



Journal of the Senate

Number 15

Thursday, March 5, 1992

CALL TO ORDER

The Senate was called to order by the President at 9:00 a.m. A quorum present—34:

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

PRAYER

The following prayer was offered by Pastor Reno Zunz, Minister of Education, Idlewild Baptist Church, Tampa:

Dear Heavenly Father, as you know my heart, I am honored this morning to stand before these men and women, the Senators of the State of Florida. But Father, I am even more honored to stand before you, our creator and Sovereign God, for you have promised, "Where two or more are gathered in my name, there I am in the midst of them."

I first want to thank you for this day you have given to us and the many opportunities that it contains. I ask primarily for your wisdom and grace to make the right decisions and to think, speak and do only the things that would please and glorify you.

I know that there are many difficult problems to solve, questions to answer and votes to cast from such a diversity of convictions and opinions. We recognize, Lord, that only you can bring about peace in all of this and we pray for a unity of this body that would transcend any personality but would be for the godly good of the people we represent.

I thank you for these Senators who have sacrificed many other plans and goals to serve and ask for your special touch upon them. I'm sure that each of these men and women have burdens on their hearts and circumstances that are troubling them. I'm sure that many of these men and women are far from home and long to be with their families even at this moment.

Therefore, I pray specifically that you protect their homes and families today and give your strength to weather the storms they may be experiencing.

I ask a special blessing for my brother in Christ, John Grant, and for his wife Beverly and his children. I thank you for the example he sets for me and our entire church family and for his constant personal encouragement. I pray that you, God, would continue to use him, your servant, in a mighty way.

Most importantly, dear Father, we ask that "the words of our mouths and the very meditations of our hearts be acceptable in your sight, O Lord, our strength and our redeemer." Amen.

CONSIDERATION OF RESOLUTIONS

On motion by Senator Souto, by two-thirds vote **SR 774** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Souto—

SR 774—A resolution commemorating December 7 and the fiftieth anniversary of the Japanese attack on Pearl Harbor.

WHEREAS, on December 7, 1941, Japanese troops attacked Pearl Harbor, and

WHEREAS, that day marks the entry of the United States into World War II, and

WHEREAS, that day was called by President Franklin D. Roosevelt "the date that will live in infamy," and

WHEREAS, more than 3,600 lives were lost, and 21 ships and 328 airplanes were destroyed or damaged, and

WHEREAS, today the U.S.S. Arizona Memorial is the grave of 1,117 sailors and Marines, who were killed that day, and

WHEREAS, the shock and loss of those lives on that terrible day is still deeply felt, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That this legislative body remembers Pearl Harbor and expresses its sorrow and loss in remembrance of the men and women of the United States Armed Forces, and of the civilians, who lost their lives December 7, 1941, and in the following days of World War II and who gave of themselves to protect this state and our nation.

—was taken up out of order by unanimous consent, read the second time in full and adopted.

On motion by Senator Souto, by two-thirds vote **SR 1414** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Souto—

SR 1414—A resolution commending Sister Blasa E. Rojo, M.D., for the dedication and care she has given to the Genesis program for treating AIDS patients.

WHEREAS, Sister Blasa E. Rojo received her Doctor of Medicine degree from the University of Havana, Cuba, in 1959, and

WHEREAS, since receiving her license from the Board of Medicine of this state in 1972, she has held numerous distinguished positions in connection with medical programs here and in Colombia, and

WHEREAS, those positions include: Medical Director, Catholic Spanish Center Medical Clinic, Miami (1972-1978); clinical investigator, St. Luke's Center Methadone Clinic, Miami (1972-1978); member, Inter-Regional Health Resources Conference for Hispanics, and president-elect (1975); member, Dade County Health Task Force, Miami (1977-1978); liaison person for Catholic Charities to the Health System Agency of Florida (1977-1978); special medical consultant, Health Research Services & Analysis, Inc., of Los Angeles, California (1976-1978); Medical Director, Papanicolau Program of the Cuban Cancer Society, Miami (1974-1978); member, Task Force of the Inter-Regional Health Resources Conference for Hispanics; Professor, Mariana's University School of Nursing, Pasto, Colombia (1978-1979); Medical Director, Community Medicine, Colombian Red Cross, Pasto, Colombia (1979-1983); Attendant Physician, San Rafael's Psychiatric Hospital, Pasto, Colombia (1980-1989); Chief, Medical Department, San Rafael's Psychiatric Hospital (1984-1988); Medical Director, San Rafael's Psychiatric Hospital (1988-1989); and Medical Director, Catholic Health and Rehabilitation Services (1989), and

WHEREAS, Sister Rojo has received many honors and awards from appreciative members of the Miami community, including: Latin Woman of the Year nominee, by Latin Business and Professional Women's Club of Miami (1974); certificate of appreciation, by Miami Cuban Lions Club (1975); Gran Order Martiana, by Cuban Lyceum of Miami (1976); Gran Order del Bicentenario, by Cuban Lyceum of Miami (1976); commenda-

tion, by Metropolitan Dade County (1977-1978); Pergamino de Reconocimiento al Merito, by Lions International of Miami (1977); and "In Appreciation" by the Cuban Cancer Society (1975-1978), and

WHEREAS, Sister Rojo is currently the director of the Genesis program, which treats AIDS patients and gives hope and comfort to those patients and their loved ones in their time of dire need, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida Senate commends Sister Blasa E. Rojo, M.D., for her longtime service to her communities in this state and in the country of Colombia, and that the Senate particularly honors Sister Rojo for the dedication and care she has provided as Director of the Genesis program for treating patients who have acquired immune deficiency syndrome.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to Sister Blasa E. Rojo, M.D., as a token of the sentiments of the Florida Senate.

—was taken up out of order by unanimous consent, read the second time in full and adopted.

On motion by Senator Souto, by two-thirds vote **SR 2454** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Souto—

SR 2454—A resolution recognizing the week of April 17th as the week of the Brigada de Asalto 2506 (2506 Light Assault Brigade of the Bay of Pigs Invasion).

WHEREAS, the week of April 17th marks the anniversary of the Bay of Pigs Invasion, and

WHEREAS, more than 2,000 men participated in the operation, and

WHEREAS, more than 200 members of the Brigada died during the Bay of Pigs Invasion, including four American pilots assigned to the Brigada's Air Force, and

WHEREAS, there is a monument at S.W. 8th Street and 13th Avenue in Miami which stands as a tribute to the members of the Brigada de Asalto 2506 (2506 Light Assault Brigade) who died in combat and to freedom fighters the world over, and

WHEREAS, the citizens of the State of Florida have great sympathy and respect for the patriots of the Brigada de Asalto 2506 (2506 Light Assault Brigade) who participated in the Bay of Pigs Invasion, and

WHEREAS, it is appropriate that the Senate pause in its deliberations to honor the many brave men of the Brigada de Asalto 2506 (2506 Light Assault Brigade), NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the week of April 17th is hereby recognized as the week of the Brigada de Asalto 2506 (2506 Light Assault Brigade).

—was taken up out of order by unanimous consent, read the second time in full and adopted.

On motion by Senator Souto, by two-thirds vote **SR 1504** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Souto—

SR 1504—A resolution commemorating veterans of the Korean War.

WHEREAS, the Korean War in which this nation was engaged constituted a time of great suffering both collectively and individually for the people of this country, and

WHEREAS, the Legislature takes notice of the fact that thousands of Florida residents served in the Armed Forces of this country during the Korean War, and

WHEREAS, the Legislature finds and declares that those brave men and women serving in active military duty suffered and endured many hardships to defend the honor and security of our great nation and state, and

WHEREAS, the Senate desires to express its utmost and heartfelt gratitude to those men and women of Florida who served in the Armed

Forces during the Korean War for their patriotism, their dedication to duty, and their bravery and for the sacrifices that they made on behalf of our state and nation, NOW, THEREFORE,

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

That the veterans of the Korean War are recognized for their patriotism and bravery in defending this nation and state during the Korean War and are commended for their unselfish acts of self-sacrifice in the line of duty.

—was taken up out of order by unanimous consent, read the second time in full and adopted.

On motion by Senator Forman, by two-thirds vote **SR 2442** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Forman—

SR 2442—A resolution honoring 1991 Police Officers of the Year Vernice Brown and Alan Johnson.

WHEREAS, Pompano Beach undercover street-crimes unit police officers and partners Vernice Brown and Alan Johnson have been named as 1991 Police Officers of the Year by the International Association of Chiefs of Police, and

WHEREAS, this is the first time that police officers from Broward County have won this most prestigious award, and

WHEREAS, this is only the second time in 26 years that two partners have shared highest honors, and

WHEREAS, Officers Brown and Johnson prevented a woman from being raped at gunpoint, and

WHEREAS, Officers Brown and Johnson risked their own lives as they continued to pursue the suspect, and

WHEREAS, at the time of the incident, the two officers had been partners for only 1 year, and

WHEREAS, the street-crimes unit must patrol some of the toughest streets in the city, and

WHEREAS, the street-crimes unit has built a solid relationship based on mutual admiration and respect with the community that the unit protects and serves, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That Officers Vernice Brown and Alan Johnson are commended for their outstanding police work, uncompromising dedication to community service, and exemplary courage in the line of duty.

—was taken up out of order by unanimous consent, read the second time in full and adopted.

MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Gardner, by two-thirds vote **Senate Bills 228, 408, 1394, CS for CS for SB 666, CS for SB 1040, CS for SB's 1368 and 72, CS for SB 2120 and CS for SB 2144** were withdrawn from the Committee on Appropriations.

On motion by Senator Gardner, by two-thirds vote **SB 1694** was removed from the calendar and withdrawn from further consideration.

On motions by Senator Thomas, by two-thirds vote **CS for SB 2388, CS for CS for SB 1726 and SB 1982** were also referred to the Committee on Rules and Calendar.

On motion by Senator Thomas, by two-thirds vote **CS for CS for CS for SB 1526** was removed from the calendar and referred to the Committees on Natural Resources and Conservation; and Rules and Calendar.

On motions by Senator Thomas, the rules were waived and **CS for SB 396** together with the message from the House was referred to the Committee on Appropriations and placed first on the agenda for Monday, March 9.

On motions by Senator Kurth, by two-thirds vote **Senate Bills 1934, 2006 and 2158** were withdrawn from the committees of reference and further consideration.

On motions by Senator Gardner, by two-thirds vote **Senate Bills 826, 1010, 2310, 1808, CS for SB 1988, CS for SB's 1590 and 1704, CS for CS for SB 936, CS for CS for SB 1034 and CS for SB 1850** were withdrawn from the Committee on Appropriations.

MATTERS ON RECONSIDERATION

The motion by Senator Scott that the Senate reconsider the vote by which—

CS for SB 268—A bill to be entitled An act relating to the state budgetary system; creating s. 11.402, F.S.; creating the Joint Legislative Budget Committee and prescribing its duties; transferring to the committee certain budgetary duties of the Executive Office of the Governor; repealing s. 17.31, F.S., relating to annual reports of trust funds; creating s. 17.32, F.S.; requiring the Comptroller to provide reports of trust funds to the Legislature annually; amending ss. 18.10, 18.125, 120.53, 120.65, 215.195, 215.22, 215.26, 215.28, 215.29, 215.31, 215.32, 215.322, 215.34, 215.405, 215.422, 215.48, 215.49, 215.51, 215.515, 215.85, 215.92, 215.94, 216.011, 216.015, 216.052, 216.0154, 216.0158, 216.016, 216.0165, 216.023, 216.031, 216.043, 216.044, 216.0442, 216.0445, 216.081, 216.091, 216.102, 216.131, 216.135, 216.141, 216.151, 216.163, 216.172, 216.177, 216.179, 216.181, 216.192, 216.195, 216.212, 216.221, 216.241, 216.251, 216.252, 216.271, 216.275, 216.292, 216.301, 216.311, 216.321, 216.345, 216.346, 216.347, 216.349, 287.20, F.S.; providing that certain budgetary procedures that apply to agencies of the executive branch of government also apply to the judicial branch; amending ss. 27.25, 27.3451, 27.53, 27.705, 120.65, 216.111, 216.177, 216.181, 216.286, 216.292, 287.064, F.S.; deleting certain powers and duties of the Executive Office of the Governor relating to budgetary matters; amending s. 110.1099, F.S.; deleting a provision that allows educational leaves of absence to be granted only when the Legislature has provided specific funding for such leaves; amending s. 215.32, F.S.; creating a Federal Revenue Fund in the State Treasury; amending ss. 215.32, 216.181, 216.182, 216.192, 216.195, 216.221, 216.231, 216.241, 216.251, 216.292, 216.301, 235.4235, 240.513, 320.20, 240.213, 240.279, F.S.; providing for the exercise of certain duties formerly in the Administration Commission by the Joint Legislative Budget Committee; amending s. 215.32, F.S.; prescribing a goal for the Working Capital Fund; repealing s. 215.3205, F.S., relating to a schedule for abolition of trust funds; providing for review of trust funds for abolition; creating s. 215.3207, F.S.; providing criteria for creation of trust funds; amending s. 215.93, F.S.; requiring the Florida Fiscal Accounting Management Information System to become operational; amending s. 216.011, F.S.; providing definitions; amending s. 216.0165, F.S.; providing for evaluation of certain judicial offices; amending s. 216.031, F.S.; revising procedures for creating legislative budget requests; creating s. 216.052, F.S.; providing for review of legislative budget requests; creating s. 216.053, F.S.; providing for summary information in the general appropriations acts; amending s. 216.065, F.S.; revising requirements for fiscal impact statements; amending s. 216.141, F.S.; deleting provisions relating to duties of the Comptroller; amending s. 216.151, F.S.; providing duty of Executive Office of the Governor; amending s. 216.164, F.S.; providing for the Governor to recommend a program budget or performance-based budget; amending s. 216.177, F.S.; deleting certain powers of legislative appropriations committee chairmen; amending s. 216.178, F.S.; providing for format of appropriations acts; amending s. 216.181, F.S.; providing for amendments to approved budgets; amending s. 216.221, F.S.; prescribing duties of Governor and Chief Justice with respect to actions to prevent budget deficits; amending s. 216.262, F.S.; prescribing duties with respect to authorized positions; amending s. 216.272, F.S.; creating additional working capital trust funds; amending s. 240.2094, F.S.; providing that funds for the State University System are subject to guidelines imposed in general appropriations acts; repealing s. 282.312(3), F.S., relating to withholding of funds of information resource managers; repealing s. 411.204(5)(e), F.S., relating to a transfer of funds for evaluation of handicap prevention, early childhood, and early assistance; amending s. 946.20, F.S.; deleting powers of the Administration Commission with respect to the number of positions for prisoners in public works; amending s. 218.385, F.S.; providing for a truth-in-bonding statement before issue of local government bonds; amending s. 110.1245, F.S.; revising provisions relating to the meritorious service awards program; amending s. 339.135, F.S.; revising procedures for amendment of the Department of Transportation's adopted work program; repealing s. 409.085, F.S., relating to appropriations to the Department of Health and Rehabilitative Services and transfer of surplus funds; providing an effective date.

—passed March 4 was taken up and the motion was adopted.

On motion by Senator Scott, by two-thirds vote the Senate reconsidered the vote by which **CS for SB 268** was read the third time.

On motion by Senator Scott, the Senate reconsidered the vote by which **Amendment 1** as amended was adopted.

Senator Scott moved the following amendment to **Amendment 1** which was adopted:

Amendment 1C—On page 1, strike line 30 and insert: majority vote of the members who represent the Senate and a majority vote of the members who represent the House of Representatives.

Amendment 1 as amended was adopted.

On motion by Senator Scott, by two-thirds vote **CS for SB 268** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—36 Nays—None

RECONSIDERATION

On motion by Senator Langley, the rules were waived and the Senate reconsidered the vote by which—

SB 1608—A bill to be entitled An act relating to the Department of the Lottery; amending ss. 20.317, 24.104, F.S.; requiring the department to maintain its headquarters office at the Satellite Center Office Park in Tallahassee; providing an effective date.

—passed as amended March 4.

Senator Langley moved the following amendment which was adopted:

Amendment 3—In title, on page 1, strike all of lines 4-6 and insert: specifying the location of the headquarters of the department; providing an

On motion by Senator Langley, **SB 1608** as amended was read by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—29 Nays—None

SPECIAL ORDER

Consideration of **CS for SB 610, SB 814 and SB 972** was deferred.

