inmate will be in the custody of the department. Assignment to programs shall be reviewed every 6 months to ensure proper placement based on bed space availability. Assignment of inmates to correctional work programs, institutional labor, and public agency work programs shall be governed by the following objectives and priorities:

(a) Inmates shall be assigned to meet the needs of the work requirements of the Department of Corrections, including existing Department of Transportation contracts.

(b) Inmates shall be assigned to correctional education and the corporation operating the correctional industry program.

(c) Inmates shall be assigned to meet all other work requirements of the department, including public works.

(2) The corporation shall establish policies and procedures relating to the use of inmates in its correctional work program, which shall be submitted to the department for approval. Any policies and procedures in effect on the effective date of this act do not require approval.

~~(1) The department shall, subject to the necessary security requirements and the needs of the corporation, provide to the corporation sufficient inmate labor to operate the various correctional work programs.~~

~~(2) The department may adopt such rules as may be necessary to govern the use of inmates by the corporation; however, such rules shall be related only to the need for security, inmate protection, and efficient operation of each institution.~~

~~(3) The needs of the corporation will be considered when assigning and transferring prisoners to correctional institutions. The following criteria shall be used when assigning and transferring inmates:~~

~~(a) Skills of the inmate relevant to the corporation's industries.~~

~~(b) Security classification of the inmate relevant to the type of the corporation's industry.~~

~~(c) Duration of availability of the inmate for employment by the corporation.~~

~~(d) Establishment of a concept of a potentially rehabilitative inmate.~~

~~(4) The corporation shall establish policies and procedures, subject to the approval of the department, relating to the use of inmates in correctional work programs.~~

Section 3. Subsection (6) is added to section 944.09, Florida Statutes, 1990 Supplement, to read:

944.09 Rules of the department; offenders, probationers, and parolees.—

(6) The department shall maintain the following information within its automated inmate information system regarding each inmate:

(a) The status of the restitution order.

(b) The amount of restitution ordered by the court.

(c) The amount of restitution owed by the inmate.

(d) The name and address of the victim.

Section 4. Section 946.512, Florida Statutes, is amended to read:

946.512 Inmate compensation plan.—The corporation shall establish a compensation plan which provides for a specific amount to be *paid to the department to be* credited ~~by the department~~ to an account for an inmate performing labor and *a portion shall* ~~a specific amount to be paid to the department to~~ be used ~~to reimburse the state for all or a portion of the lodging expenses, food expenses, or other expenses incurred for sustaining the inmate and~~ to make any court-ordered payments, including restitution to the victim, *and a specific amount to be paid to the department's Grants and Donations Trust Fund. Such funds, excluding victim restitution payments, court-ordered payments, and the amount credited to the account of the inmate, shall be deposited in the department's Grants and Donations Trust Fund. The funds shall be appropriated annually.*

Section 5. Subsection (1) of section 946.513, Florida Statutes, is amended to read:

946.513 Private employment of inmates; disposition of compensation received.—

(1) Notwithstanding the provisions of any other law, an inmate may be employed by the corporation or by any other private entity operating on the grounds of a correctional institution prior to the last 24 months of his confinement. Compensation received for such employment shall be credited by the department to an account for the inmate and shall be used ~~to reimburse the state for lodging expenses, food expenses, and other expenses incurred for sustaining the inmate according to rules adopted by the department and~~ to make any court-ordered payments, *including restitution to the victim.* The department rules shall provide that a portion of such compensation be credited by the department in the manner provided in s. 946.512.

Section 6. Section 946.515, Florida Statutes, is amended to read:

946.515 Use of goods and services produced in correctional work programs.—

(1) Any service or item manufactured, processed, grown, or produced by the corporation in a correctional work program may be furnished or sold to any legislative, executive, or judicial agency of the state, any political subdivision, any other state, any foreign government, or any agency of the Federal Government, or to any contract vendor for such agencies or any subcontractor of the contract vendor.

(2) No similar *product or service* ~~article~~ of comparable price and quality found necessary for use by any state agency may be purchased from any source other than the corporation if the corporation certifies that the *product is manufactured by or the service is provided by inmates and the product or service meets the comparable performance specifications and comparable price and quality requirements as specified under s. 287.042(1)(f) or as determined by an individual agency as provided in this section* ~~article is available and can be furnished by it~~. The purchasing authority of any such state agency may make reasonable determinations of need, price, and quality with reference to *products or services* ~~articles~~ available *from* ~~for sale by~~ the corporation. In the event of a dispute between the corporation and any purchasing authority based upon price or quality *under this section or s. 287.042(1)(f), either party may request a hearing with the Division of Purchasing and if not resolved, either party may request a proceeding pursuant to s. 120.57, which shall be referred to the Division of Administrative Hearings within 60 days after such request, to resolve any dispute under this section. No party is entitled to any appeal pursuant to s. 120.68* ~~the matter shall be referred to the Governor, whose decision shall be final~~.

(3) Raw agricultural products, including, but not limited to, sugar cane, vegetables, beef, and dairy products, may be sold to private entities or may be sold or disposed of as provided in subsections (1) and (2).

(4) The provisions of part I of chapter 287 do not apply to any purchases of commodities or contractual services made by any state agency from the corporation.

(5) In addition, the corporation may contract to provide inmate services or inmate goods to private enterprise, where such services or goods are under the direct supervision of the corporation and, further, where it is determined by the Governor that such services or goods do not unreasonably compete with other businesses in this state.

(6) *If pursuant to a* ~~Any~~ contract between any legislative, executive, or judicial agency of the state and any private contract vendor, *a product or service is required* ~~shall, if an article identified~~ by *the* Department of General Services *or on behalf of any state agency,* ~~commodity number~~ is certified by *or is available from* the corporation identified in this chapter, *and has been approved in accordance with subsection (2), the contract must* contain the following language:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2), *AND* (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

(7) The provisions of ss. 946.21 and 946.518 do not apply to this section.

Section 7. The corporation established under chapter 946, Florida Statutes, is authorized to enter into contracts with any county or municipal authority that operates a correctional facility to operate correctional work programs. The corporation shall have the same powers, privileges, and immunities in carrying out such contract as it has under chapter 946, Florida Statutes.

Section 8. Section 946.009, Florida Statutes, is amended to read:

946.009 Operational guidelines for the correctional work programs.—

.(1) The Department of Corrections shall establish guidelines for the operation of correctional work programs, which shall include the following procedures:

(a) The education, work experience, emotional and mental abilities, and physical capabilities of the inmate and the length of sentence imposed on the inmate are to be analyzed before assignment of the inmate into the various processes best suited for training.

(b) When feasible, the department shall attempt to obtain training credit for an inmate seeking apprenticeship status.

(c) The inmate may begin in a general work skills program and progress to a specific work skills training program, depending upon the ability, desire, and work record of the inmate.

(d) Modernization and upgrading of equipment and facilities should include greater automation and improved production techniques to expose inmates to the latest technological procedures to facilitate their adjustment to real work situations.

~~(e) The priority assignments of inmates to correctional and public work programs shall be as follows:~~

~~1. Inmates shall be assigned to meet the work requirements of the Department of Corrections, including any existing contracts with the Department of Transportation.~~

~~2. Inmates shall be assigned to the corporation operating the correctional industry program.~~

~~3. Inmates shall be assigned to meet all other work requirements of the department~~.

(2) Evaluations of correctional work programs shall be conducted according to the following guidelines:

(a) Systematic evaluations shall be implemented, in accordance with s. 20.315(15), to determine whether the correctional work programs are related to successful postrelease adjustments.

(b) Operations and policies of work programs shall be reevaluated to determine if they are consistent with their primary objectives.

(3) The department shall seek the advice of private labor and management to:

(a) Assist its work programs in the development of statewide policies aimed at innovation and organizational change.

(b) Obtain technical and practical assistance, information, and guidance.

(c) Encourage the cooperation and involvement of the private sector.

Section 9. The corporation established under chapter 946, Florida Statutes, shall conduct a study to determine the types of industries and vocational training programs that can be located at all major institutions to maximize the number of participating inmates. The findings from this study shall be presented to the Legislature no later than January 1, 1992.

Section 10. There is hereby appropriated to the Division of Purchasing, Department of General Services, for fiscal year 1991-1992, from the Grants and Donations Trust Fund, $90,598 from Salaries and Benefits and 3 FTE, $53,522 in Expenses ($6,986 non-recurring) and $11,529 in Operating Capital Outlay. The appropriations and the provisions of sections 2 and 6 shall become effective upon agreement by the corporation designated in chapter 946, Florida Statutes, to remit to the Department of General Services in equal amounts, at least quarterly the sum of $155,649 commencing July 1, 1991.

Section 11. This act shall take effect upon becoming a law.

House Amendment 2—On page 1, strike the entire title and insert: An act relating to inmate labor; amending s. 287.042, F.S.; requiring the Division of Purchasing of the Department of General Services to issue commodity numbers for certain products of the correctional work program; requiring the division to include corporation products on any listing prepared by the division which lists term contracts executed by the division; authorizing the corporation established under ch. 946, F.S., to submit products to the division for review; exempting purchases of such products and services by a local government from competitive-bid requirements; amending s. 946.511, F.S.; revising the priority of assigning

inmates to correctional and public works programs; amending s. 944.09, F.S.; requiring the Department of Corrections to maintain specified information regarding victim restitution orders and the status of restitution payments; amending ss. 946.512 and 946.513, F.S.; providing for disposition of inmate compensation; amending s. 946.515, F.S.; providing that the Department of Corrections must certify that products and services produced by the correctional work program meet specifications and requirements of a state agency in order for the agency to be prohibited from purchasing the product or service from any other source; providing for administrative hearings to resolve disputes arising from contracts for the purchase of products or services of the program; amending s. 946.009, F.S.; repealing provisions relating to the priority assignment of inmates to work programs; authorizing the corporation to contract with counties and municipalities; providing for a study by the corporation on vocational training programs; providing an appropriation; providing an effective date.

On motions by Senator Bruner, the Senate concurred in the House amendments.

CS for SB 1850 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—38 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has amended Senate Amendment 1 to House Amendment 1 and Senate Amendment 1 to House Amendment 2, concurred in same as amended, passed as further amended, SB 1902 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 1902—A bill to be entitled An act relating to motor vehicle licenses; amending s. 320.07, F.S.; revising the delinquency fee schedule for persons who have let their registration expire; providing a limitation on such delinquency fees; creating s. 320.0701, F.S.; providing penalties for failure to register a motor vehicle; providing for the immobilization of unregistered vehicles; providing for delinquency fees; providing a penalty for tampering with or unlocking an immobilization device; providing an effective date.

House Amendment 1 to Senate Amendment 1 to House Amendment 1—On page 9, lines 18-31, and on page 10, lines 1-12, strike all of said lines and insert:

Section 7. Section 341.102, Florida Statutes, 1990 Supplement, as amended by section 1 of chapter 90-230, Laws of Florida, is amended to read:

341.102 Regulation of nonpublic-sector buses *and taxicabs.*—No local governmental entity shall unduly restrict or impose any economic regulation upon the use of nonpublic-sector buses engaged solely in intercounty transportation, or engaged in *intercity* ~~intracity~~ transportation routes if the owner of such bus can establish that such *intercity* ~~intracity~~ transportation route *operated before January 1, 1990, and* has been operated continuously from January 1, 1990, through July 1, 1990, and such *intercity* ~~intracity~~ transportation has been conducted in compliance with applicable safety *and insurance* rules and regulations promulgated under s. 316.70. The partial exemption from local governmental regulation afforded the *intercity* ~~intracity~~ transportation routes specified in the preceding sentence shall be limited to the routes maintained continuously from January 1, 1990, through July 1, 1990, and such authority shall expire July 1, 2010, or 10 years after any change in ownership of such bus, whichever occurs first. *For the purposes of this statute the term "nonpublic-sector bus" means a nonpublic-sector bus as defined by section 316.003(78), Florida Statutes. Furthermore, for the purposes of this statute the term "bus" means any motor vehicle designed for carrying more than 10 passengers and used for the transportation of passengers for compensation.* Any existing restrictions inconsistent with this section are invalid. However, local governmental entities may enact necessary safety, insurance, and traffic ordinances. This section shall not apply to any private sector contract transportation agreements, or any nonrouted work involving nonpublic-sector buses.

House Amendment 1 to Senate Amendment 1 to House Amendment 2—In title, on page 1, line 20, after the semicolon (;) insert: amending s. 341.102, F.S.; revising language with respect to the regulation of nonpublic-sector buses;

On motions by Senator Beard, the Senate concurred in the House amendments.

SB 1902 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 1936 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 1936—A bill to be entitled An act relating to the City of Sebring, Highlands County; amending chapter 23535, Laws of Florida, 1945, as amended; authorizing the purchaser or lessee of all or a substantial portion of the electric utility system of the Sebring Utilities Commission to charge to and collect from certain electric customers a debt repayment surcharge; requiring that the purchaser or lessee pay the debt repayment surcharge collected from such electric customers to the Sebring Utilities Commission in monthly installments; providing that such debt repayment surcharge shall be held, invested, and the net amount thereof applied by or for the Sebring Utilities Commission to the payment of principal, interest and premium, if any, on revenue bonds of the Sebring Utilities Commission that are then outstanding; providing that the aforementioned debt repayment surcharge shall not be deemed to be a rate or charge under chapter 366, Florida Statutes, or a part of the rate structure of the Sebring Utilities Commission under such chapter; describing the electric customers who are to be charged the debt repayment surcharge; providing that in connection with the outstanding revenue bonds of the Sebring Utilities Commission, the rent payments from the lease of any of the assets of the Sebring Utilities Commission and the debt repayment surcharge shall be deemed to be revenues of the Sebring Utilities Commission; providing for a referendum.

House Amendment 1—Strike everything after the enacting clause and insert:

Section 1. Section 1.08.02. of chapter 23535, Laws of Florida, 1945, as amended, is created to read:

Section 1.08.02. Imposition of debt repayment surcharge, upon lease or other disposition of assets.—

(1) Commencing on the first day of the month following the closing of a sale, lease, or other disposition of all or a substantial portion of the electric utility distribution system of the Sebring Utilities Commission and continuing until such time as all then outstanding revenue bonds of the Sebring Utilities Commission have been paid, the Sebring Utilities Commission shall, not less frequently than annually, to the extent necessary, fix a debt repayment surcharge for the following year in an amount which, after taking into account all other revenues of the Sebring Utilities Commission, will permit the Sebring Utilities Commission to meet all covenants and make all payments required under the resolutions authorizing the issuance of outstanding revenue bonds of the Sebring Utilities Commission and its fair and reasonable expenses incurred in connection with the receipt and application of the revenues of the Sebring Utilities Commission to meet all covenants and make all payments required under the resolutions authorizing the issuance of such revenue bonds. Such debt repayment surcharge, and the effective date thereof, will be communicated promptly to the purchaser or lessee of all or a substantial portion of the electric distribution system. Such purchaser or lessee, as agent for the Sebring Utilities Commission, shall charge to and collect from electric service customers described below, such debt repayment surcharge monthly for the benefit of the Sebring Utilities Commission and enforce the collection thereof provided in the resolutions authorizing the issuance of the outstanding bonds, to the extent allowed by law, and shall impose penalties for nonpayment of this surcharge which may include suspension of electric service to such customer. The purchaser or lessee shall pay such debt repayment surcharge to the Sebring Utilities Commission as and when collected from the electric service customers described below.

(2) The debt repayment surcharge shall be held, invested and the amount thereof, after deducting only the fair and reasonable expenses of the Sebring Utilities Commission as described above, shall be applied by or for the Sebring Utilities Commission to meet all covenants and make

all payments required under the resolutions authorizing the issuance of the outstanding revenue bonds of the Sebring Utilities Commission that are outstanding on the date of such sale or lease. The debt repayment surcharge shall be payable by the purchaser or lessee to the Sebring Utilities Commission only to the extent that the purchaser or lessee collects such surcharge from its customers under the authority of this act.

(3) The debt repayment surcharge shall be based upon kilowatt hours used, but shall not be deemed to be a rate or charge for purposes of chapter 366, Florida Statutes, 1989, or a part of the rate structure of the Sebring Utilities Commission under such chapter.

(4) The debt repayment surcharge shall be paid by all Sebring Utilities Commission electric customers in the Sebring Utilities Commission electric service territory, including all new electric customers within the Sebring Utilities Commission electric service territory, as described in the Territorial Agreement between Florida Power Corporation and the Sebring Utilities Commission dated December 11, 1986, approved by the Florida Public Service Commission in its Order No. 17215 dated February 23, 1987, and, in addition, all Sebring Utilities Commission electric customers at addresses outside that electric service territory as of the 45th day prior to the date of the referendum described in section 2, as established by the books and records of the Sebring Utilities Commission. However, no electric customer of Florida Power Corporation or Glades Electric Cooperative, Inc., as of the 45th day prior to the date of the referendum described in section 2, as established by the books and records of Florida Power Corporation and Glades Electric Cooperative, Inc., shall pay such surcharge.

(5) In connection with such revenue bonds of the Sebring Utilities Commission, the rent payments on the lease of any of the assets of the Sebring Utilities Commission and the aforementioned debt repayment surcharge shall be deemed to be revenues of the Sebring Utilities Commission.

(6) The area affected by this act is the electric service territory of the Sebring Utilities Commission described in the Territorial Agreement between Florida Power Corporation and the Sebring Utilities Commission dated December 11, 1986, approved by the Florida Public Service Commission in its Order No. 17215 dated February 23, 1987, and, in addition, all those addresses of Sebring Utilities Commission residential electric customers outside that electric service territory on the 45th day prior to the date of the referendum described in section 2, as established by the books and records of the Sebring Utilities Commission. However, the area affected by this act shall not include any address of any Florida Power Corporation or Glades Electric Cooperative, Inc., residential electric customers on the 45th day prior to the date of the referendum.

(7) For purposes of identifying the area affected by this act, Florida Power Corporation and Glades Electric Cooperative, Inc., shall each provide a certified list of all addresses of their electric customers within Sebring Utilities Commission electric service territory, as defined above, and Sebring Utilities Commission shall provide a certified list of all addresses of residential electric customers outside of such territory as of the 45th day prior to the date of the referendum described in section 2.

Section 2. If both the electric and water systems owned and operated by the Sebring Utilities Commission have been sold or transferred and immediately after the last required payment is made on all revenue bonds issued by the Sebring Utilities Commission, chapter 23535, Laws of Florida, 1945, as amended, shall stand repealed.

Section 3. The staff of the Sebring Utilities Commission shall be eliminated over the 12 months immediately following the closing of the sale or transfer of the last commission facility. Thereafter, clerical and administrative support for the commission shall be provided by the City of Sebring.

Section 4. (a) This act shall take effect only upon its approval by a majority vote of those qualified electors residing within the area affected by this act, as described in section 1 of this act, voting in a referendum to be called by the City of Sebring and to be held in accordance with the provisions of law relating thereto, except that this section shall take effect upon becoming a law.

(b) In order that the electors within the Sebring Utilities Authority service territory may have sufficient information on which to make a decision regarding whether to vote yes or no on the debt repayment surcharge, the following data shall be furnished to each elector:

(1) The current and future debt service payments (principal and interest) required each year from the fiscal year at the time of the ballot to the time the bonds are fully repaid.

(2) The estimated monthly amount of debt repayment surcharge to be levied each year.

(3) The estimated percentage of an average monthly utility bill represented by the debt repayment surcharge.

(4) The estimated monthly utilities fee at the time of the election.

House Amendment 2—In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to the City of Sebring, Highlands County; amending chapter 23535, Laws of Florida, 1945, as amended; authorizing a debt repayment surcharge and authorizing the purchaser or lessee of all or a substantial portion of the electric utility system of the Sebring Utilities Commission to charge to and collect from certain electric customers a debt repayment surcharge; providing for collections enforcement; requiring that the purchaser or lessee pay the debt repayment surcharge collected from such electric customers to the Sebring Utilities Commission in monthly installments; providing that such debt repayment surcharge shall be held, invested, and the net amount thereof applied by or for the Sebring Utilities Commission to the payment of principal, interest and premium, if any, on revenue bonds of the Sebring Utilities Commission that are then outstanding; providing that the aforementioned debt repayment surcharge shall not be deemed to be a rate or charge under chapter 366, Florida Statutes, or a part of the rate structure of the Sebring Utilities Commission under such chapter; describing the electric customers who are to be charged the debt repayment surcharge; providing that in connection with the outstanding revenue bonds of the Sebring Utilities Commission, the rent payments from the lease of any of the assets of the Sebring Utilities Commission and the debt repayment surcharge shall be deemed to be revenues of the Sebring Utilities Commission; providing for repeal; providing for elimination of staff; providing for a referendum; providing specific financial information which must be furnished to voters when this issue is subjected to a referendum.

WHEREAS, it is determined by the Legislature of the State of Florida to be in the best interest of the City of Sebring, the Sebring Utilities Commission, the bondholders of the Sebring Utilities Commission and the customers of the Sebring Utilities Commission, and of paramount public purpose, that the purchaser or lessee of all or a substantial portion of the electric utility system of the Sebring Utilities Commission charge to and collect from the customers of the electric utility system a debt repayment surcharge for the benefit of the Sebring Utilities Commission which debt repayment surcharge is to be held, invested, and the net amount thereof applied by or for the Sebring Utilities Commission to the payment of its outstanding revenue bonds, NOW, THEREFORE,

On motions by Senator Dantzler, the Senate concurred in the House amendments.

SB 1936 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB's 2224 and 2086 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB's 2224 and 2086—A bill to be entitled An act relating to motor vehicle inspections; amending s. 325.203, F.S.; requiring persons who lease or own more than a specified number of motor vehicles to submit annual reports of the results of motor vehicle emissions inspections with the Department of Highway Safety and Motor Vehicles; amending s. 325.209, F.S.; authorizing the department to grant exemptions from compliance requirements for emissions standards under specified circumstances; amending s. 325.213, F.S.; exempting state or local government agencies from certain requirements for licensure as a self-inspector of emissions inspections of motor vehicles; providing an effective date.

House Amendment 1—On page 1, lines 20-31, and on page 2, lines 1-3, strike all of said lines and insert:

Section 1. Subsection (1), paragraph (k) of subsection (4), and subsection (8) of section 325.203, Florida Statutes, 1990 Supplement, are amended to read:

325.203 Motor vehicles subject to annual inspection; exemptions.—

(1) Beginning January 1, 1991, or as soon thereafter as possible as determined by the department, each motor vehicle which is required to obtain an inspection certificate shall obtain one or a waiver annually within 90 days prior to the expiration of the motor vehicle registration period, *except that any vehicle the registration period for which is established under s. 320.055(4) or (5) and which is required to obtain an inspection certificate shall obtain one or a waiver annually prior to the expiration of the motor vehicle registration period.*

(4) The following motor vehicles are not subject to inspection:

(k) New motor vehicles, as defined in s. 319.001(4). Such vehicles are exempt from the inspection requirements of this act at the time of the first registration by the original owner *and for 12 months following the date of such first registration* and, thereafter, are subject to the inspection requirements of this act.

(8) No motor vehicle dealer, motor vehicle broker as defined in s. 320.27, mobile home dealer as defined in s. 320.77, or person located in a program area may sell at retail any motor vehicle which is subject to inspection under this act and which is to be registered in a program area unless the motor vehicle has received a valid inspection certificate within *12 months* ~~90 days~~ prior to its sale. If a motor vehicle is purchased outside the program area and is required to be registered in the program area, the purchaser must meet the inspection requirements of this act prior to such registration.

House Amendment 2—In title, on page 1, lines 3-8, strike all of said lines and insert: amending s. 325.203, F.S.; specifying conditions under which certain vehicles must obtain a registration certificate or annual waiver; providing an exception from inspection for new motor vehicles within a certain time period; increasing the time period within which a valid inspection certificate must be obtained prior to the retail sale of certain motor vehicles; amending s. 325.209,

House Amendment 3—On page 2, lines 4-7, strike all of said lines and insert:

Section 1. Paragraph (c) of subsection (2) of section 325.209, Florida Statutes, is amended, and present subsection (5) of that section is redesignated as subsection (6) and a new subsection (5) is added to that section, to read:

325.209 Waivers.—

(2) Before a waiver may be issued, the following criteria must be met:

(c) The owner must have spent the required minimum amount for emissions-related repairs on the vehicle within the 90-day period prescribed in s. 325.203(1), not including the amount spent to repair or replace air pollution control equipment that has been tampered with. *For any vehicle the registration period for which is established under s. 320.055(4) or (5), the required minimum amount for emissions-related repairs must be spent by the owner within 90 days before the expiration of the registration period.* The required minimum amount that must have been spent on related repairs is:

1. For motor vehicles designated as model years 1975 through 1979: $100; and

2. For motor vehicles designated as model year 1980 and thereafter: $200;

(d) Repairs and adjustments provided for in paragraphs (2)(a) and (2)(c) must have caused substantial improvement in the emissions performance of the motor vehicle; and

(e) The motor vehicle must not be covered under any manufacturer's or federally mandated emissions warranty.

House Amendment 4—In title, on page 1, line 9, after the semicolon (;) insert: requiring a minimum amount to be spent on emissions-related repairs for certain vehicles within a certain time;

House Amendment 5—On page 1, line 20, insert:

Section 1. Section 627.7275, Florida Statutes, is amended to read:

627.7275 Motor vehicle property damage liability.—

(1) No motor vehicle insurance policy providing personal injury protection as set forth in s. 627.736 shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state unless the policy also provides coverage for property damage liability in the amount of at least $10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle or provides coverage in the amount of at least $30,000 for combined property damage liability and bodily injury liability in any one accident arising out of the use of the motor vehicle. The policy, as to coverage of property damage liability, shall meet the applicable requirements of s. 324.151, subject to the usual policy exclusions such as have been approved in policy forms by the department.

(2)(a) Insurers writing motor vehicle insurance in this state shall make available, subject to the insurers' usual underwriting restrictions, coverage under policies as described in subsection (1) of this section to any applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state when the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 627.733 due to the failure of the applicant to maintain required security. The policy shall be issued for a period of at least 6 months and as to the minimum coverages required under this section shall not be cancellable by the insured for any reason or by the insurer after a period not to exceed 30 days during which the insurer must complete underwriting of the policy. After the insurer has completed underwriting the policy within the 30 day period, the insurer shall notify the Department of Highway Safety and Motor Vehicles that the policy is in full force and effect and the policy shall not be cancellable for the remainder of the policy period. A premium shall be collected and coverage shall be in effect for the 30 day period during which the insurer is completing the underwriting of the policy whether or not the person's driver license, motor vehicle tag, and motor vehicle registration are in effect. Once the non-cancellable provisions of the policy become effective, the coverage or risk shall not be changed during the policy period and the premium shall be fully earned. If during the pendency of the 2 year proof of insurance period required under s. 627.733(6) the insured obtains additional coverage or coverage for an additional risk, then he must obtain a new 6 month non-cancellable policy in accordance with the provisions of this section.

(b) The provisions of this subsection shall control to the extent of any conflict with any other section.

Section 2. Subsection (6) is added to section 627.7295, Florida Statutes, 1990 Supplement, to read:

627.7295 Motor vehicle insurance contracts.—

(6) In the event a motor vehicle owner's driver license, tag, and registration have previously been suspended pursuant to s. 627.733 or s. 316.646, an insurer may only cancel a new policy in accordance with the provisions of s. 627.7275.

Section 3. Subsection (3) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers.—

(3) The department may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the department which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the department shall be subject to the provisions of chapter 120. If adopted, the plan:

(a) Shall be subject to all provisions of s. 627.351(1), except apportionment of applicants;

(b) May provide for one or more designated insurers, able and willing to provide policy and claims service, to act on behalf of all other insurers to provide insurance for applicants who are in good faith entitled to, but unable to, procure insurance through the voluntary insurance market at standard rates;

(c) Shall provide that designated insurers shall issue policies of insurance and provide policyholder and claims service on behalf of all insurers for the joint underwriting association;

(d) Shall provide for the equitable apportionment among insurers of losses and expenses incurred;

(e) Shall provide that the joint underwriting association shall operate subject to the supervision and approval of a board of governors consisting of 11 individuals, including 1 who shall be elected as chairman. Five members of the board shall be appointed by the Insurance Commissioner. Two of the commissioner's appointees shall be chosen from the insurance industry. Any board member appointed by the Insurance Commissioner may be removed and replaced by him at any time without cause. Six members of the board shall be appointed by the participating insurers, two of whom shall be from the insurance agents' associations. All board members, including the chairman, shall be appointed to serve for 2-year terms beginning annually on a date designated by the plan; and

(f) Shall provide that an agent appointed to a servicing carrier shall be a licensed general lines agent of an insurer which is authorized to write automobile liability and physical damage insurance in the state and which is actively writing such coverage in the county in which the agent is located, or the immediately adjoining counties, or an agent who places a volume of other property and casualty insurance in an amount equal to the premium volume placed with the Florida Joint Underwriting Association. The department may, however, determine that an agent may be appointed to a servicing carrier if, after public hearing, the department finds that consumers in the agent's operating area would not have adequate and reasonable access to the purchase of automobile insurance if the agent were not appointed to a servicing carrier.

(g) Shall make available noncancellable coverage as provided in s. 627.7275(2).

Section 4. Subsection (6) of section 627.733, Florida Statutes, is amended to read:

627.733 Required security.—

(6) Any operator or owner whose driver's license or registration has been suspended pursuant to this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee of $150 for the first reinstatement after July 6, 1988. Such reinstatement fee shall be $250 for the second reinstatement and $500 for each subsequent reinstatement during the 3 years following the first reinstatement. *Any person reinstating his insurance under this subsection must also secure noncancellable coverage as described in s. 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form promulgated by the Department of Highway Safety and Motor Vehicles such proof to be maintained for 2 years.* If the person does not have a second reinstatement within 3 years after his initial reinstatement, the reinstatement fee shall be $150 for the first reinstatement after that 3-year period. In the event that a person's license and registration are suspended pursuant to this section or s. 316.646, only one reinstatement fee shall be paid to reinstate the license and the registration. All fees shall be collected by the Department of Highway Safety and Motor Vehicles at the time of reinstatement. The Department of Highway Safety and Motor Vehicles shall issue proper receipts for such fees and shall promptly deposit those fees in said department's Accident Reports Trust Fund. One-third of the fee collected under this subsection shall be distributed from the Accident Reports Trust Fund to the local government entity or state agency which employed the law enforcement officer who seizes a license plate pursuant to s. 324.201. Such funds may be used by the local government entity or state agency for any authorized purpose.

Section 5. Subsection (1) of section 627.351, Florida Statutes, 1990 Supplement, is amended to read:

627.351 Insurance risk apportionment plans.—

(1) MOTOR VEHICLE INSURANCE RISK APPORTIONMENT.—Agreements may be made among casualty and surety insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but are unable to, procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the approval of the department. The department shall, after consultation with the insurers licensed to write automobile liability insurance in this state, adopt a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to, but are unable to, procure such insurance through ordinary methods, and, when such plan has been adopted, all such insurers shall subscribe thereto and shall participate therein. Such plan or plans shall include rules for classification of risks and rates therefor. *The plan or plans shall make available noncancellable coverage as provided in s. 627.7275(2).* Any insured placed with the plan shall be notified of the fact that insurance coverage is being afforded through the plan and not through the private market, and such notification shall be given in writing within 10 days of such placement. To assure that plan rates are made adequate to pay claims and expenses, insurers shall develop a means of obtaining loss and expense experience at least annually, and the plan shall file such experience, when available, with the department in sufficient detail to make a determination of rate adequacy. Prior to the filing of such experience with the department, the plan shall poll each member insurer as to the need for an actuary who is a member of the Casualty Actuarial Society and who is not affiliated with the plan's statistical agent to certify the plan's rate adequacy. If a majority of those insurers responding indicate a need for such certification, the plan shall include the certification as part of its experience filing. Such experience shall be filed with the department not more than 9 months following the end of the annual statistical period under review, together with a rate filing based on said experience. The department shall initiate proceedings to disapprove the rate and so notify the plan or shall finalize its review within 60 days of receipt of the filing. Notification to the plan by the department of its preliminary findings, which include a point of entry to the plan pursuant to chapter 120, shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the department does not issue notice to the plan of its preliminary findings within 60 days of the filing. In addition to provisions for claims and expenses, the ratemaking formula shall include a factor for projected claims trending and 5 percent for contingencies. In no instance shall the formula include a renewal discount for plan insureds. However, the plan shall reunderwrite each insured on an annual basis, based upon all applicable rating factors approved by the department. Trend factors shall not be found to be inappropriate if not in excess of trend factors normally used in the development of residual market rates by the appropriate licensed rating organization. Each application for coverage in the plan shall include, in boldfaced 12-point type immediately preceding the applicant's signature, the following statement:

> "THIS INSURANCE IS BEING AFFORDED THROUGH THE FLORIDA JOINT UNDERWRITING ASSOCIATION AND NOT THROUGH THE PRIVATE MARKET. PLEASE BE ADVISED THAT COVERAGE WITH A PRIVATE INSURER MAY BE AVAILABLE FROM ANOTHER AGENT AT A LOWER COST. AGENT AND COMPANY LISTINGS ARE AVAILABLE IN THE LOCAL YELLOW PAGES."

The plan shall annually report to the department the number and percentage of plan insureds who are not surcharged due to their driving record.

(Renumber subsequent sections.)

House Amendment 6—In title, on page 1, lines 2 and 3, strike all of said lines and insert: An act relating to motor vehicles and insurance; amending s. 627.7275, F.S.; revising language with respect to motor vehicle property damage liability; amending s. 627.7295, F.S.; revising language with respect to motor vehicle insurance contracts; amending s. 327.311, F.S.; providing for noncancellable coverage with respect to certain policies; amending s. 627.733, F.S.; revising language with respect to required security; amending s. 627.351, F.S.; revising language with respect to insurance risk apportionment; amending s. 325.203, F.S.; requiring persons

Senator Kiser moved the following amendments which were adopted:

Senate Amendment 1 to House Amendment 1—On page 1, line 13, through page 2, line 15, strike all of said lines and insert:

Section 1. Subsection (1) of section 325.203, Florida Statutes, 1990 Supplement, is amended to read:

325.203 Motor vehicles subject to annual inspection; exemptions.—

(1) Beginning January 1, 1991, or as soon thereafter as possible as determined by the department, each motor vehicle which is required to obtain an inspection certificate shall obtain one or a waiver annually within 90 days prior to the expiration of the motor vehicle registration period, *except that any vehicle the registration period for which is established under s 320 055(4) or (5) and which is required to obtain an inspection certificate shall obtain one or a waiver annually prior to the expiration of the motor vehicle registration period.*

Section 2. Section 325.2075, Florida Statutes, is created to read:

325.2075 Administrative remedies for motorist inconvenience.—

(1) The reduction of vehicle exhaust emissions and the convenience of the emissions inspection program to the public are paramount goals of this act. To ensure that motorist convenience is a primary component of the inspection program, the department, if it determines that the waiting times at the inspection stations exceed the provisions of the contract, resulting in motorist inconvenience, may order the contractor to change its operating procedures, increase number of inspection personnel on duty, increase the operating hours of the inspection station, or make any other necessary changes to reduce waiting times. Such changes may include, but not be limited to:

(a) The establishment and operation of additional test lanes as the department determines are necessary to reduce waiting times;

(b) The establishment and operation of additional inspection stations, upon determination by the department that other efforts to reduce waiting times have been exhausted.

(2) As used in this section, the terms, "motorist inconvenience" and "waiting time" shall have the same meaning as in the contract document for each contract zone. The department shall exercise its discretion under this section in a reasonable manner.

Section 3. Subsection (3) is added to section 325.217, Florida Statutes, to read:

325.217 Cost-benefit analyses and other evaluations; reports to Legislature.—

(3) The department, with the cooperation of the contractors in each program zone, shall provide to the Legislature no later than December 15, 1991, a report detailing the status and progress of the implementation and operation of the inspections program. The report shall summarize program area activity and shall include, but not be limited to:

(a) Waiting times for motorists.

(b) Complaints to the department or the contractor.

(c) Equipment malfunctions and solutions.

(d) Reinspection and self-inspection activity.

Senate Amendment 1 to House Amendment 2—In title, on page 1, strike all of lines 13-19 and insert: amending s. 325.203, F.S.; specifying conditions under which certain vehicles must obtain a registration certificate or annual waiver; creating s. 325.2075, F.S.; providing administrative remedies for motorist inconvenience; amending s. 325.217, F.S.; requiring a report to the Legislature;

On motions by Senator Kiser, the Senate concurred in **House Amendments 1** and **2** as amended and the House was requested to concur in the Senate amendments to the House amendments; concurred in **House Amendments 3** and **4**; and refused to concur in **House Amendments 5** and **6** and the House was requested to recede.

CS for SB's 2224 and 2086 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—32 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 2390 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 2390—A bill to be entitled An act relating to Broward County; amending chapter 90-487, Laws of Florida, relating to the Pompano Beach Farmers Market Authority; providing that members of the authority shall have an interest in the economic success and redevelopment of the Pompano Beach Farmers Market; providing that as many as three members of the authority may own or operate a business at the Pompano Beach Farmers Market; providing that owning or leasing a building or real estate under jurisdiction of the authority shall not prohibit an individual from serving on the authority; providing an effective date.

House Amendment 1—On page 1, line 18, through page 2, line 7, strike all of said lines and insert:

Section 1. Subsections (1) and (4) of section 2 of chapter 90-487, Laws of Florida, are amended to read:

Section 2. Membership and organization.—

(1) The authority shall consist of seven members, each serving a term of 3 years, except for the initial appointees, of whom three shall serve terms of 2 years, and four shall serve terms of 3 years, as hereinafter provided. The members shall *have an interest in the economic success and redevelopment of the Pompano Beach Farmers Market*~~, insofar as practical, be representatives of civic, agricultural, government, and business interests. Six members of the authority shall be selected by the Commission of the City of Pompano Beach, and one member shall be selected by the Commissioner of Agriculture of the State of Florida.~~ *Three members of the authority shall be appointed by the Commissioner of Agriculture of the State of Florida and four members shall be appointed by the Commission of the City of Pompano Beach. The chairman of the authority shall be selected by the Commissioner of Agriculture. Up to three of the members of the authority appointed by the city commission may be owners or operators of businesses directly or indirectly involved in agricultural activities pertaining to the Pompano Beach Farmers Market; and such persons shall not be prohibited from serving on the authority based upon their owning or leasing a building or real property under the jurisdiction of the authority.*

(4) The authority shall organize as soon as practicable after the effective date of this act. The authority shall by majority vote elect ~~a chairman and~~ such ~~other~~ officers as the authority provides for in its bylaws. The authority may create such ~~other~~ offices as it deems necessary to accomplish the purpose of this act.

House Amendment 2—In title, on page 1, between lines 4 and 5, insert: revising appointment procedures; providing for selection of the chairman by the Commissioner of Agriculture;

On motions by Senator Forman, the Senate concurred in the House amendments.

SB 2390 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 2414 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 2414—A bill to be entitled An act relating to the Halifax Hospital Medical Center, Volusia County; amending sections 7, 8, 12, 13, 14, and 20 of chapter 79-577, Laws of Florida, as amended, relating to powers and duties of the district; clarifying the borrowing of funds and issuance of promissory notes; authorizing establishment of health care facilities and services throughout Volusia County; authorizing for-profit corporations to provide health care services; modifying bond validation requirements to be consistent with s. 75.02, F. S.; clarifying authority to self-insure certain hospital/physician professional liability risks; authorizing charging

for indigent care services on the same sliding scale as used by Volusia County; clarifying the form of the district's financial statements; amending provisions relating to competitive bidding requirements; providing an effective date.

House Amendment 1—Strike everything after the enacting clause and insert:

Section 1. The Legislature finds the health care industry is under financial stress and further finds that private sector cooperation and coadventures with the district in the delivery of health care services in Volusia County are in the public interest and carry out a public function.

Section 2. Section 7 of chapter 79-577, Laws of Florida, as amended by chapter 84-539, Laws of Florida, is amended to read:

(Substantial rewording of section. See s. 4, ch. 84-539, Laws of Florida, for present text.)

Section 7. In order to carry out the purposes of this act:

(1) The district may borrow money and execute promissory notes having a term of up to seven (7) years and may enter into credit purchase agreements having a term of up to seven (7) years. The district may determine with respect to such notes or credit purchase agreements the initial principal amounts and may set terms and rates of interest.

(2) The district may facilitate fair and consistent delivery of health care services to indigent persons by charging for indigent care services on the same sliding scale used by the Volusia County Health Department.

(3) The district may form both not-for-profit and for-profit corporations. The for-profit corporations may only engage in health care-related activities. Only the not-for-profit corporations may be capitalized by the district and financially supported by the district. Neither the district nor a not-for-profit corporation formed by the district may capitalize for-profit corporations, but this shall not prohibit the district or its not-for-profit corporations from entering good faith agreements to receive from such for-profit corporations services, goods, and facilities as long as the charge for such services, goods, and facilities is at fair market value. The district shall not hold in its name corporate stock issued by any for-profit corporation established by the district, but the stock of such for-profit corporations may be held by a not-for-profit corporation established by the district or by a third party in trust for the district under a written trust agreement.

(4) The not-for-profit corporations and the for-profit corporations established by the district may be stockholders with and may enter into joint ventures and other cooperative projects with third party individuals and entities as long as:

(a) Any assets of the not-for-profit corporation which were provided by the district are not liened, collateralized, mortgaged, subjected to a security interest, or otherwise put at risk.

(b) The district's credit is not pledged or lent to or for the benefit of the joint venture or other cooperative projects.

(c) The district itself is not directly involved as a shareholder, joint venturer, or partner. The fact that a corporation established by the district is a shareholder, joint venturer, or other type of participant in a business or cooperative project shall not, alone, subject that business or cooperative project to the requirements of chapter 119, Florida Statutes, or chapter 286, Florida Statutes.

(5) The district may issue tax anticipation notes and neither validation proceedings nor referendum approval is necessary with respect to tax anticipation notes with a maturity date not more than 12 months after their date of issuance.

(6) The district shall either maintain commercial insurance, establish a risk retention program consisting of self-insurance plans, or utilize a combination of commercial insurance and self-insurance plans to protect against those risks of loss commonly insured against by businesses and organizations carrying out the health care functions provided by the district. Such commercial insurance and/or self-insurance plans shall be in such amounts as deemed prudent under the circumstances by the district's insurance consultant. The district may develop a risk retention program consisting of separate self-insurance plans for the following risks: general liability, errors and omissions, medical professional liability (including the district's "shared risk" of joint and several liability with medical physicians), workers' compensation, and employee medical benefits.

(7) Each self-insurance plan established or sponsored by the district shall be funded on an annual basis in an amount at least equal to that sum jointly established by the hospital's CEO and the district's insurance consultant as needed to maintain the plan's solvency for the applicable plan year. In making such determination, the insurance consultant and the CEO shall include "incurred but not reported" claims in the reserves against claims. The self-insurance plans within the risk retention program may be established and funded utilizing a single trust as long as the cost of risk for each self-insurance plan is separately accounted for and reported. If necessary or beneficial for legal or actuarial purposes, the separate self-insurance plans within the risk retention program may be established utilizing separate trusts or separate not-for-profit corporations.

(8) Protecting the district and its assets through commercial insurance or through a risk retention program consisting of self-insurance plans or through a combination of commercial insurance and self-insurance plans is an essential governmental function. The fact that hospital employees, their beneficiaries, or other third parties receive incidental benefits as a result of the commercial insurance or self-insurance plans purchased, established, or sponsored by the district shall not be a basis for asserting such commercial insurance or such plan within the risk retention program is not primarily for the benefit of the district or is not an essential governmental function as long as any third party receiving such incidental benefit pays its fair and equitable share of the district's total costs for insuring or self-insuring the risk.

(9) Nothing herein shall be interpreted as prohibiting the district from purchasing other commercial insurance or establishing or sponsoring other self-insurance plans under its risk retention program.

Section 3. Subsection (10) of section 8 of chapter 79-577, Laws of Florida, is amended to read:

Section 8. (10) Bonds issued under the provisions of this act *may* ~~shall~~ be validated in the manner provided in chapter 75, Florida Statutes.

Section 4. Section 12 of chapter 79-577, Laws of Florida, is amended to read:

Section 12. The district is authorized to pay from the funds of the district all expenses necessarily incurred in the formation of the district and all other reasonable and necessary expenses, including, *but not limited to, those expenses of the type normally incurred in the establishment, operation, repair, maintenance, expansion, and diversification of a modern integrated system for the delivery of health care services consisting of hospitals, clinics, health maintenance organizations, ambulatory care facilities, managed care facilities, other alternative delivery systems, self-insurance, risk retention programs, captive insurance companies and support organizations.* ~~the fees and expenses of an attorney in the transaction of the business of the district and in carrying out the purposes of this act.~~ This section shall not be construed~~; however,~~ to restrict any of the powers vested in the district by any other provision of this act or any provision of general law.

Section 5. Subsection (3) of section 13 of chapter 79-577, Laws of Florida, as amended by chapter 84-539, Laws of Florida, is amended to read:

Section 13. (3) Annually the board shall publish in a newspaper of general circulation published in the district, an audited *consolidated* financial statement of the district and ~~of each of~~ its corporations ~~under the control of the district for the last fiscal year~~. Such financial statements shall *be prepared according to Generally Accepted Accounting Principles, shall* specifically include *a combined balance sheet and a combined statement of revenues and expenses* ~~all revenues received by or on behalf of the district from whatever source~~, and shall show a complete statement of the financial conditions of the district as of the end of the fiscal year.

Section 6. Section 14 of chapter 79-577, Laws of Florida, is amended to read:

Section 14. *The* ~~Each~~ *hospitals* ~~hospital~~, medical *facilities* ~~facility~~, *clinics* ~~clinic~~, and outpatient *facilities* ~~facility~~ established under this act *or by a not-for-profit corporation formed by the district* shall provide *either independently or in cooperation with each other and/or in cooperation with the Volusia County Public Health Care Unit an appropriate location or locations for the delivery of quality* hospital care and related services and treatment~~, without fee or charge,~~ to patients who are

determined *according to criteria established* by the board to be medically indigent~~, but the district may collect from patients financially able to pay such fees or other charges as the board may from time to time establish~~. *Persons so determined to be medically indigent shall receive such services at the locations established by the district or by a not-for-profit corporation formed by the district either for no charge or alternatively for a reduced charge according to the same sliding scale used by the Volusia County Health Department. Each hospital, medical facility, clinic and outpatient facility established under this act shall collect such charges as the district may from time to time establish for hospital care, outpatient care, and related services and treatment. Except as is otherwise required by law or by agreement with the Volusia County Health Department, the district's ad valorem tax revenues shall be used to fund medical services to indigent persons only if such services are provided at facilities owned by the district or at facilities in which the district or a corporation established by the district holds an ownership interest.* The district may extend the benefits and privileges of the hospitals and clinics and treatment and outpatient services of the district to medically indigent residents of the district. The district may extend the ~~privileges and~~ use of hospitals, ~~and~~ clinics *and medical facilities* of the district to nonresidents upon such terms and conditions as the *district* ~~board~~ may from time to time by its rules provide. The medically indigent residents of the district wherein such hospital and clinic are located~~,~~ shall have *priority to admission and outpatient services* ~~the first claim to admission~~.

Section 7. Section 20 of chapter 79-577, Laws of Florida, is amended to read:

Section 20. (1) All purchases of supplies, commodities, equipment, and materials as well as the leasing of equipment for use in the operation and maintenance of the district, and all contracts for work, construction, repair, or replacement of buildings or other capital improvements to the district's property, the cost of which is in excess of *$10,000* ~~$5,000~~, shall be made or let by the district by contract to the lowest responsible bidder according to the written specifications previously prescribed *therefor* ~~therefore~~, and after publication in a newspaper of general circulation within the district, one day a week for two consecutive weeks, of an advertisement or notice calling for or inviting such bids.

(2) As an alternative to the procedure prescribed in subsection (1), whenever it reasonably appears to the Board of Commissioners of the *district* ~~Halifax Hospital Medical Center~~ that by reason of an emergency or other unusual condition, the compliance with the bidding procedure prescribed in subsection (1) would be detrimental to the interests of the *district* ~~Halifax Hospital Medical Center~~, or its patients, or it appears to the Board of Commissioners that such supplies, commodities, equipment, and materials, and the leasing of equipment for the use in the operation or maintenance of the district are obtainable from only one source or supplier, the Board of Commissioners of the *district* ~~Halifax Hospital Medical Center~~ may by appropriate resolution identify such emergency, ~~or~~ unusual condition, *or sole source situation* and authorize the purchase, the lease agreement, or contract without complying with the procedure prescribed in subsection (1).

(3) The bidding requirements in subsection (1) above shall not apply to prosthetic devices, pacemakers, or other surgically implanted devices or materials if the delay incident to complying with such bidding requirements could adversely affect patient care or could cause the patient to elect to have the implant surgery performed at a private hospital which is not bound by such bidding requirements.

(4) All contracts between the district and a third party for construction, repair, or replacement of buildings, structures, or other capital improvements owned and operated by the district, the cost of which is in excess of $25,000, shall be made or let to the lowest responsible bidder, unless:

(a) The construction is in conjunction with a design/build project, in which case the district shall comply with, s. 287.055(10), Florida Statutes; or

(b) Unless the lowest bidder refuses to enter into a contract which prohibits the contractor from claiming delay damages, in which case the district may contract with any qualified general contractor of the district's choice on the condition that the contract with such contractor prohibits the contractor claiming delay damages and the contract price does not exceed the bid from the lowest responsible bidder by more than 5 percent.

Section 8. This act shall take effect July 1, 1991, or upon becoming a law, whichever occurs later.

House Amendment 2—On page 1, lines 1-21, strike the entire title and insert: A bill to be entitled An act relating to the Halifax Hospital Medical Center, Volusia County; amending sections 7, 8, 12, 13, 14, and 20 of chapter 79-577, Laws of Florida, as amended; relating to powers and duties of the district; clarifying the borrowing of funds and issuance of promissory notes; authorizing establishment of health care facilities and services throughout Volusia County; authorizing for-profit corporations to provide health care services; modifying bond validation requirements to be consistent with s. 75.02, F.S.; clarifying authority to self-insure certain hospital/physician professional liability risks; authorizing charging for indigent care services on the same sliding scale as used by Volusia County; clarifying the form of the district's financial statements; amending provisions relating to competitive bidding requirements; providing an effective date.

On motions by Senator Brown, the Senate concurred in the House amendments.

SB 2414 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 2458 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 2458—A bill to be entitled An act relating to the Englewood Water District in Charlotte County and Sarasota County; amending s. 1, ch. 59-931, Laws of Florida, as amended, and repealing s. 1-A, ch. 59-931, Laws of Florida, as added by s. 2, ch. 69-710, Laws of Florida, s. 1-B, ch. 59-931, Laws of Florida, as added by s. 1, ch. 86-420, Laws of Florida, and s. 1-C, ch. 59-931, Laws of Florida, as added by s. 1, ch. 90-408, Laws of Florida; restating the boundaries of the district; amending s. 3, ch. 59-931, Laws of Florida, as amended, relating to the board of supervisors of the district; deleting obsolete provisions; providing for the conduct of elections for supervisors; revising provisions pertaining to the officers of the board; authorizing the board to delegate the authority to sign contracts to the administrator; making grammatical corrections; amending s. 4(d), (e), (n), ch. 59-931, Laws of Florida; reducing the district's power to assess ad valorem taxes; eliminating the district's power to assess ad valorem taxes, as of January 1, 1993, unless the voters continue such authority by referendum; eliminating the district's authority to regulate private utilities; revising other powers of the district; amending s. 7, ch. 59-931, Laws of Florida; prescribing additional procedures and requirements regarding the district's water and sewer rate-setting authority; providing for a special referendum on certain issues; providing an effective date.

House Amendment 1—On page 12, line 22, after the word "election" insert: *as specified in section 8 of this act*

House Amendment 2—On page 5, line 16, strike "section" and insert: chapter

House Amendment 3—On page 13, line 7, strike "*county*" and insert: *the applicable local government*

On motions by Senator Johnson, the Senate concurred in the House amendments.

SB 2458 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 2460 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 2460—A bill to be entitled An act relating to the Sarasota-Manatee Airport Authority; revising, restating, and consolidating laws pertaining to the authority; omitting provisions that have had their effect and other obsolete provisions; omitting redundant provisions; revising cross-references; deleting the requirement that the treasurer of the authority be responsible directly to the authority; providing for the confidentiality of medical and dental insurance records and medical and dental insurance claims records of employees and former employees of the authority and their dependents; exempting such records from specified public record requirements; providing saving clauses; providing for severability; repealing ch. 31263, Laws of Florida, 1955, and chs. 57-1837, 57-1846, 59-1840, 59-1842, 65-2229, 65-2230, 67-2053, 69-1594, 71-918, 71-919, 77-651, 78-620, 86-411, 87-525, 90-407, and 90-414, Laws of Florida, relating to the authority; providing an effective date.

House Amendment 1—On page 37, lines 20 and 21, after "act" strike "~~need not~~ comply with the requirements of any other law" and insert: shall comply with the requirements of any other general law

On motion by Senator Johnson, the Senate concurred in the House amendment.

SB 2460 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 2464 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 2464—A bill to be entitled An act relating to the City of Hollywood; replacing the Police Pension Fund of the City of Hollywood, Florida, with a comprehensive retirement plan for police officers employed by the city; providing additional and increased benefits; repealing ch. 69-1152, Laws of Florida, relating to the police pension fund; providing an effective date.

House Amendment 1—On page 2, line 8, after "System" strike the comma (,)

House Amendment 2—On page 15, line 17, strike "Computations of" and insert a new subsection beginning:

(5) Computations of

(Renumber two subsequent subsections.)

House Amendment 3—On page 29, between lines 2 and 3, insert:

Section 15. This special act, along with chapter 69-1152, Laws of Florida, and all previously existing special acts pertaining exclusively to this subject as amended by the Legislature, are hereby converted to an ordinance of the City of Hollywood on the effective date of this act. Such ordinance may be modified or repealed by the City of Hollywood only upon approval of the modification or repeal by:

(1) Fifty percent plus one of the active members of the City of Hollywood Police Officers' Retirement System; or

(2) A majority vote of those qualified electors of the City of Hollywood voting in a referendum election called for such purpose by the Hollywood City Commission and held in accordance with the provisions of law relating to elections currently in force in the city, or held in conjunction with a primary, general, or other special election held in the City of Hollywood.

(Renumber subsequent sections.)

House Amendment 4—On page 7, line 2, strike "normal" and insert: subsequent

House Amendment 5—On page 9, line 4, strike "review" and insert: approval

House Amendment 6—On page 10, lines 4 and 5, strike "performing service acceptable to the police department," and insert: performing service in the police department acceptable to the city,

House Amendment 7—On page 11, lines 19, 20 and 23, and on page 12, line 16, strike "death of the spouse" and insert: remarriage or death of the spouse

House Amendment 8—On page 12, line 12, strike "until the spouse dies," and insert: until the spouse remarries or dies,

House Amendment 9—On page 16, lines 12 and 13, strike ", including final determination of disability,"

On motions by Senator Forman, the Senate concurred in the House amendments.

SB 2464 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 2474 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 2474—A bill to be entitled An act relating to special districts in Charlotte County; abolishing the Central Charlotte County Drainage District, the East Charlotte Drainage District, and the Harbour Heights Fire Control District, each contingent upon the adoption, by the Board of County Commissioners of Charlotte County, of an ordinance establishing a municipal taxing or benefit unit to finance the facilities or services provided by, and providing for the assumption by the county of the liabilities and obligations of, the respective district; transferring the assets, liabilities, and obligations of the abolished districts to the county; abolishing the Burnt Store Isles Canal District and the Punta Gorda Isles Canal District, contingent upon the adoption, by the City Council of Punta Gorda, of an ordinance providing for the assumption by the city of the liabilities and obligations of the respective district; transferring the assets, liabilities, and obligations of the abolished districts to the city; repealing chs. 78-485 and 84-403, Laws of Florida, which authorize Charlotte County to create the special taxing districts for canal, waterway, and channel maintenance; abolishing existing districts created pursuant to that authority; transferring the assets, liabilities, and obligations of such abolished districts to the county; providing an effective date.

House Amendment 1—On page 3, line 1, insert:

Section 3. (1) Chapter 63-1207, Laws of Florida, as amended, relating to the Charlotte County Development Commission, is hereby abolished, contingent upon the adoption by the Board of County Commissioners of Charlotte County, no later than January 2, 1992, of an ordinance assuming the liabilities and obligations of the commission.

(2) Upon the effective date of the ordinance, all assets, liabilities, and obligations of the commission abolished pursuant to subsection (1) are transferred to Charlotte County.

(Renumber subsequent sections.)

House Amendment 2—In title, on page 1, line 24, after the semicolon (;) insert: abolishing the Charlotte County Development Commission contingent upon the adoption, by the Board of County Commissioners of Charlotte County, of an ordinance providing for the assumption by the county of the liabilities and obligations of the commission; transferring the assets, liabilities, and obligations of the abolished commission to the county;

House Amendment 3—On page 3, between lines 10 and 11, insert:

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

(Renumber subsequent section.)

House Amendment 4—In title, on page 2, line 1, after the semicolon (;) insert: providing severability;

Senator Johnson moved the following amendment which was adopted:

Senate Amendment 1 to House Amendment 1—On page 1, line 16, strike "1992" and insert: 1993

On motions by Senator Johnson, the Senate concurred in **House Amendment 1** as amended and the House was requested to concur in the Senate amendment to the House amendment; and concurred in **House Amendments 2, 3** and **4**.

SB 2474 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—39 Nays—None

RETURNING MESSAGES ON HOUSE BILLS

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments 1, 2, 3, 4, 5, 6, 7, 8 and 9, amended Senate Amendments 10 and 11 and concurred in same as amended, and passed as amended, HB 2069, and requests the concurrence of the Senate.

John B. Phelps, Clerk

HB 2069—A bill to be entitled An act relating to state-administered retirement systems; amending s. 121.021, F.S.; modifying definitions of "compensation," "average final compensation," and "beneficiary"; providing a definition for "plan year"; amending s. 121.052, F.S.; providing retirement membership options to elected state and county officers upon dual employment; deleting obsolete language on contribution payments; amending s. 121.053, F.S.; allowing retirees returning to employment to combine employment in different classes toward a second retirement benefit; exempting retired judges assigned to temporary duty; providing for additional credit toward the maximum health insurance subsidy; amending ss. 121.091, 122.09, and 238.07, F.S.; revising disability provisions to comply with federal law; amending s. 121.122, F.S., relating to renewed membership in the Florida Retirement System; providing for modified service contributions; providing for additional credit toward the maximum health insurance subsidy; amending ss. 121.125, 122.03, and 238.06, F.S.; limiting workers' compensation credit for retirement; amending s. 121.35, F.S.; providing membership options for the State University System Optional Retirement Program; amending ss. 121.40, 122.16, and 321.203, F.S.; providing for payment of full retirement contributions for certain retired persons returning to employment, effective July 1, 1991; amending s. 238.181, F.S.; modifying reemployment-after-retirement provisions under the Teachers' Retirement System to conform to similar provisions under the Florida Retirement System; providing an effective date.

House Amendment 1 to Senate Amendment 10—On page 1, line 12 through page 2, line 13, strike all of said lines and insert:

Section 4. *Temporary retirement incentive program.—*

(1) As an incentive to encourage retirement among certain state officers and employees in order to minimize the impact of job cuts and layoffs which may be necessitated by the current economic crisis, the Department of Administration shall establish a temporary retirement incentive program for active state officers and employees in regularly established positions in the Florida Retirement System, Teachers' Retirement System, and State and County Officers' and Employees' Retirement System with 25 or more years of creditable service, hereinafter referred to as "officers and employees" or "members." The provisions and benefits of the program shall be administered by the Division of Retirement in accordance with the provisions of chapter 121, chapter 122, or chapter 238, Florida Statutes, as applicable:

(a) Except as may be specifically otherwise provided herein, all terms used throughout this subsection shall be construed according to the definitions and usages applicable under chapter 121, chapter 122, or chapter 238, Florida Statutes, as appropriate, and all age and creditable service limitations shall be construed as of the member's designated effective retirement date.

(b) Participation in the temporary retirement incentive program shall be voluntary at the officer or employee's option. No manager, supervisor, or other representative of the employer shall, directly or indirectly, in any way suggest, advise, or exert undue pressure by use of official authority or influence, or use the threat of loss or promise of reward to coerce or encourage, an officer or employee to retire under the provisions of this subsection. However, the provision of educational materials or factual information concerning the temporary retirement incentive program shall not be construed as a violation of this paragraph.

(c) An employee who wishes to participate in the temporary retirement incentive program shall complete and file an application for retirement with the Division of Retirement prior to October 1, 1991, designating an effective retirement date of March 1, April 1, or May 1, 1992.

(d) The state shall purchase an annuity within the Florida Retirement System Trust Fund to supplement the retirement benefit otherwise payable to those eligible officers and employees who elect to retire under the program. Such annuity shall be paid monthly, in an amount to be determined as follows:

1. For a member who is age 55 or older, but under age 62, with 25 or more years of creditable service, but less than 30 years of creditable service, the annuity shall provide a monthly payment equal to the difference between the normal retirement benefit based on the member's age and creditable service as of the member's designated effective retirement date, reduced for early retirement, and such retirement benefit unreduced for early retirement. However, any state officer or employee who is age 55, but less than normal retirement age, and a member of the Teachers' Retirement System or the State and County Officers' and Employees' Retirement System may qualify for an annuity under this subparagraph with 30 or more years of creditable service.

2. For a member with 30 or more years of creditable service, or who is age 62 or older with 25 or more years of creditable service, the annuity shall provide a monthly payment equal to the difference between the member's normal retirement benefit as of the designated retirement date and such retirement benefit increased by 5 percent. However, any state officer or employee with 25 or more years of creditable service who is a member of the Teachers' Retirement System or the State and County Officers' and Employees' Retirement System and has reached normal retirement age under that system may qualify for an annuity under this subparagraph.

All such retirement annuities shall comply with Section 14 of Article X of the State Constitution.

(e) In addition to any supplemental benefit provided under subparagraph 1. or subparagraph 2. of paragraph (d), any officer or employee who participates in the temporary retirement incentive program established under this subsection shall be paid a retirement bonus in the amount of $2,500, to be disbursed by the Division of Retirement upon confirmation that the member has retired.

(2)(a) Beginning on July 1, 1992, and continuing in the form of an annual payment to be made in ten installments through July 1, 2001, the Legislature shall appropriate from the General Revenue Fund to the Florida Retirement System Trust Fund an amount necessary to fund the benefits provided by the temporary retirement incentive program under paragraph (d) of subsection (1). The Division of Retirement shall calculate the present value of said benefits, and the annual payments required to amortize the present value over 10 years commencing July 1, 1992, and shall certify such amounts to the Legislature for appropriation during the 1992 Regular Session.

(b) Effective July 1, 1992, the Legislature shall appropriate from the General Revenue Fund to the Florida Retirement System Trust Fund an amount necessary to fund, in lump sum, the retirement bonuses provided by the temporary retirement incentive program under paragraph (e) of subsection (1).

(3) This section shall take effect upon becoming a law; the provisions of subsection (1), relating to the temporary retirement incentive program, shall expire on May 31, 1992, and the provisions of subsection (2), relating to funding of the program, shall expire on July 31, 2002.

(Renumber subsequent sections.)

House Amendment 1 to Senate Amendment 11—In title, on page 1, lines 15 through 17, strike all of said lines and insert: establishing a temporary retirement incentive program; providing for administration; providing for construction; requiring that participation must be voluntary; prohibiting coercion; providing eligibility

criteria and procedure; providing for purchase of an annuity to fund supplemental benefits; providing for calculation of benefits; providing for compliance with s. 14, Art. X of the State Constitution; providing for funding; providing special effective and expiration dates for the retirement incentive program;

On motions by Senator Souto, the Senate refused to concur in the House amendments to the Senate amendments and the House was requested to recede. The action of the Senate was certified to the House. The vote was:

Yeas—37 Nays—None

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives returns, as requested, HB 2239.

John B. Phelps, Clerk

HB 2239—A bill to be entitled An act relating to the Parrish Fire Control District, Manatee County; amending section 2 of chapter 85-451, Laws of Florida, relating to the jurisdictional area of the district; providing for nonpartisan election of the district board of commissioners; providing an effective date.

RECONSIDERATION

On motion by Senator McKay, the Senate reconsidered the vote by which **HB 2239** as amended passed this day.

On motion by Senator McKay, by two-thirds vote the Senate reconsidered the vote by which **HB 2239** was read the third time.

On motion by Senator McKay, the Senate reconsidered the vote by which **Amendments 1** and **2** were adopted. By permission, **Amendments 1** and **2** were withdrawn.

On motion by Senator McKay, by two-thirds vote **HB 2239** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

By direction of the President the following Conference Committee Report was read:

CONFERENCE COMMITTEE REPORT ON HB 2251

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has accepted the Conference Committee Report as an entirety and passed HB 2251, as amended by the Conference Committee Report.

John B. Phelps, Clerk

The Honorable Gwen Margolis
President of the Senate

The Honorable T. K. Wetherell
Speaker, House of Representatives

Madam/Sir:

Your Conference Committee on the disagreeing votes of the two Houses on HB 2251, same being:

An act relating to elections (Campaign Reform),

having met, and after full and free conference, do recommend to their respective Houses as follows:

1. That the Senate recede from its amendments to HB 2251.
2. That the Senate and the House of Representatives adopt the Conference Committee amendments, attached hereto and, by reference, made a part of this report.
3. That the Senate and the House of Representatives pass HB 2251 as amended by said Conference Committee amendments.

s/Arnett E. Girardeau
Vice Chairman
s/Tom C. Brown
s/Fred R. Dudley (Dissent)
s/Lawrence H. Plummer
s/Peter M. Weinstein
s/Eleanor Weinstock
Richard T. Crotty
Alternate
Managers on the part of the Senate

s/Harry C. Goode, Jr.
Chairman
s/Timothy F. Ireland
s/Ray Liberti
s/Anne Mackenzie
s/R. Z. Safley (Dissent)
s/David L. Thomas
s/Peter Rudy Wallace
Managers on the part of the House of Representatives

Conference Committee Amendment 1—Strike everything after the enacting clause and insert:

Section 1. Effective July 1, 1991, subsection (1) of section 99.092, Florida Statutes, is amended to read:

99.092 Qualifying fee of candidate; notification of Department of State.—

(1) Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate, shall pay a qualifying fee, which shall consist of a filing fee and election assessment, to the officer with whom he qualifies, and any party assessment levied, and shall attach the original or signed duplicate of the receipt for his party assessment or pay the same, in accordance with the provisions of s. 103.121, at the time of filing his other qualifying papers. The amount of the filing fee is *4.5* ~~3~~ percent of the annual salary of the office. *The amount of the filing fee equal to 1.5 percent of the annual salary of the office shall be transferred to the Election Campaign Financing Trust Fund. The remainder shall be distributed pursuant to s. 99.103.* The amount of the election assessment is 1 percent of the annual salary of the office sought. The election assessment shall be deposited into the Elections Commission Trust Fund. The amount of the party assessment is 2 percent of the annual salary. The annual salary of the office for purposes of computing the filing fee, election assessment, and party assessment shall be computed by multiplying 12 times the monthly salary, excluding any special qualification pay, authorized for such office as of July 1 immediately preceding the first day of qualifying. No qualifying fee shall be returned to the candidate unless he withdraws his candidacy before the last date to qualify. If a candidate dies prior to an election and has not withdrawn his candidacy before the last date to qualify, his qualifying fee shall be returned to his designated beneficiary, and, if the filing fee or any portion thereof has been transferred to the political party of the candidate, the Secretary of State shall direct the party to return that portion to the designated beneficiary of the candidate.

Section 2. Effective July 1, 1991, subsection (1) of section 99.093, Florida Statutes, is amended to read:

99.093 Municipal candidates; election assessment.—

(1) Each person seeking to qualify for nomination or election to a municipal office shall pay, at the time of qualifying for office, an election assessment. The election assessment shall be an amount equal to *1.5* ~~1~~ percent of the annual salary of the office sought. Within 30 days after the close of qualifying, the qualifying officer shall forward *two-thirds of the amount* ~~all amounts~~ collected pursuant to this section to the Department of State for deposit in the Elections Commission Trust Fund *and one-third of the amount collected pursuant to this section shall be transferred to the Election Campaign Financing Trust Fund.*

Section 3. Effective July 1, 1991, section 99.0965, Florida Statutes, is created to read:

99.0965 Signature requirements for ballot position in year of apportionment.—

(1) In a year of apportionment, any candidate for representative to Congress, state Senate, or state House of Representatives seeking ballot position by the alternative method or as an independent candidate or any minor party seeking ballot position shall obtain at least the number of signatures equal to 1 percent of the ideal population for the district of the office being sought.

(2) For the purposes of this section, "ideal population" means the total population of the state based upon the most recent decennial census divided by the number of districts for representative to Congress, state Senate, or state House of Representatives. For the purposes of this section, ideal population shall be calculated as of July 1 of the year prior to apportionment. The ideal population for a state Senate district

and a state representative district shall be calculated by dividing the total population of the state by 40 for a state Senate district and by dividing by 120 for a state representative district.

(3) Signatures may be obtained from any registered voter in Florida regardless of party affiliation or district boundaries.

(4) Petitions shall state the name of the office the candidate is seeking, but shall not include a district number.

(5) Except as otherwise provided in this section, all requirements and procedures relating to the petition process shall conform to the requirements and procedures in nonapportionment years.

Section 4. Section 99.103, Florida Statutes, is amended to read:

99.103 Department of State to remit part of filing fees and party assessments of candidates to state executive committee.—

(1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members and if such party is declared by the Department of State to have recorded on the registration books of the counties, as of the first Tuesday after the first Monday in January prior to the first primary in general election years, 5 percent of the total registration of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the Department of State from its candidates less *the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and* an amount equal to 15 percent of the filing fees *after such transfer*, which amount the Department of State shall deposit in the General Revenue Fund of the state.

(2) Not later than 20 days after the close of qualifying in even-numbered years, the Department of State shall remit 95 percent of all filing fees, less *the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and* the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by the department to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the Department of State shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of chapter 103. The remainder of filing fees or party assessments collected by the Department of State shall be remitted to the appropriate state executive committees not later than the date of the first primary.

Section 5. Effective July 1, 1991, subsection (3) of section 105.031, Florida Statutes, is amended to read:

105.031 Qualification; filing fee; candidate's oath.—

(3) QUALIFYING FEE.—Each candidate qualifying for election to judicial office, except write-in judicial candidates, shall, during the time for qualifying, pay to the officer with whom he qualifies a qualifying fee, which shall consist of a filing fee and an election assessment, or qualify by the alternative method. The amount of the filing fee is *4.5* ~~3~~ percent of the annual salary of the office sought. The amount of the election assessment is 1 percent of the annual salary of the office sought. The qualifying officer shall forward all filing fees to the Department of Revenue for deposit in the General Revenue Fund. *One-third of all filing fees deposited into the General Revenue Fund shall be subsequently transferred to the Election Campaign Financing Trust Fund.* The election assessment shall be deposited into the Elections Commission Trust Fund. The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of qualifying. This subsection shall not apply to candidates qualifying for retention to judicial office.

Section 6. Effective July 1, 1991, subsections (1) and (4) of section 106.04, Florida Statutes, 1990 Supplement, are amended to read:

106.04 Committees of continuous existence.—

(1) In order to qualify as a committee of continuous existence for the purposes of this chapter, a group, organization, association, or other such entity which is involved in making contributions to candidates, political committees, or political parties, shall meet the following criteria:

(a) It shall be organized and operated in accordance with a written charter or set of bylaws which contains procedures for the election of officers and directors and which clearly defines membership in the organization; and

(b) At least 25 percent of the income of such organization, *excluding interest,* must be derived from dues or assessments payable on a regular basis by its membership pursuant to provisions contained in the charter or bylaws.

(4)(a) Each committee of continuous existence shall file an annual report with the Division of Elections during the month of January. Such annual reports shall contain the same information and shall be accompanied by the same materials as original applications filed pursuant to subsection (2). However, the charter or bylaws need not be filed if the annual report is accompanied by a sworn statement by the chairman that no changes have been made to such charter or bylaws since the last filing.

(b)*1.* Each committee of continuous existence shall file regular reports with the Division of Elections at the same times and subject to the same filing conditions as are established by s. 106.07(1) and (2) for candidates' reports.

2. Each committee of continuous existence shall pay a 1.5 percent assessment on all contributions, excluding in-kind contributions. The assessment shall be remitted to the Division of Elections at the time contribution reports are due. The Division of Elections shall deposit the proceeds of the assessment into the Election Campaign Financing Trust Fund.

3. Any committee of continuous existence failing to so file a report with the Division of Elections pursuant to this paragraph on the designated due date shall be subject to a fine for late filing as provided by this section.

(c) All committees of continuous existence shall file the original and one copy of their reports with the Division of Elections. In addition, a duplicate copy of each report shall be filed with the supervisor of elections in the county in which the committee maintains its books and records, except that if the filing officer to whom the committee is required to report is located in the same county as the supervisor no such duplicate report is required to be filed with the supervisor. Reports shall be on forms provided by the division and shall contain the following information:

1. The full name, address, and occupation of each person who has made one or more contributions to the committee during the reporting period, together with the amounts and dates of such contributions. However, if the contribution is $100 or less, the occupation of the contributor need not be listed, and only the name and address are necessary. However, for any contributions which represent the payment of dues by members in a fixed amount pursuant to the schedule on file with the Division of Elections, only the aggregate amount of such contributions need be listed, together with the number of members paying such dues and the amount of the membership dues.

2. The name and address of each political committee or committee of continuous existence from which the reporting committee received, or the name and address of each political committee, committee of continuous existence, or political party to which it made, any transfer of funds, together with the amounts and dates of all transfers.

3. Any other receipt of funds not listed pursuant to subparagraph 1. or subparagraph 2., including the sources and amounts of all such funds.

4. The name and address of, and office sought by, each candidate to whom the committee has made a contribution during the reporting period, together with the amount and date of each contribution.

(d)~~(c)~~ The treasurer of each committee shall certify as to the correctness of each report and shall bear the responsibility for its accuracy and veracity. Any treasurer who willfully certifies to the correctness of a report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. Effective July 1, 1991, subsections (1) and (3) of section 106.07, Florida Statutes, 1990 Supplement, is amended to read:

106.07 Reports; certification and filing.—

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Reports shall be filed on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar quarter occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day which is not a Saturday, Sunday, or legal holiday. Quarterly reports shall include all contributions received and expenditures made during the calendar quarter which have not otherwise been reported pursuant to this section.

(a) *Except as provided in paragraph (b),* following the last day of qualifying for office, the reports shall be filed on the 32nd, 18th, and 4th days immediately preceding the first primary and on the 18th and 4th days immediately preceding the second primary and general election, for a candidate who is opposed in seeking nomination or election to any office, for a political committee, or for a committee of continuous existence.

(b) Following the last day of qualifying for office, any statewide candidate who has requested to receive contributions from the Election Campaign Financing Trust Fund or any statewide candidate in a race with a candidate who has requested to receive contributions from the trust fund shall file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the first primary and general elections and on the 4th, 11th, 18th, and 25th days prior to the second primary.

(c)~~(b)~~ Following the last day of qualifying for office, any unopposed candidate need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions and expenditures as required by this section and shall reflect disposition of funds as required by s. 106.141.

(d)~~(c)~~1. When a special election is called to fill a vacancy in office, all political committees and committees of continuous existence making contributions or expenditures to influence the results of such special election shall file campaign treasurers' reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. When an election is called for an issue to appear on the ballot at a time when no candidates are scheduled to appear on the ballot, all political committees making contributions or expenditures in support of or in opposition to such issue shall file reports on the 18th and 4th days prior to such election.

(e)~~(d)~~ The filing officer shall provide each candidate with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(3)*(a)* Reports required of a political committee shall be filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports. Only committees that file with the Department of State shall file the original and one copy of their reports. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(b) Each political committee shall pay a 1.5 percent assessment on all contributions, excluding in-kind contributions. The assessment shall be remitted to the filing officer at the time contribution reports are due. The filing officer shall transfer the assessment revenues to the Division of Elections for deposit into the Election Campaign Financing Trust Fund.

Section 8. Effective July 1, 1991, subsection (1) of section 106.29, Florida Statutes, 1990 Supplement, is amended to read:

106.29 Reports by political parties.—

(1)*(a)* The state executive committee and each county executive committee of each political party regulated by chapter 103 shall file regular reports of all contributions received and all expenditures made by such committee. Such reports shall contain the same information as do reports required of candidates by s. 106.07 and shall be filed on the 10th day following the end of each calendar quarter, except that, during the period from the last day for candidate qualifying until the general election, such reports shall be filed on the Friday immediately preceding the first primary election, the second primary election, and the general election. Each state executive committee shall file the original and one copy of its reports with the Division of Elections. Each county executive committee shall file its reports with the supervisor of elections in the county in which such committee exists. Any political party failing to file a report on the designated due date shall be subject to a fine as provided in s. 106.07 for submitting late reports. No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Each state executive committee and county executive committee of each political party shall pay a 1.5 percent assessment on all contributions, excluding contributions received from political committees and committees of continuous existence and excluding in-kind contributions and filing fees. The assessment shall be remitted by the political party executive committee to the filing officer at the time contribution reports are due. The filing officer shall transfer the assessment revenues to the Division of Elections for deposit into the Election Campaign Financing Trust Fund.

Section 9. Subsections (3) and (5) of section 106.011, Florida Statutes, 1990 Supplement, are amended to read:

106.011 Definitions.—As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(3) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election.

(b) A transfer of funds between political committees, between committees of continuous existence, or between a political committee and a committee of continuous existence.

(c) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.

Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services, *including, but not limited to, legal and accounting services,* provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee. This definition shall not be construed to include editorial endorsements.

(5) "Independent expenditure" means an expenditure by a person for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. *An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure.*

Section 10. Subsection (5) is added to section 106.021, Florida Statutes, 1990 Supplement, and paragraph (a) of subsection (1) of said section is amended to read:

106.021 Campaign treasurers; deputies; primary and secondary depositories.—

(1)(a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository prior to qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he obtains the petitions. Each candidate shall at the same time he designates his campaign depository and appoints his treasurer also designate the office for which he is a candidate. If the candidate is running for an office which will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district office he is running. Nothing in this sub-

section shall prohibit a candidate, at a later date, from changing the designation of the office for which he is a candidate ~~and using the campaign funds for that candidacy~~. *However, if a candidate changes the designated office for which he is a candidate, he must notify all contributors in writing of his intent to seek a different office and offer to return pro rata, upon their request, those contributions given in support of the original office sought. This notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions. The notice requirement shall not apply to any change in a numerical designation resulting solely from redistricting. If, within 30 days after being notified by the candidate of his intent to seek a different office, the contributor notifies the candidate in writing that he wishes his contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of designation is filed. Any contributions not requested to be returned within the 30-day period may be used by the candidate for the newly designated office.* No person shall accept any contribution or make any expenditure with a view to bringing about his nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on his behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is required to register pursuant to s. 106.03. Each candidate who qualifies with the Department of State for an office not voted upon statewide shall, at the same time, file a copy of the name and address of the campaign treasurer with the supervisor of elections in the county in which the candidate resides.

(5) For purposes of appointing a campaign treasurer and designating a campaign depository, candidates for the offices of Governor and Lieutenant Governor on the same ticket shall be considered a single candidate.

Section 11. Subsection (1) of section 106.08, Florida Statutes, 1990 Supplement, is amended, present subsection (5) is renumbered as subsection (6) and amended, present subsections (2), (3), (4), (6), and (7) are redesignated as subsections (3), (4), (5), (7), and (8), respectively, and a new subsection (2) is added to said section, to read:

106.08 Contributions; limitations on.—

(1)*(a)* No person, political committee, or committee of continuous existence shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:

1.~~(a)~~ To a candidate for countywide office or to a candidate in any election conducted on less than a countywide basis, *$500* ~~$1,000~~.

2.~~(b)~~ To a candidate for legislative or multicounty office, *$500* ~~$1,000~~.

3.~~(c)~~ To a candidate for statewide office, *$500* ~~$3,000~~. Candidates for the offices of Governor and Lieutenant Governor *on the same ticket shall be considered a single candidate for the purpose of this section.*

4.~~(d)~~ To a political committee supporting or opposing one or more candidates, *$500* ~~$1,000~~.

5.~~(e)~~ To a candidate for county court judge or circuit judge, *$500* ~~$1,000~~.

6.~~(f)~~ To a candidate for retention as a judge of a district court of appeal, *$500* ~~$2,000~~.

7.~~(g)~~ To a candidate for retention as a justice of the Supreme Court, *$500* ~~$3,000~~.

(b) The contribution limits provided in *this subsection* ~~paragraphs (a)-(g)~~ shall not apply to contributions made by a state or county executive committee of a political party regulated by chapter 103 or to amounts contributed by a candidate to his own campaign. *Notwithstanding the limits provided in this subsection, no unemancipated child under the age of 18 years of age may make a contribution to any candidate or to any political committee supporting one or more candidates, in excess of $100.* The limitations provided by this subsection shall apply to each election.

(c) For purposes of this subsection the first primary, second primary, and general election shall be deemed separate elections so long as the candidate is not an unopposed candidate as defined in s. 106.011(15). However, for the purpose of contribution limits with respect to candidates for retention as a justice of the Supreme Court or judge of a district court of appeal, there shall be only one election, which shall be the general election, and with respect to candidates for circuit judge or county court judge, there shall be only two elections, which shall be the first primary election and general election.

(2)(a) A candidate may not accept contributions from national, state, and county executive committees of a political party, which contributions in the aggregate exceed $50,000, no more than $25,000 of which may be accepted prior to the 28-day period immediately preceding the date of the general election.

(b) For the purposes of this subsection:

1. Print, broadcast, cable, and mailing advertisements are contributions in an amount equal to their fair market value and shall be counted toward the contribution limits of this subsection.

2. Polling services, research services, technical assistance, and voter mobilization efforts are not contributions to be counted toward the contribution limits of this subsection.

(6)~~(5)~~ Any person who knowingly and willfully makes a contribution in violation of subsection (1) or subsection *(5)* ~~(4)~~, or any person who knowingly and willfully fails or refuses to return any contribution as required in subsection *(3)* ~~(2)~~, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any corporation, partnership, or other business entity or any political committee or committee of continuous existence is convicted of knowingly and willfully violating this section, it shall be fined not less than $1,000 and not more than $10,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity or of a political committee or committee of continuous existence who aids, abets, advises, or participates in a violation of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7)~~(6)~~ Any person who knowingly and willfully violates the provisions of this section shall, in addition to any other penalty prescribed by this chapter, pay to the state a sum equal to twice the amount contributed in violation of this chapter. Each campaign treasurer shall pay all amounts contributed in violation of this section to the state for deposit in the General Revenue Fund.

Section 12. For the purpose of incorporating the amendment to section 106.08, Florida Statutes, 1990 Supplement, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

106.04 Committees of continuous existence.—

(5) No committee of continuous existence shall contribute to any candidate or political committee an amount in excess of the limits contained in s. 106.08(1) or participate in any other activity which is prohibited by this chapter. If any violation occurs, it shall be punishable as provided in this chapter for the given offense. No funds of a committee of continuous existence shall be expended on behalf of a candidate, except by means of a contribution made through the duly appointed campaign treasurer of a candidate. No such committee shall make expenditures in support of, or in opposition to, an issue unless such committee first registers as a political committee pursuant to this chapter and undertakes all the practices and procedures required thereof; provided such committee may make contributions in a total amount not to exceed 25 percent of its aggregate income, as reflected in the annual report filed for the previous year, to one or more political committees registered pursuant to s. 106.03 and formed to support or oppose issues.

106.075 Elected officials; report of loans made in year preceding election; limitation on contributions to pay loans.—

(2) Any person who makes a contribution to an individual to pay all or part of a loan incurred, in the 12 months preceding the election, to be used for the individual's campaign, may not contribute more than the amount which is allowed in s. 106.08(1).

106.19 Violations by candidates, persons connected with campaigns, and political committees.—

(1) Any candidate; campaign manager, campaign treasurer, or deputy treasurer of any candidate; committee chairman, vice chairman, campaign treasurer, deputy treasurer, or other officer of any political committee; agent or person acting on behalf of any candidate or political committee; or other person who knowingly and willfully:

(a) Accepts a contribution in excess of the limits prescribed by s. 106.08;

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

106.29 Reports by political parties.—

(4) No state or county executive committee, in the furtherance of any candidate or political party, directly or indirectly, shall give, pay, or expend any money, give or pay anything of value, authorize any expenditure, or become pecuniarily liable for any expenditure prohibited by this chapter. However, the contribution of funds by one executive committee to another, to established party organizations for legitimate party or campaign purposes, or to individual candidates of that party in general elections in amounts exceeding those set forth in s. 106.08 is not prohibited, but all such contributions shall be recorded and accounted for in the reports of the contributor and recipient.

Section 13. Section 106.085, Florida Statutes, is created to read:

106.085 Independent expenditures; unfair surprise prohibited; penalty.—

(1) Any individual, group, organization, or committee making an independent expenditure in excess of $1,000 on behalf of or in opposition to a candidate shall deliver notice in writing of such independent expenditure, as well as the amount of such expenditure and a detailed description of the media type or use of such expenditure, within 24 hours after obligating any funds for such expenditure. An expenditure is obligated upon the purchase of any political advertising or the entering into any agreement, either oral or written, to purchase any political advertising. Such notice shall be delivered to all of the candidates in the affected race and to the qualifying officer of such candidates. The notice shall specifically state the name of the candidate whom the independent expenditure is designed to support or oppose. For purposes of this subsection, notice shall include, but is not limited to, personal hand delivery or overnight mail. Each new expenditure shall require the delivery or filing of an additional new notice.

(2) A person who violates any provision of this section shall be liable for a civil fine of up to $5,000 to be determined by the Florida Elections Commission or an amount equal to 10 percent of the expenditure not noticed, whichever is greater.

Section 14. Paragraph (a) of subsection (4) of section 106.11, Florida Statutes, is amended to read:

106.11 Expenses of and expenditures by candidates and political committees.—Each candidate and each political committee which designates a primary campaign depository pursuant to s. 106.021(1) shall make expenditures from funds on deposit in such primary campaign depository only in the following manner, with the exception of expenditures made from petty cash funds provided by s. 106.12:

(4) A candidate who withdraws his candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office may expend funds from the campaign account to:

(a) Purchase "thank you" advertising ~~in the communications media~~ for up to 75 days after he withdraws, becomes unopposed, or is eliminated or elected.

Section 15. Paragraph (a) of subsection (4) of section 106.141, Florida Statutes, 1990 Supplement, is amended to read:

106.141 Disposition of surplus funds by candidates.—

(4)(a) Except as provided in paragraph (b), any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

1. Return pro rata to each contributor the funds which have not been spent, or have not been obligated to be spent, with respect to a campaign which has been conducted.

2. Donate the funds which have not been spent or have not been obligated to be spent to a charity organization or organizations which meet the qualifications of s. 501(c)(3) of the Internal Revenue Code, with respect to a campaign which has been conducted.

3. Give the funds which have not been spent or have not been obligated to be spent to the political party of which such candidate is a registered member.

4. Give the funds which have not been spent, or have not been obligated to be spent, with respect to a campaign which has been conducted:

a. In the case of a candidate for state office, to the state, to be deposited in *either the Election Campaign Financing Trust Fund or* the General Revenue Fund, *as designated by the candidate*; or

b. In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

Section 16. Subsection (1) of section 106.143, Florida Statutes, 1990 Supplement, is amended, subsection (6) is renumbered as subsection (7), and a new subsection (6) is added to said section, to read:

106.143 Political advertisements circulated prior to election; requirements.—

(1) Any political advertisement and any campaign literature published, displayed, or circulated prior to, or on the day of, any election shall:

(a) Be marked "paid political advertisement" or with the abbreviation "pd. pol. adv.";

(b) Identify the persons or organizations sponsoring the advertisement.;

(c)1.*a.* State whether the advertisement and the cost of production is paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement; *or*

b.~~2.~~ State who provided or paid for the advertisement and cost of production, if different from the source of sponsorship.

2.~~3.~~ This paragraph shall not apply if the source of the sponsorship is patently clear from the content or format of the political advertisement or campaign literature.

This subsection does not apply to campaign messages used by a candidate and his supporters which messages are designed to be worn by a person.

(6) Any political advertisement which is published, displayed, or produced in a language other than English may provide the information required by this section in the language used in the advertisement.

Section 17. Subsection (4) of section 106.15, Florida Statutes, is renumbered as subsection (5) and amended, and a new subsection (4) is added to said section, to read:

106.15 Certain acts prohibited.—

(4) No person shall make and no person shall solicit or knowingly accept any campaign contribution in a building owned by a governmental entity. For purposes of this subsection, "accept" means to receive a contribution by personal hand delivery from a contributor or his agent. This subsection shall not apply when a government-owned building or any portion thereof is rented for the specific purpose of holding a campaign fundraiser.

(5)~~(4)~~ Any person violating the provisions of this section *commits* ~~is guilty of~~ a misdemeanor in the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 18. Subsection (6) of section 106.25, Florida Statutes, 1990 Supplement, is amended to read:

106.25 Reports of alleged violations to Department of State; disposition of findings.—

(6) Every sworn complaint filed pursuant to this chapter with the Division of Elections or the Florida Elections Commission, every division investigation and investigative report or other paper of the division or commission with respect to a violation of this chapter, and every proceeding of the commission with respect to a violation of this chapter is confidential, is exempt from the provisions of ss. 119.07(1) and 286.011, and is exempt from publication in the Florida Administrative Weekly of any notice or agenda with respect to any proceeding relating to such violation except under the following circumstances:

(a) As provided in subsection (5);

(b) Upon a determination of probable cause or no probable cause by the commission;

(c) After a finding of no probable cause is made by the division and the case is not appealed; or

(d) For proceedings conducted with respect to appeals of fines levied by filing officers for the late filing of reports required by this chapter.

However, *a complainant is not bound by the confidentiality provisions of this section. In addition,* confidentiality may be waived in writing by the person against whom the complaint has been filed or the investigation has been initiated. If a finding of probable cause in a case is entered within 30 days prior to the date of the election with respect to which the alleged violation occurred, such finding and the proceedings and records relating to such case shall not become public until noon of the day following such election. When two or more persons are being investigated by the division with respect to an alleged violation of this chapter, the division or the commission may not publicly enter a finding of probable cause or no probable cause in the case until a finding of probable cause or no probable cause for the entire case has been determined. However, once the confidentiality of any case has been breached, the person or persons under investigation have the right to waive the confidentiality of the case, thereby opening up the proceedings and records to the public. Any person who discloses any information or matter made confidential by the provisions of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 19. Effective July 1, 1991, section 106.32, Florida Statutes, is amended to read:

106.32 Election Campaign Financing Trust Fund.—

(1) There is hereby established in the State Treasury an Election Campaign Financing Trust Fund to be utilized by the Department of State as provided in ss. 106.30-106.36. *If necessary,* each year in which a general election is to be held for the election of the Governor and Cabinet, *additional funds shall be transferred* ~~the Legislature shall appropriate~~ to the Election Campaign Financing Trust Fund from general revenue *in* an amount sufficient to fund qualifying candidates pursuant to the provisions of ss. 106.30-106.36. ~~In the event such appropriated moneys are insufficient to fully fund qualifying candidates, available funds shall be distributed on a proportional basis based on total available funds.~~

(2) Proceeds from filing fees pursuant to ss. 99.092, 99.093, and 105.031 shall be deposited into the Election Campaign Financing Trust Fund as designated in those sections.

(3) Proceeds from assessments pursuant to ss. 106.04, 106.07, and 106.29 shall be deposited into the Election Campaign Financing Trust Fund as designated in those sections.

Section 20. Section 106.33, Florida Statutes, 1990 Supplement, is amended to read:

106.33 Election campaign financing; eligibility.—Each candidate for the office of Governor or member of the Cabinet who desires to receive contributions from the Election Campaign Financing Trust Fund shall, upon qualifying for office, file a request for such contributions with the filing officer on forms provided by the Division of Elections. If a candidate requesting contributions from the fund desires to have such funds distributed by electronic fund transfers, the request shall include information necessary to implement that procedure. For the purposes of ss. 106.30-106.36, candidates for Governor and Lieutenant Governor on the same ticket shall be considered as a single candidate. To be eligible to receive contributions from the fund, a candidate shall not be an unopposed candidate as defined in s. 106.011(15) and shall:

(1) Agree to abide by the expenditure limits provided in s. 106.34.

(2) Raise ~~qualifying matching~~ contributions *as follows:*

(a) $150,000 for a candidate for Governor.

(b) $100,000 for a candidate for Cabinet office. ~~equal to 5 percent of the expenditure limit. Qualifying matching contributions are those from an individual of $250 or less made after September 1 of the calendar year prior to the election. Aggregate contributions from an individual in excess of $250 will be matched only up to $250. A contribution from an individual, if made by check, must be drawn on the personal bank account of the individual making the contribution, as opposed to any form of business account, regardless of whether the business account is for a corporation, partnership, sole proprietorship, trust, or other form of business arrangement. For contributions made by check from a personal joint account, the match shall only be for the individual who actually signs the check.~~

(3) Limit loans or contributions from the candidate's personal funds to $25,000 and contributions from national, state, and county executive committees of a political party to $25,000 in the aggregate, which loans or contributions shall not qualify for meeting the threshold amounts in subsection (2).

(4)~~(3)~~ Submit to a postelection audit of the campaign account by the division.

Section 21. Section 106.34, Florida Statutes, 1990 Supplement, is amended to read:

106.34 Expenditure limits.—

(1) Any candidate for Governor *and Lieutenant Governor* or Cabinet officer who requests contributions from the Election Campaign Financing Trust Fund shall limit his total expenditures as follows:

(a) Governor and Lieutenant Governor: *$5 million* ~~75 cents times the number of votes cast for Governor in the last general election at which the office was contested~~.

(b) Cabinet officer: *$2 million* ~~25 cents times the number of votes cast for that office in the last general election or, if the office was uncontested in the last general election, then 25 cents times the number of votes cast for Governor~~.

(2) The expenditure limit for any candidate with primary election opposition only shall be 60 percent of the limit provided in subsection (1).

(3) The expenditure limit shall be adjusted by the Secretary of State quadrennially to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, 1967—100, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics.

(4) For the purposes of this section, the term "expenditure" does not include the payment of compensation for legal and accounting services rendered on behalf of a candidate.

Section 22. Section 106.35, Florida Statutes, 1990 Supplement, is amended to read:

106.35 Distribution of funds.—

(1) The division shall review each request for contributions from the Election Campaign Financing Trust Fund and certify whether the candidate is eligible for such contributions. Notice of the certification decision shall be provided to the candidate. An adverse decision may be appealed to the Florida Elections Commission. The division shall adopt rules providing a procedure for such appeals.

(2)*(a)* Each candidate who has been certified to receive contributions from the Election Campaign Financing Trust Fund shall be entitled to distribution of funds *as follows:*

1. For qualifying matching contributions making up all or any portion of the threshold amounts specified in s. 106.33(2), distribution shall be on a two-to-one basis.

2. For all other qualifying matching contributions, distribution shall be on a one-to-one basis ~~for all qualifying matching contributions as defined in s. 106.33(2)~~.

(b) Qualifying matching contributions are those from an individual of $250 or less made after September 1 of the calendar year prior to the election. Aggregate contributions from an individual in excess of $250 will be matched only up to $250. A contribution from an individual, if made by check, must be drawn on the personal bank account of the individual making the contribution, as opposed to any form of business account, regardless of whether the business account is for a corporation, partnership, sole proprietorship, trust, or other form of business arrangement. For contributions made by check from a personal joint account, the match shall only be for the individual who actually signs the check.

(3)(a) Certification and distribution of funds shall be based on contributions to the candidate reported ~~pursuant~~ to *the division for such purpose* ~~s. 106.07~~. The division shall review each report and verify the amount of funds to be distributed prior to authorizing the release of funds. The division may prescribe separate reporting forms for candidates for Governor and Cabinet officer.

(b) Notwithstanding the provisions of s. 106.11, a candidate who is eligible for a distribution of funds based upon qualifying matching contributions received and certified to the division on the report due on the 4th day prior to the election may obligate funds not to exceed the amount which the campaign treasurer's report shows the candidate is eligible to receive from the Election Campaign Financing Trust Fund, without the funds actually being on deposit in the campaign account.

(4)~~(3)(a) For candidates with general election opposition or primary election opposition only,~~ Distribution of funds shall be made within 7 days after the close of qualifying~~, based on quarterly contribution reports,~~ and *every* ~~within~~ 7 days *thereafter* ~~after the filing of contribution reports required on the 32nd, 18th, and 4th days before an election~~.

~~(b) For candidates with primary election opposition and general election opposition, distribution shall be as provided in paragraph (a), except that for the first primary, funding shall only be matched in an amount up to 15 percent of the expenditure limit and, for the second primary, funding shall only be matched in an amount up to 25 percent of the expenditure limit.~~

(5) The division shall adopt rules providing for the weekly reports and certification and distribution of funds pursuant thereto required by this section. Such rules shall, at a minimum, provide for:

(a) Specifications for printed campaign treasurer's reports outlining the format for such reports, including size of paper, typeface, color of print, and placement of required information on the form.

(b)1. Specifications for electronically transmitted campaign treasurer's reports outlining communication parameters and protocol, data record formats, and provisions for ensuring security of data and transmission.

2. All electronically transmitted campaign treasurer's reports must also be filed in printed format. Printed format shall not include campaign treasurer's reports submitted by electronic facsimile transmission.

Section 23. Section 106.353, Florida Statutes, is created to read:

106.353 Candidates voluntarily abiding by election campaign financing limits but not requesting public funds; irrevocable statement required; penalty.—

(1) Not later than qualifying for office, each candidate for the office of Governor or member of the Cabinet who has not made a request to receive contributions from the Election Campaign Financing Trust Fund, but who wishes to voluntarily abide by the applicable expenditure limit set forth in s. 106.34 and the contribution limits on personal and party funds set forth in s. 106.33, shall file an irrevocable statement to that effect with the Secretary of State.

(2) Any candidate who files such a statement and subsequently exceeds such limits shall pay to the Election Campaign Financing Trust Fund an amount equal to the amount of the excess contributions or expenditures. Such penalty shall not be an allowable campaign expense and shall be paid from personal funds of the candidate. However, if a nonparticipating candidate exceeds the expenditure limit as described in s. 106.355, a candidate signing the statement pursuant to this section may exceed the applicable expenditure limit to the extent the nonparticipating candidate exceeded the limit without being subject to a penalty.

Section 24. Section 106.355, Florida Statutes, is created to read:

106.355 Nonparticipating candidate exceeding limits.—Whenever a candidate for the office of Governor or member of the Cabinet who has elected not to participate in election campaign financing under the provisions of ss. 106.30-106.36 exceeds the applicable expenditure limit provided in s. 106.34, all opposing candidates participating in such election campaign financing are, notwithstanding the provisions of s. 106.33 or any other provision requiring adherence to such limit, released from such expenditure limit to the extent the nonparticipating candidate exceeded the limit, are still eligible for matching contributions up to such limit, and shall not be required to reimburse any matching funds provided pursuant thereto. In addition, the Department of State shall, within 7 days after a request by a participating candidate, provide such candidate with funds from the Election Campaign Financing Trust Fund equal to the amount by which the nonparticipating candidate exceeded the expenditure limit, not to exceed twice the amount of the maximum expenditure limits specified in s. 106.34(1)(a) and (b), which funds shall not be considered matching funds.

Section 25. Section 106.36, Florida Statutes, 1990 Supplement, is amended to read:

106.36 Penalties; fines.—In addition to any other penalties which may be applicable under the election code, any candidate who receives contributions from the Election Campaign Financing Trust Fund and who exceeds the applicable expenditure limit, *except as authorized in ss. 106.353 and 106.355,* or falsely reports qualifying matching contributions and thereby receives contributions from the Election Campaign Financing Trust Fund to which he was not entitled shall be fined an amount equal to three times the amount at issue, which shall be deposited in the Election Campaign Financing Trust Fund.

Section 26. Subsection (13) is added to section 199.052, Florida Statutes, to read:

199.052 Annual tax returns; payment of annual tax.—

(13) The annual intangible tax return shall include language permitting a voluntary contribution of $5 per taxpayer, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.

Section 27. Subsection (13) is added to section 320.02, Florida Statutes, 1990 Supplement, to read:

320.02 Registration required; application for registration; forms.—

(13) The application form for motor vehicle registration shall include language permitting a voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.

Section 28. Subsection (6) is added to section 322.08, Florida Statutes, as amended by chapter 89-282, Laws of Florida, to read:

322.08 Application for license.—

(6) The application form for a driver's license or duplicate thereof shall include language permitting a voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.

Section 29. Subsection (7) of section 327.25, Florida Statutes, 1990 Supplement, is amended to read:

327.25 Classification; registration; fees and charges; surcharge; disposition of fees; fines.—

(7) VOLUNTARY CONTRIBUTIONS.—The application form for boat registration shall include a provision to allow each applicant to indicate his desire to pay an additional voluntary contribution to the Save the Manatee Trust Fund for manatee and marine mammal research, protection, and recovery. This contribution shall be in addition to all other fees and charges. Provisions for collecting this contribution shall begin with the boat registrations for fiscal year 1985. The amount of the request for a voluntary contribution solicited shall be $1 per registrant. Beginning with boat registration in fiscal year 1993, the request for a voluntary con-

tribution solicited shall be $2 per registrant. All voluntary contributions shall be deposited in the Save the Manatee Trust Fund for use in accordance with the provisions of s. 370.12(5). *The form shall also include language permitting a voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.*

Section 30. Subsection (1) of section 607.1622, Florida Statutes, 1990 Supplement, is amended to read:

607.1622 Annual report for Department of State.—

(1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Department of State for filing a sworn annual report on such forms as the Department of State prescribes that sets forth:

(a) The name of the corporation and the state or country under the law of which it is incorporated;

(b) The date of incorporation or, if a foreign corporation, the date on which it was admitted to do business in this state;

(c) The address of its principal office and the mailing address of the corporation;

(d) The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;

(e) The names and business street addresses of its directors and principal officers;

(f) The street address of its registered office and the name of its registered agent at that office in this state; ~~and~~

(g) Language permitting a voluntary contribution of $5 per taxpayer, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included; and

(h)~~(g)~~ Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this act.

Section 31. Section 99.012, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 99.012, F.S., for present text.)

99.012 Restrictions on individuals qualifying for public office.—

(1) As used in this section:

(a) "Officer" means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, the term "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.

(b) "Subordinate officer" means a person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.

(2) No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.

(3)(a) No officer may qualify as a candidate for another public office, whether state, district, county, or municipal, if the terms or any part thereof run concurrently with each other, without resigning from the office he presently holds.

(b) The resignation is irrevocable.

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he intends to seek.

(d) The resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer must submit his resignation to the officer before whom he qualified for the office he holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his resignation to the officer or authority which appointed him to the office he holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f)1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.

2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of his unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his letter of resignation.

(g) Any officer who submits his resignation, effective immediately or effective on a date prior to the date of his qualifying for office, may then qualify for office as a nonofficeholder, and the provisions of this subsection do not apply.

(4)(a) Any officer who qualifies for federal public office must resign from the office he presently holds if the terms or any part thereof run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted no later than the date upon which he qualifies for office.

(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer must submit his resignation to the officer before whom he qualified for the office he holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his resignation to the officer or authority which appointed him to the office he holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f)1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county, or municipal officer, a copy to:

a. The officer before whom he qualified if the officer held an elective office; or

b. The person or authority who appointed the officer if the officer held an appointive office.

(g) The provisions of any special act to the contrary notwithstanding, with regard to an elective office, the resignation creates a vacancy in office to be filled by election, thereby permitting persons to qualify as candidates for nomination and election as if the officer's term were otherwise scheduled to expire. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of his unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his letter of resignation.

(5) A person who is a subordinate officer, deputy sheriff, or police officer need not resign pursuant to this section unless he is seeking to qualify for a public office which is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office. However, upon qualifying, the subordinate officer, deputy sheriff, or police officer must take a leave of absence without pay during the period in which he is a candidate for office.

(6) The name of any person who does not comply with this section may be removed from every ballot on which it appears when ordered by a circuit court upon the petition of an elector or the Department of State.

(7) This section does not apply to:

(a) Political party offices.

(b) Persons serving without salary as members of an appointive board or authority.

(8) Nothing contained in subsections (3) and (4) relates to persons holding any federal office.

Section 32. Subsections (4), (5), (6), and (7) of section 99.061, Florida Statutes, 1990 Supplement, are renumbered as subsections (5), (6), (7), and (8), respectively, and a new subsection (4) is added to said section, to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(4) At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to Section 8 of Article II of the State Constitution, and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145.

Section 33. Subsection (4) of section 163.566, Florida Statutes, is amended to read:

163.566 Definitions.—As used in this part, and unless the context clearly indicates otherwise:

(4) "Director" means a person appointed to the board by a member. No person who serves without salary as a director or in any other appointed position of the authority shall be in violation of s. 99.012~~(2)~~ by reason of holding such office.

Section 34. *The Department of Revenue shall conduct a study to determine what tax or combination of taxes are required to be paid by every taxpayer in the state and to review the forms by which these taxes are assessed for the purpose of recommending to the Legislature a form by which a taxpayer could voluntarily contribute money to the Election Campaign Financing Trust Fund.*

Section 35. *To the extent permitted by federal law, all broadcast radio and television stations and all cable television stations shall make air time available to candidates for public office at the lowest unit rate.*

Section 36. *If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.*

Section 37. Except as otherwise provided herein, this act shall take effect January 1, 1992.

Conference Committee Amendment 2—In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to elections; amending s. 99.092, F.S.; increasing the filing fee for persons seeking to qualify for nomination or election to certain offices; providing for a specified percentage of the fee to be transferred to the Election Campaign Financing Trust Fund; amending s. 99.093, F.S.; increasing the election assessment for municipal candidates; providing for a specified percentage of the assessment amount to be transferred to the Election Campaign Financing Trust Fund; creating s. 99.0965, F.S.; providing signature requirements for ballot position in apportionment years; amending s. 99.103, F.S.; providing conforming changes relating to the increase in filing fees; amending s. 105.031, F.S.; increasing the qualifying fee for certain judicial candidates; providing for a specified percentage of the fee to be transferred to the Election Campaign Financing Trust Fund; amending s. 106.04, F.S.; excluding interest income from the percentage requirement for qualification of committees of continuous existence; requiring such committees to remit a portion of certain contributions to the Division of Elections for deposit into the Election Campaign Financing Trust Fund; amending s. 106.07, F.S.; revising the reporting dates for certain candidates; requiring political committees to remit a portion of certain contributions to the filing officer for deposit into the Election Campaign Financing Trust Fund; amending s. 106.29, F.S.; requiring state and county executive committees of each political party to remit a portion of certain contributions to the filing officer for deposit into the Election Campaign Financing Trust Fund; amending s. 106.011, F.S.; redefining "contribution" and "independent expenditure"; amending s. 106.021, F.S.; restricting a candidate who is changing the designation of office sought from using campaign funds of the prior candidacy for the subsequent candidacy; requiring certain notice; clarifying that candidates for the office of Governor and Lt. Governor are considered a single candidate for the purpose of appointing a campaign treasurer and designating a campaign depository; amending s. 106.08, F.S.; revising the limitations on contributions to candidates and political committees; providing a separate limit on contributions by minors; providing limitations on contributions from political parties; providing penalties; reenacting ss. 106.04(5), 106.075(2), 106.19(1)(a), and 106.29(4), F.S., relating to contributions by committees of continuous existence, contributions to pay loans, penalty for acceptance of contributions in excess of limits, and contributions by executive committees, to incorporate the amendment to s. 106.08, F.S., in references thereto; creating s. 106.085, F.S.; requiring persons or groups making certain independent expenditures on behalf of or in opposition to any candidate to give notice thereof; providing a penalty; amending s. 106.11, F.S.; removing the requirement that "thank you" advertising must be placed in the communications media to be a qualified expenditure after a candidate withdraws, becomes unopposed, or is eliminated or elected; amending s. 106.141, F.S.; revising requirements for disposing of surplus funds; amending s. 106.143, F.S.; allowing for political advertisements to be provided in a language other than English; amending s. 106.15, F.S.; prohibiting the making, solicitation, and knowing acceptance of campaign contributions in buildings owned by a governmental entity; providing an exception; providing a penalty; amending s. 106.25, F.S., relating to confidentiality of complaints filed with the Florida Elections Commission, to provide that complainants are not bound thereby; amending s. 106.32, F.S.; providing for deposit into the Election Campaign Financing Trust Fund of a portion of certain filing fees and assessments; providing for transfer of funds into the trust fund from general revenue under certain circumstances; amending s. 106.33, F.S.; revising election campaign financing eligibility provisions; amending s. 106.34, F.S.; revising the expenditure limits for candidates for Governor and Lt. Governor or Cabinet officer who accept contributions from the Election Campaign Financing Trust Fund; amending s. 106.35, F.S.; revising election campaign financing provisions relating to reporting and to certification and distribution of funds, including matching requirements; providing rulemaking authority; creating s. 106.353, F.S.; requiring candidates voluntarily abiding by election campaign financing limits but not requesting public funds to file an irrevocable statement to that effect with the Secretary of State; providing a penalty; creating s. 106.355, F.S.; providing for release from the expenditure limits when opposing nonparticipating candidates exceed the limits; amending s. 106.36, F.S., to conform; amending s. 199.052, F.S.; requiring the annual intangible tax return to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 320.02, F.S.; requiring the application form for motor vehicle registration to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 322.08, F.S.; requiring the driver's license application form to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 327.25, F.S.; requiring the application form for boat registrations to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 607.1622, F.S.; requiring the annual report form for domestic and foreign corporations to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 99.012, F.S.; providing restrictions on persons qualifying for public office; providing exceptions; providing definitions; providing for removal of a person's name from the ballot for his failure to comply with the restrictions under certain circumstances; amending s. 99.061, F.S.; requiring all candidates to file financial disclosure at the time of qualifying; amending s. 163.566, F.S., to correct a cross reference; requiring the Department of Revenue to conduct a study for the purpose of recommending a suitable form for voluntary contributions to the Election Campaign Financing Trust Fund; requiring, to the extent permitted by federal law, radio and television sta-

tions, including cable television stations, to make air time available to candidates for public office at the lowest unit rate; providing severability; providing effective dates.

WHEREAS, the Legislature finds a compelling state interest in strengthening the integrity of, and public confidence in, the electoral process, and

WHEREAS, the Legislature seeks to serve that compelling state interest through campaign finance reform and by establishing public funding of political campaigns, and

WHEREAS, the Legislature has determined that the measures set forth below are narrowly tailored to serve the compelling state interest in public confidence in the electoral process, and that they are the least restrictive alternatives for the following reasons:

(1) They do not significantly burden any individual's right to political expression or symbolic political communication;

(2) They do not compel political speech from individuals who wish to refrain from such speech (e.g., apolitical taxpayers), or otherwise unduly burden the public treasury;

(3) As to filing fees, candidates retain a viable alternative to paying the filing fees prescribed herein;

(4) The measures enacted below are less expensive to collect; and

(5) Other measures than those enacted below would inhibit the state's ability to perform its governmental functions, NOW, THEREFORE,

The Conference Committee Report was read and on motion by Senator Girardeau was adopted. **HB 2251** passed as recommended and was certified to the House together with the Conference Committee Report. The vote on passage was:

Yeas—24 Nays—16

RETURNING MESSAGES—FINAL ACTION

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments to House Amendments to SB 120, CS for SB 586 and CS for SB 2342; and passed as further amended.

John B. Phelps, Clerk

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendment 1 to House Amendment 5 and Senate Amendment 1 to House Amendment 6; has receded from House Amendments 3, 4, 7 and has passed, as further amended, CS for SB 1554.

John B. Phelps, Clerk

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendment 1 to House Amendment 1 and Senate Amendment 1 to House Amendment 2; has receded from House Amendments 5 and 6, and has passed, as further amended, CS for SB's 2224 and 2086.

John B. Phelps, Clerk

The bills contained in the foregoing messages were ordered engrossed and enrolled.

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has receded from House Amendments 1 and 2 and has passed SB 318.

John B. Phelps, Clerk

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed CS for SB 174, CS for SB 608, CS for SB 612, SB 678, CS for SB 1246, SB 1482, CS for SB 1548, CS for SB 1672, SB 1676, SB 1708, CS for SB 1766, CS for SB 1768, Senate Bills 1906, 2504, 2506 and 2508.

John B. Phelps, Clerk

The bills contained in the foregoing messages were ordered enrolled.

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has receded from House Amendment 1 to Senate Amendment 1, and has passed HB 2313, as further amended; and has concurred in Senate amendments and passed CS for HB 1027 and HB 1503, as amended.

John B. Phelps, Clerk

AMENDMENTS TO SENATE BILLS

CS for SB 1022

Senators Jenne and Margolis offered the following amendment which was moved by Senator Jenne:

Amendment 2—On page 15, between lines 9 and 10, insert:

Section 3. Section 175.402, Florida Statutes, is created to read:

175.402 Unless specifically excluded, the provisions of this chapter shall apply as minimum requirements for each municipal firefighter retirement fund which has received or is eligible to receive state premium tax moneys as provided in this chapter. However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only increment increases shall be required as state moneys are adequate to provide. Such increments shall be provided as state moneys become available. The Department may require each local plan actuary to provide any information needed to make such cost determinations.

Section 4. Section 185.51, Florida Statutes, is created to read:

185.51 Unless specifically excluded, the provisions of this chapter shall apply as minimum requirements for each municipal police officer retirement fund which has received or is eligible to receive state premium tax moneys as provided in this chapter. However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only increment increases shall be required as state moneys are adequate to provide. Such increments shall be provided as state moneys become available. The Department may require each local plan actuary to provide any information needed to make such cost determinations.

Section 5. Sections 175.321 and 185.32, Florida Statutes, are repealed.

(Renumber subsequent section.)

Senator Dantzler moved the following substitute amendment which was adopted:

Amendment 3—On page 1, lines 19 and 26, after the period (.) insert: *Provided, however, that a municipality shall not be required to make any changes to its retirement plan based on the application of this section unless the cumulative actuarial cost of the plan changes is less than or equal to the increase (if any) in premium tax revenues received by the municipality pursuant to this chapter on or after January 1, 1991. The Department of Insurance shall not enforce the provisions of this section against any municipality or retirement fund unless and until the Department determines that the cumulative actuarial cost of any retirement plan changes deemed necessary by the Department pursuant to this section is less than or equal to the increase (if any) in premium tax revenues received by the municipality or retirement fund pursuant to this chapter on or after January 1, 1992. Nothing in this section shall be construed to impair the authority of municipalities to elect to participate or not to participate in retirement plans authorized under this chapter.*

Amendment 2 and **Substitute Amendment 3** were withdrawn after reconsideration.

CS for SB 1280

Senator Crotty moved the following amendments which were adopted:

Amendment 1—On page 1, line 23, insert:

Section 1. Paragraph (f) is added to subsection (2) of section 627.4143, Florida Statutes, to read:

627.4143 Outline of coverage.—

(2) The outline of coverage shall contain:

(f) For a private passenger motor vehicle insurance policy, the extent of coverage provided to the insured in the event of collision damage to a rental vehicle rented by the insured. Additionally, the insurer shall specify, on the proof of security required by s. 316.646, whether or not collision coverage for rental vehicles in included in the insured's coverage.

(Renumber subsequent sections.)

Amendment 2—In title, on page 1, strike all of lines 2 and 3 and insert: An act relating to insurance; amending s. 627.4143, F.S.; requiring the outline of coverage for private passenger motor vehicle insurance to include information on coverage of collision damage to rental vehicles; requiring such information to be included on proof-of-insurance cards; amending s. 627.736, F.S.; requiring

Senator Crotty moved the following amendment which failed:

Amendment 3—On page 1, line 23, insert:

Section 1. Subsection (1) of section 627.0653, Florida Statutes, 1990 Supplement, is amended to read:

627.0653 Insurance discounts for specified motor vehicle equipment.—

(1) Any rates, rating schedules, or rating manuals for the liability, personal injury protection, and collision coverages of a motor vehicle insurance policy filed with the department shall provide a premium discount if the insured vehicle is equipped with *factory-installed, four-wheel* antilock brakes.

Section 2. Paragraph (f) is added to subsection (2) of section 627.4143, Florida Statutes, 1990 Supplement, to read:

627.4143 Outline of coverage.—

(2) The outline of coverage shall contain:

(f) For a private passenger motor vehicle insurance policy, the extent of coverage provided to the insured in the event of collision damage to a rental vehicle rented by the insured. Additionally, the insurer shall specify, on the proof of security required by s. 316.646, whether or not collision coverage for rental vehicles is included in the insured's coverage.

Section 3. Paragraph (b) of subsection (1) and subsection (5) of section 627.728, Florida Statutes, are amended, and paragraph (d) is added to subsection (4) of that section, to read:

627.728 Cancellations; nonrenewals.—

(1) As used in this section:

(b) "Renewal" or "to renew" means the issuance and delivery by an insurer, *or by an insurer under the same ownership or management as that insurer,* of a policy superseding at the end of the policy period a policy previously issued and delivered by *either* the same insurer *or by an insurer under the same ownership or management as that insurer*, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. Any policy with a policy period or term of less than 6 months or any policy with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of 6 months.

(4)

(d) If an insurer intends, upon renewal of a policy, to transfer the policy to another insurer under the same ownership or management as that insurer, at least 45 days' advance notice of such action and of the renewal provision must be given to the named insured.

(5) United States postal proof of mailing or certified or registered mailing of notice of cancellation, of intention not to renew, ~~or~~ of reasons for cancellation, *or of the intention of an insurer to issue a policy by an insurer under the same ownership or management as that insurer* to the named insured at the address shown in the policy shall be sufficient proof of notice.

Section 4. Section 41 of chapter 90-119, Laws of Florida, appearing as section 627.744, Florida Statutes, is repealed.

Section 5. Section 36 of chapter 90-119, Laws of Florida, is repealed.

(Renumber subsequent sections.)

SB 2512

Senator Johnson moved the following amendment:

Amendment 1—On page 113, between lines 12 and 13, insert:

Section 53. Notwithstanding the proviso following Specific Appropriation 1A in the Conference Committee Report on Senate Bill 2300, funds in Specific Appropriation 1A shall be distributed equally to state employees.

(Renumber subsequent section.)

Senator Thomas moved the following substitute amendment which was adopted:

Amendment 2—On page 113, between lines 12 and 13, insert a new Section:

Section 53. Notwithstanding the proviso following Specific Appropriation 1A in the Conference Committee Report on Senate Bill 2300, funds in Specific Appropriation 1A shall be distributed to provide 3 percent salary increases and appropriate adjustments in insurance premiums and deductible as provided in the proposed conference committee report prior to excluding salary increases. Furthermore, notwithstanding chapter 216, Florida Statutes, the Governor shall make the appropriate transfer of funds from the Health Insurance appropriation to implement this section. Notwithstanding the provisions contained in Specific Appropriation 547 of the General Appropriations Act for fiscal year 1991-1992, the community colleges may provide salary increases if any other employee receives pay raises under the provisions of this section.

(Renumber subsequent sections.)

Senator Thomas moved the following amendment which was adopted:

Amendment 3—In title, on page 5, between lines 28 and 29, insert: providing for salary increases and adjustments in insurance premiums and deductible for public officers and employees; providing for transfer of funds for such purpose;

Senator Johnson moved the following amendments which were adopted:

Amendment 4—On page 113, between lines 12 and 13, insert:

Section 53. Section 338.065, Florida Statutes, is transferred, renumbered as section 479.29, Florida Statutes, and amended to read:

479.29 ~~338.065~~ General motorist services signs, *supplemental guide signs,* and *specific* business logo signs *on limited access and interstate highway facilities*; fee schedule.—

(1) The Department of Transportation may implement a program governing the erection of general motorist services signs, supplemental guide signs, and specific business logo signs on any limited access facility under its jurisdiction or on the interstate highway system in this state in accordance with the uniform system of traffic control devices adopted pursuant to s. 316.0745, as follows:

(a) The general motorist services signs program must provide a system of signing which informs the motorist of needed services located near the limited access or interstate highway facility, which services may include the provision of gas, food, lodging, camping, or hospital care; tourist information centers; telephones; and rest areas. The department may develop, by rule, criteria and priorities for the erection of general motorist services signs.

(b) The supplemental guide signs program must provide a system of signing which informs the motorist of establishments open to the public which attract large volumes of traffic, in order to improve traffic flow and safety at interchanges in the vicinity of such establishments. Any nonprofit establishment that is open to the public, that is located within 15 miles of an interchange of a limited access facility or interstate highway facility, and that attracts an annual attendance of at least 150,000 people is eligible for the supplemental signs program. If two nonprofit establishments located within 15 miles of the same interchange together attract an annual attendance of at least 150,000 people, those establishments may join together for purposes of meeting the 150,000-person

threshold. The department may develop, by rule, criteria for the determination of which establishments that attract large volumes of traffic are eligible for signing and priorities for the erection of supplemental guide signs.

(c) The specific business logo signs program must provide a system of signing which presents information in the specific interest of the motorist and promotes tourist-oriented businesses as provided in this chapter.

(2) The department may, by rule, establish a ~~fee~~ schedule *of fees* to be charged for the costs of placing general motorist services signs, *supplemental guide signs,* or specific business logo signs on the *rights-of-way* ~~right-of-way~~ of limited access *and interstate highway facilities* ~~highways outside urban or urbanized areas~~ in accord with the uniform system of traffic control devices adopted pursuant to s. 316.0745. Such costs shall be limited to costs of sign materials and installation *except as provided in s. 479.26.*

(Renumber subsequent section.)

Amendment 5—In title, on page 5, line 28, following the semicolon (;) insert: transferring, renumbering, and amending s. 338.065, F.S.; providing that the Department of Transportation may implement a program governing the erection of specified signs on certain limited access facilities or on the interstate highway system; providing guidelines for the program; authorizing the establishment of a schedule of fees for the cost of placing the signs;

Senator Thomas moved the following amendments which were adopted:

Amendment 6—On page 113, between lines 12 and 13, insert new Section:

Section 53. The sum of $4 million is appropriated from the General Revenue Fund and the sum of $4 million is appropriated from trust funds to Administered Funds for the purpose of implementing a state productivity enhancement program. The funds appropriated by this section shall be distributed in accordance with the provisos contained in Specific Appropriation 1A of the 1991-1992 General Appropriations Act.

(Renumber subsequent sections.)

Amendment 7—In title, on page 5, between lines 28 and 29, insert: providing appropriations to implement a state productivity enhancement program and providing for the distribution of funds appropriated;

Senators Gardner, Walker, Bruner, Childers, Thomas and Kirkpatrick offered the following amendments which were moved by Senator Bruner and adopted:

Amendment 8—On page 113, between lines 12 and 13, insert:

Section 53. (1) The sum of $150,000 is appropriated from the General Revenue Fund to the Division of Public Schools of the Department of Education for fiscal year 1991-1992 to be used to continue the activities of the Panhandle Area Education Consortium.

(2) The sum of $150,000 is appropriated from the General Revenue Fund to the Division of Public Schools of the Department of Education for fiscal year 1991-1992 to be used to continue the activities of the North East Florida Education Consortium.

(Renumber subsequent section.)

Amendment 9—In title, on page 5, line 28, following the semicolon (;) insert: providing appropriations for the Panhandle Area Education Consortium and the North East Florida Education Consortium;

AMENDMENTS TO HOUSE BILLS

CS for HB 279

Senator Kiser moved the following amendment which was adopted:

Amendment 1—On page 18, line 17, strike "1992" and insert: 1993

After reconsideration **Amendment 1** was withdrawn.

Senator Kirkpatrick moved the following amendment which was adopted:

Amendment 2—On page 18, line 17, strike "1999" and insert: 1992

HB 325

Senator Childers moved the following amendments which were adopted:

Amendment 1—On page 3, line 23, strike "2" and insert: *1*

Amendment 2—On page 6, line 4, after "sold" insert: *, and an imprint made thereof*

Amendment 3—On page 6, line 7, after "s. 370.07(6)" insert: *, and shall provide the holder of the saltwater products license with a copy of the record*

Amendment 4—On page 6, line 31, after "*However,*" insert: *effective July 1, 1993,*

Amendment 5—On page 7, strike all of lines 11-13 and insert: *agreements with respect to such fees.*

Amendment 6—On page 12, between lines 17 and 18, insert:

Section 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

(Renumber subsequent section.)

Amendment 7—On page 12, strike all of lines 19 and 20 and insert: law.

Amendment 8—In title, on page 1, line 6, after the semicolon (;) insert: providing additional requirements for wholesale dealers;

Amendment 9—In title, on page 1, line 19, after the semicolon (;) insert: providing that the provisions of the act are severable;

Senator Bruner moved the following amendment which was adopted:

Amendment 10—On page 12, line 18, insert:

Section 7. In the region west of the Ochlockonee River mullet will be declared a restricted species only in October and November.

(Renumber subsequent sections.)

HB 747

Senator Wexler moved the following amendment which failed:

Amendment 1—On page 2, strike all of lines 3-14 and insert:

Section 2. *The sum of $250,000 is hereby appropriated for fiscal year 1991-1992 and an additional sum of $250,000 is appropriated for fiscal year 1992-93* from funds in the State Treasury not otherwise appropriated, to the *Crimes Compensation Trust Fund.*

Section 3. The Comptroller is directed to draw his *warrants in favor of the Crimes Compensation Trust Fund in the amounts of $250,000 for fiscal year 1991-92 and $250,000 for fiscal year 1992-93* upon funds in the State Treasury to the credit of the *Crimes Compensation Trust Fund,* and the State Treasurer is directed to pay the same out of such funds.

HB 1323

Senator Dudley moved the following amendment which was adopted:

Amendment 1—On page 7, strike all of lines 5-15 and insert:

Section 3. This act, except for this section, which shall take effect upon this act becoming a law, shall take effect only upon its approval by a majority vote of the qualified electors voting in a referendum to be called and held by the Board of County Commissioners of Collier County. The election may be held in conjunction with any primary, general, or special election but must be held no later than the general election to be held in November 1992. Any person who is an elector of Collier County and a resident of the North Naples Fire Control and Rescue District or the Little Hickory, Bonita Shores Fire Control District is eligible to vote in the referendum. The referendum may be conducted by mail ballot.

CS for HB 1527

Senators Meek, Thurman, Walker and Kirkpatrick offered the following amendments which were moved by Senator Meek and adopted:

Amendment 1—On page 5, between lines 8 and 9, insert:

Section 5. The Board of Regents shall develop a plan for establishing a College of Law by Florida Agricultural and Mechanical University. The plan shall include a projected operating and capital budget, including anticipated student enrollment; a description of any programmatic and administrative relationship that the college should have with any other public or private college of law in the state; and an analysis of the effect that the creation of such a college might have on existing public and private colleges of law in this state. The plan shall be submitted to the President of the Senate and Speaker of the House of Representatives by January 1, 1992.

(Renumber subsequent section.)

Amendment 2—In title, on page 1, line 16, after the semicolon (;) insert: requiring the Board of Regents to develop a plan for establishing a College of Law by Florida A & M University; providing the contents of such plan; requiring submission of such plan to the Legislature;

HB 1633

Senator Thomas moved the following amendment which was adopted:

Amendment 1—On page 2, strike all of lines 6-10 and insert:

(3) The office of the Santa Rosa County Property Appraiser shall be reimbursed for assessing such taxes in the manner and amount authorized by general law, and the office of the Santa Rosa County Tax Collector shall receive a commission or fee of 3 percent for collecting such taxes.

CS for HB 1637

Senator Johnson moved the following amendments which were adopted:

Amendment 1—On page 29, line 6, through page 32, line 5, strike all of said lines and renumber subsequent sections.

Amendment 2—In title, on page 1, line 28, through page 2, line 3, strike all of said lines and insert: system; amending s. 229.808, F.S.; correcting a

Amendment 3—On page 113, between lines 7 and 8, insert:

Section 77. Paragraph (k) of subsection (1) of section 246.041, Florida Statutes, is amended to read:

246.041 Powers and duties of board.—

(1) The board shall:

(a) Hold such meetings as are necessary to administer efficiently the provisions of ss. 246.011-246.151;

(b) Select annually a chairperson and a vice chairperson;

(c) Adopt and use an official seal in the authentication of its acts;

(d) Make rules for its own government;

(e) Adopt rules necessary to carry out its functions;

(f) Administer ss. 246.011-246.151;

(g) Appoint, on the recommendation of its chairperson, executives, deputies, clerks, and employees of the board;

(h) Maintain a record of its proceedings;

(i) Cooperate with other state and federal agencies in administering the provisions of ss. 246.011-246.151;

(j) Prepare an annual budget;

(k) Transmit all fees, donations, or other receipts of money *through the Department of Education* ~~to the Treasurer~~ to be deposited in the *Institutional Assessment Trust Fund created by s. 246.31* ~~General Revenue Fund of the state~~;

(l) Transmit to the Governor, the Speaker of the House of Representatives, the President of the Senate, the minority leader of the Senate, and the minority leader of the House of Representatives on July 1, 1989, and each succeeding year an annual report which shall include, but not be limited to:

1. A detailed accounting of all funds received and expended.

2. The number of complaints received and investigated, by type.

3. The number of findings of probable cause.

4. A description of disciplinary actions taken, by statutory classification.

5. A description of all administrative hearings and court actions.

6. A description of the board's major activities during the previous year; and

(m) Serve as a central agency for collection and distribution of current information regarding institutions licensed by the board, institutions exempt from licensure by the board pursuant to s. 246.085(2)(a) or (c), and any other nonpublic colleges eligible to participate in state student financial aid programs or eligible to receive federal Title IV funds. Aggregate information collected shall be compatible with the comprehensive educational data base developed by the Florida Center for Educational Statistics pursuant to s. 229.552.

1. The data collected by the board shall include information relating to the college administration, calendar system, admissions requirements, student costs and financial obligations, financial aid information, refund policy, placement services, number of full-time and part-time faculty, student enrollment and demographic figures, degree programs, and off-campus academic programs. Other information shall be collected in response to specific needs or inquiries. Financial information of a strictly proprietary, commercial nature is excluded from this requirement.

2. The board shall provide to each participating institution annually the format, definitions, and instructions for submitting the required information.

3. The data submitted by each institution shall be accompanied by a letter of certification signed by the chief administrative officer of the institution, affirming that the information submitted is accurate.

4. A summary of the data collected by the board shall be included in the annual report to the Governor, the Speaker of the House of Representatives, the President of the Senate, the minority leader of the Senate, and the minority leader of the House of Representatives. The information collected by the board may also be used by the Department of Education for such purposes as statewide master planning, state financial aid programs, and publishing directories; by the Legislature; and to respond to consumer inquiries received by the board.

Section 78. Section 246.061, Florida Statutes, is amended to read:

246.061 Expenditures.—The Treasurer shall pay out all moneys and funds provided for in ss. 246.011-246.151 upon proper warrant issued by the Comptroller, drawn upon vouchers approved by the Department of Education for all lawful purposes necessary to the administration of ss. 246.011-246.151. The board shall make annual reports to the Governor showing in detail amounts received and all expenditures. All fees, donations, or other receipts of money by the board shall be paid into the *Institutional Assessment Trust Fund created by s. 246.31* ~~State Treasury~~, and the funds appropriated for the purposes of ss. 246.011-246.151 shall be from the *Institutional Assessment Trust Fund and other state fund sources as appropriate* ~~General Revenue Fund~~, based on an appropriate budget approved by the board and submitted to the Legislature through the Governor in accordance with chapter 216. The board shall include in its annual report to the Governor a statement of major activities during the period covered by such report.

Section 79. Section 246.101, Florida Statutes, is amended to read:

246.101 Fees.—

(1)(a) For activities related to licensure, the board shall *establish a fee for initial application for institutional licensure, annual reviews, special reviews, 1-day committee visits, multi-day committee visits, late application and material submission, initial agent licensure, and renewal agent licensure.* ~~charge the following fees:~~

~~1. Initial application for institutional licensure:~~ ..... ~~$800~~

~~2. Annual review fee:~~ ..... ~~$250~~

~~3. Special review fee:~~ ..... ~~$150~~

~~4. One day committee visit:~~ ..... ~~$200~~

~~5. Each additional day of committee visit:~~ ..... ~~$ 50~~

~~6. Late fee for materials sent after due date:~~ ..... ~~$100~~

~~7. Licensure of agent:~~

~~a. Initial license:~~ ..... ~~$ 50~~

~~b. Annual renewal of license:~~ ..... ~~$ 25~~

(b) For activities related to *fair consumer practices for licensed or accredited nonpublic colleges as directed by s. 246 085(5), data collection for nonpublic colleges eligible to participate in state student financial aid programs as directed by s. 246.041, and* authorization to operate in Florida ~~without offering educational programs~~, the board shall *establish a fee for initial application and annual review.* ~~charge the following fees:~~

~~1. Initial application:~~ ..... ~~$100~~

~~2. Annual review:~~ ..... ~~$ 50~~

(c) For activities related to approval to use the term "college" or "university," the board shall *establish a fee for initial application and annual review.* ~~charge the following fees:~~

~~1. Initial application:~~ .....~~$100~~

~~2. Review:~~ ..... ~~$ 50~~

(2) All fees shall be submitted through the Department of Education to the Treasurer, to be deposited in the *Institutional Assessment Trust Fund created by s. 246.31* ~~General Revenue Fund of the state~~.

(3) All fees authorized to be collected are considered to be administrative fees and shall not be refundable.

Section 80. Section 246.219, Florida Statutes, is amended to read:

246.219 License fees.—

(1) Each initial application for a license to operate a school shall be accompanied by a license fee of not less than $500, and each application for the renewal of such license shall be accompanied by an annual license fee of *at least* ~~not less than~~ $300, provided that the fee for a biennial license shall be *at least* ~~not less than~~ $600. A fee shall be charged for a supplementary application for the approval of any additional field or course of instruction. Such fees shall be delineated, by rule, by the board.

(2) Fees for agents representing schools shall be *at least* $50 for the initial license and *at least* $25 for renewal of the license, excluding the cost of obtaining criminal justice information. Applicants shall bear the cost of obtaining such information.

(3) The board shall adopt rules establishing a charge of *at least* ~~not less than~~ $250 for a delinquent application for license renewal.

(4) All license fees shall be transmitted by the board *through the Department of Education* ~~to the State Treasurer~~ to be deposited in the *Institutional Assessment Trust Fund created by s. 246.31* ~~General Revenue Fund~~.

Section 81. Section 246.224, Florida Statutes, is transferred, renumbered as section 246.31, Florida Statutes, and amended to read:

246.31 ~~246.224~~ Institutional Assessment Trust Fund.—

(1) There is created an Institutional Assessment Trust Fund to be administered by the *Department of Education* ~~State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools~~ pursuant to this section and rules of the *State* Board *of Education*. The trust fund shall consist of all *fees and* fines imposed upon nonpublic *colleges and* schools pursuant to *chapter 246* ~~ss. 246.201-246.231~~. *The department shall maintain separate revenue accounts for the State Board of Independent Colleges and Universities and the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools.*

(2) Funds from the trust fund shall be used for purposes including, but not limited to, the following:

(a) Authorized ~~board~~ expenses *of the respective boards in carrying out their required duties.*

(b) Financial assistance programs for students who attend nonpublic institutions licensed by the board.

(c) Educational programs for the benefit of current and prospective owners, administrators, agents, and faculty of institutions licensed by the board.

(3) The board may utilize other individuals or entities to administer the programs authorized in subsection (2).

Section 82. Paragraph (c) of subsection (2) of section 246.228, Florida Statutes, is amended to read:

246.228 Grounds for disciplinary action; action by the board.—

(2) The board shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(c) Imposition of an administrative fine of no less than $100 and no more than $1,000 for each count or separate offense. Such fine shall be deposited in the Institutional Assessment Trust Fund pursuant to *s. 246.31* ~~s. 246.224~~.

(Renumber subsequent section.)

Amendment 4—In title, on page 6, line 13, following the semicolon (;) insert: amending ss. 246.041, 246.061, F.S.; revising provisions related to the deposit and appropriation of certain funds related to the State Board of Independent Colleges and Universities; amending s. 246.101, F.S.; revising the schedule for fees collected by the State Board of Independent Colleges and Universities; amending s. 246.219, F.S.; revising the schedule for fees collected for school agents by the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools; revising provisions related to the deposit of fees collected by the board; transferring, renumbering, and amending s. 246.224, F.S.; revising provisions related to the administration and use of the Institutional Assessment Trust Fund; amending s. 246.228, F.S.; correcting a cross-reference;

Amendment 5—On page 102, line 6, through page 103, line 3, strike all of said lines and insert:

Section 67. Subsections (4) and (8) of section 230.2312, Florida Statutes, 1990 Supplement, are amended to read:

230.2312 Florida Primary Education Program.—

(4) PROMOTION, EXTENSION, OR DISMISSAL.—~~Third grade students may be eligible for promotion from the Florida Primary Education Program to grade four upon satisfactory attainment of the minimum student performance standards required by s. 229.565; however, a student who has been properly classified in accordance with rules established by the state board as "mentally handicapped," "deaf," "specific learning disabled," "emotionally handicapped," or "profoundly handicapped" and who is assigned to a full time special program for such students may be exempted from this requirement. Non-English speaking children may be permitted to demonstrate mastery of skills in their native languages.~~ At the end of grade three, there shall be three alternatives provided for each student:

(a) The student ~~has met the minimum performance standards and~~ shall enter the fourth grade;

(b) The student shall continue in an extension of the program experience for no more than 1 year ~~in order to have an additional opportunity to meet the minimum performance standards of grade three~~, at which time he shall progress according to the district's student progression plan; or

(c) The student shall be referred to exceptional student education if it appears that he requires the services of exceptional student education.

(8) CLASS SIZE REPORT.—By *January* ~~March~~ 1 of each year, the Commissioner of Education shall report to the President of the Senate, the Speaker of the House of Representatives, and the State Board of Education concerning class size in the primary grades. The report shall

list by district and by grade the number of classes having 25 or fewer students; for each integer greater than 25 and less than 35, the number of classes having a number of students equal to such integer; and the number of classes having 35 or more students. The number of students shall be determined according to the actual student membership per kindergarten through grade three classroom during the spring and fall count of full-time equivalent students. The report shall also list by district the number of classrooms in each grade that accommodate more than one full-time certified teacher and the number of classrooms for which a full-time aide is employed. The department shall assist districts in reporting any factors that contribute to unusual size or organization of classes in the primary grades.

Amendment 6—In title, on page 5, line 21, after the semicolon (;) insert: revising a reporting requirement;

Amendment 7—On page 100, line 22, strike *"or lease purchase"*

Amendment 8—On page 113, between lines 7 and 8, insert:

Section 77. Paragraph (d) of subsection (2) of section 236.25, Florida Statutes, 1990 Supplement, is amended to read:

236.25 District school tax.—

(2) In addition to the maximum millage levy as provided in subsection (1), each school board may levy not more than 2 mills against the nonexempt assessed valuation for school purposes to fund:

(d) The purchase of new and replacement equipment, *which, until June 30, 1992, may include library books, audio-visual materials, computer software, and motor vehicles. By September 1, 1992, each school board must report to the Office of Educational Facilities of the Department of Education all expenditures made pursuant to this paragraph for the purchase of library books, audio-visual materials, computer software, and motor vehicles.*

Violations of these expenditure provisions shall result in an equal dollar reduction in the Florida Education Finance Program (FEFP) funds for the violating district in the fiscal year following the audit citation.

(Renumber subsequent sections.)

Amendment 9—In title, on page 6, line 13, after the semicolon (;) insert: amending s. 236.25, F.S.; authorizing school boards to use certain discretionary ad valorem tax revenues for the purchase of new and replacement library books, audio-visual materials, computer software, and motor vehicles; providing reporting requirements;

Amendment 10—On page 23, strike all of lines 9 and 10 and insert:

(1) The Commissioner of Education shall select ~~three~~ community colleges and ~~three~~ public school districts to

Amendment 11—On page 113, strike all of lines 20 and 21 and insert: chapter 90-91, Laws of Florida, are

Amendment 12—In title, on page 6, line 16, strike "231.532,"

Amendment 13—In title, on page 6, line 28, strike "district quality instruction incentives,"

Amendment 14—On page 47, line 29, through page 48, line 27, strike all of said lines and renumber subsequent sections.

Amendment 15—In title, on page 2, strike all of lines 28-31 and insert: provisions; amending ss. 231.30 and

Amendment 16—On page 113, between lines 7 and 8, insert:

Section 77. Section 233.067, Florida Statutes, 1990 Supplement, is amended to read:

233.067 Comprehensive health education and substance abuse prevention.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Comprehensive Health Education and Substance Abuse Prevention Act."

(2) INTENT.—The Legislature recognizes that sound health habits are essential to the educational and personal success of the student. The Legislature further recognizes that schools are uniquely situated to effectively promote the establishment of sound health habits among our youth, including prevention of substance abuse and an awareness of the benefits of sexual abstinence and the consequences of teenage pregnancy. To this end, it is the intent of the Legislature to implement a comprehensive health education and substance abuse prevention program in Florida's public schools.

(3) DEFINITIONS.—As used in this section, the term "comprehensive health education" includes, but is not limited to, such concerns as mental and emotional health, sexually transmissible diseases, human immunodeficiency virus infection, acquired immune deficiency syndrome and other communicable diseases, substance abuse (including alcohol and tobacco), benefits of sexual abstinence and consequences of teenage pregnancy, environmental health, safety and emergency care, nutrition and food management, personal health and hygiene, dental health, hereditary diseases, developmental disabilities, growth and development, and consumer health and careers.

(4) ADMINISTRATION OF THE COMPREHENSIVE HEALTH EDUCATION AND SUBSTANCE ABUSE PREVENTION PROGRAM.—

(a) There is created a comprehensive health education and substance abuse prevention program for children and youths in kindergarten and grades 1 through 12. Responsibility for the administration of this section shall rest with the Department of Education, in cooperation with, and with the advice of, the Department of Health and Rehabilitative Services. The administration of the program shall be pursuant to rules and regulations adopted by the State Board of Education, provided that such rules shall require the minimum amount of paperwork and reporting necessary to comply with this section. For purposes of administering this section, the commissioner shall establish a Prevention Resource Center within the department and shall assign appropriate staff to work directly with school district personnel. The center shall serve as a clearinghouse for evaluation and dissemination of information, materials, and model programs and shall provide program and technical assistance and other prevention services as determined by the commissioner.

(b) In administering this section, the department shall take into consideration the advice of an advisory council to the Prevention Resource Center consisting of representatives of the Florida Medical Association school health medical advisory committee to the department, the state university and community college systems, school food service personnel, governmental agencies, school boards, district school personnel, teachers' associations, and any official and voluntary health or substance abuse prevention and treatment agencies as may be deemed appropriate. The department is authorized to reimburse the members of this advisory council for travel and per diem expense, as provided by law, when performing advisory services requested by the department.

(c) The comprehensive health education and substance abuse prevention program shall include the following in all public and laboratory schools:

1. Implementation of inservice education programs for teachers, counselors, and other persons, which programs deal with comprehensive health education, substance abuse prevention, prevention of sexually transmissible diseases, especially human immunodeficiency virus infection and acquired immune deficiency syndrome, and the benefits of sexual abstinence and consequences of teenage pregnancy. Such inservice education programs shall be consistent with the 5-year master plan, as specified in s. 236.0811, and shall include training in substance abuse identification and prevention. The training plan may provide for the option of using teachers as trainers and shall include, but not be limited to: information on current theory, knowledge, and practice regarding substance abuse; identification and referral procedures; legal issues; peer counseling; and methods of teaching decisionmaking skills and building self-concept. Inservice teacher education materials and student materials which are based upon individual performance and designed for use with a minimum of supervision shall be developed and made available to all school districts and laboratory schools.

2. Implementation of management training programs consistent with the provisions of s. 231.087 for principals and other school leaders on the identification, prevention, and treatment of substance abuse and the availability of local and regional referral resources.

3. Instruction in nutrition education as a specific area of health education instruction. Nutrition education shall include, but not be limited

to, sound nutritional practices, wise food selection, analysis of advertising claims about food, proper food preparation, and food storage procedures. The purpose of such nutrition education programs shall be to educate students in the overall area of nutrition education and significantly reduce health problems associated with poor or improper nutrition practices.

4. Instruction in substance abuse prevention in kindergarten through grade 12. Such instruction shall be designed to meet local needs and priorities and shall articulate clear instructional objectives aimed at the prevention of alcohol and substance abuse. The instruction shall be appropriate for the grade and age of the student and shall reflect current theory, knowledge, and practice regarding prevention of substance abuse and may contain instruction in such components as health, personal, and economic consequences of substance abuse and instruction in decision-making, resisting peer pressure, self-concept building skills, and identifying and dealing with situations that pose a risk to one's health and may lead to substance abuse.

5. Instruction in the causes, transmission, and prevention of human immunodeficiency virus infection and acquired immune deficiency syndrome and other sexually transmissible diseases for students. Such instruction shall be included in appropriate middle school or junior high school health and science courses and in life management skills and other high school courses. Any student whose parent makes written request to the school principal shall be exempt from reproductive health or AIDS instructional activities, as requested. Curriculum frameworks for comprehensive health education shall not interfere with the local determination of appropriate curriculum which reflects local values and concerns.

6. Upon approval by the district school board, an opportunity~~, beginning with the 1990-1991 school year,~~ for 9th-12th grade students to receive instruction in cardiopulmonary resuscitation in order to become certified in that technique. A school district may enter a cooperative arrangement with a local government or nonprofit association to provide training in cardiopulmonary resuscitation through instructors certified in that technique.

7. Design and development of programs for the selection and training of health education instructors from existing teaching staff and the orientation to teaching roles for persons employed in appropriate health fields and community volunteers.

8. Development of training programs to allow the use of school food service personnel as resource persons.

9. Instruction in reproductive health, interpersonal skills, and parenting to reduce teenage pregnancy and to promote healthy behavior in Florida's children for all students in kindergarten through grade 12, beginning with the 1991-1992 school year. In order that children make informed and constructive decisions about their lives, complete and accurate comprehensive health education shall be made available to all young people. Curriculum shall be developed to reduce destructive behavior in children, including early sexual involvement, substance abuse, suicide, and activities which result in sexually transmitted diseases, acquired immune deficiency syndrome, and early teenage pregnancy, with subject materials appropriate to the grade level and values consistent with those of the community. Instruction shall also include an understanding of the body and its systems and identification and prevention of child abuse in the lower grades and decisionmaking in the middle and higher grades. Instruction in human sexuality shall take into account the whole person, shall present ethical and moral dimensions, shall not be an expression of any one sectarian or secular philosophy, and shall respect the conscience and rights of students and parents. School districts and laboratory schools are encouraged to provide written materials on reproductive health to parents, as well as opportunities for parents to become informed about the instruction their children are receiving and to receive instruction themselves. All course materials and oral or visual instruction shall conform to the requisites and intent of all Florida law and the State Constitution. All instructional materials, including teachers' manuals, films, tapes, or other supplementary instructional material shall be available for inspection by parents or guardians of the children engaged in such classes.

10. Instruction in the benefits of sexual abstinence and consequences of teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome in appropriate middle school or junior high school health, science, and home economics courses and in life management skills and other appropriate high school courses. Curriculum frameworks shall be created or modified as necessary to help ensure such instruction.

(5) DISTRICT PROGRAM RESPONSIBILITIES.—

(a) Each school district shall designate one or more contact persons to coordinate the district's comprehensive health education and substance abuse prevention program and to receive materials and information from the Prevention Resource Center. District responsibilities may include cooperating with law enforcement and alcohol abuse and substance abuse treatment agencies and encouraging business and community involvement in prevention activities. Each district shall plan for efficient use of state resources and prevention center resources, including, but not limited to, training programs for school personnel, curriculum materials, and identification, referral, and legal guidelines.

(b) Pursuant to policies and regulations to be adopted by the Commissioner of Education, each district school board, laboratory school, or consortium thereof shall submit to the commissioner a proposed program designed to effectuate an exemplary comprehensive health education and substance abuse prevention program for kindergarten through grade 12. Such programs shall be implemented no later than the 1988-1989 school year in each public school within the district. The proposal shall include:

1. A statement of the nature of the comprehensive health education and substance abuse prevention program proposed;

2. A provision for a sequential program of instruction in comprehensive health education, including nutrition education and substance abuse education, at the four progressional levels K-3, 4-6, 7-9, and 10-12. The sequential program shall be integrated into the curriculum for each grade, kindergarten through 12, with special emphasis in the middle grades. The program for kindergarten through grade 3 shall take into account the developmental needs of young children and shall emphasize personal health and safety;

3. The number of teachers and students to be involved;

4. A provision stating how the involvement of governmental agencies and private organizations will be enlisted in order to ensure the use of all available resources in the implementation of the program;

5. An estimate of the cost;

6. A plan for evaluation of the program;

7. A plan for coordinating this program with student services and dropout prevention, pursuant to the provisions of ss. 230.2313 and 230.2316, respectively, and other social services, and for the provision of support activities for students in treatment and those returning to school after treatment or suspension;

8. A plan for integration of the program into the general curricular and financial program of the district;

9. A provision for involvement by parents or legal guardians, the community, and businesses; and

10. Such other information as the commissioner shall by regulation require.

(6) TECHNICAL ASSISTANCE.—Upon request of a district school board, laboratory school, or consortium thereof, the department shall provide such technical assistance as is necessary to develop and submit a proposed program for comprehensive health education and substance abuse prevention. The department shall develop and make available to any requesting district school board one or more model suggested programs for substance abuse prevention, including recommended minimum number of hours of instruction in substance abuse prevention appropriate for each grade level, kindergarten through 12.

(7) PROGRAM REVIEW; FUNDING.—The commissioner shall review and approve, disapprove, or resubmit for modification all proposed comprehensive health education and substance abuse prevention programs submitted. Approval shall be based on the assurance that components specified in this section have been met. For those programs approved, the commissioner shall authorize distribution of funds equal to the cost of the program from funds appropriated to the Department of Education for comprehensive health education and substance abuse prevention purposes.

(8) PROGRAM EVALUATION AND MONITORING.—The department shall monitor and evaluate the programs or projects funded under subsection (7) and evaluate the overall comprehensive health edu-

cation and substance abuse prevention program. The department shall collect, analyze, evaluate, and disseminate to all school districts, laboratory schools, or consortia thereof, resource information on effective comprehensive health education and substance abuse programs. Program evaluations shall include, but not be limited to, components for determining program or project effectiveness, efficiency, and use of resources. A report on the overall evaluation as well as recommendations for funding and any other recommendations deemed to be appropriate by the commissioner shall be included in the annual report of the Commissioner of Education required under s. 229.575(1).

(9) NONPUBLIC PERSONNEL PERMITTED TO PARTICIPATE.—Teachers or school administrators employed by a nonpublic school may participate as students in inservice teacher education institutes or curriculum development programs conducted pursuant to this section, provided such participants assume the pro rata share of the cost or charges for tuition.

(10) STUDENT EXEMPTION.—Any child whose parent presents to the school principal a signed statement that the teaching of disease and its symptoms, development, and treatment, and the use of instructional aids and materials of such subjects, conflicts with his religious beliefs shall be exempt from such instruction. No child so exempt shall be penalized by reason of such exemption.

(11) USE OF FUNDS.—In implementing this section, every effort shall be made to combine funds appropriated for this purpose with funds available from all other sources, federal, state, local, or private, in order to achieve maximum benefits for improving health education and substance abuse prevention.

(12) Subsections (4) and (10) apply regardless of the extent to which the provisions of those subsections are specifically funded in the General Appropriations Act.

(Renumber subsequent sections.)

Amendment 17—In title, on page 6, line 13, after the semicolon (;) insert: amending s. 233.067, F.S.; relating to comprehensive health education and substance abuse prevention; providing certain requirements for implementation;

Amendment 18—On page 113, between lines 22 and 23, insert:

Section . (1) Notwithstanding section 236.25, Florida Statutes, when moneys appropriated to a district school board are insufficient to maintain class size, within programs, based upon the class size of the 1989-1990 school year, the school board may use moneys that are collected pursuant to a levy authorized in subsection (2) of section 236.25, Florida Statutes, and that are not otherwise encumbered for the purposes prescribed in that subsection to replace such moneys not received by the school board.

(2) Moneys collected pursuant to a levy authorized by subsection (2) of section 236.25, Florida Statutes, and used pursuant to this section:

(a) May not be used in an amount greater than the amount of moneys required to maintain class size, within programs, based upon the class size of the 1989-1990 school year.

(b) May be used for direct instructional costs to the school pursuant to section 237.34, Florida Statutes, only and may not be used to pay administrative costs.

(3) The district school board shall publish a notice of its intent to expend funds pursuant to this section and hold a public hearing to consider and adopt a supplemental budget as to such expenditures. The notice must specify the board's intent to expend funds and the purpose, date, time, and place of the public hearing. The notice must be published in a newspaper of general paid circulation in the county and must not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

(4) This section expires June 30, 1993.

(Renumber subsequent sections.)

Amendment 19—In title, on page 7, line 6, after the semicolon (;) insert: providing that district school boards may use ad valorem tax revenues collected for capital outlay purposes to fund classroom operations under certain circumstances;

Senator Gordon moved the following amendments which were adopted:

Amendment 20—On page 5, line 14, insert:

Section 1. Paragraph (c) of subsection (5) of section 230.23, Florida Statutes, 1990 Supplement, is amended to read:

230.23 Powers and duties of school board.—The school board, acting as a board, shall exercise all powers and perform all duties listed below:

(5) PERSONNEL.—Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of chapter 231:

(c) Compensation and salary schedules.—Adopt a salary schedule or salary schedules to be used as a basis for paying all school employees, such schedules to be arranged, insofar as practicable, so as to furnish incentive for improvement in training and for continued and efficient service and fix and authorize the compensation of school employees on the basis of such schedules. *A district school board, in determining the salary schedule for instructional personnel, shall consider the prior teaching experience of a person who has been designated state teacher of the year by any state in the United States.*

(Renumber subsequent sections.)