CS for SB 2334—A bill to be entitled An act relating to condominiums; amending s. 718.103, F.S.; revising definitions for purposes of ch. 718, F.S.; amending s. 718.111, F.S.; revising provisions with respect to the corporate entity of a condominium association; deleting certain exclusions provided under policies for condominium property insurance; revising requirements for maintaining official records of the condominium association; providing for privileged records and information; revising requirements for furnishing financial reports; providing for confidentiality; revising certain requirements for maintaining association funds; amending s. 718.112, F.S.; providing for nominations to the board of administration of an association; revising procedures for meetings and elections; revising provisions with respect to fidelity bonds of the association; amending s. 718.113, F.S.; providing requirements for approving alterations or additions to association property; amending s. 718.115, F.S.; providing that certain unpaid shares of common expenses or assessments are collectible from all unit owners; amending s. 718.116, F.S.; providing a mortgagee limited liability for unpaid assessments accruing prior to foreclosure sale; amending s. 718.1255, F.S.; providing for an award of costs in arbitration proceedings; providing for attorney's fees and costs in proceedings to enforce an arbitration award; amending s. 718.301, F.S.; prescribing procedures for the election of a member of the board of an association when unit owners other than the developer are entitled to elect such a member; conditioning developer turnover upon an audit if audits have been performed each year since incorporation; amending s. 718.3026, F.S.; providing certain exemptions from competitive bid requirements; amending s. 718.303, F.S.; providing for a hearing before a committee of unit owners; amending s. 718.501, F.S.; revising provisions with respect to the powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation; deleting provisions relating to random investigations by the division; providing for a mediation program; providing for procedures to handle complaints to the division; amending s. 718.5019, F.S.; prescribing criteria for making appointments to the Advisory Council on Condomini-

ums; amending s. 718.503, F.S.; revising disclosure requirements for non-developers prior to the sale of a condominium unit; providing a limitation on plans to be approved; amending s. 718.504, F.S.; providing a limitation on plans to be approved; repealing ss. 718.5015, 718.5016, 718.5017, 718.5018, F.S., relating to the Office of the Condominium Ombudsman; providing an effective date.

—was read the second time by title.

Senator Dudley moved the following amendment:

Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Subsections (2) and (6) of section 718.103, Florida Statutes, are amended to read:

718.103 Definitions.—As used in this chapter, the term:

(2) "Association" means, in addition to those entities responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which condominium unit owners have use rights, where unit owner membership in the *entity association* is composed exclusively of condominium unit owners or their elected or appointed representatives, and where membership in the *entity association* is a required condition of unit ownership.

(6) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the association budget or take action on behalf of the board.

Section 2. Subsection (1), paragraph (b) of subsection (11), and subsections (12), (13), and (15) of section 718.111, Florida Statutes, as amended by section 3 of chapter 91-426, Laws of Florida, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association, ~~as well as any manager employed by the association and required to be licensed pursuant to s. 468.432,~~ have a fiduciary relationship to the unit owners. *It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not be required to be licensed under s. 468.432 shall* solicit, offer to accept, or accept any thing or service of a value ~~exceeding \$100~~ for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of a value ~~exceeding \$100~~ is subject to a civil penalty pursuant to s. 718.501(1)(d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at board meetings, *except that officers may be elected by secret ballot.* A vote or abstention for each member present shall be recorded in the minutes.

(c) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(11) INSURANCE.—

(b) Every hazard policy which is issued to protect a condominium building shall provide that the word "building" wherever used in the policy include, but not necessarily be limited to, fixtures, installations, or additions comprising that part of the building within the unfinished inte-

rior surfaces of the perimeter walls, floors, and ceilings of the individual units initially installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as they existed at the time the unit was initially conveyed if the original plans and specifications are not available. However, unless ~~prior to October 1, 1986,~~ the association is required by the declaration to provide coverage therefor, the word "building" does not include unit floor coverings, wall coverings, or ceiling coverings, and, as to contracts entered into after July 1, 1993, does not include the following equipment if it is located within a unit and the unit owner is required to repair or replace such equipment: electrical fixtures, appliances, air conditioner or heating equipment, water heaters, or built-in cabinets. With respect to the coverage provided for by this paragraph, the unit owners shall be considered additional insureds under the policy.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, when applicable, which shall constitute the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and of each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and of each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and of each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books which contain the minutes of all meetings of the association, of the board of directors, and of unit owners, which minutes shall be retained for a period of not less than 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium which the association operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to *voting by unit owners elections*, which shall be maintained for a period of 1 year from the date of the *election, vote, or meeting* to which the document relates.

13. All rental records, when the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described by s. 718.504.

15. All other records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records of the association shall be maintained *within the state*. The records of the association shall be made available to a unit owner within 5 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. ~~in the county in which the condominium is located or within 25 miles of the property if maintained in another county.~~

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 5 working days after receipt of a written request shall create a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to ~~three times~~ the actual damages or minimum damages of \$500 for the association's willful failure to comply with this paragraph. *The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after receipt of the written request.* The failure to permit inspection of the association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records for inspection. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet provided for in s. 718.504 on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. *Notwithstanding the provisions of this paragraph, the following records shall not be accessible to unit owners:*

1. *A record which was prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.*

2. *Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.*

3. *Medical records of unit owners.*

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(13) FINANCIAL REPORTS.—Within 60 days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the association, the board of administration of the association shall mail or furnish by personal delivery to each unit owner and to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (a) Costs for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Costs for building maintenance and repair;
- (h) Insurance costs;

(i) Administrative and salary expenses; and

(j) General reserves, maintenance reserves, and depreciation reserves.

Any financial report provided to the Division of Florida Land Sales, Condominiums, and Mobile Homes under this subsection is exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(15) COMMINGLING.—All funds shall be maintained separately in the association's name. *Reserve and operating funds of the association may be commingled for purposes of investment, but separate ledgers must be maintained for each account. In addition, reserve funds shall be maintained separately from operating funds in separate accounts in a financial institution as defined in s. 655.005.* No manager or business entity required to be licensed or registered under s. 468.432, and no agent, employee, officer, or director of a condominium association shall commingle any association funds with his funds or with the funds of any other condominium association or community association as defined in s. 468.431.

Section 3. Paragraphs (a), (c), (d), (j), and (k) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(a) Administration.—

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of a condominium which has five or fewer units, in which case in a not-for-profit corporation the board shall consist of not fewer than three members. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. *When a unit owner files a written complaint by certified mail with the board of administration, the board shall respond to the unit owner within 30 days. The board shall give a substantive response to the complainant, notify the complainant that an opinion has been requested, or notify the complainant that legal advice has been requested from the division. The failure to act within 30 days and to notify the unit owner within 30 days after the action taken precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the complaint.*

(c) Board of administration meetings.—Meetings of the board of administration and any committee thereof at which a quorum of the members of that committee is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. *Any item not included on the notice may be taken up by at least a majority plus one of the members of the board.* However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be ~~considered proposed, discussed, or approved~~ shall be mailed or delivered to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the ~~person providing the notice~~ secretary and filed among the official

records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of board meetings shall be posted. *If there is no condominium property or association property upon which notices can be posted, notices of board meetings shall be mailed or delivered at least 14 days before the meeting to the owner of each unit.* Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

(d) Unit owner meetings.—

1. There shall be an annual meeting of the unit owners. Unless the bylaws provide otherwise, a vacancy on the board of administration caused by the expiration of a director's term shall be filled by electing a new board member; *however, if there is only one candidate for election to fill the vacancy, no election is required.* If there is no provision in the bylaws for terms of the members of the board of administration, the terms of all members of the board of administration shall expire upon the election of their successors at the annual meeting. Any unit owner desiring to be a candidate for board membership shall comply with subparagraph 3.

2. The bylaws shall provide the method of calling meetings of unit owners, including annual meetings. Written notice, which notice ~~must include an shall incorporate an identification of agenda items,~~ shall be mailed or delivered given to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the condominium property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of unit owner meetings shall be posted; *however, if there is no condominium property or association property upon which notices can be posted, this requirement does not apply.* Unless a unit owner waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting shall be sent by mail to each unit owner. Where a unit is owned by more than one person, the association shall provide notice, for meetings and all other purposes, to that one address which the developer initially identifies for that purpose and thereafter as one or more of the owners of the unit shall so advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered, in accordance with this provision, to each unit owner at the address last furnished to the association.

3. After January 1, 1992, the members of the board of administration shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board of administration, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, *unless otherwise provided in this chapter.* Not less than 60 days before a scheduled election, the association shall mail or deliver, whether by separate association mailing or included in another association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. *The board shall hold a meeting within 5 days after the deadline for a candidate to provide notice to the association of intent to run. At this meeting, the board shall accept additional nominations. Any unit owner or other eligible person may nominate himself or may nominate another unit owner or eligible person, if he has permission in writing to nominate the other person.* Any unit owner or other eligible person desiring to be a candidate for the board of administration ~~must shall~~ give written notice to the secretary of the association not less than 40 days before a scheduled election. *Not less than 30 days before the election meeting,* the association shall ~~then~~ mail or deliver a second notice of the election meeting to all unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8½ inches by 11 inches, *which must be furnished by the candidate not less than 35 days before the election,* to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the association. *However, the association has no liability for the contents of the information sheets prepared by the candidates.* The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules providing for the

secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; *however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid or minimum number of votes necessary for election of members of the board of administration.* No unit owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 718.303. The regular election shall occur on the date of the annual meeting. The provisions of this subparagraph shall not apply to time-share condominium associations. *Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the board.*

4. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), shall be made at a duly noticed meeting of unit owners and shall be subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any statute which provides for such action.

5. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any statute.

6. Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

7. Any unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)3., an association consisting of fewer than 25 units may, by a two-thirds vote of the unit owners, provide for a different voting and election procedures in its bylaws.

(j) Fidelity bonds.—The association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the association. *If an association's annual gross receipts do not exceed \$100,000, the bond shall be in the principal sum of not less than \$10,000 for each such person. If an association's annual gross receipts exceed \$100,000, but do not exceed \$300,000, the bond shall be in the principal sum of \$30,000 for each such person. If an association's annual gross receipts exceed \$300,000, the bond shall be in the principal sum of not less than \$50,000 for each such person.* The association shall bear the cost of bonding. ~~However, in the case of a person providing management services to the association and required to be licensed pursuant to s. 468.432, the cost of bonding may be reimbursed by the association; all such persons providing management services to an association shall provide the association with a certificate of insurance evidencing compliance with this paragraph.~~

(k) Recall of board members.—Subject to the provisions of s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective immediately, and the recalled member or members of the board of administration shall turn over to the board any and all records of the association in their possession within 72 hours after the meeting.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing shall be served on the association by certified mail. The board of administration shall call a meeting of the board within 72 hours after receipt of the agreement in writing and shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 72 hours any and all records of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall a member or members of the board, or if the recall by a vote at a meeting is disputed, the board shall, within 72 hours, file with the division a petition for binding arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon service of the final order of arbitration upon the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 72 hours of the effective date of the recall.

4. *If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in subparagraph (d)(3). If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with subparagraph (d)3. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but prior to the recall election.*

Section 4. Subsection (2) of section 718.113, Florida Statutes, is amended and subsection (6) is added to that section to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters.—

(2) *Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration or except as provided in this section. If the declaration does not specify the procedure for approval of alterations or additions, 75 percent of the total voting interests of the association must approve the alterations or additions.*

(6) *If work that is necessary to maintain, repair, replace, protect, or ensure the common elements also constitutes a material alteration or substantial addition to the common elements or association property, the work may be authorized by the board of administration pursuant to its duties under subsection (1) or unless otherwise provided to the contrary by the declaration.*

Section 5. Paragraph (c) is added to subsection (1) of section 718.115, Florida Statutes, to read:

718.115 Common expenses and common surplus.—

(1)

(c) *If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located.*

Section 6. Paragraph (a) of subsection (1), and paragraph (a) of subsection (9) of section 718.116, Florida Statutes, are amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how his title has been acquired, including a purchaser at a judicial sale, is liable for all assessments which come due while he is the unit owner. The grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. ~~However, A first mortgagee who acquires title to the unit by foreclosure or by deed in lieu of foreclosure is not liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed share of common expenses or assessments attributable to the condominium parcel or chargeable to the former unit owner if the mortgagee has recorded in the official records a deed in lieu of foreclosure or filed a foreclosure proceeding in a court of appropriate jurisdiction within 6 months after the last payment of principal or interest received by the mortgagee. However, the mortgagee's liability is limited to a period not exceeding 6 months, but in no event does~~

~~the first mortgagee's liability exceed 1 percent of the original mortgage debt. The first mortgagee's liability for such expenses or assessments does not commence until 30 days after the date the first mortgagee received the last payment of principal or interest. The 6-month period shall be extended for any period of time during which the mortgagee is precluded from initiating such procedure due to the bankruptcy laws of the United States, and In no event shall the mortgagee be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less.~~

(9)(a) No unit owner may be excused from the payment of his share of the common expense of a condominium unless all unit owners are likewise proportionately excused from payment, except as provided in subsection (1)(7) and in the following cases:

1. If the declaration so provides, a developer or other person who owns condominium units offered for sale may be excused from the payment of the share of the common expenses and assessments related to those units for a stated period of time subsequent to the recording of the declaration of condominium. The period must terminate no later than the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first condominium unit occurs. However, the developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

2. A developer or other person who owns condominium units or who has an obligation to pay condominium expenses may be excused from the payment of his share of the common expense which would have been assessed against those units during the period of time that he has guaranteed to each purchaser in the purchase contract, declaration, or prospectus, or by agreement between the developer and a majority of the unit owners other than the developer, that the assessment for common expenses of the condominium imposed upon the unit owners would not increase over a stated dollar amount and has obligated himself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners ~~and other income as provided in paragraph (b). The guarantee may provide that after an initial stated period, the developer has an option or options to extend the guarantee for one or more additional stated periods.~~

Section 7. Paragraphs (c) and (e) of subsection (4) of section 718.1255, Florida Statutes, are amended to read:

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(4) MANDATORY NONBINDING ARBITRATION OF DISPUTES.—The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation shall employ full-time arbitrators to conduct the arbitration hearings provided by this chapter. No person may be employed by the department as a full-time arbitrator unless he is a member in good standing of The Florida Bar. The department shall promulgate rules of procedure to govern such arbitration hearings. The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo. If such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence.

(c) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party may be awarded the costs of the arbitration, reasonable attorney's fees, or both, in an amount determined in the discretion of the arbitrator.

(e) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction ~~the circuit court for the circuit in which the condominium is located arbitration took place.~~ A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. *If the petition is granted, the petitioner may recover reasonable attorney's fees and costs incurred in enforcing the arbitration award.*

Section 8. Subsection (2) and paragraph (c) of subsection (4) of section 718.301, Florida Statutes, are amended to read:

718.301 Transfer of association control.—

(2) Within 75 ~~60~~ days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 ~~30~~ days' ~~or more than 40 days'~~ notice of an election ~~for a meeting of the unit owners to elect the members of the board of administration. The election shall proceed as provided in s. 718.112(2)(d).~~ The meeting may be called and the notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation applicable, by an independent certified public accountant. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

Section 9. Section 718.3026, Florida Statutes, is amended to read:

718.3026 Contracts for products and services; in writing; bids; exceptions.—Associations with less than 100 units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so.

(1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after ~~from~~ the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing. If ~~where~~ a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association on behalf of any condominium operated by the association in the aggregate that exceeds 5 percent of the total annual budget of the association, including reserves ~~exceeding \$5,000~~, the association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the association to accept the lowest bid.

(2)(a)1. Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, ~~and~~ accountant, architect, engineering, and landscape architect services are ~~shall~~ not be subject to the provisions of this section.

2. A contract executed before January 1, 1992, and any renewal thereof, is not subject to the competitive bid requirements of this section. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to a condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this section. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. A condominium whose declaration or bylaws provides for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of this section if those provisions are not less stringent than the requirements of this section.

(b) Nothing contained herein is intended to limit the ability of an association to obtain needed products and services in an emergency.

(c) This section shall not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

(d) Nothing contained herein shall excuse a party contracting to provide maintenance or management services from compliance with s. 718.3025.

Section 10. Subsection (3) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners; waiver; levy of fine against unit by association.—

(3) If the declaration or bylaws so provide, the association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. No fine will become a lien against a unit. No fine may exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, its licensee or invitee. The hearing must be held before a committee of other unit owners. If the committee does not agree with the fine, the fine may not be levied. The provisions of this subsection do not apply to unoccupied units.

Section 11. Paragraph (k) of subsection (1) of section 718.501, Florida Statutes, is repealed; present paragraphs (l) and (m) of that subsection are redesignated as paragraphs (k) and (l); and paragraph (d) of that subsection is amended, new paragraphs (m) and (n) are added to that subsection, and paragraph (a) of subsection (2) is amended, to read:

718.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties: upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board of administration, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division. The term "willfully and knowing-

ly" means that the division informed the officer or board member that his action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(m) The division shall develop a program to recruit volunteer mediators to provide voluntary mediation of condominium disputes without compensation or reimbursement. The division shall provide, upon request, a list of such mediators to any association requesting a copy of the list. The division shall include on the list only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes.

(n) When a complaint is made, the division shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to s. 120.57.

(2)(a) Effective January 1, 1992, each condominium association which operates more than two units shall pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. ~~Effective January 1, 1993, the annual fee shall be \$3.~~ If the fee is not paid by March 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

Section 12. Subsection (1) of section 718.5019, Florida Statutes, is amended to read:

718.5019 Advisory council; membership; functions.—

(1) There is created the Advisory Council on Condominiums. The council shall consist of seven members. Two shall be appointed by the Speaker of the House of Representatives, two shall be appointed by the President of the Senate, and three members shall be appointed by the Governor. At least one member shall represent time-share condominiums. Members shall be appointed to 2-year terms; however, of the initial appointment, one of the members appointed by each of the Governor, the Speaker of the House of Representatives, and the President of the Senate shall be appointed to 1-year terms. In addition to these appointed members, the director of the Division of Florida Land Sales, Condominiums, and Mobile Homes shall serve as an ex officio member of the council. It is the intent of the Legislature that the appointments persons appointed to this council be geographically distributed across the state and repre-

sent a cross-section of persons interested in condominium issues and include unit-owner and board representatives and a representative from at least one association with less than 100 units. For administrative purpose, the commission shall be located in the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation. Members of the council shall serve without compensation, but shall be entitled to receive per diem and travel expenses pursuant to s. 112.061 while on official business.