Amendment 21—In title, on page 1, line 2, after the semicolon (;) insert: amending s. 230.23, F.S.; requiring each district school board to consider the teaching experience of certain instructional personnel in determining the salary schedule for instructional personnel;

Senator McKay moved the following amendments which were adopted:

Amendment 22—On page 41, line 11, after the period (.) insert: *Notwithstanding any provision of law to the contrary, a school employee who is denied continued employment because the employee cannot meet the conditions established by law and by state board rule for obtaining a teaching certificate is ineligible for unemployment compensation under chapter 443.*

Amendment 23—In title, on page 2, line 19, after the semicolon (;) insert: providing that certain school employees who are denied continued employment are ineligible for unemployment compensation;

Senator Souto moved the following amendments which were adopted:

Amendment 24—On page 113, between lines 22 and 23, insert:

Section 78. Paragraph (b) of subsection (1) and subsections (2) and (3) of section 240.408, Florida Statutes, 1990 Supplement, are amended to read:

240.408 Challenger Astronauts Memorial Undergraduate Scholarship Program.—

(1) There is created a Challenger Astronauts Memorial Undergraduate Scholarship Program to be administered by the Department of Education. Eligibility for scholarships awarded pursuant to this section shall be limited to students who:

(b) Receive a Florida public school diploma pursuant to s. 229.814 or s. 232.246, *or graduate from a Florida nonpublic secondary school in compliance with ss. 229.808 and 232.246(1)-(4) and regulations of the Federal Office for Civil Rights and which school is accredited by the Southern Association of Colleges and Schools or another statewide accrediting agency affiliated with the Council for American Private Education.*

(2) Each district school board shall nominate one candidate annually for receipt of an award pursuant to this section. Such nominations shall be made subject to the recommendations of a district nominating panel appointed by the school board, which shall consist of teachers, administrators, and lay persons. *Additionally, a committee of nonpublic school personnel appointed by the Commissioner of Education shall nominate seven eligible nonpublic school candidates pursuant to this section.* Criteria for student nominations shall consist of extracurricular activities, letters of recommendation, and an essay of no more than 1,000 words related to the topic of "The Challenge of Space."

(3) A panel consisting of the Chancellor of the Board of Regents, the executive director of the community college system, and the Commissioner of Education shall select 20 award recipients from the district nominees *and 2 award recipients from nonpublic school nominees.*

(Renumber subsequent section.)

Amendment 25—In title, on page 7, line 6, after the semicolon (;) insert: amending s. 240.408, F.S.; providing for the award of scholarships to nonpublic school students from the Challenger Astronauts Memorial Undergraduate Scholarship Program;

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The Committee on Governmental Operations recommended the following amendments which were moved by Senator Childers and failed:

Amendment 1—On page 9, lines 25-31, and on page 10, lines 1-30, strike all of said lines and insert: demonstrates receipt of a D.D.S. or D.M.D.~~, or the equivalent,~~ from said school; ~~or~~

2. Completes a 2-year supplemental dental education program at an accredited dental school and receives a dental diploma, degree, or certificate as evidence of program completion; or

3.~~2.~~ Exhibits manual skills on a laboratory model pursuant to rules of the board. The board may charge a reasonable fee, not to exceed $250, to cover the costs of administering the exhibition of competency in manual skills. If the applicant fails to exhibit competent clinical skills in two attempts, he shall not be entitled to take the examinations authorized in subsection (4). Effective *December 31* ~~October 1~~, 1991, no applicant may fulfill the requirements of this paragraph by taking the laboratory model exam. On or after said date, applicants must complete the educational requirements set forth in *subparagraphs* ~~subparagraph~~ 1 *or 2.*.

The provisions of paragraph (a) and subparagraph (c)*3*~~2~~. notwithstanding, an applicant who is a graduate of a dental college or school not accredited in accordance with paragraph (2)(b) and who has failed to pass part I or part II of the national board examination in two attempts may take the laboratory model exam required in subparagraph (c)*3*~~2~~. if the board finds that he has taken remedial training in the subject areas in which he tested below standard on said national board examination and that he has subsequently passed that part of such exam which he had previously failed, provided that no applicant shall be entitled to this exception who fails either part of the national board examination a total of three times. Further, an applicant who has failed to pass the laboratory model exam required in subparagraph (c)*3*~~2~~. in two attempts may be allowed by the board to make a third and final attempt if the board finds that he has taken remedial training in clinical subjects in which he tested below standard. Upon passing said laboratory model exam, the applicant may take the licensure examinations required in subsection (4). Further, the educational requirements found in subparagraph (b)1. do not apply to persons who began dental education prior to October 1, 1983, and such persons shall be governed by the educational requirements in existence on September 30, 1983.

Amendment 2—In title, on page 1, strike all of lines 2-12 and insert: An act relating to the scheduled repeal and prior legislative review of certain professions, regulatory functions, and advisory bodies; postponing the October 1, 1991, repeal of the following statutes until October 1, 1992, and providing for review of same pursuant to s. 11.61, F.S., the Regulatory Sunset Act, in advance of October 1, 1992: ch. 494, F.S., relating to the regulation of mortgage brokers; ch. 560, F.S., relating to the sale of money orders; part I of ch. 624, F.S., consisting of ss. 624.01, 624.02, 624.03, 624.031, 624.04, 624.05, 624.06, 624.07, 624.075, 624.08, 624.09, 624.10, 624.11, 624.12, 624.124, 624.125, 624.126, 624.13, 624.15, 624.155, 624.19, 624.21, and 624.215, relating to the scope of the insurance code; part II of ch. 624, F.S., consisting of ss. 624.302, 624.303, 624.305, 624.307, 624.308, 624.310, 624.311, 624.312, 624.313, 624.314, 624.315, 624.3151, 624.316, 624.317, 624.318, 624.319, 624.320, 624.321, 624.322, 624.324, 624.33, 624.34, and 624.5091, F.S., relating to duties of the Department of Insurance; part V of ch. 624, F.S., consisting of ss. 624.601, 624.6011, 624.6012, 624.602, 624.603, 624.604, 624.605, 624.606, 624.6065, 624.607, 624.608, 624.6081, 624.609, and 624.610, F.S., relating to types of insurance, limits of risk, and reinsurance; ch. 625, F.S., relating to accounting, investments, and deposits by insurers; part XVIII of ch. 627, F.S., consisting of ss. 627.9301, 627.9302, 627.9303, 627.9304, and 627.9305, F.S., relating to life maintenance insurance contracts; ch. 628, F.S., relating to stock and mutual insurers and holding companies; ch. 629, F.S., except for ss. 629.401 and 629.5011, F.S., relating to reciprocal insurers; ch. 630, F.S., relating to alien insurers, trusted assets, and domestication; ch. 631, F.S., relating to insurer insolvency and guaranty of payment; ch. 641, F.S., relating to regulation of health care service programs; postponing the October 1, 1991, repeal of the following statutes until October 1, 1992, and providing for review of same pursuant to s. 11.611, F.S., the Sundown Act, in advance of October 1, 1992: s. 20.19(5)(e), F.S., relating to the Medicaid Advisory Council; part V of ch. 154, F.S., consisting of ss. 154.401, 154.402, 154.403, 154.404, 154.405, 154.406, 154.407, 154.408. 154.409, 154.41, 154.411, 154.412, 154.413, 154.414, 154.415, 154.418, 154.42, 154.422, 154.423, 154.424, 154.425, and 154.426, F.S., relating to the State of Florida Health Facility Authority; s. 229.053(2)(m), F.S., relating to the authority of the State Board of Education to appoint subordinate advisory bodies; s. 229.8361, F.S., relating to the Florida Council for the Hearing Impaired; s. 230.2317(2), F.S., relating to the Advisory Board for the Service Network for the Severely Emotionally Disturbed; s. 230.66(2), F.S., relating to the Industry Services Advisory Council; ss. 233.07, 233.08, 233.09, 233.095, 233.10, 233.11, 233.115, 233.14, and 233.15, F.S., relating to state instructional material councils; ss. 240.145 and 240.147, F.S., relating to the Postsecondary Education Planning Council; s. 240.257(6)(c), F.S., relating to committees appointed by state university presidents to process applications and nominations for eminent scholar seats; s. 240.515(2)(b), F.S., relating to the Florida Medical Museum Council; s. 240.533(3), F.S., relating to the Council on Equity in Athletics; s. 267.073, F.S., relating to the Union Bank Advisory Council; ss. 381.503(5) and (8), F.S., relating to the Community Hospital Education Council; s. 410.501, F.S., relating to the public and private sector multidisciplinary advisory group on housing; s. 413.011(2), F.S., relating to the Advisory Council for the Blind; s. 420.609, F.S., relating to the Affordable Housing Study Commission; part II of ch. 427, F.S., consisting of ss. 427.501, 427.502, 427.503, 427.504, 427.505, 427.506, 427.507, and 427.508, F.S., relating to the Florida Council for the Hearing Impaired; s. 553.49, F.S., relating to the advisory committee to the Florida Board of Building Codes and Standards; ss. 553.71(1), 553.74, and 553.77, F.S., relating to the Florida Board of Building Codes and Standards; amending s. 33 of ch. 87-387, Laws of Florida, and s. 7 of ch. 88-303, Laws of Florida, correcting a reference and postponing until October 1, 1992, the repeal and review of s. 382.025, F.S., relating to the issue of birth certificates and marriage licenses by the State Registrar; amending subsection (4) of s. 4 of ch. 88-391, F.S.; postponing the repeal of s. 402.3198, F.S., relating to intergenerational child care facilities until July 1, 1992; amending s. 2 of ch. 88-289, Laws of Florida; postponing until October 1, 1992, the repeal of provisions in s. 443.111, F.S., relating to unemployment compensation payments; amending s. 4 of ch. 88-380, Laws of Florida, and s. 10 of ch. 89-350, Laws of Florida; postponing until July 1, 1992, the repeal of provisions in ss. 456.2226(3)-(8), F.S., requiring specified licensees to complete a course on the human immunodeficiency virus; amending s. 466(3)(c), F.S.; modifying methods by which certain applicants may be licensed to practice dentistry; amending s. 561.704, F.S.; postponing until October 1, 1992, the repeal of the responsible vendors program; amending s. 54 of ch. 88-380, Laws of Florida; correcting a reference and postponing until October 1, 1992, the repeal of s. 641.3007, F.S., relating to health maintenance organizations; providing an effective date.

Senator Childers moved the following amendments which were adopted:

Amendment 3—Strike everything after the enacting clause and insert:

Section 1. Section 655.001, Florida Statutes, is amended to read:

655.001 Purpose; application.—The *purposes of the financial institutions codes are* ~~purpose of this chapter is~~ to:

(1) Provide general regulatory powers to be exercised by the Department of Banking and Finance in relation to the regulation of financial institutions. *The financial institutions codes* ~~This chapter shall~~ apply to all state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to state-authorized or state-chartered financial institutions.

(2) Provide for and promote:

(a) The safe and sound conduct of the business of the financial institutions subject to the financial institutions codes.

(b) The prudent conservation of the assets of the financial institutions subject to the financial institutions codes.

(c) The maintenance of public confidence in the financial institutions subject to the financial institutions codes.

(d) The protection of the interests of the public in the safety and soundness, and the preservation, of the financial institution system in this state and the protection of the interests of the depositors and creditors of financial institutions.

(e) The protection of the interests of the public in the proper conduct of fiduciary functions; the safety, soundness, and preservation of the system of the conduct in this state of trust business by trust companies and banks and associations that have trust departments; the protection of the interests of beneficiaries and other members of the public using the services of, doing business with, or otherwise affected by, trust companies, trust departments of banks and associations, and other business organizations in the conduct of trust business or other exercise of fiduciary functions or powers; and the protection of the interests of the creditors of trust companies.

(f) The opportunity for state financial institutions to be and remain competitive with each other, with financial institutions or organizations existing under statutes of this state other than the financial institutions codes, and with other financial institutions and organizations organized or existing under, or deriving their authority or powers from, the laws of other states, the United States, or foreign countries.

(g) The opportunity for financial institutions to serve effectively the convenience and needs of their customers or members and the public and to participate in and promote the economic progress and welfare of this state and the United States.

(h) The opportunity for the management of financial institutions in conducting the business and affairs of their institutions, to exercise their business judgment, subject to the provisions of the financial institutions codes and to the extent compatible with, and subject to, the purposes and policies stated in this section.

(i) The modernization of state law governing financial institutions and governing the exercise of fiduciary and other representative powers by trust companies and trust departments of banks and associations.

(j) The delegation to the department of adequate rulemaking power and administrative discretion, subject to the provisions of the financial institutions codes and to the purposes and policies stated in this section, in order that the supervision and regulation of financial institutions may be flexible and readily responsive to changes in economic conditions, in technology, and in financial institution practices.

Section 2. Section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in this chapter, unless the context otherwise requires, *the term:*

(a) "Affiliate" means any financial institution holding company pursuant to federal law or any subsidiary or service corporation of such a holding company.

(b) "Appropriate federal regulatory agency" means the Federal Reserve Board, including its Board of Governors and the Federal Reserve bank of the Federal Reserve district in which the institution is located in the case of a state member bank; the Federal Deposit Insurance Corporation in the case of a state nonmember bank or a savings and loan association; the Comptroller of the Currency in the case of a national bank; the Office of Thrift Supervision in the case of a savings and loan association; the National Credit Union Administration in the case of a federally insured credit union; and the Resolution Trust Corporation.

(c) "Capital accounts" means unimpaired capital stock, unimpaired surplus, and undivided profits or retained earnings of a financial institution.

(d)~~(a)~~ "Department" means the Department of Banking and Finance.

(e) "Executive officer" means an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the financial institution; the term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by officers other than such individual, whether or not such policy standards have been adopted by the board of directors. The chairman of the board, the president, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless any such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein.

(f)~~(b)~~ "Financial institution" means *a state* ~~an~~ association, bank, ~~industrial savings bank,~~ trust company, international bank agency, ~~or~~ representative office *or international administrative office*, or credit union.

(g) "Financial institution-affiliated party" means:

1. Any director, officer, employee, or controlling stockholder (other than a financial institution holding company) of, or agent for, a financial institution, subsidiary, or service corporation;

2. Any other person who has filed or is required to file a change-of-control notice with the appropriate state or federal regulatory agency;

3. Any stockholder (other than a financial institution holding company), any joint venture partner, or any other person as determined by the department who participates in the conduct of the affairs of a financial institution, subsidiary, or service corporation; or

4. Any independent contractor (including any attorney, appraiser, consultant, or accountant) who knowingly or recklessly participates in:

a. Any violation of any law or regulation;

b. Any breach of fiduciary duty; or

c. Any unsafe and unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution, subsidiary, or service corporation.

(h)~~(c)~~ "Financial institutions codes" means:

1. Chapter 655, relating to financial institutions generally;

2.~~1.~~ Chapter 657, relating to credit unions;

3.~~2.~~ Chapter 658, relating to banks and trust companies;

4.~~3.~~ Chapter 660, relating to trust business;

~~4. Chapter 661, relating to safe deposit business;~~

~~5. Chapter 662, relating to bank service corporations;~~

5.~~6.~~ Chapter 663, relating to international banking corporations; *and*

~~7. Chapter 664, relating to industrial savings banks; and~~

6.~~8.~~ Chapter 665, relating to associations.

(i) "Imminently insolvent" means a condition in which a financial institution has total capital accounts, or equity less the allowance for loan losses in the case of a credit union, of less than 1 percent of its total assets, after adjustment for apparent losses.

(j) "Insolvent" means a condition in which:

1. The capital accounts, or equity less the allowance for loan losses in the case of a credit union, and all assets of a financial institution are insufficient to meet liabilities;

2. The financial institution is unable to meet current obligations as they mature, even though assets may exceed liabilities; or

3. The capital accounts, or equity less the allowance for loan losses in the case of a credit union, of a financial institution are exhausted by losses and no immediate prospect of replacement exists.

(k) "Main office" or "principal office" of a financial institution means the main business office designated or provided for in the articles of incorporation or bylaws of a financial institution at such identified

location as has been or is hereafter approved by the department, in the case of a state financial institution, or by the appropriate federal regulatory agency, in the case of a national or federal financial institution; and, with respect to the trust department of a bank or association that has trust powers, each of these terms means the office or place of business of the trust department at such identified location, which need not be the same location as the main office of the bank or association exclusive of the trust department, as has been or is hereafter approved by the department, in the case of a state bank or association that has a trust department, or by the appropriate federal regulatory agency, in the case of a national bank or federal association that has a trust department. "Main office" or "principal office" of a trust company means the office designated or provided for as such in its articles of incorporation, at such identified location as has been or is hereafter approved by the relevant chartering authority.

(l) "Officer" of a financial institution means any individual duly elected or appointed to, or otherwise performing the duties and functions appropriate to, any position or office having the designation or title of chairman of the board of directors, vice chairman of the board of directors, chairman of the executive committee, president, vice president, assistant vice president, cashier or assistant cashier, comptroller, assistant comptroller, trust officer, assistant trust officer, secretary or assistant secretary (of a trust company), or any other office or officer designated in, or as provided by, the articles of incorporation or bylaws.

(m) "Service corporation" means an organization that is empowered to engage in any activity that is related or incidental to the business of a financial institution that is wholly or partially owned or controlled by a financial institution.

(n) "Subsidiary" means any organization permitted by the department which is controlled by a financial institution.

(o)~~(d)~~ "Unsafe or unsound practice" means any practice or conduct *found by the department to be* contrary to generally accepted standards applicable to the specific financial institution, *or a violation of any prior order of a state or federal regulatory agency,* which practice, ~~or~~ conduct, *or violation* creates the likelihood of ~~abnormal risk or~~ loss, insolvency, or dissipation of assets or otherwise ~~seriously~~ prejudices the interest of the specific financial institution or its depositors or members. *In making this determination, the department must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.*

(2) Terms which are defined in the financial institutions codes ~~shall~~, unless the context otherwise requires, have the meanings ascribed to them therein.

Section 3. Section 655.012, Florida Statutes, is amended to read:

655.012 General supervisory powers of the department; rulemaking.—In addition to other powers conferred by this chapter and by the financial institutions codes, the department shall have:

(1) General supervision over all state financial institutions, their subsidiaries, and service corporations.

(2) Access to all books and records of all persons over whom the department exercises general supervision as is necessary for the performance of the duties and functions of the department prescribed by ~~this chapter and~~ the financial institutions codes.

(3) Power to issue and publish rules, orders, and declaratory statements, disseminate information, and otherwise exercise its discretion to effectuate the purposes, policies, and provisions of ~~this chapter and~~ the financial institutions codes and to interpret and implement the provisions of ~~this chapter and~~ such codes consistently with such purposes, policies, and provisions.

Section 4. Section 655.013, Florida Statutes, is created to read:

655.013 Effect on existing financial institutions.—The charters of state financial institutions existing at the time of the adoption of this act shall continue in full force and effect. However, all state financial institutions and, to the extent applicable, all financial institutions shall hereafter be operated in accordance with the provisions of the financial institutions codes.

Section 5. Section 655.015, Florida Statutes, is created to read:

655.015 Construction; standards to be observed by department.—

(1) The financial institutions codes shall be liberally construed and applied to promote its purposes and policies.

(2) The purposes and policies as stated in s. 655.001 constitute standards to be observed by the department in the exercise of its discretionary powers under the financial institutions codes, in the adoption of rules, in the issuance of orders and declaratory statements, in the examination and supervision of financial institutions, and in all matters of construction and application of the financial institutions codes required for any determination or action by the department.

(3) The headings, captions, and catch lines at the beginning of sections, subsections, and paragraphs are for convenience only, do not constitute any part of the statutes comprising the financial institutions codes, do not constitute a complete index of the financial institutions codes, are not indicative of the intent of the financial institutions codes, and may not be used in construing or interpreting the financial institutions codes.

Section 6. Section 655.021, Florida Statutes, is transferred, renumbered as section 655.031, Florida Statutes, and amended to read:

655.031 ~~655.021~~ Administrative enforcement guidelines.—

(1) In imposing any administrative remedy or penalty provided for in ~~this chapter or in any of~~ the financial institutions codes, the department shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(2) All administrative proceedings under ss. 655.033 and 655.037 shall be conducted in accordance with chapter 120. Any service required or authorized to be made by the department under ~~this chapter or any of~~ the financial institutions codes may be made by certified mail, return receipt requested, delivered to addressee only; by personal delivery; or in accordance with chapter 48. The service provided for *hereunder is* ~~herein shall be~~ effective from the date of delivery.

Section 7. Section 655.025, Florida Statutes, is transferred, renumbered as section 655.032, Florida Statutes, and amended to read:

655.032 ~~655.025~~ Investigations, subpoenas, hearings, and witnesses.—

(1) The department may make investigations, within or outside this state, which it deems necessary to determine whether a person has violated or is about to violate any provision of ~~this chapter or of~~ the financial institutions codes or of the rules adopted by the department pursuant to ~~this chapter or~~ such codes.

(2)(a) In the course of or in connection with an investigation by the department pursuant to the provisions of subsection (1) or an investigation or examination in connection with any application to the department for the organization or establishment of a financial institution or a branch thereof, and in connection with an examination of a financial institution, *subsidiary, or service corporation* by the department, the department, or any of its officers holding no lesser title and position than examiner in charge or attorney at law, shall have the power:

1. To administer oaths and affirmations;

2. To take or cause to be taken testimony and depositions; and

3. To issue, revoke, quash, or modify subpoenas and subpoenas duces tecum under the seal of the department or to cause any such subpoena or subpoena duces tecum to be issued by any county court judge or clerk of the circuit court or county court to require persons to be or appear before the department at a time and place to be therein named and to bring such books, records, and documents for inspection as may be therein designated. Such subpoenas may be served by a representative of the department or may be served as otherwise provided for by law for the service of subpoenas.

(b) In connection with any such investigation or examination, the department may permit a person to file a statement in writing, under oath or otherwise as the department determines, as to facts and circumstances specified by the department.

(3)(a) In the event of ~~substantial~~ noncompliance with a subpoena issued or caused to be issued by the department pursuant to this section, the department may petition the circuit court of the county in which the

person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The department is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar.

(b) A copy of the petition shall be served upon the person subpoenaed by any person authorized by this section to serve subpoenas, who shall make and file with the court an affidavit showing the time, place, and date of service.

(c) At any hearing on any such petition, the person subpoenaed, or any person whose interests will be substantially affected by the investigation, examination, or subpoena, may appear and object to the subpoena and to the granting of the petition. The court may make any order which justice requires to protect a party or other person and his personal and property rights, including, but not limited to, protection from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Failure to comply with an order granting, in whole or in part, a petition for enforcement of a subpoena *is* ~~shall be~~ a contempt of court.

(4) Witnesses shall be entitled to the same fees and mileage to which they might be entitled by law for attending as witnesses in the circuit court, except that no fees or mileage shall be allowed in the case of testimony of *a financial institution-affiliated party* ~~an officer, director, committee member, or employee of a financial institution~~ if such testimony is taken at the principal office of the financial institution, *subsidiary, or service corporation* or at the residence of the *financial institution-affiliated party* ~~officer, director, committee member, or employee~~.

(5) Reasonable and necessary expenses incurred by the department and payable to persons ~~outside the department~~ in investigations may be assessed against such *an applicant, financial institution, subsidiary, service corporation, or financial institution-affiliated party* ~~applicants or financial institutions~~ on the basis of actual costs incurred. Assessable expenses include, but are not limited to: expenses for interpreters; expenses for communications; expenses for legal representation; expenses for economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the department is a ground for denial of the application or for revocation of any approval thereof.

Section 8. Section 655.029, Florida Statutes, is transferred, renumbered as section 655.0321, Florida Statutes, and amended to read:

655.0321 ~~655.029~~ Hearings and proceedings to be public; limited closing.—Except as otherwise provided by law, all hearings and proceedings, and documents related to the hearings and proceedings, conducted under s. 655.033 for the issuance of a cease and desist order and under s. 655.037 to remove *a financial institution-affiliated party* ~~an officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution~~ shall be public, unless the department, after considering the view of the party afforded the hearing, determines that the hearings and proceedings and related documents should be closed to the public as necessary:

(1) To protect the public interest;

(2) To protect depositors, members, creditors, or stockholders of the financial institution; or

(3) To protect the solvency of the financial institution.

Section 9. Section 655.0322, Florida Statutes, is created to read:

655.0322 Prohibited acts and practices; criminal penalties.—

(1) As used in this section, the term "financial institution" means a financial institution as defined in s. 655.50 which includes a state trust company, state or national bank, state or federal association, state or federal credit union, Edge Act or agreement corporation, international bank agency, representative office or administrative office or other business entity as defined by the department by rule, whether organized under the laws of this state, the laws of another state, or the laws of the United States, which institution is located in this state.

(2) It is unlawful for any financial institution-affiliated party to ask for, willfully and knowingly receive or consent to receive any commission, emolument, gratuity, money, property, or thing of value for:

(a) Procuring, or endeavoring to procure, for any person a loan or extension of credit from such financial institution, subsidiary, or service corporation; or

(b) Procuring, or endeavoring to procure, the purchase or discount of any note, draft, check, bill of exchange, or other obligation by such financial institution, subsidiary, or service corporation.

Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) It is unlawful for any financial institution-affiliated party to:

(a) Knowingly receive or possess himself of any of its property otherwise than in payment of a just demand, and, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in its books and accounts, or concur in omitting to make any material entry thereof;

(b) Embezzle, abstract, or misapply any money, property, or thing of value of the financial institution, subsidiary, or service corporation with intent to deceive or defraud such financial institution, subsidiary, or service corporation;

(c) Knowingly make, draw, issue, put forth, or assign any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, mortgage, judgment, or decree without authority from the board of directors of such financial institution;

(d) Make any false entry in any book, report, or statement of such financial institution, subsidiary, or service corporation with intent to deceive or defraud such financial institution or another person, firm, or corporation, or with intent to deceive the department, any other appropriate federal regulatory agency, or any authorized representative appointed to examine the affairs of such financial institution, subsidiary, or service corporation; or

(e) Deliver or disclose to the department or any of its employees any examination report, report of condition, report of income and dividends, internal audit, account, statement, or document known by him to be fraudulent or false as to any material matter.

Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any financial institution-affiliated party to knowingly place among the assets of such financial institution, subsidiary, or service corporation any note, obligation, or security which the financial institution, subsidiary, or service corporation does not own or which to the individual's knowledge is fraudulent or otherwise worthless or for any such individual to represent to the department that any note, obligation, or security carried as an asset of such financial institution, subsidiary, or service corporation is the property of the financial institution, subsidiary, or service corporation and is genuine if it is known to such individual that such representation is false or that such note, obligation, or security is fraudulent or otherwise worthless. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who willfully makes any false statement or report, or willfully overvalues any land, property, or security, for the purposes of influencing in any way the action of any financial institution, subsidiary, or service corporation or any other entity authorized by law to extend credit, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any person who knowingly executes, or attempts to execute, a scheme or artifice to defraud a financial institution, subsidiary, or service corporation or any other entity authorized by law to extend credit, or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, subsidiary, service corporation, or any other entity authorized by law to extend credit, by means of false or fraudulent pretenses, representations, or promises, is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Section 655.033, Florida Statutes, is amended to read:

655.033 Cease and desist orders.—

(1) The department may issue and serve upon any financial institution, *subsidiary, or service corporation, or upon any financial institution-affiliated party* ~~or upon any of its officers, directors, committee members, employees, or other persons participating in the conduct of the affairs of the financial institution~~, a complaint stating charges whenever the department has reason to believe that such financial institution, *subsidiary, service corporation, financial institution-affiliated party,* or individual named therein is engaging in or has engaged in conduct that is:

(a) An unsafe or unsound practice;

(b) A violation of any law relating to the operation of a financial institution;

(c) A violation of any rule of the department;

(d) A violation of any order of the department; ~~or~~

(e) A breach of any written agreement with the department;~~.~~

(f) A prohibited act or practice pursuant to s. 655.0322; or

(g) A willful failure to provide information or documents to the department or any appropriate federal agency, or any of its representatives, upon written request.

(2) The complaint *must* ~~shall~~ contain the statement of facts and notice of opportunity for a hearing pursuant to s. 120.57.

(3) If no hearing is requested within the time allowed by s. 120.57, or if a hearing is held and the department finds that any of the charges are true, the department may enter an order directing the financial institution, *subsidiary, service corporation, financial institution-affiliated party,* or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action.

(4) If the financial institution, *subsidiary, service corporation, financial institution-affiliated party,* or the individual named in such order fails to respond to the complaint within the time allotted in s. 120.57, such failure constitutes a default and justifies the entry of a cease and desist order.

(5) A contested or default cease and desist order is effective when reduced to writing and served upon the financial institution, *subsidiary, service corporation, financial institution-affiliated party,* or the individual named therein. An uncontested cease and desist order is effective as agreed.

(6) Whenever the department finds that conduct described in subsection (1) is likely to cause insolvency, substantial dissipation of assets or earnings of the financial institution, or substantial prejudice to the depositors, members, or shareholders, it may issue an emergency cease and desist order requiring the financial institution, *subsidiary, service corporation, or financial institution-affiliated party* ~~or any of its officers, directors, committee members, employees, or other persons participating in the conduct of the affairs of the financial institution~~ to immediately cease and desist from engaging in the conduct complained of and to take corrective action. The emergency order is effective immediately upon service of a copy of the order upon the financial institution, *subsidiary, service corporation, financial institution-affiliated party,* or the individual named therein and remains effective for 90 days. If the department begins nonemergency cease and desist proceedings under subsection (1), the emergency order remains effective until the conclusion of the proceedings under s. 120.57. Any emergency order entered under this subsection *is* ~~shall be~~ confidential until it is made permanent unless the department finds that such confidentiality will result in substantial risk of financial loss to the public.

Section 11. Section 655.034, Florida Statutes, is amended to read:

655.034 Injunctions.—Whenever a violation of the financial institutions codes is threatened or impending and such violation will cause substantial injury to a financial institution or to the depositors, *members,* creditors, or stockholders thereof, the circuit court *has* ~~is hereby granted~~ jurisdiction to hear any complaint filed by the department and, upon proper showing, to issue an injunction restraining such violation or granting other such appropriate relief.

Section 12. Section 655.037, Florida Statutes, 1990 Supplement, is amended to read:

655.037 Removal of *a financial institution-affiliated party* ~~officer, director, committee member, employee, or other person~~ by the department.—

(1) The department may issue and serve upon any *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution,~~ and upon the financial institution, *subsidiary, or service corporation* involved, a complaint stating charges whenever the department has reason to believe that the *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution~~ is engaging or has engaged in conduct that is:

(a) An unsafe or unsound practice;

(b) A prohibited act or practice;

(c)~~(b)~~ A willful violation of any law relating to financial institutions; ~~however, if such violation constitutes a misdemeanor, no complaint shall be served as provided in this section until the officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution is notified in writing of the matter of such violation and has been afforded a reasonable period of time, as set forth in the notice, to correct such violation and has failed to do so;~~

(d)~~(c)~~ A violation of any other law involving fraud or moral turpitude which constitutes a felony;

(e)~~(d)~~ A violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law;

(f)~~(e)~~ A willful violation of any rule of the department;

(g)~~(f)~~ A willful violation of any order of the department;

(h)~~(g)~~ A willful breach of any written agreement with the department; or

(i)~~(h)~~ An act of commission or omission or a practice which is a breach of trust or a breach of fiduciary duty.

(2) The complaint *must* ~~shall~~ contain the statement of facts and notice of opportunity for a hearing pursuant to s. 120.57.

(3) If no hearing is requested within the time allowed by s. 120.57, or if a hearing is held and the department finds that any of the charges in the complaint are true and that the financial institution has suffered or will likely suffer ~~substantial~~ loss or other ~~substantial~~ damage or that the interests of the depositors, members, or shareholders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution~~ has received financial gain by reason of such violation, ~~or~~ practice, or breach of fiduciary duty, and that such violation, ~~or~~ practice, or breach of fiduciary duty is one involving personal dishonesty on the part of such *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution,~~ or a ~~willful or~~ continuing disregard for the safety or soundness of the financial institution, *subsidiary, or service corporation,* the department may enter an order removing the *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution~~ or restricting or prohibiting participation by such *financial institution-affiliated party* ~~person~~ in the affairs of that particular *financial* institution, *subsidiary, or service corporation* or any other financial institution, *subsidiary, or service corporation.*

(4) If the *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution~~ fails to respond to the complaint within the time allowed in s. 120.57, such failure constitutes a default and justifies the entry of an order of removal.

(5) A contested or default order of removal is effective when reduced to writing and served on the financial institution, *subsidiary, or service corporation and the financial institution-affiliated party* ~~and the officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution~~. An uncontested order of removal is effective as agreed.

(6)(a) The chief executive officer, or the person holding the equivalent office, of a financial institution shall promptly notify the department if he has actual knowledge that any *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of that financial institution~~ is charged with a felony in a state or federal court.

(b) Whenever any *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution~~ is charged with a felony in a state or federal court, or in the courts of any foreign country with which the United States maintains diplomatic relations, and such charge alleges violation of any law involving fraud, currency transaction reporting, money laundering, theft, or moral turpitude and the charge under such foreign law is equivalent to a felony charge under state or federal law, the department may enter an emergency order suspending such *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person~~ or restricting or prohibiting participation by such *financial institution-affiliated party* ~~person~~ in the affairs of that particular *financial* institution, *subsidiary, or service corporation* or any other financial institution, *subsidiary, or service corporation,* upon service of the order upon the financial institution, *subsidiary, or service corporation* and the *financial institution-affiliated party so* ~~person~~ charged. The order shall contain notice of opportunity for a hearing pursuant to s. 120.57, where the *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person concerned~~ may request a postsuspension hearing to show that continued service to or participation in the affairs of the *financial* institution, *subsidiary, or service corporation* does not pose a threat to the interests of the *financial* institution's depositors, members, or stockholders, or threaten to impair public confidence in the *financial* institution. In accordance with applicable departmental rules, the department shall notify the *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person concerned~~ whether the order suspending or prohibiting the *financial institution-affiliated party* ~~person~~ from participation in the affairs of a financial institution, *subsidiary, or service corporation* will be rescinded or otherwise modified. The emergency order will remain in effect, unless otherwise modified by the department, until the criminal charge is disposed of. The acquittal of the *financial institution-affiliated party* ~~person~~ charged, or the final, unappealed dismissal of all charges against such person, will dissolve the emergency order, but will not prohibit the department from instituting proceedings under subsection (1). If the *financial institution-affiliated party* ~~person~~ charged is convicted or pleads guilty or nolo contendere, whether or not an adjudication of guilt is entered by the court, the emergency order *becomes* ~~shall become~~ final.

(7) Any *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution~~ removed from office pursuant to this section is not eligible for reelection to such position or to any official position in any financial institution in this state except with the written consent of the department. Any *financial institution-affiliated party* ~~officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution~~ who is removed, restricted, or prohibited from participation in the affairs of a financial institution pursuant to this section may petition the department for modification or termination of any such removal, restriction, or prohibition.

(8) The resignation, termination of employment or participation, or separation from a financial institution, subsidiary, or service corporation of the financial institution-affiliated party does not affect the jurisdiction and authority of the department to issue any notice and proceed under this section against such financial institution-affiliated party, if such notice is served before the end of the 6-year period beginning on the date such person ceases to be such a financial institution-affiliated party with respect to such financial institution, subsidiary, or service corporation.

Section 13. Section 655.0385, Florida Statutes, is created to read:

655.0385 Disapproval of directors and executive officers.—

(1) Each financial institution shall notify the department of the proposed appointment of any individual to the board of directors or the employment of any individual as an executive officer or equivalent position at least 30 days before such appointment or employment becomes effective, if the financial institution:

(a) Has been chartered for less than 2 years;

(b) Has undergone a change in control within the preceding 2 years;

(c) Is not in compliance with the minimum capital requirements applicable to such institution; or

(d) Is otherwise in an unsafe and unsound condition, as determined by the department, on the basis of such institution's most recent report of condition or report of examination.

(2) A financial institution may not appoint any individual to the board of directors, or employ any individual as an executive officer or equivalent position, if the department issues a notice of disapproval with respect to that person.

(3) The department shall issue a notice of disapproval if the competence, experience, character, or integrity of the individual to be appointed or employed indicates that it is not in the best interests of the depositors, the members, or the public to permit the individual to be employed by or associated with the financial institution.

Section 14. Section 655.0386, Florida Statutes, is created to read:

655.0386 Transactions with financial institution-affiliated parties.—

(1) CONFLICT OF INTEREST.—Directors and officers occupy a fiduciary relationship to the financial institution of which they are directors or officers, and a director or officer may not engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the financial institution, subsidiary, or service corporation which would result in a conflict of his own personal interests with those of the financial institution which he serves unless:

(a) Such business or transactions are conducted in good faith and are honest, fair, and reasonable to the financial institution, subsidiary, or service corporation and are on terms no more favorable than would be offered to a disinterested third party;

(b) A full disclosure of such business or transaction and the nature of the director's or officer's interest is made to the board of directors;

(c) Such business or transactions are approved in good faith by the board of directors, any interested director abstaining, and such approval is recorded in the minutes;

(d) Any profits inuring to the officer or director are not at the expense of the financial institution, subsidiary, or service corporation and do not prejudice the best interests of the financial institution, subsidiary, or service corporation in any way; and

(e) Such business or transactions do not represent a breach of the officer's or director's fiduciary duty and are not fraudulent, illegal, or ultra vires.

(2) DISCLOSURE OF PERSONAL INTEREST.—Without limitation by any of the specific provisions of this section, the department may require the disclosure by financial institution-affiliated parties of their personal interests, directly or indirectly, in any business or transactions on behalf of or involving the financial institution, subsidiary, or service corporation and of their control of or active participation in enterprises having activities related to the business of the financial institution, subsidiary, or service corporation.

(3) SPECIFIED RESTRICTIONS.—The following restrictions governing the conduct of directors and officers expressly are specified, but such specification is not to be construed in any manner as excusing such persons from the observance of any other aspect of the general fiduciary duty owed by them to the financial institution which they serve:

(a) Remuneration.—A director of a bank, association, or trust company may not accept director fees unless the director fees have been previously approved by the board of directors and such fees represent reasonable compensation for service as a director or member of a committee. This section does not limit or preclude reasonable compensation as otherwise authorized by subsection (1) for a director who also provides goods or services to the bank, association, or trust company.

(b) Assets.—Except as provided in ss. 657.039 and 658.48, a director or officer may not have any interest, directly or indirectly, in the proceeds of a loan or investment or of a purchase or sale made by the financial institution, subsidiary, or service corporation unless such loan, investment, purchase, or sale is authorized expressly by resolution of the board of directors and unless such resolution is approved by vote of at least a majority of the directors of the financial institution with all interested parties taking no part in such vote.

(c) Liabilities.—A financial institution-affiliated party may not have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings account, deposit, or other indebtedness issued by the financial institution, subsidiary, or service corporation.

(d) Voting rights; office.—An officer or director acting as proxy for a stockholder of a financial institution may not exercise, transfer, or delegate such vote or votes in any consideration of a private benefit or advantage, direct or indirect. The voting rights of stockholders and directors may not be the subject of sale, barter, exchange, or similar transaction, either directly or indirectly. Any officer or director who violates the provisions of this section is accountable to the financial institution for any increment.

Section 15. Section 655.0391, Florida Statutes, is created to read:

655.0391 Retention of supervision by department.—A financial institution may not cause to be performed, by contract or otherwise, any financial-institution services for itself, whether at or away from its main or branch office or on or off its premises, unless assurances satisfactory to the department are furnished to the department by both the financial institution and the person performing such services that the performance thereof will be subject to regulation and examination by the department to the same extent as if such services were being performed by the financial institution itself on its own premises.

Section 16. Section 655.0392, Florida Statutes, is created to read:

655.0392 Place of transacting business.—Any financial institution, except a credit union, organized under the laws of this state or federal law may apply for space in any building owned or leased by the state, political subdivision, or municipality in the community or political subdivision in which the financial institution does business. The application must be addressed to the officer charged with the allotment of space in such building, who, if space is available, may allot the space at a commercially reasonable rate. A credit union may apply for such space under the provisions of s. 657.008(4).

Section 17. Section 655.041, Florida Statutes, is amended to read:

655.041 Administrative fines; enforcement.—

(1) The department may, *by complaint, initiate* ~~in~~ a proceeding ~~initiated~~ pursuant to chapter 120 *to*~~,~~ impose an administrative fine against any person found ~~in such proceeding~~ to have ~~willfully~~ violated any provision of ~~this chapter or of~~ the financial institutions codes or a cease and desist order of the department or any written agreement with the department. No such proceeding shall be initiated and no fine shall accrue *pursuant to this section* until after such person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

(2) Any such fine may not exceed $1,000 a day for each violation except as provided in this section.

(a) If the department determines that any such person has recklessly violated any provision of the financial institutions codes or a cease and desist order of the department or any written agreement with the department, which violation results in more than a minimal loss to a financial institution, subsidiary, or service corporation, or a pecuniary benefit to such person, the department may impose a fine not exceeding $5,000 a day for each day the violation continues.

(b) If the department determines that any such person has knowingly violated any provision of the financial institutions codes or a cease and desist order of the department or any written agreement with the department, which violation results in more than a minimal loss to a financial institution, subsidiary, or service corporation, or a pecuniary benefit to such person, the department may impose a fine not exceeding $25,000 a day for each day the violation continues.

(c) The department may by complaint impose an administrative fine, not exceeding $5,000 a day, upon any financial institution-affiliated party, and upon a financial institution, subsidiary, service corporation, or affiliate, who refuses to permit an examiner to examine a financial institution, subsidiary, or service corporation, who refuses to permit an examiner to review the books and records of an affiliate, or who refuses to give an examiner any information required in the course of any examination or review of the books and records.

(3)~~(2)~~ Any administrative fine levied by the department ~~may be in such amount as the department determines pursuant to s. 655.021, not to exceed $1,000 for each day in which the violation has continued, and~~ may be enforced by the department by appropriate proceedings in the circuit court of the county in which such person resides or in which the principal office of a financial institution is located. In any administrative or judicial proceeding arising under this section, a party may elect to correct the violation asserted by the department and, upon doing so, any fine *ceases* ~~shall cease~~ to accrue; *however, an* ~~provided that the~~ election to correct the violation *does* ~~shall~~ not render any administrative or judicial proceeding moot. ~~All fines collected under this section shall be paid to the Financial Institutions' Regulatory Trust Fund of the department.~~

Section 18. Section 655.044, Florida Statutes, is amended to read:

655.044 Accounting practices; bad debts ineligible to be carried as assets.—

(1) *Except as otherwise provided by law, a* ~~Every~~ financial institution shall observe generally accepted accounting principles and practices. The department may authorize by rule exceptions to such accounting practices as necessary.

(2) A financial institution, *subsidiary, or service corporation* may not carry as an asset any note, obligation, or security which it does not own absolutely or which is known by the financial institution to be fraudulent or otherwise worthless; and a financial institution may not carry as an asset, in any report to the department or in any published report, any note or other obligation which is past due or upon which no interest has been paid for 1 year or longer *or which has been determined by the department to be a loss*. However, ~~such~~ past due paper may be carried to the extent of the reasonable value of any lien or other collateral given to secure such obligation; and, if the obligation is in the process of collection, it may be carried at its reasonable value as determined by the board of directors. The department may order the revision of any value so determined hereunder.

(3) A financial institution shall keep at its main office correct and complete books of accounts, membership or stockholder records, and minutes of the proceedings of members, stockholders, directors, and the executive committee. Complete records of all business transacted at the main office shall be maintained at the main office. Control records of all business transacted at each branch office shall be accessible to the main office. Accessibility may be provided by physical retention of records or by electronic or other means.

(4) Each branch office of a financial institution shall keep detailed records of all transactions at that office and shall furnish full control records to the main office. Records of such transactions may be furnished by electronic or other means.

Section 19. Section 655.045, Florida Statutes, 1990 Supplement, is amended to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1)(a) The department shall conduct an examination of the condition of each state financial institution during each 18-month period, beginning July 1, 1981. The department may accept an examination made by the appropriate federal regulator, insuring or guaranteeing corporation, or agency with respect to the condition of the financial institution or may make a joint or concurrent examination with the appropriate federal regulator, insuring or guaranteeing corporation, or agency. *If as a part of an examination or investigation of a financial institution, subsidiary, or service corporation, the department has reason to believe that an affiliate is engaged in an unsafe or unsound practice or that the affiliate has a negative impact on the financial institution, subsidiary, or service corporation, then the department may review such books and records as are reasonably related to the examination or investigation.* The department may furnish a copy of all examinations *or reviews* made of such financial institutions *or their affiliates* to the *state or federal financial*

institution regulators participating in the examination of a regional bank holding company; an association holding company; or any of their subsidiaries, service corporations, or affiliates; an ~~appropriate federal~~ regulator, insuring or guaranteeing corporation~~,~~ or agency~~,~~ or its representatives,~~;~~ or ~~to~~ state financial institution regulators participating in the examination of a ~~regional bank~~ holding company or its subsidiaries.

(b) The department may recover the costs of examination and supervision of a financial institution, *subsidiary, or service corporation* that is determined by the department to be engaged in an unsafe or unsound practice. *The department may also recover the costs of any review conducted pursuant to paragraph (a) of any affiliate of a financial institution determined by the department to have contributed to an unsafe or unsound practice at a financial institution, subsidiary, or service corporation.*

(c) For the purposes of this section, *the term* "costs" means the salary and travel expenses directly attributable to the field staff examining the financial institution and the travel expenses of any supervisory staff required as a result of examination findings.

(d) The department may require an audit of any financial institution, *subsidiary, or service corporation* by an independent certified public accountant approved by the department whenever the department, after conducting an examination of such financial institution, *subsidiary, or service corporation,* or after accepting an examination of such financial institution by the appropriate *state or* federal regulatory agency, determines that such an audit is necessary in order to ascertain the condition of the financial institution, *subsidiary, or service corporation.* The cost of such audit shall be paid by the financial institution, *subsidiary, or service corporation.*

The mailing of any fees incurred in accordance with this subsection *must* ~~shall~~ be postmarked no later than 30 days after the date of receipt of a notice of such fees due. The department may levy a late payment penalty of up to $100 per day or part thereof that a fee payment is overdue, unless it is excused for good cause. However, for intentional late payment of a fee, the department shall levy an administrative fine of up to $1,000 per day for each day the fee is overdue. ~~All late payment penalties collected under this subsection shall be paid to the Financial Institutions' Regulatory Trust Fund of the department.~~

(2)(a) The department shall require each financial institution, *subsidiary, or service corporation* to submit a report, at least *four times* ~~twice~~ each calendar year, as of such dates as the department may determine. Each such report *must* ~~shall~~ contain a declaration by the chief executive officer or any other officer authorized by the board of directors to make such declaration that the report is true and correct to the best of his knowledge and belief. Such report *must* ~~shall~~ include such information as the department ~~shall~~ by rule *requires* ~~require~~ for that type of institution.

(b) The department shall levy an administrative fine of up to $100 per day for each day the report is past due, unless it is excused for good cause. However, for intentional late filing of the report required under paragraph (a), the department shall levy an administrative fine of up to $1,000 per day for each day the report is past due. ~~All fines collected under this subsection shall be paid to the Financial Institutions' Regulatory Trust Fund of the department.~~

(3)(a) The department shall require the board of directors of each financial institution or, in the case of a credit union, the supervisory committee *or audit committee* to perform or cause to be performed, within each calendar year, an internal audit of each financial institution, *subsidiary, or service corporation* and to file a copy of the report and findings of such audit with the department on a timely basis. Such internal audit *must* ~~shall~~ include such information as the department ~~shall~~ by rule *requires* ~~require~~ for that type of institution.

(b) With the approval of the department, the board of directors or, in the case of a credit union, the supervisory committee may elect, in lieu of such periodic audits, to adopt and implement an adequate continuous audit system and procedure which *must* ~~shall~~ include full, adequate, and continuous written reports to, and review by, the board of directors or, in the case of a credit union, the supervisory committee, together with written statements of the actions taken thereon and reasons for omissions to take actions, all of which shall be noted in the minutes and filed among the records of the board of directors or, in the case of a credit union, the supervisory committee. If at any time such continuous audit system and procedure, including the reports and statements, becomes inadequate, in the judgment of the department, the financial institution shall promptly make such changes as may be required by the department to cause the same to accomplish the purpose of this section.

(4) A copy of the report of each examination shall be furnished to the financial institution examined. Such report of examination shall be presented to the board of directors ~~or, in the case of a credit union, to the supervisory committee~~ at its next regular or special meeting.

Section 20. Section 655.047, Florida Statutes, 1990 Supplement, is amended to read:

655.047 Assessments; financial institutions.—

(1) Each state financial institution shall pay to the department a semiannual assessment based on the total assets as shown on the statement of condition of the financial institution on the last business day in December and the last business day in June of each year.

(2) The mailing of *a* ~~the~~ semiannual *assessment must* ~~assessments shall~~ be postmarked on or before January 31 and July 31 of each year. The department may levy a late payment penalty of up to $100 per day or part thereof that *a* ~~the~~ semiannual assessment payment is overdue, unless it is excused for good cause. However, for intentional late payment of *a* ~~the~~ semiannual assessment, the department shall levy an administrative fine of up to $1,000 *a* ~~per~~ day for each day the semiannual assessment is overdue. ~~All late payment penalties collected under this subsection shall be paid to the Financial Institutions' Regulatory Trust Fund of the department.~~

(3) The assessments required by this section cover the 6-month period following the first day of the month in which they are due. The department may prorate the amount of the semiannual assessment; however, no portion of a semiannual assessment is refundable.

Section 21. Section 655.049, Florida Statutes, is amended to read:

655.049 Deposit of fees and assessments.—The ~~fees and~~ assessments, *application fees, late payment penalties, administrative fines, and other fees* provided for in the financial institutions codes shall, in all cases, be paid directly to the department, which shall deposit all thereof in the Financial Institutions' Regulatory Trust Fund, which fund shall be used by the department to pay its costs for administration of ~~this chapter and~~ the financial institutions codes. The department shall determine and report to the Legislature whether the fees and assessments provided in the financial institutions codes and assessed against and collected from *the* ~~each class of~~ financial institutions *that are subject to the financial institutions codes* support the *department's* expenditures ~~for each class of financial institutions~~. The Financial Institutions' Regulatory Trust Fund *is* ~~shall be~~ subject to the service charge imposed pursuant to chapter 215.

Section 22. Section 655.053, Florida Statutes, is amended to read:

655.053 Annual report.—The department shall submit a report no later than January 1 of each year to the Governor and to the Speaker of the House of Representatives and the President of the Senate, which report *must* ~~shall~~ include:

(1) A statement of the general condition and affairs of existing state financial institutions.

(2) The text of all rules which the department has adopted or amended since its last report.

(3) A statement of the status and remaining assets and liabilities of all state financial institutions in the process of liquidation.

(4) A summary of all changes occurring since its last previous report by reason of the opening of new state financial institutions, mergers, conversions, and the like.

(5) A summary of all powers granted to state financial institutions by virtue of the competitive equality provisions of s. 655.061.

(6) Other information showing general conditions or trends within the financial institutions industry.

(7)~~(6)~~ A summary of all court proceedings involving existing or proposed financial institutions in which the department was or is a party.

(8) Any suggestions that the department may have for legislation affecting the regulation of financial institutions in this state.

~~(7) Suggestions by the department for legislation affecting the regulation of financial institutions in the state.~~

Section 23. Section 655.057, Florida Statutes, is amended to read:

655.057 Records; limited restrictions upon public access.—

(1)(a) Except as otherwise provided in this section, all classes of records filed with the department pursuant to the financial institutions codes, including related information obtained or prepared by the department, shall be open to the public pursuant to chapter 119 and the rules of the department.

(b) Except for such portions thereof which are otherwise matters of public record or general public knowledge, the following records and information of the department are confidential:

1. Personal financial statements or information; personnel, medical, or similar records or information; records or information obtained or prepared by the department with reference to the character or reputation of any person; proprietary records or information of any person which does not constitute, and is not a part of or connected with, an unlawful activity, scheme, or device, the disclosure of which could provide an unfair advantage to another person and the disclosure of which is not clearly necessary to the public interest; and any record or information which would constitute a clearly unwarranted invasion of personal privacy.

2. Investigatory records compiled for civil or criminal law enforcement purposes, including investigatory records relating to a proceeding or the issuance of a cease and desist order or order of suspension or removal under ss. 655.033 and 655.037, *respectively,* but only to the extent that the disclosure of such records would:

a. Interfere with enforcement proceedings;

b. Deprive a person or institution of the right to a fair trial or an impartial adjudication;

c. Tend to impair the safety or soundness of any financial institution;

d. Constitute an unwarranted invasion of personal privacy;

e. Disclose the identity of a confidential source or, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, confidential information furnished only by the confidential source;

f. Disclose investigative techniques or procedures; or

g. Endanger the life or physical safety of law enforcement or department personnel.

3. Reports of examinations or operations, working notes or papers and memoranda and records, or portions thereof, containing or relating to an examination, operation, or condition report prepared by, or on behalf of or for the use of, the department or any other agency, state or federal, responsible for the regulation or supervision of financial institutions in this state, *or subsidiaries, service corporations,* or affiliates thereof. Reports of examinations or operations, or records or condition reports, may be released to third parties by the department or the financial institution as follows:

a. To the financial institution for its confidential use;

b. To any holding company of which the financial institution is a subsidiary;

c. To proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such *financial* institution;

d. To persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution; or

e. To any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, *financial institution* holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution.

Any person receiving confidential information pursuant to the provisions of this subparagraph shall maintain the confidentiality of the information. *The board of directors may release to a fidelity insurance company that portion of an examination report relating to a claim or investigation being conducted by such company. The department may deem portions of the examination report of a financial institution public information 5 years after appointment of a liquidator, receiver, or conservator to the extent that such disclosure does not conflict with the confidentiality provisions contained in subparagraphs 1. and 2.*

4. Testimony, depositions, books, records, documents, and other materials taken or compiled by the department during the course of an investigation under ~~this chapter or any of~~ the financial institutions codes until such investigation is complete. If the department submits such testimony, depositions, books, records, documents, or other material, or any part thereof, to any law enforcement agency for further investigation or for the filing of a criminal prosecution, it *must* ~~shall~~ remain confidential until the law enforcement agency has completed its investigation or has filed a criminal prosecution proceeding.

5. Records and reports submitted to and compiled by the department pursuant to s. 655.50.

(c) The provisions of this subsection do not prevent or restrict:

1. The publication of reports required to be submitted to the department pursuant to s. 655.045(2)(a) or required by applicable federal statutes or regulations to be published.

2. The furnishing of records or information to any other state, federal, or foreign agency responsible for the regulation, *insurance of accounts,* or supervision of financial institutions, *subsidiaries, or service corporations.* Any person or agency receiving confidential information pursuant to the provisions of this subparagraph shall maintain the confidentiality of the information.

3. The furnishing of records or information, in the case of a credit union, to the Florida Credit Union Guaranty Corporation, Inc.

4. The disclosure or publication of summaries of the condition of financial institutions and the disclosure or publication of general economic and similar statistics and data, provided any of the foregoing are in such form that the identity of particular financial institutions cannot be reasonably ~~expected to be~~ ascertained therefrom.

5. The reporting of any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.

6. The furnishing of information upon request to the ~~State~~ Treasurer regarding the financial condition of any financial institution, that is, or has applied to be, designated as a qualified public depository pursuant to chapter 280. Any information or records obtained by the Treasurer from the department under this section shall be maintained as confidential information and records and are exempt from the provisions of s. 119.07(1). Such exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(2)(a) The records specified to be confidential shall not be disclosed by the department or any of its officials, employees, or agents, except pursuant to an order of a court or a hearing officer under chapter 120 or to a legislative subpoena, as provided by law.

(b) Orders of courts or of hearing officers for the production of confidential records or information *must* ~~shall~~ provide for inspection in camera by the court or the hearing officer and, after the court or hearing officer has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, *the* ~~said~~ documents *are* ~~shall be~~ subject to further orders by the court or the hearing officer to protect the confidentiality thereof, except to the extent deemed necessary by the court or the hearing officer to protect the interests or rights of privacy or confidentiality of all the parties or affected persons or the soundness of the individual financial institutions or the financial institution industry. Any order directing the release of information relating to the soundness of any financial institution or the financial institution industry *is* ~~shall be~~ immediately reviewable. A petition by the department for review of an order directing the release of information relating to the soundness of any financial institution or the financial institution industry ~~shall~~ automatically *stays* ~~stay~~ further proceedings in the trial court or the administrative hearing until the disposition of such

petition by the reviewing court. If any other party files such a petition for review, it *operates* ~~will operate~~ as a stay of such proceedings only upon order of the reviewing court.

(c) Confidential records and information furnished in compliance with or in response to a legislative subpoena *are* ~~shall be~~ confidential communications, ~~shall~~ retain their confidential status while in the possession of any legislative body or committee receiving the same, and shall not be made public; and such confidential status *continues* ~~shall continue~~ after the legislative body or committee has returned such records to the department or other source from which they came. Confidential records and information furnished in compliance with, or in response to, a legislative subpoena shall not be disclosed or made public to any third party, except in a case involving investigation of charges against *a financial institution-affiliated party* ~~an officer~~ subject to impeachment or removal, and then only to the extent determined by the legislative body or committee to be necessary.

(3) Every credit union ~~and mutual association~~ shall cause to be kept at all times, in the principal office where its business is transacted, full and correct records of the names and residences of all the members of the credit union ~~or mutual association~~. Such records *are* ~~shall be~~ subject to the inspection of all the members of the credit union ~~or mutual association~~, and the officers authorized to assess taxes under state authority, during business hours of each business day. A current list of members shall be made available to the department's examiners for their inspection and, upon the request of the department, shall be transmitted to the department. Neither the department nor any person shall disclose or make public any such list or any part thereof, except that this prohibition does not apply to the names of officers, directors, committee members, and employees of a credit union ~~or mutual association~~.

(4) Every bank, ~~industrial savings bank,~~ trust company, and ~~stock~~ association shall cause to be kept at all times, in the principal office where its business is transacted, full and complete records of the names and residences of all the shareholders of the bank, ~~industrial savings bank,~~ trust company, or ~~stock~~ association and the number of shares held by each. Such records *are* ~~shall be~~ subject to the inspection of all the shareholders of the bank, ~~industrial savings bank,~~ trust company, or ~~stock~~ association, and the officers authorized to assess taxes under state authority, during business hours of each banking day. A current list of shareholders shall be made available to the department's examiners for their inspection and, upon the request of the department, shall be submitted to the department, but the department shall not disclose or make public such list or any part thereof.

(5) Materials supplied to the department or to employees of any financial institution by other governmental agencies, federal or state, or the Florida Credit Union Guaranty Corporation, Inc., ~~shall~~ remain the property of the submitting agency or the corporation, and any document request must be made to the appropriate agency. Any confidential or proprietary documents supplied to the department or to employees of any financial institution by other governmental agencies, federal or state, or by the Florida Credit Union Guaranty Corporation, Inc., shall be made public only with the consent of such agency or the corporation or pursuant to appropriate court or legislative subpoena, as provided by law. Any request to produce such materials *must* ~~shall~~ be made to the submitting agency.

(6) Reports of examinations, investigations, *applications*, and related information made by the department, or photographic copies thereof, shall be retained by the department for a period of at least 10 years.

(7) A copy of any document on file with the department which is certified by the department as being a true copy may be introduced in evidence as if it were the original. The department shall establish a schedule of fees for preparing copies of documents.

(8) Any person who willfully discloses information made confidential by this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 24. Section 655.059, Florida Statutes, is amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(1) The books and records of a financial institution *are* ~~shall be~~ confidential and shall be made available for inspection and examination only:

(a) To the department or its duly authorized representative;~~.~~

(b) To any person duly authorized to act for the financial institution;~~.~~

(c) To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;~~.~~

(d) As compelled by a court of competent jurisdiction;~~.~~

(e) As compelled by legislative subpoena as provided by law, in which case the provisions of s. 655.057(2)(c) ~~shall~~ apply;~~.~~

(f) Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;

(g)~~(f)~~ As authorized by the board of directors of the financial institution*; or*~~.~~

(h)~~(g)~~ As provided in subsection (2).

(2)(a) Each depositor, borrower, member, or stockholder *has* ~~shall have~~ the right to inspect such books and records of a financial institution as pertain to his loans or accounts or the determination of his voting rights.

(b) The books and records pertaining to the deposit accounts and loans of depositors, borrowers, members, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and shall not be released except upon express authorization of the accountholder as to his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information. *Information may also be released, without the authorization of a member or depositor but in a manner prescribed by the board of directors, to verify or corroborate the existence or amount of a customer's or member's account when such information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. In addition,* a financial institution and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers *or members*, subject to the requirement that each corporation receiving information that is confidential ~~shall~~ maintain the confidentiality of such information and ~~shall~~ not provide or disclose such information to any unaffiliated person or entity.

(c) *A person who willfully violates* ~~any willful violation of~~ the provisions of this section *that relate* ~~relating~~ to unlawful disclosure of confidential information is *guilty of* a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 25. Section 655.061, Florida Statutes, as amended by section 1 of chapter 88-113, Laws of Florida, is amended to read:

655.061 Competitive equality with federally organized or chartered financial institutions.—Subject to the prior approval of the department pursuant to rule or order of general application, state financial institutions subject to ~~this chapter and~~ the financial institutions codes may make any loan or investment or exercise any power which they could make or exercise if incorporated or operating in this state as a federally chartered or regulated financial institution of the same type and *are* ~~shall be~~ entitled to all privileges and protections granted federally chartered or regulated financial institutions of the same type under federal statutes and regulations. The provisions of this section *take precedence* ~~shall take priority~~ over, and *must* be given effect over, any other general or specific provisions of ~~this chapter and~~ the financial institutions codes to the contrary. In issuing an order or rule under this section, the department shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.

Section 26. Section 655.41, Florida Statutes, is amended to read:

655.41 Cross-industry conversions, mergers, consolidations, and acquisitions; definitions used in ss. 655.41-655.419.—As used in ss. 655.41-655.419, *the term*:

(1) "Financial *entity* ~~institution~~" means an association, bank, credit union, ~~industrial savings bank,~~ or trust company organized under the laws of this state or organized under the laws of the United States and having its principal place of business in this state.

(2) "Capital stock financial institution" means a financial *entity* ~~institution~~ which is authorized to issue capital stock.

(3) "Mutual financial institution" means a financial *entity* ~~institution, including a credit union,~~ which is not authorized to issue stock and the assets of which are owned by its members.

Section 27. Section 655.411, Florida Statutes, 1990 Supplement, is amended to read:

655.411 Conversion of charter.—

(1) Any financial *entity* ~~institution~~ may apply to the department for permission to *convert its charter without a change of business form or* convert its charter in order to do business as another type of financial *entity* ~~institution~~ in accordance with the following procedures:

(a) The board of directors *must* ~~shall~~ approve a plan of conversion by a vote of a majority of all the directors. The plan *must* ~~shall~~ include a statement of:

1. The type of financial *entity* ~~institution~~ which would result if the application were approved and the proposed name under which it would do business.

2. The method and schedule for terminating any activities and disposing of any assets *or liabilities* which would not conform to the requirements applicable to the resulting *financial entity* ~~institution~~.

3. The competitive impact of such change, including any effect on the availability of particular financial services in the market area served by the *financial entity* ~~institution~~.

4. Such financial data as may be required to determine compliance with the *capital,* reserve, and liquidity requirements applicable to the resulting *financial entity* ~~institution~~.

5. Such other information as the department may by rule require.

(b)~~1.~~ Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board, *must* ~~shall~~ be submitted to the department for approval before being submitted to the members or stockholders of the *financial entity* ~~institution~~. *The application for conversion must be in such form and contain such additional information as the department reasonably requires and must be accompanied by a nonrefundable fee of $7,500. Additionally, the department is authorized to assess any financial institution, applying to convert pursuant to this section, a nonrefundable examination fee to cover the actual costs of any examination required as a part of the application process.*

~~2. The application for conversion pursuant to this section shall be accompanied by a fee of $5,000.~~

(c) The department shall approve the plan if it finds that:

~~1. The public convenience and advantage would be promoted by the conversion.~~

1.~~2.~~ The resulting *financial entity* ~~institution~~ would have an adequate capital structure with regard to its activities and its deposit liabilities.

2.~~3.~~ The proposed conversion would not cause a substantially adverse effect on the financial condition of any financial *entity* ~~institution~~ already established in the primary service area.

3.~~4.~~ The officers and directors have sufficient experience, ability, and standing to indicate reasonable promise for successful operation of the resulting *financial entity* ~~institution~~.

4.~~5.~~ The proposed name of the resulting *financial entity* ~~institution~~ has been reserved with the Department of State.

5.~~6.~~ The schedule for termination of any nonconforming activities and disposition of any nonconforming assets *and liabilities* is reasonably prompt, and the plan for such termination and disposition does not include any unsafe or unsound practice.

6.~~7.~~ None of the officers or directors has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

If the department disapproves the plan, it shall state its objections and give an opportunity to the parties to amend the plan to overcome such objections. The department may deny an application by any financial *entity* ~~institution~~ which is subject to a cease and desist order or other supervisory restriction *or order* imposed by *any state or federal* ~~the~~ supervisory authority, insurer, or guarantor.

(d) If the department approves the plan, it may be submitted to the members or stockholders at an annual meeting or at any special meeting called to consider such action. Upon a favorable vote of a majority of the total number of votes eligible to be cast or, in the case of a credit union, a majority of the members present at the meeting, the plan *is* ~~shall be~~ adopted. Copies of the minutes of the proceedings of such meeting of the members or stockholders, verified by the affidavit of the secretary or an assistant secretary, shall be filed with the department within 10 days after such meeting. Such verified copies of the proceedings of such meeting *are* ~~shall be~~ presumptive evidence of the holding and action of such meeting. If the members or stockholders approve the plan of conversion, the directors shall then execute new articles of incorporation or amendments to existing articles and two copies of the new bylaws. The directors shall insert in the articles of incorporation the following: "This . . . (bank, association, etc.) . . . is incorporated by conversion from a . . . (national bank, state association, etc.) . . .."

(e) If the members or stockholders adopt the plan of conversion, the *financial entity* ~~institution~~ shall apply to the appropriate insurer or guarantor for a commitment for insurance of accounts or a certificate guaranteeing the shares and deposits of the resulting *financial entity* ~~institution~~.

(f) The plan shall not take effect until the department has received notice that the commitment for insurance of accounts or certificate of guaranty has been given by the insurer or guarantor. Upon receipt of such notice, the department shall issue a new charter to the *financial entity* ~~institution~~ authorizing it to transact business pursuant to applicable law.

(2) The department may provide by rule for the procedures to be followed by any national or federal financial *entity* ~~institution~~ seeking to convert its charter pursuant to this section.

(3) A mutual financial institution *requesting approval to convert its charter may* ~~shall~~ not be converted into a capital stock financial institution until it has complied with the requirements of s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations *are* ~~shall be~~ deemed to refer also to credit unions; but, in the case of a credit union, the provision therein concerning proxy statements *does* ~~shall~~ not apply.

(4) This section *does* ~~shall~~ not ~~be construed to~~ authorize a capital stock financial institution to convert to a mutual financial institution.

(5) Nothing in the law of this state shall restrict the right of a state financial institution to convert to a national or federal financial institution upon compliance with the laws of the United States, and, upon completion of such conversion, it shall surrender its charter as a state financial institution.

Section 28. Section 655.412, Florida Statutes, is amended to read:

655.412 Merger and consolidation.—

(1) With the approval of the department, any capital stock financial institution may be merged into or consolidated with another capital stock financial institution or a mutual financial institution. The provisions of ss. 658.41-658.45 ~~shall~~ govern any merger or consolidation pursuant to this subsection; and, for this purpose, references therein to banks and trust companies *are* ~~shall be~~ deemed to refer to capital stock financial institutions.

(2) A mutual financial institution *may* ~~shall~~ not be merged into a capital stock financial institution until it has *first converted into a capital stock financial institution in accordance with* ~~complied with the requirements of~~ s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations *are* ~~shall be~~ deemed to refer also to credit unions; but, in the case of a credit union, the provision therein concerning proxy statements *does* ~~shall~~ not apply.

(3) An application to merge or consolidate pursuant to this section *must* ~~shall~~ be accompanied by a fee of *$7,500; however, if three or more financial entities are involved in any such application, the fee is $3,500*

for each financial entity involved in the merger or consolidation ~~$1,250 for each financial institution involved in the merger or consolidation, up to a maximum fee of $5,000~~.

Section 29. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—Any financial *entity* ~~institution~~ may acquire all or substantially all of the assets of, or assume the liabilities of, any other financial *entity* ~~institution~~ in accordance with the procedures and subject to the *following* conditions and limitations ~~set forth below~~:

(1) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming *financial entity* ~~institution~~ and the board of directors of the transferring *financial entity must* ~~institution shall~~ adopt, by a majority vote, a plan for such acquisition, assumption, or sale on such terms as *are* ~~shall be~~ mutually agreed upon. The plan *must* ~~shall~~ include:

(a) The names and types of *financial entities* ~~the institutions~~ involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation of the transferring *financial entity* ~~institution~~ upon execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the department and approval of the members or stockholders of the transferring *financial entity* ~~institution~~.

(e) If a stock *financial* institution is the transferring *financial entity* ~~institution~~ and the proposed sale is not to be for cash, a clear and concise statement that dissenting stockholders of such *financial entity* ~~institution~~ are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of such acquisition, assumption, or sale and such other information and provisions as may be necessary to execute the transaction or as may be required by the department.

(2) APPROVAL OF DEPARTMENT.—Following approval by the board of directors of each participating *financial entity* ~~institution~~, the plan, together with certified copies of the authorizing resolutions adopted by the boards, *must* ~~shall~~ be forwarded to the department for its approval or disapproval. The department shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting *financial entity* ~~institution~~ would have an adequate capital structure in relation to its activities and its deposit liabilities;~~.~~

(b) The plan is fair to all parties*; and*~~.~~

(c) The plan is not contrary to the public interest.

If the department disapproves the plan, it shall state its objections and give an opportunity to the parties to amend the plan to overcome such objections.

(3) VOTE OF MEMBERS OR STOCKHOLDERS.—If the department approves the plan, it may be submitted to the members or stockholders of the transferring *financial entity* ~~institution~~ at an annual meeting or at any special meeting called to consider such action. Upon a favorable vote of 51 percent or more of the total number of votes eligible to be cast or, in the case of a credit union, 51 percent or more of the members present at the meeting, the plan *is* ~~shall be~~ adopted.

(4) ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring *financial entity* ~~institution~~, the president or vice president and the *cashier or corporate* ~~clerk or~~ secretary of such *financial entity* ~~institution~~ shall submit the adopted plan to the department, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating *financial entities* ~~institutions~~ have complied with all applicable federal law and regulations, the department shall certify, in writing, to the participants that the plan has been adopted and is in compliance with the provisions of this section.

(c) Notwithstanding approval of the members or stockholders or certification by the department, the board of directors of the transferring *financial entity* ~~institution~~ may, in its discretion, abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(5) FEDERALLY CHARTERED INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered *financial entity* ~~institution~~, all participants *must also* ~~shall~~ comply with such requirements as may be imposed by federal law for such an acquisition, assumption, or sale and provide evidence of such compliance to the department as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming *financial entity* ~~institution~~ is a federally chartered *financial entity* ~~institution~~, approval of the department *is* ~~shall~~ not ~~be~~ required.

(6) STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—~~Except as the department may authorize pursuant to s. 665.0335(2),~~ A mutual *financial* institution *may* ~~shall~~ not sell all or substantially all of its assets to a stock *financial entity* ~~institution~~ until it has *first converted into a capital stock financial institution in accordance with* ~~complied with the requirements of~~ s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations *are* ~~shall be~~ deemed to refer also to credit unions; but, in the case of a credit union, the provision therein concerning proxy statements *does* ~~shall~~ not apply.

(7) BRANCH OFFICES.—If the acquisition of assets or assumption of liabilities includes any bank, association, or trust company branch office, a branch application with a nonrefundable filing fee, in accordance with s. 658.26, must be filed for each proposed branch office of the acquiring or assuming financial entity.

Section 30. Section 655.416, Florida Statutes, is amended to read:

655.416 Book value of assets.—Upon the effective date of a merger, consolidation, ~~or~~ conversion, *or acquisition* pursuant to ss. 655.41-655.419, *an* ~~no~~ asset *may not* ~~shall~~ be carried on the books of the resulting *financial entity* ~~institution~~ at a valuation higher than that at which it was carried on the books of a participating or converting *financial entity* ~~institution~~ at the time of its last examination by a state or federal examiner before the effective date of such merger, consolidation, ~~or~~ conversion, *or acquisition*, without written approval from the department.

Section 31. Section 655.417, Florida Statutes, is amended to read:

655.417 Effect of merger, consolidation, conversion, or acquisition.—From and after the effective date of a merger, consolidation, conversion, or acquisition, the resulting *financial entity* ~~institution~~ may conduct business in accordance with the terms of the plan as approved; provided that:

(1) CONTINUING ENTITY.—Even though the charter of *a* ~~any~~ participating or converting *financial entity* ~~institution~~ has been terminated, the resulting *financial entity is* ~~institution shall be~~ deemed to be a continuation of ~~the entity of~~ the participating or converting *financial entity* ~~institution~~ such that all property of the participating or converting *financial entity* ~~institution~~, including rights, titles, and *interests* ~~interest~~ in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and all rights, privileges, interests, and assets of any conceivable value or benefit which are then existing, or pertaining to it, or which would inure to it, *are* ~~shall~~ immediately ~~be~~ vested in and continue to be the property of the resulting *financial entity* ~~institution~~, by act of law and without any conveyance or transfer and without further act or deed; and such *financial entity has, holds, and enjoys* ~~institution shall have, hold, and enjoy~~ the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the participating or converting *financial entity* ~~institution~~; and, at the time of the taking effect of such merger, consolidation, conversion, or acquisition, the resulting *financial entity has* ~~institution shall have~~ and *succeeds* ~~shall succeed~~ to all the rights, obligations, and relations of the participating or converting *financial entity* ~~institution~~.

(2) EFFECT ON JUDICIAL PROCEEDINGS.—Any pending action or other judicial proceeding to which the participating or converting *financial entity* ~~institution~~ is a party *is* ~~shall~~ not ~~be deemed to have been~~ abated ~~or to have been discontinued~~ by reason of such merger, consolidation, conversion, or acquisition but may be prosecuted to final judgment, order, or decree in the same manner as if such action had not been taken;

and the *financial entity* ~~institution~~ resulting from such merger, consolidation, conversion, or acquisition may continue such action in its new name; and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the participating or converting *financial entity* ~~institution~~ previously involved in such judicial proceeding.

(3) CREDITORS' RIGHTS.—The resulting *financial entity* ~~institution~~ in a merger, consolidation, conversion, or acquisition *is* ~~shall be~~ liable for all obligations of the participating or converting *financial entity* ~~institution~~ which existed prior to such action; and the action taken *does* ~~shall~~ not prejudice the right of a creditor of the participating or converting *financial entity* ~~institution~~ to have his debts paid out of the assets thereof, nor *may* ~~shall~~ such creditor be deprived of, or prejudiced in, any action against the officers, directors, ~~corporators, or~~ members, *or other persons participating in the conduct of the affairs* of a participating or converting *financial entity* ~~institution~~ for any neglect or misconduct.

(4) EXCEPTION.—In the *case* ~~event~~ of an acquisition of assets pursuant to s. 655.414, the provisions of subsections (1), (2), and (3) ~~shall~~ apply only to the assets acquired and the liabilities assumed by the resulting *financial entity* ~~institution~~, provided sufficient assets to satisfy all liabilities not assumed by the resulting *financial entity* ~~institution~~ are retained by the transferring *financial entity* ~~institution~~.

Section 32. Section 655.418, Florida Statutes, is amended to read:

655.418 Nonconforming activities; cessation.—If, as a result of a merger, consolidation, conversion, or acquisition pursuant to ss. 655.41-655.419, the resulting *financial entity* ~~institution~~ is to be of a different type or of a different character than any one or all of the participating or converting *financial entities* ~~institutions~~, such resulting *financial entity will* ~~institution shall~~ be subject to the following conditions and limitations:

(1) PLAN FOR TERMINATION.—The plan of merger, consolidation, conversion, or acquisition *must* ~~shall~~ set forth the method and schedule for terminating those activities *that* ~~which~~ are not permitted by the laws of this state for the resulting *financial entity* ~~institution~~ but *that* ~~which~~ were authorized for any of the participating or converting *financial entities* ~~institutions~~.

(2) EFFECTIVE DATE.—The plan of merger, consolidation, conversion, or acquisition *must* ~~shall~~ state that, from the effective date of such action, the resulting *financial entity will* ~~institution shall~~ not engage in any nonconforming activities, except to the extent necessary to fulfill obligations existing prior to the merger, consolidation, conversion, or acquisition, pursuant to subsection (4).

(3) COMPLIANCE WITH LENDING AND INVESTMENT LIMITATIONS.—If, as a result of such merger, consolidation, conversion, or acquisition, the resulting *financial entity will exceed* ~~institution exceeds~~ any lending, investment, or other limitations imposed by law, *the financial entity* ~~it~~ shall conform to such limitations within such period of time as *is* ~~shall be~~ established by the department.

(4) DIVESTITURE.—The department may, as a condition to such merger, consolidation, conversion, or acquisition, require a nonconforming activity to be divested in accordance with such additional requirements as it *considers* ~~may deem~~ appropriate under the circumstances.

Section 33. Section 655.419, Florida Statutes, is amended to read:

655.419 Effect.—The provisions of ss. 655.41-655.419 relating to merger, consolidation, conversion, or acquisition of assets of any financial *entity* ~~institution~~ are cumulative with all other provisions of the financial institutions codes and *do* ~~shall~~ not ~~be construed to~~ modify, limit, or repeal any of such other provisions except as expressly stated herein. Additionally, the provisions of ss. 655.41-655.419 *do* ~~shall~~ not *grant* ~~be construed as granting~~ any authority, directly or indirectly, for any bank, *association, trust company, association holding company,* or bank holding company, the operations of which are principally conducted outside this state, to acquire, convert to, or merge or consolidate with any financial *entity* ~~institution~~.

Section 34. Section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency *or monetary instruments*; when required; purpose; definitions; penalties.—

(1) This section may be cited as the "Florida Control of Money Laundering in Financial Institutions Act."

(2) It is the purpose of this section to require submission to the department of certain reports and maintenance of certain records of transactions involving currency *or monetary instruments* when such reports and records deter the use of financial institutions to conceal *the* proceeds of criminal activity and have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

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

(a) "Currency" means currency and coin of the United States or of any other country.

(b) "Financial institution" means any *state or* national bank ~~or banking association~~, state ~~bank or banking association, industrial savings bank,~~ trust company, ~~federal savings and loan association,~~ state *or federal* ~~savings and loan~~ association, ~~federal savings bank,~~ state *or* ~~savings bank,~~ federal credit union, ~~state credit union,~~ Edge Act or agreement corporation, or international bank agency, *representative office, administrative office, or other business entity as defined by department rule,* whether organized under the laws of this state, the laws of another state, or the laws of the United States, which institution is located in this state.

(c) "Financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in any way or degree.

(d) "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(e) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(f) "Report" means a report of each deposit, withdrawal, exchange of currency, or other payments or transfer, by, through, or to that financial institution, that involves a transaction required or authorized to be reported by this section, and *includes* ~~shall include~~ the electronic submission of such information in the manner provided for by rule of the department.

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

(4)(a) Every financial institution shall keep a record of each financial transaction *occurring in this state* known to it to involve currency of a value in excess of $10,000, ~~or~~ to involve the proceeds of specified unlawful activity, *or to be designed to evade the reporting requirements of this section, chapter 896, or any similar state or federal law* and shall file a report with the department at such time and containing such information as the department requires by rule. *Multiple financial transactions shall be treated as a single transaction if the financial institution has knowledge that they are made by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any business day, as defined in s. 655.89.* However, the filing of a duplicate copy of the report required by 31 U.S.C. s. 5313 will satisfy the reporting requirements of this subsection. The Department of Law Enforcement shall have access to, and *is* ~~shall be~~ authorized to inspect and copy, any report filed with the department pursuant to this section.

~~(b) The department shall provide any report filed pursuant to this section, or information contained therein, pursuant to an order of a judge of a court of competent jurisdiction or pursuant to a subpoena duces tecum only when the subpoena is:~~

~~1. Issued by the statewide prosecutor, a state attorney, a United States attorney, or a court in a criminal investigation or a criminal judicial proceeding;~~

~~2. Issued by a state or federal grand jury; or~~

~~3. Issued by a state attorney, the Department of Legal Affairs, a United States attorney, or a court in the course of a civil investigation or a civil judicial proceeding instituted by a state attorney, the Department of Legal Affairs, or a United States attorney under the state or federal racketeer influenced and corrupt organization act.~~

(b)~~(c)~~ Any financial institution may *keep a* record *of* ~~and report~~ any financial transaction *occurring in this state*, regardless of the value ~~of the property involved~~, if it suspects the transaction to involve the proceeds of specified unlawful activity.

(c) Each financial institution shall file a report with the department of the record required under paragraph (a) and any record maintained pursuant to paragraph (b). Each record filed pursuant to this subsection must be filed at such time and contain such information as the department requires by rule. However, the filing of a duplicate copy of the report required by 31 U.S.C. s. 5313 satisfies the reporting requirements of this subsection.

(d) A ~~No~~ financial institution, or officer, employee, or agent thereof, *that files* ~~filing~~ a report in good faith pursuant to this section *is not*~~, shall be~~ liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

(5) Each financial institution shall maintain for a minimum of 5 calendar years full and complete records of all financial transactions. Every financial institution shall maintain all records required by 31 C.F.R. ss. 103.33 and 103.34, and every financial institution shall maintain appropriate procedures to ensure compliance with this section, chapter 896, and any similar state or federal law.

(6)~~(5)~~ Unless otherwise provided by rule, a financial institution may exempt from the reporting requirements of this section deposits, withdrawals, exchanges, or payments exempted from the reporting requirements of 31 U.S.C. s. 5313. Each financial institution shall maintain a record of each exemption granted, including the name, address, type of business, taxpayer identification number, ~~and~~ account number, *and signature* of the customer granted the exemption; a written statement describing in detail the customary conduct of the lawful business of that customer and the reasons why such customer qualified for such an exemption; the type of transactions exempted; and the dollar limit of each exempt transaction. Such record of exemptions shall be made available to the department for inspection and copying and shall be submitted to the department within 15 days *after* ~~of~~ request.

(7) All reports and records filed with the department pursuant to this section are confidential in accordance with s. 655.057, except:

(a) An officer of the Department of Law Enforcement, or any other officer of this state, a political subdivision of this state, the United States, any other state, or a political subdivision of any other state, who is empowered by law to conduct, on behalf of the government, investigations of, or to make arrests for, offenses enumerated in this section, chapter 896, or any similar state or federal law shall have access to, and is authorized to inspect and copy, any report filed with the department pursuant to this section.

(b) The department shall provide any report filed pursuant to this section, or information contained therein, pursuant to an order of a judge of a court of competent jurisdiction or pursuant to a subpoena duces tecum only when the subpoena is:

1. Issued by the statewide prosecutor, a state attorney, a United States attorney, or a court in a criminal investigation or a criminal judicial proceeding;

2. Issued by a state or federal grand jury; or

3. Issued by a state attorney, the Department of Legal Affairs, a United States attorney, or a court in the course of a civil investigation or a civil judicial proceeding instituted by a state attorney, the Department of Legal Affairs, or a United States attorney under the state or federal racketeer-influenced and corrupt organization act.

(8)~~(6)~~(a) The department shall retain a copy of all reports received under subsection (4) for a minimum of 5 calendar years after receipt of the report. However, if a report or information contained in a report is known by the department to be the subject of an existing criminal proceeding, the report shall be retained for a minimum of 10 calendar years after receipt of the report.

(b) The financial institution shall retain a copy of all reports filed with the department under subsection (4) for a minimum of 5 calendar years after submission of the report. However, if a report or information contained in a report is known by the financial institution to be the subject of an existing criminal proceeding, the report shall be retained for a minimum of 10 calendar years after submission of the report.

(c) The financial institution shall retain a copy of all records of exemption for each customer granted pursuant to subsection (5) for a minimum of 5 calendar years after termination of exempt status of such customer. However, if it is known by the financial institution that the customer or the transactions of the customer are the subject of an existing criminal proceeding, the records shall be retained for a minimum of 10 calendar years after termination of exempt status of such customer.

(9)~~(7)~~ In addition to any other power conferred upon it to enforce and administer this chapter and the financial institutions codes, the department may:

(a) Bring an action in any court of competent jurisdiction to enforce or administer this section. In such action, the department may seek award of any civil penalty authorized by law and any other appropriate relief at law or equity.

(b) *Pursuant to s. 655.033,* issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the department finds that such person is violating, has violated, or is about to violate any provision of this section, *chapter 896, or any similar state or federal law;* any rule or order adopted under this section, *chapter 896, or any similar state or federal law;* or any written agreement related to this section, *chapter 896, or any similar state or federal law* and entered into with the department.

(c) Pursuant to s. 655.037, issue and serve upon any person an order of removal whenever the department finds that such person is violating, has violated, or is about to violate any provision of this section, chapter 896, or any similar state or federal law; any rule or order adopted under this section, chapter 896, or any similar state or federal law; or any written agreement related to this section, chapter 896, or any similar state or federal law and entered into with the department.

(d)~~(c)~~ Impose and collect an administrative fine against any person found to have violated any provision of this section, *chapter 896, or any similar state or federal law;* any rule or order adopted under this section, *chapter 896, or any similar state or federal law;* or any written agreement related to this section, *chapter 896, or any similar state or federal law* and entered into with the department, in an amount not *exceeding* ~~to exceed~~ $10,000 *a day* for *each willful violation or $500 a day for each negligent* ~~each~~ violation.

Any civil penalty or administrative fine recovered under this subsection shall be deposited into the Financial Institutions' Regulatory Trust Fund *of the department.*

(10)~~(8)~~(a) Except as provided in paragraph (b), a person who willfully violates any provision of this section, *chapter 896, or any similar state or federal law* is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who willfully violates any provision of this section, *chapter 896, or any similar state or federal law,* when the violation is:

1. Committed in furtherance of the commission of any other violation of Florida law; or

2. Committed as part of a pattern of illegal activity involving *financial* transactions exceeding $100,000 in any 12-month period,

is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) In lieu of *the penalties* ~~a fine~~ otherwise authorized by *ss. 775.082 and* ~~s.~~ 775.083, a person who has been convicted of or who has pleaded guilty or *nolo contendere* ~~no contest~~ to having violated this section, *chapter 896, or any similar state or federal law* may be sentenced to *imprisonment for 5 years, to* pay a fine not exceeding $250,000 or twice the value of the *financial* ~~property involved in the~~ transaction, whichever is greater, *or sentenced to both a fine and imprisonment,* except that on a second or subsequent conviction for or plea of guilty or *nolo contendere* ~~no contest~~ to a violation of this section, *chapter 896, or any similar state or federal law, the term of imprisonment may be up to 10 years or* the

fine may be up to $500,000 or quintuple the value of the *financial* ~~property involved in the~~ transaction, whichever is greater*; or the person may be sentenced to both such term of imprisonment and such fine.*

(d) A person who willfully violates this section*, chapter 896, or any similar state or federal law* is also liable for a civil penalty of not more than the greater of the value of the *financial transaction involved or $25,000* ~~property involved in the transaction or $10,000~~. *However, the civil penalty may not exceed $100,000.*

All civil fines collected under this subsection shall be deposited into the Financial Institutions' Regulatory Trust Fund of the department.

Section 35. Section 655.51, Florida Statutes, 1990 Supplement, is amended to read:

655.51 Employment information.—

(1) It is not unlawful for any person to provide employment information to a financial institution *or a state or federal financial institution regulatory agency, or to any person providing employment information to a financial institution or a state or federal financial institution regulatory agency*, about an employee's, or former employee's, known or suspected involvement in a violation of any state or federal law, rule, or regulation which has been reported to state or federal authorities.

(2) *A* ~~No~~ person *is not* ~~shall be~~ civilly liable for providing such employment information unless the information provided is false and the person providing the information does so with reckless disregard for the truth.

Section 36. Section 655.55, Florida Statutes, is amended to read:

655.55 Law applicable to deposits in and contracts relating to extensions of credit by *a deposit or lending institution* ~~financial institutions~~ located in *this state* ~~Florida~~.—

(1) The law of this state, excluding its law regarding comity and conflict of laws, *governs* ~~shall govern~~ all aspects, including without limitation the validity and effect, of any deposit account in a branch or office in this state of a *deposit or lending* ~~financial~~ institution, including a deposit account otherwise covered by s. 671.105(1), regardless of the citizenship, residence, location, or domicile of any other party to the contract or agreement governing such deposit account, and regardless of any provision of any law of the jurisdiction of the residence, location, or domicile of such other party, whether or not such deposit account bears any other relation to this state, except that this section does not apply to any such deposit account:

(a) To the extent provided to the contrary in s. 671.105(2); or

(b) To the extent that all parties to the contract or agreement governing such deposit account have agreed in writing that the law of another jurisdiction will govern it.

(2) The law of this state, excluding its law regarding comity and conflict of laws, *governs* ~~shall govern~~ all aspects, including without limitation the validity and effect, of any contract relating to an extension of credit made by a branch or office in this state of a *deposit or lending* ~~financial~~ institution, including a contract otherwise covered by s. 671.105(1), if the contract expressly provides that it *will* ~~shall~~ be governed by the law of this state, regardless of the citizenship, residence, location, or domicile of any other party to such contract and regardless of any provision of any law of the jurisdiction of the residence, location, or domicile of such other party, whether or not such contract bears any other relation to this state, except that this section does not apply to any such contract to the extent provided to the contrary in s. 671.105(2).

(3) As used in this section*, the term*:

(a) *"Deposit or lending institution"* ~~"Financial institution"~~ means any of the following:

1. A bank, trust company, ~~industrial savings bank,~~ credit union, *or* ~~savings~~ association, ~~savings and loan association, savings bank, or building and loan association~~ organized and existing under the laws of this *or any other* state.

2. An international bank agency, representative office, or international administrative office operating pursuant to the laws of this state or any branch or other office of an international banking corporation operating pursuant to the laws of this state.

~~3. A trust company, savings association, savings and loan association, savings bank, or building and loan association organized and existing under the laws of any other state.~~

3.~~4.~~ A national banking *corporation* ~~association~~ organized and existing pursuant to the provisions of the National Bank Act, 12 U.S.C. ss. 21 et seq.

4.~~5.~~ A federal association organized and existing pursuant to the provisions of the Home Owners' Loan Act of 1933, 12 U.S.C. ss. 1461 et seq.

5.~~6.~~ A federal credit union organized and existing pursuant to the provisions of the Federal Credit Union Act, 12 U.S.C. ss. 1751 et seq.

6.~~7.~~ A federal agency operating pursuant to the provisions of the International Banking Act of 1978, 12 U.S.C. ss. 3101 et seq.

7.~~8.~~ An agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq.

8.~~9.~~ An Edge Act corporation organized pursuant to the provisions of s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

(b) "Deposit account" means any deposit or account in one or more names including, without limitation, any certificate of deposit, time deposit, credit balance, checking account, interest-bearing account, noninterest-bearing account, individual retirement account (IRA), money market account, NOW account, transaction account, savings account, passbook account, joint account, convenience account, escrow account, trust account, custodial account, fiduciary account, deposit in trust, or Totten trust account.

(c) "Contract relating to extension of credit" means any contract or agreement relating to any extension of credit, including, without limitation, any loan agreement, letter of credit, promissory note, letter of intent, loan commitment, credit facility agreement, confirmation or advice of letter of credit, letter of credit application or reimbursement agreement, overdraft agreement, revolving credit agreement, construction loan agreement, floor plan agreement, acceptance, pledge agreement, hypothecation agreement, assignment, mortgage, security agreement, power of attorney, subordination agreement, assumption agreement, loan modification agreement, guaranty, surety agreement, indemnity agreement, or workout agreement.

(4) Notwithstanding any law that limits or affects the right of a person to maintain an action or proceeding, any person may, to the extent permitted under the United States Constitution, maintain an action or proceeding in this state against any person or other entity residing or located outside this state if the action or proceeding arises out of a deposit account or contract relating to an extension of credit which, pursuant to subsection (1) or subsection (2), is governed in whole or in part by the law of this state.

(5) This section does not affect the law governing any transactions other than deposit accounts or contracts relating to extensions of credit specified herein, nor does this section affect the jurisdiction of the courts of this state over any dispute arising under any transactions other than deposit accounts or contracts relating to extensions of credit specified herein.

(6) This section applies to deposit accounts and contracts relating to extensions of credit entered into before, on, or after July 1, 1988. However, this section *does* ~~shall~~ not apply to any deposit accounts existing on July 1, 1988, if either party to the contract or agreement governing the deposit account provides the other party with a written objection to the application of this section within 6 months of July 1, 1988.

Section 37. Section 655 56, Florida Statutes, is created to read:

655.56 Collection of fines, interest, or premiums on loans made by financial institutions.—No fines, interest, or premiums paid on the following loans made by any financial institution shall be deemed usurious, and the same may be collected as debts of like amount are now collected by law in this state and according to the terms and stipulations of the agreement between the financial institution and the borrower:

(1) Loans secured by a first lien on real estate.

(2) Loans secured by savings accounts to the extent of the withdrawal value thereof.

(3) Loans secured by the pledge of those loans described in subsections (1) and (2) and by the pledge of investments of a type in which the financial institution is authorized to invest, provided the loans and investments so pledged shall be subject to all restrictions and requirements which would be applicable were the financial institution to invest directly in such loans or investments.

(4) Loans secured by a wrap-around mortgage, inferior to the first mortgage, in which the mortgagee is contractually obligated to make the payments required under the first mortgage.

Section 38. Section 655.60, Florida Statutes, is created to read:

655.60 Appraisals by department.—

(1) The department is authorized to cause to be made appraisals of real estate or other property held by any financial institution, subsidiary, or service corporation or securing the assets of the financial institution, subsidiary, or service corporation when specific facts or information with respect to real estate or other property held, secured loans, or lending, or when in its opinion the financial institution's policies, practices, operating results and trends, give evidence that the financial institution's appraisals or evaluations of ability to make payments may be excessive, that lending or investment may be of a marginal nature, that appraisal policies and loan practices may not conform with generally accepted and established professional standards, or that real estate or other property held by the financial institution, subsidiary, or service corporation or assets secured by real estate or other property are overvalued. In lieu of causing such appraisals to be made, the department may accept any appraisal caused to be made by an appropriate state or federal regulatory agency or other insuring agency or corporation of a financial institution Unless otherwise ordered by the department, an appraisal of real estate or other property pursuant to this section must be made by a licensed or certified appraiser or appraisers selected by the department, and the cost of such appraisal shall be paid promptly by such financial institution, subsidiary, or service corporation directly to such appraiser or appraisers upon receipt by the financial institution of a statement of such cost bearing the written approval of the department. A copy of the report of each appraisal caused to be made by the department pursuant to this section shall be furnished to the financial institution, subsidiary, or service corporation within a reasonable time, not exceeding 60 days, following the completion of such appraisal and may be furnished to the insuring agency or corporation or federal or state regulatory agency.

(2) A financial institution may not make loans based on the security of real estate unless appraisal standards and policies have been previously established by the board of directors. Such standards must be in written form and include, without limitation, information required by rules of the department.

(3) If any appraisal required pursuant to this section discloses that any asset of a financial institution, subsidiary, or service corporation is overvalued on its books, the department may require the financial institution, subsidiary, or service corporation to charge off such asset or portion thereof pursuant to s. 655.044.

Section 39. Section 655.762, Florida Statutes, is created to read:

655.762 Sale of assets.—A financial institution may sell any asset in the ordinary course of business or with the approval of the department in any other circumstances.

Section 40. Section 655.769, Florida Statutes, is created to read:

655.769 Definitions of terms used in ss. 655.77-655.91.—As used in ss. 655.77-655.91, the term:

(1) "Check" includes a share draft of a credit union.

(2) "Deposit" includes a share of a credit union.

(3) "Depositor" includes a member of a credit union.

(4) "Institution" means any state or national bank, state or federal association, or state or federal credit union.

Section 41. Section 655.77, Florida Statutes, is created to read:

655.77 Deposits by minors.—Deposits made by a minor, or made in his name by other than a court-appointed guardian, may be withdrawn by the minor in the absence of an agreement to the contrary made between the institution and the depositor at the time the account is opened. In case of any such agreement, such moneys, until the minor's disabilities are removed, may be withdrawn by the person or persons designated in such agreement.

Section 42. Section 655.78, Florida Statutes, is created to read:

655.78 Deposit accounts in two or more names.—

(1) Unless otherwise expressly provided in a contract, agreement, or signature card executed in connection with the opening or maintenance of an account, including a certificate of deposit, a deposit account in the names of two or more persons may be paid to, or on the order of, either or any of such persons or to, or on the order of, the guardian of the property of any such person who is incompetent, whether the other or others are competent. The check or other order for payment to any such person or guardian is a valid and sufficient release and discharge of the obligation of the institution for funds transferred thereby.

(2) In the case of a credit union, a member may designate any person or persons to hold deposits with the member in joint tenancy with the right of survivorship; but a joint tenant, unless he is a member in his own right, may not be permitted to vote, obtain a loan, or hold office or be required to pay an entrance or membership fee.

Section 43. Section 655.79, Florida Statutes, is created to read:

655.79 Deposits and accounts in two or more names; presumption as to vesting on death.—

(1) Unless otherwise expressly provided in a contract, agreement, or signature card executed in connection with the opening or maintenance of an account, including a certificate of deposit, a deposit account in the names of two or more persons shall be presumed to have been intended by such persons to provide that, upon the death of any one of them, all rights, title, interest, and claim in, to, and in respect of such deposit account, less all proper setoffs and charges in favor of the institution, vest in the surviving person or persons.

(2) The presumption created in this section may be overcome only by proof of fraud or undue influence or clear and convincing proof of a contrary intent. In the absence of such proof, all rights, title, interest, and claims in, to, and in respect of such deposits and account and the additions thereto, and the obligation of the institution created thereby, less all proper setoffs and charges in favor of the institution against any one or more of such persons, upon the death of any such person, vest in the surviving person or persons, notwithstanding the absence of proof of any donative intent or delivery, possession, dominion, control, or acceptance on the part of any person and notwithstanding that the provisions hereof may constitute or cause a vesting or disposition of property or rights or interests therein, testamentary in nature, which, except for the provisions of this section, would or might otherwise be void or voidable.

(3) This section does not abridge, impair, or affect the validity, effectiveness, or operation of any of the provisions of ss. 655.78 and 674.405 or the rights of institutions to make payments as therein provided.

Section 44. Section 655.80, Florida Statutes, is created to read:

655.80 Convenience accounts.—

(1) A convenience account is a deposit account, other than a certificate of deposit, in the name of one individual (principal), in which one or more other individuals have been designated as agents with the right to make deposits to and to withdraw funds from or draw checks on such account. The designation of agents, the substitution or removal of agents, or any other change in the contractual terms or provisions governing a convenience account may be made only by the principal. Except as otherwise provided in this section, the agency relationship created under this account is not affected by the subsequent death or incompetence of the principal.

(2) All rights, interests, and claims in, to, and in respect of, such deposits and convenience account and the additions thereto shall be those of the principal only.

(3) Any balance standing to the credit of a convenience account shall be paid to the guardian of the property of the principal, to any person designated in a court order entered pursuant to s. 735.206, to any person designated by letter or other writing as authorized by s. 735.301, or to the personal representative of the deceased principal's estate, upon presentation of effective written notice and, if applicable, proof of judicial

appointment of such guardian or personal representative by a court of competent jurisdiction. No such court order or letter, written notice, or proof of judicial appointment is effective until it is served upon and received by an officer of the institution during regular banking hours and in such time and in such manner as to afford the institution a reasonable opportunity to act on it prior to the happening of any of the events described in s. 674.303. No other notice, knowledge, or other information shown to have been available to an institution affects its right to the protection provided by this section.

(4) Payment by an institution pursuant to this section is a valid and sufficient release and discharge to the institution from all claims for payments so paid.

(5) Without qualifying any other right to setoff or lien, and subject to any contractual provision, if the principal is indebted to the institution, the institution has a right to setoff against the account.

Section 45. Section 655.81, Florida Statutes, is created to read:

655.81 Deposits in trust.—

(1) When a deposit is made by any person describing himself as, and making such deposit as, trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description has been given in writing to the institution, the deposit or any part thereof, together with the dividends or interest thereon, may, in the event of the death of the person so described as trustee, be paid to the person for whom the deposit was thus stated to have been made.

(2) In the case of a credit union, deposits may be held in the name of a member in trust for a beneficiary, including a minor; but a beneficiary, unless he is a member in his own right, may not be permitted to vote, obtain an extension of credit, or hold office or be required to pay an entrance or membership fee.

Section 46. Section 655.83, Florida Statutes, is created to read:

655.83 Adverse claim to a deposit or fiduciary account.—Notice to any institution of an adverse claim to a deposit or fiduciary account standing on its books to the credit of any person does not obligate the institution to recognize the adverse claimant unless the adverse claimant also either:

(1) Procures a restraining order, injunction, or other appropriate process having specific application to the institution issued by a court of competent jurisdiction in a cause therein instituted by such claimant wherein the person to whose credit the deposit or fiduciary account stands is made a party and served with process; or

(2) Obtains in favor of the institution, in a form, amount, and with sureties acceptable to it, a bond indemnifying the institution from any and all liability (including liabilities for penalties), loss, damage, costs, and expenses should it act to give effect to the adverse claim, including the decision not to honor the check or other order of the person to whose credit the deposit or fiduciary account stands on the books of the institution. Upon receipt of such bond, the institution shall hold the account pending agreement between the claimant and the person to whose credit the deposit or fiduciary account stands on the books of the institution or pending receipt of a restraining order, injunction, or other process pursuant to subsection (1).

Section 47. Section 655.84, Florida Statutes, is created to read:

655.84 Limitations; statements as correct.—

(1) Unless written objection thereto has been theretofore delivered by the depositor to the institution, a statement of account rendered by any institution in this state to a depositor, with a description of the amount and type (such as deposit, withdrawal, debit, credit, or any similar designation) of entries to such account, which description may be on accompanying documents or on the statement itself, shall, after the expiration of 2 years from the date rendered, be conclusively presumed to be correct; and the depositor is thereafter barred from questioning same.

(2) In the absence of a written contract between an institution and a depositor providing otherwise, the statement of account is deemed to have been rendered to the depositor within the meaning of this section when prepared and lodged by the institution at its statement window or other customary place for delivery to the depositor. Any such statement of account which is not demanded by the depositor within 3 years may be destroyed by the institution without accountability or liability therefor to anyone.

(3) This section does not relieve a depositor from any duty or obligation imposed by law or by contract heretofore or hereafter made to examine such statement of account and to report any disputed debits, credits, errors, or irregularities within a shorter period of time than mentioned in this section, or from the legal consequences of the depositor's failure to perform any such duty or obligation.

Section 48. Section 655.85, Florida Statutes, is created to read:

655.85 Settlement of checks.—Whenever any check is forwarded or presented to an institution for payment, except when presented by the payee in person, the paying institution or remitting institution may pay or remit the same, at its option, either in money or in exchange drawn on its reserve agent or agents in the City of New York or in any reserve city within the Sixth Federal Reserve District; however, an institution may not settle any check drawn on it otherwise than at par. The provisions of this section do not apply with respect to the settlement of a check sent to such institution as a special collection item.

Section 49. Section 655.86, Florida Statutes, is created to read:

655.86 Issuance of postdated checks.—It is the duty of the person drawing a postdated check to notify, in writing, the separate office or branch of the institution upon which such check is drawn, giving a complete description thereof, including the name of the payee, the date, the number, and the amount thereof; otherwise, the institution is not liable for paying such check.

Section 50. Section 655.89, Florida Statutes, is created to read:

655.89 Legal holidays; business days; business and transactions.—

(1) In this section, the term:

(a) "Business day" means that part of any day on which an institution is open to the public for carrying on substantially all its banking functions, trust functions, or transactions. A financial institution is deemed to be "closed" on any day, or any part of a day, when it is not open to the public for carrying on substantially all its banking functions, trust functions, and transactions.

(b) "Legal holiday" means a statutory holiday or a permissive holiday. A "statutory holiday" is any day which, by the laws of this state or the United States, is designated or recognized as a legal or public holiday. A "permissive holiday" is any one day, other than a statutory holiday, in each week on which an institution is customarily closed.

(c) "Transaction" means any one or more of the functions and elements of the business of an institution and includes, but is not limited to, the receipt or giving of any notice; the receipt or acceptance of deposits; the transmission, acceptance, payment, dishonor, and giving notice of dishonor of items; and its obligations and duties with respect to all thereof; and the word "transact" means to take action or nonaction the result of which is a transaction.

(2) Any institution may, but unless otherwise required by law is not required to, be closed or be open only for limited transactions and functions or purposes on any legal holiday. When an institution is closed as provided or permitted by law, it is not under any obligation or duty to conduct any of its business or effectuate any transaction. An institution is open only for limited transactions and functions or purposes when one or more, but fewer than all, of its branches, separate or other offices, departments, sections, or other functional elements of its business, which customarily are open to the public for carrying on the banking or trust business and transactions, are not open to the public for such purposes. When, as provided or permitted by law, an institution is open only for limited transactions and functions or purposes, it is not under any obligation or duty to conduct or transact, at or from such of its branches, separate or other offices, departments, sections, or other functional elements of its business which are not open to the public for such purposes, any of the business or transactions customarily conducted or transacted therefrom or thereat.

(3) When any statutory holiday occurs on a Sunday or on a day when an institution customarily is closed, such institution may, but unless otherwise required by law is not required to, elect to be closed or to be open only for limited transactions and functions or purposes on the next preceding or the next following day which, except for the provisions of this section, would not be a legal holiday, and such day so elected is, with respect to such institution, a legal holiday as to all transactions and for all purposes and laws.

(4) Any legal holiday on which an institution is closed or is open only for limited transactions and functions or purposes may, if the institution elects, be deemed and treated with respect to all transactions and for all purposes and laws, including, but not limited to, the Uniform Commercial Code, as not a business day; and any notice, item, or deposit of money received on any such day may be treated as being received at the opening of the next business day, and any transaction or other business which would or should have occurred or been transacted on any such legal holiday may be treated as postponed by law to the next business day.

(5) An institution may establish the regular and customary hours of each day during which each of its branches, separate or other offices, departments, sections, or functional elements of its business will be operated for the transaction of the business customarily conducted or transacted at or from each such branch, office, department, section, or functional element of business, and the regular and customary hours during which each thereof will be open to the public for the conduct of such business and transactions, and it is not necessary that the same hours be established for all thereof or that the hours so established for any thereof be the same on every day.

(6) With prior written approval of the department, an institution may designate another day or other days on which the institution may be closed and which day or days will not be considered business days.

(7) An institution may, but unless otherwise required by law is not under or subject to any obligation or duty to, effectuate any transaction or transact any business on any legal holiday; at any time before the beginning, or after the close, of its business day; or outside the regular and customary hours established as provided in subsection (5) or subsection (6) of any separate or other office or branch or any department, section, or functional element of business. If the institution elects to do so, it has all the rights provided by law with respect to such transaction or business, and, at its election, any such transactions or business shall be treated as having occurred or as having been transacted on that day or on its next following business day, except that any transaction or business occurring before the beginning of its regular business day shall be treated as occurring at the beginning of that business day.

(8) No liability or loss of rights of any kind on the part of any institution accrues or results by reason of any institution being closed or open only for limited functions or purposes, or by reason of any branch, separate or other office, department, section, or functional element of business being operated or open for the transaction of business only during the regular and customary hours established by the institution, as provided in this section.

Section 51. Section 655.90, Florida Statutes, is created to read:

655.90 Closing during emergencies and other special days.—

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

(a) "Commissioner" means the officer of this state designated by law as the head of the Department of Banking and Finance and any other person lawfully exercising such powers, whether as a deputy to such officer; as a division director, bureau chief, or financial administrator of or within such department; or otherwise. In the absence of any person lawfully exercising the powers of the head of the Department of Banking and Finance, the director of the Division of Banking or any other person lawfully exercising the powers of the director of the division, whether as another division director, as a bureau chief or financial administrator, or otherwise.

(b) "Emergency" means any condition or occurrence, actual or threatened, which may interfere physically with the conduct of normal business operations of an institution or of one or more or all of the departments, sections, functions, offices, or facilities of an institution, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may exist, arise, or be imminent as the result of any one or more, actual or threatened, of the following: fires; floods; earthquakes; tornadoes; hurricanes; wind, rain, or other storms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, food, transportation, or labor; robberies or burglaries or attempted robberies or burglaries; actual or threatened enemy attacks; epidemics or other catastrophes; explosions; and riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

(c) "Office" means any place at which an institution transacts its business or conducts operations relating to its business. However, this section does not authorize an institution to conduct its banking business at any place or places not otherwise authorized or permitted by law.

(d) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of an institution to act for the institution in carrying out the provisions of this section or, in the absence of any such designation or in the absence of the officers so designated, the president or any other officer currently in charge of the institution or of the office or offices in question.

(e) The authorizations herein provided for an institution "to close" in case of an emergency means and includes the authority not to open on any business or banking day and, if having opened, to close and suspend business.

(2) POWERS OF COMMISSIONER.—Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part of this state, he may, by proclamation, authorize state and nationally or federally chartered institutions, if not inconsistent with, and if it does not infringe upon, paramount federal law, located in the affected area or areas to close or to close any or all the departments, sections, functions, offices, or facilities thereof. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular institution or institutions, or one or more particular departments, sections, functions, offices, or facilities thereof, but not institutions located in the area generally, he may authorize the particular institution or institutions to close or to close one or more of the departments, sections, functions, offices, or facilities thereof. The institution or institutions affected by any such proclamation or authorization may close in accordance therewith. Such institutions and such of the departments, sections, functions, offices, or facilities thereof so closed may remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the institution determine that the institution or any of its departments, sections, functions, offices, or facilities, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

(3) POWERS OF OFFICERS.—

(a) Whenever the officers of an institution are of the opinion that an emergency exists, or is impending, which affects, or may affect, the institution or one or more or all of its departments, sections, functions, offices, or facilities, they shall have the authority, in the reasonable exercise of their discretion, to close the institution or any one or more or all of the departments, sections, functions, offices, or facilities thereof on any business day or days during the continuation of such emergency, even if the commissioner has not issued and does not issue a proclamation of emergency. The office or offices so closed may remain closed until such time as the officers determine that the emergency has ended and for such further time thereafter as may reasonably be required to reopen. However, in no case may such institution or any department, section, function, office, or facility thereof remain closed pursuant to this paragraph for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the commissioner.

(b) The officers of an institution may close the institution or any one or more or all of the institution's departments, sections, functions, offices, or facilities on any day or days designated, by proclamation of the President of the United States or the Governor of this state, as a day or days of mourning, rejoicing, or other special observance.

(4) NOTICE TO BE GIVEN.—

(a) An institution chartered under the laws of this state closing, or closing any of its departments, sections, functions, offices, or facilities, pursuant to the authority granted under subsection (3) shall give notice of its action to the commissioner as promptly as conditions reasonably permit and by any means reasonably available.

(b) A national or federal institution closing, or closing any of its departments, sections, functions, offices, or facilities, pursuant to the authority granted by this section shall give notice of its action to the appropriate federal regulatory agency as promptly as conditions reasonably permit and by any means reasonably available.

(5) EFFECT OF CLOSING AND PARTIAL CLOSING.—

(a) Any day on which an institution, or any one or more of its departments, sections, functions, offices, or facilities, is closed during all or any part of its normal banking hours pursuant to the authorization granted in this section is, with respect to such institution or, if not all its departments, sections, functions, offices, or facilities are closed, then with respect to any of its departments, sections, functions, offices, or facilities which are closed, a legal holiday for all purposes with respect to any business of any kind or character of the institution, or of any of its departments, sections, functions, offices, or facilities, so closed, including, but without limiting the generality of the foregoing, matters relating to the time payable, the presenting for payment or acceptance, and the protesting and giving notice of protest and notice of dishonor of bills of exchange, checks, promissory notes, and other items drawn on or payable at such institution and relating to any other banking business of any kind or character. No liability or loss of rights of any kind on the part of any institution or director, officer, or employee thereof accrues or results by virtue of any closing authorized by this section.

(b) On any day which by the provisions of this section is deemed or declared to be a legal holiday with respect to any institution or institutions or office or offices thereof, the officers thereof may, in the exercise of their discretion, cause such institution or any office thereof to open its doors or facilities for the transaction or conduct of a limited business by the operation of one or more, but less than all, of its departments, sections, offices, functions, or facilities. On any day when, pursuant to the provisions of this section, less than all the departments, sections, functions, offices, or facilities are open, at the election of such institution the limited business transacted or conducted on such day is deemed for all purposes as transacted or conducted on the next following business day which is not deemed or declared as a legal holiday pursuant to the provisions of this section or of any other provision of law.

(6) PROVISIONS CUMULATIVE.—The provisions of this section shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States authorizing the closing of an institution or excusing the delay by an institution in the performance of its duties and obligations because of emergencies or conditions beyond the institution's control or otherwise.

Section 52. Section 655.91, Florida Statutes, is created to read:

655.91 Records of institutions and copies thereof; retention and destruction.—

(1) In this section, "records" of an institution means and includes all books of account and other books of every kind, journals, ledgers, statements, instruments, documents, files, messages, writings of every kind, and other internal or other data and other information of every description, made or received by an institution in the regular course of its business or otherwise, regardless of the mode in which it is recorded.

(2) Institutions need not preserve or retain any of their records or copies thereof for a period longer than is expressly required by an applicable statute or rule or regulation of this state or the United States which identifies, either specifically or by type or category, the relevant records or copies thereof or, if there is no such statute or rule or regulation which specifies a retention period applicable to the records or copies thereof, for a period longer than 4 years. An institution may destroy any of its records or copies thereof after the expiration of the retention period determined as provided in this subsection.

(3) No liability shall accrue against any institution because of the destruction of any of its records or copies thereof as permitted by subsection (2), and in any judicial or other action or proceeding in which any such records or copies thereof may be called in question or be demanded of the institution or any officer or employee thereof, a showing that such records or copies thereof have been destroyed in accordance with the provisions of subsection (2) is a sufficient excuse for the failure to produce them.

(4) Any institution may at any time make, or cause to be made, a copy or copies of any or all of its records, and any such copy duly certified, authenticated, or identified by a responsible officer or agent of the institution under whose supervision the records or copies are kept shall, in all cases and in all courts and places, be admitted and received as evidence with a like force and effect as the original record, whether or not the original is in existence.

(5) The original of any record of an institution includes the data or other information comprising a record stored or transmitted in or by means of any electronic, computerized, mechanized, or other information storage or retrieval or transmission system or device which can upon request generate, regenerate, or transmit the precise data or other information comprising the record; and an original also includes the visible data or other information so generated, regenerated, or transmitted if it is legible or can be made legible by enlargement or other process.

(6) Copies of records of an institution, heretofore or hereafter made, include duplicates or counterparts of an original produced from the same impression or process as the original by carbon or other chemical or substance or process; negative and positive film and prints of an original or copy and reproductions and facsimiles of an original or copy, whether or not the same size, produced by photographic, microphotographic, photostatic, xerographic, electronic, computerized, or mechanized process, or by any other process, and enlargements and reductions thereof; and the data or other information comprising a record stored or transmitted as provided in subsection (5), and the visible data or other information generated or regenerated or transmitted by such information storage or retrieval or transmission system or device, if it is legible or can be made legible by enlargement or other process.

Section 53. Section 655.921, Florida Statutes, is created to read:

655.921 Transaction of business by out-of-state financial institutions; exempt transactions in the financial institutions codes.—

(1) Nothing in the financial institutions codes shall be construed to prohibit a financial institution having its principal place of business outside this state from:

(a) Contracting in this state with any person to acquire from such person a part, or the entire, interest in a loan that such person proposes to make, has heretofore made, or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan.

(b) Entering into mortgage servicing contracts with persons authorized to transact business in this state and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside this state or in the transaction of any business authorized by this section.

(c) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section.

(d) Making loans or committing to make loans to any person located in this state and soliciting compensating deposit balances in connection therewith.

(2) No such financial institution shall be deemed to be transacting business in this state, or be required to qualify so to do, solely by reason of the performance of any of the acts or business authorized in this section. This section does not authorize or permit any such financial institution to maintain an office within the state.

Section 54. Section 655.922, Florida Statutes, is created to read:

655.922 Banking business by unauthorized persons; use of name.—

(1) No person other than a financial institution having its principal place of business in this state shall, in this state, engage in the business of soliciting or receiving funds for deposit or of issuing certificates of deposit or of paying checks; and no person shall establish or maintain a place of business in this state for any of the functions, transactions, or purposes mentioned in this subsection. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This subsection does not prohibit the issuance or sale by a financial institution of traveler's checks, money orders, or other instruments for the transmission or payment of money, by or through employees or agents of the financial institution off the financial institution's premises.

(2) No person other than a financial institution shall, in this state:

(a) Transact business under any name or title that contains the words "bank," "banker," "banking," "trust company," "savings and loan association," "savings bank," or "credit union," or words of similar import, in any context or in any manner;

(b) Use any name, word, sign, symbol, or device in any context or in any manner; or

(c) Circulate or use any letterhead, billhead, circular, paper, or writing of any kind or otherwise advertise or represent in any manner,

which indicates or reasonably implies that the business being conducted or advertised is the kind or character of business transacted or conducted by a financial institution or which is likely to lead any person to believe that such business is that of a financial institution; however, the words "bank," "banker," "banking," "trust company," "savings and loan association," "savings bank," or "credit union," or the plural of any thereof, may be used by, and in the corporate or other name or title of, any company which is or becomes a financial institution holding company pursuant to federal law; any subsidiary of any such financial institution holding company which includes as a part of its name or title all or any part, or abbreviations, of the name or title of the financial institution holding company of which it is a subsidiary; any trade organization or association, whether or not incorporated, functioning for the purpose of promoting the interests of financial institutions or financial institution holding companies, the active members of which are financial institutions or financial institution holding companies; and any international development bank chartered pursuant to part II of chapter 663.

(3) Any court, in a proceeding brought by the department, by any financial institution the principal place of business of which is in this state, or by any other person residing, or whose principal place of business is located, in this state and whose interests are substantially affected thereby, may enjoin any person from violating any of the provisions of this section. For the purposes of this subsection, the interests of a trade organization or association are deemed to be substantially affected if the interests of any of its members are so affected. In addition, the department may issue and serve upon any person who violates any of the provisions of this section a complaint seeking a cease and desist order in accordance with the procedures, and in the manner prescribed by, s. 655.033.

(4) Nothing in this section shall be construed to prohibit the lawful establishment or the lawful operations of an Edge Act corporation, a credit union pursuant to s. 657.008(5), or an association established pursuant to s. 665.0335, s. 665.034(5), or s. 665.1001; and nothing in this code shall be construed to prohibit any advertisement or other activity in this state by any person if such prohibition would contravene any applicable federal law which preempts the law of this state.

Section 55. Section 655.93, Florida Statutes, is created to read:

655.93 Definitions for ss. 655.93-655.94.—As used in ss. 655.93-655.94, the term:

(1) "Lessee" means a person who contracts with a lessor for the use of a safe-deposit box.

(2) "Lessor" means a state, national, or federal financial institution that rents safe-deposit facilities.

(3) "Safe-deposit box" means a safe-deposit box, vault, or other safe-deposit receptacle maintained by a lessor, and the rules relating thereto apply to property or documents kept in safekeeping in the financial institution's vault.

Section 56. Section 655.931, Florida Statutes, is created to read:

655.931 Authority to engage in safe-deposit business.—A financial institution may maintain and lease safe-deposit boxes and may accept property or documents for safekeeping if, except in the case of property or documents accepted through night depositories, it issues a receipt therefor.

Section 57. Section 655.932, Florida Statutes, is created to read:

655.932 Lease to minor.—A lessor may lease a safe-deposit box to, and in connection therewith deal with, a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

Section 58. Section 655.933, Florida Statutes, is created to read:

655.933 Access by fiduciaries.—If a safe-deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as personal representatives.

(2) By any one or more of the persons otherwise acting as fiduciaries if authorized in writing, which writing is signed by all other persons so acting.

(3) By any agent authorized in writing, which writing is signed by all persons acting as fiduciaries.

Section 59. Section 655.934, Florida Statutes, is created to read:

655.934 Effect of lessee's death or incapacity.—If a lessor without knowledge of the death or of an order determining incapacity of the lessee deals with the lessee's agent in accordance with a written power of attorney or a durable family power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

Section 60. Section 655.935, Florida Statutes, is created to read:

655.935 Search procedure on death of lessee.—If satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant, or a person named as a personal representative in a copy of a purported will produced by such person, to open and examine the contents of a safe-deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, shall deliver:

(1) Any writing purporting to be a will of the decedent, to the court having probate jurisdiction in the county in which the financial institution is located;

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions, to the person making the request for a search; and

(3) Any document purporting to be an insurance policy on the life of the decedent, to the beneficiary named therein.

No other contents may be removed pursuant to this section.

Section 61. Section 655.936, Florida Statutes, is created to read:

655.936 Delivery of safe-deposit box contents or property held in safekeeping to personal representative.—

(1) The lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant him access to any safe-deposit box in the decedent's name and permit him to remove from such box any part or all of the contents thereof.

(2) If a foreign personal representative of a deceased lessee has been appointed by a court of any other state, a lessor may, at its discretion, after 3 months from the issuance to such foreign personal representative of his letters of authority, deliver to such foreign personal representative all properties deposited with it for safekeeping and the contents of any safe-deposit box in the name of the decedent if at such time the lessor has not received written notice of the appointment of a personal representative in this state, and such delivery is a valid discharge of the lessor for all property or contents so delivered. Such foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

(3) A lessor is not liable for damages or penalty by reason of any delivery made pursuant to this section.

Section 62. Section 655.937, Florida Statutes, is created to read:

655.937 Access to safe-deposit boxes leased in two or more names.—

(1) When specifically provided in the lease or rental agreement covering a safe-deposit box heretofore or hereafter rented or leased in the names of two or more lessees that access to the safe-deposit box will be granted to either lessee, or to either or the survivor, access to the safe-deposit box shall be granted to:

(a) Either or any of such lessees, regardless of whether or not the other lessee or lessees or any of them are living or competent; or

(b) The personal representative of the estate of either or any of such lessees who is deceased, or the guardian of the property of either or any of such lessees who is incapacitated; and, in either such case, the provisions of s. 655.933 apply, and the signature on the safe-deposit entry or access record (or the receipt or acquittance, in the case of property or documents otherwise held for safekeeping) is a valid and sufficient release and discharge to the lessor for granting access to such safe-deposit box or for the delivery of such property or documents otherwise held for safekeeping.

(2) A lessor may not be held liable for damages or penalty by reason of any access granted or delivery made pursuant to this section.

Section 63. Section 655.938, Florida Statutes, is created to read:

655.938 Adverse claims to contents of safe-deposit box.—

(1) An adverse claim to the contents of a safe-deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies the lessee with the name in which the safe-deposit box is leased or the property held; or

(b) The safe-deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by, or on behalf of, a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

(2) A claim is also an adverse claim if one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or if one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or if it is claimed that a lessee is the same person as one using another name.

Section 64. Section 655.939, Florida Statutes, is created to read:

655.939 Limiting right of access for failure to comply with security procedures.—If any individual who has a right of access to a safe-deposit box is unwilling or unable for any reason or cause to comply with any of the lessor's normal requirements or procedures in connection with such access relating to security, safety, or protection, the lessor has the right to limit or deny access to the safe-deposit box by such individual unless all lessees of such safe-deposit box take such action as is necessary to ensure reasonable compliance with such security, safety, or protection requirements or procedures.

Section 65. Section 655.94, Florida Statutes, is created to read:

655.94 Special remedies for nonpayment of rent.—

(1) If the rental due on a safe-deposit box has not been paid for 3 months, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee, or stockholder of the lessor. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box, and a list of its contents. The certificate shall be included in the package, and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box. The lessor has a lien on the package and its contents to the extent of any rental due and owing plus the actual, reasonable costs of removing the contents from the safe-deposit box.

(2) If the contents of the safe-deposit box have not been claimed within 1 year after the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be sold at public auction at a specified time and place or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and unsalable items will be destroyed. The time, place, and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice. The balance of the proceeds, after deducting accumulated charges, including the expenses of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by the lessee, or, if none, shall be deemed a deposit account with the financial institution operating the safe-deposit facility, and shall be identified on the books of the financial institution as arising from the sale of contents of a safe-deposit box.

(3) Any documents or writings of a private nature, and having little or no apparent value, need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed contents, after which they may be destroyed.

Section 66. Section 657.002, Florida Statutes, is amended to read:

657.002 Definitions.—As used in this part:

(1) "Capital" means shares, deposits, *and equity* ~~reserves, excluding allowance for loan losses, and undivided earnings~~.

(2) "Central credit union" means a credit union the membership of which includes, but is not limited to, other credit unions, members of credit unions, credit union employees, employees of organizations serving credit unions, and the families of such members.

(3) "Corporate credit union" means any central credit union organized pursuant to any state or federal act for the purpose of serving other credit unions.

(4) "The corporation" means the Florida Credit Union Guaranty Corporation, Inc.

(5) "Correspondent" means that person designated on an application to organize a credit union as the person to whom all correspondence regarding the application should be sent.

(6) "Credit union" means any cooperative society organized pursuant to this part.

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

(8) "Deposits" means that portion of the capital paid into the credit union by members on which a contractual rate of interest will be paid.

(9) "Equity" means undivided earnings, reserves, and allowance for loan losses.

(10)~~(9)~~ "Foreign credit union" means a credit union organized and operating under the laws of another state.

(11)~~(10)~~ "Immediate family" means parents, children, spouse, or surviving spouse of the member, or any other relative by blood, marriage, or adoption ~~residing in the same household with the member~~.

(12)~~(11)~~ "Limited field of membership" means the defined group of persons designated as eligible for membership in the credit union who:

(a) Have a similar profession, occupation, or formal association with an identifiable purpose; or

(b) Reside within an identifiable neighborhood, community, rural district, or county; or

(c) Are employed by a common employer; or

(d) Are employed by the credit union; and

members of the immediate family of persons within such group.

(13)~~(12)~~ "Shares" means that portion of the capital paid into the credit union by members on which dividends may be paid.

(14)~~(13)~~ "Unimpaired capital" means capital which is not impaired by losses that exceed applicable reserves.

Section 67. Subsection (2) of section 657.004, Florida Statutes, is amended to read:

657.004 Exclusive use of name "credit union"; penalty.—

(2) Any person who violates this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 *or*~~,~~ s. 775.083~~, or s. 775.084,~~ and may be enjoined from using such words or so holding itself out. The department shall have standing to bring action to enforce the provisions of this section.

Section 68. Section 657.005, Florida Statutes, is amended to read:

657.005 Notice of intent to organize; investigation by department; application for authority to organize a credit union.—

(1) The proposed organizers of the proposed credit union shall file with the department a notice of intent to organize, upon such form as the department may, by rule, prescribe.

(2) Any five or more residents of this state who represent a limited field of membership may apply to the department for permission to organize a credit union. The fact that individuals within the proposed limited field of membership have credit union services available to them through another limited field of membership shall not preclude the granting of a certificate of authorization to engage in the business of a credit union.

(3) The application shall be submitted to the department on forms and in the manner prescribed by rules adopted by the department and shall be accompanied by a nonrefundable filing fee of $250. Such application shall include:

(a) The proposed name and the proposed location where the proposed credit union is to have its principal place of business.

(b) Designation of the par value of each share of the credit union.

(c) Designation of at least five persons who agree to serve on the board of directors, and at least three other persons who agree to serve on the supervisory committee *or audit committee*, with a signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, executed by those who so agree.

(d) Any information required by the department to be submitted to the corporation or insuring agency.

(e) Bylaws of the credit union, which bylaws shall be *in the form and substance as required by the department* ~~consistent with the provisions of this chapter~~.

(4) The department shall have the power of investigation to the extent necessary to make the finding required under this section.

(5) The application shall be approved if the department determines that:

(a) There is a showing of sufficient interest on the part of the proposed limited field of membership;

(b) The qualifications of the proposed board of directors and committee members are such as to indicate a reasonable likelihood that the affairs of the proposed credit union will be administered consistently with sound financial and credit union practices;

(c) The organization of the credit union would benefit its members; and

(d) The limited field of membership is of sufficient financial viability to indicate reasonable promise of successful operation of the proposed credit union. In determining the financial viability of the proposed limited field of membership and chances for reasonable promise of success of the proposed credit union, the department shall consider:

1. The size of the proposed limited field of membership, excluding potential members based upon familial relationships; and

2. Any other evidence that tends to indicate the reasonable promise of success of the proposed credit union.

(6) If the organization of a proposed credit union would result in an overlapping limited field of membership, the department may disapprove the application if it finds that the formation of the proposed credit union will result in a substantial, adverse financial impact to an existing credit union having the same or substantially the same limited field of membership.

(7) Concurrently with submission of the application to the department, the applicant shall apply for membership in the corporation or apply for insurance of accounts with the National Credit Union Administration.

(8) The applicant shall not *accept any payments for credit to share or deposit accounts, or* commence business operations as a credit union, until the certificate of authorization and the guaranty certificate or insurance certificate have been delivered to the credit union.

(9) The department shall perform a preopening examination to verify good-faith compliance with all the requirements of law. If the department finds that such requirements have been met, it shall issue and deliver the certificate of authorization to transact business. Any credit union which fails to open for business within 6 months after the issuance of such certificate will forfeit its existence as a credit union, and the certificate of authorization shall be revoked. For good cause shown, the department may extend the opening date for an additional 6 months on its own motion or at the request of the credit union. Amounts credited on share accounts, less expenditures authorized by law, shall be returned pro rata to the respective account holders.

(10) All preopening costs and expenses in connection with the organization of the credit union and preparation for opening for business may be paid only from funds provided by the organizers or a sponsor and may be reimbursed by the credit union only out of undivided earnings, after provision has been made for reserves and dividends. However, the credit union may reimburse, as an operating expense, for forms and supplies, insurance, rent, and other expenses applicable to or consumed in the period after opening in accordance with rules adopted by the department.

(11)~~(10)~~ The department shall provide a form certificate of authorization and bylaws consistent with this chapter which shall be used by applicants for credit unions.

Section 69. Section 657.0061, Florida Statutes, is created to read:

657.0061 Amendments to bylaws.—

(1) All bylaw amendments must be submitted to the department. The department shall approve or disapprove bylaw amendments within 60 days after receipt. The department shall approve the proposed bylaw amendment unless it finds that the amendment:

(a) Is not in the best interest of the membership;

(b) Is not in accord with sound credit union practices; or

(c) Exposes the assets of the credit union to unnecessary risks.

(2) The department may, by rule, allow certain bylaw amendments that are ministerial in nature to become effective immediately upon filing with the department.

Section 70. Section 657.008, Florida Statutes, is amended to read:

657.008 Place of doing business.—

(1) Every credit union authorized to transact business pursuant to the laws of this state shall have one principal place of doing business as designated in its bylaws.

(2)(a) With 30 days prior written notification to the department, a credit union may maintain branches at locations other than its main office or relocate branches previously established if the maintenance of such branches is determined by the board of directors to be reasonably necessary to furnish service to its members.

(b) Investments in such branch offices shall comply with the limitations imposed by s. 657.042(4).

(c) If any branch is located outside this state, the cost of examining such branch shall be borne by the credit union. Such cost shall include, but shall not be limited to, examiner travel expense and per diem.

(3) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(4) Any credit union organized under this state or federal law, the members of which are presently, or were at the time of admission into the credit union, employees of the state or a political subdivision or munici-

pality thereof, or members of the immediate families of such employees, may apply for space in any building owned or leased by the state or respective political subdivision or municipality in the community or district in which the credit union does business. The application shall be addressed to the officer charged with the allotment of space in such building. If space is available, the officer may allot space to the credit union at a reasonable charge for rent or services. If the governing body having jurisdiction over the building determines that the services rendered by the credit union to the employees of the governing body are equivalent to a reasonable charge for rent or services, available space may be allotted to the credit union without charge for rent or services. The officer charged with the allotment of space in such building shall report annually the terms and conditions of such use of space to the Auditor General.

(5) A credit union may change its principal place of business within this state upon approval by the department.

~~(6) All records of a credit union shall be maintained at the principal place of business described in the bylaws.~~

(6)~~(7)~~(a) The department may authorize foreign credit unions to establish branches in Florida if all of the following criteria are met:

1. The state in which the foreign credit union's home office is located permits Florida credit unions to do business in the state under restrictions that are no greater than those placed upon a domestic credit union doing business in that state. For this purpose, such restrictions shall include, but are not limited to, any fees, bonds, or other charges levied on domestic credit unions doing business in that state.

2. The deposits of such foreign credit union and its proposed Florida branch will be insured or guaranteed by an insurer or guarantor acceptable to the department. Insurance or guarantee of accounts comparable to that provided by the Florida Credit Union Guaranty Corporation is deemed to be acceptable; however, acceptance of insurance or guarantee of accounts by any insuring or guaranteeing agencies or companies shall be subject to a determination by the department that the insuring or guaranteeing agency or company is in sound financial condition and that its reserves with respect to its insured or guaranteed accounts are no less than those of the Florida Credit Union Guaranty Corporation.

3. The credit union's field of membership is so limited as to be within that meaning of that term as defined in s. 657.002.

(b) Every foreign credit union operating in Florida shall keep the department informed of every location at which it is operating.

(c) If the department has reason to believe that a foreign credit union is operating a branch in this state in an unsafe and unsound manner, it shall have the right to examine such branch. If, upon examination, the department finds that such branch is operating in an unsafe and unsound manner, it shall require the branch office to make appropriate modifications to bring such branch operations into compliance with generally accepted credit union operation in this state. Such foreign credit union shall reimburse the department for the full cost of this examination. Costs shall include examiner salaries, per diem, and travel expenses.

(d) Any foreign credit union operating in this state shall in any connection therewith be subject to suit in the courts of this state, by this state and the citizens of this state.

(7) A credit union may provide, directly or through a contract with another company, off-premises armored car services to its members. Armored car services do not constitute a branch for the purposes of this section.

Section 71. Section 657.021, Florida Statutes, 1990 Supplement, is amended to read:

657.021 Board of directors; executive committee.—

(1) The credit union shall have a board of directors consisting of not fewer than five directors to be elected from the members in the manner prescribed in the bylaws.

(2) Directors shall hold office for such terms as the bylaws provide.

(3) Each director, upon assuming office, shall acknowledge under oath that he has read the credit union act and the pertinent rules of the department and is familiar with his responsibilities as a director and that he will diligently and honestly administer the affairs of the credit union and will not knowingly violate, or willfully permit to be violated, any provision of this chapter. The director shall immediately file the signed copy of this oath with the department.

~~(3) No person shall serve as an officer, director, or committee member of a credit union who:~~

~~(a) Has been convicted of an offense involving dishonesty, a breach of trust, a violation of this chapter, or fraud, except with the prior approval of the department upon a showing of rehabilitation;~~

~~(b) Has been adjudicated bankrupt within the previous 3 years;~~

~~(c) Has been removed by the department as a credit union director, officer, committee member, or employee within the previous 3 years; or~~

~~(d) Has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.~~

(4) The board of directors shall fill any vacancies on the board by appointment until successors are elected as provided in the bylaws.

(5) The board of directors and the executive committee shall meet as often as required in the bylaws.

(6) The board of directors must determine the general direction of the business affairs, manage the funds, and maintain the records of the credit union in a manner that is consistent with safe and sound credit union practices.

(7) The board of directors must exercise the following duties which are nondelegable:

(a) Require any officer or employee who has custody of or handles funds to give bond with good and sufficient surety in an amount and character determined by the board of directors in compliance with rules adopted by the department.

(b) Establish the maximum amount of credit which may be extended to a member and establish written credit policies, including, without limitation, security requirements and terms of repayment.

(c) Establish written policies governing loans, investments, equity, personnel, collections, the conduct of officers, employees, and committee members, and continuing education for directors and committee members and other policies necessary for prudent credit union practices.

(d) Declare any dividends on shares.

(e) Adequately provide for reserves as required by this part or by rules or order of the department or as otherwise determined necessary by the board.

(f) Employ a chief executive officer, whose title may be either president or general manager, or, in lieu thereof, designate the treasurer to act as the chief executive officer and to be in active charge of the affairs of the credit union.

(8) The board of directors must exercise the following duties, which may be delegated within specific guidelines and policies established by board resolutions:

(a) Act on applications for membership, or appoint one or more membership officers to approve or deny applications for membership, under such conditions as may be prescribed in the bylaws. A record of a membership officer's approval or denial of membership must be made available to the board for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(b) Determine, from time to time, the interest rate or rates which are charged on extensions of credit and authorize any interest refunds to members from income earned and received in proportion to the interest paid by them on such classes of credit and under such conditions as the board prescribes.

(c) Determine the interest rates which will be paid on deposits and the manner of calculating those rates.

(d) Invest funds, except that the board may designate an investment committee or any qualified individual to make investments pursuant to written policies established by the board.

(9) The board of directors has authority, which may not be delegated, to:

(a) Limit the number of shares and the amount of deposits which may be owned by a member, which limitation must apply to all members.

(b) Designate a depository or depositories for the funds of the credit union.

(c) Suspend and remove any member of any of its committees for failure to perform his duties or for other just cause.

(d) Establish any committee determined to be necessary and appoint its membership.

(e) Call special meetings of the members.

(10) The board of directors has authority, which may be delegated within specific guidelines and policies established by board resolutions, to:

(a) Authorize the employment of persons necessary to carry on the business of the credit union.

(b) Authorize the purchase, lease, rental, or sale of personal property necessary to carry on the business of the credit union.

(c) Borrow or lend money to carry on the functions of the credit union.

~~(6) It shall be the duty of the board of directors to:~~

~~(a) Act on applications for membership, or appoint one or more membership officers to approve or deny applications for membership under such conditions as may be prescribed in the bylaws. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.~~

~~(b) Require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with rules adopted by the department.~~

~~(c) Determine from time to time the interest rate or rates which shall be charged on extensions of credit and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of credit and under such conditions as the board prescribes.~~

~~(d) Establish the maximum amount of credit which may be extended to a member and establish written credit policy, including, but not limited to, security requirements and terms of repayment.~~

~~(e) Establish written loan, investment, personnel, and collection policies.~~

~~(f) Declare dividends, if any, on shares and determine the interest rate or rates which will be paid on deposits and the manner of calculation.~~

~~(g) Invest funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments pursuant to written policies established by the board of directors.~~

~~(h) Make adequate provision for reserves as required by this part, by rules or order of the department, or as otherwise deemed necessary by the board.~~

~~(i) Employ a chief operating officer, whose title shall be either president or general manager, as the case may require; or in lieu thereof, designate the treasurer to act as the chief operating officer and to be in active charge of the affairs of the credit union.~~

~~(7) The board of directors shall have the authority to:~~

~~(a) Limit the number of shares and the amount of deposits which may be owned by a member, such limitations to apply alike to all members.~~

~~(b) Authorize the employment of such persons necessary to carry on the business of the credit union.~~

~~(c) Authorize the purchase, lease, rental, or sale of personal property necessary to carry on the business of the credit union.~~

~~(d) Borrow or lend money to carry on the functions of the credit union.~~

~~(e) Designate a depository or depositories for the funds of the credit union.~~

~~(f) Suspend and remove any or all members of any committee for failure to perform their duties or for other just cause.~~

~~(g) Establish any committees deemed necessary and appoint the membership thereof.~~

~~(h) Call special meetings of the members.~~

~~(i) Delegate to the officers, employees, and committees such tasks as it may deem appropriate.~~

~~(j) Establish policies and procedures for the conduct of officers, employees, and committees.~~

~~(k) Perform such duties as the members from time to time direct and perform or authorize any action authorized by this chapter not specifically reserved in the bylaws for the members.~~

(11)~~(8)~~ The board of directors may appoint an executive committee which may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board in writing. The executive committee shall be composed of the executive officers as defined in s. 657.022.

Section 72. Subsection (3) of section 657.023, Florida Statutes, is amended to read:

657.023 Membership.—

(3) A credit union may not ~~classify members or otherwise~~ restrict any member's rights, except that the credit union may close the account *and terminate the membership* of any member whose actions have resulted in any financial loss to the credit union.

Section 73. Section 657.026, Florida Statutes, is amended to read:

657.026 Supervisory *or audit* committee.—

(1) *There shall be* a supervisory *or audit* committee of not fewer than three members, *which may* ~~shall~~ be elected by the membership or appointed by the board, *or the board may appoint an audit committee of directors* in the manner prescribed in the bylaws. *An officer or employee may not serve on the supervisory or audit committee.*

(2) The supervisory or audit committee may audit, or cause to be audited, the financial statements of the credit union to determine compliance with policy, to ensure that generally accepted accounting principles are consistently applied, and to ensure an adequate system of internal controls.

(3)~~(2) It shall be the duty of~~ The supervisory *or audit* committee *shall:*

(a) Make or cause to be made a comprehensive annual audit of the credit union, in accordance with the rules of the department.

(b) Make or cause to be made such supplementary audits or examinations as it deems necessary or as are requested by the board of directors or the department.

~~(c) Make or cause to be made a verification of members' accounts from time to time and not less than once in any 24-month period.~~

(c)~~(d)~~ Submit a report of every required audit or examination within a reasonable time to the board of directors with a copy to the department *and, depending upon which organization is applicable, a copy to the corporation or the National Credit Union Administration.*

(d)~~(e)~~ Make a summary report, to the membership at the annual meeting, of any audits or examinations conducted during the preceding year.

~~(3) The supervisory committee may:~~

~~(a) By a two-thirds vote, suspend any member of the credit committee for cause and report such action to the board of directors for appropriate action.~~

(4)~~(b)~~ *The supervisory or audit committee shall notify the board of directors, the department, and, as applicable, either the corporation or the National Credit Union Administration of* ~~By a majority vote, call a special meeting of the members to consider~~ any violation of this part, any violation of the certificate of authorization or bylaws of the credit union, or any practice of the credit union deemed by the supervisory *or audit* committee to be unsafe, unsound, or unauthorized.

For the purposes of this subsection, two-thirds of the members of the supervisory *or audit* committee *constitutes* ~~shall constitute~~ a quorum.

Section 74. Section 657.0265, Florida Statutes, is amended to read:

657.0265 Liability of *credit union directors, supervisory committee members, or audit committee members* ~~directors or supervisory committee members of credit unions.~~—

(1) A director of a credit union organized under state or federal law, or a member of the supervisory *or audit* committee of such credit union, is not personally liable for monetary damages to the credit union, its members, or any other persons for any statement, vote, decision, or failure to act, regarding the management or policy of the credit union, ~~by a director or member of the supervisory committee,~~ unless:

(a) The director or the member of the supervisory *or audit* committee breached or failed to perform his duties as a director or as a member of the supervisory *or audit* committee; and

(b) The breach or failure to perform by the director or the member of the supervisory *or audit* committee constitutes:

1. A violation of the criminal law, unless the director or the member of the supervisory *or audit* committee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a director or a member of a supervisory *or audit* committee in any criminal proceeding for a violation of the criminal law estops that director or member of the supervisory *or audit* committee from contesting the fact that his breach or failure to perform constitutes a violation of the criminal law, but does not estop the director or member of the supervisory *or audit* committee from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful;

2. A transaction from which the director or the member of the supervisory *or audit* committee derived an improper personal benefit, either directly or indirectly; or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term "recklessness" means the acting, or omission to act, in conscious disregard of a risk *that is*:

(a) Known, or so obvious that it should have been known, to the director or member of the supervisory *or audit* committee; and

(b) ~~Known to the director or member of the supervisory committee, or so obvious that it should have been known, to be~~ So great as to make it highly probable that harm would follow from such action or omission.

Section 75. Section 657.027, Florida Statutes, is amended to read:

657.027 Credit committee and credit manager.—

(1) The board of directors may appoint or the members may elect, as provided in the bylaws, a credit committee composed of not fewer than three members, for such terms as the bylaws provide.

(a) The credit committee shall have the general supervision of all applications for credit by members, pursuant to written policies established by the board of directors.

(b) The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for credit. No credit shall be extended unless it is approved by a majority of a quorum of the committee. A quorum shall consist of not less than a majority of the entire committee.

(c) The credit committee may appoint one or more loan officers and delegate to them the power to approve *or disapprove* credit subject to such limitations or conditions as the credit committee prescribes. Credit applications not acted upon by a loan officer shall be reviewed and acted upon by the credit committee.

(2) In lieu of a credit committee, the board of directors may provide for a credit manager to approve or disapprove credit under written conditions prescribed by the board. The board of directors may designate and empower the chief *executive* ~~operating~~ officer as the credit manager, or may authorize the chief *executive* ~~operating~~ officer to employ a credit manager, as provided in the bylaws. In the event a credit manager is designated or employed, the procedures prescribed in subsection (1) do not apply, and no credit shall be extended unless approved by the credit manager; except that the credit manager may appoint one or more loan officers with the power to approve *or disapprove* credit, subject to such limitations or conditions as prescribed by the chief *executive* ~~operating~~ officer.

Section 76. Section 657.028, Florida Statutes, is amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents; criminal penalties.—

(1) *An* ~~No~~ individual *may not* ~~shall have the authority to~~ disburse funds of the credit union for any extension of credit approved by him.

(2) *An* ~~No~~ elected officer or director or any committee member, *other than* ~~except~~ the treasurer *or the chief executive officer serving in the capacity of treasurer,* ~~while serving as the chief operating officer,~~ may *not* be compensated for his service as such.

(3) A person may not serve as an officer, director, or committee member of a credit union if he:

(a) Has been convicted of a felony or of an offense involving dishonesty, a breach of trust, a violation of this chapter, or fraud, except with the prior approval of the department upon a showing of rehabilitation;

(b) Has been adjudicated bankrupt within the previous 7 years;

(c) Has been removed by any regulatory agency as a director, officer, committee member, or employee of any financial institution, except with the prior approval of the department upon a showing of rehabilitation and upon showing of ability to be bondable;

(d) Has performed acts of fraud or dishonesty, or has failed to perform duties, resulting in a loss which was subject to a paid claim under a fidelity bond, except with the prior approval of the department upon a showing of rehabilitation and upon showing of ability to be bondable; or

(e) Has been found guilty of a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(4) A person may not serve as a director of a credit union if he is an employee of the credit union other than the chief executive officer of the credit union.

(5)~~(3)~~ *A* ~~No~~ director, committee member, officer, agent, or employee of the credit union *may not* ~~shall~~ in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association, other than the credit union, in which he or a member of his immediate family is directly or indirectly interested.

(6)~~(4)~~ Within *30* ~~10~~ days after election or appointment, a record of the names and addresses of the members of the board, members of committees, and all officers of the credit union shall be filed with the department on forms prescribed by the department.

(7)~~(5)~~ It is unlawful for any official, director, or employee of a credit union to ask for, receive, or consent to receive any commission, emolument, gratuity, money, property, or thing of value for:

(a) Procuring or endeavoring to procure for any person a loan or extension of credit from such credit union; or

(b) Procuring or endeavoring to procure the purchase or discount of any note, draft, check, bill of exchange, or other obligation by such credit union.

(8)~~(6)~~ It is unlawful for any official, director, agent, or employee of a credit union to:

(a) Knowingly receive or possess himself of any credit union property, other than in payment of a just demand, and, with intent to deceive or defraud, omit to make or cause to be made a full and true entry thereof in its books and accounts, or concur in omitting to make any material entry thereof;

(b) Embezzle, abstract, or misapply any money, property, or thing of value of the credit union with intent to deceive or defraud such credit union;

(c) Knowingly make, draw, issue, put forth, or assign any share, certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation, mortgage, judgment, or decree without authority from the board of directors of such credit union;

(d) Make any false entry in any book, report, or statement of such credit union with intent to deceive or defraud such credit union or any other person, with intent to deceive any members or officials of such credit union, or with intent to deceive the department or any authorized representative appointed to examine the affairs of such credit union; or

(e) Deliver or disclose to the department or any of its employees any examination report, report of condition, report of income and dividends, internal audit, account, statement, or document known by him to be fraudulent or false as to any material matter.

(9)~~(7)~~ Whoever violates any *provision* ~~of the provisions~~ of subsection *(7)*~~(5)~~ or subsection *(8)*~~(6)~~ is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 77. Subsections (10), (23), and (26) of section 657.031, Florida Statutes, are amended to read:

657.031 Powers.—A credit union shall have the power to:

(10) Borrow money and issue evidences of indebtedness for a loan or loans ~~for temporary purposes~~ in the usual course of its business and secure such obligations by mortgage or pledge of any of its assets. Aggregate borrowings shall not exceed 50 percent of the unimpaired capital of the credit union. However, this percentage limitation shall not apply to loans from the corporation or from the National Credit Union Administration.

(23) Act as trustee of funds permitted by federal law to be deposited in a credit union as a deferred-compensation or tax-deferral device, including, but not limited to, Individual Retirement Accounts as defined by *the* ~~s. 408,~~ Internal Revenue Code.

(26) Participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, provided such participation is not inconsistent with those rules of the department adopted to further service to the members and to protect members' funds against unreasonable risks. ~~Any credit union participating in any system shall notify the department as provided by law.~~

Section 78. Section 657.0315, Florida Statutes, is created to read:

657.0315 Contracts for providing goods, products, or services.—

(1) A credit union may not enter into a written or oral contract with any person to provide goods, products, or services to or for the benefit of the credit union if the performance of such contract would adversely affect the safety or soundness of the credit union, and the contract is voidable.

(2) Enforcement of this section may be made only by the board of directors of the credit union, unless the contract had been authorized by specific action of the board; by the corporation or National Credit Union Administration if it is directed to assume control of the assets and business of the credit union pursuant to s. 657.062; or by the liquidator appointed pursuant to s. 657.063 or s. 657.064.

Section 79. Subsections (5) and (6) of section 657.033, Florida Statutes, are amended to read:

657.033 Accounts.—

(5) *When* ~~At such time as the location of the member, beneficiary, or other person named on the account is unknown to the credit union and~~ there has not been any activity generated by the member on the account for *24* ~~12~~ months ~~or longer~~, such account shall be considered a dormant account and shall be placed ~~in a separate grouping~~ under *an accounting* ~~a~~ control system ~~which will adequately identify such accounts~~.

(6) *If the owner of a dormant account, a person named on the account, or the beneficiary of the account has not had any activity with a credit union for 7 years and the whereabouts of those interested parties are unknown to the credit union, that account is unclaimed or abandoned property and shall be maintained pursuant to chapter 717.* ~~Adequate controls shall be established to determine the validity of significant activity on dormant accounts.~~

Section 80. Section 657.038, Florida Statutes, is amended to read:

657.038 Loan powers.—

(1) A credit union may extend credit to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves, pursuant to written loan policies established by the board of directors, ~~at rates of interest not exceeding 18 percent per annum simple interest,~~ or as may otherwise be provided by law.

(2) The total unsecured obligations outstanding from any member *must* ~~shall~~ not exceed the greater of *$500 or 15* ~~$200 or 2~~ percent of the *equity* ~~unimpaired capital~~ of the credit union.

(3) The total ~~secured~~ obligations outstanding from any member *must* ~~shall~~ not exceed the greater of *$1,000 or 25* ~~$500 or 10~~ percent of the *equity* ~~unimpaired capital~~ of the credit union. The limitations provided in this subsection do not apply to loans which are fully secured by assignment of shares or deposits *in* ~~of~~ the lending credit union.

(4) A member may receive credit in installments or in one sum and may pay the whole or any part of his indebtedness on any day on which the office of the credit union is open for business.

(5) The credit committee or credit manager may approve in advance, upon request of a member, a line of credit, and disbursements may be granted to such member within the limit of such line of credit. When a line of credit has been approved, no additional credit applications are required as long as the aggregate obligation does not exceed the limit of such line of credit; however, no additional disbursements *may* ~~shall be made to any member whose financial information has not been reviewed and updated within the previous 36-month period, and no additional disbursements shall~~ be made to any member whose existing extensions of credit are in default or are subject to adverse classification without receiving current financial information.

(6) Loans secured by ~~first or second~~ mortgages on real property *must* ~~shall~~ be made in accordance with written policies of the board of directors and rules of the department.

(7) *As used in this section, the term "related interest" means a person's interest in a partnership as a general partner, and any limited partnership, corporation, or other business organization controlled by that person. A limited partnership, corporation, or other business organization is controlled by a person who:* ~~In computing the aggregate liability of a member for the purpose of the limitations herein and any other limitation prescribed by rules of the department and the bylaws of the credit union, there shall be included:~~

(a) *Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of any such business organization;* ~~Loans to a member corporation in which the member holds an equity interest of 25 percent or more.~~

(b) *Controls in any manner the election of a majority of the directors of any such business organization; or* ~~Loans to any member partnership in which the member is a general partner or is a limited partner with a 50 percent interest or more.~~

(c) *Has the power to exercise a controlling influence over the management or policies of such business organization.* ~~Loans made, endorsed, or guaranteed by the member.~~

(8) In computing the total liabilities of any person, all loans endorsed or guaranteed as to repayment by such person and by any related interest of such person must be included.

(9)~~(8)~~ *A* ~~No~~ loan *may not* ~~shall~~ be made to any corporation, except *to* the Florida Credit Union Guaranty Corporation, Inc., or a corporation in which the credit union holds an equity interest.

(10)~~(9)~~ The loan limitations stated in this section shall not be enlarged by the provision of any other section of this chapter.

(11)~~(10)~~ Any approval of extension of credit requiring approval of the board of directors shall be recorded in the minutes of the board, including the borrower's account number or other code, the amount of the loan, the maturity of the loan, and the general type of security.

(12)~~(11)~~ The department may adopt rules to provide for minimum documentation and safe lending procedures necessary to protect the members' funds.

(13)~~(12)~~ A credit union may participate in extensions of credit to its members jointly with other credit unions, corporations, or financial institutions.

(14)~~(13)~~ A credit union may participate in guaranteed loan programs of the federal and state governments, provided the borrower is a member of the credit union.

(15)~~(14)~~ If approved by the board of directors, a credit union may extend credit to other credit unions, or to the corporation, in an amount not greater than 25 percent of the unimpaired capital of the lending credit union.

(16)~~(15)~~ A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members, provided that the credit union could have originally made the loan to the member.

~~(16) For the purposes of this part, the existence of an endorser, comaker, or guarantor shall not constitute security.~~

Section 81. Section 657.039, Florida Statutes, is amended to read:

657.039 Loan powers; extension of credit to directors, officers, committee members, and certain employees.—

(1) A credit union may extend credit to its *officers,* directors, ~~its~~ credit manager, members of its supervisory, *audit,* and credit committees, and any other person authorized to approve extensions of credit, provided:

(a) The extension of credit complies with all requirements under this part with respect to credit extended to other borrowers and is not on terms more favorable than those extended to other borrowers.