Section 13. Paragraph (b) of subsection (1) and subsection (2) of section 718.503, Florida Statutes, are amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(b) Copies of documents to be furnished to prospective buyer or lessee.—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the condominium.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium to obtain acceptance or approval of the development plan or any portion thereof by state or local authorities, a copy of

any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received required at the time of filing.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is ~~shall be~~ entitled, at the seller's expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws, and rules of the association, as well as a copy of the question and answer sheet provided for by s. 718.504.

(b) ~~If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.~~

(c)~~(b)~~ Each ~~any~~ contract entered into after July 1, 1992, for the resale of a residential unit shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, AND THE QUESTION AND ANSWER SHEET MORE THAN 3 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS, AND RULES OF THE ASSOCIATION, AND QUESTION AND ANSWER SHEET, ~~IF SO REQUESTED IN WRITING~~. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES ~~HAS RECEIVED~~ THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS, RULES, AND QUESTION AND ANSWER SHEET, ~~IF REQUESTED IN WRITING~~. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

Section 14. Subsection (26) of section 718.504, Florida Statutes, is amended to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Land Sales, Condominiums, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled Frequently Asked Questions and Answers, which shall be in accordance with a format approved by the division. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied,

whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(26) ~~If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium to obtain acceptance or approval of the development plan or any portion thereof by state or local authorities, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received required at the time of filing.~~

Section 15. Sections 718.5015, 718.5016, 718.5017, and 718.5018, Florida Statutes, as created by section 17 of chapter 91-103, Laws of Florida, are repealed.

Section 16. Section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(1) "Assessment" means a share of the funds required for the payment of common expenses, which from time to time is assessed against the unit owner.

(2) "Association" means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative.

(3) "Board of administration" means the board of directors or other representative body responsible for administration of the association.

(4) "Bylaws" means the bylaws of the association existing from time to time.

(5) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the association budget or take action on behalf of the board.

(6)~~(5)~~ "Common areas" means the portions of the cooperative property not included in the units.

(7)~~(6)~~ "Common expenses" means all expenses and assessments properly incurred by the association for the cooperative.

(8)~~(7)~~ "Common surplus" means the excess of all receipts of the association—including, but not limited to, assessments, rents, profits, and revenues on account of the common areas—over the amount of common expenses.

(9)~~(8)~~ "Cooperative" means that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

(10)~~(9)~~ "Cooperative documents" means:

(a) The documents that create a cooperative, including, but not limited to, articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any.

(b) The document evidencing a unit owner's membership or share in the association.

(c) The document recognizing a unit owner's title or right of possession to his unit.

(11)~~(10)~~ "Cooperative parcel" means the shares or other evidence of ownership in a cooperative representing an undivided share in the assets of the association, together with the lease or other muniment of title or possession.

(12)(11) "Cooperative property" means the lands, leaseholds, and personal property owned by a cooperative association.

(13)(12) "Developer" means a person who creates a cooperative or who offers cooperative parcels for sale or lease in the ordinary course of business, but does not include the owner or lessee of a unit who has acquired or leased his unit for his own occupancy, nor does it include a condominium association which creates a cooperative by conversion of an existing residential condominium after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons.

(14)(13) "Operation" or "operation of the cooperative" includes the administration and management of the cooperative property.

(15)(14) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents.

(16)(15) "Unit owner" or "owner of a unit" means the person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property.

(17)(16) "Residential cooperative" means a cooperative consisting of cooperative units, any of which are intended for use as a private residence. A cooperative is not a residential cooperative if the use of the units is intended as primarily commercial or industrial and not more than three units are intended to be used for private residence, domicile, or homestead, or if the units are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the cooperative. If a cooperative is a residential cooperative under this definition, but has units intended to be commercial or industrial, then the cooperative is a residential cooperative with respect to those units intended for use as a private residence, domicile, or homestead, but not a residential cooperative with respect to those units intended for use commercially or industrially.

(18)(17) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(19)(18) "Conspicuous type" means type in capital letters no smaller than the largest type on the page on which it appears.

(20)(19) "Limited common areas" means those common areas which are reserved for the use of a certain cooperative unit or units to the exclusion of other units, as specified in the cooperative documents.

(21)(20) "Common areas" includes within its meaning the following:

- (a) The cooperative property which is not included within the units.
- (b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common areas.
- (c) An easement of support in every portion of a unit which contributes to the support of a building.
- (d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common areas.
- (e) Any other part of the cooperative property designated in the cooperative documents as common areas.

Section 17. Section 719.104, Florida Statutes, is amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(1) RIGHT OF ACCESS TO UNITS.—The association has the irrevocable right of access to each unit from time to time during reasonable hours when necessary for the maintenance, repair, or replacement of any structural components of the building or of any mechanical, electrical, or plumbing elements necessary to prevent damage to the building or to another unit.

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).;
 2. A photocopy of the cooperative documents.;
 3. A copy of the current rules of the association.;
 4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.;
 5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers.;
 6. All current insurance policies of the association.;
 7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.;
 8. Bills of sale or transfer for all property owned by the association.;
 9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:
 - a. Accurate, itemized, and detailed records of all receipts and expenditures.
 - b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
 - c. All audits, reviews, accounting statements, and financial reports of the association.
 - d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.;
 10. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners elections, which shall be maintained for a period of 1 year after from the date of the election, vote, or meeting to which the document relates.;
 11. All rental records where the association is acting as agent for the rental of units.
 12. A copy of the current question and answer sheet as described in s. 719.504.
 13. All other records of the association not specifically included in the foregoing which are related to the operation of the association.
- (b) The official records of the association shall be maintained within the state in the county in which the cooperative is located. The records of the association shall be made available to a unit owner within 5 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records available for inspection or copying on the cooperative property.
- (c) The official records of the association shall be open to inspection by any association member or the authorized representative of such member at all reasonable times. Failure to permit inspection of the association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th day after receipt of the written request. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amend-

ments to each of the foregoing, as well as the question and answer sheet provided for in s. 719.504, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. Notwithstanding the provisions of this paragraph, the following records shall not be accessible to unit owners:

1. A record that was prepared by an association attorney or prepared at the attorney's express direction; that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association; or that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, until the conclusion of the litigation or adversarial administrative proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Medical records of unit owners.

(3) **INSURANCE.**—The association shall use its best efforts to obtain and maintain adequate insurance to protect the association property. The association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(4) **FINANCIAL REPORT.**—

(a) Within 60 days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the association, the board of administration of the association shall mail or furnish by personal delivery to each unit owner and to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:

- 1.(a) Costs for security;
- 2.(b) Professional and management fees and expenses;
- 3.(c) Taxes;
- 4.(d) Costs for recreation facilities;
- 5.(e) Expenses for refuse collection and utility services;
- 6.(f) Expenses for lawn care;
- 7.(g) Costs for building maintenance and repair;
- 8.(h) Insurance costs;
- 9.(i) Administrative and salary expenses; and
- 10.(j) General reserves, maintenance reserves, and depreciation reserves.

Any financial report provided to the Division of Florida Land Sales, Condominiums, and Mobile Homes is confidential and exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(b) The division shall adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year. The financial statements shall be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The rules of the division may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j). The requirement to have the financial statements compiled, reviewed, or audited does not apply to associations if a majority of the voting interests of the association present at a duly called meeting of the association have determined for a fiscal year to waive this requirement. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of the operation of the association,

after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. This subsection does not apply to a cooperative that consists of 50 or fewer units.

(5) **ASSESSMENTS.**—The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common areas. However, the association may not charge a use fee against the unit owner for the use of common areas unless otherwise provided for in the cooperative documents or by a majority vote of the association or unless the charges relate to expenses incurred by an owner having exclusive use of common areas.

(6) **PURCHASE OF LEASES.**—The association has the power to purchase any land or recreation lease upon the approval of such voting interest as is required by the cooperative documents. If the cooperative documents make no provision for acquisition of the land or recreational lease, the vote required is that required to amend the cooperative documents to permit the acquisition.

(7) **COMMINGLING.**—All funds shall be maintained separately in the association's name. Reserve and operating funds of the association may be commingled for purposes of investment but separate ledgers must be maintained for each account. A manager or business entity required to be licensed or registered under s. 468.432, or an agent, employee, officer, or director of a cooperative association may not commingle any association funds with his own funds or with the funds of any other cooperative association or community association as defined in s. 468.431.

(8) **CORPORATE ENTITY.**—

(a) The officers and directors of the association have a fiduciary relationship to the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts any thing or service of value is subject to a civil penalty pursuant to s. 719.501(1)(d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken is presumed to have assented to the action taken unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

(c) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(9) **POWERS AND DUTIES.**—The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the articles of incorporation and bylaws and chapters 607 and 617, as applicable.

Section 18. Subsection (3) is added to section 719.105, Florida Statutes, to read:

719.105 Cooperative parcels; appurtenances; possession and enjoyment.—

(3) When a unit is leased, the tenant has all use rights in the association property available for use generally by the unit owner and the unit owner does not have such rights except as a guest. This subsection does not interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association may adopt rules to prohibit dual usage by a unit owner and a tenant of cooperative property.

Section 19. Subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) **MANDATORY PROVISIONS.**—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) Administration.—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. *Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.*

2. *When a unit owner files a written complaint by certified mail with the board of administration, the board shall respond to the unit owner within 30 days. The board shall give a substantive response to the complainant, notify the complainant that a legal opinion has been requested or notify the complainant that advice has been requested from the division. The failure to act within 30 days and to notify the unit owner within 30 days of the action taken precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the complaint.*

(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of voting interests, and decisions shall be made by owners of a majority of the voting interests. Unless otherwise provided in this chapter, or in the articles of incorporation, bylaws, or other cooperative documents, and except as provided in subparagraph (d)1., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2.; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. After January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a time-share cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

(c) Board of administration meetings.—Meetings of the board of administration and any committee thereof at which a quorum of the members of that committee are present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. *Any item not included on the notice may be taken up by at least a majority plus one of the members of the board.* However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit

use, will be ~~considered proposed, discussed, or approved~~, shall be mailed or delivered to the unit owners and posted conspicuously on the cooperative property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the ~~person providing the notice~~ secretary and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

(d) Shareholder meetings.—There shall be an annual meeting of the shareholders. All members of the board of administration shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. Any unit owner desiring to be a candidate for board membership shall comply with subparagraph 1. The bylaws shall provide the method for calling meetings, including annual meetings. Written notice, which notice shall incorporate an identification of agenda items, shall be given to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the cooperative property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notice of unit owner meetings shall be posted. Unless a unit owner waives in writing the right to receive notice of the annual meeting, the notice of the annual meeting shall be sent by mail to each unit owner. An officer of the association shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association, affirming that notices of the association meeting were mailed or hand delivered, in accordance with this provision, to each unit owner at the address last furnished to the association.

1. After January 1, 1992, the board of administration shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board of administration, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise *unless otherwise provided in this chapter*. Not less than 60 days before a scheduled election, the association shall mail or deliver, whether by separate association mailing or included in another association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the ~~secretary~~ of the association not less than 40 days before a scheduled election. *The board shall hold a meeting within 5 days after the deadline for a candidate to provide notice to the association of intent to run. At this meeting, the board shall accept additional nominations. Any unit owner or other eligible person may nominate himself or may nominate another unit owner or eligible person, if he has permission in writing to nominate the other person.* Not less than 30 days before the election meeting, the association shall ~~then~~ mail a second notice of election meeting to all unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, *which must be furnished by the candidate not less than 35 days prior to the election*, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the association. *The association has no liability for the contents of the information sheets provided by the candidates.* The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement. *However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid or minimum number of votes necessary for election of members of the board of administration.* No unit owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. *Any unit owner violating this provision may be fined by the association in accordance with s. 719.303.* The regular election shall occur on the date of the annual meeting. The provisions of this subparagraph shall not apply to time-share cooperatives. *Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file a notice of intent to run or are nominated than vacancies exist on the board.*

2. Any approval by unit owners called for by this chapter, or the applicable cooperative documents, shall be made at a duly noticed meeting of unit owners and shall be subject to all requirements of this chapter or the applicable cooperative documents relating to unit owner decision-making, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable cooperative documents or any Florida statute which provides for the unit owner action.

3. Unit owners may waive notice of specific meetings if allowed by the applicable cooperative documents or any Florida statute.

4. Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

5. Any unit owner may tape record or videotape meetings of the unit owners subject to reasonable rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)1., an association consisting of fewer than 25 units may, by a two-thirds vote of the unit owners, provide for a different voting and election procedure in its bylaws.

(e) Budget procedures.—

1. The board of administration shall mail a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 30 days prior to the meeting at which the budget will be considered. If the bylaws or other cooperative documents provide that the budget may be adopted by the board of administration, then the unit owners shall be given written notice of the time and place at which the meeting of the board of administration to consider the budget will be held. The meeting shall be open to the unit owners.

2. If an adopted budget which requires assessment against the unit owners in any fiscal or calendar year exceeds 115 percent of the assessments for the preceding year, the board upon written application of 10 percent of the voting interests to the board, shall call a special meeting of the unit owners within 30 days, upon not less than 10 days' written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. Unless the bylaws require a larger vote, the adoption of the budget shall require a vote of not less than a majority of all the voting interests.

3. The board of administration may, in any event, propose a budget to the unit owners at a meeting of members or by writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all voting interests in writing, the budget shall be adopted. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the board of directors shall go into effect as scheduled.

4. In determining whether assessments exceed 115 percent of similar assessments for prior years, any authorized provisions for reasonable reserves for repair or replacement of cooperative property, anticipated expenses by the association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterments to the cooperative property shall be excluded from computation. However, as long as the developer is in control of the board of administration, the board shall not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all voting interests.

(f) Recall of board members.—Subject to the provisions of s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the voting interests to recall any member of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective immediately, and each recalled member of the board of administration shall turn over to the board any and all records of the association in his possession within 72 hours after the meeting.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing shall be served on the association by certified mail. The board of administration shall call a meeting of the board within 72 hours after receipt of the agreement in writing and shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 72 hours, any and all records of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or if the recall by a vote at a meeting is disputed, the board shall, within 72 hours, file with the division a petition for binding arbitration pursuant to the procedures of s. 719.1255. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member of the board, the recall shall be effective upon service of the final order of arbitration upon the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 719.501. Any member so recalled shall deliver to the board any and all records of the association in his possession within 72 hours of the effective date of the recall.

4. *If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but prior to the recall election.*

(g) Common expenses.—The manner of collecting from the unit owners their shares of the common expenses shall be stated. Assessments shall be made against unit owners not less frequently than quarterly, in an amount no less than is required to provide funds in advance for payment of all of the anticipated current operating expense and for all of the unpaid operating expense previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses in actions taken pursuant to s. 719.104(4).

(h) Amendment of bylaws.—The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by owners of not less than two-thirds of the voting interests. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw . . . for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

(i) Transfer fees.—No charge may be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the cooperative documents. Any such fee may be preset, but in no event shall it exceed \$100 \$50 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. Nothing in this paragraph shall be construed to prohibit an association from requiring as a condition to permitting the letting or renting of a unit, when the association has such authority in the documents, the depositing into an escrow account maintained by the association a security deposit in an amount not to exceed the equivalent of 1 month's rent. The security deposit shall protect against damages to the common areas or cooperative property. Within 15 days after a tenant

vacates the premises, the association shall refund the full security deposit or give written notice to the tenant of any claim made against the security. Disputes under this paragraph shall be handled in the same fashion as disputes concerning security deposits under s. 83.49.

(j) Annual budget.—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20).

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any extension of the useful life of a reserve item caused by deferred maintenance. This paragraph shall not apply to any budget in which the members of an association have, by a vote of the majority of the members present at a duly called meeting of the association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves for the first two years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of nondeveloper voting interests present at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interests present at a duly called meeting of the association.

(k) Fidelity bonds.—The association shall obtain and maintain adequate provision for the fidelity bonding of all persons who control or disburse funds of the association. *If an association's annual gross receipts do not exceed \$100,000, the bond shall be in the principal sum of not less than \$10,000 for each such person. If an association's annual gross receipts exceed \$100,000 but do not exceed \$300,000, the bond shall be in the principal sum of \$30,000 for each such person. If an association's annual gross receipts are greater than \$300,000, the bond shall be, in the principal sum of not less than \$50,000 for each such person. The association shall bear the cost of bonding. However, in the case of a person providing management services to the association and required to be licensed pursuant to s. 468.432, the cost of bonding may be reimbursed by the association; all such persons providing management services to an association shall provide the association with a certificate of insurance evidencing compliance with this paragraph.*

(l) Arbitration.—There shall be a provision for voluntary binding arbitration of internal disputes arising from the operation of the cooperative among developers, unit owners, associations, and their agents and assigns in accordance with s. 719.1255.