(b) *The loan or aggregate of loans to any person or any related interest of any person covered by this section which exceeds $5,000, except for share-secured or deposit-secured credit, is approved in advance by the board of directors with any interested person abstaining from voting.* ~~The aggregate of credit, except share secured or deposit secured credit, extended to those persons set forth in this subsection does not exceed 10 percent of the unimpaired capital of the credit union.~~

(c) ~~The application for extension of credit, except share secured or deposit secured credit, is approved by the credit committee or credit manager and the board of directors, without such director, loan officer, credit manager, or credit committee member having a vote on his loan.~~ Approved lines of credit, such as open-end loans, may be funded without further approval by the board, but all extensions of credit *over $5,000* to such persons *must* ~~shall~~ be reviewed at least annually by the board of directors. Closed-end loans which have been fully funded *do* ~~shall~~ not require annual review.

(2) As used in this section, the term "related interest" means a person's interest in a partnership as a general partner, and any limited partnership, corporation, or other business organization controlled by that person. A limited partnership, corporation, or other business organization is controlled by a person who:

(a) Owns, controls, or has the power to vote 25 percent or more of any class of its voting securities;

(b) Controls in any manner the election of a majority of its directors; or

(c) Has the power to exercise a controlling influence over its management or policies.

(3) In computing the total liabilities of any person, all loans endorsed or guaranteed as to repayment by such person and by any related interest of such person must be included.

~~(2) In computing the aggregate liabilities of the directors, officers, committee members, and employees subject to the 10 percent limitation, there shall be included:~~

~~(a) Loans to any member corporation in which any one or more directors, officers, committee members, or employees hold an equity interest of 25 percent or more.~~

~~(b) Loans to any member partnership in which any one or more directors, officers, committee members, or employees is a general partner or a limited partner with a 50 percent interest or more.~~

~~(c) Loans comade, endorsed, or guaranteed by the directors, officers, committee members, and employees.~~

~~(3) The requirements of this section concerning approval of extensions of credit by the board of directors shall have been met only when those approvals have been recorded in the formal minutes of the board, including the borrower's name, the amount of the loan, the maturity of the loan, and the general type of security.~~

(4) The limitations stated in this section shall not be enlarged by the provision of any other section of this chapter.

Section 82. Section 657.042, Florida Statutes, is amended to read:

657.042 Investment powers and limitations.—A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(1) INVESTMENTS NOT SUBJECT TO LIMITATIONS.—There is no limitation with respect to the capital of the investing credit union on the following investments:

(a) Direct obligations of the United States Government.

(b) Obligations of agencies created by the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government.

(c) Public housing authority obligations.

(d) General obligations of the states of the United States and of the political subdivisions and municipalities thereof.

(e) Obligations issued by the State Board of Education under authority of the Constitution or applicable statutes.

(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.

(g) The assets of liquidating credit unions in this state, provided such assets are otherwise eligible for investment by the acquiring credit union.

(h) The shares and deposit accounts of corporate credit unions and any other fund established by this state or by the Federal Government for the purpose of maintaining liquidity in credit unions; however, such investments shall not exceed the amount required for the purpose of meeting the daily needs of the investing credit union for operating liquidity.

(i) Stock of the Federal National Mortgage Association, or any other similar entity designated by the department, designed to promote investment in residential mortgages, which may be purchased and retained as required in connection with mortgage transactions with the association or entity.

(2) INVESTMENTS SUBJECT TO LIMITATION OF *25* ~~15~~ PERCENT OF CAPITAL OF THE CREDIT UNION.—Up to *25* ~~15~~ percent of the capital of the credit union may be invested in:

(a) The shares or deposit accounts *in* ~~of~~ any one corporate credit union or other insured financial depository institution. *The credit union may exceed the 25-percent investment limitation in the corporate credit union, subject to the prior written approval of the department.*

(b) Federal funds, daily; however, a credit union may not sell at any one time federal funds to any individual institution in an amount exceeding 100 percent of the equity of the selling credit union.

(c) Bankers' acceptances that are eligible for purchase by Federal Reserve Banks.

(3) INVESTMENT SUBJECT TO LIMITATION OF TWO PERCENT OF CAPITAL OF THE CREDIT UNION.—

(a) Up to 2 percent of the capital of the credit union may be invested in the capital shares, obligations, or preferred stock issues of any agency or association, or membership association, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations.

(b) Commercial paper and bonds of any corporation within the United States which have a fixed maturity, as provided in subsection (7), except that the total investment in all such paper and bonds may not exceed 10 percent of the capital of the credit union.

(4) INVESTMENT SUBJECT TO LIMITATION OF ONE PERCENT OF CAPITAL OF THE CREDIT UNION.—Up to 1 percent of the capital of the credit union or $15,000, whichever is greater, may be invested in any of the following:

(a) Corporate obligations of any one corporation which is an affiliate or subsidiary of the credit union, except that the total investment in all such corporate obligations shall not exceed 10 percent of the capital of the credit union.

~~(b) With the approval of the department, corporate bonds with a fixed maturity of any corporation within the United States, except that the total investment in all such corporate bonds shall not exceed 10 percent of the capital of the credit union.~~

(b)~~(c)~~ Any capital participation instrument or evidence of indebtedness issued by the Florida Black Business Investment Board pursuant to the Florida Small and Minority Business Assistance Act of 1985.

(5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE CREDIT UNION.—

(a) Up to 5 percent of the capital of the credit union may be invested in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business.

(b) The limitations provided by this subsection may be exceeded with the prior written approval of the department. The department shall grant such approval if it is satisfied that:

1. The proposed investment is necessary.

2. The amount thereof is commensurate with the size and needs of the credit union.

3. The investment will be beneficial to the members.

(6) INVESTMENTS SUBJECT TO DEPARTMENT APPROVAL.—A credit union may invest its funds in such other investments, including the capital stock of other financial institutions, as the department approves by rule or order.

(7) SPECIAL PROVISIONS.—

(a) None of the bonds or other obligations described in this section shall be eligible for investment by credit unions in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized investment rating service, or any comparable rating as determined by the department. ~~Bonds or other obligations which are unrated shall not be eligible for investment unless otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing credit union.~~

(b) *With prior approval of the department,* any investment permitted in this section may also be made indirectly by investment in a trust *or mutual,* the investments of which are limited as set forth *in this section* ~~herein~~, provided that the *credit union must maintain a current file on each investment which contains sufficient information to determine whether the investment complies with the requirements of this section. If the investment fails to comply with the requirements of this section, the credit union must divest itself of its investment, unless otherwise* ~~trust is~~ approved by the department.

Section 83. Section 657.043, Florida Statutes, is amended to read:

657.043 Reserves.—

(1) TRANSFERS TO REGULAR RESERVE.—Immediately before *paying* ~~payment of~~ each dividend, the *total* ~~gross earnings~~ of *all income for the period* ~~the credit union~~ shall be determined. From this amount, there shall be set aside sums as a regular reserve in accordance with the following schedule:

(a) A credit union shall set aside:

1. Five percent of the *total of all income for the period* ~~gross income~~, until the regular reserve *equals 6* ~~shall equal 4~~ percent of the ~~total outstanding loans and~~ risk assets, then,

2. Two percent of the *total of all income for the period* ~~gross income~~, until the regular reserve *equals 8* ~~shall equal 6~~ percent of the ~~total outstanding loans and~~ risk assets.

(b) Whenever the *ratio of regular reserves to risk assets* ~~regular reserve~~ falls below the stated percent ~~of the total outstanding loans and risk assets~~, it shall be replenished by regular contributions as provided in paragraph (a).

(c) The department may decrease the reserve requirements set forth in this subsection when in its opinion such a decrease is necessary to preserve the fiscal soundness of the credit union.

(2) ALLOWANCE FOR LOAN LOSSES ACCOUNT.—*The credit union shall maintain an account for loan losses. The amount in the account must equal the board's estimate of losses in the loan portfolio and be consistent with the rules of the department. The account must be provided for, before paying a dividend, in the manner provided by rule. This account constitutes part of the regular reserve for the purpose of determining the ratio of regular reserves to risk assets.* ~~A portion of the regular reserve will be transferred to an account to be known as "allowance for loan losses" in an amount equal to the board's estimate of losses in the portfolio and consistent with rules of the department.~~

(3) USE OF REGULAR RESERVE.—The regular reserve shall belong to the credit union and shall be used to meet losses ~~as may be approved by the department~~. *In the event of a decrease, the department may require additional transfers to the regular reserve above the amount required by subsection (1) until the decrease has been restored. The regular reserve may not be decreased without the prior written approval of the department or as provided by rule.*

(4) RISK ASSETS DEFINED.—~~For the purpose of establishing the reserve required by subsection (1),~~ The following assets shall ~~not~~ be considered risk assets:

(a) All loans, except:

~~(a) Cash on hand.~~

~~(b) Insured or guaranteed deposits and shares in financial depository institutions.~~

~~(c) Assets which are fully insured or fully guaranteed as to principal and interest by, or due from, the United States Government, its agencies, or associations.~~

~~(d) Loans to other credit unions.~~

~~(e) Loans to students insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. ss. 1071 et seq.) by the Federal Housing Administration or similarly insured loans.~~

~~(f) Shares or deposits in central credit unions organized under this part or any other state act or the Federal Credit Union Act.~~

~~(g) Common trust investments which deal in investments authorized by this part.~~

~~(h) Accrued interest on nonrisk investments.~~

~~(i) Furniture and equipment.~~

~~(j) Land and buildings.~~

~~(k) Investments in or loans to the corporation.~~

1.~~(l)~~ Loans fully secured by a pledge of shares or deposits in the lending credit union, equal to and maintained to at least the amount of the loan outstanding.

2.~~(m)~~ Loans which are purchased from liquidating credit unions and guaranteed by the corporation or insured by the National Credit Union Administration or other insuring agencies.

3. Investments in or loans to the corporation.

(b) All investments that have remaining maturities greater than 3 years, unless a specific reserve has been established to mark the investment to current market value.

(c) Uninsured or nonguaranteed deposits and shares in financial depository institutions, except deposits in the Federal Reserve Bank, the Federal Home Loan Bank, and the Southeast Corporate Federal Credit Union.

(d) All investments in commercial paper and bonds.

(e) All investments in Banker's Acceptances.

(f) All investments in Federal Funds.

(g) All investments that are authorized pursuant to subsection (6) or subsection (7).

(h) Fixed assets greater than the statutory limit imposed by this chapter, unless a specific reserve has been established for the excess.

(5) ALLOWANCE FOR INVESTMENT LOSSES.—The credit union may maintain a contra asset account to provide an allowance for investment losses, which will not be included in the determination of equity. The account must be maintained consistent with the rules of the department.

(6)~~(5)~~ SPECIAL RESERVES.—In addition to such regular reserve, special reserves shall be established:

(a) To protect members against losses resulting from credit extended or from risk assets when required by rule, or when found by the department, in any special case, to be necessary for that purpose; or

(b) As authorized by the board of directors.

(7)~~(6)~~ RESERVE FOR CONTINGENCIES.—The board of directors may, after the regular reserve required by this section and rules of the department has been set aside, transfer a portion of undivided earnings to an auxiliary reserve account to provide for additional possible losses and expenses. ~~The purpose for the reserve shall be specific, and the amount of the possible loss shall be reasonably estimable.~~

(8) RESERVES.—The ratio of equity to total assets for each credit union must be maintained at not less than 5 percent. At the end of the calendar quarter when this ratio is determined to be less than 5 percent, the credit union shall, within 60 days thereafter, prepare and file with the department for approval a plan to achieve the minimum ratio within 4 years, or such longer period of time approved by the department. Once achieved, each credit union must maintain a ratio of equity to total assets of not less than 5 percent, unless otherwise authorized by the department. The department, by rule, shall prescribe the information, types of restrictions and limitations on operations, reporting requirements, and other criteria that are required to be included in an acceptable plan. An acceptable plan must recognize the unique characteristics and risk differences for the individual credit union.

(9) GUARANTY ASSISTANCE AGREEMENT.—The amount of any liability arising out of a guaranty assistance agreement with the corporation or National Credit Union Administration must be maintained as a reserve and be included in the determination of undivided earnings of the credit union.

Section 84. Section 657.053, Florida Statutes, 1990 Supplement, is amended to read:

657.053 Assessments; state credit unions.—

~~(1)~~ Each state credit union shall pay to the department a semiannual assessment ~~based on the total assets as shown on the statement of condition of the credit union on the last business day in December and the last business day in June of each year. The semiannual assessment shall be~~ computed by using the following schedule:

(1)~~(a)~~ For assets under $25,000, an assessment of *$1.98* ~~$1.72~~ per $1,000, but not less than *$17.25* ~~$15.00~~.

(2)~~(b)~~ For assets over $25,000, an assessment of *$49.50* ~~$43.12~~, plus *$1.82* ~~$1.58~~ per $1,000 over $25,000.

(3)~~(c)~~ For assets over $50,000, an assessment of *$95.00* ~~$82.65~~, plus *$1.59* ~~$1.38~~ per $1,000 over $50,000.

(4)~~(d)~~ For assets over $100,000, an assessment of *$174.40* ~~$151.65~~, plus *$0.99* ~~$0.86~~ per $1,000 over $100,000.

(5)~~(e)~~ For assets over $250,000, an assessment of *$323.19* ~~$281.03~~, plus *$0.79* ~~$0.69~~ per $1,000 over $250,000.

(6)~~(f)~~ For assets over $500,000, an assessment of *$521.56* ~~$453.53~~, plus *$0.46* ~~$0.40~~ per $1,000 over $500,000.

(7)~~(g)~~ For assets over $1,000,000, an assessment of *$753.00* ~~$654.78~~, plus *$0.36* ~~$0.31~~ per $1,000 over $1,000,000.

(8)~~(h)~~ For assets over $2,000,000, an assessment of *$1,116 69* ~~$971.03~~, plus *$0.31* ~~$0.27~~ per $1,000 over $2,000,000.

(9)~~(i)~~ For assets over $5,000,000, an assessment of *$2,068.89* ~~$1,799.03~~, plus *$0.16* ~~$0.14~~ per $1,000 over $5,000,000.

(10)~~(j)~~ For assets over $20,000,000, an assessment of *$4,449.39* ~~$3,869.03~~, plus *$0.15* ~~$0.13~~ per $1,000 over $20,000,000.

(11)~~(k)~~ For assets over $50,000,000, an assessment of *$9,012.01* ~~$7,836.53~~, plus *$0.14* ~~$0.12~~ per $1,000 over $50,000,000.

(12)~~(l)~~ For assets over $100,000,000, an assessment of *$16,285.76* ~~$14,161.53~~, plus *$0.14* ~~$0.12~~ per $1,000 over $100,000,000.

~~(2) Additional assessments may be made to cover the costs of the department for examination and supervision. Such assessments may not exceed 15 percent of the assessment of a credit union, as calculated pursuant to subsection (1), in any fiscal year. The assessments required by this subsection shall apply to the 6-month period following the first day of the month in which they are due.~~

Section 85. Section 657.055, Florida Statutes, is amended to read:

657.055 *Retention and* destruction of certain records.—

(1) *The following credit union records must be retained permanently in either their original form or copied photographically, microphotographically, or on archival computer media:*

(a) Charter, bylaws, and amendments.

(b) Certificates of share insurance or any license to operate under a program of any government agency.

(c) General ledger and supporting subsidiary ledgers.

(d) Minutes of meetings of the members, board of directors, credit committee, audit committee, and supervisory committee.

(e) Supervisory or audit committee annual audit report, or equivalent examination report by a certified public accountant, and any attachments.

(f) Listings of records destroyed.

(2) The following credit union records, if used, must be retained in either their original form or copied photographically, microphotographically, or on archival computer media for a period of at least 5 years after January 1 of the year following the date the records are made or filed:

(a) Balance sheets and statements of income and expenses.

(b) Individual share and loan records.

(c) Journal and cash records.

(d) Cash account reconcilements.

(e) Dividend records.

(f) Expense records.

(g) Reports of financial condition.

(h) Matured investment records.

(i) Supervisory or audit committee summary of account verification or the equivalent prepared by a certified public accountant.

(j) Closed applications for membership and share account agreements.

~~(a) Credit unions shall preserve the following records, if used, or files or photographic or microphotographic copies thereof, for a period of not less than 5 years next after January 1 of the year following the time of making or filing of such records or files:~~

~~1. Cash received voucher.~~

~~2. Balance sheet and statement of income and expense.~~

~~3. Individual share and loan ledger.~~

~~4. Journal and cash record.~~

~~5. Bank reconcilement.~~

~~6. Dividend record.~~

~~7. Expense record.~~

~~(b) Ledger sheets or photographic or microphotographic copies of ledger sheets shall not be destroyed and shall be retained in an accessible location.~~

(3)~~(2)~~ No liability shall accrue against any credit union destroying any such records after the expiration of the period provided in subsection *(2)* ~~(1)~~, and in any cause or proceedings in which any such records or files *are* ~~may be~~ called *into* ~~in~~ question or ~~be~~ demanded of the credit union or an employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section *constitutes* ~~shall be~~ a sufficient excuse for the failure to produce them.

(4)~~(3)~~ Any credit union may photograph, microphotograph, *use archival computer media,* or reproduce on film, in such manner that each page is exposed in its entirety, any of its journals, ledgers, statements, account books, other books, or internal records of every description made or received in the regular course of its business, and the photographs, microphotographs, *archival computer media,* or reproductions on film in the form of film, prints, or enlarged prints, or any duly certified or authenticated copy or reproduction thereof, duly certified or authenticated by a responsible officer of the credit union under whose supervision the records are kept shall, in all cases and in all courts and places, be admitted and received as evidence with a like force and effect as the original general ledger, voucher, statement, account book, or other record.

(5) Retention requirements of federal laws must be satisfied pursuant to appropriate federal regulations.

(6)~~(4)~~ This section shall, so far as applicable, apply to the records of federal credit unions operating in this state.

Section 86. Section 657.062, Florida Statutes, is amended to read:

657.062 Assumption of control by guarantor or insurer.—

(1) The department may direct the corporation or the National Credit Union Administration, whichever is applicable, to assume control of the property, assets, and business of its member credit union and to operate it *subject to the directions* ~~in accordance with the recommendations~~ of the department:

(a) Whenever the department finds that the credit union:

1. Is engaging or has engaged in an unsafe or unsound practice;

2. Is violating or has violated any provision of this chapter; or

3. Is violating or has violated any department rule, department order, or written agreement entered into with the department,

in such a manner that the credit union is threatened with *imminent* insolvency. *Any credit union which has a balance in its equity accounts of less than 1 percent of its total assets, after adjustment for apparent losses, is considered to be threatened with imminent insolvency.*

(b) Whenever a majority of the members of the board of directors of the credit union have been removed by the department or shall have resigned.

(2) *Except when prohibited by federal or state law,* in the event of assumption of control, the guarantor or insurer *may* ~~shall have authority to~~ elect the board of directors and the operating committees *and may, without penalty or liability, prepay any deposit accounts; terminate any contracts or agreements with employees, independent contractors, or consultants; terminate any contract or agreement with any person to provide goods, products, or services if the performance of such contract would adversely affect the safety or soundness of the credit unions or if such contract was entered into in violation of s. 657.0315(1); and terminate or assign any lease for property.* The authority of the guarantor or insurer to continue operation of a credit union shall continue for a period not to exceed 180 days, unless extended by the department for an additional period not to exceed 180 days at the request of the guarantor or insurer, or unless involuntary liquidation proceedings have been initiated by the department. In the event that the guarantor or insurer does assume control pursuant to the direction of the department, a meeting of the credit union shall be called within 180 days, or within the period of extension as approved by the department, for the specific purpose of electing a new board of directors, who shall take office when the guarantor or insurer surrenders control, or considering such other recommendations as the guarantor or insurer and the department may make.

Section 87. Section 657.063, Florida Statutes, is amended to read:

657.063 Involuntary liquidation.—

(1) If the department finds that any credit union is bankrupt or insolvent, or is transacting its business in an unsound, unsafe, or unauthorized manner such that it is threatened with imminent insolvency, and liquidation is in the best interest of the members, the department may, in its discretion, order the credit union placed in involuntary liquidation and designate and appoint a liquidator to take charge of the assets and affairs of the credit union. The order shall set forth the specific findings and reasons for the action taken.

(2) The liquidator *must* ~~to~~ be appointed by the department. ~~shall be~~ The corporation or the National Credit Union Administration, whichever is applicable, *must be given the right of first refusal. The department may appoint another entity if refused by the primary guarantor or insurer.*

(3) Upon appointment and in accordance with the directions of the department, the liquidator shall take possession and charge of all of the assets, books, and records of the credit union and shall take charge of the affairs, business, and operations of the credit union and shall have all of the powers of the board of directors, credit committee, credit manager, and supervisory committee of the credit union. The liquidator shall continue the business operation of the credit union for a period not to exceed 180 days, subject to the direction of the department. The liquidator shall have full authority to make loans and investments and to permit deposits to or withdrawals from accounts by members, except that during the period of such operation by the liquidator, no withdrawal from any account or accounts which are not fully insured or guaranteed shall be permitted. *Except when prohibited by federal or state law, the liquidator may, without penalty or liability, prepay any deposit accounts; terminate any contracts or agreements with employees, independent contractors, or consultants; terminate any contract or agreement that was entered into in violation of s. 657.0315(1) or s. 657.062(2); and terminate or assign any lease for property.* The liquidator shall proceed with a liquidation of assets by sale or transfer of assets and conversion of assets into cash or liquid investments in preparation for distribution to members on account of shares and deposits. The liquidator shall have specific authority to sell loan assets. *The liquidator may enter into agreements for the sale or transfer of loans and other assets with the assumption of outstanding share and deposit accounts, which assumption constitutes full and complete distribution to members on account of shares and deposits.*

(4) On the completion of the liquidation and certification by the liquidator that the distribution of the assets of the credit union has been completed, the department shall cancel the certificate of authorization of the credit union. The department may designate a custodian to maintain the books and records of the liquidated credit union.

(5) When the *liquidating agent of the credit union* ~~corporation or the National Credit Union Administration~~ has been appointed ~~liquidating agent of a credit union~~, the department may waive or deem inapplicable the fees required by this chapter and the examination required by s. 655.045(1)(a), provided the *liquidating agent* ~~corporation or the National Credit Union Administration~~ submits periodic reports to the department on the status of the liquidation.

Section 88. Section 657.064, Florida Statutes, is amended to read:

657.064 Voluntary liquidation.—A credit union may elect to dissolve voluntarily and liquidate its affairs in the following manner:

(1) Before considering any resolution pertaining to voluntary liquidation by the board of directors, the credit union must inform the department and the corporation or the National Credit Union Administration, whichever is applicable, of the time and place of the meeting of the board of directors. The notification must be transmitted at least 5 days before the board of directors meets.

(2)~~(1) Any action by~~ The board of directors, pursuant to this section, shall, ~~be~~ by resolution, *recommend* ~~recommending~~ to the membership that the credit union be dissolved and shall state the board's reasons for such recommendation.

(3)~~(2)~~ Within 10 days after adoption by the board of directors of the resolution proposing voluntary liquidation, a copy of the resolution shall be mailed to each member, giving notice of the time, location, and purpose of a special membership meeting, which *must* ~~shall~~ be held *not* ~~no~~ less than 10 *nor* ~~or~~ more than 20 days following the mailing of the resolution. Included in this notice shall be a mail ballot, allowing each member to vote in favor *of* or against the proposed voluntary liquidation. All ballots which are received by the credit union prior to the time set for the special membership meeting shall be counted together with the ballots cast at the meeting to determine whether the membership approves of the voluntary liquidation. Adequate procedures shall be established to provide that each member shall have but one vote. A majority of the votes cast by the members must be in favor of voluntary liquidation for the credit union to be voluntarily liquidated. *Those casting ballots by mail or at the meeting constitute a quorum for the transaction of business at such special meeting, notwithstanding any contrary bylaw provision.*

~~(3) Prior to consideration of any resolution pertaining to voluntary liquidation by the board of directors, the credit union shall inform the department and the corporation or the National Credit Union Administration, whichever is applicable, of the time and place of the meeting of the board of directors. Said notification shall be transmitted not less than 5 days prior to the meeting of the board of directors.~~

(4) Upon adoption by the board of directors of a resolution recommending that the credit union be voluntarily liquidated, the corporation or the National Credit Union Administration, whichever is applicable, may restrict control or give directions with respect to the continued business of the credit union pending consideration of the voluntary liquidation by the members. During such period, no member shall withdraw an aggregate amount in excess of the insurance or guaranty covered by the credit union. No new extensions of credit shall be funded during the period between the board of directors' adoption of the resolution recommending the voluntary liquidation and the membership meeting called to consider the voluntary liquidation, *except for loans fully secured by a pledge of shares and for the funding of outstanding loan commitments approved before the board of directors adopts the resolution.*

(5) The notice required by subsection *(3)*~~(2)~~ shall also be mailed to the department within 5 days after the action of the board of directors. Within 10 days after the meeting of the membership, the board of directors shall notify the department and the corporation or the National Credit Union Administration, whichever is applicable, in writing of the action taken by the members.

(6) If the voluntary liquidation is approved by the membership, the board of directors shall appoint a liquidator to proceed with the liquidation. All reasonable and necessary expenses of operation during the period of liquidation shall continue to be paid as authorizable by the board of directors. *When all assets from which there is a reasonable expectancy of realization have been fully paid, the remaining liquidation proceeds shall be paid and distributed to the members, ratably according to the balances in the share accounts as of the close of the last business day preceding the date of the resolution of the board of directors pursuant to subsection (2).*

(7) The corporation or the National Credit Union Administration, whichever is applicable, shall have the right of first refusal to be appointed as liquidator of any liquidating credit union which it guarantees or insures. The liquidator shall have all of the powers provided in s. 657.063 regarding involuntary liquidation. If the corporation or the National Credit Union Administration shall decline to serve as liquidator, the board of directors shall appoint a reasonable person as liquidator and specify the extent of responsibilities and authority delegated to the liquidator.

(8) When the liquidating agent of the credit union has been appointed, the department may waive or hold inapplicable the fees required by this chapter and the examination required by s. 655.045(1)(a), provided the liquidating agent submits periodic reports to the department on the status of the liquidation.

(9)~~(8)~~ Whenever the board of directors or liquidator determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed to the members, a certificate of dissolution on forms prescribed by the department shall be prepared and filed with the department together with all pertinent books and records of the credit union, and thereupon the credit union shall be dissolved and its certificate of authorization canceled. The department may designate a custodian to maintain the books and records of the liquidated credit union.

~~(9) The liquidator shall file a copy of the certificate of dissolution with the Department of State and provide proof of such filing to the department.~~

~~(10) When the corporation or the National Credit Union Administration has been appointed liquidating agent of a credit union, the department may waive or deem inapplicable the fees required by this chapter and the examination required by s. 655.045(1)(a), provided the corporation or the National Credit Union Administration submits periodic reports to the department on the status of the liquidation.~~

Section 89. Section 657.065, Florida Statutes, is amended to read:

657.065 Merger.—

(1) Any state or federal credit union may merge with another state or federal credit union under the existing certificate of authorization of the other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, if:

(a) The merger is approved by the affirmative vote of a majority of the members of the merging credit union *who voted on the issue* ~~present at a meeting of its members duly called for such purpose~~;

~~(b) The merger is approved by an affirmative vote of a majority of the members of the surviving credit union present at a meeting of its members duly called for such purpose; however, no such vote or meeting is required unless requested in writing by 5 percent or more of the membership of the surviving credit union within 20 days of being given notice of intent to merge, which notice shall inform the members of their right to request a vote and meeting as provided in this paragraph;~~

(b)~~(c)~~ The merger is consented to by the corporation or the National Credit Union Administration, whichever is applicable; and

(c)~~(d)~~ The merger is approved by the authority under the supervision of which the resulting credit union will operate.

(2) The department shall approve a merger as provided in this section if it finds upon the written and verified application filed by each board of directors that:

(a) Notice of intent to merge was given to the members of the surviving credit union;

(b) Notice of the meeting called to consider the merger was given to the members entitled to vote upon the question;

(c) Such notice disclosed the purpose of the meeting and properly informed the membership *of the merging credit union* that approval of a merger was under consideration;

(d) A majority of the votes cast upon the question *by the members of the merging credit union* were in favor of the merger; and

(e) The merger will not seriously impair the ongoing viability of the surviving credit union.

(3) After agreement by the boards of directors and approval by the members of the merging credit union, *the chief executive officer* ~~and surviving credit union, if applicable, the president and secretary~~ of the surviving credit union shall execute a *plan* ~~certificate~~ of merger, which shall set forth all of the following:

(a) The time and place of the meeting of each board of directors at which the plan was agreed upon;

(b) The vote in favor of the adoption of the plan;

(c) A copy of the resolution or other action by which the plan was agreed upon;

(d) The time and place of the meeting ~~or meetings~~ of the members~~, if applicable,~~ at which the plan agreed upon was approved; ~~and~~

(e) The vote by which the plan was approved by the members;~~.~~

(f) The name and the specific location of the proposed main office and each existing and proposed branch office;

(g) The name of each director who is to serve until the next annual meeting; and

(h) A copy of any proposed bylaw amendments.

(4) The ~~certificate and~~ plan of merger shall be transmitted to the department for its approval.

~~(5) Upon return of the certificate from the department, or at such time as directed by the department, all property, property rights, and members' interests of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under the certificate of authorization of which the merger was effected. All members of the surviving credit union shall have the same rights, privileges, and responsibilities after the merger is completed.~~

(5)~~(6)~~ A merger application shall be accompanied by a nonrefundable fee of $500. The fee may be waived by the department for a merger pursuant to subsection *(6)*~~(7)~~.

(6)~~(7)~~ Notwithstanding any other provisions of this chapter or of chapter 120, a credit union may merge without a vote of the membership when the department determines that the credit union is in danger of insolvency and that the merger will enable the credit union to avoid liquidation.

(7)~~(8)~~ *A merger with a resulting state credit union may not take place or be effective unless the department issues a certificate of merger.* Upon consummation of the merger, the certificate of authorization of the merged credit union shall be returned to the proper authority to be canceled. *Also at consummation, all property and property rights of, and members' interests in, the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union must be assumed by the surviving credit union under the certificate of authorization under which the merger was effected. All members of the surviving credit union have the same rights, privileges, and responsibilities after the merger is completed. The certificate of merger must be recorded in the public records of all counties in which the merging credit union owned any real property at the effective date of the merger.*

Section 90. Subsection (2) of section 657.068, Florida Statutes, is amended to read:

657.068 Central credit unions.—

(2) Membership in a central credit union shall be limited to:

(a) Credit unions organized and operating under this part or any other credit union act;

(b) Officers, directors, committee members, and employees of such credit unions, and officials and employees of any association of credit unions;

(c) Organizations and associations of those persons or organizations set forth in paragraph (a) or paragraph (b);

(d) Residents of this state having a limited field of membership who have applied to the department to organize a credit union and have been denied on grounds other than those set forth in s. 657.005(6);

(e) Residents of this state having a limited field of membership, if their application for membership is approved by the board of directors of the central credit union *and by the department;*~~. The applicant group must demonstrate to the board of directors of the central credit union that the circumstances of its group are such as to clearly demonstrate that there is no reasonable chance that the group could successfully organize a credit union. The burden of proof shall be on the applicant group. The department shall promulgate forms to be used by applicant groups applying for membership in central credit unions. If the applicant group is approved for membership by the board of directors of the central credit union, the central credit union shall submit to the department a copy of the application for approval by the department;~~

(f) Persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; and

(g) Members of the immediate families of all members qualified above.

Section 91. Subsection (6) is added to section 657.251, Florida Statutes, to read:

657.251 Purposes.—The purposes of this part are to:

(6) Provide for the orderly conversion of member credit unions to share insurance through the National Credit Union Administration, or the liquidation or merger of member credit unions, and the liquidation of the corporation.

Section 92. Subsection (6) of section 657.253, Florida Statutes, is amended to read:

657.253 Definitions.—As used in this part:

(6) "Member credit union" means any credit union authorized and chartered under the laws of this state which has obtained and maintained membership with the corporation *as of the effective date of this act.*

Section 93. Section 657.257, Florida Statutes, is amended to read:

657.257 Membership and eligibility provision.—

(1) Every member credit union shall ~~maintain membership in the corporation and shall~~ maintain a guaranty certificate issued by the corporation *until the accounts of the credit union are insured through the National Credit Union Administration.* ~~Every state-chartered credit union, which is organized or converted to a state-chartered credit union after the effective date of this act may apply for membership in the corporation on forms prescribed by the corporation. Every state-chartered credit union the accounts of which are insured through the National Credit Union Administration and which terminates such insurance shall apply for membership in the corporation on forms prescribed by the corporation.~~

~~(a) With respect to applications from newly organized credit unions, the corporation shall review the application and, within 30 days after receiving the application, notify the department of the recommendation by the corporation with respect to conformity of the application with the requirements of part I of this chapter; adoption of lending, savings, investment, and management policies and practices consistent with this act; and establishment of qualified management and operation personnel. Such action by the corporation will be advisory to the department. Upon issuance of a certificate of organization by the department, the corporation shall issue a provisional guaranty certificate to the newly organized credit union.~~

~~(b) With respect to applications from any other credit union, the corporation, before approving the application for guarantee of its accounts, shall consider:~~

~~1. The history, financial condition, and lending, savings, investment, and management policies and practices of the applicant.~~

~~2. The economic advisability of guaranteeing the applicant's accounts without undue risk to the corporation.~~

~~3. Such other reasonable standards and qualifications not inconsistent with this act as may be established by the corporation and set forth in the plan of operation.~~

~~(c) The corporation shall either approve or disapprove the application of any credit union within 90 days of receipt of a completed application for membership.~~

~~(2) Upon the approval of any application for membership, the corporation shall notify the department and the applicant and, upon issuance of a certificate of organization by the department, shall issue to the applicant a guaranty certificate evidencing the fact that it is, as of the date of issuance of the certificate, a member credit union under the provisions of this part.~~

~~(3) The corporation shall disapprove the application of any credit union for guarantee of its account if it finds that the credit union's reserves are inadequate, that its financial condition and policies are unsafe or unsound, or that the guarantee of its accounts would otherwise involve undue risk to the corporation.~~

(2)~~(4)~~ The guaranty certificate issued by the corporation shall evidence the undertaking by the corporation to guarantee accounts of member credit unions to the extent of covered claims subject to such terms and conditions as the board of directors may from time to time prescribe. Guaranty certificates may be regular or provisional.

(a) Provisional guaranty certificates shall be issued for a period determined by the board of directors, but not less than 6 months nor more than 2 years. A provisional certificate may be renewed for an additional period not to exceed 12 months. There may be only one such renewal period.

(b) A regular guaranty certificate shall be issued for a continuing and indefinite period.

(c) The board of directors may cancel any certificate if the board of directors finds that there has been a deterioration since the issuance of the guaranty certificate in the financial condition, adequacy of reserves, application of financial and loan policies, or extent of delinquencies of the member credit union *or if the department determines that the credit union is engaging in an unsafe or unsound practice, is violating any provision of chapter 655 or chapter 657, or is violating any department rule, department order, or agreement entered into with the department.* In the event of cancellation of a regular guaranty certificate, the corporation shall issue to such member credit union a provisional guaranty certificate unless, at the time of such cancellation, the credit union is insolvent and, in such event, the corporation may decline to issue a provisional guaranty certificate.

(3)~~(5)~~ If, during the term of a provisional certificate, including any renewal thereof, the member credit union fails to qualify for *share insurance through the National Credit Union Administration or* a regular guarantee of its accounts and full membership in the corporation, the corporation will notify the department stating, with particularity, the deficiency which prevents the *qualification for such share insurance through the National Credit Union Administration or* issuance of the regular guaranty certificate, and, thereupon, the department shall institute proceedings to revoke the certificate of organization of such credit union.

(4)~~(6)~~ *Each* ~~A~~ member credit union *shall surrender the guaranty certificate from* ~~may terminate membership in~~ the corporation *in the following manner:* ~~after approval by the board of directors and the members of the credit union and after a certificate of insurance through the National Credit Union Administration has been obtained.~~

(a) A member credit union directed by the department must file a complete application for federal share insurance through the National Credit Union Administration not later than 30 days after the effective date of this act. The department may direct the corporation to assume control or shall order involuntary liquidation of any member credit union that fails to file a complete application within the prescribed time.

(b) A member credit union must obtain a certificate of insurance issued through the National Credit Union Administration within 42 months after the effective date of this act. The department may extend the period not to exceed 12 months if the department finds that the credit union is making substantial effort to satisfy the conditions precedent to issuance of the certificate of insurance and the credit union is likely to satisfy such conditions within the additional 12-month period. The department may order the involuntary liquidation or merger of any member credit union that fails to timely comply with the provisions of this paragraph.

(c) A member credit union that receives a certificate of insurance through the National Credit Union Administration must file a copy of the certificate with the department and with the corporation within 10 days after receipt. Upon receipt of the certificate of insurance by the member credit union, the guaranty certificate from the corporation is canceled and neither the member credit union nor the members of the credit union shall have any further claim against the corporation except as otherwise provided in this part.

~~(a) Prior to consideration by the board of directors of any resolution pertaining to conversion to share insurance through the National Credit Union Administration, the credit union shall provide the department and the corporation with not less than 5 days' advance notice of the time and place of the meeting of the board of directors.~~

~~(b) Any action by the board of directors proposing conversion shall be by resolution and shall require the affirmative vote of an absolute majority of the board of directors.~~

~~(c) Upon adoption of a resolution relating to conversion, a copy of the resolution shall be mailed to each member, together with a notice setting forth the time, location, and purpose of a meeting of the membership which shall be held not less than 10 or more than 30 days following the mailing of the notice.~~

~~(d) A ballot allowing an affirmative or negative vote on the proposed conversion shall also be mailed to each member. Any ballot received by the credit union prior to the meeting called to consider the conversion shall be tallied along with the votes cast at the meeting. Each member shall have but one vote. An affirmative vote of a majority of members who vote on the proposal in a vote in which at least 20 percent of the total members participated shall be required to approve the conversion.~~

~~(e) Within 10 days after approval of the membership, the board of directors shall cause to be transmitted to the department and to the corporation a copy of the resolution adopted by the board and approved by the membership.~~

~~(f) Upon the filing with the department and the corporation of a copy of the certificate of share insurance through the National Credit Union Administration, the membership of the credit union in the corporation shall be terminated and the members of the credit union shall have no further claim against the corporation.~~

Section 94. Subsections (2) and (3) of section 657.258, Florida Statutes, are amended to read:

657.258 Powers and duties of the corporation; assessments; loss reserves.—

(2) The corporation may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the corporation.

(b) Borrow funds necessary to effect the purposes of this act in accordance with the plan of operation.

(c) Sue or be sued.

(d) Negotiate, and become a party to, such contracts as are necessary to carry out the purposes of this act.

(e) Adopt, use, and display a corporate seal.

(f) Advance funds, with or without interest, in accordance with agreed terms and conditions to aid member credit unions to continue to operate and to maintain solvency or to maintain account balances with a financial institution in connection with the assumption of receivables from a member credit union, or to provide liquidity for payment of shares and deposits following a determination of voluntary or involuntary liquidation.

(g) Upon the written request of the department, assume control of the property, assets, and business of any member credit union and operate the credit union in accordance with the recommendations of the department. The corporation shall have all the powers, duties, and authorities of the board of directors of such credit union, specifically including the power and authority to elect or designate directors, officers, and committee members, who need not be members of the member credit union, to sell assets, and to terminate and employ personnel for the credit union.

(h) Assist in the merger, consolidation, or liquidation of credit unions with written notice to the department. In the event of liquidation of a *member* credit union *that has not received a certificate of insurance through the National Credit Union Administration*, whether voluntary or involuntary, the corporation *must* ~~may~~ be designated as the liquidating agent and, as such, the corporation shall have all the duties, powers, and authorities of the board of directors of such liquidating credit union, specifically including, but not limited to, the power and authority to elect and designate directors, officers, and committee members, who need not be members of the credit union; to sell assets; and to terminate and employ personnel for the liquidating credit union. The corporation shall have the right and authority to participate in negotiations for any contemplated merger, consolidation, or liquidation of a member credit union and to approve the terms of any sales of assets in order to minimize potential loss which might result in a covered claim to be paid by the corporation.

(i) Receive money or other property from its member credit union or from any corporation, association, or person.

(j) Invest its funds in bonds, notes, securities, obligations, participations, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the United States Government or any agencies thereof, or in any trust or trusts established for investing directly or collectively in the same, and in such other investments, other than investments in credit unions which are members of the corporation, as are deemed prudent by the directors, but these other investments shall not exceed 25 percent of the funds of the corporation.

(k) Purchase in its own name, hold, and convey property of any nature.

(l) Receive by assignment or purchase from its member credit unions any property of any nature owned by those member credit unions, including securities.

(m) Sell, assign, mortgage, encumber, or transfer property of any nature.

(n) Adopt and amend a plan of operation and bylaws for carrying out the purposes of this part.

(o) Purchase or acquire by assignment loans due and owing to credit unions, along with the right to receive payments thereon.

(p) Pay dividends to member credit unions.

(q) Have access to and make audit or examination of all records and information concerning the affairs of a member credit union.

(r) Pledge or advance funds, or enter into agreements with the National Credit Union Administration, notwithstanding any other provisions of this part, and may otherwise provide assistance to enable member credit unions to qualify for a certificate of insurance through the National Credit Union Administration, if the action would not preclude the corporation from meeting its current and future obligations under this part.

(3) To obtain funds for the fulfillment of the purposes of the corporation, for the provision of reserves for the protection of potential claimants, and for the payment of costs of operating the corporation, the corporation shall be authorized and empowered to levy and collect from member credit unions fees and assessments as follows:

~~(a) The corporation shall levy and collect from each member credit union an initial membership fee in an amount equal to 0.5 percent of its guaranteed shares and deposits as of the date of application for membership.~~

(a)~~(b)~~ The corporation shall levy and collect from each member credit union *that has not received a certificate of insurance through the National Credit Union Administration* an annual growth fee in an amount equal to 0.5 percent of the annual increase in its guaranteed shares and deposits as determined as of December 31 of each year.

(b)~~(c)~~ In addition to the fees set forth above, the corporation may levy and collect a uniform annual assessment from each member credit union *that has not received a certificate of insurance through the National Credit Union Administration* in an amount to be determined by the board of directors not to exceed 0.05 percent of its guaranteed shares and deposits determined as of December 31 of the preceding year.

(c)~~(d)~~ In addition to the fees and annual assessment, the corporation, in the event of potential impairment of the corporation's capital assets, may levy and collect from the member credit unions uniform special assessments in amounts to be determined by the board of directors, subject to approval by the department. If the board of directors determines that a special assessment is necessary, then such determination shall be submitted in writing to the department, and the special assessment shall be approved, modified, or disapproved within 60 days after it is received by the department.

(d)~~(e)~~ The initial membership fee and the growth membership fee shall be considered as an investment of the member credit union in the corporation. Such investment shall not be transferable except to another member credit union as a result of a merger approved by the department; and, in such event, the amount of such investment which may be transferred to the acquiring credit union shall not exceed 0.5 percent of the guaranteed shares and deposits of the acquired member credit union as of the preceding December 31 or the date of merger, whichever amount is the lower.

(e)~~(f)~~ Annual and special assessments hereunder shall be considered as a payment by the member credit union into the loss reserve to be maintained by the corporation. Each payment by member credit unions after 1983 shall be retained by the corporation as a permanent part of its working capital and the funds received by the corporation shall be restricted to use as part of the loss reserve. The interest of each member credit union in the balance of the loss reserve shall be proportionate according to the amount paid in by all member credit unions which are members of the corporation *on the effective date of this act* ~~as of the time when the interest is to be determined~~. Such interest in the loss reserve shall not be transferable, except to another member credit union as a result of a merger approved by the department *and shall be applied in the calculation of any amount of any refund to be made to each member credit union under s. 657.269.*

(f) The total amount paid in by each member credit union as its investment in the corporation and the amount paid into the loss reserve must be determined as of the effective date of this act. The interest of each member credit union in the corporation must be proportionate according to the total amount paid in by all member credit unions as of the effective date of this act. The proportion thus determined must be applied in the calculation of the amount of any refund to be made to each member credit union under s. 657.269.

~~(g) If a member credit union ceases to operate under a valid certificate of organization under part I, the corporation shall refund to the withdrawing member the amount of the member's investment in the corporation and the amount of the withdrawing member's interest in the loss reserve of the corporation; however, no refund shall be made to such withdrawing member unless it elects to convert and does convert to a federal credit union or unless the withdrawing member goes into voluntary liquidation and is not insolvent and the corporation is not obligated in any manner for any loss, cost, expense, or claim arising out of the voluntary liquidation or unless the withdrawing member obtains share insurance through the National Credit Union Administration and the National Credit Union Administration releases the corporation of any obligation. In no event shall a withdrawing member be entitled to a refund of any portion of its investment or its interest in the loss reserve under this section if the total assets of the corporation are less than 1 percent of the aggregate of all guaranteed shares and deposits of all member credit unions, excluding those of the members requesting such refund. The entitlement to any such refund shall be determined as of the date the withdrawing member converts to a federal credit union or the time when voluntary liquidation procedures have progressed to the point at which final distribution in payment of shares and deposits is to be made to the members or share insurance through the National Credit Union Administration has been issued.~~

(g)~~(h)~~ All fees and assessments shall be paid in the manner established by the plan of operation.

(h)~~(i)~~ In the event the assets of the corporation fall below 0.5 percent of the total aggregate guaranteed shares and deposits of all member credit unions *which have not received certificates of insurance through the National Credit Union Administration*, the corporation may determine the proportionate amount of the reduction of the investment of each member credit union, and this amount shall be transferred from membership fees to the loss reserve and shall be considered as the payment of a special assessment by each member credit union.

(i)~~(j)~~ Upon written application, the corporation, for good cause shown, may exempt or defer any member credit union from an assessment if such assessment would result in such credit union being forced into insolvency, liquidation, or an unsound financial condition.

(j)~~(k)~~ No state funds of any kind shall be allocated or paid to the corporation.

Section 95. Paragraph (i) is added to subsection (3) of section 657.259, Florida Statutes, to read:

657.259 Plan of operation.—

(3) The plan of operation shall:

(i) Provide for the dissolution of the corporation to include procedures for the payment of liquidating dividends to member credit unions as provided in s. 657.269.

Section 96. Paragraph (d) is added to subsection (2) of section 657.260, Florida Statutes, to read:

657.260 Duties and powers of the department.—

(2) The department may:

(d) Order the corporation to take any action required to be taken by the corporation under this part.

Section 97. Subsection (2) of section 657.262, Florida Statutes, is amended to read:

657.262 Detection and prevention of insolvencies.—To aid in the detection and prevention of credit union insolvencies or liquidations:

(2) The board of directors may request that the department order an examination of any member credit union which the board in good faith believes may be in an unsound financial condition that might jeopardize the safety of the shares and deposits in the credit union. Within a reasonable time after receipt of such request, the department shall commence such examination. The *department may charge the actual* cost of such examination ~~shall be $75 per day per man~~, which shall be paid by the corporation to the department, and the examination report shall be treated as are other examination reports under part I. The department shall notify the corporation when the examination is completed in writing and forthwith furnish the corporation with a copy of the report.

Section 98. Section 657.263, Florida Statutes, is amended to read:

657.263 Examination of the corporation*; disposition of records of the corporation.*—

(1) The books, records, and accounts of the corporation shall be subject to an examination at least annually by the department ~~at a cost of $75 per day per man~~. *The department may charge the actual cost of the examination.* The corporation shall submit, not later than January 31 of each year, a financial report for the preceding calendar year in a format approved by the department. Such report shall be prepared in accordance with generally acceptable accounting practices.

(2) The department is entitled to possess all books, records, and accounts of the corporation upon its dissolution. The department may request the transfer of any books, records, or accounts that are not required by the corporation for current operations. Upon dissolution of the corporation, all the remaining books, records, and accounts of the corporation must be delivered to the department for preservation or ultimate disposition pursuant to law.

Section 99. Section 657.269, Florida Statutes, is created to read:

657.269 Dissolution of the corporation.—

(1) The corporation shall liquidate its assets, complete its business activities, and make final distribution to the member credit unions not later than the date the corporation converted its assets into cash and paid its liabilities or 6 months after the date all member credit unions received certificates of insurance through the National Credit Union Administration or were liquidated or merged, whichever last occurs.

(2) The liquid assets of the corporation remaining after making provision for all amounts required to be paid or reserved to meet conditions of a liquidation, a merger, or the issuance of certificates of insurance through the National Credit Union Administration of member credit unions, and setting aside an adequate reserve to fully pay all future covered claims, losses, liabilities, and guarantees, and a provision for expenses of liquidation and dissolution of the corporation, all as determined by the corporation, with the approval of the department, shall be available for distribution to member credit unions proportionately according to the interest in the corporation of each member credit union.

(3) Any amount paid or committed to assist in the merger or liquidation of a member credit union or in the qualification of a member credit union for a certificate of insurance through the National Credit Union Administration must be taken into account and shall reduce the amount otherwise distributable to that member credit union or its successor. Any member credit union that is liquidated is ineligible for any portion of a liquidating dividend that is paid subsequent to liquidation of that member credit union.

(4) When all member credit unions have been liquidated, merged, or received certificates of insurance through the National Credit Union Administration or the financial impact on the corporation from satisfying any conditions of a liquidation, merger, or receipt of a certificate of insurance has been determined with reasonable certainty, the corporation shall begin making partial liquidating distributions. After the initial partial liquidating distribution, supplemental partial liquidating distributions must be made to member credit unions from time to time as funds are available. Determination of the amount available for distribution must be made at least once during each 12-month period and must be paid within 30 days after the determination.

(5) Within 6 months after making final distribution to member credit unions, the corporation shall prepare and file with the department a final report and, pursuant to s. 657.263(2), shall turn over to the department all remaining books, records, and accounts of the corporation and of liquidated member credit unions which are in the possession of the corporation.

Section 100. Any application that was submitted by a credit union to convert to share insurance through the National Credit Union Administration before the effective date of this act need not satisfy the requirements of the law in effect at the time the application was submitted, but need only comply with the conversion provisions of this act.

Section 101. Section 658.12, Florida Statutes, is amended to read:

658.12 Definitions.—Subject to other definitions contained in *the financial institutions codes* ~~subsequent sections of this code,~~ and unless the context otherwise requires~~, in this code~~:

~~(1) "Appropriate federal regulatory agency" means the Federal Reserve System, including its Board of Governors and the Federal Reserve bank of the Federal Reserve District in which the state bank is located, in the case of a state member bank; the Federal Deposit Insurance Corporation, in the case of a state nonmember bank the deposits of which are insured by that corporation; and the Comptroller of the Currency, in the case of a national bank.~~

(1)~~(2)~~ "Association" means an association as defined in s. 665.012.

(2)~~(3)~~ "Bank" means any person having a subsisting charter or other lawful authorization, under the laws of this or any other jurisdiction, authorizing such person to conduct a general commercial banking business. The term "bank" does not include ~~an industrial savings bank operating under the provisions of chapter 664 (but provisions of this chapter and chapter 661 may be applicable to such industrial savings banks as, and to the extent, provided in chapter 664)~~, a credit union~~, a building and loan association,~~ or ~~a savings and loan~~ *an* association.

(3)~~(4)~~ "Banker's bank" means a bank insured by the Federal Deposit Insurance Corporation, or a holding company which owns or controls such an insured bank, when the stock of such bank or holding company

is owned exclusively by other banks and such bank or holding company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees.

(4)~~(5)~~ "Branch" or "branch office" of a bank means any office or place of business of a bank, other than its main office and the facilities and operations authorized by ss. 658.26*(5)*~~(4) and (6)~~, 658.65, and 660.33, at which deposits are received, checks are paid, or money is lent. With respect to a bank which has a trust department, the terms "branch" and "branch office" have the meanings herein ascribed to a branch or a branch office of a trust company. "Branch" or "branch office" of a trust company means any office or place of business of a trust company, other than its main office and its trust service offices established pursuant to s. 660.33, where trust business is transacted with its customers.

~~(6) "Capital accounts" means unimpaired capital, unimpaired surplus, and undivided profits.~~

(5)~~(7)~~ "Charter" of a bank or trust company means the lawful authority under the laws of this or any other jurisdiction to exist and conduct business as, and the franchise of, a bank or a trust company, as the case may be, and includes the written instrument however denominated or entitled which evidences such authority. When used as a verb, "charter" means the granting of such authority and franchise.

(6)~~(8)~~ "Community" means an incorporated city, town, or village or, where not within any of the foregoing or if the department determines that the area within the corporate limits of any of the foregoing is inappropriate under specific circumstances, such trade area or other area, determined by the department to be appropriate under the circumstances, in which are located persons having generally similar interests, including residential, social, or business interests or combinations thereof.

(7)~~(9)~~ "Court" means a court of competent jurisdiction.

~~(10) "Department" means the Department of Banking and Finance of this state.~~

~~(11) "Executive officer" of a bank or trust company means an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the bank or trust company; the term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of bank loans, but who does not participate in the determination of major policies of the bank or trust company and whose decisions are limited by policy standards established by officers other than such individual, whether or not such policy standards have been adopted by the board of directors. The chairman of the board, the president, and every vice president of a bank or trust company; the cashier of a bank; and the secretary of a trust company are considered to be executive officers unless any such office or the individual holding any such office is excluded, by resolution of the board of directors or by the bylaws of the bank or trust company, from participation, other than in the capacity of a director, in major policy making functions of the bank or trust company and the individual holding any such office so excluded does not actually participate therein.~~

(8)~~(12)~~ "Fiduciary" means a trustee; committee, guardian, custodian, conservator, or other personal representative of a person, property, or an estate; registrar or transfer agent of, or in connection with, evidences of indebtedness of every kind and of stocks and bonds and other securities; fiscal or financial agent; investment adviser; receiver; trustee in bankruptcy; assignee for creditors; or holder of any similar representative position or any other position of trust, including a person acting in any or all the capacities and performing any or all the functions enumerated in s. 660.34.

(9)~~(13)~~ "General commercial banking business" includes:

(a) The business of receiving demand and time deposits;

(b) The payment of checks; and

(c) The conduct of a trust business when duly authorized.

(10)~~(14)~~ "Item" means any instrument, or any electronically or otherwise recorded, stored, or transmitted message, for the payment of money, whether or not it is negotiable, but does not include money.

(11)~~(15)~~ "Law" means each valid and applicable statute, ordinance, rule, or regulation of any state and each of its political subdivisions or of the United States and each of its departments, agencies, or other entities authorized by the laws of the United States to issue rules or regulations.

~~(16) "Main office," "main banking house," or "principal office" of a bank means the main banking office designated or provided for in the articles of incorporation of a state bank, and the main office designated or provided for in the articles of association of a national bank, at such identified location as shall have been or as hereafter may be approved by the department, in the case of a state bank, or by the appropriate federal regulatory agency, in the case of a national bank; and, with respect to the trust department of a bank which has trust powers, each of these terms means the office or place of business of the trust department at such identified location, which shall not necessarily be the same location as the main banking house of the bank exclusive of the trust department, as shall have been or as hereafter may be approved by the department, in the case of a state bank which has a trust department, or by the appropriate federal regulatory agency, in the case of a national bank which has a trust department. "Main office" or "principal office" of a trust company means the office designated or provided for as such in its articles of incorporation, at such identified location as shall have been or as hereafter may be approved by the relevant chartering authority.~~

(12)~~(17)~~ "National bank" means a bank organized and existing as a national banking association under the provisions of 12 U.S.C. s. 21 and other sections of the National Bank Act relating thereto.

~~(18) "Officer" of a bank or trust company means any individual duly elected or appointed to, or otherwise performing the duties or functions appropriate to, any position or office having the designation or title of chairman of the board of directors, vice chairman of the board of directors, chairman of the executive committee, president, vice president, assistant vice president, cashier or assistant cashier (of a bank), comptroller, assistant comptroller, trust officer, assistant trust officer, secretary or assistant secretary (of a trust company), or any other office or officer designated in, or as provided by, the bylaws.~~

(13)~~(19)~~ "Political subdivision" of this state means and includes counties, municipalities, and departments, commissions, districts, boards, and other bodies, whether corporate or otherwise, created by or pursuant to the provisions of the constitution or any other law and also includes any officer of any of the foregoing.

(14)~~(20)~~ "Primary service area" means the smallest geographical area from which a bank draws, or a proposed bank expects to draw, approximately 75 percent of its deposits; the term also means the smallest geographic area from which a trust company or the trust department of a bank or association draws, or a proposed trust company or a proposed trust department of a bank or association expects to draw, approximately 75 percent of the assets value of its fiduciary accounts.

(15)~~(21)~~ "Principal place of business" or "principal place of doing business" of a bank, the trust department of a bank, or a trust company means its main office ~~as defined in this section~~.

(16)~~(22)~~ "State," when used in the context of a state other than this state, means any or every other state of the United States, the District of Columbia, any and every territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(17)~~(23)~~ "State bank" means any bank which has a subsisting bank charter issued pursuant to the provisions of *the financial institutions codes* ~~this code~~ or the general banking laws of this state in effect prior to the enactment of *the financial institutions codes* ~~this code~~.

(18)~~(24)~~ "State member bank" means a state bank which is a member of the Federal Reserve System; and "state nonmember bank" means a state bank which is not a member of the Federal Reserve System.

(19)~~(25)~~ "State trust company" means a corporation, other than a bank, which has a subsisting trust company charter issued pursuant to the provisions of *the financial institutions codes* ~~this code~~ or the applicable laws of the state in effect prior to the enactment of *the financial institutions codes* ~~this code~~.

(20)~~(26)~~ "Trust business" means the business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company, and also when conducted by any other business organization as its sole or principal business.

(21)~~(27)~~ "Trust company" means any business organization which is authorized to engage in trust business. A bank or state or federal association conducting business pursuant to lawful authority, which also by lawful authority has authority to engage in trust business, is not a trust company by reason of having been granted authority to engage in trust business in addition to its general business.

(22)~~(28)~~ "Trust department" means the functional division or department of a bank or state or federal association which conducts the trust business of a bank or state or federal association which has been granted trust powers, pursuant to the laws of this or any other jurisdiction, authorizing the bank or state or federal association to engage in trust business in addition to the general commercial banking business or general business of an association in which it engages.

(23)~~(29)~~ "Trust powers" means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business.

~~(30) "This code" means and includes all the sections and provisions of chapters 658, 660, 661, 662, and 663.~~

(24)~~(31)~~ Terms which are defined in other sections of *the financial institutions codes* ~~this code~~ shall~~, in all sections of this code~~, unless the context otherwise requires or unless by the provisions of the section in which such term is defined its meaning as so defined is limited, have the meanings ascribed to them in such other sections of *the financial institutions codes* ~~this code~~.

(25)~~(32)~~ Terms used but not defined in this code, but which are defined in Article 3 or Article 4 of the Uniform Commercial Code as enacted in chapters 673 and 674 shall, in this code, unless the context otherwise requires, have the meanings ascribed to them in chapters 673 and 674.

Section 102. Subsections (1) and (2) of section 658.165, Florida Statutes, are amended to read:

658.165 Banker's banks; formation; applicability of banking code; exceptions.—

(1) When authorized by the department, a corporation may be formed under the laws of this state for the purpose of becoming a banker's bank. An application for authority to organize a banker's bank is subject to the provisions of ss. 658.19, 658.20, and 658.21, except that the provisions of ss. 658.20(1)(b) and (c) and 658.21~~(1) and~~ (2) do not apply.

(2) A banker's bank chartered pursuant to subsection (1) shall be subject to the provisions of the *financial institutions codes* ~~Florida Banking Code and chapter 655~~ and rules adopted thereunder; and, except as otherwise specifically provided herein or by rule or order of the department, a banker's bank shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to a state bank.

Section 103. Section 658.20, Florida Statutes, is amended to read:

658.20 Investigation by department.—

(1) Upon the filing of an application, the department shall make an investigation of:

(a) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located.

(c) The ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

(2) The department is authorized to obtain criminal record information from the National Crime Information Center or from the Department of Law Enforcement as a part of its investigation pursuant to this section.

(3) The department may accept an application for prior approval of individuals that may become directors and executive officers of a failing bank, association, or trust company. Such applications are governed by the application criteria set forth in paragraph (1)(a) and ss. 658.21(4) and 658.28. The application must be in the form and must contain additional information prescribed by the department, and must be accompanied by a nonrefundable, nontransferable filing fee of $7,500.

Section 104. Section 658.21, Florida Statutes, 1990 Supplement, is amended to read:

658.21 Approval of application; findings required.—The department shall approve the application if it finds that:

~~(1) Public convenience and advantage will be promoted by the establishment of the proposed state bank or trust company. In determining whether an applicant meets the requirements of this subsection, the department shall consider all materially relevant factors, including:~~

~~(a) The location and services offered by existing banks, trust companies, trust departments, and trust service offices in the community.~~

~~(b) The general economic and demographic characteristics of the area.~~

(1)~~(2)~~ *Public convenience and advantage will be promoted by the establishment of the proposed state bank or trust company. Additionally,* local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company and those financial institutions already established in the primary service area. In determining whether an applicant meets the requirements of this subsection, the department shall consider all materially relevant factors, including:

~~(a) Economic and demographic conditions and the growth potential of the community and county in which the proposed state bank or trust company intends to locate.~~

(a)~~(b)~~ The growth rate, size, *location,* financial strength, and operating characteristics of financial institutions in the primary service area of the proposed bank or trust company.

(b) The growth, economic, and demographic characteristics of the primary service areas and the metropolitan statistical area or county.

(2)~~(3)~~ The proposed capitalization is in such amount as the department deems adequate, but in no case may the total capital accounts at opening for a bank be less than $4,000,000 if the proposed bank is to be located in any county which is included in a metropolitan statistical area, or $2,000,000 if the proposed bank is to be located in any other county. The total capital accounts at opening for a trust company may not be less than $2,000,000. The department may disallow illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section.

(3)~~(4)~~ The proposed capital structure is in such form as the department may require, but, at a minimum, every state bank or trust company hereafter organized shall establish:

(a) Paid-in capital equal in amount to not less than 50 percent of its total capital accounts.

(b) A paid-in surplus equal in amount to not less than 20 percent of its paid-in capital.

(c) A fund to be designated as undivided profits equal in amount to not less than 5 percent of its paid-in capital.

(4)~~(5)~~ The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial institutions; or any similar state or federal law. *One or more* ~~At least one~~ of the proposed directors who is not also a proposed officer shall have had direct experience as an *executive* officer or director of a financial institution within 3 years of the date of the application.

(5)~~(6)~~ The corporate name of the proposed state bank or trust company is reserved with the Department of State.

(6)~~(7)~~ Provision has been made for suitable quarters at the location in the application.

Section 105. Section 658.22, Florida Statutes, is amended to read:

658.22 Coordination with federal agencies.—Upon approval by the department of the application for authority to organize a state bank, the department shall forward a copy of its final order to the Federal Reserve System for approval of membership, if such membership has been applied for, or, if not, to the Federal Deposit Insurance Corporation for insurance of accounts. The failure of *an* ~~the~~ applicant to apply for membership in the Federal Reserve System or for the insurance of accounts by the Federal Deposit Insurance Corporation within 3 months after approval by the department or a final order of denial or revocation by either of these federal agencies will terminate and revoke the final order issued by the department approving the application.

Section 106. Section 658.23, Florida Statutes, 1990 Supplement, is amended to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(1) Within 3 months after approval by the department and the appropriate federal regulatory agency, the applicant shall submit its duly executed articles of incorporation to the department, together with the filing fee due the Department of State under s. 607.0122.

(2) The articles of incorporation shall contain:

(a) The name of the proposed bank or trust company.

(b) The general nature of the business to be transacted or a statement that the corporation may engage in any activity or business permitted by law. Such statement shall authorize all such activities and business by the corporation.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each, together with the distinguishing characteristics and the par value of all shares.

(d) The amount of capital with which the corporation will begin business, which shall not be less than the amount required by the department pursuant to s. 658.21.

(e) A provision that the corporation is to have perpetual existence unless existence is terminated pursuant to *the financial institutions codes* ~~this chapter~~.

(f) The initial street address of the main office of the corporation, which shall be in this state.

(g) The number of directors, which shall ~~not~~ be ~~fewer than~~ five *or more*, and the names and street addresses of the members of the first board of directors.

(h) A provision for preemptive rights, if applicable.

(i) A provision authorizing the board of directors to appoint additional directors, pursuant to s. 658.33, if applicable.

The department shall provide to the proposed directors form articles of incorporation which shall include only those provisions required by this section or by chapter 607. The form articles shall be acknowledged by the proposed directors and returned to the department for filing with the Department of State.

(3) Within 30 days of receipt of the executed articles of incorporation in the form previously approved, *and the required filing fees,* the department shall place the following legend upon the articles of incorporation and affix the seal of the Office of the Comptroller of Florida thereto. The legend shall in substance read: "Approved by the Department of Banking and Finance this . . . . day of . . . . . (herein the name and signature of the head of the department) . . .." Thereafter, the articles of incorporation shall be filed with the Department of State.

(4) The corporate existence of a banking corporation or a trust company corporation shall commence on the date the approved articles of incorporation are filed with the Department of State, unless otherwise provided in the articles of incorporation pursuant to *s. 607.0203* ~~s. 607.167~~. Thereafter, a banking corporation or trust company corporation may perform all acts necessary to perfect its organization, obtain and equip a place of business, and otherwise prepare to conduct a general banking business or trust business. However, no banking corporation or trust company corporation shall become a state bank or a state trust company or transact any banking business or trust business until it has received a certificate of authority to transact business as provided in s. 658.25.

(5) Unless the articles of incorporation provide otherwise, the board of directors shall have authority to adopt or amend bylaws that do not conflict with bylaws that may have been adopted by the stockholders. The bylaws shall be for the government of the bank or trust company, subordinate only to the articles of incorporation and the laws of the United States and of this state. A current copy of the bylaws shall be filed with the department at all times.

(6) A bank or trust company may not amend its articles of incorporation without the prior written approval of the department. The department may not approve any amendment to the articles of incorporation which requests a change in name of the bank or trust company without evidence that the proposed name has been reserved with the Department of State.

Section 107. Section 658.24, Florida Statutes, is amended to read:

658.24 Organizational procedures.—After the corporate existence of a *bank* ~~banking corporation~~ or trust company corporation has commenced and the stock has been issued, but no less than 30 days prior to the intended opening date, a shareholders' meeting shall be held to elect directors already approved by the department, to approve organizational expenses, and to conduct such other business relating to the corporation as may be appropriate. Immediately after the board of directors has been elected by the shareholders, the board shall meet to adopt bylaws, elect officers, and conduct such other business relating to the corporation as may be appropriate. Within 10 days after the shareholders' and directors' meetings, the corporation shall file with the department a copy of the minutes of the meetings together with a copy of the bylaws that were adopted, a list showing the names and residence addresses of the officers elected and the title of each, and a detailed accounting of the organization expenses approved by the shareholders.

Section 108. Section 658.25, Florida Statutes, is amended to read:

658.25 Opening for business.—

(1) A *bank* ~~banking corporation~~ or trust company corporation shall open and conduct a general commercial *bank* ~~banking business~~ or ~~general~~ trust business no later than 6 months after the commencement of its corporate existence. For good cause shown, the department may extend the opening date for an additional period, not to exceed 6 months, on its own motion or at the request of the bank or trust company.

(2) At least 30 days prior to its intended opening date, the corporation shall notify the department of its proposed opening date and confirm its compliance with all conditions imposed in the order or orders issued by the department relating to its organization.

(3) The department shall perform a preopening examination to verify good faith compliance with all the requirements of law and that the *bank* ~~banking corporation~~ or trust company corporation is ready to engage in a general commercial *bank* ~~banking business~~ or ~~a general~~ trust business. If the department finds that such requirements have been met, it shall issue a certificate of authorization to transact a general commercial *bank* ~~banking business~~ or ~~a general~~ trust business. Upon the issuance of the certificate of authorization, the *bank* ~~banking corporation~~ or trust company corporation shall become a state bank or a state trust company and the certificate shall constitute its charter.

(4) Upon opening for business, a bank or trust company shall have power to engage in a general commercial *bank* ~~banking business~~ or ~~a general~~ trust business and to exercise, subject to law, all such incidental powers as may reasonably promote its general commercial *bank* ~~banking business~~ or ~~general~~ trust business.

Section 109. Section 658.26, Florida Statutes, is amended to read:

658.26 *Places* ~~Place~~ of transacting business; ~~bank~~ branches; ~~school savings;~~ facilities.—

(1) Any bank *or trust company* heretofore or hereafter incorporated pursuant to this chapter shall have one main office, which shall be located within the state.

(2)(a) In addition, with the approval of the department and upon such conditions as the department prescribes, any bank *or trust company* may establish branches within the state. With the approval of the department upon a determination that the resulting bank *or trust company* will be of sound financial condition, any bank *or trust company* incorporated pursuant to this chapter may establish branches by merger with any other bank *or trust company* located in this state.

(b) An application for a branch shall be in writing in such form as the department prescribes and be supported by such information, data, and records as the department may require to make findings necessary for approval. Applications filed pursuant to this subsection shall not be published in the Florida Administrative Weekly but shall otherwise be subject to the provisions of chapter 120. Upon the filing of an application *and a nonrefundable filing fee* for the establishment of any branch permitted by paragraph (a), the department shall make an investigation with respect to compliance with the requirements of paragraph (a) and shall investigate and consider all factors relevant to such requirements, including the following:

1. The sufficiency of capital accounts in relation to the deposit liabilities of the bank, *or in relation to the number and valuation of fiduciary accounts of the trust company,* including the proposed branch, and the additional fixed assets, if any, which are proposed for the branch and its operations, without undue risk to the bank or its depositors, *or undue risk to the trust company or its fiduciary accounts*;

2. The sufficiency of earnings and earning prospects of the bank *or trust company* to support the anticipated expenses and any anticipated operating losses of the branch during its formative or initial years;

3. The sufficiency and quality of management available to operate the branch;

4. The name of the proposed branch to determine if it reasonably identifies the branch as a branch of the main office and is not likely to unduly confuse the public; and

5. Substantial compliance by the applicants with applicable law governing their operations.

(3)(a) An office which has been in operation for at least 18 months may be relocated upon 30 *days'* ~~days~~ prior written notification to the department. *An office which has been open for less than 18 months may be relocated with prior written approval of the department, if the relocation will not create an unsafe and unsound condition.* Additional investments in land, buildings, leases, and leasehold improvements resulting from such relocation shall comply with the limitations imposed by s. 658.67(7)(a). The location of an office may not be moved beyond the limits of the county or counties in which the bank *or trust company* maintains authorized *bank or trust company* ~~banking~~ offices.

(b) The redesignation of a main office and a branch may be made with prior written notification to the department. *However, the redesignation of the main office during the bank or trust company's first 18 months of operation requires the prior written approval of the department.*

~~(4) A bank may contract with proper authorities of any elementary or secondary school or institution caring for minors for the participation by the bank in any school or institutional thrift or savings plan, and it may accept deposits at such school or institution, either by its own collector or by any representative of the school or institution who becomes the agent of the bank for such purposes. Withdrawal from any account carried with the bank by any such school or institution shall be made only at the banking house of such bank.~~

(4)~~(5)~~ With prior written notification to the department, *any bank may operate facilities which are not physically connected to the main or branch office of the bank or association, provided that the facilities are situated on the property of the main or branch office or property contiguous thereto. Property which is separated from the main or branch office of a bank by only a street, and one or more walkways and alleyways are determined to be, for purposes of this subsection, contiguous to the property of the main or branch office.* ~~providing such geographic and locational information as the department may require, and in order to relieve some of the burdens on the public caused by congestion of public streets, roadways, and parking facilities, to promote safety of pedestrians on public ways, or to otherwise serve the needs or convenience of the public, the main office or any branch office of a bank may operate facilities providing services to customers. It is not necessary that any such facility be a part of, or be physically connected to, the main or any other banking room or building of the main office or branch office of the bank if the facility is located on the property on which the main banking house of the main office or branch office of the bank is situated or on property contiguous thereto. Property which is separated from the property on which the main banking house of the main office or branch office of the bank is situated only by a street and one or more walkways and alleyways shall, for the purposes of this subsection, be deemed contiguous to the property on which the main banking house is situated. The operation of any such facility which is not located on the property on which the main banking house of the main office or branch office of the bank is situated or on property contiguous thereto constitutes a violation of subsection (1), unless otherwise approved as provided in subsection (2).~~

(5)~~(6)~~ A bank may provide, directly or through a contract with another company, off-premises armored car service to its customers. Armored car services shall not be considered a branch for the purposes of subsection (2).

(6)~~(7)~~ Banks located in this state that are subsidiaries of a bank holding company may accept deposits as agents for other banks located in this state that are subsidiaries of the same bank holding company. If banks located in this state are affiliates, they may accept deposits as agents for each other. Banks acting as agents for other banks under this subsection shall not be deemed branch offices of the banks for which they act. As used in this subsection, banks are "affiliates" if the same person or persons directly or indirectly own or control either a majority of the voting shares or more than 50 percent of the number of shares entitled to elect the directors of both banks.

Section 110. Section 658.27, Florida Statutes, is amended to read:

658.27 Control of bank or trust company; definitions and related provisions.—

(1) In ss. 658.27-658.29, unless the context clearly requires otherwise:

(a) "Bank holding company" means any business organization which has or acquires control over any bank or trust company or over any business organization that is or becomes a bank holding company by virtue of ss. 658.27-658.29.

(b) "Business organization" means a corporation, association, partnership, or business trust and includes any similar organization (including a trust company and including a bank, whether or not authorized to engage in trust business, but only if such bank is, or by virtue of ss. 658.27-658.29 becomes, a bank holding company), whether created, organized, or existing under the laws of the United States; this state or any other state of the United States; or any other country, government, or jurisdiction. "Business organization" does not include any corporation the majority of the shares of which are owned by the United States or by this state. "Business organization" also includes any other trust, unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, unless the department determines, after notice and opportunity for hearing, that a purpose for the creation of such trust was the evasion of the provisions of ss. 658.27-658.29.

(c) "Edge Act corporation" means a corporation organized and existing under the provisions of s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611-632.

(d) "Subsidiary," with respect to a specified bank, trust company, or bank holding company, means:

1. Any business organization 25 percent or more of the voting shares of which, excluding shares owned by the United States or by any business organization wholly owned by the United States, are directly or indirectly owned or controlled by such bank, trust company, or bank holding company or are held by such bank, trust company, or bank holding company with power to vote;

2. Any business organization the election of a majority of the directors of which is controlled in any manner by such bank, trust company, or bank holding company; or

3. Any business organization with respect to the management or policies of which such bank, trust company, or bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the department after notice and opportunity for hearing.

(e) "Successor," with respect to a specified bank holding company, means any business organization which acquires directly or indirectly from the bank holding company shares of any bank or trust company, when and if the relationship between such business organization and the bank holding company is such that the transaction effects no substantial change in the control of the bank or trust company or beneficial ownership of such shares of such bank or trust company. The department may, by rule, further define the term "successor" to the extent necessary to prevent evasion of the purposes of ss. 658.27-658.29. For the purposes of ss. 658.27-658.29, any successor to a bank holding company shall be deemed to have been a bank holding company from the date on which the predecessor business organization became a bank holding company.

(2) A business organization has control over a bank or over any other business organization if:

(a) The business organization directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or other business organization;

(b) The business organization controls in any manner the election of a majority of the directors, trustees, or other governing body of the bank or other business organization; or

(c) The department determines, after notice and opportunity for hearing, that the business organization directly or indirectly exercises a controlling influence over the management or policies of the bank or other business organization. *For the purposes of this paragraph, a business organization that owns, controls, or has power to vote 10 percent or more of any class of voting securities of the bank or other business organization shall be presumed to exercise a controlling influence over the management or policies of such banks or other business organization if no other business organization owns, controls, or has power to vote a greater proportion of that class of voting securities.*

(3) Shares of any kind or class of voting securities of a bank or business organization, and assets of a business organization, shall be deemed to be indirectly owned or controlled by a bank or business organization, the latter being referred to in this subsection as the "controlling bank or business organization," if:

(a) The shares or assets are owned or controlled by any bank or business organization over which the controlling bank or business organization has control; or

(b) The shares or assets are held or controlled directly or indirectly by trustees for the benefit of:

1. The controlling bank or business organization;

2. The shareholders or members of the controlling bank or business organization; or

3. The employees, whether exclusively or not, of the controlling bank or business organization.

(4) Shares of any kind or class of voting securities, and assets, of a bank or business organization which, after March 28, 1972, the effective date of former s. 659.141(2)(g), are transferred by any bank holding company, or by any bank or any business organization which, but for such transfer, would be a bank holding company, directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the department, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(5) Notwithstanding any other provision of this section, no bank and no business organization shall be deemed to own or control voting shares or assets of another bank or another business organization if:

(a) The ownership or control of such shares or assets is in a fiduciary capacity, except as provided in paragraph (3)(b) and subsection (4). For the purposes of the preceding sentence, shares of a bank or a business organization shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or business organization has sole discretionary authority to exercise voting rights with respect thereto, except that this limitation is applicable in the case of a bank or business organization acquiring such shares prior to March 28, 1972, the effective date of former s. 659.141(3)(a), only if the bank or business organization has the right, consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship, to divest itself of such voting rights and fails to exercise that right to divest within 1 year after that date;

(b) The shares are acquired in connection with the underwriting of securities by a business organization, in good faith and without any intent or purpose to evade the purposes of ss. 658.27-658.29, and if such shares are held only for such period of time, not exceeding 3 months from date of acquisition, as will permit the sale thereof on a reasonable basis; however, upon application by the underwriting business organization, and after notice and opportunity for hearing, if the department finds that the sale of such shares within that period of time would create an unreasonable hardship on the underwriting business organization, that there is no intent or purpose to evade the purposes of ss. 658.27-658.29 by the continued ownership or control of such shares by such underwriting business organization, and that an extension of such period of time would not be detrimental to the public interest, the department is authorized to extend, from time to time, for not more than 1 month at a time, the 3-month period, but the aggregate of such extensions shall not exceed 3 months;

(c) Control of voting rights of such shares is acquired in good faith, and without any purpose or intent to evade the purposes of ss. 658.27-658.29, in the course of participating in a proxy solicitation by a business organization formed in good faith, and without any purpose or intent to evade the purposes of ss. 658.27-658.29, for the sole purpose of participating in such proxy solicitation, and such control of voting rights terminates immediately upon the conclusion of the sole purpose for which such business organization was formed; or

(d) The ownership or control of such shares or assets is acquired in securing or collecting a debt previously contracted in good faith, unless the department, after notice and opportunity for hearing, finds that a purpose of any part of any transaction was an evasion of the purposes of ss. 658.27-658.29 and if the ownership or control of such shares or assets is held only for such reasonable period of time, not exceeding 2 years after the date of acquisition, as will permit the divestiture thereof on a reasonable basis. Upon application by the bank or business organization which acquired such ownership or control in accordance with the preceding provisions of this paragraph, and after notice and opportunity for hearing, if the department finds that the bank or business organization has made reasonable and good faith efforts to divest itself of such ownership or control on a reasonable basis within the 2-year period but has been unable to do so, that immediate divestiture of such ownership or control would create an unreasonable hardship on such bank or business organization, that continuation of such ownership or control involves no purpose or intent to evade the purposes of ss. 658.27-658.29, and that an extension of the 2-year period would not be detrimental to the public interest, the department is authorized to extend, from time to time and for not more than 1 year at a time, the 2-year period, but the aggregate of all such extensions shall not exceed 3 years.

(6) A business organization provides investment advisory services if, in this state and for compensation, it engages in the business of advising persons, directly or indirectly or through publications or writings, as to the value of securities or as to the advisability of investment in or purchasing securities; or if, not being a certified public accountant, in this state and for compensation, it issues or distributes to persons analyses or reports concerning securities.

Section 111. Section 658.28, Florida Statutes, 1990 Supplement, is amended to read:

658.28 Acquisition of control of a bank or trust company.—

(1) In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in any state bank or state trust company, and thereby to change the control of that bank or trust company, each person or group of persons shall first make application to the department for a certificate of approval of such proposed change of control of the bank or trust company. The application shall contain the name and address, and such other relevant information as the department may require, including information relating to other and former addresses and the reputation, character, responsibility, and business affiliations, of the proposed new owner or each of the proposed new owners of the controlling interest. The department shall issue a certificate of approval only

after it has made an investigation and determined that the proposed new owner or owners of the interest are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and that the interests of the other stockholders, if any, and the depositors and creditors of the bank or trust company and the interests of the public generally will not be jeopardized by the proposed change in ownership, controlling interest, or management. No person who has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law shall be given a certificate of approval by the department.

(2) For the purposes of this section, the standards, criteria, and exceptions contained in s. 658.27(2), (3), (4), and (5) relating to control by a business organization of a bank or another business organization apply to the persons mentioned in this section and constitute the standards, criteria, and exceptions which determine whether any person or group of persons shall be deemed to be purchasing or acquiring, or to have purchased or acquired, directly or indirectly a "controlling interest" in a state bank or a state trust company; but the department is not limited to those standards or criteria in determining whether any such person shall be deemed to be acting by or through one or more other persons.

(3) In any case in which a proposed purchase or acquisition of voting securities of a state bank or trust company would give rise to the presumption created under s. 658.27(2)(c), the person or group of persons who propose to purchase or acquire the voting securities shall first give written notice of the proposal to the department. Such notice may present information that the proposed purchase or acquisition will not result in control. The department shall afford the person seeking to rebut the presumption an opportunity to present views in writing or orally before its designated representatives at an informal conference.

(4)~~(3)~~ For the purposes of this section, no person will be considered as having effected a change in control of any bank by the formation of a bank holding company when the person or persons who controlled the bank or banks are the same person or persons who control the holding company.

Section 112. Section 658.29, Florida Statutes, is amended to read:

658.29 Certain ownership and control prohibited.—

(1) Except as provided in subsection (3), no bank, trust company, or bank holding company, the operations of which are principally conducted outside this state, shall acquire, retain, or own, directly or indirectly, all, or substantially all, of the assets of, or control over, any bank ~~or trust company~~ having a place of business in this state where the business of banking *is* ~~or trust business or functions are~~ conducted~~, or acquire, retain, or own all, or substantially all, of the assets of, or control over, any business organization having a place of business in this state where or from which it furnishes investment advisory services in this state. However, if a bank, trust company, or bank holding company directly or indirectly owning all, or substantially all, the assets of, or having control over, a bank or a trust company or business organization to which the restrictions and prohibitions of this section apply, having acquired such assets or control prior to becoming disqualified hereunder, becomes disqualified hereunder to acquire, retain, or own the same, the restrictions and prohibitions of this section shall not be enforced against it for a period which, under all the circumstances, is determined by the department to be reasonable, not exceeding 2 years from the date it becomes disqualified hereunder, unless such period of 2 years is extended by the department as herein provided. The department is authorized, upon a showing of undue hardship, to extend the 2-year period from time to time if it determines that any such extension would not be detrimental to the public interest; but any such extension shall not exceed 1 year, and all extensions shall not in the aggregate exceed 3 years.~~

(2) Except as provided in subsection (3), for the purposes of this section, the operations of a bank, trust company, or bank holding company are principally conducted outside this state if:

(a) In the case of a bank, the largest amount of its total deposits is held outside this state.

(b) In the case of a trust company, the largest amount of its total trust assets is held or administered outside this state.

(c) In the case of a bank holding company, the largest amount of the total deposits of all banks controlled by the bank holding company is held outside this state or the largest amount of the total trust assets held by all trust companies controlled by the bank holding company is held or administered outside this state.

(3) Notwithstanding any other provisions of this section, the restrictions and prohibitions of this section shall not apply:

(a) To the ownership or control of shares acquired by a bank, trust company, or bank holding company prior to January 1, 1972.

~~(b) To any acquisition of a bank, trust company, or investment advisory business organization if an application for approval of such acquisition or notice of proposed investment advisory activities was filed with the Department of Banking and Finance, or the Board of Governors of the Federal Reserve System or other appropriate federal regulatory agency having jurisdiction, prior to June 1, 1972.~~

~~(c) To the establishment of one investment advisory office in this state by a bank or business organization which, on March 1, 1972, and for a period of 1 year prior thereto, rendered investment advisory services to trust companies or banks in this state from an office outside the state.~~

(b)~~(d)~~ To any bank, trust company, or bank holding company, the operations of which are principally conducted outside this state, which, on December 20, 1972, owned all the assets of, or control over, a bank or trust company located within and doing business within this state.

(c)~~(e)~~ To the acquisition, retention, or ownership of an Edge Act corporation when the Edge Act corporation is performing functions authorized by the act under which it was organized.

(d) To any acquisition of a bank by a bank holding company after approval by the department in accordance with s. 658.295.

Section 113. Section 658.30, Florida Statutes, is amended to read:

658.30 Application of *the* Florida *Business* ~~General~~ Corporation Act.—

(1)(a) When not in direct conflict with *or superseded by* specific provisions of *the financial institutions codes* ~~this code~~, the provisions of the Florida *Business* ~~General~~ Corporation Act, chapter 607, shall extend to state banks and trust companies formed under *the financial institutions codes* ~~this code~~. This section shall be liberally construed to accomplish the purposes stated herein.

(b) Without limiting the generality of paragraph (a), stockholders, directors, and committees of state banks and trust companies may hold meetings in any manner permitted by chapter 607, and any action by stockholders, directors, or committees required or permitted to be taken at a meeting may be taken without a meeting in any manner provided or permitted by chapter 607.

(2) The office of cashier of a bank shall correspond to the office of secretary in the Florida *Business* ~~General~~ Corporation Act; however, any bank may, by designation in its *articles of incorporation* ~~bylaws~~, elect to substitute the title of secretary for the title of cashier, but a bank shall not have both a cashier and a secretary.

Section 114. Section 658.32, Florida Statutes, is amended to read:

658.32 Annual meetings.—*Unless otherwise approved by the department,* the annual meeting of stockholders of a state bank or trust company shall be held on such day in the first 4 months of each year as is specified therefor in the *articles of incorporation or in the* bylaws of the corporation; however, when the day fixed in the *articles of incorporation or in the* bylaws for the regular annual meeting of the stockholders falls on a legal holiday, the annual meeting of stockholders shall be held on the next following day which is not a legal holiday.

Section 115. Section 658.33, Florida Statutes, 1990 Supplement, is amended to read:

658.33 Directors, number, qualifications; officers.—

(1) The board of directors of a bank or trust company shall consist of *at least* ~~not less than~~ five directors and shall be elected, unless appointed to fill a vacancy, at the annual meeting of stockholders or at a special meeting; however, if so authorized by the articles of incorporation, a majority of the full board of directors may, at any time during the year

following the annual meeting of shareholders in which such action has been authorized, increase the number of directors of such bank or trust company by not more than two and appoint persons to fill the resulting vacancies.

(2) Not less than a majority of the directors must, during their whole term of service, be citizens of the United States, and at least three-fifths of the directors must have resided in this state for at least 1 year preceding their election and must be residents therein during their continuance in office.

(3) Within 30 days following the annual meeting or any other meeting at which directors or officers are elected, the bank or trust company shall submit to the department the names and residence addresses of those persons on such form as shall be provided by the department.

(4) Each director, upon assuming office, shall acknowledge that he is familiar with his responsibilities as a director and that he will diligently and honestly administer the affairs of such bank or trust company and will not knowingly violate, or willfully permit to be violated, any of the provisions of the *financial institutions codes* ~~banking code~~ or pertinent rules of the department. The signed copy of such oath shall be ~~immediately~~ filed with the department *within 30 days after election.*

Section 116. Section 658.34, Florida Statutes, is amended to read:

658.34 Shares of stock.—

(1) A bank or trust company shall issue its capital stock with par value of not more than $100 *nor less than $1* per share.

(2) No bank or trust company shall issue any shares *of capital stock* before they are fully paid *in cash.*

(3) With the approval of the department, a bank or trust company may issue preferred stock of one or more classes in an amount and with a par value as approved by the department.

(4) With the approval of the department, a bank or trust company may issue less than all the number of shares of any of its capital stock authorized by its articles of incorporation. Such authorized but unissued shares may be issued only for the following purposes:

(a) To provide for stock options as provided in s. 658.35.

(b) To declare or pay a stock dividend, with the approval of the department.

(c) To increase the capital of the bank or trust company, with the approval of the department.

Section 117. Section 658.36, Florida Statutes, is amended to read:

658.36 Changes in capital.—

(1) No state bank or trust company shall reduce its outstanding capital stock without first obtaining the approval of the department, and such approval shall be withheld if the reduction will cause the outstanding capital stock to be less than the minimum required pursuant to *the financial institutions codes* ~~this code~~.

(2) Any state bank or trust company may, with the approval of the department, provide for an increase in its capital *stock.*

Section 118. Section 658.37, Florida Statutes, is amended to read:

658.37 Dividends and surplus.—The directors of any bank or trust company, after charging off bad debts, depreciation, and other worthless assets if any, and making provision for reasonably anticipated future losses on loans and other assets, may quarterly, semiannually, or annually declare a dividend of so much of the aggregate of the net profits of that period combined with its retained net profits of the preceding 2 years as they shall judge expedient, and, with the approval of the department, any bank or trust company may declare a dividend from retained net profits which accrued prior to the preceding 2 years, but each bank or trust company shall, before the declaration of a dividend on its common stock, carry 20 percent of its net profits for such preceding period as is covered by the dividend to its surplus fund, until the same shall at least equal the amount of its common and preferred stock then issued and outstanding. No bank or trust company shall declare any dividend at any time at which its net income from the current year combined with the retained net income from the preceding 2 years is a loss or which would cause the capital accounts of the bank or trust company to fall below the minimum amount required by law, regulation, order, or any written agreement with the department or a *state or* federal regulatory agency. *A bank or trust company may, however, split up or divide the issued shares of capital stock into a greater number of shares without increasing or decreasing the capital accounts of the bank or trust company, and such shall not be construed to be a dividend within the meaning of this section.*

Section 119. Section 658.38, Florida Statutes, is amended to read:

658.38 Deposit insurance~~; membership in Federal Reserve System~~.—A state bank *must, prior to opening, obtain and thereafter maintain* ~~is authorized to do any act necessary to obtain~~ insurance of its deposits by the Federal Deposit Insurance Corporation ~~and to acquire and hold membership in the Federal Reserve System~~.

Section 120. Section 658.39, Florida Statutes, is amended to read:

658.39 Stockholders; examination of records.—No bank, ~~or~~ trust company, *or financial institution-affiliated party* ~~and no director, officer, or employee thereof~~ shall permit any stockholder, other than a qualified director, officer, or employee thereof, to have access to, or to examine or inspect, any of the books or records of such bank or trust company other than its general statement of condition of its general assets and liabilities, the quarterly reports of condition and *quarterly* ~~semiannual~~ reports of income required to be submitted to the department pursuant to s. 655.045(2)(a), and a list of shareholders as provided in s. 655.057(4).

Section 121. Section 658.40, Florida Statutes, is amended to read:

658.40 Definitions for merger *and*~~,~~ consolidation~~, and conversion~~.—As used in the provisions of this code relating to the merger *and*~~,~~ consolidation~~, and conversion~~ of banks and trust companies, unless the context requires otherwise:

(1) "Constituent bank or trust company" means a bank or a state trust company which is a party to a merger.

(2) "Converted bank" means the converting bank after the conversion.

(3) "Converting bank" means a bank converting from a state bank to a national bank, or the reverse.

(4) "Merger" includes consolidation.

(5) "Resulting bank or trust company" means the consolidated bank or state trust company which is, or is to be, carrying on business upon completion of a consolidation; and, in the case of a merger, means the bank or state trust company into which the other constituent banks or trust companies are, or are to be, merged.

(6) "Successor institution" means a banking corporation or a trust company organized under the laws of this state to which the department has not issued a certificate of authorization, as provided in s. 658.25, to conduct a banking business or trust business, the sole purpose of the organization of which is to facilitate a plan of merger, reorganization, or consolidation.

Section 122. Section 658.42, Florida Statutes, is amended to read:

658.42 Plan of merger and merger agreement.—

(1) If the resulting bank or trust company will be a state bank or a state trust company, the constituent banks or trust companies shall adopt a plan of merger and merger agreement stating the method, terms, and conditions of the merger, including the rights of the stockholders of each constituent bank or trust company and all agreements concerning the merger. The board of directors of each constituent bank or trust company shall, by a majority of the entire board, approve the plan of merger and merger agreement which shall contain:

(a) The name of each constituent bank or trust company and the specific location of its office and each of its branches and trust service offices.

(b) With respect to the resulting state bank or state trust company:

1. The name and the specific location of the proposed main office and each existing and proposed branch office and trust service office;

2. The name and address of each director who is to serve until the next meeting of the stockholders at which directors are elected;

3. The name and address of each executive officer;

4. The number of shares of capital stock of every class; the par value of each share of every class; the limitations, rights, preferences, or other special terms, if any, of each class of stock; and the amount of the surplus fund and of *retained earnings or* the undivided profits fund;

5. Whether the resulting state bank is to have trust powers; and

6. The complete articles of incorporation under which the resulting bank or trust company will operate.

(c) The terms for the exchange of shares of the constituent banks or trust companies for cash or the shares, rights, obligations, or other securities or property, or a combination of any thereof, of the resulting bank or trust company, or of, or offered by, a bank holding company as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. ss. 1841-1849, which owns, or on the effective date of the merger and as a result of the merger will own, more than 50 percent of the shares of voting stock of the resulting bank.

(d) A statement that the plan and agreement are subject to approval by the department and by the stockholders of each constituent bank or trust company.

(e) Provisions governing the manner of disposing of the shares, if any, of the resulting state bank or state trust company not taken by dissenting shareholders of constituent banks or trust companies.

(f) Such additional provisions not contrary to law as may be agreed upon by the constituent banks and trust companies and such other provisions as the department requires to enable it to discharge its duties with respect to the merger.

(2) In connection with the organization of a successor institution, a showing and finding of public convenience and advantage for the organization of a new state bank or state trust company is not required; and the department shall adopt special rules relating to the formation, organization, approval, and chartering of successor institutions which omit or waive such of the provisions of ss. 658.16-658.26 as are not essential to safeguard the public interest and the safety and soundness of state banks and state trust companies, but no certificate of authorization to conduct a banking business or trust business shall be issued to a successor institution unless a certificate of merger, as provided in s. 658.45, is issued pursuant to the plan of merger and merger agreement. However, nothing in this subsection shall be construed as waiving or otherwise impairing the public-interest requirement in s. 658.43(3)(d).

Section 123. Section 658.43, Florida Statutes, 1990 Supplement, is amended to read:

658.43 Approval by department; valuation of assets; emergency action.—

(1) After approval by the board of directors of each constituent bank or trust company, the plan of merger and merger agreement shall be submitted to the department for approval, together with a certified copy of the authorizing resolutions of the board of directors of each constituent state bank or state trust company showing approval by a majority of the entire board of directors of each such state bank or state trust company, and evidence of proper action by the board of directors of any constituent national bank.

(2) Without approval by the department, no asset shall be carried on the books of the resulting state bank or state trust company at a valuation higher than that on the books of the constituent bank or trust company at the time of the last examination by a state or national bank or trust company examiner before the effective date of the merger.

(3) The department shall approve the plan of merger and merger agreement if it appears that:

(a) The resulting state bank or state trust company meets all the requirements of state law as to the formation of a new state bank or state trust company, except that this provision shall not apply to the establishment of branches by merger as provided in s. 658.26.

(b) The agreement provides an adequate capital structure, including surplus, of the resulting state bank or state trust company in relation to its activities which are to continue or are to be undertaken, and also in relation to its deposit liabilities in the case of a resulting state bank.

(c) The *valuation* ~~agreement~~ is fair.

(d) The merger is not contrary to the public interest.

If the department disapproves a plan of merger or merger agreement, it shall state its objections and, the provisions of chapter 120 notwithstanding, give an opportunity to the constituent banks, trust companies, or banks and trust companies to amend the plan of merger and merger agreement to obviate such objections.

(4) If the resulting state bank is not to have trust powers, the department shall not approve a merger until adequate provision has been made for successors to fiduciary positions held by any constituent trust company or any constituent bank.

(5) Approval by the department, by final order or otherwise, of a plan of merger or merger agreement shall be deemed subject to approval of the plan of merger and merger agreement by the stockholders of each constituent bank or trust company as provided in s. 658.44(1) and shall also be deemed subject to approval of the merger and the plan of merger and merger agreement by each appropriate federal regulatory agency. Unless all such approvals have been obtained and proper evidence thereof submitted to the department within 6 months after the approval by the department, the approval by the department of the plan of merger and merger agreement shall be deemed to be revoked and terminated; however, the department on its own motion, or at the request of the constituent banks or trust companies for good cause shown, may extend the time for a period not exceeding 6 months.

(6) No merger with a resulting state bank or trust company shall take place or be effective without the issuance by the department of a certificate of merger.

(7) Notwithstanding any other provisions of *the financial institutions codes* ~~this code~~ or of chapter 120, if the department or the appropriate federal regulatory agency finds that immediate action is necessary in order to prevent the probable failure of one or more banks, *associations,* or trust companies, which in this subsection may be referred to as a *"failing financial entity,"* ~~"failing bank or trust company,"~~ the department shall have the power, with the concurrence of the appropriate federal regulatory agency in the case of any bank *or association* the deposits of which are insured by the Federal Deposit Insurance Corporation, to issue an emergency order authorizing:

(a) The merger of any such failing *financial entity* ~~bank or trust company~~ with a state bank;

(b) The merger of any such failing *financial entity* ~~state trust company~~ with a state trust company;

(c) Any state bank to acquire assets and assume liabilities of any such failing *financial entity, including all rights, powers, and responsibilities as fiduciary in instances where the failing financial institution is actively engaged in the exercise of trust powers* ~~bank or trust company; or~~

(d) Any state trust company to acquire assets and assume liabilities of any such failing trust company *and rights, powers, and responsibilities as fiduciary of such failing trust company;*~~.~~

(e) The conversion of any such failing financial entity into a state bank or trust company;

(f) The chartering of a new state bank or state association to acquire assets and assume liabilities of any such failing financial entity and to assume rights, powers, and responsibilities as fiduciary in cases where such failing financial entity is engaged in the exercise of trust powers; or

(g) The chartering of a new state trust company to acquire assets and assume liabilities and rights, powers, and responsibilities as fiduciary of such failing trust company.

Any such finding by the department shall be based upon reports furnished to it by a state bank, *association,* or trust company examiner or by a federal bank *or association* examiner or upon other evidence from which it is reasonable to conclude that any such bank, *association,* or trust company is insolvent or is threatened with imminent insolvency. ~~Any state bank or trust company which has capital accounts of less than 1 percent of its total assets, after adjustment for apparent losses, shall be considered imminently insolvent.~~ The department may disallow illegally

obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section. The stockholders of a failing bank, *association,* or trust company that is acquired by another bank or trust company pursuant to this subsection shall be entitled to the same procedural rights and to compensation for the remaining value of their shares as is provided for dissenters in s. 658.44, except that they shall have no right to vote against the transaction. Any transaction authorized by this subsection may be accomplished through the organization of a successor institution.

Section 124. Subsections (1) and (2) of section 658.44, Florida Statutes, are amended to read:

658.44 Approval by stockholders; rights of dissenters; preemptive rights.—

(1) The department shall not issue a certificate of merger to a resulting state bank or trust company unless the plan of merger and merger agreement, as adopted by a majority of the entire board of directors of each constituent bank or trust company, and as approved by each appropriate federal regulatory agency and by the department, has been approved:

(a) By the stockholders of each constituent national bank as provided by, and in accordance with the procedures required by, the laws of the United States applicable thereto, and

(b) After notice as hereinafter provided, by the affirmative vote or written consent of the holders of at least a majority of the shares entitled to vote thereon of each constituent state bank or state trust company, unless any class of shares of any constituent state bank or state trust company is entitled to vote thereon as a class, in which event as to such constituent state bank or state trust company the plan of merger and merger agreement shall be approved by the stockholders upon receiving the affirmative vote or written consent of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Such vote of stockholders of a constituent state bank or state trust company shall be at an annual or special meeting of stockholders or by written consent of the stockholders without a meeting as provided in *s. 607.0704* ~~s. 607.394~~.

Approval by the stockholders of a constituent bank or trust company of a plan of merger and merger agreement shall constitute the adoption by the stockholders of the articles of incorporation of the resulting state bank or state trust company as set forth in the plan of merger and merger agreement.

(2) Written notice of the meeting of, or proposed written consent action by, the stockholders of each constituent state bank or state trust company shall be given to each stockholder of record, whether or not entitled to vote, and whether the meeting is an annual or a special meeting or whether the vote is to be by written consent pursuant to *s. 607.0704* ~~s. 607.394~~, and the notice shall state that the purpose or one of the purposes of the meeting, or of the proposed action by the stockholders without a meeting, is to consider the proposed plan of merger and merger agreement. Except to the extent provided otherwise with respect to stockholders of a resulting bank or trust company pursuant to subsection (7), the notice shall also state that dissenting stockholders will be entitled to payment in cash of the value of only those shares held by the stockholders:

(a) Which at a meeting of the stockholders are voted against the approval of the plan of merger and merger agreement;

(b) As to which, if the proposed action is to be by written consent of stockholders pursuant to *s. 607.0704* ~~s. 607.394~~, such written consent is not given by the holder thereof; or

(c) With respect to which the holder thereof has given written notice to the constituent state bank or trust company, at or prior to the meeting of the stockholders or on or prior to the date specified for action by the stockholders without a meeting pursuant to *s. 607.0704* ~~s. 607.394~~ in the notice of such proposed action, that the stockholder dissents from the plan of merger and merger agreement.

Hereinafter in this section, the term "dissenting shares" means and includes only those shares, which may be all or less than all the shares of any class owned by a stockholder, described in paragraphs (a), (b), and (c).

Section 125. Subsection (4) of section 658.45, Florida Statutes, is amended to read:

658.45 Certificate of merger and effective date; effect on charters and powers.—

(4)(a) If the resulting state bank is to have trust powers and if one or more of the parties to the merger is a state trust company or a bank having an existing trust department operating pursuant to trust powers theretofore granted by the department, in the case of a constituent state bank, or by the *appropriate federal regulatory authority* ~~Board of Governors of the Federal Reserve System or the Comptroller of the Currency~~, in the case of a constituent national bank, such trust powers shall pass to the resulting state bank; and it shall have and may exercise trust powers in the same manner and to the same extent as the constituent banks or trust companies to which such trust powers were originally issued, and no application to have or to continue to have or exercise trust powers shall be required. However, if the name of the resulting state bank differs from that of a constituent state trust company or a constituent bank having trust powers, the department shall issue a certificate to the resulting state bank showing its right to exercise the trust powers theretofore granted to the constituent banks or trust companies. All fiduciary relationships and capacities of all the constituent banks and trust companies shall, by operation of law, pass to and be assumed by the resulting bank having trust powers, in the same manner and to the same extent as such fiduciary capacities and relationships were held by any constituent bank or trust company.

(b) Upon the merger of two or more state trust companies, the resulting state trust company shall continue to have and exercise the trust powers of the constituent trust companies, and no application to have or to continue to exercise trust powers shall be required. However, if the name of the resulting state trust company differs from that of any of the constituent trust companies, the department shall issue a certificate to the resulting state trust company showing its right to exercise the trust powers theretofore granted to the constituent trust companies. All fiduciary relationships and capacities of the constituent state trust companies shall pass to and be assumed by the resulting state trust company by operation of law.

Section 126. Section 658.48, Florida Statutes, 1990 Supplement, is amended to read:

658.48 Loans.—A state bank may make loans and extensions of credit, with or without security, subject to the following limitations and provisions:

(1) LOANS; GENERAL LIMITATIONS.—

(a) A bank may extend credit to any person, *including any related interest of that person, up to an amount of* ~~in any amount up to~~ 15 percent of its capital accounts *plus the allowance for loan losses* for loans and lines of credit which are unsecured. A bank may extend credit to any person, *including any related interest of that person,* in any amount up to 25 percent of its capital accounts *plus the allowance for loan losses* for loans and lines of credit, all components of which are amply and entirely secured. However, when outstanding loans consist of both secured and unsecured portions, the secured and unsecured portions together may not exceed 25 percent of the capital accounts *plus the allowance for loan losses* of the lending bank, and the unsecured portion may not exceed 15 percent of the capital accounts *plus the allowance for loan losses* of the lending bank.

(b) The department may provide by rule for securities margin requirements.

(c) The loan limitations stated in this section shall not be enlarged by the provisions of any other section of this chapter, except as provided in subsection (6).

(2) LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND THEIR RELATED INTERESTS.—No bank shall extend credit, including the granting of a line of credit, to any of its executive officers or directors, or any related interest of that person, that, when aggregated with the amount of all other extensions of credit to that person and any related interest of that person, exceeds $25,000, unless the extension of credit has been approved in advance by a majority of the entire board of directors not more than 1 year prior to the time when such credit is extended.

(3) LOANS TO OTHER PERSONS.—No bank shall extend credit, including the granting of a line of credit, to any other person not included in subsection (2), *including* ~~or~~ any related interest of that person, that, when aggregated with the amount of all other extensions of credit to that person and any related interest of that person, exceeds 15 percent of the capital accounts *plus the allowance for loan losses* of the lending bank, unless the extension of credit has been approved in advance by a majority of the entire board of directors or an authorized committee thereof not more than 1 year prior to the time when such credit is extended.

(4) RELATED INTERESTS.—As used in this section, the term "related interest" means, with respect to any person, any partnership, corporation, or other business organization controlled by that person. A corporation is controlled by a person who:

(a) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the corporation;

(b) Controls in any manner the election of a majority of the directors of the corporation; or

(c) Has the power to exercise a controlling influence over the management or policies of the corporation.

(5) SPECIAL PROVISIONS.—

(a) A limitation of 25 percent of the capital accounts *plus the allowance for loan losses* of the lending bank applies to the aggregate of all loans made to a corporation together with all loans secured by shares of stock, bonds, or other obligations of the same corporation, unless the stocks or bonds are listed and traded on a recognized stock exchange or are registered under the Securities Exchange Act of 1934 or are registered with the Board of Governors of the Federal Reserve System, with the Federal Deposit Insurance Corporation, or with the Comptroller of the Currency, in which case no aggregate loan limit applies.

(b) A limitation of 10 percent of the capital accounts *plus the allowance for loan losses* of the lending bank applies to loans made to any one borrower on the security of shares of capital stock or the obligations subordinate to deposits of another bank. A limitation of 25 percent of the capital accounts *plus the allowance for loan losses* of the lending state bank applies to the aggregate of all loans secured by the shares of capital stock or the obligations subordinate to deposits of any one bank.

(c) No loan shall be made by a bank:

1. On the security of the shares of its own capital stock, *of stock of its own one-bank holding company,* or of its obligations subordinate to deposits.

2. On an unsecured basis for the purpose of the purchase of shares of its own capital stock, stock of its own one-bank holding company, or its obligations subordinate to deposits.

(d) Loans based upon the security of real estate mortgages shall be documented as first liens, except that liens other than first liens may be taken:

1. To protect a loan previously made in good faith;

2. To further secure a loan otherwise amply and entirely secured;

3. As additional security for Federal Housing Administration Title 1 loans or loans made with participation or guaranty by the Small Business Administration;

4. To secure a loan not in excess of 15 percent of the capital accounts *plus the allowance for loan losses* of the bank; or

5. As provided by rules of the department.

(e) In computing the total liabilities of any person, there shall be included all loans endorsed or guaranteed as to repayment by such person and by any related interest of such person.

(f) All loan documentation shall be written in the English language or contain an English translation of foreign language provisions.

(6) APPLICABILITY OF LOAN LIMITATIONS.—The loan limitations otherwise provided in this section do not apply to:

(a) Loans which are fully secured by assignment of a savings account or certificate of deposit of the lending bank;

(b) Loans which are fully secured by notes, bonds, or other evidences of indebtedness issued by the United States Government or fully guaranteed as to repayment by the United States Government or its agencies, bureaus, boards, or commissions; or

(c) Loans made to district school boards when such loans are secured by the assignment of revenues reasonably expected to be received from the state and are otherwise made in compliance with statutes governing borrowings by such boards.

(7) APPROVAL BY BOARD.—The requirements of this section concerning approval of lending activities by the board of directors or an authorized committee therefrom have been met only when such approvals are recorded in the formal minutes of the actions of the board and its committees by name of borrower, amount of loan, maturity of loan, and general type of collateral. If, at the time of approval of a line of credit, such information is not available, the name of the borrower and the amount of the approved line of credit shall be recorded in the minutes. Any action required by this section to be taken by the board of directors or an authorized committee therefrom may be taken pursuant to s. 607.0820(4) if the minutes of the proceedings of the board or of the committee reflect such action and each director taking such action signs the minutes reflecting such action at the next regular meeting of the board or committee attended by such director.

(8) LIABILITY OF OFFICERS AND DIRECTORS.—Officers and directors are personally liable, jointly and severally, for any loss that may be occasioned by any willful violation of this section.

(9) When a bank's capital has been diminished by losses so that its ability to honor legally binding written loan commitments is impaired, the department may approve limited expansion of the lending limitations set forth in this section.

(10)~~(9)~~ FEDERAL RESTRICTIONS AND LIMITATIONS.—Nothing in this section shall be construed as expanding, enlarging, or otherwise affecting any lending limits, restrictions, or procedures now provided by federal law applicable to state banks in conjunction with any loan or loans to any borrower or class of borrowers.

Section 127. Section 658.50, Florida Statutes, is amended to read:

658.50 Bank loans; credit cards.—

(1) Any bank shall have the power to make loans or extensions of credit to *a* ~~any~~ person on a credit card or overdraft financing arrangement and to charge, in any billing cycle, interest on the outstanding amount at a rate not exceeding the equivalent of 18 percent per annum, simple interest.

(2) For the purpose of this section, the term:

(a) "Billing cycle" has the same meaning as ascribed to it under the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., and the associated regulations which are in effect as of April 1, 1988.

(b) "Interest" means those charges considered a finance charge under the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., and the associated regulations which are in effect as of April 1, 1988.

(3) Notwithstanding the provisions of this section or any other law, a financial institution may impose and collect interest, finance charges, and credit service charges, as well as such other fees and charges which are material to the determination of the interest rate in connection with loans or extensions of credit to any person on a credit card or overdraft financial arrangement at such rates and in such amounts as financial institutions domiciled in any other state are permitted to impose and collect when making loans or extensions of credit to persons residing in this state.

Section 128. Subsection (3) of section 658.53, Florida Statutes, is amended to read:

658.53 Borrowing; limits of indebtedness.—

(3) No state bank or trust company shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its *unimpaired* capital stock ~~at such time actually paid in and remaining undiminished by losses or otherwise~~ plus 50 percent of the amount of its unimpaired surplus fund and *unimpaired* undivided profits fund, except on account of demands of the nature following:

(a) Moneys deposited with or collected by the bank.

(b) Bills of exchange or drafts drawn against money actually on deposit to the credit of the state bank or due thereto.

(c) Liabilities to the stockholders of the state bank or trust company for dividends and reserve profits.

(d) Liabilities incurred under the provisions of the Federal Reserve Act.

(e) Liabilities incurred under the provisions of the Federal Deposit Insurance Act.

(f) Liabilities incurred under the provisions of the Federal Home Loan Bank Act.

(g)~~(f)~~ Liabilities created by the endorsement of accepted bills of exchange payable abroad actually owned by the endorsing bank and discounted at home or abroad.

(h)~~(g)~~ Liabilities incurred under the provisions of ss. 2.3 and 2.4 of Title II of the federal Farm Credit Act of 1971, as amended, 12 U.S.C. ss. 2074 and 2075, subject to the limitations therein contained.

(i)~~(h)~~ Liabilities incurred for moneys borrowed from a bank when such borrowing is made with the express written approval of the department.

(j)~~(i)~~ Liabilities incurred for funds purchased from the United States Department of the Treasury.

(k)~~(j)~~ Liabilities incurred for federal funds purchased.

Section 129. Subsection (2) of section 658.60, Florida Statutes, is amended to read:

658.60 Depositories of public moneys and pledge of assets.—

(2) Notwithstanding any other provision of this section or the provisions of any other law requiring security for deposits of funds in the form of surety bond, in the form of the deposit or pledge of securities, or in any other form, security for such deposits shall not be required to the extent that such deposits are insured under the provisions of the Federal Deposit Insurance Act, as now or hereafter amended. Recognition is accorded to the custom and usage, and its practicality, of the deposit or pledge of securities by banks, as security for deposits, in an aggregate amount which, because of the fluctuation from time to time of the aggregate amount of the deposits secured thereby, may at times be in an amount in excess of the required amount of such security without withdrawing and redepositing securities with each decrease and increase of the aggregate amount of deposits secured thereby. In order to effectuate the provisions of the first sentence of this subsection, and in recognition of the availability of such excess securities for inclusion in ~~the~~ liquidity *and reserves* ~~reserve~~ of state banks as provided in s. 658.68, whenever the amount of securities deposited or pledged exceeds the amount required for the deposits secured thereby, securities in an amount equal to such excess shall, for all purposes and laws, while such excess exists be, and be treated as, freed and discharged from such deposit and pledge even though not physically withdrawn or removed from such deposit or pledge, and, in determining the securities which are so freed and discharged, those securities which are eligible for inclusion in a state bank's liquidity ~~reserve~~ as provided in s. 658.68 shall first be included in such determination. However, such excess securities which are not physically withdrawn or removed from deposit or from the pledge thereof shall immediately and automatically, for all purposes and laws, be, and be treated as, redeposited and repledged at such time or times as, and to the extent that, there is an increase in the amount of security required for funds deposited with the bank, and, in determining the securities which are so automatically and immediately redeposited and repledged, there shall first be included those securities which are not eligible for the aforesaid liquidity ~~reserve~~ under s. 658.68.

Section 130. Section 658.65, Florida Statutes, is amended to read:

658.65 Remote financial service units.—

~~(1) As used in this section:~~

~~(a) "Bank" means any person authorized under the laws of this state or of the United States to do a general commercial banking business, which includes the acceptance of deposits, who has his principal office and main banking house in this state; the term also includes an industrial savings bank organized and operating under the provisions of chapter 664. For the purposes of this section, the foregoing definition of the term "bank" shall control over the definition of "bank" contained in s. 658.12.~~

~~(b) "Credit union" means a credit union as defined in chapter 657 or a credit union organized and existing under the laws of the United States having its principal office in this state.~~

~~(c) "Financial depository institution" means a bank, savings and loan association, or credit union.~~

~~(d) The "owner" of a remote financial service unit is the person having the right to determine the financial depository institutions which will be permitted to use, or participate in the usage of, the remote financial service unit.~~

~~(e) "Point-of-sale terminal" means an information processing device by which transactions by a person with, among, or involving one or more financial depository institutions are accomplished through or by means of electronic or automated signals or impulses, which may include the human voice. A point-of-sale terminal shall be located at a place of business other than the place of business of a financial depository institution and shall not be operated by an agent or employee of a financial depository institution and shall not be located on any premises having a pari-mutuel license. For the purposes of this section and for the purposes of all other statutes and rules of law, an agent or employee of the place of business where the point-of-sale terminal is located who operates the point-of-sale terminal shall not be deemed to be the agent or employee of any financial depository institution using the point-of-sale terminal or with which transactions are accomplished by means of the point-of-sale terminal.~~

~~(f) "Remote service terminal" means an information processing device, including associated structures, for the operation of which at its location an agent or employee of a financial depository institution is not required and by which, through or by means of electronic, automated, or mechanical signals or impulses generated through the use of electronic, automated, or mechanical equipment, transactions by a person are accomplished with, among, or involving one or more financial depository institutions, including, but not limited to, the dispensing of cash. Except for a remote service terminal located in any financial depository institution office or on the property on which the office is located or on property contiguous thereto, a financial depository institution utilizing a remote service terminal shall not cause any agent or employee of the financial depository institution to be stationed at the location of the remote service terminal for the operation thereof.~~

~~(g) "Remote financial service units" means and includes point-of-sale terminals and remote service terminals.~~

~~(h) "Savings and loan association" means an association as defined in chapter 665 and a savings and loan association organized and existing under the laws of the United States having its principal office in this state.~~

~~(2) A financial depository institution may use the facilities of, or participate in the use of, such number of remote financial service units at such locations as the financial depository institution may determine. It shall not be necessary that any remote financial service unit, or any associated equipment, structures, or systems by which it is operated, be a part of, or physically connected to, the main room or building of the financial depository institution or branch, be on the property on which the main building is situated, or be on property contiguous thereto. It shall not be necessary that a financial depository institution using the facilities of a remote financial service unit hold the legal title to, or otherwise be the owner of, the remote financial service unit or any associated equipment, structures, or systems, but the owner of any remote financial service unit shall be subject to the provisions of this section.~~

~~(3)(a) As to any and each remote financial service unit which a financial depository institution chartered by the state proposes to establish, the financial depository institution shall give not less than 30 days' written notice to the department of its intention to establish the same. Each written notice shall be in such form as the department requires and shall include the following information with regard to the remote financial service unit:~~

~~1. The name of the financial depository institution giving notice.~~

~~2. The owner of the remote financial service unit.~~

~~3. The exact location and a description of the surrounding area, including a description of any business establishment in or on which the remote financial service unit will be located.~~

~~4. Any other additional information the department requires.~~

~~(b) The department shall require that each establishing financial depository institution provide the department with a written periodic update of the information required in the written notice, including a current list of each financial depository institution sharing the remote financial service unit.~~

~~(4) The owner of a point-of-sale terminal, other than a retail merchant, a savings and loan association, or a credit union or a subsidiary at least 50 percent of the equity ownership of which is owned by one or more savings and loan associations or credit unions, shall make the same available, on a nondiscriminatory basis, for use by any other bank or banks and the customers thereof upon the request of such bank or banks to pay a fair and equitable amount for such right to use the same; but the owner of the point-of-sale terminal shall have the right to retain the control thereof. The owner of a point-of-sale terminal may make the same available for use by one or more savings and loan associations and credit unions and the customers thereof, and a bank may participate upon contractual agreement in the use of a point-of-sale terminal owned or operated by one or more savings and loan associations and credit unions.~~

~~(5) The owner of a remote service terminal may share the use of any remote service terminal with one or more financial depository institutions, and a financial depository institution may share, upon contractual agreement with one or more other financial depository institutions, the use of a remote service terminal operated by one or more financial depository institutions.~~

~~(6) It is the intent of this section to provide and authorize more convenient methods of implementing and performing the functions which banks, savings and loan associations, and credit unions, respectively, are permitted to perform and render. Nothing contained in this section shall be construed to enlarge the powers, services, or activities which banks or any category of banks, savings and loan associations, or credit unions are permitted to perform, render, or engage in by applicable law other than the provisions of this section.~~

~~(7) In considering any application for authority to organize a new financial depository institution or to establish any other financial depository institution facility, whether manned or unmanned, the department shall disregard the existence of remote financial service units in considering and determining the need for financial depository institution facilities in the community where the proposed new financial depository institution or other financial depository institution facility is to be located, in considering the adequacy of existing financial depository institution facilities and the need for further financial depository institution facilities in the locality, and in considering the ability of the community to support the proposed new financial depository institution or other financial depository institution facility and all other existing financial depository institution facilities in the community.~~

~~(8) Neither a remote financial service unit nor any associated equipment or systems by which it is operated as provided for in this section shall be considered to be a branch of any financial depository institution using or participating in the use thereof, and such use shall not be deemed to be a violation of s. 658.26. The provisions of this section are cumulative and in addition to the provisions of s. 658.26.~~

~~(9) The provisions of this section shall not be available to any bank which does not have its principal office and place of business in this state, and~~ Any bank which does not have its principal office and place of business in this state is prohibited from using in this state any remote financial service unit or any associated system by which a remote financial service unit is operated. However, any bank which does not have its principal office and place of business in this state may use in this state any remote financial service unit or any associated system within this state by which such a remote financial service unit is operated if:

(1)~~(a)~~ Such bank does not take deposits, either directly or indirectly, from any source whatsoever by use of the remote financial service unit or associated system;

(2)~~(b)~~ Such bank by itself or in conjunction with another is not, directly or indirectly, the owner of, nor does it hold title to or rent or control the use of, the remote financial service unit or that part of the associated system that is within the state; and

(3)~~(c)~~ The remote financial service unit or associated system:

(a)~~1.~~ Has as its owner:

1.~~a.~~ One or more banks, each of which has its principal office and place of business in this state;

2.~~b.~~ One or more parent holding companies of a bank described in *subparagraph 1.* ~~sub-subparagraph a.~~; or

3.~~c.~~ One or more subsidiaries of a bank described in *subparagraph 1.* ~~sub-subparagraph a.~~ or of a holding company described in *subparagraph 2.* ~~sub-subparagraph b.~~; or

(b)~~2.~~ Is accessible by such bank or its customers only through computer or similar electronic systems used by, and the use of which is controlled by:

1.~~a.~~ One or more banks, each of which has its principal office and place of business in this state;

2.~~b.~~ One or more parent holding companies of a bank described in *subparagraph 1.* ~~sub-subparagraph a.~~; or

3.~~c.~~ One or more subsidiaries of a bank described in *subparagraph 1.* ~~sub-subparagraph a.~~ or of a holding company described in *subparagraph 2.* ~~sub-subparagraph b.~~

However, nothing ~~herein~~ contained *in this section prohibits* ~~shall prohibit~~ any Federal Reserve Bank or branch thereof from operating any electronic funds transfer system in this state. Nothing ~~herein~~ contained *in this section grants* ~~shall be construed as granting~~ any authority, directly or indirectly, for any bank or bank holding company, the operations of which are principally conducted outside this state, to operate a branch in this state or to acquire, directly or indirectly, any voting shares of, any interest in, or all or substantially all of the assets of any bank in this state. Nothing *contained* in this *section* ~~subsection shall be construed~~, by negative implication or otherwise, *applies* ~~to apply~~ to any ~~savings and loan~~ association or credit union, regardless of whether such association or credit union has its principal office and place of business in this state.

~~(10) Every owner of a remote financial service unit and every financial depository institution using a remote financial service unit shall adopt and maintain safeguards to ensure the safety of funds, items, and other information, which safeguards shall include security devices consistent with the minimum requirements specified under the federal Bank Protection Act or such alternative security precautions as are approved by the department.~~

~~(11) The department shall have the authority to require, by rule, each financial depository institution operating pursuant to this section to supply information to customers using remote financial service units concerning the consumer protection policies of the financial depository institution, including the rights and liabilities of consumers and protection against wrongful or accidental disclosure of confidential information.~~

~~(12)(a) A cardholder's federal social security number shall not be used as the personal identification number or as any code to activate any remote financial service unit.~~

~~(b) Information received through, or by means of, any remote financial service unit shall be treated and used in accordance with applicable law relating to the dissemination or disclosure of such information.~~

~~(c) A customer may bring a civil action against a person violating the provisions of this subsection in the circuit court of the county in which the alleged violator resides or has his principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or $500, whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff. The court may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this subsection. If it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorney's fees incurred by the defendant.~~

~~(13) It is the intent of the Legislature that no person be deprived of any rights and protections now offered by existing law due to the effect of this section becoming law.~~

Section 131. Section 658.67, Florida Statutes, is amended to read:

658.67 Investment powers and limitations.—A bank may invest its funds, and a trust company may invest its corporate funds, subject to the following definitions, restrictions, and limitations:

(1) INVESTMENTS NOT SUBJECT TO LIMITATION.—A bank or trust company may invest without limitation in the following:

(a) Direct obligations of the United States Government.

(b) Obligations of agencies created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government.

(c) Collateralized mortgage obligations guaranteed by agencies created by an act of the United States Congress.

(d)~~(c)~~ Public housing authority obligations.

(e)~~(d)~~ General obligations of the states of the United States and of the political subdivisions and municipalities thereof.

(f)~~(e)~~ Obligations issued by the State Board of Education under authority of the State Constitution or applicable statutes.

~~(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.~~

(g) Prerefunded municipal bonds, the principal and interest of which are secured by the principal and interest of a direct obligation of the United States Government.

(h) The sale of federal funds on a daily *or term* basis; however, no bank shall sell at any one time federal funds to any individual bank in an amount exceeding 100 percent of the capital accounts of the selling bank.

(i) Demand, savings, or time deposits or accounts of any *insured* state or federal financial institution.

(j) Bankers' acceptances which are eligible for purchase by federal reserve banks.

(k) Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. s. 80a-1 et seq., as amended from time to time, provided that the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations, and provided further that any such investment company or investment trust shall take delivery of such collateral either directly or through an authorized custodian.

(2) INVESTMENTS SUBJECT TO LIMITATION OF TWENTY-FIVE PERCENT OF TOTAL ASSETS.—Up to 25 percent of the total assets of the purchasing bank or trust company may be invested in the following:

(a) Any single issue of revenue bonds or certificates of the states of the United States or of the political subdivisions and municipalities thereof.

(b) Bonds or other obligations of the Inter-American Development Bank.

(c) *Tax anticipation certificates or warrants of counties or municipalities which have maturities not exceeding 1 year.* ~~Corporate obligations of any one corporation which is not an affiliate or subsidiary of the bank or trust company.~~

(3) INVESTMENTS SUBJECT TO LIMITATION OF TWENTY-FIVE PERCENT OF CAPITAL ACCOUNTS.—Up to 25 percent of the capital accounts of the purchasing bank or trust company may be invested in:

(a) Bonds or other obligations of the African Development Bank.

(b) Corporate obligations of any one corporation that is not an affiliate or subsidiary of the bank or trust company.

(4) INVESTMENTS SUBJECT TO LIMITATION OF TEN PERCENT OR LESS OF CAPITAL ACCOUNTS.—

(a) Up to 10 percent of the capital accounts of the purchasing bank or trust company may be used to invest in any single issue of industrial development bonds issued for the benefit of a specified corporation.

(b) Up to 5 percent of the capital accounts of the purchasing bank or trust company may be used to invest in or purchase bonds or other evidences of indebtedness of the State of Israel.

(c) Up to 2 percent of the capital accounts of the purchasing bank or trust company may be used to invest in the stock of a community corporation organized to promote the physical, social, or moral well-being of the members of the community where the bank or trust company is located.

(d) Up to 1 percent of the capital accounts of the purchasing bank or trust company may be used to invest in the stock of the Florida Industrial Development Corporation. ~~The purchasing bank or trust company may thereafter deal in the securities or other evidences of debt of such corporation as provided for in chapter 289.~~

(e) Up to 1 percent of the capital accounts of the purchasing bank or trust company may be used to invest in the stock of the Housing Development Corporation of Florida. The purchasing bank or trust company may thereafter deal in the securities or other evidences of debt of such corporation as provided for in chapter 420.

(f) Up to 10 percent of the capital accounts of a bank or trust company may be invested in any capital participation instrument or evidence of indebtedness issued by the Florida Black Business Investment Board pursuant to the Florida Small and Minority Business Assistance Act of 1985.

(5) INVESTMENTS IN RELATED COMPANIES.—A bank or trust company may invest in the stock of incorporated companies to the extent hereinafter defined:

(a) Stock of the Federal Reserve bank *or the Federal Home Loan bank* of this district may be purchased and retained as required to maintain membership in the ~~Federal Reserve~~ system.

(b) Stock of the Federal National Mortgage Association may be purchased and retained as required in connection with mortgage transactions with that association.

~~(c) Up to 10 percent of the capital accounts of a bank or trust company may be invested in a bank service corporation organized and operated as provided in chapter 662.~~

(c)~~(d)~~ Up to 10 percent of the capital accounts of a bank may be invested in a clearing corporation as defined in s. 678.102(3).

(d)~~(e)~~ Up to 10 percent of the capital accounts of a bank may be invested in the capital stock of a banker's bank, except that in no event shall the purchase of such stock result in the acquisition of more than 5 percent of any class of voting securities of such banker's bank.

(6) INVESTMENTS IN CORPORATIONS.—*Without prior approval by the department,* up to an aggregate of *10* ~~20~~ percent of the total assets of a bank may be invested in the stock, obligations, or other securities of subsidiary corporations or other corporations or entities, except that during the first 3 years of existence of a bank, such investments are limited to *5* ~~10~~ percent of the total assets *without prior approval. The department may, by prior approval, permit additional investments in this section of up to 20 percent of the total assets. Any bank whose aggregate investment on October 1, 1991, exceeds the limitation in this subsection has 5 years within which to achieve compliance; additional time may be approved by the department.* The department may, by rule, *further* limit any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.

(7) INVESTMENTS IN REAL ESTATE AND EQUIPMENT.—A bank or trust company may invest in real estate and equipment to the extent hereinafter defined:

(a)1. Up to 60 percent of the capital accounts of the bank or trust company may be invested in the direct ownership of, or in leasehold interests in, land and buildings utilized or to be utilized by the bank or trust company in the transaction of its business. This limitation applies to assets subject to a lease agreement which is required to be capitalized under criteria issued by the Financial Accounting Standards Board. In

lieu of such investment in real estate, with the prior written approval of the department, up to 60 percent of the capital accounts of the bank or trust company may be invested in the stock of a corporation which owns the land and buildings within which the business of the bank or trust company is or will be transacted.

2. The real estate investment limitations provided by this subsection may not be exceeded except with the prior written approval of the department.

(b) A bank or trust company may own or lease furniture, fixtures, machinery, and equipment such as may be necessary to the transaction of its business.

(8) INVESTMENTS IN PERSONAL PROPERTY.—A bank or trust company may own or lease personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. In addition, a bank or trust company may purchase leases as provided by rules of the department.

(9) ACQUISITIONS OF PROPERTY AS SECURITY.—A bank or trust company may acquire property of any kind to secure, protect, or satisfy a loan or investment previously made in good faith, and such property shall be entered on the books of the bank or trust company and held and disposed of subject to the following conditions and limitations:

(a) The book entry shall be the lesser of the balance of the loan or investment plus acquisition costs and accrued interest or the appraisal value or market value of the property acquired which shall be determined *and dated within 1 year prior* ~~as near as possible~~ to the date of acquisition *and in compliance with s. 655.60.*

(b) The bank or trust company shall have evidence of ownership of all property acquired and shall maintain subsidiary ledgers adequate to the separate recording of all income and expense attributable to its ownership of such property.

(c) Unless an extension of time is approved in writing by the department, real estate shall be sold or charged off within 5 years of the date of acquisition, and personal property shall be sold or charged off within 6 months of the date of acquisition.

(d) The bank will maintain appraisal reports required by s. 655.60.

(10) SPECIAL PROVISIONS.—

(a) None of the bonds or other obligations described in this section shall be eligible for investment in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized rating service or any comparable rating as determined by the department. Bonds or other obligations which are unrated shall not be eligible for investment unless otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing bank or trust company.

(b) Investment securities shall be entered on the books of the bank or trust company at the fair market value on the date of acquisition. Premiums paid in excess of par value shall be amortized either over the life of the security or to the first call date at its call price and thereafter to subsequent call dates at their respective call prices until maturity. Discount may be accredited over the life of the security.

(11) OTHER INVESTMENTS; SUBJECT TO DEPARTMENTAL APPROVAL.—A bank or trust company may make such other investments as the department approves by rule.

Section 132. Section 658.68, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 658.68, F.S., for present text.)

658.68 Liquidity.—

(1) A state bank must maintain a daily liquidity position equal to at least 15 percent of its total deposit liability, less those deposits of public funds for which security has been pledged as provided by law. Bank assets eligible to meet the 15 percent liquidity requirement are cash on hand, demand deposits due from correspondent banks, and other investments and short-term marketable securities as determined by rule of the department.

(2) Whenever a state bank fails to demonstrate compliance with subsection (1), the bank shall not further diminish its liquidity by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor by paying any dividends of its profits until compliance with the liquidity requirement of either has been met. The department may notify any bank whose liquidity is below the amount required to be maintained to make good such liquidity, and if the bank fails within 30 days thereafter to achieve its liquidity requirement, the department may determine the bank insolvent and may appoint a liquidator to wind up the business as provided in ss. 658.79-658.96.

Section 133. Section 658.73, Florida Statutes, 1990 Supplement, is amended to read:

658.73 ~~Examination~~ Fees and assessments.—

(1) Each state bank and state trust company shall pay to the department examination fees and assessments as follows:

(a) A semiannual fee of *$2,500* ~~$300~~; and

(b) A semiannual assessment, each in such amount as may be determined by the department, *by rule*, but not exceeding *15* 8 cents for each $1,000 of total assets as shown on the statement of condition of the bank or trust company as of the last business day in June and the last business day in December in each year. *In its determination, the department may consider examination fees and application fees received from banks and trust companies in setting the semiannual assessment for purposes of meeting the cost of regulation of banks and trust companies subject to this chapter.* ~~The formula for computation of the semiannual assessment shall be uniform as to all state banks and shall be uniform as to all state trust companies, but the formula amount per $1,000 of total assets of state trust companies shall not be less than for state banks. The fees and assessments required by this subsection shall apply to the 6-month period following the first day of the month in which they are due.~~

(2) Applications filed with the department shall be accompanied by payment of the following nonrefundable fees:

(a) *Fifteen* ~~Ten~~ thousand dollars for each application for authority to organize a new state bank or state trust company.

(b) Two thousand five hundred dollars for each application by an existing bank or association for trust powers.

(c) *Seven thousand five hundred* ~~Five thousand~~ dollars for each application for authority to acquire a controlling interest in a state bank or state trust company; however, if more than one bank or trust company is being acquired in any such application, the fee shall be increased by *$3,000* ~~$2,000~~ for each additional bank or trust company.

(d) *Seven thousand five hundred* ~~Five thousand~~ dollars for each application for conversion of a national bank to a state bank.

(e) *Two* ~~One~~ thousand five hundred dollars for each application to establish a branch of a state bank or a branch of a state trust company.

(f) One thousand *five hundred* dollars for each application for authority to establish a trust service office of a state trust company or of a trust department of a state bank or association, and a like amount for each application by a bank or association with trust powers which is not a state bank or state association for authority to establish a trust service office at a state bank, state association, or state credit union.

(g) *Seven thousand five hundred* ~~Five thousand~~ dollars for each application for a merger, consolidation, or purchase of assets and assumption of liabilities; however, if three or more banks or trust companies are involved in any such application, the fee shall be *$3,500* ~~$2,000~~ for each involved institution.

(h) *Two thousand five hundred* ~~One thousand~~ dollars to establish a successor institution.

(i) *Seven thousand five hundred* ~~Five thousand~~ dollars for each application by a regional bank holding company to make an acquisition pursuant to s. 658.295.

~~(3) Each state trust company and each state bank or association exercising trust powers shall pay to the department, promptly upon its demand, a fee for the examination by the department of such state trust company or the trust department of such state bank or association, which examination fee shall be $125 per day for the examiner in charge plus $90 per day for each examiner participating in the examination.~~

(3)~~(4)~~ The amounts of all fees and assessments provided for in this section~~, except for subsection (5),~~ shall be deemed to be maximum amounts; and the department has the authority to establish, *by rule*, and from time to time to change, fees and assessments ~~of uniform application~~ in amounts less than the maximum amounts stated in this section.

~~(5) There is hereby imposed a fee for the examination of each representative office, as defined in s. 663.01(5), and each international administrative office, as defined in s. 663.01(2), which fee shall be equal to the actual cost of each examiner's participation in the examination, as measured by the examiner's pay scale, plus other expenses directly incurred in that examination, but in no event shall such fee be less than $100 per day for each examiner participating in the examination.~~

~~(6) Each international bank agency shall pay the department examination fees and assessments as follows:~~

~~(a) An examination fee for each examination required pursuant to s. 655.045(1)(a), which fee shall be equal to the actual cost of each examiner's participation in an examination, as measured by the examiner's pay scale, plus other expenses directly incurred in that examination, but in no event shall such fee be less than $100 per day for each examiner participating in the examination.~~

~~(b) A semiannual assessment on the total assets of the international bank agency, which shall be sufficient to recover the costs of the department incurred in connection with the supervision of international bank agencies, representative offices, and administrative offices but which, in any event, shall not exceed the semiannual assessments paid to the department by state banks and state trust companies as specified in paragraph (1)(b). Such semiannual assessments shall be as prescribed in rules adopted by the department. Such rules shall provide for declining rates of assessment upon each international bank agency's total assets, as defined in paragraph (c), in excess of $35 million. The formula for computation of the semiannual assessment shall be uniform as to all agencies. The fees and assessments required by this subsection shall apply to the 6-month period following the first day of the month in which they are due.~~

~~(c) For the purposes of paragraph (b), the "assets" of an international bank agency include amounts due the agency from other offices or branches of the international banking corporation of which the agency is a part or from entities related to that international banking corporation.~~

Section 134. Section 658.79, Florida Statutes, is amended to read:

658.79 Taking possession of insolvent state banks or trust companies.—

~~(1)~~ Whenever the department has reason to conclude, based upon the reports furnished to it by a state bank or trust company examiner or upon other satisfactory evidence, that any state bank or trust company:

(1)~~(a)~~ Is insolvent *or imminently insolvent*; or

(2)~~(b)~~ Is transacting its business in an unsound, unsafe, or unauthorized manner such that it is threatened with imminent insolvency,

the department may, in its discretion, forthwith designate and appoint a liquidator or receiver to take charge of the assets and affairs of such bank or trust company and require of him such bond and security as the department deems proper, not exceeding double the amount that may come into his hands. The department may enlist the services of any state or local law enforcement agency in taking possession and securing the assets of the bank or trust company.

~~(2) A state bank or trust company is deemed to be insolvent when any of the following conditions exist:~~

~~(a) The capital stock, surplus, undivided profits, and all assets are insufficient to meet liabilities.~~

~~(b) The bank or trust company is unable to meet current obligations as they mature, even though assets may exceed liabilities.~~

~~(c) The capital stock, surplus, and undivided profits are exhausted by losses with no immediate prospect of replacement.~~

Section 135. Section 658.80, Florida Statutes, is amended to read:

658.80 Appointment of receiver or liquidator.—

(1) Upon taking possession of a state bank or trust company pursuant to s. 658.79, the department shall appoint either a receiver to conserve the assets of the institution or a liquidator to liquidate the assets of the institution and wind up its affairs.

(2) The Federal Deposit Insurance Corporation *or any appropriate federal agency* ~~created under the Federal Deposit Insurance Act~~ shall be appointed by the department as receiver or liquidator of any state bank, the deposits of which are to any extent insured by the corporation, and which shall have been closed by the department. Upon appointment, the corporation may act without bond as receiver or liquidator and shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator, respectively, of such institution, its depositors and other creditors. If the corporation declines to accept the tendered appointment, the department may appoint and thereafter dismiss or replace such other receiver or liquidator as deemed necessary or advisable.

Section 136. Subsection (1) of section 658.82, Florida Statutes, is amended to read:

658.82 Receiver; powers and duties.—

(1) When the Federal Deposit Insurance Corporation *or other appropriate federal agency* is appointed receiver of the bank, it may proceed independently with the receivership pursuant to its rules and regulations.

Section 137. Subsection (1) of section 658.83, Florida Statutes, is amended to read:

658.83 Liquidator; powers and duties.—

(1) When the Federal Deposit Insurance Corporation *or other appropriate federal agency* is appointed liquidator or makes a decision to liquidate a bank of which it has been appointed receiver, it may proceed independently with liquidation pursuant to its rules and regulations.

Section 138. Section 658.84, Florida Statutes, is amended to read:

658.84 Transfers, assignments, deposits, and payments void after act of insolvency.—Any and all transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any bank or trust company or of deposits to its credit; all assignments of mortgages, securities, or real estate or of any judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use or for the use of any of its stockholders or creditors; and all payments of money to either, made after the commission of an act of insolvency or in contemplation thereof made with a view to the preference of one creditor to another shall be void. *Except in any action brought by the department, no attachment, injunction, or execution shall be enforced against such bank or trust company or any of its property before final judgment in any suit, action, or proceeding in any state or federal court.*

Section 139. Subsections (1) and (6) of section 660.25, Florida Statutes, are amended to read:

660.25 Definitions.—Subject to other definitions contained in other sections of this code, and unless the context otherwise requires, in this chapter:

(1) "Commercial department" of a bank *or association* having trust powers means the functional divisions or departments of the bank which conduct its general *bank or association* ~~banking~~ business, including, but not limited to, the divisions or departments which accept demand and time deposits and paychecks, but excluding the trust department.

(6) Terms used but not defined in this chapter, but which are expressly defined in chapter 518, *the financial institutions codes* ~~chapter 655, chapter 658, chapter 661, chapter 662, chapter 663~~, chapter 732, chapter 733, chapter 734, chapter 735, chapter 737, chapter 738, chapter 744, or chapter 747, shall in this chapter, unless the context otherwise requires, have the meanings ascribed to them in said chapters; and references in any of said chapters to a "trust company" or to "trust companies" shall include every trust department as defined in *s. 658.12* ~~s. 658.12(27)~~.

Section 140. Section 660.265, Florida Statutes, is created to read:

660.265 Examination fees.—Each state trust company and each state bank or association exercising trust powers shall pay to the department, promptly upon demand, a fee for the costs of the examination by the department pursuant to s. 655.045. For the purposes of this section, the

term "costs" means the salary and travel expenses of field staff which are directly attributable to its examination of the financial institution and the travel expenses of any supervisory or support staff required as a result of examination findings.

Section 141. Subsections (1) and (2) of section 660.27, Florida Statutes, are amended to read:

660.27 Deposit of securities with Treasurer.—

(1) Before transacting any trust business in this state, every trust company and every *state or national* bank or state or federal association having trust powers shall give satisfactory security by the deposit or pledge of security of the kind or type provided in this section having at all times a market value in an amount equal to 25 percent of the issued and outstanding capital stock of such trust company, bank, or state or federal stock association or, in the case of a ~~state or~~ federal mutual association, an equivalent amount determined by the department, or the sum of $25,000, whichever is greater. However, the value of the security deposited or pledged pursuant to the provisions of this section by a state trust company, a state bank or state association having trust powers, or a national bank or federal association having its principal office in this state and having trust powers shall not be required to exceed $500,000. Any notes, mortgages, bonds, or other securities, other than shares of stock, eligible for investment by a state bank, state association, or state trust company, or eligible for investment by fiduciaries, shall be accepted as satisfactory security for the purposes of this section.

(2) The Treasurer shall determine whether the security deposited or pledged pursuant to this section, or tendered for such deposit or pledge, is of the kind or type permitted, and has a market value in the amount required, by subsection (1). The security required by this section shall be deposited with or to the credit of, or pledged to, the Treasurer for the account of each *state or national* bank, state or federal association, or trust company depositing or pledging the same and shall be used, if at all, by the liquidator of such bank, association, or trust company with first priority being given to claims on account of the trust business or fiduciary functions of such bank, association, or trust company or, prior to liquidation, for the payment of any judgment or decree which may be rendered against such bank, association, or trust company in connection with its trust business or its fiduciary functions if such judgment or decree is not otherwise paid by, or out of other assets of, such bank, association, or trust company.

Section 142. Subsection (4) of section 660.33, Florida Statutes, is amended to read:

660.33 Trust service offices.—

(4)(a) Unless an election has been made pursuant to paragraph (b), when a trust service office is established by a trust company or a trust department at the location of a bank or association which has trust powers, the bank or association may retain and continue to exercise its trust powers following the establishment of the trust service office.

(b) If the bank or association and the trust company or trust department so elect in the application for approval to establish a trust service office at the location of a bank or association that has trust powers, and if the department is satisfied that the interests of beneficiaries of the estates, trusts, and other fiduciary relationships being serviced will be adequately protected, the department shall issue an order authorizing the following:

1. The trust company or trust department, upon complying with all applicable requirements of law, shall be substituted for, succeed to, and replace the bank or association as fiduciary. The trust company or trust department, as the successor fiduciary, shall thereupon succeed to all the powers, rights, duties, and privileges of the bank or association as fiduciary of all such estates, trusts, guardianships, and other fiduciary relationships in which the bank or association is serving to which the trust company or trust department shall have been lawfully substituted.

2. During the time the trust company or trust department maintains a trust service office at the location of the bank or association, the trust company or trust department shall be deemed to be named the fiduciary in all instruments in which the bank or association is named the fiduciary, even if the bank or association is not serving as fiduciary at the time the trust service office is established, in the manner, to the extent, and with the same effect as though there had been a merger of the bank and the trust company or trust department.

3. Upon complying with all requirements of law with respect thereto, the bank or association shall be relieved from all of its fiduciary duties in connection with all fiduciary accounts and relationships with respect to which the trust company or trust department has been substituted as fiduciary or with respect to which it has resigned and been relieved as provided by law, and, upon being so relieved of all its fiduciary duties, the bank or association, although retaining its trust powers in an inactive status unless it surrenders them as provided by law, shall not thereafter exercise its trust powers so long as there is a trust service office transacting business at the bank or association. The substitution of the trust company or trust department for the bank or association as fiduciary shall occur and be effective on the day the trust company or trust department opens the trust service office for business, or on such later date as may be specified by court order, or by any written consent or agreement, which lawfully effectuates the designation, by substitution or otherwise, of the trust company or trust department as the fiduciary with respect to any particular fiduciary account.

(c)1. Anything in this section or any other law to the contrary notwithstanding and subject to compliance with this subsection, an affiliated trust company or an affiliated bank's trust department, if authorized to exercise trust powers in this state, shall be deemed substituted as fiduciary without further authorization where the successor has an established trust service office in the predecessor's principal place of business or any branch of the predecessor located in this state. The successor may conduct therein any trust business incidental thereto that it is otherwise permitted to conduct in this state, but it may not accept deposits at the offices of the predecessor bank except as incidental to the trust business.

2. To effect the substitution referred to in subparagraph 1., a predecessor shall enter into an agreement with the successor that sets forth the fiduciary powers, rights, privileges, duties, and liabilities of the parties and, more specifically, those to which the successor will succeed, including, but not limited to, those described in subparagraph 7. The agreement will be approved by the boards of directors of the predecessor, successor, and parent corporations. The agreement shall then be filed with the department. The effective date of the agreement shall be the date on which the department approves the agreement under subparagraph 6. unless another, later date is specified in the agreement, which other date shall be no later than 75 days after the date on which the agreement is filed with the department under this subparagraph; however, no such agreement may take effect without approval by the department.

3.a. Not sooner than 30 days before or later than 30 days after the date on which the agreement is filed with the department under subparagraph 2., the predecessor and successor shall cause notice of the filing of such agreement with the department, along with the procedure for objection thereto as hereinafter provided, to be published in a newspaper of general circulation in the county in which the predecessor's principal place of business is located and file a copy of such written notice in any applicable court-administered fiduciary proceeding, including, but not limited to, probate and guardianship proceedings, and additionally, they shall serve written notice upon the following:

(I) Each cofiduciary that serves with the predecessor;

(II) Each surviving grantor of a revocable trust;

(III) Each person who alone or in conjunction with others has the power to remove the predecessor;

(IV) Each principal for whom the predecessor serves as agent or custodian;

(V) Each guardian of the person for whom the predecessor serves as guardian of the property for their ward;

(VI) Each beneficiary or his legal or natural guardian, when applicable, currently receiving or entitled as a matter of right to receive a current mandatory or discretionary distribution, as opposed to a remainder distribution, of principal or income from a trust, estate, or other fund with respect to which a substitution of fiduciary under this subsection is to be effected. However, when applicable and in lieu thereof, such service will be made upon the sole holder or a majority of the coholders of a general or limited power of appointment, including one in the form of a power of amendment, or revocation, in which case they shall be deemed to act for any beneficiary who may take by virtue of the exercise or failure to exercise the power;

(VII) Upon any other person or entity required by the court in any referenced court-administered fiduciary proceeding; and

(VIII) In the case of a trust described in the Internal Revenue Code of 1986 s. 401(a) as it may from time to time hereafter be amended, upon the employer or employee organization or both responsible for the maintenance of such trust.

b. Service of such written notice will not be required upon the persons or entities listed in sub-subparagraph a. when the documents or other writings that created the fiduciary relationship permit a substitution of fiduciaries.

c. Service of written notice shall be made upon the persons or entities listed in sub-subparagraph a. in the manner provided for the service of formal notice under the applicable Florida Rules of Probate and Guardianship Procedure. Service of written notice by mail shall be completed upon receipt or refusal of the notice by the persons or entities listed in sub-subparagraph a. If such written notice is made by mail or delivery, proof of mailing or delivery shall be by verified statement of the person mailing or delivering the written notice, and there shall be attached to the verified statement the signed receipt, appropriate affidavit of delivery by the person effecting such delivery, or other evidence satisfactory to the department or to a court of competent jurisdiction that notice was given properly to or refused by the addressee or agent of the addressee. The original of such proof shall be filed with the department with copies to the file or the account maintained by the predecessor or successor and to the court in any court-administered fiduciary administration.

4. Within 60 days after the date on which newspaper notice is published under subparagraph 3., after any date of a signed or refused receipt pertaining to the written notice by mail under subparagraph 3., after any date of delivery as set forth in the affidavit referenced in subparagraph 3., or after the date on which service is otherwise accomplished, the latest date being operative, but not thereafter, the persons or entities listed in subparagraph 3. or the court in a court-administered fiduciary proceeding on its own motion may object to such substitution of fiduciaries by serving written notice, executed by the persons, entities, or court, upon the predecessor, successor, and department. Such notice shall be served in the same manner as provided for service of the original notice upon interested persons or entities in subparagraph 3. Execution of such notice shall be in the same manner as is required for the execution and recordation of deeds to real property in this state except that notice by a court may be signed by the judge. If such notice of objection is executed by all of the cofiduciaries that serve with the predecessor, by each surviving grantor of a revocable trust, by all of the persons that have the power to remove the predecessor as fiduciary, by all of the principals for whom the predecessor serves as agent or custodian, by the guardian of the person for whom the predecessor serves as guardian of the property for their ward, by all of the beneficiaries currently receiving or entitled as a matter of right to receive a current mandatory or discretionary distribution, as opposed to a remainder distribution, of principal or income, or by the sole holder or a majority of the coholders of a general or limited power of appointment including one in the form of a power of amendment or revocation, the successor will not be substituted for the predecessor and the predecessor will remain or be reinstated as fiduciary but only as to the fiduciary relationship that is the subject of such objection. Reinstatement shall take effect immediately upon receipt of such notice by the predecessor, successor, and department. If the notice of objection is executed by less than all of the persons or entities of any category specified in this subparagraph, or if entered by the court of a court-administered fiduciary proceeding on its own motion, then, with regard to the fiduciary relationship that is the subject of such notice of objection, the predecessor and successor may elect to do either of the following:

a. File a subsequent agreement with the department, with copies of such agreement to be mailed to all of the specified persons or entities, which states that the successor will not be substituted for the predecessor as to that fiduciary relationship, and such agreement shall cause the predecessor to remain or be reinstated, instanter, as fiduciary in that fiduciary relationship. The filing of such subsequent agreement with the department does not prejudice the predecessor or the successor from filing another agreement that affects such fiduciary relationship under subparagraph 2.; or

b. File a petition with the court having jurisdiction of any court-administered fiduciary proceeding or commence a civil action in a court of competent jurisdiction as to any other applicable fiduciary relationship. The court shall then determine whether such substitution is appropriate and whether it is in the best interest of those specifically interested in the premises. The court shall then enter judgment accordingly and specify the party to serve thereafter as the fiduciary. The predecessor, the successor, the department, and those for whom the fiduciary relationship is the subject of the civil action and upon whom service of written notice was required under subparagraph 3. shall be necessary parties in any civil action that concerns an objection to the substitution. Any such petition or separate civil action must be filed within 60 days after service of the notice of objection. Failure to do so will be deemed to be an agreement pursuant to sub-subparagraph a. and the alternative provided in sub-subparagraph a. will be deemed to have been selected automatically.

5. At any time while a civil action is pending pursuant to sub-subparagraph 4.b., the predecessor and successor may file a subsequent agreement with the department in the same manner set forth under alternative sub-subparagraph 4.a. and file a copy of the same along with a withdrawal of the petition or a voluntary dismissal with the court in which the petition was filed or the civil action is pending. Such filing will have the same force and effect as set forth under sub-subparagraph 4.a.; however, it shall be without prejudice to the right of the predecessor or successor to file another agreement that affects such fiduciary relationship under subparagraph 2.

6. Within 30 days after the date on which a fiduciary agreement is filed with the department under subparagraph 2., the department shall approve the agreement if it finds both that the successor is:

a. Legally authorized to exercise trust powers in this state; and

b. Has otherwise met the requirements for the establishment of a trust service office at the predecessor's principal place of business or branch.

7. Upon the effective date of an agreement filed under subparagraph 2. and regardless of any petition filed or any civil action pending pursuant to subparagraph 4., the successor will be deemed substituted for the predecessor as fiduciary without further authorization of any kind such that the successor shall succeed to and be substituted for the predecessor as to all fiduciary powers, rights, privileges, duties, and liabilities of the predecessor in its capacity as fiduciary for all estate, trust, guardianship, agency, and custodial accounts and any other fiduciary relationship for which the predecessor is then, or but for such agreement would be, serving as fiduciary, except as may be otherwise specified in such agreement and in any subsequent agreement filed with the department under subparagraph 4. or subparagraph 5. The successor shall also be deemed the fiduciary in all writings, including, but not limited to, wills, trusts, deeds, policies of insurance, stock certificates, court orders, and similar documents and instruments which name or have named the predecessor as fiduciary and which were signed before or after the effective date of such agreement except as may be otherwise specified in such agreement and any subsequent agreement filed with the department under subparagraph 4. or subparagraph 5. This section does not absolve or discharge any predecessor exercising trust powers from liability arising out of any breach of its fiduciary duties or obligations which occurred before the effective date of such agreement.

8. As used herein:

a. Trust companies, ~~or~~ banks, *or associations* are "affiliated" if they are connected through stock ownership with a common parent corporation that is a registered multibank *or multiassociation* holding company and such parent owns directly stock that possesses at least 80 percent of the total voting power of the stock of such trust company, ~~or~~ bank, *or association* and has a value equal to at least 80 percent of the total value of the stock of such trust company, ~~or~~ bank, *or association.*

b. The term "predecessor" refers to an affiliated trust company or affiliated bank's *or affiliated association's* trust department for the position of which in its trust relations the successor is substituted.

c. The term "successor" refers to an affiliated trust company or affiliated bank's *or affiliated association's* trust department which is substituted for a predecessor in the predecessor's trust relationships including all powers, duties, and responsibilities associated therewith.