Section 20. Subsection (1) of section 719.107, Florida Statutes, is amended to read:

719.107 Common expenses; assessment.—

(1)(a) Common expenses include the expenses of the operation, maintenance, repair, or replacement of the cooperative property; costs of carrying out the powers and duties of the association; and any other expense, whether or not included in this paragraph, designated as common expense by this chapter or the cooperative documents.

(b) *If so provided in the bylaws, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract shall be deemed a common expense, and if not obtained pursuant to a bulk contract, such cost shall be considered common expense if it is designated as such in a written contract*

between the board of administration and the company providing the master television antenna system or the cable television service. The contract shall be for a term of not less than 2 years.

1. *Any contract made by the board after the effective date of this act for a community antenna system or duly franchised cable television service may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.*

2. *Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners receiving cable television.*

(c) *If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the cooperative in which the unit is located.*

Section 21. Subsection (3) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law, and, if no rate is provided in the cooperative documents, then interest shall accrue at 18 percent per annum. *Also, if the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, in an amount not to exceed the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association shall be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 719.303(3).*

Section 22. Section 719.1255, Florida Statutes, is amended to read:

719.1255 ~~Alternative resolution~~ Arbitration of disputes.—The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation shall ~~provide for alternative dispute resolution in accordance with s. 718.1255 employ full-time arbitrators to conduct the binding arbitration hearings provided by this chapter. No person may be employed by the department as a full-time arbitrator unless he is a member in good standing of The Florida Bar. The department shall adopt rules of procedure to govern such binding arbitration hearings. The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this section shall be construed to foreclose parties from proceeding in a trial de novo; if such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence. Any party may seek enforcement of the final decision of an arbitrator in a court of competent jurisdiction.~~

Section 23. Section 719.201, Florida Statutes, is repealed.

Section 24. Section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(1) When unit owners other than the developer own 15 percent or more of the units in a cooperative that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to

elect not less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business; or

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business; or;

(e) Seven years after creation of the cooperative association,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent in cooperatives with fewer than 500 units and 2 percent in cooperatives with 500 or more units in a cooperative operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority of the members of the board.

(2) Within 75 ~~60~~ days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than ~~60~~ ~~30~~ days' ~~or more than 40 days'~~ notice of an election for a meeting of the unit owners to elect the members of the board of administration. The election shall proceed as provided in s. 719.106(1)(d). The meeting may be called and the notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) ~~Prior to, or not more than 60 days after, the time that~~ unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, ~~or for the purpose of paragraph (c) not more than 90 days thereafter,~~ the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(a)1. The original or a photocopy of the recorded cooperative documents and all amendments thereto. If a photocopy is provided, it shall be certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual recorded cooperative documents.

2. A certified copy of the association's articles of incorporation, or if it is not incorporated, then copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations which have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents since the incorporation of the association through the date of turnover. The records shall be audited for the period of the incorporation of the association or for the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, reviewed by an independent certified public accountant. All financial statements shall be prepared ~~The minimum report required shall be a review~~ in accordance with generally accepted accounting standards and shall be audited in accordance with generally accepted auditing standards as prescribed by ~~defined by rule of~~ the Board of Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, represented by the developer to be part of the common areas or ostensibly part of the common areas, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the cooperative and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the cooperative property and for the construction and installation of the mechanical components serving the improvements. If the cooperative property has been organized as a cooperative more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

(g) A list of the names and addresses, of which the developer had knowledge at any time in the development of the cooperative, of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping.

(h) ~~(g)~~ Insurance policies.

(i) ~~(h)~~ Copies of any certificates of occupancy which may have been issued for the cooperative property.

(j) ~~(i)~~ Any other permits issued by governmental bodies applicable to the cooperative property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(k) ~~(j)~~ All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) ~~(k)~~ A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(m) ~~(l)~~ Leases of the common areas and other leases to which the association is a party.

(n) ~~(m)~~ Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) ~~(n)~~ All other contracts to which the association is a party.

(5) If, during the period prior to the time the developer relinquishes control of the association pursuant to subsection (4), any provision of the Cooperative Act or any rule adopted thereunder is violated by the association, the developer shall be responsible for such violation and shall be subject to the administrative action provided in this chapter for such violation, and the developer shall be liable to third parties for such violation. This subsection is intended to clarify existing law.

Section 25. Section 719.3026, Florida Statutes, is created to read:

719.3026 Contracts for products and services; in writing; bids; exceptions.—Associations with less than 100 units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so.

(1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association in an amount which in the aggregate exceeds 5 percent of the association's budget, including reserves, the association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the association to accept the lowest bid.

(2)(a)1. Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, engineering, and landscape architect services shall not be subject to the provisions of this section.

2. A contract executed before January 1, 1992, and any renewal thereof, is not subject to the competitive bid requirements of this section. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to a cooperative pursuant to a local government franchise agreement by a franchise holder are not subject to the competitive bid requirement. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. A condominium whose declaration or bylaws provides for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of this section if those provisions are not less stringent than the requirements of this section.

(b) This section does not limit the ability of an association to obtain needed products and services in an emergency.

(c) This section does not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

Section 26. Section 719.303, Florida Statutes, is amended to read:

719.303 Obligations of owners.—

(1) Each unit owner, *each tenant and other invitee*, and each association shall be governed by, and shall comply with the provisions of, this chapter, the cooperative documents, the documents creating the association, and the association bylaws *and the provisions thereof shall be deemed expressly incorporated into any lease of a unit*. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

- (a) The association.
- (b) A unit owner.

(c) Directors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) *Any tenant leasing a unit, and any other invitee occupying a unit.*

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 719.503(1)(a) is entitled to recover reasonable attorney's fees. *A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his share of assessments levied by the association to fund its expenses of the litigation.* This relief does not exclude other remedies provided by law.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws.

Any instrument given in writing by the unit owner or purchaser to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

(3) If the cooperative documents so provide, the association may levy reasonable fines against a unit owner for failure of the unit owner or his licensee or invitee or the unit's occupant to comply with any provision of the cooperative documents or reasonable rules of the association. *No fine shall become a lien against a unit. No fine shall exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000. No fine may \$50, nor shall any fine be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, his licensee or invitee. The hearing shall be held before a committee of other unit owners. If the committee does not agree with the fine it shall not be levied.* This subsection does not apply to unoccupied units.

Section 27. Section 719.501, Florida Statutes, is amended to read:

719.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against a developer, ~~or~~ association, *officer, or member of the board*, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, ~~or~~ association, *officer, or member of the board*, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. *Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.*

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignees or agents, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division, and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division is authorized to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential cooperatives in assessing the rights, privileges, and duties pertaining thereto.

(f) The division is authorized to promulgate rules, pursuant to chapter 120, necessary to implement, enforce, and interpret this chapter.

(g) The division shall establish procedures for providing notice to an association when the division is considering the issuance of a declaratory statement with respect to the cooperative documents governing such cooperative community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State's office on a biennial basis, and the rules promulgated pursuant thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of cooperatives which were rendered by the division during the previous year.

(j) The division shall adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by this chapter. The principles, policies, and standards shall take into consideration the size of the association and the total revenue collected by the association.

(k) The division shall provide training programs for cooperative association board members and unit owners.

(l) The division shall maintain a toll free telephone number accessible to cooperative unit owners.

(m) When a complaint is made to the division, the division shall conduct its inquiry with reasonable dispatch and with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a viola-

tion of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to s. 120.57.

(n) The division shall develop a program to recruit volunteer mediators to provide voluntary mediation of cooperative disputes without compensation or reimbursement. The division shall provide, upon request, a list of such mediators to any association requesting a copy of the list. The division shall include on the list only persons who have received at least 20 hours of training in mediation techniques or have mediated at least 20 disputes.

(2)(a) Each cooperative association shall pay to the division, on or before January 1 of each year, an annual fee in the amount of \$4 \$1 for each residential unit in cooperatives operated by the association. If the fee is not paid by March 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association shall not have the standing to maintain or defend any action in the courts of this state until the amount due is paid.

(b) All fees shall be deposited in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund as provided by law.

Section 28. Paragraph (a) of subsection (2) and subsection (3) of section 719.502, Florida Statutes, are amended to read:

719.502 Filing prior to sale or lease.—

(2)(a) Prior to filing as required by subsection (1), and prior to acquiring an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed, a developer shall not offer a contract for purchase or lease of a unit for more than 5 years. However, the developer but may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes. Each filing of a proposed reservation program shall be accompanied by a filing fee of \$250. Reservations shall not be taken on a proposed cooperative unless the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of \$20 \$15 for each residential unit to be sold by the developer which is described in the documents filed. If the cooperative is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase. Every developer who holds a unit or units for sale in a cooperative shall submit to the division any amendments to documents or items on file with the division and deliver to purchasers all amendments prior to closing, but in no event later than 10 days after the amendment. Upon filing of amendments to documents currently on file with the division, the developer shall pay to the division a filing fee of up to \$100 per filing, with the exact fee to be set by the division rule.

Section 29. Subsections (1) and (2) of section 719.503, Florida Statutes, are amended to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(a) Contents of contracts.—Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

1.(a) The following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER

UNDER SECTION 719.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

2.(b) The following caveat in conspicuous type shall be placed upon the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3.(e) If the unit has been occupied by someone other than the buyer, a statement that the unit has been occupied.

4.(d) If the contract is for the sale or transfer of a unit subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5.(e) If the contract is for the lease of a unit for a term of 5 years or more, the contract shall include as an exhibit a copy of the proposed lease.

6.(f) If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other common areas, the contract shall contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7.(g) The contract shall state the name and address of the escrow agent required by s. 719.202 and shall state that the purchaser may obtain a receipt for his deposit from the escrow agent, upon request.

(b)(2) Copies of documents to be furnished to prospective buyer or lessee.—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 719.504, or, if not, then copies of the following which are applicable:

1.(a) The question and answer sheet described in s. 719.504, and cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 719.104.

2.(b) The documents creating the association.

3.(e) The bylaws.

4.(d) The ground lease or other underlying lease of the cooperative.

5.(e) The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6.(f) The estimated operating budget for the cooperative and a schedule of expenses for each type of unit, including fees assessed to a shareholder who has exclusive use of common areas, where such costs are shared only by those entitled to use such common areas.

7.(g) The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

8.(h) The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

9.(i) The form of unit lease if the offer is of a leasehold.

10.(j) Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

11.(k) If the development is to be built in phases or if the association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

12.(l) If the cooperative is a conversion of existing improvements, the statements and disclosure required by s. 719.616.

13.(m) The form of agreement for sale or lease of units.

14.(n) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15.(o) A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the cooperative, a copy of any such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with the provisions of this subsection prior to the sale of his interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of the articles of incorporation of the association, the bylaws, and rules of the association, as well as a copy of the question and answer sheet as provided in s. 719.504.

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of an interest in a cooperative shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, AND THE QUESTION AND ANSWER SHEET MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE ARTICLES OF INCORPORATION, BYLAWS, AND RULES OF THE ASSOCIATION, AND QUESTION AND ANSWER SHEET. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE ARTICLES OF INCORPORATION, BYLAWS, RULES, AND QUESTION AND ANSWER SHEET. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

Section 30. Section 719.504, Florida Statutes, is amended to read:

719.504 Prospectus or offering circular.—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Land Sales, Condominiums, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. *In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and state whether membership in a recreational facilities association is mandatory, and if so, identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers.* The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

- (1) The front cover or the first page must contain only:
 - (a) The name of the cooperative.
 - (b) The following statements in conspicuous type:
 1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A COOPERATIVE UNIT.
 2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.
 3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.
- (2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.
- (3) A separate index of the contents and exhibits of the prospectus.
- (4) Beginning on the first page of the text (not including the summary and index), a description of the cooperative, including, but not limited to, the following information:
 - (a) Its name and location.
 - (b) A description of the cooperative property, including, without limitation:
 1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the cooperative is not a phase cooperative. If the cooperative is a phase cooperative, the maximum number of buildings that may be contained within the cooperative, the minimum and maximum number of units in each building, the minimum and maximum number of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the cooperative.
 2. The page in the cooperative documents where a copy of the survey and plot plan of the cooperative is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, a statement that the estimated date of completion of the cooperative is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the cooperative. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5) A statement in conspicuous type describing whether the cooperative is created and being sold as fee simple interests or as leasehold interests. If the cooperative is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(6) A description of the recreational and other common areas that will be used only by unit owners of the cooperative, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above, their general locations and types, improvements or changes that may be made, the approximate dollar amount to be expended, and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other cooperatives, *community associations, or planned developments* which require the payment of the maintenance and expenses of such facilities, either directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other common areas offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: **THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS COOPERATIVE; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS COOPERATIVE.** There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. **MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS;** or

2. **UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE;** or

3. **UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES);** or

4. A similar statement of the nature of the organization or manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: **THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMON AREAS.** Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN;** or

2. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED AREAS. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the cooperative whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: **RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S).** Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

(11) The arrangements for management of the association and maintenance and operation of the cooperative property and of other property that will serve the unit owners of the cooperative property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the cooperative documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the cooperative property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: **THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE COOPERATIVE PROPERTY WITH (NAME OF THE CONTRACT MANAGER).** Immediately following this statement, the location in the disclosure materials of the contract for management of the cooperative property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that cooperative to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: **THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.** Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: **THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.** Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the cooperative is part of a phase project, the following shall be stated:

(a) A statement in conspicuous type in substantially the following form shall be included: **THIS IS A PHASE COOPERATIVE. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS COOPERATIVE.** Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration providing for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the cooperative may be substantially different from the residential buildings and units originally in the cooperative, and, if the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE COOPERATIVE MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE COOPERATIVE. Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum number of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the cooperative.

(15) If the cooperative is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 719.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(16) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the cooperative property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the cooperative documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(17) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the cooperative. If any part of such land will serve the cooperative, the statement shall describe the land and the nature and term of service, and the cooperative documents or other instrument creating such servitude shall be included as an exhibit.

(18) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(19) An explanation of the manner in which the apportionment of common expenses and ownership of the common areas have been determined.

(20) An estimated operating budget for the cooperative and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the cooperative and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than assessments payable to the association, payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses that are personal to unit owners, which are not uniformly incurred by all unit owners, or which are not provided for or contemplated by the cooperative documents, including, but not limited to, the costs of private telephone; maintenance of the interior of cooperative units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his unit; insurance premiums other than those incurred for policies obtained by the cooperative; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the cooperative and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated either as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and cooperative:

- a. Administration of the association.
- b. Management fees.
- c. Maintenance.
- d. Rent for recreational and other commonly used areas.
- e. Taxes upon association property.
- f. Taxes upon leased areas.
- g. Insurance.
- h. Security provisions.
- i. Other expenses.
- j. Operating capital.
- k. Reserves.

1. Fee payable to the division.

2. Expenses for a unit owner:

- a. Rent for the unit, if subject to a lease.
- b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used areas, which use and payment are a mandatory condition of ownership and are not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(21) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the cooperative and a statement of its and his experience in this field.

(23) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The cooperative documents, or the proposed cooperative documents if the documents have not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the cooperative.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the cooperative and the required schedule of unit owners' expenses.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to cooperative ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the cooperative is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (16).

(24) Any prospectus or offering circular complying with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment, or may be amended to comply with the provisions of this chapter.

(25) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the cooperative property other than those in the declaration.

(26) *If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facility intended to serve the cooperative, a copy of such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502 or a statement that such acceptance has not been acquired or received.*

(27) *Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.*

Section 31. Subsection (5) of section 719.608, Florida Statutes, is amended to read:

719.608 Notice of intended conversion; time of delivery; content.—

(5) *Prior to delivering a notice of intended conversion to tenants of existing improvements being converted to a residential cooperative, each developer shall file with the division a copy of the notice of intended conversion. Upon filing, each developer shall pay to the division a filing fee of \$100. The copy of the notice shall be filed with the division no later than the time when the notice is given to the tenants.*

Section 32. This act shall take effect April 1, 1992, or upon becoming a law, whichever occurs later, and shall operate retroactively to April 1, 1992.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to community associations; amending s. 718.103, F.S.; revising definitions for purposes of ch. 718, F.S.; amending s. 718.111, F.S.; revising provisions with respect to the corporate entity of a condominium association; revising requirements for maintaining official records of the condominium association; providing for privileged records and information; revising requirements for furnishing financial reports; providing for confidentiality; revising certain requirements for maintaining association funds; amending s. 718.112, F.S.; providing for nominations to the board of administration of an association; revising procedures for meetings and elections; revising provisions with respect to fidelity bonds of the association; amending s. 718.113, F.S.; providing requirements for approving alterations or additions to association property; amending s. 718.115, F.S.; providing that certain unpaid shares of common expenses or assessments are collectible from all unit owners; amending s. 718.116, F.S.; providing a mortgagee limited liability for unpaid assessments accruing prior to foreclosure sale; amending s. 718.1255, F.S.; providing for an award of costs in arbitration proceedings; providing for attorney's fees and costs in proceedings to enforce an arbitration award; amending s. 718.301, F.S.; prescribing procedures for the election of a member of the board of an association when unit owners other than the developer are entitled to elect such a member; conditioning developer turnover upon an audit if audits have been performed each year since incorporation; amending s. 718.3026, F.S.; providing certain exemptions from competitive bid requirements; amending s. 718.303, F.S.; providing for a hearing before a committee of unit owners; amending s. 718.501, F.S.; revising provisions with respect to the powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation; providing for a mediation program; providing for procedures to handle complaints to the division; amending s. 718.5019, F.S.; prescribing criteria for making appointments to the Advisory Council on Condominiums; amending ss. 718.503, 718.504, F.S.; revising disclosure requirements for developers and nonde-

velopers prior to the sale of a condominium unit; repealing ss. 718.5015, 718.5016, 718.5017, 718.5018, F.S., relating to the Office of the Condominium Ombudsman; amending s. 719.103, F.S.; revising definitions for purposes of ch. 719, F.S.; amending s. 719.104, F.S.; providing for additional information in the official records of the cooperative; providing for availability of records; providing for rules with respect to records; providing for insurance; revising language with respect to financial reports; providing for confidentiality of certain records; providing for commingling and for the corporate entity; amending s. 719.105, F.S.; providing for use rights of tenants who rent cooperatives; amending s. 719.106, F.S., relating to bylaws and cooperative ownership; amending s. 719.107, F.S.; revising provisions with respect to common expenses and assessments; amending s. 719.108, F.S.; revising provisions with respect to rents and assessments; providing fees; amending s. 719.1255, F.S.; revising provisions with respect to alternative dispute resolution; repealing s. 719.201, F.S., relating to taxes and bond for payment of liability during construction; amending s. 719.301, F.S.; revising provisions with respect to transfer of association control; creating s. 719.3026, F.S.; providing for written contracts for products and services; providing for bids; providing exceptions; amending s. 719.303, F.S.; revising provisions with respect to the obligations of cooperative owners; increasing a penalty; amending s. 719.501, F.S.; revising provisions with respect to the powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes; providing procedures for investigating complaints and for voluntary mediation; increasing a fee; amending s. 719.502, F.S.; revising provisions with respect to filing prior to sale or lease; requiring a filing fee; amending s. 719.503, F.S.; revising provisions with respect to disclosure prior to sale; amending s. 719.504, F.S.; revising provisions with respect to the prospectus or offering circular; amending s. 719.608, F.S.; revising provisions relating to notice of intended conversion; providing for retroactive application; providing an effective date.

Senator Dudley moved the following amendments to **Amendment 1** which were adopted:

Amendment 1A—On page 3, line 28, strike “July 1, 1993” and insert: ~~April 1, 1992~~ July 1, 1992

Amendment 1B—On page 10, line 15, strike “legal”

Senator Wexler moved the following amendment to **Amendment 1** which was adopted:

Amendment 1C (with Title Amendment)—On page 102, line 30, insert:

Section 32. Section 617.301, Florida Statutes, is created to read:

617.301 Homeowners' associations; definitions.—

(1) “Association property” means the lands, leaseholds, and personal property that are subject to the homeowners' association.

(2) “Homeowners' association” means an association in which membership, either by the parcel owner or by an association in which parcel owners are members, is a condition of ownership of a parcel and which is authorized to impose a charge or assessment that, if unpaid, may become a lien on the parcel.

(3) “Member” means a member of a homeowners' association, whether a natural person or an association representing parcel owners.

(4) “Parcel” means the real property within the property subject to a homeowners' association that is subject to exclusive ownership.

Section 33. Section 617.302, Florida Statutes, is created to read:

617.302 Homeowners' associations; scope.—Sections 617.301-617.306 do not apply to homeowners' associations that are subject to regulation by chapter 718, chapter 719, chapter 721, or chapter 723; to homeowners' associations serving less than 50 parcels or in which the assessments do not exceed \$150 per year per parcel; or to any homeowners' association prior to transfer of control of the association to parcel owners other than the developer.

Section 34. Section 617.303, Florida Statutes, is created to read:

617.303 The association.—

(1) The officers and directors of a homeowners' association have a fiduciary relationship to the owners of parcels served by the homeowners' association.

(2) Meetings of the board of directors shall be open to all parcel owners, and notices of meetings shall be posted in a conspicuous place on the association property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against parcels are to be established shall specifically contain a statement that assessments shall be considered and the nature of such assessments.

(3) Minutes of all meetings of members and of the board of directors shall be kept in a businesslike manner and shall be available for inspection by parcel owners, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes for at least 7 years.

(4) The association shall maintain each of the following items, when applicable, which shall constitute the official records of the association:

(a) A copy of the plans, permits, warranties, and other items provided by the developer.

(b) A copy of the bylaws of the homeowners' association and of each amendment to the bylaws.

(c) A certified copy of the articles of incorporation of the homeowners' association, or other documents creating the homeowners' association, and of each amendment thereto.

(d) A copy of the current rules of the homeowners' association.

(e) A book or books that contain the minutes of all meetings of the homeowners' association, of the board of directors, and of members, which minutes shall be retained for a period of not less than 7 years.

(f) A current roster of all members and their mailing addresses, parcel identifications, and, if known, telephone numbers.

(g) All current insurance policies of the homeowners' association or a copy thereof.

(h) A current copy of any management agreement, lease, or other contract to which the homeowners' association is a party or under which the homeowners' association or the parcel owners have an obligation or responsibility.

(i) Accounting records for the homeowners' association and separate accounting records for each parcel, according to generally accepted accounting principles. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall be open to inspection by parcel owners or their authorized representatives at reasonable times. The failure of the homeowners' association to permit inspection of its accounting records by parcel owners or their authorized representatives entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the books and records who, directly or indirectly, knowingly denied access to the books and records for inspection. The accounting records shall include, but are not limited to:

1. Accurate, itemized, and detailed records of all receipts and expenditures.

2. A current account and a periodic statement of the account for each member of the homeowners' association, designating the name of the member, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

3. All audits, reviews, accounting statements, and financial reports of the homeowners' association.

4. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

Section 35. Section 617.304, Florida Statutes, is created to read:

617.304 Homeowners' associations; right of owners to peaceably assemble.—

(1) All common areas and recreational facilities serving any homeowners' association shall be available to parcel owners in the homeowners' association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or

entities shall unreasonably restrict any parcel owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any homeowners' association document or rule that operates to deprive the owner of such rights.

Section 36. Section 617.305, Florida Statutes, is created to read:

617.305 Failure to fill vacancies on board of directors sufficient to constitute a quorum; appointment of receiver upon petition of parcel owner.—If a homeowners' association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any parcel owner may apply to the circuit court within whose jurisdiction the community served by the homeowners' association lies for the appointment of a receiver to manage the affairs of the association. At least 30 days prior to applying to the circuit court, the parcel owner shall mail to the association and post, in a conspicuous place on the property of the community served by the homeowners' association, a notice describing the intended action, giving the association the opportunity to fill the vacancies. If during such time the association fails to fill the vacancies, the parcel owner may proceed with the petition. If a receiver is appointed, the homeowners' association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of directors and shall serve until the homeowners' association fills vacancies on the board sufficient to constitute a quorum.

Section 37. Section 617.306, Florida Statutes, is created to read:

617.306 Voting and election procedures.—

(1) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

(2) Homeowners may not vote by general proxy, but may vote by limited proxy. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may also be used for votes taken to amend the articles of incorporation or bylaws or for any matter that requires or permits a vote of the homeowners.

(3) Any proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the homeowner executing it.

(4) For election of members of the board of directors, homeowners shall vote in person at a meeting of the homeowners or by a ballot that the homeowner personally casts.

Section 38. It is the intent of the Legislature that, to the extent possible, without causing the impairment of the obligation of contract, sections 32-37 of this act shall apply to existing homeowners' associations.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 106, line 23, following the semicolon (;) insert: creating ss. 617.301, 617.302, 617.303, 617.304, 617.305, and 617.306, F.S.; providing for the regulation of homeowners' associations; providing for the scope of such regulation, minimum requirements of homeowners' associations, right of owners to peaceably assemble, appointment of a receiver for failure to fill vacancies on the board of directors sufficient to constitute a quorum, and voting and election procedures; providing legislative intent;

Senator Wexler moved the following amendment to **Amendment 1:**

Amendment 1D (with Title Amendment)—On page 103, strike all of lines 5-7 and insert:

Section 32. Section 617.301, Florida Statutes, is created to read:

617.301 Homeowners' associations; definitions.—As used in ss. 617.301-617.306, the term:

(1) "Association property" means the lands, leaseholds, and personal property that are subject to the homeowners' association.

(2) "Homeowners' association" means an association in which membership, either by the parcel owner or by an association in which parcel owners are members, is a condition of ownership of a parcel and which is authorized to impose a charge or assessment that, if unpaid, may become a lien on the parcel.

(3) "Member" means a member of a homeowners' association, whether a natural person or an association representing parcel owners.

(4) "Parcel" means the real property within the property subject to a homeowners' association that is subject to exclusive ownership.

Section 33. Section 617.302, Florida Statutes, is created to read:

617.302 Homeowners' associations; scope.—Sections 617.301-617.306 do not apply to homeowners' associations that are subject to regulation by chapter 718, chapter 719, chapter 721, or chapter 723; to homeowners' associations serving less than 50 parcels or in which the assessments do not exceed \$150 per year per parcel; or to any homeowners' association prior to transfer of control of the association to parcel owners other than the developer.

Section 34. Section 617.303, Florida Statutes, is created to read:

617.303 The association.—

(1) The officers and directors of a homeowners' association have a fiduciary relationship to the owners of parcels served by the homeowners' association.

(2) Meetings of the board of directors shall be open to all parcel owners, and notices of meetings shall be posted in a conspicuous place on the association property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against parcels are to be established shall specifically contain a statement that assessments shall be considered and a statement of the nature of such assessments.

(3) Minutes of all meetings of members and of the board of directors shall be kept in a businesslike manner and shall be available for inspection by parcel owners, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes for at least 7 years.

(4) The association shall maintain each of the following items, when applicable, which shall constitute the official records of the association:

(a) A copy of the plans, permits, warranties, and other items provided by the developer.

(b) A copy of the bylaws of the homeowners' association and of each amendment to the bylaws.

(c) A certified copy of the articles of incorporation of the homeowners' association, or other documents creating the homeowners' association, and of each amendment thereto.

(d) A copy of the current rules of the homeowners' association.

(e) A book or books that contain the minutes of all meetings of the homeowners' association, of the board of directors, and of members, which minutes shall be retained for a period of not less than 7 years.

(f) A current roster of all members and their mailing addresses, parcel identifications, and, if known, telephone numbers.

(g) All current insurance policies of the homeowners' association or a copy thereof.

(h) A current copy of any management agreement, lease, or other contract to which the homeowners' association is a party or under which the homeowners' association or the parcel owners have an obligation or responsibility.

(i) Accounting records for the homeowners' association and separate accounting records for each parcel, according to generally accepted accounting principles. All accounting records shall be maintained for a

period of not less than 7 years. The accounting records shall be open to inspection by parcel owners or their authorized representatives at reasonable times. The failure of the homeowners' association to permit inspection of its accounting records by parcel owners or their authorized representatives entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the books and records who, directly or indirectly, knowingly denied access to the books and records for inspection. The accounting records shall include, but are not limited to:

1. Accurate, itemized, and detailed records of all receipts and expenditures.

2. A current account and a periodic statement of the account for each member of the homeowners' association, designating the name of the member, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

3. All audits, reviews, accounting statements, and financial reports of the homeowners' association.

4. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

Section 35. Section 617.304, Florida Statutes, is created to read:

617.304 Homeowners' associations; right of owners to peaceably assemble.—

(1) All common areas and recreational facilities serving any homeowners' association shall be available to parcel owners in the homeowners' association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or entities shall unreasonably restrict any parcel owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any homeowners' association document or rule that operates to deprive the owner of such rights.

Section 36. Section 617.305, Florida Statutes, is created to read:

617.305 Failure to fill vacancies on board of directors sufficient to constitute a quorum; appointment of receiver upon petition of parcel owner.—If a homeowners' association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any parcel owner may apply to the circuit court that has jurisdiction over the community served by the homeowners' association for the appointment of a receiver to manage the affairs of the association. At least 30 days before applying to the circuit court, the parcel owner shall mail to the association and post, in a conspicuous place on the property of the community served by the homeowners' association, a notice describing the intended action, giving the association the opportunity to fill the vacancies. If during such time the association fails to fill the vacancies, the parcel owner may proceed with the petition. If a receiver is appointed, the homeowners' association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of directors and shall serve until the homeowners' association fills vacancies on the board sufficient to constitute a quorum.

Section 37. Section 617.306, Florida Statutes, is created to read:

617.306 Voting and election procedures.—

(1) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

(2) Homeowners may not vote by general proxy, but may vote by limited proxy. Limited proxies and general proxies may be used to establish

a quorum. Limited proxies may also be used for votes taken to amend the articles of incorporation or bylaws or for any matter that requires or permits a vote of the homeowners.

(3) Any proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid for a period longer than 90 days after the date of the first meeting for which it was given. A proxy is revocable at any time at the pleasure of the homeowner who executes it.

(4) For election of members of the board of directors, homeowners shall vote in person at a meeting of the homeowners or by a ballot that the homeowner personally casts.

Section 38. It is the intent of the Legislature that, to the extent possible, without causing the impairment of the obligation of contract, sections 32-37 of this act shall apply to existing homeowners' associations.

Section 39. A prospective purchaser of real property to which membership in a residential homeowners' association is a prerequisite to ownership must, before execution of the contract for sale, be given a disclosure statement which contains a full description of any recreational or other facilities which are available for use by the property owners and a statement of any charges for the use of those facilities. The disclosure must be supplied by the developer if the sale is an initial sale of the property, or by the seller if the sale is by an owner that is not the developer. This section does not apply to property that is subject to chapter 718 or chapter 719, Florida Statutes.

Section 40. This act shall take effect April 1, 1992, or upon becoming a law, whichever occurs later, and shall operate retroactively to April 1, 1992, except that sections 32-39 shall take effect October 1, 1992, and shall not operate retroactively.

And the title is amended as follows:

In title, on page 106, lines 28-29, strike "providing an effective date." and insert: creating ss. 617.301, 617.302, 617.303, 617.304, 617.305, 617.306, F.S.; providing for the regulation of homeowners' associations; providing for the scope of such regulation, minimum requirements of homeowners' associations, the right of owners to peaceably assemble, appointment of a receiver for failure to fill vacancies on the board of directors sufficient to constitute a quorum, and voting and election procedures; providing legislative intent; requiring a disclosure statement that provides information regarding recreational facilities and charges be given to certain prospective purchasers of real property; providing effective dates.

On motion by Senator Dudley, further consideration of **CS for SB 2334** with pending **Amendment 1D** was deferred.

SB 444—A bill to be entitled An act relating to local improvements; amending s. 170.01, F.S.; authorizing municipalities to levy special assessments for the purpose of constructing public improvements to permit the passage and navigation of watercraft; providing an effective date.

—was read the second time by title.

Senator Crotty moved the following amendment:

Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Subsections (1) and (3) of section 170.01, Florida Statutes, are amended to read:

170.01 Authority for providing improvements and levying and collecting special assessments against property benefited.—

(1) Any municipality of this state may, by its governing authority:

(a) Provide for the construction, reconstruction, repair, paving, repaving, hard surfacing, rehard surfacing, widening, guttering, and draining of streets, boulevards, and alleys; and for grading, regrading, leveling, laying, relaying, paving, repaving, hard surfacing, and rehard surfacing of sidewalks; for constructing or reconstructing permanent pedestrian canopies over public sidewalks; and in connection with any of the foregoing, provide related lighting, landscaping, street furniture, signage, and other amenities as determined by the governing authority of the municipality;

(b) Order the construction, reconstruction, repair, renovation, excavation, grading, stabilization, and upgrading of greenbelts, swales, cul-

verts, sanitary sewers, storm sewers, outfalls, canals, primary, secondary, and tertiary drains, water bodies, marshlands, and natural areas, all or part of a comprehensive stormwater management system, including the necessary appurtenances and structures thereto and including, but not limited to, dams, weirs, and pumps;

(c) Order the construction or reconstruction of water mains, water laterals, and other water distribution facilities, including the necessary appurtenances thereto;

(d) Provide for the construction or reconstruction of parks and other public recreational facilities and improvements, including appurtenances thereto;

(e) Provide for the construction or reconstruction of sea walls;

(f)(4) Provide for the drainage and reclamation of wet, low, or overflowed lands;

(g)(e) Provide for offstreet parking facilities, parking garages, or similar facilities;

(h)(f) Provide for mass transportation systems; and

(i) Provide for improvements to permit the passage and navigation of watercraft; and

(j)(g) Provide for the payment of all or any part of the costs of any such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property.

However, offstreet parking facilities, parking garages, or other similar facilities and mass transportation systems must be approved by vote of a majority shall have prior approval of the affected property owners. Any municipality which is legally obligated for providing capital improvements for water or sewer facilities within an unincorporated area of the county may recover the costs of the capital improvements by levying and collecting special assessments for the purposes authorized in this section on the specially benefited property; however, collections of the special assessment shall not take place until the specially benefited property connects to the capital improvement.