(d) When a trust service office is established at a bank or association that has retained its trust powers in an active status, the trust company or trust department may at any time be substituted as fiduciary as provided in paragraph (b) by filing an election with the department. The election to substitute the trust company or trust department for the bank

or association as fiduciary must contain the consent of a majority of the stockholders or members entitled to vote on such proposal at a meeting of stockholders or members and of a majority of the board of directors, of the bank or association at which the trust service office has been established.

(e) This subsection shall not affect any substitution of fiduciaries made under former s. 659.061(6)~~(d)~~ prior to May 31, 1976.

Section 143. Subsections (1) and (2) of section 660.37, Florida Statutes, are amended to read:

660.37 Security for deposit of fiduciary funds.—

(1) If security, including insurance by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation~~, is furnished as provided in subsection (2), funds held in a fiduciary account by a trust company or a trust department awaiting investment, distribution, or payment of debts, taxes, or expenses may, unless prohibited by the governing instrument or by court order, be deposited in demand or time accounts of a bank or association. Unless otherwise expressly directed by the governing instrument or in writing by a beneficiary, a fiduciary shall not be required to invest current income accruing to a fiduciary account if, within 90 days after receipt thereof, such income is to be distributed or will be used for payment of debts, taxes, or expenses. In addition, in any case of a demonstrated need of or benefit to a fiduciary account or beneficiaries thereof, or when the investment or administration circumstances of a fiduciary account or beneficiaries thereof cause it to appear prudent or otherwise appropriate, a trust company or trust department may invest funds held by it in a fiduciary account in time deposits in, or issued by, a bank or association, of such type or maturity as appears appropriate at the time of the investment, including maturities in excess of 1 year; and in the case of a trust department, any such deposits may be made in the commercial department of the fiduciary bank or the nontrust departments of the fiduciary association. Funds so deposited and secured may be used by the depositary bank or association in the conduct of its business, and it shall pay interest on any such time deposits at a rate not less than the standard interest rate it pays on time deposits of the same type and having substantially the same characteristics, including size and maturity. If the depositary bank or association pays interest on such deposits at a rate equal to or in excess of such standard rates, it shall not be subject to any claim for an amount of interest or for potential earnings in excess of the interest so paid but is subject, however, in the case of the depositary trust company or trust department, to the provisions of s. 518.11. In this section, the term "depositing trust company or trust department" means the trust company or the trust department depositing funds of a fiduciary account, and "depositary bank or association" means the bank or association, including the fiduciary bank or association, in which such funds are deposited.

(2)*(a) Except as provided by paragraph (b)*, a trust company or trust department shall not deposit any funds of a fiduciary account in any bank or association in an amount in excess of the insurance provided by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation~~ unless the depositary bank or association shall first set aside under the control of the depositing trust company or trust department, as collateral security for the pro-rata benefit of each fiduciary account whose funds are so deposited, readily marketable securities which are eligible under the laws of this state for investment by banks, associations, or fiduciaries, having a market value not less than the amount of the funds so deposited which exceeds the insurance provided by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation~~. Substitutions and withdrawals of such securities may be made from time to time, but the aggregate amount of the market value of the securities so set aside shall at all times be at least equal to the amount herein required, and it shall not be necessary that the securities so set aside be segregated as to the funds of each separate fiduciary account which are so deposited. Specifically identified securities effectively pledged for the purposes required herein, including those held under a safekeeping receipt as permitted by law, shall be deemed to be set aside under the control of the depositing trust company or trust department whether or not in its actual physical possession.

(b) This subsection does not apply to fiduciary accounts in which, pursuant to the terms of the governing instrument, full investment authority is retained by the grantor or is vested in persons or entities other than the bank, association, or trust company and the bank, association, or trust company as fiduciary does not have power to exert any influence over investment decisions.

Section 144. Section 660.41, Florida Statutes, is amended to read:

660.41 Corporations; certain fiduciary functions prohibited.—All corporations, except banks or associations and trust companies incorporated under the laws of this state and having trust powers and except national banking associations or federal associations located in this state and having trust powers, are prohibited from exercising any of the powers or duties and from acting in any of the capacities, within this state, as follows:

(1) As personal representative of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent is original or ancillary; however, if the personal representative of the estate of a nonresident decedent is a corporation duly authorized, qualified, and acting as such personal representative in the jurisdiction of the domicile of the decedent, it may as a foreign personal representative perform such duties and exercise such powers and privileges as are required, authorized, or permitted by s. 734.101.

~~(2) As guardian of any infant or physically or mentally incompetent person, whether domiciled in this state or not.~~

(2)~~(3)~~ As trustee under any will or other testamentary instrument, except that any corporation that is authorized to act as trustee under the laws of the place where it has its principal place of business may receive bequests as trustee of money or *tangible or* intangible personal property and devises of real property located in this state and may sell, transfer, and convey the property.

~~(4) As trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others.~~

~~(5) As trustee under any deed of trust or other instrument executed after June 10, 1937, conveying or encumbering any real or tangible personal property in this state given to secure bonds or other evidence of indebtedness unless in such deed of trust or other instrument a trust company or bank having trust powers and located in this state or an individual residing in this state shall be named as cotrustee. No suit shall be brought to foreclose any such deed of trust or other instrument unless such cotrustee or successor cotrustees of like qualifications be a party plaintiff.~~

(3)~~(6)~~ As receiver or trustee under appointment of any court in this state.

(4)~~(7)~~ As assignee, receiver, or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.

(5)~~(8)~~ As fiscal agent, transfer agent, or registrar of any municipal or private corporation, except that this prohibition shall not be so construed as to prevent banks, associations, and trust companies not located in this state from acting within the state where located as fiscal agent, transfer agent, or registrar of municipal or private corporations of this state. Nothing herein shall prevent any Florida corporation which is not a bank, association, or trust company and not having trust powers from being its own fiscal agent, transfer agent, or registrar concerning its own affairs, stock, or securities. Nothing herein shall prevent any Florida corporation or corporation having its principal place of business in Florida registered as a transfer agent with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Securities and Exchange Commission from acting as a transfer agent for any other private corporation. Nothing in this section or in any other law of this state shall be construed to prohibit a foreign bank, foreign association, or foreign trust company as trustee of any charitable foundation or endowment, employees' pension, retirement or profit-sharing trust, alone or together with a cotrustee, from: *making loans or committing to make loans to any other person;* contracting, in this state or elsewhere, with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made, or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan; servicing directly or entering into servicing contracts with persons, and enforcing in this state the *loans made by it or* obligations heretofore or hereafter acquired by it in the transaction of business outside this state or in the transaction of any business authorized or permitted hereby; or acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying

property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized or permitted hereby. However, no such foreign bank, foreign association, or foreign trust company shall be deemed to be transacting business in this state, shall be required to qualify so to do, or shall be deemed to be unlawfully exercising powers or duties, acting in an unlawful or prohibited capacity, or violating any of the provisions of this section or of any other law of this state solely by reason of the performance of any of the acts or business hereinbefore permitted or authorized hereby; further, nothing herein shall be construed as authorizing or permitting any foreign bank, association, or trust company to maintain an office within this state.

Section 145. Section 660.44, Florida Statutes, is amended to read:

660.44 Common trust fund to be audited annually.—A trust company or trust department administering a common trust fund shall keep proper records, which in addition to all other necessary and proper matters shall show at all times the proportionate interest of each fiduciary account in the common trust fund, and, at least once during each period of 12 months, shall cause an audit to be made of the common trust fund by auditors responsible only to the board of directors of the trust company or trust department. The report of such audit shall include a list of the investments comprising the common trust fund at the time of the audit, which shall show the valuation placed on each item on such list by the board of directors or the trust investment committee of the trust company or trust department as of the date of the audit; a statement of purchases, sales, and any other investment changes and of income and disbursements since the last audit; and appropriate comments as to any investment in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the common trust fund. The bank, ~~or~~ association, *or trust company* shall manage such common trust funds *and may charge thereto reasonable management fees and* ~~without charge, save necessary~~ expenses, and *it* shall send a copy of the latest report of such audit annually to each person to whom a regular periodic accounting of the fiduciary accounts participating in the common trust fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

Section 146. Section 663.01, Florida Statutes, is amended to read:

663.01 Definitions.—As used in ss. 663.01-663.14, the term:

(1) "Foreign country" means a country other than the United States and includes any colony, dependency, or possession of such country *and any territory of* ~~other than~~ the United States *including Guam, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.*

(2) "International administrative office" means an office of an international banking corporation *established in this state*~~, which office exists~~ for the purposes described in s. 663.063(1).

(3) "International bank agency" means *an office of an* ~~the~~ international banking corporation *established in this state to engage in the activities described in s. 663.061* ~~with respect to all business or activities conducted in this state or through an office located in this state~~.

(4) "International banking corporation" means a banking corporation organized and licensed under the laws of a foreign country, ~~a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands~~ or, if organized and licensed under the laws of the United States or any of the states of the United States of America, a banking corporation:

(a) Which is not a bank or bank holding company as defined in the federal Bank Holding Company Act, as amended, 12 U.S.C. ss. 1841-1850; and

(b) Which maintained, on July 1, 1981, as its only United States banking office, one state agency licensed by a state other than this state.

The term "international banking corporation" includes, without limitation, a foreign commercial bank, foreign merchant bank, *a multinational bank,* or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating.

(5) "International branch" means any office of an international banking corporation established in this state under s. 663.064.

(6)~~(5)~~ "*International* representative office" means *an office* ~~a business location~~ of a representative of an international banking corporation established for the purpose of *engaging in the activities described in s. 663.062* ~~acting in a liaison capacity with existing and potential customers of such international banking corporation and to generate new loans and other activities for such international banking corporation which is operating outside the state~~.

(7) "Multinational bank" means an international banking corporation the sole shareholders of which are one or more international banking corporations or holding companies which own or control international banking corporations which are authorized to carry on a general banking business, with the power to receive deposits from the general public, in at least one foreign country under the supervision of the central bank or other bank regulatory authority of such country.

(8) "Nonresident" means:

(a) An individual, who resides in the United States for less than 183 days during a calendar year.

(b) A person other than an individual whose principal place of business or domicile is outside the United States and includes a person who conducts a majority of its business activities in a foreign country and any foreign government and its subdivisions, agencies and instrumentalities. Any person who conducts business in the United States is considered to have its principal place of business outside the United States if any one of the following requirements is satisfied for its most recent fiscal year:

1. Its assets located outside the United States exceed its assets located within the United States;

2. Its gross revenues generated outside the United States exceed its gross revenues generated within the United States; or

3. Its payroll expenses incurred outside the United States exceed its payroll expenses incurred within the United States.

(9) "State-chartered investment company" means a corporation organized under the laws of this state for the purpose of engaging in the activities described in s. 663.065.

Section 147. Section 663.02, Florida Statutes, is amended to read:

663.02 Applicability of state banking laws.—

(1) International *banking corporations having offices in this state* ~~bank agencies~~ shall be subject to all the provisions of the *financial institutions codes* ~~Florida Banking Code and chapter 655~~ as though such international *banking corporations* ~~bank agencies~~ were state banks, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions shall be applicable to such banks or *corporations* ~~agencies~~: *s. 655.031* ~~s. 655.021~~, relating to administrative enforcement guidelines; *s. 655.032* ~~s. 655.025~~, relating to investigations, subpoenas, hearings, and witnesses; *s. 655.0321* ~~s. 655.029~~, relating to public hearings and limited closing thereof; s. 655.033, relating to cease and desist orders; s. 655.037, relating to ~~officer, director, committee member, employee, or other person~~ removal *of financial institution-related party* by the department; s. 655.041, relating to administrative fines and enforcement; s. 658.49, relating to loans by banks not exceeding $50,000; ~~s. 658.76, relating to transactions with directors;~~ and *s. 655.0322* ~~s. 658.77~~, relating to prohibited acts and practices *and criminal penalties.* International *banking corporations* ~~bank agencies~~ shall not have the powers conferred on domestic banks by the provisions of ~~s. 658.26, relating to branches and facilities; s. 658.65, relating to remote financial service units; and~~ s. 658.60, relating to deposits of public funds. International *banking corporations* ~~bank agencies~~ shall not be subject to the provisions of s. 658.68, relating to liquidity reserves. The provisions of chapter 687, relating to interest and usury, shall apply to all loans not subject to s. 658.49.

(2) *The assets of* international bank agencies, *international branches, and state-chartered investment companies* ~~with regard to assets~~ located within this state, shall be subject specifically to the liquidation and receivership provisions of chapter 658.

(3) *Neither* an international bank agency *nor an international branch* shall have *any* ~~no~~ greater right under, or by virtue of, this section than is granted to banks organized under the laws of this state. Legal and financial terms used herein shall be deemed to refer to equivalent terms used by the country in which the international banking corporation is organized. However, all contracts or agreements which are negotiated in this state with Florida residents shall be construed under Florida law.

~~(4) Nothing contained in this chapter shall be construed as granting any authority, directly or indirectly, for any bank or bank holding company, the operations of which are conducted principally outside this state, to operate a branch in this state or to acquire, directly or indirectly, any voting shares of, any interest in, or all or substantially all of the assets of any bank in this state.~~

Section 148. Section 663.03, Florida Statutes, 1990 Supplement, is amended to read:

663.03 Applicability of chapter 607.—Notwithstanding the definition of the term "foreign corporation" appearing in *s. 607.01401* ~~s. 607.0140(11)~~, all of the provisions of chapter 607 not in conflict with the *financial institutions codes* ~~Florida Banking Code~~ which relate to foreign corporations ~~shall~~ apply to all international *banking corporations* ~~bank agencies and representative offices~~ doing business in this state.

Section 149. Section 663.04, Florida Statutes, is amended to read:

663.04 Requirements for carrying on banking business.—

(1) No international banking corporation may transact a banking business, or maintain in this state any office for carrying on such business, or any part thereof, unless such corporation has:

(a) Been authorized by its charter to carry on *a general banking* ~~such~~ business and has complied with the laws of the country under which it is chartered.

(b) Furnished to the department such proof as to the nature and character of its business and as to its financial condition as the department may require.

(c) Filed with the department a certified copy of that information required to be supplied to the Department of State by those provisions of chapter 607 which are applicable to foreign corporations.

~~(d) Paid to the department a nonrefundable application fee of $5,000.~~

(d)~~(e)~~ Received a license duly issued to it by the department.

(2) The department may not issue a license to an international banking corporation unless:

(a) It is chartered in a jurisdiction in which any bank having its principal place of business in this state may establish similar facilities or exercise similar powers; or

(b) Under the federal International Banking Act of 1978, the Comptroller of the Currency of the United States could issue a license to the corporation to operate a federal agency without considering whether the international banking corporation is chartered in a jurisdiction in which any bank having its principal place of business in this state may establish similar facilities or exercise similar powers.

(3) A license may not be issued to an international banking corporation for the purpose of operating an international bank agency or an international branch in this state unless the international banking corporation:

(a) Holds an unrestricted license to receive deposits from the public in the foreign country under the laws of which it is organized and chartered; and

(b) Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which it is organized and chartered. The department may establish by rule the general principles that determine the adequacy of home-country supervision of an international banking corporation's foreign establishments. These principles must be based upon the need for cooperative supervisory efforts and consistent regulatory guidelines and must address, at a minimum, the capital adequacy, liquidity, and foreign exchange operations and positions of the international banking corporation. This paragraph does not require an examination by the home-country regulatory authorities of any office of an international banking corporation in this state.

(4) The requirements of subsection (3) do not apply to an international banking corporation that held a license to operate an international bank agency in this state before October 1, 1990, or to any multinational bank that otherwise meets the requirements of this part and is a subsidiary of one or more international banking corporations or bank holding companies that meet all requirements of this part.

(5) In addition to any other reports it is required to make, an international banking corporation that maintains an international bank agency or international branch in the state under subsection (4) must make quarterly reports to the department in such form as the department prescribes by rule concerning the asset quality, capital adequacy, and liquidity of the international banking corporation.

Section 150. Section 663.05, Florida Statutes, 1990 Supplement, is amended to read:

663.05 Application for license *to maintain an office*; approval or disapproval.—

(1) Every international banking corporation, before being licensed by the department to *maintain any office in this state* ~~act in a liaison capacity or to transact a banking business in this state, or before maintaining in this state any office to carry on such business or any part thereof,~~ shall subscribe and acknowledge, and submit to the department, *an* ~~a separate~~ application which shall state:

(a) The name of *the* ~~such~~ international banking corporation.

(b) The *proposed* location by street and post-office address and county where its business is to be transacted in this state and the name of the person who shall be in charge of the business and affairs of such ~~agency or representative~~ office.

(c) The location where its initial registered office will be located in this state.

~~(d) The amount of its capital actually paid in and the amount subscribed for and unpaid.~~

(d)~~(e)~~ The total amount of the capital accounts of such international banking corporation.~~, which must be at least $25 million for the establishment of an international bank agency and $10 million for the establishment of a representative office; and a~~

(e) A complete and detailed statement of its financial condition as of a date within 180 days prior to the date of such application, except that the department in its discretion may, when necessary or expedient, accept such statement of financial condition as of a date within 240 days prior to the date of such application. The department in its discretion may, when necessary or expedient, require an opinion audit or the equivalent.

(2) The department may disallow any illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section.

~~(3) Notwithstanding the provisions of paragraph (1)(e), the department may approve such application if:~~

~~(a) The international banking corporation has been in the business of banking for at least 10 years and has been empowered under the laws of the country in which it is organized and licensed to receive deposits without restriction from the general public and to engage in such other activities as are usual in connection with the business of banking in the country where such foreign institution is organized and licensed;~~

~~(b) The international banking corporation is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of the statement of its financial condition as required by paragraph (1)(e); and~~

~~(c) The department receives a certificate issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a general banking business.~~

~~The department may specify such other conditions as it may deem appropriate, considering the public interest, the need to maintain a sound and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in the state.~~

(3)~~(4)~~ At the time *an* ~~such~~ application is submitted to the department, *the international banking* ~~such~~ corporation shall also submit a duly authenticated copy of its articles *of incorporation* and *a* ~~an authenticated~~ copy of its bylaws, or an equivalent thereof satisfactory to the department. Such corporation shall also submit a certificate issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing and has not been convicted of, or pled guilty or nolo contendere to, a violation of any currency transaction reporting or money laundering law which may exist in the country.

(4)~~(5)~~ Application shall be made on a form prescribed by the department and shall contain such information as the department may require.

(5)~~(6)~~ The department may, in its discretion, approve or disapprove the application, but it shall not approve such application unless, in its opinion, the applicant meets each and every requirement of *this part* ~~ss. 663.01-663.14~~ and any other applicable provision of the *financial institutions codes* ~~Florida Banking Code~~. In the processing of applications, the time limitations under the Administrative Procedure Act shall not apply as to approval or disapproval of the application.

Section 151. Section 663 055, Florida Statutes, is created to read:

663.055 Capital requirements.—

(1) To qualify for a license under this part, an international banking corporation must have total capital account of at least:

(a) Twenty-five million dollars for establishing an international bank agency, an international branch, or an international administrative office; or

(b) Ten million dollars for establishing an international representative office.

(2) Notwithstanding the provisions of paragraph (1)(a), the department may approve an application for a license to establish an international bank agency, an international branch, or an international administrative office if:

(a) The international banking corporation is licensed to receive deposits from the public, without restriction, and to engage in such other activities as are usual in connection with the business of banking in the country where it is organized and licensed;

(b) The department receives a certificate that is issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed and that states that the international banking corporation is duly organized and licensed and lawfully existing in good standing and is empowered to conduct a general banking business; and

(c) The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition.

(3) Notwithstanding the provisions of paragraph (1)(b), the department may approve an application for a license to establish an international representative office if the international banking corporation meets the requirements of paragraphs (2)(a) and (b), has been in the business of banking for at least 5 years, and has total capital accounts of at least $5 million as of the date of its most recent statement of financial condition.

(4) The department may specify other conditions it determines appropriate, considering the public interest, the need to maintain a sound and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in the state.

(5) For the purposes of this part, the capital accounts of an international banking corporation are to be determined in accordance with rules adopted by the department. In adopting these rules, the department shall consider similar rules adopted by bank regulatory agencies in the United States and the need to provide reasonably consistent regulatory requirements for international banking corporations which will maintain the safe and sound condition of international banking corporations doing business in this state. In translating the capital accounts of an international banking corporation, the department may consider monetary correction accounts that produce results consistent with the application of generally accepted accounting principles in the United States.

Section 152. Section 663.06, Florida Statutes, is amended to read:

663.06 Licenses; permissible activities.—

(1) An international banking corporation licensed to operate an ~~international bank agency, representative office, or administrative~~ office *in this state* may engage in the business authorized by *this part* ~~ss. 663.01-663.14~~ at the office specified in such license for such period as is provided in subsection (2) or subsection (3). ~~No international bank agency, representative office, or administrative office may have more than one place of doing business; but nothing in this section or elsewhere in the Florida Statutes shall be construed to prevent~~ An international banking corporation *may operate* ~~from operating~~ more than one international bank agency, *international branch,* or representative office, each at a different place of business, provided *that* each such ~~agency or representative~~ office *must be* ~~is~~ separately licensed. No license to operate an international bank ~~agency, representative office, or administrative~~ office is transferable or assignable. Every such license *must* ~~shall~~ be, at all times, conspicuously displayed in the place of business specified therein.

(2) Except as provided in subsection (3), a license to operate an international bank agency, *international branch, international* representative office, or *international* administrative office *is* ~~shall be~~ valid for a period of 1 year, unless such license is suspended or revoked sooner pursuant to subsection (5). *The* ~~Such~~ license may be renewed annually upon application to the department, upon forms available for that purpose, within 30 days prior to the expiration of the license. *The* ~~Such~~ license may be renewed by the department, in its discretion, upon its determination, with or without examination, that the international banking corporation is in a safe and sound condition and has complied with all requirements of law with respect to the international bank agency, *international branch, international* representative office, or *international* administrative office; that *the* ~~such~~ renewal of the license will not be detrimental to the public interest; and that the renewal has been duly authorized by proper corporate action. Each application for renewal of *a* ~~an international bank agency~~ license *must* ~~shall~~ be accompanied by *the fee prescribed in s 663 12* ~~an annual renewal fee of $500~~.

(3) Notwithstanding the provisions of subsection (2), the department may, in its discretion, issue a license *to an international banking corporation* for an indefinite period if it finds that the international banking corporation has satisfied the requirements for renewal of its license and has held a license for the previous 3 years. *However, an indefinite license to operate an international bank agency or international branch may not be issued to an international banking corporation unless it has held one or the other of such licenses for at least 3 years.* A license issued for an indefinite period *is* ~~shall be~~ valid without renewal unless suspended or revoked pursuant to subsection (5). An international banking corporation that is granted a license for an indefinite period *must* ~~shall~~ file with the department such annual financial statements as the department may require and *must* ~~shall~~ pay an annual fee equal to the annual renewal fee for each license held by the international banking corporation. *The* ~~Such~~ annual fee *must* ~~shall~~ be paid in January of each year.

(4) An international banking corporation which proposes to terminate the operations of its international bank agency, *international branch, international* representative office, or *international* administrative office *must surrender its license to the department and* ~~shall~~ comply with such procedures as the department may prescribe by rule ~~to ensure an orderly cessation of business in a manner which is not harmful to the public interest and shall surrender its license to the department~~.

(5) An international bank agency, *international branch, international* representative office, or *international* administrative office license may be suspended or revoked by the department, with or without examination, upon its determination that the international banking corporation does not meet all requirements for original licensing or any of the criteria established by subsection (2) for renewal of a license.

(6) In the event any such license *is surrendered by the international banking corporation or is* ~~shall be~~ suspended or revoked by the department, or the renewal thereof *is* ~~shall be~~ refused by the department, all rights and privileges of the international banking corporation to transact the business thus licensed shall *cease. The department shall, by rule,*

prescribe procedures for surrendering a license and for the orderly cessation of business by an international banking corporation in a manner that is not harmful to the interests of its customers or to the public ~~forthwith cease, and such license shall be surrendered to the department within 24 hours after the department has mailed or personally delivered written notice of such decision. The notice may be personally delivered to any officer, director, employee, or agent of the corporation who is physically present in this state.~~

(7) In addition to the activities in which it is expressly permitted to engage:

(a) An international branch may engage in any activity permissible for an international bank agency;

(b) An international bank agency may engage in any activity permissible for an international administrative office; and

(c) An international administrative office may engage in any activity permissible for an international representative office.

(8)~~(7)~~ An international banking corporation licensed under the terms of *this part may* ~~ss. 663.01-663.14 is authorized to~~ transact only such limited business in this state as is clearly related to, and is usual in, international or foreign business and financing international commerce. No ~~such~~ international banking corporation may exercise fiduciary powers. An international banking corporation may furnish such investment advisory services as it may ~~be authorized to~~ render under rules adopted by the department with respect to nonresident entities or persons whose principal places of business or domicile are outside the United States. The licensing provisions of chapter 517 do not apply to investment advisory and investment management services authorized under this section. No ~~such~~ international banking corporation may receive deposits in this state except:

(a) Deposits from nonresident entities or persons whose principal places of business or domicile are outside the United States;

(b) Interbank deposits, interbank borrowing, or similar interbank obligations; and

(c) International banking facility deposits as defined pursuant to s. 655.071.

An international banking corporation may maintain in this state, for the account of others, credit balances necessarily incidental to, or arising out of, the exercise of its lawful powers. *The* ~~Such~~ credit balances may be disbursed by check or other draft; however, the department shall by rule provide appropriate limitations upon such disbursement to ensure that credit balances are not functionally equivalent to demand deposits.

(9)~~(8)~~ Notwithstanding any provision of this chapter or chapter 658 to the contrary, an international banking corporation licensed under *this part* ~~ss. 663.01-663.14~~ as an international bank agency may, if authorized by rules of the department, make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under the federal International Banking Act of 1978. The department shall, when promulgating such rules, consider the public interest and convenience and the need to maintain a sound and competitive state banking system. Unless otherwise provided by statute, an international bank agency may not exercise any powers that a federal agency is not authorized to exercise.

(10)~~(9)~~ Notwithstanding the provisions of subsections *(8)*~~(7)~~ and *(9)*~~(8)~~, any banking corporation organized and existing under the laws of any other state and licensed pursuant to the provisions of this chapter shall engage only in those activities permissible for an Edge Act corporation organized under s. 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss. 611-632.

(11)~~(10)~~ It is the intent of *this part* ~~ss. 663.01-663.14~~ that an international bank agency may not be a "state branch" or a "federal branch," as those terms are defined in the federal International Banking Act of 1978, and neither a foreign bank as defined in such federal act nor an international banking corporation may establish or operate any such branch in this state.

Section 153. Section 663.061, Florida Statutes, is created to read:

663.061 International bank agencies; permissible activities.—

(1) An international bank agency licensed under this part may make any loan, extension of credit, or investment that it could make if incorporated and operating as a bank organized under the laws of this state. An international bank agency may act as custodian and may furnish investment, management, and investment advisory services authorized under rules adopted by the department for nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons for international or foreign investments. An international banking corporation that has an international bank agency licensed under this part is exempt from the registration requirements of s. 517.12.

(2) An international bank agency may not receive deposits in this state except for:

(a) Deposits from nonresident entities or persons whose principal places of business or domicile are outside the United States;

(b) Interbank deposits, interbank borrowing, or similar interbank obligations; and

(c) International banking facility deposits as defined in s. 655.071.

An international bank agency may maintain in this state, for the account of others, credit balances necessarily incidental to, or arising out of, the exercise of its lawful powers. These credit balances may be disbursed by check or other draft; however, the department shall, by rule, provide appropriate limitations upon the disbursement to ensure that credit balances are not functionally equivalent to demand deposits.

(3) Notwithstanding any provision of this chapter or chapter 658 to the contrary, an international banking corporation licensed under this part to operate an international bank agency may, if authorized by rule of the department, make any loan or investment or exercise any power that it could make or exercise if it were operating in this state as a federal agency under the federal International Banking Act of 1978. The department shall, when adopting such rule, consider the public interest and convenience and the need to maintain a sound and competitive state banking system. Unless otherwise provided by law, an international bank agency may not exercise any powers that a federal agency may not exercise.

(4) Notwithstanding the provisions of subsection (1), any international banking corporation organized and existing under the laws of any other state and licensed to operate an international bank agency may engage only in those activities permissible for an Edge Act corporation organized under s. 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss. 611-632.

(5) With the prior authorization of the department under s. 660.26, an international bank agency may accept appointments as trustee by nonresident persons or entities and may exercise trust powers with respect to such fiduciary accounts. Except for the foregoing limitation, the trust activities of an international bank agency, are subject to the same requirements and may be conducted in the same manner as the trust business of a state trust company or state bank with trust powers.

Section 154. Section 663.062, Florida Statutes, is created to read:

663.062 International representative offices; permissible activities.—An international representative office may promote or assist the deposit-taking, lending, or other financial or banking activities of an international banking corporation. An international representative office may serve as a liaison in this state between an international banking corporation and its existing and potential customers. Representatives and employees based at such office may solicit business for the international banking corporation and its subsidiaries and affiliates, provide information to customers concerning their accounts, answer questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts, but a representative office may not conduct any banking business in this state.

Section 155. Section 663.063, Florida Statutes, is amended to read:

663.063 International administrative offices.—

(1) *Subject to the provisions of this part, any* ~~Any~~ international banking corporation ~~having capital accounts in excess of $25 million~~ may establish *offices* ~~one office~~ in this state for the purposes of:

(a) Administering ~~its~~ personnel and operations ~~outside the United~~ States;

(b) Engaging in data processing and recordkeeping *activities* ~~with respect to its international transactions~~; and

(c) Negotiating, approving, or servicing ~~international~~ loans or extensions of credit *and investments* ~~within the meaning of s. 199.023(11)~~.

(2) An office established pursuant to the provisions of this section may not engage in *a general commercial banking business* ~~any activity except those activities set forth in subsection (1)~~.

~~(3) An office established in accordance with the provisions of this section does not require a certificate of authority to do business pursuant to s. 658.25, nor shall it be deemed a branch pursuant to s. 658.12(5).~~

~~(4) An international banking corporation establishing an office in accordance with the provisions of this section is subject to the provisions of ss. 663.04(1) and 663.06(1)-(4), except that the nonrefundable application fee shall be $2,500 and the annual renewal fee shall be $250.~~

~~(5) The department shall conduct regular examinations, in accordance with s. 655.045(1)(a), of any office established in accordance with the provisions of this section. Such examinations shall be conducted solely for the purpose of determining compliance with the limitations specified in this section.~~

Section 156. Section 663.064, Florida Statutes, is created to read:

663.064 International branch offices; permissible activities; requirements.—

(1) An international banking corporation that meets the requirements of ss. 663.04 and 663.055 may, with the approval of the department, establish one or more international branches in the state. An international branch has the same rights and privileges as a state bank and is subject to the provisions of 12 U.S.C. s. 3104, relating to insurance of deposits. The operations of an international branch must be conducted pursuant to rules determined by the department as necessary to ensure compliance with the provisions of the financial institutions codes. These rules must include requirements for the maintenance of accounts and records separate from those of the international banking corporation of which it is a branch. An application to establish an international branch must be made pursuant to s. 658.26.

(2) Subsection (1) applies only when national banks from all states are authorized to establish branches in this state.

Section 157. Section 663.065, Florida Statutes, is created to read:

663.065 State-chartered investment companies; formation; permissible activities; restrictions.—

(1) With the approval of the department, a Florida corporation may be formed for the purpose of engaging in international banking, lending, and other financial activities. A state-chartered investment company established under this section may engage directly in only those activities permissible for an Edge Act corporation organized under s. 25(a) of the Federal Reserve Act, as amended.

(2) Subject to the prior approval of the department and to such limitations as the department prescribes by rule, a state-chartered investment company may invest in the shares of and may own or control an Edge Act corporation or an international banking corporation and may establish and operate branches, representative offices, and similar banking facilities in foreign countries.

(3) An application for approval to organize a state-chartered investment company is subject to chapter 655, relating to the organization of de novo financial institutions, and to rules adopted by the department as necessary to ensure that the proposed state-chartered investment company will be operated in a safe and lawful manner, except that the applicant is not required to become a member of the Federal Reserve System or the Federal Deposit Insurance Corporation. State-chartered investment companies are subject to the examination and supervision of the department and are subject to the financial institutions codes to the same extent as international banking corporations under s. 663.02.

Section 158. Section 663.066, Florida Statutes, is created to read:

663.066 Acquisition or ownership of state banks by international banking corporations.—Notwithstanding the provisions of s. 658.29, an international banking corporation that has not established a branch in another state and that does not own or control a bank in any other state may, with the approval of the department under s. 658.28, acquire control over a state bank organized under the laws of this state. For the purposes of this section, the word "bank" has the meaning given in section 2(c) of The Bank Holding Company Act of 1956, 12 U.S.C. s. 1841(c).

Section 159. Section 663.07, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 663.07, F.S., for present text.)

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international branch must:

(a) Maintain with a bank in this state, in such amounts as the department specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account under s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch must, at a minimum, equal the greater of:

1. Four million dollars; or

2. Five percent of the total liabilities of the international bank agency or international branch, excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The department shall prescribe by rule the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection must be held, to the extent feasible, in a state or national bank located in this state or in a federal reserve bank.

(2) In lieu of the requirements of subsection (1), the department may, by rule, permit an international bank agency or international branch to hold, in this state, assets that bear such relationships as the department, by rule, prescribes to the aggregate liabilities of the international bank agency or branch payable in this state or resulting from its operations. The amount of such assets must be equal to at least $4 million or 105 percent of the amount of such liabilities, whichever is greater; however, the department, by order, may reduce the required amount of assets to not less than 100 percent of the amount of such liabilities. When issuing any such order the department shall take into account the objective of maintaining a sound banking system in this state. The assets must be maintained as cash on hand; as cash on demand deposit with other banks, including the total amount of any reserves deposited at a federal reserve bank; as cash items in process of collection; as earning assets such as federal funds sold, bonds, notes, debentures, drafts, bills of exchange, acceptances, loan participation certificates, or other evidences of indebtedness payable in the United States or in United States funds or in funds freely convertible into United States funds; in such other form as the department specifies by rule; or as any combination of the foregoing.

(3) The term "assets" as used in this section excludes accrued income and amounts due from other offices or branches of, and wholly owned, except for a nominal number of directors' shares, subsidiaries of, the international banking corporation. The term "liabilities" as used in this section excludes accrued expenses and amounts due and other liabilities to branches, offices, agencies, and wholly owned, except for a nominal number of directors' shares, subsidiaries of the international banking corporation, and such other liabilities as the department specifies by rule. Except as the department requires under subsection (6), international banking facility deposits and extensions of credit are excluded from the total liabilities and total assets of an international bank agency or international branch.

(4) For the purposes of this section, the department must value marketable securities at book value; may determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other evidence of indebtedness or of any other obligation held by or owed to the international banking corporation in this state; and, in determining the amount of assets for the purpose of computing the ratio of assets to liabilities, may exclude any particular assets.

(5) Notwithstanding the limitations of s. 658.67, the department may, by rule, authorize, and may specify conditions and limits on, the use of securities issued by foreign governments or government-sponsored entities for the purpose of satisfying the capital equivalency or asset maintenance requirements of this section. However, any such foreign government securities must be payable in funds freely convertible into United States funds, and the amount of such securities deposited or held for the purposes of this section must not exceed 25 percent of the required amount.

(6) If, by reason of the existence or the potential occurrence of unusual or extraordinary circumstances, the department finds it necessary or desirable for maintaining a sound financial condition, protecting creditors and the public interest, and maintaining public confidence in the business of the international bank agency or international branch, it may by order require such international banking corporation to deposit cash and eligible securities in an amount not exceeding twice the amount required under subsection (1). The assets required to be held in this state under this subsection must be deposited with a bank or trust company located in this state that the international banking corporation designates and the department approves.

(7) Each international bank agency and international branch must file such reports with the department as the department by rule requires to determine compliance with this section.

Section 160. Section 663.083, Florida Statutes, is amended to read:

663.083 Lending limits.—

(1) The department shall by rule prescribe the limits of drafts or bills of exchange which an international bank agency *or international branch* may accept relative to the capital accounts of the international banking corporation. These limits shall take into account all transactions which are included and excluded in computing the lending limit for acceptances of a federal agency licensed under the federal International Banking Act of 1978, as amended.

(2) The provisions of ss. 658.48 and 658.67, except to the extent they are inconsistent with s. 663.06 or this section, apply to the loans and investments made by any international bank agencies *or international branches* of the international banking corporation.~~;~~ As used in those sections with respect to an international banking corporation and its international bank agencies *or international branches*, the term "capital accounts" *refers* ~~shall be deemed to refer~~ to the capital *accounts* ~~and surplus~~ of the international banking corporation, and, except when used with reference to "capital accounts," the term "bank" *refers* ~~shall be deemed to refer~~ to the international bank agencies *or international branches* of the international banking corporation which are licensed in this state.

(3) Any limitation in this section based on the capital accounts of an international banking corporation *refers* ~~shall be deemed to refer~~, with respect to an international bank agency *or international branch* in this state, to the dollar equivalent of the capital accounts of the international banking corporation, as determined by the department. If the international banking corporation has more than one international bank agency *or international branch* in this state, the business transacted by all such agencies *or branches must* ~~shall~~ be aggregated in determining compliance with a limitation or restriction in this section.

~~(4) With the prior approval of the department, the capital notes and capital debentures of an international banking corporation may be treated as capital in computing the limitations referred to in this section.~~

Section 161. Section 663.09, Florida Statutes, is amended to read:

663.09 Reports; records.—

(1) Every international banking corporation doing business in this state shall, at such times and in such form as the department shall prescribe, make written reports in the English language to the department, under the oath of one of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the department shall prescribe. *An international banking corporation, that maintains two or more offices of the same type may consolidate such information in one report, unless the department otherwise requires for purposes of its supervision of the condition and operations of each such office. The late filing of such reports is subject to the imposition of the administrative fine prescribed by s. 655.045(2)(b).* If any such international banking corporation *fails* ~~shall fail~~ to make *the* ~~any such~~ report, as directed by the department, or if *the* ~~any such~~ report *contains* ~~shall contain~~ any false statement knowingly made, *it is* ~~the same shall be~~ grounds for revocation of the license of the international banking corporation.

(2) Each international banking corporation which operates an *office* ~~international bank agency~~ licensed under *this part* ~~ss. 663.01-663.14~~ shall *keep* ~~cause to be kept~~, at *such* ~~its~~ place of business in this state.~~;~~

(a) Correct and complete books and records of account of *the* ~~its~~ business operations transacted by such *office* ~~agency, pursuant to s. 658.72~~. *All policies and procedures governing the operations of the office must be maintained in English. The department may require that any other document not written in English which the department determines necessary for the purposes of its regulatory and supervisory functions be translated into English at the expense of the international banking corporation.* ~~Such agencies shall also keep~~

(b) Current copies of the charter and bylaws of the international banking corporation, relative to the operations of the *office* ~~agency~~, and minutes of the proceedings of its directors or committees relative to the ~~agency~~ business *of the office.*

Such records *must* ~~shall~~ be kept pursuant to *s. 655.91* ~~s. 658.72~~ and ~~shall be~~ made available to the department, upon request, at any time during regular business hours of the agency. Any failure to keep *the* ~~such~~ records ~~as aforesaid~~ or any refusal to produce *the* ~~such~~ records upon request by the department *is* ~~shall be~~ grounds for suspension or revocation of any license issued under *this part* ~~ss. 663.01-663.14~~.

Section 162. Section 663.10, Florida Statutes, is amended to read:

663.10 Conversion *of license* ~~from a federal agency to a state-chartered agency and the reverse~~.—

(1) An international banking corporation desiring to convert its existing federal agency or *federal branch or Edge Act corporation* ~~representative office~~ into a state-chartered *international bank* agency or *international branch, or an Edge Act corporation which desires to convert to a state-chartered investment company organized under the laws of this state,* ~~representative office~~ shall submit to the department an application, on a form the department shall provide, accompanied by *a filing fee as prescribed by s. 663.12* ~~nonrefundable application fees of $5,000 and $1,000 respectively~~. An examination and investigation may be conducted to the extent determined necessary by the department. The cost of any such examination shall be paid by the applicant.

(2) Nothing in the laws of this state shall restrict the right of a state-chartered *international bank* agency, *international branch,* or *international* representative office *or a state-chartered investment company* to convert to a federal *license or charter* ~~agency or representative office~~ upon compliance with the laws of the United States. Upon completion of any such conversion, the state charter shall be surrendered to the department.

(3) An international banking corporation desiring to convert *any* ~~its~~ existing *international banking* ~~state-chartered representative~~ office to *an international banking office of a different type* ~~a state-chartered agency or its existing state-chartered agency to a state-chartered representative office~~ shall submit to the department an application on a form the department shall provide *which.* ~~An application to convert to an agency~~ shall be accompanied by all of the information and documents that *are required of* ~~the state requires~~ applicants for *a license of the type being sought together with the filing fee required by s. 663.12* ~~an agency to submit and by a nonrefundable application fee in the amount of $4,000. A nonrefundable application fee in the amount of $500 shall accompany an application to convert to a representative office.~~

(4) An international banking corporation desiring to convert *any existing* ~~from a~~ federal agency or *federal branch or an Edge Act corporation into an international banking office operating under the provisions of this part* ~~representative office into a state-chartered agency or representative office, or from its existing state-chartered representative office to an agency,~~ shall ~~be required to~~ meet the minimum criteria of the state-chartered form into which it is converting.

Section 163. Section 663.11, Florida Statutes, is amended to read:

663.11 Dissolution.—In the event an international banking corporation which is licensed to maintain an *office* ~~international bank agency~~ in this state is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate of the official who is responsible for records of banking corporations of the jurisdiction of incorporation of such international banking corporation, attesting to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction, directing the dissolution of such international banking corporation, the termination of its existence, or the cancellation of its authority, shall be delivered by the corporation or its surviving officers and directors to the department. The filing of the certificate, order, or decree shall have the same effect as the revocation of the license of such international banking corporation as provided in s. 663.06.

Section 164. Section 663.12, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 663.12, F.S., for present text.)

663.12 Licenses; fees; assessments; examinations.—

(1) Each application for a license under this part must be accompanied by a nonrefundable filing fee payable to the department in the following amount:

(a) Ten thousand dollars for establishing a state investment company.

(b) Five thousand dollars for establishing an international bank agency or branch.

(c) Twenty-five hundred dollars for establishing an international administrative office.

(d) Two thousand dollars for establishing an international representative office.

(e) One thousand dollars for annual renewal of an existing license.

(f) An amount equal to the initial filing fee for an application to convert from one type of license to another.

The department may increase the filing fee for any type of license to an amount established by rule and calculated in a manner to cover the direct and indirect cost of processing such applications.

(2) Each international bank agency, international branch and state-chartered investment company must pay to the departmental a semiannual assessment, payable on or before January 31 and July 31 of each year, in an amount determined by rule by the department and calculated in a manner to recover the costs of the department incurred in connection with supervising international banking activities licensed under this part. These rules must provide for uniform rates of assessment for all licenses of the same type and must provide for declining rates of assessment in relation to the total assets of the licensee held in the state, but may not provide for rates of assessment that exceed the rate applicable to state banks under s. 658.73. For the purposes of this subsection, the total assets of an international bank agency or branch include amounts due the agency or branch from other offices or branches of the international banking corporation of which the agency or branch is a part or from entities that relate to that international banking corporation.

(3) Each international banking corporation and state investment company that maintains offices licensed under this part must pay to the department examination fees set by rule of the department and calculated in a manner to equal the actual cost of each examiner's participation in the examination, as measured by the examiner's pay scale, plus any other expenses directly incurred in the examination, but in no event may the fee be less than $200 per day for each examiner participating in the examination.

Section 165. Section 663.13, Florida Statutes, is amended to read:

663.13 Rules; exemption from economic-impact-statement requirements.—In addition to any other rulemaking authority it has under the *financial institutions codes* ~~Florida Banking Code~~, the department is authorized to promulgate reasonable rules which it deems advisable for the administration of international banking corporations under ss. 663.01-663.14, in the interest of protecting depositors, creditors, borrowers, or the public interest and in the interest of maintaining a sound banking system in this state. Because of the difficulty in obtaining economic data with regard to such banks, no economic impact statement shall be required in connection with these rules.

Section 166. Subsection (1) of section 663.302, Florida Statutes, is amended to read:

663.302 Applicability of state banking laws.—

(1)(a) International development banks shall be subject to the following provisions of chapter 655 as though such international development banks were state banks:

1. Section 655.005, relating to definitions.

2. Section 655.012, relating to general *supervisory* ~~supervising~~ powers of the department.

3. Section 655.016, relating to liability.

4. Section *655.031* ~~655.021~~, relating to administrative enforcement guidelines.

5. Section *655.032* ~~655.025~~, relating to investigations; etc.

6. Section *655.0321* ~~655.029~~, relating to hearings and proceedings.

7. Section 655.033, relating to cease and desist orders.

8. Section 655.034, relating to injunctions.

9. Section 655.037, relating to removal of *financial institution-affiliated party* ~~officers and others~~.

10. Section 655.041, relating to administrative fines.

11. Section 655.043, relating to articles of incorporation.

12. Section 655.044, relating to accounting practices.

13. Section 655.045, relating to examinations, reports, and internal audits.

14. Section 655.049, relating to deposit of fees and assessments.

15. Section 655.057, relating to records.

16. Section 655.071, relating to international banking facilities.

17. Section 655.50, relating to reports of transactions involving currency.

(b) In addition, except as otherwise specifically provided in this part, international development banks shall be subject to the following provisions of chapter 658 as though such international development banks were state banks:

1. Section 658.32, relating to annual shareholders meetings.

2. Section 658.39, relating to stockholder examination of records.

~~3. Section 658.66, relating to transmission of money and foreign exchange.~~

~~4. Section 658.69, relating to sale of assets.~~

~~5. Section 658.70, relating to legal holidays, banking days, and transaction of business.~~

~~6. Section 658.72, relating to records and retention and destruction thereof.~~

~~7. Section 658.73(6), relating to examination fees and assessments.~~

~~8. Section 658.77, relating to prohibited acts and practices.~~

3. ~~9.~~ Section 658.79, relating to insolvency.

~~10. Sections 658.80-658.97, relating to receivership and liquidation.~~

Section 167. Subsection (2) of section 663.309, Florida Statutes, is amended to read:

663.309 Permissible activities; prohibited activities.—

(2) An international development bank shall not:

(a) Take deposits except as provided in this section;

(b) Offer deposit accounts ~~as defined in s. 655.081~~ other than those permitted to be offered by an international bank agency;

(c) Exercise trust or fiduciary powers;

(d) Offer credit cards;

(e) Establish or use remote financial service units; or

(f) Serve as a depository of public moneys or be employed as a financial agent of the state.

Section 168. Section 663.319, Florida Statutes, 1990 Supplement, is amended to read:

663.319 Rules; exemption from economic-impact-statement requirements.—In addition to any other rulemaking authority it has under the *financial institutions codes* ~~Florida Banking Code~~, the department is authorized to promulgate rules for the administration of regional development banks. Because of the difficulty in obtaining economic data with regard to such banks, no economic impact statement shall be required in connection with these rules.

Section 169. Section 665.012, Florida Statutes, is amended to read:

665.012 Definitions.—When used in this chapter, the following words and phrases have the following meanings, except to the extent that any such word or phrase specifically is qualified by its context:

(1) "Association" means a ~~mutual or~~ capital stock ~~savings~~ association, ~~savings and loan association, building and loan association, or savings bank~~ subject to the provisions of this chapter.

(2) "Capital stock" means the aggregate of shares of nonwithdrawable capital issued by a capital stock association, but does not include nonwithdrawable capital represented by capital certificates.

~~(3) "Community" means a centralized area or locality in which a body of inhabitants is gathered in one group having common residential, social, or business interests. The term does not necessarily mean a municipal corporation or other political subdivision; a community need not be limited by lines and boundaries. A village, town, or other governmental unit, either incorporated or unincorporated, may constitute one community, but a large, populous area under one or more forms of government may be composed of several communities.~~

~~(4) "Department" means the Department of Banking and Finance.~~

(3)~~(5)~~ "Dwelling unit" means a single, unified combination of rooms which is designed for residential use by one family in a multiple dwelling unit structure and which is not "home property."

(4)~~(6)~~ "Earnings" means that part of the sources available for payment of earnings of an association which is declared payable on savings accounts from time to time by the board of directors, and is the cost of savings money to the association. Earnings also may be referred to as "interest."

~~(7) "Financial depository institution" means a savings association, savings bank, bank, industrial savings bank, or credit union organized under the laws of this state or of another state or the United States.~~

(5)~~(8)~~ "Home property" means real estate on which there is located, or will be located pursuant to a real estate loan, either a structure designed for residential use by one family or a single condominium unit, including common elements pertinent thereto, designed for residential use by one family in a multiple-dwelling-unit structure or complex and includes fixtures and home furnishings and equipment.

~~(9) "Impaired condition" means a condition in which the assets of an association in the aggregate do not have a fair value equal to the aggregate amount of liabilities of the association to its creditors, including the holders of its savings accounts and all other persons or in which an association is unable to meet current obligations as they mature, even though assets may exceed liabilities.~~

~~(10) "Improved real estate" means real estate on which there is a structure or an enclosure or which is cultivated, reclaimed, used for the purpose of agriculture in any form, prepared as building lots or sites, or otherwise occupied, made better, more useful, or of greater value by care so as to produce an enjoyment thereof.~~

~~(11) "Insured association" means an association the savings accounts of which are insured wholly or in part in accordance with the provisions of this chapter.~~

(6)~~(12)~~ "Liquid assets" means:

(a) Cash on hand;

(b) Cash on deposit in federal home loan banks, federal reserve banks, state banks performing similar reserve functions, or financial depository institutions, which is withdrawable upon not more than 30 days' notice and which is not pledged as security for indebtedness, except that any deposits in a financial depository institution under the control or in the possession of any supervisory authority shall not be considered as liquid assets:

(c) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state; and

(d) Such other assets as may be approved by the department which are accepted as liquid assets for federally insured associations by the appropriate federal regulatory agency.

~~(13) "Member" means a person holding a savings account of a mutual association, or borrowing from or assuming or obligated upon a loan or interest therein held by a mutual association, or purchasing property securing a loan or interest therein held by a mutual association. A joint and survivorship relationship, whether of savers or borrowers, constitutes a single membership. A capital stock association has no members.~~

(7)~~(14)~~ "Net income" means gross revenues for an accounting period less all expenses paid or incurred, taxes, and losses sustained as shall not have been charged to reserves pursuant to the provisions of this chapter.

~~(15) "Net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, capital stock, any other nonwithdrawable accounts or capital contributions of an association, and the principal amount of any subordinated debt securities.~~

(8)~~(16)~~ "Primarily residential property" means real estate on which there is located, or will be located pursuant to a real estate loan, any of the following:

(a) A structure or structures designed or used primarily for residential rather than nonresidential purposes and consisting of more than one dwelling unit.

(b) A structure or structures designed or used primarily for residential rather than nonresidential purposes for students, residents and persons under care, employees, or members of the staff of an educational, health, or welfare institution or facility.

(c) A structure or structures which are used in part for residential purposes for not more than one family and in part for business purposes, provided that the residential use of such structure or structures must be substantial and permanent, not merely transitory.

~~(17) "Primary lending area" means this state and any additional area within 100 miles of the home office of an association.~~

~~(18) "Primary service area" means the smallest geographical area from which a proposed association expects to draw approximately 75 percent of its deposits.~~

(9)~~(19)~~ "Real estate loan" means any loan or other obligation secured by a lien on real estate in any state held in fee or in a leasehold extending or renewable automatically for a period of at least 15 years beyond the date scheduled for the final principal payment of such loan or obligation, or any transaction out of which a lien or claim is created against such real estate, including among other things the purchase of such real estate in fee by an association and the concurrent or immediate sale thereof on installment contract.

(10)~~(20)~~ "Savings account" means that part of the savings liability of the association which is credited to the account of the holder thereof. A savings account also may be referred to as a "savings deposit."

(11)~~(21)~~ "Savings liability" means the aggregate amount of savings accounts of depositors, including earnings credited to such accounts, less redemptions and withdrawals.

~~(22) "Service corporation" means an organization which is empowered to engage in any activity that is related or incidental to the business of an association, or any other activity permitted by the department, and which is wholly or partially owned or controlled by an association.~~

~~(23) "Sources available for payment of earnings" means net income for an accounting period less amounts transferred to reserves as provided in or permitted by this chapter, plus any balance of undivided profits from preceding accounting periods.~~

(12)~~(24)~~ "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized or operating pursuant to the provisions of this chapter.

~~(25) "Withdrawal value" means the amount credited to a savings account, less lawful deductions therefrom, as shown by the records of the association.~~

Section 170. Section 665.013, Florida Statutes, is created to read:

665.013 Applicability of chapter 658.—The following sections of chapter 658, relating to banks and trust companies, are applicable to an association to the same extent as if the association were a "bank" operating thereunder:

(1) Section 658.12, relating to definitions.

(2) Section 658.16, relating to the creation of a banking or trust corporation.

(3) Section 658.19, relating to application for authority to organize a bank or trust company.

(4) Section 658.20, relating to investigation by department.

(5) Section 658.21, relating to approval of application, findings required.

(6) Section 658.22, relating to coordination with federal agencies.

(7) Section 658.23, relating to submission of articles of incorporation; contents; form; approval; filing; commencement or corporate existence; bylaws.

(8) Section 658.235, relating to subscriptions for stock, approval of major shareholders.

(9) Section 658.24, relating to organizational procedures.

(10) Section 658.25, relating to opening for business.

(11) Section 658.26, relating to places of transacting business; branches; school savings; facilities.

(12) Section 658.32, relating to annual meetings.

(13) Section 658.33, relating to directors, number, qualifications; officers.

(14) Section 658.34, relating to shares of stock.

(15) Section 658.35, relating to stock options; warrants.

(16) Section 658.36, relating to changes in capital.

(17) Section 658.37, relating to dividends and surplus.

(18) Section 658.38, relating to deposit insurance.

(19) Section 658.39, relating to stockholders; examination of records.

(20) Section 658.40, relating to definitions for merger and consolidation.

(21) Section 658.41, relating to merger, resulting state or national bank.

(22) Section 658.42, relating to plan of merger and merger agreement.

(23) Section 658.43, relating to approval by department, valuation of assets; emergency action.

(24) Section 658.44, relating to approval by stockholders; rights of dissenters; preemptive rights.

(25) Section 658.45, relating to certification of merger and effective date; effect on charters and powers.

(26) Section 658.48, relating to loans.

(27) Section 658.49, relating to loans by banks not exceeding $50,000.

(28) Section 658.491, relating to commercial loans by financial institutions.

(29) Section 658.50, relating to bank loans, credit cards.

(30) Section 658.51, relating to banks authorized to make commodity loans.

(31) Section 658.53, relating to borrowings, limits of indebtedness.

(32) Section 658.60, relating to depositories of public moneys and pledge of assets.

(33) Section 658.67, relating to investment powers and limitations.

(34) Section 658.73, relating to fees and assessments. The department shall, by rule, adopt a separate semiannual fee and semiannual assessment for associations. In its determination, the department shall consider the housing finance role of such associations in addition to the cost of regulation of associations and the collection of fees from such associations.

(35) Section 658.79, relating to taking possession of insolvent state banks or trust companies.

(36) Section 658.80, relating to appointment of receiver or liquidator.

(37) Section 658.81, relating to department action; notice and court confirmation.

(38) Section 658.82, relating to receiver; powers and duties.

(39) Section 658.83, relating to liquidator; powers and duties.

(40) Section 658.84, relating to transfers, assignments, deposits, and payments void after act of insolvency.

(41) Section 658.90, relating to receivers or liquidators under supervision of department.

(42) Section 658.94, relating to prima facie evidence.

(43) Section 658.95, relating to voluntary liquidation.

(44) Section 658.96, relating to procedure in voluntary liquidation.

Section 171. Section 665.0211, Florida Statutes, is amended to read:

665.0211 Name.—

~~(1) CORPORATE NAME.—~~The name of every association shall include either the words "savings association," "savings bank," or "savings and loan association." The use of the words "National," "Federal," "United States," "insured," or "guaranteed," separately or in any combination thereof with other words or syllables, is prohibited as part of the corporate name of an association.

~~(2) EXCLUSIVENESS OF NAME.—No person, firm, company, association, fiduciary, partnership, or corporation, either domestic or foreign, unless he or it is lawfully authorized to do business in this state under the provisions of this chapter and actually is engaged in carrying on a savings association business shall do business under any name or title which contains the terms "savings association," "savings and loan association," "building and loan association," "building association," or any combination employing either or both of the words "building" or "loan" with one or more of the words "saving" or "savings," or words of similar import, or any combination employing one or more of the words "saving" or "savings," or words of similar import with one or more of the words "association," "institution," "society," "company," "fund," or "corporation," or words of similar import, or use any name or sign or circulate or use any letterhead, billhead, circular, or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that his or its business is the character or kind of business carried on or transacted by an association or which is likely to lead any person to believe that his or its business is that of an association; however, the words "saving," "savings," "company," or "corporation," or the plural of any thereof, may be used by, and in the corporate or other name or title of, any company which is or becomes a savings and loan holding company pursuant to the provisions of this chapter or regulations of the Federal Home Loan Bank Board. Upon application by the department or any association, a court of competent jurisdiction may issue an injunction to restrain any such entity from violating or continuing to violate any of the foregoing provisions of this subsection. Any person who violates any provision of this subsection shall be punished by a fine of not more than $5,000, and~~

~~each day of violation constitutes a separate offense. The prohibitions of this subsection do not apply to any corporation or association formed for the purpose of promoting the interests of associations, the membership of which is comprised of associations, their officers or other representatives.~~

Section 172. Section 665.0315, Florida Statutes, is amended to read:

665.0315 Reorganization, merger, or consolidation with a foreign association.—

(1) An association shall have power to reorganize or merge or consolidate with a foreign association, as defined in s. 665.1001, subject to the approval of the department.

(2) If the resulting or surviving association is to be a foreign association, the department shall not approve the proposed transaction unless:

(a) The laws of the state in which the foreign association has its principal place of business permit associations in that state to reorganize, merge, or consolidate with Florida associations in transactions in which the resulting or surviving association is a Florida association; and

(b) The constituent Florida association has been in existence and continuously operating for more than 2 years.

(3) A proposed transaction in which the resulting or surviving association is to be a foreign association shall be subject to any conditions, restrictions, and requirements that would apply in the state where the foreign association has its principal place of business if the resulting or surviving association were to be a Florida association, which conditions, restrictions, and requirements would not apply to a reorganization, merger, or consolidation of associations all of which are located in that state.

~~(4) If the resulting or surviving association is to be a state chartered association, the transaction shall also be subject to the provisions of s. 665.0311 and the insurance of accounts as provided in s. 665.0501(8).~~

(4)~~(5)~~ A foreign association which is the resulting or surviving association in a reorganization, merger, or consolidation with a Florida association shall not be considered a Florida association.

(5) Each application for reorganization, merger, or consolidation with a foreign association shall be accompanied by a nonrefundable filing fee as provided in s. 655.047.

Section 173. Subsections (1), (2), (3), and (5) of section 665.033, Florida Statutes, 1990 Supplement, are amended to read:

665.033 Conversion of state or federal mutual association to capital stock association.—

(1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.—Any state or federal mutual association may apply to the department for permission to convert itself into an association operated under the provisions of this chapter in accordance with the following procedures:

(a) The board of directors shall approve a plan of conversion by resolution adopted by a majority vote of all the directors. The plan shall include, among other terms:

1. Financial statements of the association as of the last day of the month preceding adoption of the plan.

2. Such financial data as may be required to determine compliance with applicable regulatory requirements respecting financial condition.

3. A provision that each savings account holder of the mutual association will receive a withdrawable account in the capital stock association equal in amount to his withdrawable account in the mutual association.

4. A provision that each member of record will be entitled to receive rights to purchase voting common stock.

5. Pro forma financial statements of the association as a capital stock association, which shall include data required to determine compliance with applicable regulatory requirements respecting financial condition.

6. With particularity, the business purpose to be accomplished by the conversion.

7. Such other information as the department may, by rule, require.

(b) The plan of conversion shall be executed by a majority of the board of directors and submitted to the department for approval prior to any vote on conversion by the members.

(c) The department may approve or disapprove the plan in its discretion, but it shall not approve the plan unless it finds that the association will comply sufficiently with the requirements of *the financial institutions codes* ~~this chapter~~ after conversion to entitle it to become an association operating under *the financial institutions codes* ~~this chapter~~ and the rules of the department. The department may deny any application from any federal association that is subject to any cease and desist order or other supervisory restriction or order imposed by *any state or* the federal supervisory authority, or insurer, *or guarantor* or that has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(d) If the department approves the plan of conversion, the question of such conversion may be submitted to the members at a meeting of voting members called to consider such action. A vote of 51 percent or more of the total number of votes eligible to be cast, unless federal law permits a lesser percentage of votes for a federal mutual association to convert, in which case that percentage shall control, shall be required for approval. Notice of the meeting, giving the time, place, and purpose thereof, together with a proxy statement and proxy form ~~approved by the department~~ covering all matters to be brought before the meeting, shall be mailed at least 30 days prior thereto to the department *for review* and to each voting member at his last address as shown on the books of the association.

(2) MINUTES OF MEETING.—Copies of the minutes of the meeting of members, verified by the affidavit of the secretary or assistant secretary of the association, shall be filed *with* ~~in the office of~~ the department~~,~~ and with the *appropriate federal regulatory agency* ~~Federal Home Loan Bank Board if applicable~~, within a reasonable time after the meeting. When so filed, the verified copies of the minutes are presumptive evidence of the holding of the meeting and of the action taken.

(3) FILING OF ARTICLES OF INCORPORATION AND COMMITMENT FOR INSURANCE OF ACCOUNTS.—The directors of the association shall have executed and filed with the department proposed articles of incorporation as provided for in *s. 658.23* ~~s. 665.024~~, together with the application for conversion and a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type. The articles shall contain a statement that the association resulted from the conversion of a state or federal mutual association to a capital stock association. Approval by the department shall be affixed to the articles of incorporation. An authenticated copy of the articles of incorporation shall be filed with the Department of State and one copy of the articles of incorporation and the certificate of incorporation shall be returned to the association. The association shall cease to be a mutual association at the time and on the date specified in the approved articles of incorporation.

(5) FEE.—The application for conversion from a *state or* federal mutual to a state capital stock association shall be accompanied by a nonrefundable filing fee of *$7,500. Additionally, the department is authorized to assess any association, applying to convert pursuant to this section, a nonrefundable examination fee to cover the actual costs of any examination required as part of the application process* ~~$5,000~~.

Section 174. Section 665.034, Florida Statutes, 1990 Supplement, is amended to read:

665.034 Acquisition of assets of or control over an association~~; establishment of association by out of state financial institution or foreign association~~.—

(1)(a) In any case in which a person or group of persons propose to purchase or acquire voting common stock of any capital stock association, which purchase or acquisition would cause such person or group of persons to have control, as defined herein, of that association, such person or group of persons must first make application to the department for a certificate of approval of such purchase or acquisition.

(b) An application for control shall be in such form and request such information as the department may, by rule, require.

(c) The application for control shall be accompanied by a nonrefundable filing fee of *$7,500* ~~$5,000~~; however, if more than one association is being acquired in any such application, the fee shall be increased by *$3,000* ~~$2,000~~ for each additional association.

(2) The department shall issue the certificate of approval only after it has made an investigation and determined that:

(a) The proposed new owner or owners of voting *capital* ~~common~~ stock are qualified by character, experience, and financial responsibility to control the association in a legal and proper manner and none of the proposed new owners have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(b) The interests of the public generally will not be jeopardized by the proposed purchase or acquisition of voting *capital* ~~common~~ stock.

(3) This section does not apply to the acquisition of:

(a) Directors' voting proxies acquired in the normal course of business as a result of proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting a debt contracted in good faith until 2 years after the date of acquisition;

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale thereof; or

(e) Control of an association by a unitary *association* ~~savings and loan~~ holding company if the person or persons who control the holding company are the same person or persons who control the association.

(4) For purposes of this section, a person or group of persons shall be deemed to have control of an association if such person or group of persons:

(a) Directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with powers to vote, or holds proxies representing more than 25 percent of the voting common stock of such association.

(b) Controls in any manner the election of a majority of the directors of such association.

(c) Exercises a controlling influence over the management or policies of such association.

(d) Owns, controls, or has power to vote 10 percent or more of any class of voting securities of the association, if no other person or group of persons owns, controls, or has power to vote a greater proportion of that class of voting securities.

(e) In any case in which a proposed purchase or acquisition of voting securities of an association would give rise to the presumption created under paragraph (d), the person or group of persons who propose to purchase or acquire the voting securities shall first be given written notice of the proposal to the department. Such notice may present information that the proposed purchase or acquisition will not result in control. The department shall afford the person seeking to rebut the presumption an opportunity to present views in writing or orally before its designated representatives at an information conference.

(5)(a) For the purposes of this subsection, the term "financial institution" means *an* ~~a savings~~ association, bank, ~~industrial savings bank,~~ trust company, international bank agency or representative office, *or* credit union~~, or savings bank~~.

~~(b) Except in a supervisory case and as provided in this subsection or s. 665.0315, no financial institution the operations of which are principally conducted outside this state, or business organization as defined in s. 658.27(1)(b), which directly or indirectly controls a financial institution the operations of which are principally conducted outside this state, shall:~~

~~1. Acquire, directly or indirectly, all or substantially all of the assets of, or control over, any association having its principal place of business or home office in this state; or~~

~~2. Establish any association having its principal place of business or home office in this state or establish any branch office or other depository office in this state.~~

(b)~~(c)~~ A foreign association, as defined in s. 665.1001, whether controlled directly or indirectly by another business organization, may acquire a Florida association, subject to approval by the department. The department shall not approve the proposed acquisition unless:

1. The laws of the state in which the foreign association has its principal place of business permit associations in that state to be acquired by Florida associations; and

2. The Florida association which is to be acquired has been in existence and continuously operating for more than 2 years.

(c)~~(d)~~ The proposed acquisition shall be subject to any conditions, restrictions, and requirements that would apply in the state where the foreign association has its principal place of business if the foreign association were to be acquired by a Florida association, which conditions, restrictions, and requirements would not apply to the acquisition by such foreign association of another association in that state.

(d)~~(e)~~ A foreign association which has a subsidiary association in Florida is authorized to acquire a Florida association upon approval by the department pursuant to the laws and rules which are applicable to the acquisition of a Florida association by an association having its principal place of business in this state, but such acquired association shall not be considered a Florida association for purposes of this subsection or s. 665.0315.

(e)~~(f)~~ This subsection does not apply to any merger by an association subject to s. 123 of Pub. L. No. 97-320.

Section 175. Section 665.0501, Florida Statutes, is amended to read:

665.0501 Powers of association generally.—Every association incorporated pursuant to or operating under the provisions of *the financial institutions codes* ~~this chapter~~ shall have all the powers enumerated, authorized, and permitted by this chapter and such other rights, privileges, and powers as may be incidental to or reasonably necessary or appropriate for the accomplishment of the objectives and purposes of the association. Among others, and except as otherwise limited by the provisions of *the financial institution codes* ~~this chapter~~, every association shall have the following powers:

~~(1) EXISTENCE; SEAL; BYLAWS.—To have perpetual existence; to adopt and use a corporate seal, which may be affixed by imprint, facsimile, or otherwise; and to adopt and amend bylaws as provided in this chapter.~~

~~(2) PLAINTIFF; DEFENDANT.—To sue and be sued, complain, and defend in any court of law or equity.~~

(1)~~(3)~~ PROPERTY TRANSFERS.—To acquire, hold, sell, dispose of, and convey real and personal estate consistent with its objects and powers; to mortgage, pledge, or lease any real or personal estate; and to take property by gifts, devise, or bequest.

~~(4) BORROWING.—To borrow from sources, individual or corporate, not more than an aggregate amount equal to one-half of its total assets on the date of borrowing. A subsequent reduction of total assets shall not affect in any way outstanding obligations for borrowed money. All such borrowings may be secured by property of the association and may be evidenced by notes, bonds, debentures, commercial paper, bankers' acceptances, or other obligations or securities, except capital stock and capital certificates.~~

(2)~~(5)~~ *SUBORDINATED DEBT* ~~CAPITAL CERTIFICATES.~~—To issue and sell, directly or through underwriters, *subordinated debt* ~~capital certificates~~ which shall represent nonwithdrawable capital contributions and shall constitute part of the *equity capital* ~~reserves and net worth~~ of the association. Such *debt* ~~certificates~~ shall have no voting rights; shall be subordinate to all savings accounts, debt obligations, and claims of creditors of the association; and shall constitute a claim in liquidation against any other *equity capital* ~~net worth~~ accounts remaining after the payment in full of all savings accounts, debt obligations, and

claims of creditors. Such *subordinated debt* ~~capital certificates~~ shall be entitled to the payment of earnings prior to the allocation of any income to surplus or other *equity capital* ~~net worth~~ accounts of the association and may be issued with a fixed rate of earnings or with a prior claim to distribution of a specified percentage of any net income remaining after required allocations to reserves, or a combination thereof. Losses shall be charged against *subordinated debt* ~~capital certificates~~ only after other *equity capital* ~~net worth~~ accounts have been exhausted. *Subordinated debt may not be sold, bartered, or exchanged at the main office or branch office or any other premises of the association.*

(3)~~(6)~~ SALE OF LOANS.—To sell with or without recourse any loan, including any participating interests therein.

(4)~~(7)~~ SERVICING.—To service loans and investments for others.

~~(8) INSURANCE OF ACCOUNTS.—To obtain and maintain insurance of its savings accounts by the Federal Savings and Loan Insurance Corporation, by any other federal agency established for the purpose of insuring savings accounts in associations, by any agency of this state, or with any other insurer approved by the department and meeting the qualifications prescribed in this subsection; however, no association subject to the provisions of this chapter shall have the power to obtain insurance of accounts from, or represent in any way that its accounts are insured by, any insurer other than the Federal Savings and Loan Insurance Corporation, another federal agency, or a state agency as herein defined, unless the department, after application to the department for approval has been submitted by the association, has determined that:~~

~~(a) The contract of insurance contemplated is written upon substantially the same basis as to form, amount, coverage, maturity, voluntary termination and involuntary termination, and other provisions as the insurance contract provided at that time by the Federal Savings and Loan Insurance Corporation and complies with such further requirements for protection as the department in its discretion may deem reasonably necessary; and~~

~~(b) The contract is underwritten by an insurer which has a net worth reasonably commensurate with the risks underwritten, but in no event less than $25 million; which is licensed in this state and authorized to do business in this state; which is admitted and authorized by law to write such insurance in all of the states of the union; and which has issued its certificate of approval of such application. These requirements apply to all revisions or modifications of such contracts of insurance. Associations and foreign associations insured as provided in this subsection may make representations as to such insurance of savings accounts, provided any such representations set forth the name of the insurer. Excepting banks, industrial savings banks, and credit unions, no association or foreign association or any other person shall advertise or represent or accept or offer to accept any savings accounts in this state as insured or guaranteed accounts or as the savings accounts of an insured or guaranteed institution unless the same are insured as provided in this subsection. Any violation of this provision is a separate offense for each day of such violation and is a misdemeanor and shall be enjoined upon the application of the Department of Legal Affairs, the Department of Banking and Finance, or other state prosecuting official or by an association in this state. The requirements of this subsection are in the exercise of the police power of this state and are enacted to protect the people of the state from misrepresentation, misunderstanding, and loss.~~

~~(9) FEDERAL HOME LOAN BANK MEMBERSHIP.—To qualify as and become a member of a Federal Home Loan Bank.~~

~~(10) EMPLOYEES.—~~

~~(a) To appoint and remove officers, agents, and employees as its business shall require and to provide them suitable compensation;~~

~~(b) To provide for life, health, and casualty insurance for officers and employees;~~

~~(c) To adopt and operate reasonable bonus plans and retirement benefits for such officers and employees; and~~

~~(d) To provide for indemnification of its officers, employees, and directors as prescribed or permitted in this chapter, whether by insurance or otherwise.~~

~~(11) FACILITATING ORGANIZATIONS.—To become a member of, deal with, or make reasonable payments or contributions to any organization to the extent that such organization assists in furthering or facilitating the purposes, powers, or community responsibilities of the association and to comply with any reasonable condition of eligibility.~~

~~(12) FISCAL AGENT.—To act as fiscal agent of the United States and, when so designated by the Secretary of the Treasury, to perform, under such regulations as he may prescribe, all such reasonable duties as fiscal agent of the United States as he may require; and to act as agent for any instrumentality of the United States and as agent of this state or any instrumentality thereof.~~

~~(13) TAX AND LOAN ACCOUNTS.—To act as depository for receipt of payments of federal or state taxes and loan funds and to satisfy any federal or state statutory or regulatory requirements in connection therewith, including pledging of assets as collateral, payment of earnings at prescribed rates, and, notwithstanding any other provision of this chapter, issuing such accounts subject to the right of immediate withdrawal.~~

(5)~~(14)~~ AGENT.—To act as agent or escrowee for others in any transaction incidental to the operation of its business.

(6)~~(15)~~ LIMITED TRUSTEESHIP.—To act, and receive compensation therefor, as trustee of any trust created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan which qualifies or is qualified for specific tax treatment under s. 401 of the Internal Revenue Code of 1954, as amended, and to act as trustee or custodian of an individual retirement account within the meaning of s. 408 of such code if the funds of such trust or account are invested only in savings accounts of such association or in obligations or securities issued by such association. All funds held in a fiduciary capacity by any such association under the authority of this subsection may be commingled and consolidated for appropriate purposes of investment, provided that records reflecting each separate beneficial interest are maintained by the fiduciary unless such responsibility is lawfully assumed by another appropriate party.

~~(16) GENERAL TRUST BUSINESS.—Upon application to and approval by the department pursuant to chapter 658 and chapter 660, to act as trustee, executor, administrator, personal representative, conservator, guardian, custodian, or in any other fiduciary capacity and to receive reasonable compensation therefor. Such trust business shall be conducted in all respects pursuant to the provisions regarding trust operations in chapter 658 and chapter 660.~~

~~(17) REMOTE FINANCIAL SERVICE UNITS.—To own and use or participate in the use or ownership and use of remote financial service units.~~

~~(18) SAVINGS, LOANS, INVESTMENTS.—To acquire savings and pay earnings thereon and to lend and commit to lend, extend credit, and invest its funds as provided in this chapter.~~

~~(19) SAFE DEPOSIT BOXES.—To maintain and let safes, boxes, or other receptacles or premises for the safekeeping of personal property upon such terms and conditions as may be agreed upon.~~

~~(20) MONEY ORDERS AND TRAVELER'S CHECKS.—To sell money orders, traveler's checks, and similar instruments drawn by it on its deposit accounts or as agent for any organization empowered to sell such instruments through agents within this state.~~

~~(21) DIVIDENDS ON CAPITAL STOCK.—~~

~~(a) To authorize the directors, after charging off bad debts, depreciation, and other worthless assets, if any, to declare a dividend from time to time of so much of the aggregate net income of the association's current fiscal year combined with its retained earnings of the preceding 2 years as they shall judge expedient, and, with the approval of the department, to declare a dividend from retained earnings which accrued prior to the preceding 2 years. However, no association shall declare any dividend on its common stock at any time when its net income from the current year combined with the net income from the preceding 2 years is a loss or which would cause the net worth of the association to fall below the minimum ratio required by law, regulation, final order, or any written agreement with the department or a federal regulatory agency. In no event shall the payment of dividends of any type be made when the payment thereof would cause the association to be in an impaired condition.~~

~~(b) To split up or divide the issued shares of capital stock into a greater number of shares without increasing the stated capital of the association, which shall not be construed to be a dividend within the meaning of this subsection.~~

(7)~~(22)~~ SCHOOL SAVINGS.—To contract with the proper authorities of any public or nonpublic elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the association in any school or institutional thrift or savings plan, and to accept savings accounts at such a school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the association for such purpose.

(8)~~(23)~~ PAYROLL SAVINGS.—To contract with any employer with respect to the solicitation, collection, and receipt of savings by payroll deduction to be credited to a designated account or accounts of his or its employee or employees who voluntarily may participate or with respect to the direct deposit of wages or salary paid by such employer to the account of the employee in a financial depository institution by electronic or other medium upon authorization in writing by the employee and his designation of the association or other financial depository institution as the recipient of such deposits.

(9)~~(24)~~ DRAFTS.—To issue drafts and similar instruments drawn on the association to aid in effecting withdrawals and for other purposes of the association.

Section 176. Section 665.0711, Florida Statutes, is amended to read:

665.0711 ~~Investment in~~ Loans.—~~Every association shall have power to invest in or otherwise acquire loans and interests in loans, secured or unsecured, of any type or amount and for any purpose, subject only to the requirement that,~~ As an annual average, based on monthly computations, at least 50 percent of assets other than liquid assets *of an association* shall be invested in either real estate loans or interests therein on home property or primarily residential property for terms not in excess of 40 years or for such additional terms as may be provided by rule. Recognizing that associations are chartered to serve the convenience and needs of the communities in which they are chartered to do business, that the convenience and needs of communities include the need for credit services as well as deposit services, and that associations have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered, at least 40 percent of the assets required to be invested by this section shall be secured by property within this state, unless a lower percentage is established by the department pursuant to s. 655.061, except that loans insured or guaranteed in whole or in part by the United States are not subject to this restriction.