(3) Any municipality located within a county as defined in s. 125.011(1) may levy and collect special assessments against property benefited for the purpose of stabilizing and improving:

(a) Retail business districts,

(b) Wholesale business districts, or

(c) Nationally recognized historic districts,

or any combination of such districts, through promotion, management, marketing, and other similar services in such business districts of the municipality. This subsection does not authorize a municipality to use bond proceeds to fund ongoing operations of these districts.

Section 2. Section 170.03, Florida Statutes, is amended to read:

170.03 Resolution required to declare special assessments.—When the governing authority of any municipality may determine to make any public improvement authorized by s. 170.01 and defray the whole or any part of the expense thereof by special assessments, said governing authority shall so declare by resolution stating the nature of the proposed improvement, designating the street or streets or sidewalks to be so improved, the location of said sanitary sewers, storm sewers, and drains, the location of said water mains, water laterals, and other water distribution facilities, the location of the recreational facilities, the location of the sea walls, the location of the drainage project, or the location of the retail or wholesale business districts or nationally recognized historic districts to be improved, and the part or portion of the expense thereof to be paid by special assessments, the manner in which said assessments shall be made, when said assessments are to be paid, what part, if any, shall be apportioned to be paid from the general improvement fund of the municipality; and said resolution shall also designate the lands upon which the special assessments shall be levied, and in describing said lands it shall be sufficient to describe them as "all lots and lands adjoining and contiguous or bounding and abutting upon such improvements or specially benefited thereby and further designated by the assessment plat hereinafter provided for." Such resolution shall also state the total estimated cost of the improvement. Such estimated cost may include the cost of construction or reconstruction, the cost of all labor and materials, the

cost of all lands, property, rights, easements, and franchises acquired, financing charges, interest prior to and during construction and for 1 year after completion of construction, discount on the sale of special assessment bonds, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction, administrative expense, and such other expense as may be necessary or incident to the financing herein authorized.

Section 3. Section 170.11, Florida Statutes, is amended to read:

170.11 Bonds may be issued to an amount not exceeding the amount of liens assessed for the cost of improvements to be paid by special assessment.—After the equalization, approval and confirmation of the levying of the special assessments for improvements as provided by s. 170.08 and as soon as a contract for said improvement has been finally let, the governing authority of the municipality may by resolution or ordinance authorize the issuance of bonds, to be designated "Improvement bonds, series No.," in an amount not in excess of the aggregate amount of said liens levied for such improvements. Said bonds shall be payable from a special and separate fund, to be known as the "Improvement fund, series No.," which shall be used solely for the payment of the principal and interest of said "Improvement bonds, series No." and for no other purpose. Said fund shall be deposited in a separate bank account; and all the proceeds collected by the city from the principal, interest, and penalties of said liens shall be deposited and held in said fund. Said bonds so issued shall never exceed the amount of liens assessed, and said bonds shall mature not later than 2 years after the maturity of the last installment of said liens. Said bonds shall bear certificates signed by the clerk of the municipality certifying that the amount of liens levied, the proceeds of which are pledged to the payment of said bonds, are equal to the amount of the bonds issued. The bonds may be delivered to the contractor in payment for his work or may be sold at public or private sale for not less than 95 percent of par and accrued interest, the proceeds to be used in paying for the cost of the work. Said bonds shall not be a charge on, or payable out of, the general obligation revenues of the city, but shall be payable solely out of said assessments, installments, interest, and penalties, *provided that said bonds may be secured by any other revenues that may be legally available for such purpose.* Any surplus remaining after payment of all bonds and interest thereon shall revert to the city and be used for any municipal purpose. *Bonds issued under this section may be refunded from time to time as provided in this section.*

Section 4. Section 170.17, Florida Statutes, is amended to read:

170.17 Denomination of bonds; interest; place of payment; form; signatures; coupons; and delivery.—All bonds issued under this chapter shall be the denomination of \$500, or some multiple thereof, and shall bear interest as provided in s. 215.84 *until paid in full*, payable annually or semiannually thereafter *until maturity, and 10 percent per year after maturity*, and both principal and interest shall be payable at such place or places as the governing authority may determine. The form of such bonds shall be fixed by resolution of the governing authority of the municipality, and said bonds shall be signed by the mayor or chief executive officer of the municipality and the clerk or other like officers thereof, under the seal of the municipality; the coupons, if any, shall be executed by the facsimile signatures of said officers. The delivery of any bond and coupon so executed at any time thereafter shall be valid although before the date of delivery the person signing such bond or coupons shall cease to hold office.

Section 5. This act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 1, line 3, after "F.S." insert: , which provides an alternative method for municipalities to make improvements and levy special assessments against property benefited; providing additional projects which may be funded by said method; revising provisions which require approval of affected property owners for offstreet parking facilities, parking garages, and mass transportation systems; authorizing all municipalities to levy special assessments for stabilizing and improving business and historic districts; providing that bond proceeds may not be used for operation of such districts; amending s. 170.03, F.S., to conform; amending s. 170.11, F.S.; revising provisions relating to sources from which bonds are payable; authorizing issuance of refunding bonds; amending s. 170.17, F.S.; revising provisions relating to payment of interest on bonds;

Senator Grizzle moved the following amendment to **Amendment 1** which was adopted:

Amendment 1A—On page 3, line 8, after "municipality" insert: , *subject to the approval of a majority of the affected property owners,*

On motion by Senator Kurth, further consideration of **SB 444** with pending **Amendment 1** as amended was deferred.

CS for SB 1580—A bill to be entitled An act relating to medicinal drugs; creating s. 465.0255, F.S.; requiring the display of expiration dates on all medicinal drugs manufactured, repackaged, or distributed and all medicinal drugs dispensed; requiring certain use and storage instructions on all medicinal drugs dispensed; providing an effective date.

—was read the second time by title.

Senator Wexler moved the following amendment which was adopted:

Amendment 1—On page 1, lines 29-31, and on page 2, lines 1-12, strike all of said lines and insert: expiration date when provided by the manufacturer, repackager, or other distributor pursuant to subsection (1). The dispensing pharmacist or practitioner shall also display on the label of such container appropriate instructions regarding the storage of the medicinal drug involved. Nothing in this section shall impose liability on the pharmacy, dispensing pharmacist, or practitioner for damages related to, or caused by, a medicinal drug that loses its effectiveness prior to the expiration date displayed by the dispensing pharmacist or practitioner.

(4) The provisions of this section are intended to notify the patient receiving a medicinal drug of the information required by this section, and the pharmacy, dispensing pharmacist, or practitioner shall not be liable for the patient's failure to heed such notice or follow the instructions for storage or use.

On motion by Senator Wexler, by two-thirds vote **CS for SB 1580** 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 Senate resumed consideration of—

CS for SB 262—A bill to be entitled An act relating to comprehensive planning; amending s. 163.3184, F.S.; prescribing authority of local governing body to readopt density requirements of comprehensive plan or plan amendment not in compliance with ss. 163.3161-163.3215, F.S.; prohibiting application of sanctions against a local government readopting such a plan or plan amendment; providing an effective date.

—which had been considered March 3. **CS for SB 262** was read the third time by title.

Senator Langley moved the following amendment:

Amendment 3—On page 2, line 7, following the period (.) insert: *The provisions of this subsection shall apply only if the density sought by the local governing body is less than one unit per usable acre. And provided further that nothing contained in this subsection shall allow the violation of any other portion of the plan including concurrency, conservation, or levels of service.*

Senator Yancey moved the following substitute amendment:

Amendment 4—On page 2, line 7, following the period (.) insert: *The provisions of this subsection shall apply only if the density sought by the local governing body is less than one unit per usable 2 1/2 acres. And provided further that nothing contained in this subsection shall allow the violation of any other portion of the plan including concurrency, conservation, or levels of service.*

Senator Kiser moved the following amendment to **Amendment 4** which was adopted by two-thirds vote:

Amendment 4A—On page 1, line 7, after the period (.) insert: This provision shall take effect July 1, 1993

On motion by Senator Langley, further consideration of **CS for SB 262** with pending **Amendment 4** as amended was deferred.

The Senate resumed consideration of—

CS for HB 1925—A bill to be entitled An act relating to the psycho-therapist-patient privilege; amending s. 90.503, F.S.; expanding the privilege by adding specified therapists to the definition of "psychotherapist"; providing an effective date.

—which had been considered March 3.

On motion by Senator Girardeau, **CS for HB 1925** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—26 Nays—6

SENATOR CHILDERS PRESIDING

SB 1816—A bill to be entitled An act relating to continuing care facilities; amending s. 651.085, F.S.; revising provisions pertaining to quarterly meetings between the residents of such a facility and the governing body or designated representative of the facility; providing for representation of the residents of such a facility before the governing body of the provider by a resident elected by the residents; providing an effective date.

—was read the second time by title.

Two amendments were adopted to **SB 1816** to conform the bill to **CS for HB 1711**.

Pending further consideration of **SB 1816** as amended, on motion by Senator Yancey, by two-thirds vote **CS for HB 1711** was withdrawn from the Committee on Health and Rehabilitative Services.

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

CS for HB 1711—A bill to be entitled An act relating to continuing care facilities; amending s. 651.085, F.S.; revising provisions pertaining to quarterly meetings between the residents of such a facility and the governing body or designated representative of the facility; providing for representation of the residents of such a facility before the governing body of the provider by a resident elected by the residents; amending s. 651.022, F.S.; deleting certain requirements of feasibility studies for provisional certificates of authority; amending s. 651.023, F.S.; requiring an independent feasibility study from holders of provisional certificates of authority; amending s. 651.026, F.S.; requiring certain financial information in certain annual statements; requiring the Department of Insurance to adopt certain financial viability measures by rule; requiring the department to provide certain information as to provider financial statements; amending s. 651.095, F.S.; revising certain provisions relating to advertisements for continuing care contracts; amending s. 651.119, F.S.; limiting the department's authority to levy pro rata assessments against providers for certain moving expenses; amending s. 651.121, F.S.; specifying qualifications of certain members of the Continuing Care Advisory Council; amending s. 651.125, F.S.; providing for application of certain enforcement provisions to applicants for provisional certificates of authority; repealing s. 651.055(8), F.S., relating to exemptions for continuing care contracts; repealing s. 651.119(8), F.S., relating to repeal of s. 651.119, F.S., by a date certain; providing penalties; providing an effective date.

—a companion measure, was substituted for **SB 1816** and by two-thirds vote read the second time by title. On motion by Senator Yancey, by two-thirds vote **CS for HB 1711** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

SB 972—A bill to be entitled An act relating to private construction contracts; creating the Construction Contract Prompt Payment Law; providing for applicability; providing definitions; requiring payment of such contracts within certain time periods and requiring accrual of interest; providing an exception; providing an effective date.

—was read the second time by title.

The Committee on Commerce recommended the following amendment which was moved by Senator Dudley and failed:

Amendment 1—On page 1, lines 24 and 30; on page 2, line 12; and on page 3, line 3, strike "10" and insert: 15

The Committee on Judiciary recommended the following amendment which was moved by Senator Dudley and failed:

Amendment 2—On page 1, line 13, strike everything after the enactment clause and insert:

Section 1. (1) This section may be cited as the "Construction Contract Prompt Pay Law."

(2) This section applies only to written contracts to improve real property entered into after December 31, 1992, and for which a construction lien is authorized under part I of chapter 713, Florida Statutes.

(3) The terms used in this section have the same definitions as the terms defined in section 713.01, Florida Statutes. As used in this section, the term:

(a) "Obligor" means an owner, contractor, subcontractor, or sub-subcontractor who has an obligation to make payments under a contract that is subject to this section.

(b) "Obligee" means a contractor, subcontractor, sub-subcontractor, or materialman who is entitled to receive payments under a contract that is subject to this section.

(c) "Chain of contracts" means the contracts between the owner and the contractor, the contractor and any subcontractor or materialman, the subcontractor and any sub-subcontractor or materialman and the sub-subcontractor and any materialman.

(4) An obligor must pay an obligee with whom the obligor has a contract when all of the following events have occurred:

(a) The obligee is entitled to a payment under the terms of the contract between the obligor and the obligee; and the obligee has furnished the obligor with a written request for payment; and

(b) The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the obligee's request for payment by the person immediately above the obligor in the chain of contracts; and

(c) The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under section 713.06, Florida Statutes.

(5)(a) Any payment due under the provisions of subsection (4), excluding any amounts withheld pursuant of subsection (7), shall bear interest at the rate specified in section 55.03, Florida Statutes, computed beginning on the 14th day after payment is due pursuant to subsection (4).

(b) If the request for payment is incomplete or contains an error, the obligor has 14 days within which to return the request for payment to the obligee for completion or correction. The obligor must specify in writing the reasons for the return of the request for payment. If the obligor does not return the request for payment, together with the specified reasons within the time provided in paragraph (a), the obligor must pay interest as provided in paragraph (a). If the obligor does return the request for payment within the time provided in paragraph (a), the time period for computing interest begins to run on the 14th day after the request for payment is completed or corrected and payment is otherwise due pursuant to subsection (4).

(6)(a) This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any civil action or arbitration case.

(b) If an obligor pays an amount less than the full amount due under the contract between the obligor and the obligee, the obligor may designate the portion of the labor, services, or materials to which the payment applies. In the absence of such a designation by the obligor, the obligee may apply the payment in any manner the obligee deems appropriate. This paragraph does not modify the obligation to make or demand a designation under the provisions of section 713.14, Florida Statutes.

(c) An obligee may not waive the right to receive interest before a payment is due under a contract subject to this section. An obligee may waive the interest due on any late payment on or after the date the payment is due under subsection (4).

(d) Unless the contract specifically provides to the contrary, a dispute between an obligor and obligee does not permit the obligor to withhold payment from the obligee or from any other obligee for labor, services, or materials provided to the obligor and which are not subject to or affected by the dispute.

(7)(a) An owner and a contractor may agree to a provision that allows the owner to withhold a portion of each progress payment until substantial completion of the entire project. The owner shall pay the contractor the balance of the contract price, including the amounts withheld from the progress payments, within 14 days after any of the following events occur.

1. Pursuant to the terms of the contract, an architect or engineer certifies that the project is substantially complete and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor completes the items on the punchlist.

2. The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor completes the items on the punchlist.

3. The owner or a tenant of the owner takes possession of the construction project and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor completes the items on the punchlist.

Any funds retained by the owner beyond the time period specified in this subsection shall accrue interest at the rate specified in subsection (5), computed from the date the payment is due to the date the payment is received by the contractor. If the contract between the owner and the contractor does not provide a time period for the owner to submit a written punchlist to the contractor, the time period shall be 15 days from the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. If no written punchlist is given to the contractor within the time provided in this subsection, interest begins to accrue 14 days after the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. For construction projects that are to be built in phases, this subsection applies to each phase of the total project. The contract between the owner and the contractor may specify a shorter time period for disbursing all or any portion of the final payment and the retainage.

(b) Except as provided in paragraph (a), an obligor and obligee may agree to a provision that allows the obligor to withhold a portion of each progress payment until completion of the entire project. The amounts withheld shall bear interest 14 days after payment of such amounts are due under the terms of the contract between the obligor and obligee and the other requirements of subsection (4) have been satisfied.

(c) An obligee may, from time to time, withdraw all or any portion of the amount retained from progress payments upon depositing with the obligor:

1. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

2. Bonds or notes of the State of Florida; or

3. Certificates of deposit, within the insured limits, from a state or national bank or state or federal savings and loan association authorized to do business in this state.

Amounts may not be withdrawn in excess of the market value of the securities listed in subparagraphs 1., 2., and 3. at the time of such withdrawal or in excess of the par value of such securities, whichever is less. The obligee shall execute and deliver all documents reasonably required to allow the obligor to document the transfer and the obligee shall pay any recording or registration costs incurred by the obligor in connection with the transfer. The obligor shall pay the obligee any interest or income earned on the securities so deposited within 30 days after the date such interest or income is received by the obligor. If the deposit is in the form of coupon bonds, the obligor shall deliver each coupon to the obligee within 30 days after the date the coupon matures.

Section 2. This act shall take effect January 1, 1993.

Senator Dudley moved the following amendment:

Amendment 3 (with Title Amendment)—On page 1, strike everything after the enacting clause and insert:

Section 1. (1) This section may be cited as the "Construction Contract Prompt Pay Law."

(2) This section applies only to written contracts to improve real property entered into after December 31, 1992, and for which a construction lien is authorized under part I of chapter 713, Florida Statutes.

(3) The terms used in this section have the same definitions as the terms defined in section 713.01, Florida Statutes. As used in this section, the term:

(a) "Obligor" means an owner, contractor, subcontractor, or sub-subcontractor who has an obligation to make payments under a contract that is subject to this section.

(b) "Obligee" means a contractor, subcontractor, sub-subcontractor, or materialman who is entitled to receive payments under a contract that is subject to this section.

(c) "Chain of contracts" means the contracts between the owner and the contractor, the contractor and any subcontractor or materialman, the subcontractor and any sub-subcontractor or materialman and the sub-subcontractor and any materialman.

(4) An obligor must pay an obligee with whom the obligor has a contract when all of the following events have occurred:

(a) The obligee is entitled to a payment under the terms of the contract between the obligor and the obligee, and the obligee has furnished the obligor with a written request for payment; and

(b) The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the obligee's request for payment by the person immediately above the obligor in the chain of contracts; and

(c) The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under section 713.06, Florida Statutes.

(5)(a) Any payment due under the provisions of subsection (4), excluding any amounts withheld pursuant of subsection (7), shall bear interest at the rate specified in section 55.03, Florida Statutes, computed beginning on the 14th day after payment is due pursuant to subsection (4).

(b) If the request for payment is incomplete or contains an error, the obligor has 14 days within which to return the request for payment to the obligee for completion or correction. The obligor must specify in writing the reasons for the return of the request for payment. If the obligor does not return the request for payment, together with the specified reasons within the time provided in paragraph (a), the obligor must pay interest as provided in paragraph (a). If the obligor does return the request for payment within the time provided in paragraph (a), the time period for computing interest begins to run on the 14th day after the request for payment is completed or corrected and payment is otherwise due pursuant to subsection (4).

(6)(a) The right to receive interest on a payment under this section is not an exclusive remedy. This section does not modify the remedies available to any person under the terms of a contract or under any other statute. This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any civil action or arbitration case.

(b) This section does not create a separate cause of action other than for the collection of interest due pursuant to subsection (5).

(c) If an obligor pays an amount less than the full amount due under the contract between the obligor and the obligee, the obligor may designate the portion of the labor, services, or materials to which the payment applies. In the absence of such a designation by the obligor, the obligee may apply the payment in any manner the obligee deems appropriate. This paragraph does not modify the obligation to make or demand a designation under the provisions of section 713.14, Florida Statutes.

(d) An obligee may not waive the right to receive interest before a payment is due under a contract subject to this section. An obligee may waive the interest due on any late payment on or after the date the payment is due under subsection (4).

(e) Unless the contract specifically provides to the contrary, a dispute between an obligor and obligee does not permit the obligor to withhold payment from the obligee or from any other obligee for labor, services, or materials provided to the obligor and which are not subject to or affected by the dispute.

(7)(a) An owner and a contractor may agree to a provision that allows the owner to withhold a portion of each progress payment until substantial completion of the entire project. The owner shall pay the contractor the balance of the contract price, including the amounts withheld from the progress payments, within 14 days after any of the following events occur.

1. Pursuant to the terms of the contract, an architect or engineer certifies that the project is substantially complete and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor completes the items on the punchlist.

2. The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor completes the items on the punchlist.

3. The owner or a tenant of the owner takes possession of the construction project and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor completes the items on the punchlist.

Any funds retained by the owner beyond the time period specified in this subsection shall accrue interest at the rate specified in subsection (5), computed from the date the payment is due to the date the payment is received by the contractor. If the contract between the owner and the contractor does not provide a time period for the owner to submit a written punchlist to the contractor, the time period shall be 15 days from the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. If no written punchlist is given to the contractor within the time provided in this subsection, interest begins to accrue 14 days after the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. For construction projects that are to be built in phases, this subsection applies to each phase of the total project. The contract between the owner and the contractor may specify a shorter time period for disbursing all or any portion of the final payment and the retainage.

(b) Except as provided in paragraph (a), an obligor and obligee may agree to a provision that allows the obligor to withhold a portion of each progress payment until completion of the entire project. The amounts withheld shall bear interest 14 days after payment of such amounts are due under the terms of the contract between the obligor and obligee and the other requirements of subsection (4) have been satisfied.

(c) An obligee may, from time to time, withdraw all or any portion of the amount retained from progress payments upon depositing with the obligor:

1. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

2. Bonds or notes of the State of Florida; or

3. Certificates of deposit, within the insured limits, from a state or national bank or state or federal savings and loan association authorized to do business in this state.

Amounts may not be withdrawn in excess of the market value of the securities listed in subparagraphs 1., 2., and 3. at the time of such withdrawal or in excess of the par value of such securities, whichever is less. The obligee shall execute and deliver all documents reasonably required to allow the obligor to document the transfer and the obligee shall pay any recording or registration costs incurred by the obligor in connection with the transfer. The obligor shall pay the obligee any interest or income earned on the securities so deposited within 30 days after the date such interest or income is received by the obligor. If the deposit is in the form of coupon bonds, the obligor shall deliver each coupon to the obligee within 30 days after the date the coupon matures. An obligee may withdraw funds retained from progress payments only to the extent the obli-

gor has withdrawn such funds for the obligee's labor, services, or materials from the person immediately above the obligor in the chain of contracts.

Section 2. Subsection (2) of section 255.05, Florida Statutes, is amended and subsection (8) is added to that section to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.—

(2) A claimant, except a laborer, who is not in privity with the contractor and who has not received payment for his labor, materials, or supplies shall, within 45 days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his labor, materials, or supplies shall, within 90 days after performance of the labor or after complete delivery of the materials or supplies or, with respect to rental equipment, within 90 days after the date that the rental equipment was last on the job site available for use, deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. No action for the labor, materials, or supplies may be instituted against the contractor or the surety unless both notices have been given. No action shall be instituted against the contractor or the surety on the bond after 1 year from the performance of the labor or completion of delivery of the materials or supplies. A claimant may not waive in advance his right to bring an action under the bond against the surety. *In any action brought to enforce a claim against a bond under this chapter, the prevailing party is entitled to recover a reasonable fee for the services of his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of his costs, as allowed in equitable actions.*

Section 3. Section 713.01, Florida Statutes, is amended to read:

713.01 Definitions.—As used in this part, the term:

(1) "Architect" means a person or firm that is authorized to practice architecture pursuant to chapter 481 or a general contractor who provides architectural services under a design-build contract authorized by s. 481.229(3).

(2)(1) "Claim of lien" means the claim recorded as provided in s. 713.08.

(3)(2) "Clerk's office" means the office of the clerk of the circuit court of the county in which the real property is located.

(4)(3) "Commencement of the improvement" means the time of filing for record of the notice of commencement provided in s. 713.13.

(5)(4) "Contract" means an agreement for improving real property, written or unwritten, express or implied, and includes extras or change orders.

(6)(5) "Contract price" means the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and must be increased or diminished by the price of extras or change orders, or by any amounts attributable to changes in the scope of the work or defects in workmanship or materials or any other breaches of the contract; but no penalty or liquidated damages between the owner and a contractor diminishes the contract price as to any other lienor. If no price is agreed upon by the contracting parties, this term means the value of all labor, services, or materials covered by their contract, with any increases and diminutions, as provided in this subsection. Allowance items are a part of the contract when accepted by the owner.

(7)(6) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. *The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16).*

(8)(7) "Direct contract" means a contract between the owner and any other person.

(9) "Engineer" means a person or firm that is authorized to practice engineering pursuant to chapter 471 or a general contractor who provides engineering services under a design-build contract authorized by s. 471.003(2)(j).

(10)(8) "Extras or change orders" means labor, services, or materials for improving real property authorized by the owner and added to or deleted from labor, services, or materials covered by a previous contract between the same parties.

(11)(9) "Furnish materials" means supply materials which are incorporated in the improvement including normal wastage in construction operations; or specially fabricated materials for incorporation in the improvement, not including any design work, submittals, or the like preliminary to actual fabrication of the materials; or supply materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and includes supplying tools, appliances, or machinery used on the particular improvement to the extent of the reasonable rental value for the period of actual use (not determinable by the contract for rental unless the owner is a party thereto), but does not include supplying handtools. The delivery of materials to the site of the improvement is prima facie evidence of incorporation of such materials in the improvement.

(12)(10) "Improve" means build, erect, place, make, alter, remove, repair, or demolish any improvement over, upon, connected with, or beneath the surface of real property, or excavate any land, or furnish materials for any of these purposes, or perform any labor or services upon the improvements, including the furnishing of carpet or rugs or appliances that are permanently affixed to the real property; or perform any labor or services or furnish any materials in grading, seeding, sodding, or planting for landscaping purposes, including the furnishing of trees, shrubs, bushes, or plants that are planted on the real property, or in equipping any improvement with fixtures or permanent apparatus.

(13)(11) "Improvement" means any building, structure, construction, demolition, excavation, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

(14)(12) "Laborer" means any person other than an architect, landscape architect, engineer, land surveyor, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

(15)(13) "Lender" means any person who loans money to an owner for construction of an improvement to real property, who secures that loan by recording a mortgage on the real property, and who periodically disburses portions of the proceeds of that loan for the payment of the improvement.

(16)(14) "Lienor" means a person who is:

- (a) A contractor;
- (b) A subcontractor;
- (c) A sub-subcontractor;
- (d) A laborer;
- (e) A materialman who contracts with the owner, a contractor, a subcontractor, or a sub-subcontractor; or
- (f) A professional lienor under s. 713.03;

and who has a lien or prospective lien upon real property under this part, and includes his successor in interest. No other person may have a lien under this part.

(17)(15) "Lienor giving notice" means any lienor, except a contractor, who has duly and timely served a notice to the owner and, if required, to the contractor and subcontractor, as provided in s. 713.06(2).

(18)(16) "Materialman" means any person who furnishes materials under contract to the owner, contractor, subcontractor, or sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

(19)(17) "Notice by lienor" means the notice to owner served as provided in s. 713.06(2).

(20)(18) "Notice of commencement" means the notice recorded as provided in s. 713.13.

(21)(19) "Owner" means a person who is the owner of any legal or equitable interest in real property, which interest can be sold by legal process, and who enters into a contract for the improvement of the real property. The term includes a condominium association pursuant to chapter 718 as to improvements made to association property or common elements. The term does not include any political subdivision, agency, or department of the state, a municipality, or other governmental entity.

(22)(20) "Perform" or "furnish" when used in connection with the words "labor" or "services" or "materials" means performance or furnishing by the lienor or by another for him.

(23)(21) "Post" or "posting" means placing the document referred to on the site of the improvement in a conspicuous place at the front of the site and in a manner that protects the document from the weather.

(24)(22) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision.

(25)(23) "Site of the improvement" means the real property which is being improved and on which labor or services are performed or materials furnished in furtherance of the operations of improving such real property. In cases of removal, without demolition and under contract, of an improvement from one lot, parcel, or tract of land to another, this term means the real property to which the improvement is removed.

(26)(24) "Subcontractor" means a person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of such contractor's contract.

(27)(25) "Sub-subcontractor" means a person other than a materialman or laborer who enters into a contract with a subcontractor for the performance of any part of such subcontractor's contract.

Section 4. Subsection (5) of section 713.08, Florida Statutes, is amended to read:

713.08 Claim of lien.—

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor; or, with respect to rental equipment, within 90 days after the date that the rental equipment was last on the job site available for use; provided if the original contractor defaults or the contract is terminated under s. 713.07(4), no claim for a lien attaching prior to such default shall be recorded after 90 days from the date of such default or 90 days after the final performance of labor or services or furnishing of materials, whichever occurs first. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.

Section 5. Subsection (1) of section 713.132, Florida Statutes, is amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

- (a) The same information as the notice of commencement;
- (b) The recording office document book and page reference numbers and date of the notice of commencement;
- (c) A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded;
- (d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies; and
- (e) A statement that all lienors have been paid in full; and.

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination on the contractor and on each lienor who has given notice.

Section 6. Subsection (4) is added to section 713.16, Florida Statutes, to read:

713.16 Demand for copy of contract and statements of account; form.—

(4) When an owner makes any payment to the contractor or directly to a lienor, the contractor may, in writing, demand of any other lienor a written statement under oath of his account showing the nature of the labor of services performed and to be performed, the materials furnished and to be furnished, the amount paid on account to date, the amount due, and the amount to become due. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his lien.

Section 7. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney's fees.—In any action brought to enforce a lien or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of his costs, as allowed in equitable actions.

Section 8. Section 713.347, Florida Statutes, is created to read:

713.347 Lender responsibilities with construction loans.—

(1)(a) Within 5 business days after a lender makes a final determination, prior to the distribution of all funds available under a construction loan, that the lender will cease further advances pursuant to the loan, the lender shall serve written notice of that decision on the contractor and on any other lienor who has given the lender notice. The lender shall not be liable to the contractor based upon the decision of the lender to cease further advances if the lender gives the contractor notice of such decision in accordance with this subsection and the decision is otherwise permitted under the loan documents.

(b) The failure to give notice to the contractor under paragraph (a) renders the lender liable to the contractor to the extent of the actual value of the materials and direct labor costs furnished by the contractor plus 15 percent for overhead, profit, and all other costs from the date on which notice of the lender's decision should have been served on the contractor and the date on which notice of the lender's decision is served on the contractor. The lender and the contractor may agree in writing to any other reasonable method for determining the value of the labor, services, and materials furnished by the contractor.

(c) The liability of the lender shall in no event be greater than the amount of undisbursed funds at the time the notice should have been given unless the failure to give notice was done for the purpose of defrauding the contractor. The lender is not liable to the contractor for consequential or punitive damages for failure to give timely notice under this subsection. The contractor shall have a separate cause of action against the lender for damages sustained as the result of the lender's failure to give timely notice under this subsection. Such separate cause of action may not be used to hinder or delay any foreclosure action filed by the lender, may not be the basis of any claim for an equitable lien or for equitable subordination of the mortgage lien, and may not be asserted as an offset or a defense in the foreclosure case.

(d) For purposes of serving notice on the contractor under this subsection, the lender may rely on the name and address of the contractor listed in the notice of commencement or, if no notice of commencement is recorded, on the name and address of the contractor listed in the uniform building permit application. For purposes of serving notice on any other lienor under this subsection, the lender may rely upon the name and address of the lienor listed in the notice to owner.

(e) The contractor or any other lienor may not waive the right to receive notice under this paragraph.

(2)(a) If the lender and the borrower have designated a portion of the construction loan proceeds, the borrower may not authorize the lender to disburse the funds so designated for any other purpose until the owner serves the contractor and any other lienor who has given the owner a

notice to owner with written notice of that decision, including the amount of such loan proceeds to be disbursed. For the purposes of this subsection, the term "designated construction loan proceeds" means that portion of the loan allocated to actual construction costs of the facility and shall not include allocated loan proceeds for tenant improvements where the contractor has no contractual obligation or work order to proceed with such improvements. The lender shall not be liable to the contractor based upon the reallocation of the loan proceeds or the disbursement of the loan proceeds if the notice is timely given in accordance with this subsection and the decision is otherwise permitted under the loan documents.

(b) If the lender is permitted under the loan documents to make disbursements from the loan contrary to the original loan budget without the borrower's prior consent, the lender is responsible for serving the notice to the contractor or other lienor required under this subsection.

(c) This subsection does not apply to a residential project of four units or less.

(d) This subsection does not apply to construction loans of less than \$1 million unless the lender has committed to make more than one loan, the total of which loans are greater than \$1 million, for the purpose of evading this subsection.

(e) The owner or the lender is not required to give notice to the contractor or any other lienor under this subsection unless the total amount of all disbursements described in paragraph (a) exceed 5 percent of the original amount of the designated construction loan proceeds or \$100,000, whichever is less.

(f) Disbursement of loan proceeds contrary to this subsection renders the lender liable to the contractor to the extent of any such disbursements or to the extent of the actual value of the materials and direct labor costs plus 15 percent for overhead, profit, and all other costs, whichever is less. The lender is not liable to the contractor for consequential or punitive damages for disbursing loan proceeds in violation of this subsection. The contractor shall have a separate cause of action against the lender for damages sustained as the result of the disbursement of loan proceeds in violation of this subsection. Such separate cause of action may not be used to hinder or delay any foreclosure action filed by the lender, may not be the basis of any claim for equitable subordination of the mortgage lien, and may not be asserted as an offset or a defense in the foreclosure case.

(g) For purposes of serving notice on the contractor under this subsection, the lender may rely upon the name and address of the contractor listed in the notice of commencement or, if no notice of commencement is recorded, the name and address of the contractor listed in the uniform building permit application. For purposes of serving notice on any other lienor under this subsection, the lender may rely upon the name and address of the lienor listed in the notice to owner.

(h) For purposes of this subsection, the lender may rely upon a written statement, signed under oath by the contractor or any other lienor, that confirms that the contractor or the lienor has received the written notice required by this subsection.

(i) A contractor and any other lienor may not waive his right to receive notice under this subsection.

Section 9. Subsection (15) of section 713.245, Florida Statutes, as created by section 13 of chapter 90-109, Laws of Florida, is amended to read:

713.245 Conditional payment bond.—

(15) This section is repealed July 1, 1993 July 1, 1992.

Section 10. This act shall take effect October 1, 1992, except that section 9 shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 1, strike everything before the enacting clause and insert: An act relating to construction contracts; creating the Construction Contract Prompt Payment Law; providing for applicability; providing definitions; requiring payment of such contracts within certain time periods and requiring accrual of interest; providing an exception;

Senator Dudley moved the following amendment to **Amendment 3** which was adopted:

Amendment 3A (with Title Amendment)—On page 14, between lines 28 and 29, insert:

Section 2. Subsection (4) is added to section 713.16, Florida Statutes, to read:

713.16 Demand for copy of contract and statements of account; form.—

(5) *Any lienor who has filed a Claim of Lien may demand, in writing, of the owner a written statement under oath showing the amount of all direct contracts, the amount paid by the owner for all labor, services, and materials furnished pursuant to such direct contracts, the dates and amounts paid or to be paid by the owner for all improvements described in any direct contracts, and the reasonable costs of completing any direct contract under which construction has ceased if known. The failure or refusal by the owner to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the owner from recovering attorney's fees pursuant to s. 713.29.*

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 8, after the semicolon (;) insert: amending s. 713.16, F.S.; providing rights of a lienor;

Senator Langley moved the following amendment to **Amendment 3** which was adopted:

Amendment 3B—On page 1, line 14, strike “to” and insert: which do not provide otherwise, which

On motion by Senator Dudley, further consideration of **SB 972** with pending **Amendment 3** as amended was deferred.