Section 177. Section 665.074, Florida Statutes, is amended to read:

665.074 Loan expenses.—

~~(1) FEES AND CHARGES.~~—Every association may require borrowers to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorney, abstract, recording, and registration fees; title examination; title insurance; mortgage loan insurance; credit report; survey; drawing of papers; escrow services; loan closing costs; and taxes or charges imposed upon or in connection with the making and recording of any loan. Every association also may require borrowers to pay the cost of all other necessary and incidental services rendered by the association or by others in connection with real estate and other loans in such reasonable amounts as may be fixed by the board of directors. Without limiting the generality of the foregoing, such costs may include the costs of services of inspectors, engineers, and architects. Such initial charges may be collected by the association from the borrower and paid to any person, including any director, officer, or employee of the association rendering such services, or paid directly by the borrower. In lieu of such initial charges to cover such expenses and costs, an association may make a reasonable charge, part or all of which may be retained by the association which renders such service or part or all of which may be paid to others who render such services. The fees and charges authorized by *this chapter* ~~s. 665.0731 and this section~~ shall be in addition to interest authorized by law and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this state which limits the rate of interest which may be exacted in any transaction. No director, officer, or employee of an association shall receive any fee or other compensation of any kind in connection with procuring any loan for an association, except for services actually rendered as above provided.

~~(2) SETTLEMENT STATEMENT.—The association shall furnish a loan settlement statement to each borrower, indicating in detail the charges and fees such borrower has paid or obligated himself to pay to the association or to any other person in connection with such loan. A copy of such statement shall be retained in the records of the association. A loan settlement statement which satisfies the requirements of applicable federal law shall be deemed to satisfy the requirements of this subsection.~~

Section 178. Subsections (1), (2), and (3) and paragraph (b) of subsection (4) of section 665.1001, Florida Statutes, are amended to read:

665.1001 Foreign associations.—

(1) DEFINED.—For the purposes of this section, the term "foreign association" includes any *domestic joint venture, business trust, syndicate* ~~person~~, firm, company, association, fiduciary, partnership, or corporation, *and all other groups or combinations,* by whatever name called, actually engaged in the business of *an* ~~a savings~~ association ~~or savings bank~~, the principal business office of which is located outside the territorial limits of this state.

(2) DOING BUSINESS.—No foreign association shall do any business of *an* ~~a savings~~ association ~~or savings bank~~ within this state or maintain an office in this state for the purpose of doing such business, including, but not limited to, the establishment of a branch office or other depository office. However, the establishment of a branch office as a result of the reorganization, merger, or consolidation of a foreign association and a Florida association is not prohibited if the laws of the state in which the resulting or surviving association has its principal place of business would permit the establishment of a branch of a Florida association in that state as a result of such a reorganization, merger, or consolidation. The origination of real estate mortgages covering real property located in this state is considered doing business as *an* ~~a savings~~ association unless the state of domicile of the principal business office of any such foreign association permits associations from this state to originate real estate mortgages covering real property located in such state.

(3) ACTION BY DEPARTMENT.—The department is authorized, empowered, and directed to obtain an injunction or to take any other action necessary to prevent any foreign association from doing any business of *an* ~~a savings~~ association in this state.

(4) ACTIVITIES NOT CONSIDERED "DOING BUSINESS."—For the purposes of this section and any other law of this state prohibiting, limiting, or regulating the doing of business in this state by foreign associations or foreign corporations of any type, any federal association, the principal office of which is located outside this state, and any foreign association which is subject to state or federal supervision, or both, which by law are subject to periodic examination by such supervisory authority and to a requirement of periodic audit, shall not be considered to be doing business in this state by reason of engaging in any of the following activities:

(b) The advertising or solicitation of savings accounts or the making of any representations with respect thereto in this state through the medium of the mail, radio, television, magazines, or newspapers or any other medium which is published or circulated within this state; provided that such advertising, solicitation, or the making of such representations is accurately descriptive of the facts~~; and provided, further, that if such advertising, solicitation, or the making of such representations contains any reference to insurance or guaranty of accounts, such shall comply with the provisions of s. 665.0501(8)~~.

Section 179. Section 665.1011, Florida Statutes, is amended to read:

665.1011 Federal ~~savings and loan~~ associations.—Federal ~~savings and loan~~ associations, which are incorporated pursuant to the laws of the United States, as now or hereafter amended, and the principal place of business of which is located within this state, are not foreign corporations or foreign associations. Unless federal laws or regulations provide otherwise, such federal associations and the members or stockholders thereof shall possess all of the rights, powers, privileges, benefits, immunities, and exemptions that are now provided or that hereafter may be provided by the laws of this state for associations organized under the laws of this state and for the members or stockholders thereof. This provision is additional and supplemental to any provision which, by specific reference, is applicable to federal associations and the members or stockholders thereof.

Section 180. Section 665.102, Florida Statutes, is amended to read:

665.102 Grandfather clause.—*The financial institutions codes* ~~This chapter~~ shall not impair or affect any act done; offense committed; right accruing, accrued, or acquired; or liability, penalty, forfeiture or punishment incurred prior to the effective date of the *financial institutions codes* ~~chapter~~, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if *the financial institutions codes* ~~this chapter~~ had not been passed.

Section 181. (1) Sections 655.081 and 655.413, Florida Statutes, are repealed.

(2) Notwithstanding the provisions of section 11.61, Florida Statutes, the Regulatory Sunset Act, or of section 1 of chapter 85-65, section 30 of chapter 89-229, section 1 of chapter 89-296, or section 1 of chapter 90-192, Laws of Florida, sections 655.001, 655.005, 655.012, 655.016, 655.021, 655.025, 655.029, 655.033, 655.034, 655.037, 655.041, 655.043, 655.044, 655.045, 655.049, 655.053, 655.057, 655.059, 655.061, 655.071, 655.41, 655.411, 655.412, 655.414, 655.416, 655.417, 655.418, 655.419, 655.50, 655.51, and 655.55, Florida Statutes, shall not stand repealed or expire October 1, 1991, as scheduled by such laws, but those sections, as renumbered and amended by this act, are revived and readopted.

(3) Chapter 88-113, Laws of Florida, is repealed.

Section 182. Sections 655.001, 655.005, 655.012, 655.013, 655.015, 655.016, 655.031, 655.032, 655.0321, 655.0322, 655.033, 655.034, 655.037, 655.0385, 655.0386, 655.0391, 655.0392, 655.041, 655.043, 655.044, 655.045, 655.047, 655.049, 655.053, 655.057, 655.059, 655.061, 655.071, 655.41, 655.411, 655.412, 655.414, 655.416, 655.417, 655.418, 655.419, 655.50, 655.51, 655.55, 655.56, 655.60, 655.762, 655.769, 655.77, 655.78, 655.79, 655.80, 655.81, 655.83, 655.84, 655.85, 655.86, 655.89, 655.90, 655.91, 655.921, 655.922, 655.93, 655.931, 655.932, 655.933, 655.934, 655.935, 655.936, 655.937, 655.938, 655.939, and 655.94, Florida Statutes, are repealed October 1, 1992, and shall be reviewed by the Legislature prior to that date.

Section 183. Notwithstanding the provisions of section 11.61, Florida Statutes, the Regulatory Sunset Act, or of section 2 of chapter 81-318, section 1 of chapter 82-46, section 46 of chapter 82-214, section 51 of chapter 84-216, or section 58 of chapter 85-82, Laws of Florida, sections 657.001, 657.002, 657.003, 657.004, 657.005, 657.008, 657.021, 657.022, 657.023, 657.024, 657.026, 657.027, 657.028, 657.029, 657.031, 657.032, 657.033, 657.0335, 657.034, 657.035, 657.036, 657.037, 657.038, 657.039, 657.041, 657.042, 657.043, 657.051, 657.053, 657.055, 657.062, 657.063, 657.064, 657.065, 657.066, 657.068, 657.25, 657.251, 657.252, 657.253, 657.254, 657.256, 657.257, 657.258, 657.259, 657.260, 657.261, 657.262, 657.263, 657.264, 657.265, 657.266, 657.267, and 657.268, Florida Statutes, shall not stand repealed or expire October 1, 1991, as scheduled by such laws, but those sections, as amended by this act, are revived and readopted.

Section 184. (1) Sections 657.001, 657.002, 657.003, 657.004, 657.005, 657.0061, 657.008, 657.021, 657.022, 657.023, 657.024, 657.026, 657.0265, 657.027, 657.028, 657.029, 657.031, 657.0315, 657.032, 657.033, 657.0335, 657.034, 657.035, 657.036, 657.037, 657.038, 657.039, 657.041, 657.042, 657.043, 657.051, 657.053, 657.055, 657.062, 657.063, 657.064, 657.065, 657.066, and 657.068, Florida Statutes, are repealed October 1, 1992, and shall be reviewed by the Legislature prior to that date.

(2) Sections 657.25, 657.251, 657.252, 657.253, 657.254, 657.256, 657.257, 657.258, 657.259, 657.260, 657.261, 657.262, 657.263, 657.264, 657.265, 657.266, 657.267, 657.268, and 657.269, Florida Statutes, are repealed October 1, 1992, and shall be reviewed by the Legislature prior to that date.

Section 185. (1) Sections 658.1101, 658.13, 658.14, 658.15, 658.46, 658.47, 658.54, 658.55, 658.56, 658.57, 658.58, 658.59, 658.61, 658.62, 658.63, 658.64, 658.66, 658.69, 658.70, 658.71, 658.72, 658.74, 658.75, 658.76, 658.77, 658.78, 658.85, 658.86, 658.87, 658.88, 658.89, 658.91, 658.92, 658.93, 658.97, 658.98, and 658.99, Florida Statutes, are repealed.

(2) Notwithstanding the provisions of section 11.61, Florida Statutes, the Regulatory Sunset Act, or of section 2 of chapter 81-318, section 2 of chapter 82-194, section 46 of chapter 82-214, section 4 of chapter 84-42, section 51 of chapter 84-216, section 58 of chapter 85-82, or section 2 of chapter 90-41, Laws of Florida, sections 658.12, 658.16, 658.19, 658.20, 658.21, 658.22, 658.23, 658.235, 658.24, 658.25, 658.26, 658.27, 658.28, 658.29, 658.295, 658.30, 658.32, 658.33, 658.34, 658.35, 658.36, 658.37, 658.38, 658.39, 658.40, 658.41, 658.42, 658.43, 658.44, 658.45, 658.48, 658.49, 658.491, 658.50, 658.51, 658.53, 658.60, 658.65, 658.67, 658.68, 658.73, 658.79, 658.80, 658.81, 658.82, 658.83, 658.84, 658.90, 658.94, 658.95, and 658.96, Florida Statutes, shall not stand repealed or expire October 1, 1991, as scheduled by such laws, but those sections, as amended by this act, are revived and readopted.

Section 186. Sections 658.12, 658.16, 658.165, 658.19, 658.20, 658.21, 658.22, 658.23, 658.235, 658.24, 658.25, 658.26, 658.27, 658.28, 658.29, 658.295, 658.296, 658.30, 658.32, 658.33, 658.34, 658.35, 658.36, 658.37, 658.38, 658.39, 658.40, 658.41, 658.42, 658.43, 658.44, 658.45, 658.48, 658.49, 658.491, 658.50, 658.51, 658.53, 658.60, 658.65, 658.67, 658.68, 658.73, 658.79, 658.80, 658.81, 658.82, 658.83, 658.84, 658.90, 658.94, 658.95, and 658.96, Florida Statutes, are repealed October 1, 1992, and shall be reviewed by the Legislature prior to that date.

Section 187. (1) Section 660.32, Florida Statutes, is repealed.

(2) Notwithstanding the provisions of section 11.61, Florida Statutes, the Regulatory Sunset Act, or of section 2 of chapter 81-318 or section 51 of chapter 84-216, Laws of Florida, sections 660.25, 660.26, 660.27, 660.28, 660.29, 660.30, 660.31, 660.33, 660.34, 660.35, 660.36, 660.37, 660.38, 660.39, 660.40, 660.41, 660.42, 660.43, 660.44, 660.45, 660.46, 660.47, and 660.48, Florida Statutes, shall not stand repealed or expire October 1, 1991, as scheduled by such laws, but those sections, as amended by this act, are revived and readopted.

Section 188. Sections 660.25, 660.26, 660.265, 660.27, 660.28, 660.29, 660.30, 660.31, 660.33, 660.34, 660.35, 660.36, 660.37, 660.38, 660.39, 660.40, 660.41, 660.415, 660.42, 660.43, 660.44, 660.45, 660.46, 660.47, and 660.48, Florida Statutes, are repealed October 1, 1992, and shall be reviewed by the Legislature prior to that date.

Section 189. Sections 661.45, 661.46, 661.47, 661.48, 661.49, 661.50, 661.51, 661.52, 661.53, 661.54, and 661.55, Florida Statutes, are repealed.

Section 190. Sections 662.01, 662.02, 662.03, 662.04, 662.05, 662.06, 662.07, and 662.08, Florida Statutes, are repealed.

Section 191. Notwithstanding the provisions of section 11.61, Florida Statutes, the Regulatory Sunset Act, or of section 2 of chapter 81-318, section 46 of chapter 82-214, section 51 of chapter 84-216, section 58 of chapter 85-82, section 5 of chapter 86-82, or section 1 of chapter 90-192, Laws of Florida, sections 663.01, 663.02, 663.03, 663.04, 663.05, 663.06, 663.07, 663.08, 663.09, 663.10, 663.11, 663.12, 663.13, 663.14, 663.301, 663.302, 663.303, 663.304, 663.305, 663.306, 663.307, 663.308, 663.309, 663.310, 663.311, 663.312, 663.313, 663.314, 663.315, 663.316, 663.317, 663.318, and 663.319, Florida Statutes, shall not stand repealed or expire October 1, 1991, as scheduled by such laws, but those sections, as amended by this act, are revived and readopted.

Section 192. Sections 663.01, 663.02, 663.03, 663.04, 663.05, 663.055, 663.06, 663.061, 663.062, 663.063, 663.064, 663.065, 663.066, 663.07, 663.08, 663.083, 663.09, 663.10, 663.11, 663.12, 663.13, 663.14, 663.301, 663.302, 663.303, 663.304, 663.305, 663.306, 663.307, 663.308, 663.309, 663.310, 663.311, 663.312, 663.313, 663.314, 663.315, 663.316, 663.317, 663.318, and 663.319, Florida Statutes, are repealed October 1, 1992, and shall be reviewed by the Legislature prior to that date.

Section 193. Sections 664.01, 664.02, 664.03, 664.045, 664.05, 664.06, 664.07, 664.08, 664.09, 664.10, 664.11, and 664.12, Florida Statutes, are repealed.

Section 194. (1) Sections 665.011, 665.0201, 665.022, 665.023, 665.024, 665.025, 665.027, 665.028, 665.0301, 665.0311, 665.0335, 665.038, 665.0401, 665.044, 665.045, 665.047, 665.048, 665.0601, 665.0611, 665.062, 665.063, 665.064, 665.065, 665.066, 665.067, 665.068, 665.069, 665.0701, 665.0731, 665.076, 665.077, 665,0801, 665.082, 665.083, 665.093, 665.096, 665.097, 665.099, 665.1021, 665.103, and 665.104, Florida Statutes, as amended by sections 10 and 11 of chapter 90-51, sections 185, 186, and 187 of chapter 90-179, and section 6 of chapter 90-197, Laws of Florida, are repealed.

(2) Notwithstanding the provisions of section 11.61, Florida Statutes, the Regulating Sunset Act, or of section 2 of chapter 81-318, section 46 of chapter 82-214, section 51 of chapter 84-216, section 58 of chapter 85-82, or section 7 of chapter 86-58, Laws of Florida, sections 665.012, 665.0211, 665.0315, 665.033, 665.034, 665.0345, 665.0501, 665.0711, 665.074, 665.075, 665.1001, 665.1011, and 665.102, Florida Statutes, shall not stand repealed or expire October 1, 1991, as scheduled by such laws, but those sections, as amended by this act, are revived and readopted.

Section 195. Sections 665.012, 665.013, 665.0211, 665.0315, 665.033, 665.034, 665.0345, 665.0501, 665.0711, 665.074, 665.075, 665.1001, 665.1011, and 665.102, Florida Statutes, are repealed October 1, 1992, and shall be reviewed by the Legislature prior to that date.

Section 196. Sections 1, 2, 3, 4, 5, 6, and 7 of chapter 90-110, Laws of Florida, and subsection (7) of section 216.023, Florida Statutes, as amended by section 8 of chapter 90-110, Laws of Florida, are repealed.

Section 197. Section 154.238, Florida Statutes, is amended to read:

154.238 Authorization to deal with *financial institution* ~~bank~~ which employs a member of the authority.—Notwithstanding any general or special law, rule, regulation, or ordinance to the contrary, including ss. 112.311-112.326, an authority may sell its bonds to a *financial institution* ~~bank~~, as defined in *s. 655.005* ~~s. 662.02(1)~~, which employs a member of the authority as an officer, director, or employee and may appoint a *financial institution* ~~bank~~ to serve as trustee or cotrustee under a trust indenture relating to bonds issued under this part, notwithstanding the fact that an officer, director, or employee of the *financial institution* ~~bank~~ which is interested in purchasing or serving as trustee or cotrustee for a proposed or outstanding bond issue shall vote on any matter related to such bond issue after the interest of the *financial institution* ~~bank~~ in such bond issue becomes known to him.

Section 198. Section 159.414, Florida Statutes, is amended to read:

159.414 Authority to deal with *financial institution* ~~bank~~ which employs a board member.—Notwithstanding any general or special law, rule, regulation, or ordinance to the contrary, including ss. 112.311-112.326, a board may sell its bonds to a *financial institution* ~~bank~~, as defined in *s. 655.005* ~~s. 662.02(1)~~, which employs a member of the board as an officer, director, or employee and may appoint a *financial institution* ~~bank~~ to serve as trustee or cotrustee under a trust indenture relating to bonds issued under this part, notwithstanding the fact that an officer, director, or employee of the *financial institution* ~~bank~~ is a member of the board. However, no member of the board who is an officer, director, or employee of a *financial institution* ~~bank~~ which is interested in purchasing or serving as trustee or cotrustee for a proposed or outstanding bond issue shall vote on any matter related to such bond issue after the interest of the *financial institution* ~~bank~~ in such bond issue becomes known to him.

Section 199. Section 159.494, Florida Statutes, is amended to read:

159.494 Authority to deal with *financial institution* ~~bank~~ which employs a member of the authority.—Notwithstanding any general or special law, rule, regulation, or ordinance to the contrary, including ss. 112.311-112.326, an authority may sell its bonds to a *financial institution* ~~bank~~, as defined in *s. 655.005* ~~s. 662.02(1)~~, which employs a member of the authority as an officer, director, or employee and may appoint a *financial institution* ~~bank~~ to serve as trustee or cotrustee under a trust indenture relating to bonds issued under this part, notwithstanding the fact that an officer, director, or employee of the *financial institution* ~~bank~~ is a member of the authority. However, no member of the authority who is an officer, director, or employee of a *financial institution* ~~bank~~ which is interested in purchasing or serving as trustee or cotrustee for a proposed or outstanding bond issue shall vote on any matter related to such bond issue after the interest of the *financial institution* ~~bank~~ in such bond issue becomes known to him.

Section 200. Section 240.488, Florida Statutes, is amended to read:

240.488 Investment of funds of authority.—Except as otherwise provided in s. 240.487(3), an authority may invest any funds in:

(1) Direct obligations of the United States of America;

(2) Obligations as to which the timely payment of principal and interest is fully guaranteed by the United States of America;

(3) Obligations of the Federal Intermediate Credit Banks, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Federal National Mortgage Association, Government National Mortgage Association, and Student Loan Marketing Association;

(4) Certificates of deposit or time deposits constituting direct obligations of any *financial institution* ~~bank~~ as defined by the *financial institutions codes* ~~Florida Banking Code~~, as now or hereafter amended, except that investments may be made only in those certificates of deposit or time deposits in *financial institutions* ~~banks~~ which are insured by the *appropriate federal regulatory agency as defined in s. 655.005* ~~Federal Deposit Insurance Corporation, if then in existence~~; and

(5) Withdrawable capital accounts or deposits of state or federally chartered savings and loan associations which are insured by the Federal Savings and Loan Insurance Corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date prior to the time when, in the judgment of the authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time when any funds will be required for expenditure or be redeemable is final and conclusive.

Section 201. Subsection (1) of section 288.753, Florida Statutes, is amended to read:

288.753 Periodic examinations; reports.—

(1) The corporation shall be examined at least once every 18 months by the Department of Banking and Finance or a certified public accountant agreed upon by the corporation and the department. The corporation shall make reports of its condition not less than annually to the department and more frequently upon call of the department, which in turn shall make copies of such reports available to the Governor, the Department of Commerce, and the Comptroller. The corporation shall also furnish such other information as may from time to time be required by the Department of Banking and Finance, the Department of Revenue, the Department of State, and the Department of Insurance. The corporation shall pay the actual cost of said examinations. The Department of Banking and Finance shall exercise the same power and authority over corporations organized under this part as is ~~now~~ exercised over *financial institutions* ~~banks and trust companies~~ by the provisions of the *financial institutions codes, when* ~~Florida Banking Code, where~~ such *codes are* ~~banking code is~~ not in conflict with this part.

Section 202. Section 289.121, Florida Statutes, is amended to read:

289.121 Periodic examinations; reports.—The corporation shall be examined at least once annually by the Department of Banking and Finance and shall make reports of its condition not less than annually to said department and more frequently upon call of the department, which in turn shall make copies of such reports available to the Department of Insurance and the Governor; and the corporation shall also furnish such other information as may from time to time be required by the Department of Banking and Finance and Department of State. The corporation shall pay the actual cost of said examinations. The Department of Banking and Finance shall exercise the same power and authority over corporations organized under this act as is ~~now~~ exercised over *financial institutions under* ~~banks and trust companies by~~ the provisions of the *financial institutions codes, when* ~~Florida Banking Code, where~~ such *codes are* ~~banking code is~~ not in conflict with this act.

Section 203. Subsection (2) of section 420.141, Florida Statutes, is amended to read:

420.141 Housing Development Corporation of Florida; deposits and examination.—

(2) The corporation shall be examined at least once annually by the Department of Banking and Finance and shall make reports of its condition not less than annually to said department, and more frequently upon call of the department, which in turn shall make copies of such reports available to the Department of Insurance and the Governor; and the corporation shall also furnish such other information as may from time to time be required by the Department of Banking and Finance and the Department of State. The Department of Banking and Finance shall exercise the same power and authority over the corporation organized pursuant to this part as is ~~now~~ exercised over *financial institutions under* ~~banks and trust companies by~~ the provisions of the *financial institutions codes* ~~Florida Banking Code~~, when such *codes are* ~~banking code is~~ not in conflict with this chapter.

Section 204. Paragraph (c) of subsection (1) of section 538.03, Florida Statutes, 1990 Supplement, is amended to read:

538.03 Definitions; applicability.—

(1) As used in this part, the term:

(c) "Pawnbroker" means a secondhand dealer who is regularly engaged in the business of making pawns but does not include a financial institution as defined in *s. 655.005* ~~s. 655.081~~ or any person who regularly loans money or any other thing of value on stocks, bonds, or other securities.

Section 205. Paragraph (b) of subsection (1) of section 560.201, Florida Statutes, is amended to read:

560.201 Record of sale of money order of $700 or more required.—

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

(b) "Deposit account" means *an account in a financial institution on which the account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders or withdrawals, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order or withdrawal draft accounts, savings deposits subject to automatic transfer, share draft accounts, and all savings deposits and share accounts other than time deposits* ~~a deposit account as defined in s. 655.081(1)(b)~~.

Section 206. Subsection (2) of section 607.0501, Florida Statutes, 1990 Supplement, is amended to read:

607.0501 Registered office and registered agent.—

(2) This section does not apply to corporations which are required by law to designate the Insurance Commissioner and Treasurer as their attorney for the service of process, ~~savings~~ associations ~~or savings and loan associations~~ subject to the provisions of chapter 665, *and* banks and trust companies subject to the provisions of the *financial institutions codes* ~~Florida Banking Code, savings banks, and industrial savings banks~~.

Section 207. Subsection (2) of section 627.826, Florida Statutes, is amended to read:

627.826 "Premium finance company" defined.—

(2) Credit unions, banks, savings and loan associations, and other lending institutions as defined under chapters 516, 657, 658, ~~664,~~ and 665 or their federally chartered counterparts are exempt from the provisions of this part.

Section 208. Paragraph (j) of subsection (2) of section 671.304, Florida Statutes, 1990 Supplement, is amended to read:

671.304 Laws not repealed; precedence where code provisions in conflict with other laws; certain statutory remedies retained.—

(2) The following laws and parts of laws are specifically not repealed and shall take precedence over any provisions of this code which may be inconsistent or in conflict therewith:

(j) Chapters 658, 660, ~~661, 662,~~ and 663~~—Florida Banking Code~~.

Section 209. Subsection (1) of section 687.12, Florida Statutes, is amended to read:

687.12 Interest rates; parity among licensed lenders or creditors.—

(1) Any lender or creditor licensed or chartered under the provisions of chapter 516, chapter 520, chapter 657, chapter 658 or former chapter 659, *former* chapter 664 or former chapter 656, chapter 665, or part XV of chapter 627; any lender or creditor located in the State of Florida and licensed or chartered under the laws of the United States and authorized to conduct a lending business; or any lender or creditor lending through a licensee under chapter 494, shall be authorized to charge interest on loans or extensions of credit to any person as defined in s. 1.01(3), or to any firm or corporation, at the maximum rate of interest permitted by law to be charged on similar loans or extensions of credit made by any lender or creditor in the State of Florida, except that the statutes governing the maximum permissible interest rate on any loan or extension of credit, and other statutory restrictions relating thereto, shall also govern the amount, term, permissible charges, rebate requirements, and restrictions for a similar loan or extension of credit made by any lender or creditor.

Section 210. Paragraph (f) of subsection (1) of section 896.101, Florida Statutes, 1990 Supplement, is amended to read:

896.101 Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.—

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

(f) "Financial institution" means an institution regulated under *chapter 655,* chapter 657, chapter 658, chapter 660, ~~chapter 661, chapter 662,~~ chapter 663, ~~chapter 664,~~ or chapter 665.

Section 211. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 212. This act shall take effect July 1, 1991.

Amendment 4—In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to financial institutions; amending s. 655.001, F.S.; expanding the scope of the section to specify the purposes and application of the financial institutions codes rather than of ch. 655, F.S.; amending s. 655.005, F.S.; altering and adding definitions applicable to ch. 655, F.S.; amending s. 655.012, F.S., relating to general supervisory powers of the Department of Banking and Finance, to conform; creating s. 655.013, F.S.; providing for the act's effect on existing financial institutions; creating s. 655.015, F.S.; providing for construction of the act and standards to be observed by the department; transferring, renumbering, and amending s. 655.021, F.S., relating to administrative enforcement guidelines; transferring, renumbering, and amending s. 655.025, F.S., concerning department investigations, subpoenas, hearings, and witnesses; transferring, renumbering, and amending s. 655.029, F.S.; requiring hearings and proceedings to be public except under certain circumstances; creating s. 655.0322, F.S.; prescribing prohibited acts and practices; providing criminal penalties; amending s. 655.033, F.S.; revising the grounds upon which and the parties against which the department may issue a cease and desist order; amending s. 655.034, F.S., relating to injunctions; inserting the term "members" to conform; amending s. 655.037, F.S., relating to removal of officers, directors, and others by the department; revising the list of persons that may be so removed and revising the grounds upon which such persons may be removed; revising the procedure therefor; creating s. 655.0385, F.S.; providing for the disapproval of directors and executive officers of a financial institution by the department; creating s. 655.0386, F.S.; restricting conduct of and transactions by financial institution-affiliated parties; creating s. 655.0391, F.S.; providing for retention of supervision of financial institutions by the department; creating s. 655.0392, F.S.; allowing a financial institution to rent space from a governmental entity under certain circumstances; authorizing a governmental entity to rent such space at a certain rate; deleting provisions for disposition of fines; amending s. 655.041, F.S.; expanding the department's authority to impose administrative fines; amending s. 655.044, F.S.; revising recordkeeping requirements; providing for recovery of certain costs; amending s. 655.045, F.S.; revising the examination authority of the department; amending s. 655.047, F.S.; clarifying the application period of assessments; allowing proration of assessments but prohibiting refunds of portions of assessments; deleting provisions for disposition of assessments; amending s. 655.049, F.S.; clarifying the types of fees that are required to be deposited into the Financial Institutions' Regulatory Trust Fund; amending s. 655.053, F.S.; revising the annual report requirements; amending s. 655.057, F.S.; revising the restrictions on public access to certain records; amending s. 655.059, F.S.; providing certain law enforcement agencies access to a financial institution's books and records; amending s. 655.061, F.S., relating to competitive equality with federally organized or chartered financial institutions; providing for the section to take precedence over other state statutes; amending s. 655.41, F.S., relating to cross-industry conversions, mergers, consolidations, and acquisitions; replacing the term "financial institution" with the term "financial entity" with reference thereto; amending s. 655.411, F.S.; revising conversion-of-charter requirements; amending s. 655.412, F.S.; revising merger and consolidation requirements; amending s. 655.414, F.S.; revising the conditions and limitations upon which a financial entity may acquire all or substantially all the assets or liabilities of another financial entity; amending s. 655.416, F.S.; providing for the valuation of assets after an acquisition; amending s. 655.417, F.S.; conforming provisions relating to the effect of merger, consolidation, conversion, or acquisition; amending s. 655.418, F.S.; conforming provisions relating to cessation of nonconforming activities; amending s. 655.419, F.S.; clarifying the applicability of provisions for merger, consolidation, conversion, or acquisition of assets; amending s. 655.50, F.S.; revising the provisions of, and the penalties for violation of, the Florida Control of Money Laundering in Financial Institutions Act; providing for confidentiality of reports and records thereunder; extending the act's penalties to cover violations of ch. 896, F.S., or similar state or federal statutes; amending s. 655.51, F.S.; allowing state and federal regulatory agencies access to certain employment information; amending s. 655.55, F.S., relating to the law applicable to deposits in and contracts related to extensions of credit by financial institutions; replac-

ing the term "financial institution" with the term "deposit or lending institution" and defining that term; creating s. 655.56, F.S.; providing for the collection of fines, interest, or premiums on loans made by financial institutions; creating s. 655.60, F.S.; providing for appraisals of financial institutions, subsidiaries, or service corporations by the department; creating s. 655.762, F.S.; regulating the sale of assets by a financial institution; creating s. 655.769, F.S.; providing definitions related to deposits in deposit or lending institutions; creating s. 655.77, F.S.; providing for deposits by minors; creating s. 655.78, F.S.; providing for deposit accounts in two or more names; creating s. 655.79, F.S.; establishing a presumption as to vesting on death when deposits and accounts are in two or more names; creating s. 655.80, F.S.; defining and establishing requirements for convenience accounts; creating s. 655.81, F.S.; providing for deposits in trust; creating s. 655.83, F.S.; providing for adverse claims to deposit or fiduciary accounts; creating s. 655.84, F.S.; establishing a presumption as to correctness concerning statements of account; creating s. 655.85, F.S.; providing for settlement of checks; creating s. 655.86, F.S.; regulating the issuance of postdated checks; creating s. 655.89, F.S.; defining "legal holidays," "business days," and "transactions"; creating s. 655.90, F.S.; providing for the closing of deposit or lending institutions during emergencies and other special days; creating s. 655.91, F.S.; providing recordkeeping requirements for such institutions; creating s. 655.921, F.S.; providing for transaction of business by out-of-state financial institutions; creating s. 655.922, F.S.; prohibiting banking by unauthorized persons; providing penalties; creating s. 655.93, F.S.; providing definitions related to the leasing of safe-deposit boxes; creating s. 655.931, F.S.; authorizing financial institutions to engage in the safe-deposit business; creating s. 655.932, F.S.; authorizing the leasing of a safe-deposit box to a minor; creating s. 655.933, F.S.; providing for access to safe-deposit boxes by fiduciaries; creating s. 655.934, F.S.; specifying the effect of the death or incapacity of the lessee of a safe-deposit box; creating s. 655.935, F.S.; establishing safe-deposit search procedures on the death of the lessee; creating s. 655.936, F.S.; providing for the delivery of safe-deposit box contents or other property to a personal representative; creating s. 655.937, F.S.; providing for access to a safe-deposit box leased in two or more names; creating s. 655.938, F.S.; providing for adverse claims to the contents of a safe-deposit box; creating s. 655.939, F.S.; limiting the right of access to a safe-deposit box for failure to comply with security procedures; creating s. 655.94, F.S.; providing special remedies for the nonpayment of rent for a safe-deposit box; amending s. 657.002, F.S.; providing definitions; amending s. 657.004, F.S.; providing technical changes to cross-references; amending s. 657.005, F.S.; providing credit union organizational procedures and forms; creating s. 657.0061, F.S.; requiring the submission of bylaw amendments to the Department of Banking and Finance; amending s. 657.008, F.S.; authorizing armored car services and deleting the requirement that all records be kept at the principal place of business as described within the bylaws; amending s. 657.021, F.S.; defining the duties and powers of the board of directors; amending s. 657.023, F.S.; clarifying certain language; amending s. 657.026, F.S.; authorizing audit committees and defining the duties and responsibilities of these committees; amending s. 657.0265, F.S.; prescribing the liability of audit committee members; amending s. 657.027, F.S.; clarifying certain language; amending s. 657.028, F.S.; prohibiting certain persons from serving as an officer, director, or committee member; amending s. 657.031, F.S.; clarifying language and deleting language requiring notice to the department concerning certain authorized activities; creating s. 657.0315, F.S.; prohibiting credit unions from entering into certain contracts; limiting the enforceability of these contracts; amending s. 657.033, F.S.; clarifying the definition of dormant accounts; amending s. 657.038, F.S.; deleting reference to a 18-percent usury cap and defining the term "related interest"; amending s. 657.039, F.S.; prescribing conditions for credit union loans to its directors, officers, and employees; defining the term "related interests"; amending s. 657.042, F.S.; increasing the allowable percentage of certain types of investments and clarifying the authority to invest in mutual funds; amending s. 657.043, F.S.; replacing the term "gross earnings" with the term "all income for the period"; modifying the definition of "risk assets" and increasing the amount of reserve amounts; amending s. 657.053, F.S.; revising the amounts of the semiannual assessments collected from credit unions; amending s. 657.055, F.S.; mandating the type and length of time certain records must be maintained; amending s. 657.062, F.S.; providing procedures for assumption of control of an insolvent credit union; amending s. 657.063, F.S.; authorizing the department to appoint a liquidator; limiting the enforceability of certain contracts; modifying procedures for involuntary liquidation; amending s. 657.064, F.S.; altering the procedures for undertaking a voluntary liquidation; amending s. 657.065, F.S.; prescribing voting requirements and procedures of a credit union merger; amending s. 657.068, F.S.; removing certain limitations on membership in a central credit union; providing for the conversion to federal share insurance through the National Credit Union Administration or the liquidation or merger of all member credit unions and the dissolution of the Florida Credit Union Guaranty Corporation; amending s. 657.251, F.S.; providing a purpose; amending s. 657.253, F.S.; defining member credit union; amending s. 657.257, F.S.; providing for the conversion of member credit unions to federal share insurance and deleting certain procedural requirements for such conversion; amending s. 657.258, F.S.; providing standards in pledging or advancing funds or entering into agreements with the National Credit Union Administration or providing assistance to member credit unions to qualify for federal share insurance; providing for a determination date for liquidating distributions; amending s. 657.259, F.S.; providing that the plan of operation provide for dissolution of the corporation; amending s. 657.260, F.S.; providing authority to the department to require the corporation to take any required action; amending s. 657.262, F.S.; permitting the department to charge the corporation the actual cost of examination of certain member credit unions when examination is requested; amending s. 657.263, F.S.; permitting the department to charge the corporation the actual cost of its annual examination; providing for disposition of the records of the corporation; creating s. 657.269, F.S.; providing for the orderly dissolution of the Florida Credit Union Guaranty Corporation; providing for retroactive application; amending s. 658.12, F.S.; providing definitions; amending s. 658.165, F.S.; correcting a cross-reference and inserting the term "financial institutions codes"; amending s. 658.20, F.S.; providing for prior approval of certain directors and executive officers of a failing bank or trust company; providing a filing fee for approval; amending s. 658.21, F.S.; altering the approval criteria of an application; amending s. 658.22, F.S.; requiring orders approving applications to organize a state bank be sent to the "Federal Home Loan Bank of Atlanta"; amending s. 658.23, F.S.; requiring prior Department of Banking and Finance authorization for a change in the articles of incorporation; amending ss. 658.24, 658.25, F.S.; substituting the term "bank" for "banking corporation"; amending s. 658.26, F.S.; altering the locations where banks and trust companies may transact business; amending s. 658.27, F.S.; altering the definition of control over a bank or trust company; amending s. 658.28, F.S.; providing an exception to the requirement that the department be given prior notice of any acquisition of voting securities; amending s. 658.29, F.S.; altering certain prohibitions concerning ownership and control of a bank or trust company; amending s. 658.30, F.S.; incorporating changes concerning the application of the Florida Business Corporation Act; amending s. 658.32, F.S.; allowing the department to approve an annual meeting date which is not within the first 4 months of a given year; amending s. 658.33, F.S.; inserting the term "financial institutions codes"; requiring director's oath of office to be filed within 30 days of election; amending s. 658.34, F.S.; requiring shares of common stock to be issued with a minimum par value and to be paid for in cash; amending s. 658.36, F.S.; requiring department approval for banks and trust companies to reduce outstanding common stock; amending s. 658.37, F.S.; clarifying that a stock split does not constitute a dividend; amending s. 658.38, F.S.; clarifying that a state bank must have and maintain Federal Deposit Insurance; amending s. 658.39, F.S.; restricting the right of stockholders to examine certain records; amending s. 658.40, F.S.; deleting the term "conversion"; amending s. 658.42, F.S.; providing a technical clarification; amending s. 658.43, F.S.; modifying the department's authority to issue emergency rules concerning a failing institution; amending s. 658.44, F.S., relating to approval by stockholders; revising cross-references; amending s. 658.45, F.S.; providing a technical clarification; amending s. 658.48, F.S.; altering the loan and credit authority of a state bank; amending s. 658.50, F.S., relating to loans or extensions of credit; removing interest rate limitations on credit cards or overdraft financing arrangements; improving clarity; amending s. 658.53, F.S.; altering limits of indebtedness; amending s. 658.60, F.S.; deleting the term "reserves"; amending s. 658.65, F.S.; altering the provisions related to remote financial service units; amending s. 658.67, F.S.; altering the investment powers of a bank and trust company; amending s. 658.68, F.S.; altering the liquidity requirements of a state bank; amending s. 658.73, F.S.; increasing examination fees and assessments; amending s. 658.79, F.S.; allowing the department to take possession of an imminently insolvent state bank or trust company; deleting the conditions for determining insolvency; amending ss. 658.80, 658.82, 658.83, F.S.; providing a technical clarification; amending s. 658.84, F.S.; prohibiting the enforcement of certain judicial actions; amending s. 660.25, F.S.; redefining the term "commercial department"; providing for the use of terms defined in other chapters of the Florida Statutes; creating s. 660.265, F.S.; requiring certain financial institutions to pay the costs of examination by the Department of Banking and Finance; amending s. 660.27, F.S.; deleting

references to state mutual associations with respect to deposits of securities with the Treasurer; clarifying the term "bank" to include state banks and national banks; amending s. 660.33, F.S.; prescribing when an association is "affiliated" or a "successor"; correcting a cross-reference; amending s. 660.37, F.S.; deleting references to the Federal Savings and Loan Insurance Corporation; permitting the deposit of fiduciary funds in amounts exceeding insurance in specified circumstances; amending s. 660.41, F.S.; revising powers of corporations other than banks, associations, and trust companies with respect to fiduciary functions; amending s. 660.44, F.S.; authorizing a bank, association, or trust company to charge reasonable management expenses for managing common trust funds; amending s. 663.01, F.S.; providing definitions; amending s. 663.02, F.S.; expanding the applicability of domestic bank powers to international banking corporations; deleting reference to a clarification concerning branching authority of bank holding companies located outside the state; amending s. 663.03, F.S.; providing that ch. 607, F.S., regulating corporations applies to international banking corporations unless it conflicts with the banking code; amending s. 663.04, F.S.; prescribing conditions under which a license may be issued to an international banking corporation to operate an international bank agency or an international branch; deleting application fee; amending s. 663.05, F.S.; modifying the application requirements for an international banking corporation to maintain an office in this state; creating s. 663.055, F.S.; prescribing certain capital requirements as a condition of licensing; providing alternative requirements for licensing; amending s. 663.06, F.S.; expanding the permissible activities of an international banking corporation and allowing the department to prescribe by rule the procedures for surrendering a license; creating s. 663.061, F.S.; defining the permissible activities of international bank agencies; creating s. 663.062, F.S.; defining the permissible activities of an international representative office; amending s. 663.063, F.S.; altering the purposes and powers of an international administrative office; creating s. 663.064, F.S.; defining the permissible activities of an international branch; creating s. 663.065, F.S.; defining the permissible activities of a state investment company; creating s. 663.066, F.S.; authorizing, under certain conditions, the acquisition of state banks by international banking corporations; amending s. 663.07, F.S.; modifying the asset maintenance requirements of an international bank agency and international branch; amending s. 663.083, F.S.; adding the term "international branch" and deleting language allowing capital debentures and notes to be treated as capital in computing capital limitations; amending s. 663.09, F.S.; providing for the consolidation of reports under certain circumstances; requiring loan documentation to be in the English language; amending s. 663.10, F.S.; modifying the provisions related to license conversion; amending s. 663.11, F.S.; replacing the term "international bank agency" with the term "office"; amending s. 663.12, F.S.; providing for filing fees, semiannual assessments, and examination fees; amending s. 663.13, F.S., relating to rulemaking respecting international banking corporations; conforming a cross-reference; amending s. 663.302, F.S., relating to the applicability of state banking laws to international development banks, to conform cross-references in that section to renumbering by this act; amending s. 663.309, F.S., relating to prohibited activities; deleting an obsolete cross-reference; amending s. 663.319, F.S., relating to rulemaking respecting regional development banks; conforming a cross-reference; amending s. 665.012, F.S.; altering and deleting certain definitions; creating s. 665.013, F.S.; outlining the applicability of ch. 658, F.S., to ch. 665, F.S.; amending s. 665.0211, F.S.; deleting exclusiveness-of-name provisions; amending s. 665.0315, F.S,; correcting a cross-reference and incorporating a nonrefundable filing fee; amending s. 665.033, F.S.; inserting reference to the financial institutions codes and permitting denial of an application due to the existence of a state-imposed order; increasing the fee for converting from a federal mutual to a state capital stock association and authorizing examination fees for conversions; revising a cross-reference; amending s. 665.034, F.S.; changing certain requirements concerning acquisition of assets of, or control over, an association; amending s. 665.0501, F.S.; altering the general powers of an association organized under ch. 665, F.S.; amending s. 665.0711, F.S.; limiting the association's power to invest in loans; amending s. 665.074, F.S.; deleting the requirement that a settlement statement be furnished to each borrower; amending s. 665.1001, F.S.; clarifying the definition of a "foreign association"; deleting reference to the term "savings"; deleting a requirement relating to references to insurance or guaranty of accounts in advertising, solicitations, or representations; amending s. 665.1011, F.S.; deleting the term "savings and loan"; amending s. 665.102, F.S.; inserting the term, "financial institutions codes"; repealing s. 655.081, F.S., relating to disclosure of practices with respect to availability of funds; repealing s. 655.413, F.S., relating to acquisition of stock by a financial institution in another financial institution; reviving and readopting ss. 655.001, 655.005, 655.012, 655.016, 655.021, 655.025, 655.029, 655.033, 655.034, 655.037, 655.041, 655.043, 655.044, 655.045, 655.049, 655.053, 655.057, 655.059, 655.061, 655.071, 655.41, 655.411, 655.412, 655.414, 655.416, 655.417, 655.418, 655.419, 655.50, 655.51, and 655.55, F.S., as renumbered and amended by this act, notwithstanding their scheduled termination October 1, 1991, pursuant to the Regulatory Sunset Act and other laws; terminating ss. 655.001-655.94, F.S., effective October 1, 1992, and providing for legislative review of such sections before that date; repealing ch. 88-113, Laws of Florida, relating to a contingent amendment to s. 655.061, F.S.; reviving and readopting ss. 657.001, 657.002, 657.003, 657.004, 657.005, 657.008, 657.021, 657.022, 657.023, 657.024, 657.026, 657.027, 657.028, 657.029, 657.031, 657.032, 657.033, 657.0335, 657.034, 657.035, 657.036, 657.037, 657.038, 657.039, 657.041, 657.042, 657.043, 657.051, 657.053, 657.055, 657.062, 657.063, 657.064, 657.065, 657.066, 657.068, 657.25, 657.251, 657.252, 657.253, 657.254, 657.256, 657.257, 657.258, 657.259, 657.260, 657.261, 657.262, 657.263, 657.264, 657.265, 657.266, 657.267, and 657.268, F.S., as amended by this act, notwithstanding their scheduled termination October 1, 1991, pursuant to the Regulatory Sunset Act and other laws; terminating ss. 657.001-657.068, F.S., effective October 1, 1992, and providing for legislative review of such sections before that date; terminating ss. 657.25-657.269, F.S., effective October 1, 1992, and providing for legislative review of such sections before that date; repealing ss. 658.1101, 658.13, 658.14, 658.15, 658.46, 658.47, 658.54, 658.55, 658.56, 658.57, 658.58, 658.59, 658.61, 658.62, 658.63, 658.64, 658.66, 658.69, 658.70, 658.71, 658.72, 658.74, 658.75, 658.76, 658.77, 658.78, 658.85, 658.86, 658.87, 658.88, 658.89, 658.91, 658.92, 658.93, 658.97, 658.98, 658.99, F.S., relating to the regulation of banks and trust companies; reviving and readopting ss. 658.12, 658.16, 658.19, 658.20, 658.21, 658.22, 658.23, 658.235, 658.24, 658.25, 658.26, 658.27, 658.28, 658.29, 658.295, 658.30, 658.32, 658.33, 658.34, 658.35, 658.36, 658.37, 658.38, 658.39, 658.40, 658.41, 658.42, 658.43, 658.44, 658.45, 658.48, 658.49, 658.491, 658.50, 658.51, 658.53, 658.60, 658.65, 658.67, 658.68, 658.73, 658.79, 658.80, 658.81, 658.82, 658.83, 658.84, 658.90, 658.94, 658.95, and 658.96, F.S., notwithstanding their scheduled termination October 1, 1991, pursuant to the Regulatory Sunset Act and other laws; terminating ss. 658.12-658.96, F.S., effective October 1, 1992, and providing for legislative review of such sections before that date; repealing s. 660.32, F.S., relating to the place of transacting trust business and trust company branches; reviving and readopting ss. 660.25, 660.26, 660.27, 660.28, 660.29, 660.30, 660.31, 660.33, 660.34, 660.35, 660.36, 660.37, 660.38, 660.39, 660.40, 660.41, 660.42, 660.43, 660.44, 660.45, 660.46, 660.47, and 660.48, F.S., as amended by this act, notwithstanding their scheduled termination October 1, 1991, pursuant to the Regulatory Sunset Act and other laws; terminating ss. 660.25-660.48, F.S., effective October 1, 1992, and providing for legislative review of such sections before that date; repealing ss. 661.45-661.55, F.S., relating to regulating the safe-deposit business, in accordance with the Regulatory Sunset Act; repealing ss. 662.01-662.08, F.S., relating to bank service corporations, in accordance with the Regulatory Sunset Act; reviving and readopting ss. 663.01, 663.02, 663.03, 663.04, 663.05, 663.06, 663.07, 663.08, 663.09, 663.10, 663.11, 663.12, 663.13, 663.14, 663.301, 663.302, 663.303, 663.304, 663.305, 663.306, 663.307, 663.308, 663.309, 663.310, 663.311, 663.312, 663.313, 663.314, 663.315, 663.316, 663.317, 663.318, and 663.319, F.S., as amended by this act, notwithstanding their scheduled termination October 1, 1991, pursuant to the Regulatory Sunset Act and other laws; terminating ss. 663.01-663.319, F.S., effective October 1, 1992, and providing for legislative review of such sections before that date; repealing ss. 664.01-664.12, F.S.; relating to industrial savings banks, in accordance with the Regulatory Sunset Act; repealing ss. 665.011, 665.0201, 665.022, 665.023, 665.024, 665.025, 665.027, 665.028, 665.0301, 665.0311, 665.0335, 665.038, 665.0401, 665.044, 665.045, 665.047, 665.048, 665.0601, 665.0611, 665.062, 665.063, 665.064, 665.065, 665.066, 665.067, 665.068, 665.069, 665.0701, 665.0731, 665.076, 665.077, 665.0801, 665.082, 665.083, 665.093, 665.096, 665.097, 665.099, 665.1021, 665.103, 665.104, F.S., relating to the regulation of savings associations; reviving and readopting ss. 665.012, 665.0211, 665.0315, 665.033, 665.0335, 665.034, 665.0345, 665.0501, 665.0711, 665.074, 665.075, 665.1001, 665.1011, and 665.102, F.S., as amended by this act, notwithstanding their scheduled termination October 1, 1991, pursuant to the Regulatory Sunset Act and other laws; terminating ss. 665.012-665.102, F.S., effective October 1, 1992, and providing for legislative review of such sections before that date; repealing ss. 1, 2, 3, 4, 5, 6, and 7 of ch. 90-110, Laws of Florida, and subsection (7) of s. 216.023, F.S., relating to certain review functions; amending s. 154.238, F.S., relating to the authority of a health facilities authority to deal with a bank that employs a member of the authority, to conform terminology to that used in this act; amending s. 159.414, F.S., relating to the authority of a board of a local agency, under

the Florida Industrial Development Financing Act, to deal with a bank that employs a board member, to conform terminology to that used in this act; amending s. 159.494, F.S., relating to the authority of an industrial development authority to deal with a bank that employs a member of the authority; amending s. 240.488, F.S., relating to the investment of funds of a county education loan authority, to conform terminology to that used in this act; amending s. 288.753, F.S., relating to examination of the Florida Export Finance Corporation by the Department of Banking and Finance, to conform terminology to that used in this act; amending s. 289.121, F.S., relating to examination of the Florida Industrial Development Corporation, to conform terminology to that used in this act; amending s. 420.141, F.S., relating to examination of the Housing Development Corporation of Florida, to conform terminology to that used in this act; amending s. 538.03, F.S., relating to definitions applicable to secondhand dealers, to conform a cross-reference made obsolete by this act; amending s. 560.201, F.S., relating to the record of sales of money orders, to revise a cross-reference to a provision repealed by this act; amending s. 607.0501, F.S., relating to registered offices and agents of corporations, to conform terminology to that used in this act; amending s. 627.826, F.S., relating to insurance premium finance companies, to delete a cross-reference to a law repealed by this act; amending s. 671.304, F.S., relating to laws not repealed by the enactment of the Uniform Commercial Code, to delete cross-references to laws repealed by this act; amending s. 687.12, F.S., relating to interest rates of licensed lenders and creditors, to revise a cross-reference to a law repealed by this act; amending s. 896.101, F.S., relating to the conduct of financial transactions involving the proceeds of unlawful activity, to revise cross-references to conform with this act; providing an effective date.

HB 2137

Senator McKay moved the following amendment which was adopted:

Amendment 1—On page 4, strike all of lines 25 and 26 and insert: *are hereby extended to the 1992 general election, at which time each shall terminate and the seats shall be filled by election for 2-year terms; these commission seats shall be filled for 4-year terms at the 1994 general election and in gubernatorial election years thereafter. In the event such a previously*

HB 2239

Senator McKay moved the following amendments which were adopted:

Amendment 1—On page 2, lines 1-31, and on page 3, lines 1-3, strike all of said lines and renumber subsequent section.

Amendment 2—In title, on page 1, strike all of lines 6 and 7 and insert: providing an

Amendments 1 and **2** were reconsidered and withdrawn.

HB 2315

Senator McKay moved the following amendment which was adopted:

Amendment 1—In title, on page 1, line 2, after the semicolon (;) insert: consolidating the Oneco-Tallevast Fire Control District and the Samoset Fire Control District into the Southern Manatee Fire and Rescue District and creating a board of commissioners of the new district;

HB 2535

Senator McKay moved the following amendments which were adopted:

Amendment 1—On page 4, lines 18-31, and on page 5, lines 1-20, strike all of said lines and renumber subsequent section.

Amendment 2—In title, on page 1, lines 6-8, strike "providing for nonpartisan election of the district board of commissioners;"

ROLL CALLS ON SENATE BILLS

CS for SB 10

Yeas—39

Madam President	Bruner	Crotty	Dudley
Bankhead	Casas	Dantzler	Forman
Beard	Childers	Davis	Gardner
Brown	Crenshaw	Diaz-Balart	Girardeau
Gordon	Kirkpatrick	Meek	Walker
Grant	Kiser	Myers	Weinstein
Grizzle	Kurth	Plummer	Weinstock
Jenne	Langley	Souto	Wexler
Jennings	Malchon	Thomas	Yancey
Johnson	McKay	Thurman	

Nays—None

CS for SB 46

Yeas—27

Madam President	Davis	Johnson	Myers
Bankhead	Diaz-Balart	Kiser	Souto
Beard	Dudley	Kurth	Thurman
Brown	Forman	Langley	Weinstein
Casas	Girardeau	Malchon	Weinstock
Crotty	Grant	McKay	Wexler
Dantzler	Grizzle	Meek	

Nays—None

Vote after roll call:

Yea—Childers, Jenne, Thomas

CS for SB 74

Yeas—25

Madam President	Dantzler	Johnson	Thurman
Bankhead	Davis	Kurth	Weinstein
Beard	Diaz-Balart	Langley	Weinstock
Brown	Forman	Malchon	Yancey
Casas	Girardeau	McKay	
Childers	Grant	Myers	
Crotty	Grizzle	Souto	

Nays—None

Vote after roll call:

Yea—Jenne, Thomas

CS for SB 156

Yeas—32

Madam President	Dantzler	Jennings	Myers
Bankhead	Davis	Johnson	Plummer
Brown	Diaz-Balart	Kirkpatrick	Scott
Bruner	Forman	Kurth	Thomas
Casas	Gardner	Langley	Thurman
Childers	Girardeau	Malchon	Walker
Crenshaw	Gordon	McKay	Weinstein
Crotty	Grant	Meek	Yancey

Nays—3

Dudley	Grizzle	Weinstock

Vote after roll call:

Yea—Jenne, Souto

CS for SB 464

Yeas—35

Madam President	Dantzler	Grizzle	Myers
Bankhead	Davis	Jennings	Plummer
Beard	Diaz-Balart	Johnson	Scott
Brown	Dudley	Kirkpatrick	Souto
Bruner	Forman	Kiser	Thurman
Casas	Gardner	Kurth	Weinstein
Childers	Girardeau	Malchon	Weinstock
Crenshaw	Gordon	McKay	Yancey
Crotty	Grant	Meek	

Nays—None

Vote after roll call:

Yea—Jenne, Thomas

SB 854

Yeas—36

Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kurth	Thomas
Bruner	Gardner	Langley	Thurman
Casas	Girardeau	Malchon	Walker
Childers	Gordon	McKay	Weinstein
Crenshaw	Grant	Meek	Weinstock
Dantzler	Grizzle	Myers	Wexler
Davis	Jennings	Plummer	Yancey

Nays—None

Vote after roll call:

Yea—Jenne

CS for SB 856

Yeas—30

Madam President	Davis	Kiser	Thurman
Beard	Diaz-Balart	Kurth	Walker
Brown	Dudley	Malchon	Weinstein
Bruner	Forman	McKay	Weinstock
Casas	Gordon	Meek	Wexler
Childers	Grizzle	Myers	Yancey
Crotty	Jennings	Plummer	
Dantzler	Johnson	Souto	

Nays—2

Bankhead	Langley

Vote after roll call:

Nay to Yea—Bankhead

CS for CS for SB's 1000, 1234 and 2158

Yeas—39

Madam President	Diaz-Balart	Johnson	Scott
Bankhead	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thomas
Bruner	Gardner	Kurth	Thurman
Casas	Girardeau	Langley	Walker
Childers	Gordon	Malchon	Weinstein
Crenshaw	Grant	McKay	Weinstock
Crotty	Grizzle	Meek	Wexler
Dantzler	Jenne	Myers	Yancey
Davis	Jennings	Plummer	

Nays—None

Vote after roll call:

Yea—Beard

CS for SB 1022—Substitute Amendment 3

Yeas—22

Bankhead	Davis	Grizzle	Meek
Beard	Diaz-Balart	Jennings	Souto
Brown	Dudley	Johnson	Weinstock
Casas	Girardeau	Kirkpatrick	Yancey
Crenshaw	Gordon	Kiser	
Dantzler	Grant	Langley	

Nays—10

Madam President	Forman	Malchon	Wexler
Bruner	Jenne	Thurman	
Childers	Kurth	Walker	

Vote after roll call:

Yea to Nay—Diaz-Balart, Souto, Weinstock

CS for SB 1022

Yeas—33

Madam President	Davis	Jennings	Souto
Bankhead	Diaz-Balart	Kirkpatrick	Thurman
Beard	Dudley	Kiser	Walker
Brown	Forman	Kurth	Weinstock
Bruner	Girardeau	Langley	Wexler
Casas	Gordon	Malchon	Yancey
Childers	Grant	Meek	
Crotty	Grizzle	Myers	
Dantzler	Jenne	Plummer	

Nays—None

CS for SB 1022—After Reconsideration

Yeas—33

Bankhead	Davis	Johnson	Thomas
Beard	Diaz-Balart	Kurth	Walker
Brown	Dudley	Langley	Weinstein
Bruner	Forman	McKay	Weinstock
Casas	Gardner	Meek	Wexler
Childers	Gordon	Myers	Yancey
Crenshaw	Grant	Plummer	
Crotty	Grizzle	Scott	
Dantzler	Jenne	Souto	

Nays—None

CS for CS for SB 1120

Yeas—37

Madam President	Diaz-Balart	Kirkpatrick	Souto
Bankhead	Forman	Kiser	Thurman
Beard	Gardner	Kurth	Walker
Brown	Girardeau	Langley	Weinstein
Bruner	Gordon	Malchon	Weinstock
Casas	Grant	McKay	Wexler
Childers	Grizzle	Meek	Yancey
Crotty	Jenne	Myers	
Dantzler	Jennings	Plummer	
Davis	Johnson	Scott	

Nays—None

CS for SB 1146

Yeas—37

Madam President	Davis	Johnson	Thomas
Bankhead	Diaz-Balart	Kirkpatrick	Thurman
Beard	Dudley	Kurth	Walker
Brown	Forman	Langley	Weinstein
Bruner	Gardner	Malchon	Weinstock
Casas	Girardeau	McKay	Wexler
Childers	Gordon	Meek	Yancey
Crenshaw	Grant	Myers	
Crotty	Grizzle	Plummer	
Dantzler	Jennings	Souto	

Nays—None

Vote after roll call:

Yea—Jenne

CS for SB 1280

Yeas—35

Bankhead	Davis	Jennings	Scott
Beard	Diaz-Balart	Johnson	Souto
Brown	Dudley	Kirkpatrick	Thomas
Bruner	Forman	Kiser	Thurman
Casas	Girardeau	Kurth	Walker
Childers	Gordon	Langley	Weinstein
Crenshaw	Grant	Malchon	Weinstock
Crotty	Grizzle	Myers	Wexler
Dantzler	Jenne	Plummer	

Nays—None

SB 1336

Yeas—33

Bankhead	Davis	Johnson	Thurman
Beard	Diaz-Balart	Kirkpatrick	Walker
Brown	Dudley	Kurth	Weinstein
Bruner	Forman	Langley	Weinstock
Casas	Girardeau	Meek	Wexler
Childers	Gordon	Myers	Yancey
Crenshaw	Grant	Scott	
Crotty	Grizzle	Souto	
Dantzler	Jenne	Thomas	

Nays—1

Plummer

Vote after roll call:

Yea—Malchon

CS for SB 1400

Yeas—36

Bankhead	Davis	Jennings	Myers
Beard	Diaz-Balart	Johnson	Plummer
Brown	Dudley	Kirkpatrick	Scott
Bruner	Forman	Kiser	Souto
Casas	Girardeau	Kurth	Thomas
Childers	Gordon	Langley	Walker
Crenshaw	Grant	Malchon	Weinstock
Crotty	Grizzle	McKay	Wexler
Dantzler	Jenne	Meek	Yancey

Nays—None

SB 1428

Yeas—34

Brown	Dudley	Kirkpatrick	Scott
Bruner	Forman	Kiser	Souto
Casas	Gardner	Kurth	Thomas
Childers	Girardeau	Langley	Thurman
Crenshaw	Gordon	Malchon	Walker
Crotty	Grant	McKay	Weinstein
Dantzler	Grizzle	Meek	Yancey
Davis	Jennings	Myers	
Diaz-Balart	Johnson	Plummer	

Nays—None

Vote after roll call:

Yea—Bankhead

CS for SB 1430

Yeas—35

Madam President	Dantzler	Jennings	Scott
Bankhead	Davis	Johnson	Souto
Beard	Diaz-Balart	Kiser	Thomas
Brown	Dudley	Kurth	Walker
Bruner	Forman	Langley	Weinstein
Casas	Girardeau	Malchon	Weinstock
Childers	Gordon	Meek	Wexler
Crenshaw	Grant	Myers	Yancey
Crotty	Grizzle	Plummer	

Nays—None

Vote after roll call:

Yea—Thurman

CS for CS for SB 1436—Substitute Motion

Yeas—23

Bankhead	Crotty	Jennings	Scott
Beard	Dantzler	Johnson	Souto
Bruner	Davis	Kiser	Thurman
Casas	Dudley	Kurth	Walker
Childers	Girardeau	Langley	Yancey
Crenshaw	Grant	Plummer	

Nays—9

Brown	Gordon	McKay
Diaz-Balart	Grizzle	Weinstock
Forman	Malchon	Wexler

CS for CS for SB 1436

Yeas—21

Bankhead	Dantzler	Kiser	Thurman
Brown	Girardeau	Langley	Walker
Bruner	Grant	Myers	Yancey
Casas	Grizzle	Plummer	
Childers	Jennings	Scott	
Crotty	Johnson	Thomas	

Nays—None

CS for CS for SB 1436—Motion to Reconsider

Yeas—13

Madam President	Girardeau	Malchon	Wexler
Casas	Gordon	McKay	
Diaz-Balart	Grizzle	Souto	
Forman	Jenne	Weinstock	

Nays—22

Bankhead	Crotty	Kiser	Thomas
Beard	Dantzler	Kurth	Thurman
Brown	Dudley	Langley	Walker
Bruner	Grant	Myers	Yancey
Childers	Jennings	Plummer	
Crenshaw	Johnson	Scott	

CS for SB 1756—Motion

Yeas—33

Madam President	Davis	Jennings	Souto
Bankhead	Diaz-Balart	Johnson	Thurman
Beard	Dudley	Kiser	Walker
Bruner	Forman	Kurth	Weinstein
Casas	Gardner	Langley	Wexler
Childers	Girardeau	Malchon	Yancey
Crenshaw	Gordon	McKay	
Crotty	Grant	Meek	
Dantzler	Jenne	Myers	

Nays—2

Brown	Thomas

CS for SB 1792

Yeas—29

Madam President	Davis	Kiser	Thurman
Bankhead	Girardeau	Kurth	Walker
Beard	Gordon	Langley	Weinstock
Brown	Grant	Myers	Wexler
Casas	Grizzle	Plummer	Yancey
Childers	Jenne	Scott	
Crotty	Jennings	Souto	
Dantzler	Kirkpatrick	Thomas	

Nays—None

Vote after roll call:

Yea—Malchon

CS for SB 1850

Yeas—38

Madam President	Davis	Jennings	Souto
Bankhead	Diaz-Balart	Johnson	Thomas
Beard	Dudley	Kirkpatrick	Thurman
Brown	Forman	Kurth	Walker
Bruner	Gardner	Langley	Weinstein
Casas	Girardeau	Malchon	Weinstock
Childers	Gordon	McKay	Wexler
Crenshaw	Grant	Meek	Yancey
Crotty	Grizzle	Myers	
Dantzler	Jenne	Scott	

Nays—None

SB 1902

Yeas—36

Bankhead	Diaz-Balart	Johnson	Plummer
Beard	Dudley	Kirkpatrick	Scott
Brown	Forman	Kiser	Souto
Bruner	Girardeau	Kurth	Thomas
Casas	Gordon	Langley	Thurman
Childers	Grant	Malchon	Walker
Crenshaw	Grizzle	McKay	Weinstein
Dantzler	Jenne	Meek	Wexler
Davis	Jennings	Myers	Yancey

Nays—None

CS for SB's 2224 and 2086

Yeas—32

Bankhead	Dantzler	Grizzle	Meek
Beard	Davis	Jenne	Myers
Brown	Diaz-Balart	Johnson	Scott
Bruner	Dudley	Kiser	Souto
Casas	Forman	Kurth	Walker
Childers	Girardeau	Langley	Weinstein
Crenshaw	Gordon	Malchon	Weinstock
Crotty	Grant	McKay	Yancey

Nays—None

SB 2464

Yeas—36

Madam President	Dantzler	Jenne	Myers
Bankhead	Davis	Jennings	Souto
Beard	Diaz-Balart	Johnson	Thomas
Brown	Dudley	Kiser	Thurman
Bruner	Forman	Kurth	Walker
Casas	Girardeau	Langley	Weinstein
Childers	Gordon	Malchon	Weinstock
Crenshaw	Grant	McKay	Wexler
Crotty	Grizzle	Meek	Yancey

Nays—None

SB 2512

Yeas—40

Madam President	Davis	Jennings	Plummer
Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thomas
Bruner	Gardner	Kurth	Thurman
Casas	Girardeau	Langley	Walker
Childers	Gordon	Malchon	Weinstein
Crenshaw	Grant	McKay	Weinstock
Crotty	Grizzle	Meek	Wexler
Dantzler	Jenne	Myers	Yancey

Nays—None

ROLL CALLS ON HOUSE BILLS

HB 27

Yeas—39

Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thomas
Bruner	Gardner	Kurth	Thurman
Casas	Girardeau	Langley	Walker
Childers	Gordon	Malchon	Weinstein
Crenshaw	Grant	McKay	Weinstock
Crotty	Grizzle	Meek	Wexler
Dantzler	Jenne	Myers	Yancey
Davis	Jennings	Plummer	

Nays—None

CS for HB 95

Yeas—35

Bankhead	Davis	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thomas
Bruner	Girardeau	Langley	Thurman
Casas	Gordon	Malchon	Walker
Childers	Grant	McKay	Weinstein
Crenshaw	Grizzle	Meek	Weinstock
Crotty	Jenne	Myers	Wexler
Dantzler	Jennings	Plummer	

Nays—None

CS for HB 279

Yeas—38

Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thurman
Bruner	Gardner	Kurth	Walker
Casas	Girardeau	Langley	Weinstein
Childers	Gordon	Malchon	Weinstock
Crenshaw	Grant	McKay	Wexler
Crotty	Grizzle	Meek	Yancey
Dantzler	Jenne	Myers	
Davis	Jennings	Plummer	

Nays—None

CS for HB 279—After Reconsideration

Yeas—35

Bankhead	Davis	Johnson	Souto
Beard	Dudley	Kirkpatrick	Thomas
Brown	Forman	Kiser	Thurman
Bruner	Girardeau	Langley	Walker
Casas	Gordon	McKay	Weinstein
Childers	Grant	Meek	Weinstock
Crenshaw	Grizzle	Myers	Wexler
Crotty	Jenne	Plummer	Yancey
Dantzler	Jennings	Scott	

Nays—None

HB 325

Yeas—37

Madam President	Davis	Kirkpatrick	Thomas
Bankhead	Diaz-Balart	Kiser	Thurman
Beard	Dudley	Kurth	Walker
Brown	Forman	Langley	Weinstein
Bruner	Girardeau	Malchon	Weinstock
Casas	Gordon	Meek	Wexler
Childers	Grant	Myers	Yancey
Crenshaw	Grizzle	Plummer	
Crotty	Jennings	Scott	
Dantzler	Johnson	Souto	

Nays—None

CS for HB 653

Yeas—34

Madam President	Diaz-Balart	Kurth	Thomas
Bankhead	Girardeau	Langley	Thurman
Beard	Gordon	Malchon	Walker
Bruner	Grant	McKay	Weinstein
Casas	Grizzle	Meek	Weinstock
Childers	Jennings	Myers	Wexler
Crenshaw	Johnson	Plummer	Yancey
Crotty	Kirkpatrick	Scott	
Davis	Kiser	Souto	

Nays—2

Dantzler Jenne

HB 747

Yeas—29

Madam President	Diaz-Balart	Langley	Thurman
Bankhead	Forman	Malchon	Walker
Beard	Girardeau	McKay	Weinstein
Bruner	Gordon	Myers	Weinstock
Casas	Grant	Plummer	Yancey
Childers	Grizzle	Scott	
Crenshaw	Kirkpatrick	Souto	
Davis	Kiser	Thomas	

Nays—6

Dantzler	Jennings	Kurth
Dudley	Johnson	Wexler

CS for HB 1527

Yeas—35

Bankhead	Davis	Jennings	Myers
Beard	Diaz-Balart	Johnson	Scott
Brown	Dudley	Kirkpatrick	Souto
Bruner	Forman	Kiser	Thurman
Casas	Girardeau	Kurth	Walker
Childers	Gordon	Langley	Weinstein
Crenshaw	Grant	Malchon	Weinstock
Crotty	Grizzle	McKay	Wexler
Dantzler	Jenne	Meek	

Nays—None

CS for HB 1637

Yeas—40

Madam President	Davis	Jennings	Plummer
Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thomas
Bruner	Gardner	Kurth	Thurman
Casas	Girardeau	Langley	Walker
Childers	Gordon	Malchon	Weinstein
Crenshaw	Grant	McKay	Weinstock
Crotty	Grizzle	Meek	Wexler
Dantzler	Jenne	Myers	Yancey

Nays—None

HB 1841

Yeas—34

Bankhead	Davis	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thurman
Bruner	Girardeau	Langley	Walker
Casas	Gordon	Malchon	Weinstein
Childers	Grant	McKay	Weinstock
Crenshaw	Grizzle	Meek	Yancey
Crotty	Jenne	Myers	
Dantzler	Jennings	Plummer	

Nays—None

Vote after roll call:

Yea to Nay—Gordon, Plummer, Souto

HB 2069

Yeas—37

Madam President	Diaz-Balart	Kiser	Thomas
Bankhead	Dudley	Kurth	Thurman
Beard	Forman	Langley	Walker
Bruner	Gardner	Malchon	Weinstein
Casas	Girardeau	McKay	Weinstock
Childers	Gordon	Meek	Wexler
Crenshaw	Grizzle	Myers	Yancey
Crotty	Jennings	Plummer	
Dantzler	Johnson	Scott	
Davis	Kirkpatrick	Souto	

Nays—None

Vote after roll call:

Yea—Jenne

HB 2251—Conference Committee Report

Yeas—24

Madam President	Forman	Kurth	Thurman
Brown	Gardner	Malchon	Walker
Casas	Girardeau	Meek	Weinstein
Dantzler	Gordon	Plummer	Weinstock
Davis	Jenne	Souto	Wexler
Diaz-Balart	Kirkpatrick	Thomas	Yancey

Nays—16

Bankhead	Crenshaw	Grizzle	Langley
Beard	Crotty	Jennings	McKay
Bruner	Dudley	Johnson	Myers
Childers	Grant	Kiser	Scott

EXPLANATIONS OF VOTE

We oppose the public financing provisions of **HB 2251**. Nevertheless, we believe that other reforms included in this legislation such as the sections limiting campaign contributions, constitute important steps toward the improvement of our state's electoral process. Accordingly, we felt an obligation to support **HB 2251** despite its objectionable parts.

Lincoln Diaz-Balart
34th District
Roberto Casas
33rd District
Javier D. Souto
40th District

I have voted no on the Conference Report for **HB 2251** because it requires the use of unlimited general revenues to fund political campaigns without a specific appropriation by the legislature.

While I support the campaign financing reforms contained in this bill, minimal as they are, I cannot support the use of scarce public funds to advance the personal aspirations of political candidates.

By assessing political party contributions, at both the state and local levels, this bill will discourage voter participation in fund raising efforts, since the monies thus raised will be available for use by candidates who are not otherwise supported by the contributors.

Finally, the limitations on party contributions to candidates weakens the important role political parties have played in our Democratic system, and protects incumbent office holders by restricting the ability of unknown challengers to have access to the full resources of their party in order to gain the necessary name recognition to be successful.

Fred R. Dudley
38th District

We, the undersigned Senators, voted "no" on the Conference Committee Report on **House Bill 2251** because this bill requires the use of unlimited general revenue to fund political campaigns. While we support many of the campaign reforms contained in this legislation, we cannot support the use of scarce public funds to pay for political campaigns.

Ander Crenshaw
8th District
John Grant
21st District

W. G. Bankhead
9th District
Malcolm E. Beard
22nd District
Richard T. Crotty
14th District
Fred R. Dudley
38th District
Richard H. Langley
11th District
William G. Myers
27th District
Mary R. Grizzle
20th District
Toni Jennings
15th District
Bob Johnson
25th District
Curt Kiser
19th District
John McKay
24th District
James A. Scott
31st District

ROLL CALLS ON LOCAL BILLS

The following roll call was taken on **Senate Bills 1094, 1936, 2390, 2414, 2458** and **2460** which passed this day:

Yeas—36

Madam President	Dantzler	Johnson	Plummer
Bankhead	Diaz-Balart	Kirkpatrick	Scott
Beard	Dudley	Kiser	Souto
Brown	Forman	Kurth	Thomas
Bruner	Gardner	Langley	Thurman
Casas	Girardeau	Malchon	Walker
Childers	Gordon	McKay	Weinstein
Crenshaw	Grizzle	Meek	Weinstock
Crotty	Jennings	Myers	Yancey

Nays—None

The following roll call was taken on **SB 2508; House Bills 1257, 1417, 1481, 1501, 1589, 1605, 1633, 1967, 2015, 2063, 2137, 2207, 2239** and **2407** which passed this day:

Yeas—38

Madam President	Davis	Jennings	Scott
Bankhead	Diaz-Balart	Johnson	Souto
Beard	Dudley	Kiser	Thomas
Brown	Forman	Kurth	Thurman
Bruner	Gardner	Langley	Walker
Casas	Girardeau	Malchon	Weinstock
Childers	Gordon	McKay	Wexler
Crenshaw	Grant	Meek	Yancey
Crotty	Grizzle	Myers	
Dantzler	Jenne	Plummer	

Nays—None

Vote after roll call:

Yea—Weinstein

HB 1323

Yeas—36

Madam President	Dantzler	Jennings	Scott
Bankhead	Davis	Johnson	Souto
Beard	Diaz-Balart	Kirkpatrick	Thomas
Brown	Dudley	Kiser	Thurman
Bruner	Gardner	Kurth	Walker
Casas	Girardeau	Malchon	Weinstein
Childers	Grant	McKay	Weinstock
Crenshaw	Grizzle	Meek	Wexler
Crotty	Jenne	Myers	Yancey

Nays—None

Vote after roll call:

Yea—Langley

SB 1274

Yeas—36

Bankhead	Diaz-Balart	Jennings	Plummer
Beard	Dudley	Johnson	Scott
Brown	Forman	Kirkpatrick	Souto
Bruner	Gardner	Kiser	Thurman
Casas	Girardeau	Kurth	Walker
Crenshaw	Gordon	Langley	Weinstein
Crotty	Grant	McKay	Weinstock
Dantzler	Grizzle	Meek	Wexler
Davis	Jenne	Myers	Yancey

Nays—None

The following roll call was taken on **House Bills 1693, 1951, 1953, 2153** and **2317**; **Senate Bills 2514** and **2474** which passed this day:

Yeas—39

Madam President	Davis	Johnson	Scott
Bankhead	Diaz-Balart	Kirkpatrick	Souto
Beard	Dudley	Kiser	Thomas
Brown	Forman	Kurth	Thurman
Bruner	Girardeau	Langley	Walker
Casas	Gordon	Malchon	Weinstein
Childers	Grant	McKay	Weinstock
Crenshaw	Grizzle	Meek	Wexler
Crotty	Jenne	Myers	Yancey
Dantzler	Jennings	Plummer	

Nays—None

The following roll call was taken on **House Bills 2315** and **2535** which passed this day; and on **HB 2239** which was reconsidered and passed this day:

Yeas—38

Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Brown	Forman	Kiser	Thomas
Bruner	Gardner	Kurth	Thurman
Casas	Girardeau	Langley	Walker
Childers	Gordon	Malchon	Weinstock
Crenshaw	Grant	McKay	Wexler
Crotty	Grizzle	Meek	Yancey
Dantzler	Jenne	Myers	
Davis	Jennings	Plummer	

Nays—None

CORRECTION AND APPROVAL OF JOURNAL

The Journal of April 26 was corrected and approved.

RECESS

On motion by Senator Thomas, the Senate recessed at 5:58 p.m. to reconvene at 9:00 a.m., Thursday, May 2, or upon call of the President.