The Senate resumed consideration of—

CS for SB 262—A bill to be entitled An act relating to comprehensive planning; amending s. 163.3184, F.S.; prescribing authority of local governing body to readopt density requirements of comprehensive plan or plan amendment not in compliance with ss. 163.3161-163.3215, F.S.; prohibiting application of sanctions against a local government readopting such a plan or plan amendment; providing an effective date.

—which had been previously considered this day. Pending **Amendment 4**, by Senator Yancey, as amended was adopted by two-thirds vote.

The vote was:

Yeas—24 Nays—10

On motion by Senator Langley, by two-thirds vote **CS for SB 262** as amended was read by title and failed to pass. The vote was:

Yeas—17 Nays—20

THE PRESIDENT PRESIDING

MOTION TO RECONSIDER

Senator Childers moved that the Senate reconsider the vote by which **CS for SB 262** failed to pass.

The motion was placed on the calendar.

CS for SB 1650—A bill to be entitled An act relating to medical practice; providing for the restricted licensure of physicians under certain circumstances; providing qualifications for such physicians prior to licensure; providing an effective date.

—was read the second time by title. On motion by Senator Johnson, by two-thirds vote **CS for SB 1650** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SB 1692—A bill to be entitled An act relating to securities regulation; amending s. 517.051, F.S.; clarifying an exemption for securities issued by credit unions; amending s. 517.061, F.S.; clarifying certain exemptions from registration requirements; amending s. 517.111, F.S.; providing additional grounds for denying an application to register securities; amending s. 517.12, F.S.; requiring payment of certain moneys in addition to renewal fees in renewing registrations; providing for confidential-

ity of certain information received in connection with a registration application; amending s. 517.131, F.S.; authorizing the Department of Banking and Finance to require certain writs of execution; authorizing the department to waive certain compliance requirements; amending s. 517.141, F.S.; clarifying the amount of recovery to which a claimant is entitled; amending s. 517.161, F.S.; specifying certain activities or events as grounds for denying certain registrations; amending s. 517.301, F.S.; prohibiting certain activities in rendering investment advice; providing penalties; providing an effective date.

—was read the second time by title.

Three amendments were adopted to **SB 1692** to conform the bill to **CS for HB 837**.

Pending further consideration of **SB 1692** as amended, on motions by Senator Dudley, by two-thirds vote **CS for HB 837** was withdrawn from the Committees on Commerce; and Finance, Taxation and Claims.

On motion by Senator Dudley—

CS for HB 837—A bill to be entitled An act relating to securities regulation; amending s. 517.051, F.S.; providing that certain exemptions are self-executing; clarifying an exemption for securities issued by certain financial institutions; amending s. 517.061, F.S.; clarifying certain exemptions from registration requirements; amending s. 517.111, F.S.; providing additional grounds for denying an application to register securities; amending s. 517.12, F.S.; requiring payment of certain moneys in addition to renewal fees in renewing registrations; changing the registration expiration date of branch offices; amending s. 517.131, F.S.; authorizing the Department of Banking and Finance to require certain writs of execution; authorizing the department to waive certain compliance requirements; amending s. 517.141, F.S.; clarifying the amount of recovery to which a claimant is entitled; amending s. 517.161, F.S.; specifying certain activities or events as grounds for denying certain registrations; amending s. 517.301, F.S.; prohibiting certain activities in rendering investment advice; providing penalties; providing an effective date.

—a companion measure, was substituted for **SB 1692** and read the second time by title. On motion by Senator Dudley, by two-thirds vote **CS for HB 837** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

SB 1778—A bill to be entitled An act relating to surplus property; amending s. 20.22, F.S.; abolishing the Division of Surplus Property of the Department of General Services and creating the Bureau of Surplus Property within the Division of Purchasing of that department; amending s. 217.01, F.S.; revising the purpose of ch. 217, F.S., relating to federal surplus personal property; amending s. 217.045, F.S.; deleting references to the Division of Surplus Property; authorizing the bureau to assist state agencies to take advantage of federal surplus property allocated to the state; amending s. 273.04, F.S., relating to property acquisition; deleting references to the Division of Surplus Property; authorizing the bureau to coordinate the acquisition of property with the custodian of the property; changing a deadline for the custodian for the contracting for the sale of certain surplus property; amending s. 273.05, F.S., relating to classification of property as surplus; deleting a reference to the Division of Surplus Property; adding a reference to the bureau; amending s. 273.055, F.S., relating to disposition of state-owned tangible personal property; deleting references to the Division of Surplus Property; adding references to the bureau; improving grammar; amending s. 287.032, F.S.; adding to the purposes of the Division of Purchasing; amending s. 287.042, F.S.; giving certain additional authority to the Division of Purchasing relating to surplus property; providing an effective date.

—was read the second time by title.

The Committee on Governmental Operations recommended the following amendment which was moved by Senator Yancey and adopted:

Amendment 1 (with Title Amendment)—On page 3, between lines 4 and 5, insert new Section 4:

Section 4. Section 217.017, Florida Statutes, is amended to read:

217.07 Transfer of surplus property assets to department.—The State Treasurer is authorized to transfer to the department any funds unexpended in the Surplus Property ~~Division~~ Revolving Trust Fund account in the State Treasury. This revolving fund shall remain in existence as a

separate trust fund as long as the surplus property program exists. Upon termination of the program any remaining funds shall be disposed of as provided by federal law.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 14, after the semicolon (;) insert: amending s. 217.07, F.S.; revising a reference;

On motion by Senator Yancey, by two-thirds vote **SB 1778** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—34 Nays—None

The Senate resumed consideration of—

SB 444—A bill to be entitled An act relating to local improvements; amending s. 170.01, F.S.; authorizing municipalities to levy special assessments for the purpose of constructing public improvements to permit the passage and navigation of watercraft; providing an effective date.

—which had been previously considered this day. Pending **Amendment 1**, by Senator Crotty, as amended was adopted.

On motion by Senator Kurth, by two-thirds vote **SB 444** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—37 Nays—None

Consideration of **SB 1770** was deferred.

CS for SB 1766—A bill to be entitled An act relating to alcoholic beverages; amending s. 561.01, F.S.; defining the term "performing arts center"; amending s. 561.20, F.S.; authorizing the Division of Alcoholic Beverages and Tobacco to issue special licenses to performing arts centers; providing exceptions; providing a limitation on fees for such licenses; providing an effective date.

—was read the second time by title. On motion by Senator Wexler, by two-thirds vote **CS for SB 1766** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

SB 1762—A bill to be entitled An act relating to securities transactions; amending s. 517.12, F.S.; increasing the annual registration fee for associated persons; providing an effective date.

—was read the second time by title. On motion by Senator Kirkpatrick, by two-thirds vote **SB 1762** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SB 1790—A bill to be entitled An act relating to breast cancer; establishing the Breast Cancer Task Force; providing for representation on the task force; providing responsibilities; requiring a report to the Governor and the Legislature; providing an effective date.

—was read the second time by title.

The Committee on Health and Rehabilitative Services recommended the following amendments which were moved by Senator Forman and adopted:

Amendment 1—On page 3, strike all of lines 15-21 and insert: this state in an interim report to the Governor and the Legislature by January 15, 1993, to be followed by a final report to the Governor and the Legislature by January 15, 1994. The reports must include, but not be limited to, specific recommendations on:

(a) Approaches to be used by state and local governments to increase public awareness of breast cancer;

(b) A plan for reducing the number of deaths related to breast cancer in this state, including but not limited to:

Amendment 2—On page 4, line 2, strike "Board" and insert: Council

Amendment 3—On page 4, between lines 3 and 4, insert:

(8) The task force shall cease to exist on January 15, 1994.

On motion by Senator Forman, by two-thirds vote **SB 1790** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—38 Nays—None

MOTION

On motion by Senator Forman, the rules were waived and **SB 1790** was ordered immediately certified to the House.

SB 1582—A bill to be entitled An act relating to employment; providing legislative intent; prohibiting certain employers from discriminating against any employee who is a parent or guardian of any child in grades K-12 for taking off a certain number of hours per year to visit the school of the child; providing remedies; providing an exception; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendment which was moved by Senator Diaz-Balart and adopted:

Amendment 1 (with Title Amendment)—On page 3, strike all of lines 1 and 2

And the title is amended as follows:

In title, on page 1, lines 8 and 9, strike everything after the semicolon (;) on line 8 through the semicolon (;) on line 9

On motion by Senator Diaz-Balart, by two-thirds vote **SB 1582** 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

SB 64—A bill to be entitled An act relating to the Endangered Plant Advisory Council of the Department of Agriculture and Consumer Services; repealing s. 6, ch. 85-153, Laws of Florida; abrogating the repeal of s. 581.186, F.S., pertaining to the council, which section is scheduled for termination by s. 6, ch. 85-153, Laws of Florida, effective October 1, 1992; repealing s. 581.186, F.S., effective October 1, 2002, and providing for review thereof before that date; providing an effective date.

—was read the second time by title.

The Committee on Agriculture recommended the following amendments which were moved by Senator Dantzler and failed:

Amendment 1—On page 1, line 15, insert:

Section 1. Subsection (1) of section 581.186, Florida Statutes, is amended to read:

581.186 Endangered Plant Advisory Council; organization; meetings; quorum; compensation.—

(1) The Endangered Plant Advisory Council is hereby created, consisting of *eight seven* persons to be appointed by the Commissioner of Agriculture. One member shall be a representative of the Florida Federation of Garden Clubs, Inc.; one member shall be a representative of the Florida Nurserymen and Growers Association, Inc.; one member shall be a representative of the Committee for Rare and Endangered Plants and Animals; one member shall be a representative of the Florida Forestry Association; one member shall be a representative of the Florida Native Plant Society; *one member shall be a representative of the Florida Farm Bureau Federation*; and two members shall be botanists, each of whom shall be a staff or faculty member at a state university. Members shall be appointed for terms of 4 years.

(Renumber subsequent sections.)

Amendment 2—On page 1, line 15, insert:

Section 1. Subsection (1) of section 581.186, Florida Statutes, is amended to read:

581.186 Endangered Plant Advisory Council; organization; meetings; quorum; compensation.—

(1) The Endangered Plant Advisory Council is hereby created, consisting of *eight seven* persons to be appointed by the Commissioner of

Agriculture. One member shall be a representative of the Florida Federation of Garden Clubs, Inc.; one member shall be a representative of the Florida Nurserymen and Growers Association, Inc.; one member shall be a representative of the Committee for Rare and Endangered Plants and Animals; one member shall be a representative of the Florida Forestry Association; one member shall be a representative of the Florida Native Plant Society; *one member shall be a representative of the Florida Home Builders Association*; and two members shall be botanists, each of whom shall be a staff or faculty member at a state university. Members shall be appointed for terms of 4 years.

(Renumber subsequent sections.)

Amendment 3—On page 1, line 19, strike “2002” and insert: 1997

Amendment 4—In title, on page 1, line 4, following the semicolon (;) insert: amending s. 581.186, F.S.; providing for the membership of the council;

Amendment 5—In title, on page 1, line 10, strike “2002” and insert: 1997

Senator Dantzler moved the following amendment which was adopted:

Amendment 6 (with Title Amendment)—On page 1, strike all of lines 18-21 and insert:

Section 2. Subsections (1) and (6) of section 581.186, Florida Statutes, are amended to read:

581.186 Endangered Plant Advisory Council; organization; meetings; quorum; compensation.—

(1) The Endangered Plant Advisory Council is hereby created, consisting of seven persons to be appointed by the Commissioner of Agriculture. One member shall be a representative of the Florida Federation of Garden Clubs, Inc.; one member shall be a representative of the Florida Nurserymen and Growers Association, Inc.; one member shall be a representative of the Committee for Rare and Endangered Plants and Animals; one member shall be a representative of the Florida Forestry Association; one member shall be a representative of the Florida Native Plant Society; and two members shall be botanists, each of whom shall be a staff or faculty member at a state university. *The terms for the first three council members appointed after October 1, 1991, shall be for 4 years each, the terms for the next two council members appointed shall be for 3 years each, and the terms for the last two members appointed shall be for 2 years each. Thereafter, all members shall be appointed for terms of 4 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.*

(6) The council shall advise the department concerning proposals for revising this section and s. 581.185. The council shall periodically examine those plant species on the Regulated Plant Index and such other plants native to the state that have been proposed for inclusion on the Regulated Plant Index to determine whether the plant species should be removed from the list, transferred from one category to another category on the list, or added to an appropriate category on the list. The council shall inform the department of such determination and request that the department initiate appropriate changes in the list. *The Regulated Plant Index must be used solely for the purposes specified in s. 581.185 and may not be used for regulatory purposes by other agencies. However, this section does not preclude another agency authorized to protect endangered plants from including one or more species listed on the Regulated Plant Index on a list developed by that agency under its regulatory authority.*

Section 3. Section 581.186, Florida Statutes, is repealed October 1, 1997.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, strike all of lines 9-12 and insert: Florida, effective October 1, 1992; amending s. 581.186, F.S.; revising certain terms of members; providing for filling vacancies; limiting the use of the Regulated Plant Index; repealing s. 581.186, F.S., effective October 1, 1997; providing an effective date.

On motion by Senator Dantzler, by two-thirds vote **SB 64** 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

SB 348—A bill to be entitled An act relating to veterans; amending s. 1.01, F.S.; revising definition of the term “veteran”; revising definition of wartime service to include Persian Gulf War; amending s. 292.05, F.S.; revising date of an annual report to Governor and Legislature; amending s. 295.07, F.S.; providing employment preference in appointment and retention for certain veterans; amending s. 296.01, F.S.; revising short title; amending s. 296.02, F.S.; revising definition of terms “wartime service,” “peacetime service,” and “Veterans Home of Florida”; amending s. 296.03, F.S.; revising purpose of the home; amending s. 296.04, F.S.; revising provisions relating to the qualifications, duties, and responsibilities of the administrator; amending s. 296.06, F.S.; revising provisions relating to eligibility for residency in the home; amending s. 296.08, F.S.; conforming cross references; amending s. 296.09, F.S.; revising provisions relating to general register information; amending s. 296.10, F.S.; requiring contribution to support by certain members of the home; amending s. 296.11, F.S.; deleting Members’ Deposits Trust Fund as created in the State Treasury; amending s. 296.12, F.S.; creating a Members’ Deposits Trust Fund administered by the home; creating part II of chapter 296, F.S.; creating the “Veterans’ Nursing Home of Florida Act”; providing purpose and definitions; providing for appointment of administrator and specifying qualifications, duties, and responsibilities; establishing a nondiscrimination policy of the home; providing for eligibility and priority of admittance; providing for members’ contribution to support; creating certain trust funds in the State Treasury and providing for disposition of moneys; creating a Members’ Deposits Trust Fund administered by the home; requiring annual reports to the Governor, Cabinet, and Legislature; providing for audits, inspections, and operational standards of the home; providing a directive to the Statutory Revision Division; providing an effective date.

—was read the second time by title.

The Committee on Community Affairs recommended the following amendments which were moved by Senator Jenne and adopted:

Amendment 1—On page 15, strike all of lines 26-30 and insert:

(4)(a) There is hereby created a Members’ Deposits Trust Fund. All moneys received by the home pursuant to this subsection shall be deposited into the Members’ Deposits Trust Fund, a local fund administered by the home and which is not a part of the State Treasury.

(b) The members of the home may voluntarily deposit moneys with the home, which the home shall receive and keep without charge in the Members’ Deposits Trust Fund. Such moneys voluntarily deposited with the home by a member may be withdrawn, in whole or in part, at the will of the member. Any balance remaining upon his death, undisposed of by will and not paid to his heirs at law, shall be paid to the state in accordance with the provisions of chapter 717.

(c) Upon a member’s discharge or voluntary departure from the home, if such moneys are not so demanded at the time of discharge or departure, or within a period of 3 years thereafter, or demanded by the heirs, devisees, or legatees in case of his decease after his discharge or voluntary departure, the same shall be paid to the state as provided in chapter 717.

(d) All accrued interest on this trust fund shall be accounted for by the financial manager and deposited to the General Home Trust Fund.

Amendment 2—In title, on page 2, line 10, after the semicolon (;) insert: providing for deposit and disposition of moneys;

Senator Jenne moved the following amendments which were adopted:

Amendment 3—On page 10, strike all of lines 15 and 16 and insert: receives for care of *residents* members from the state, United States Department of Veterans Affairs; and members into the

Amendment 4—On page 15, strike all of lines 7 and 8 and insert: receives for care of residents from the United States Department of Veterans Affairs and residents into the

On motion by Senator Jenne, further consideration of **SB 348** as amended was deferred.

CS for SB 968—A bill to be entitled An act relating to transportation; creating s. 337.108, F.S.; providing definitions; providing for indemnification of certain contractors that discover or encounter hazardous substances or pollution while performing services for the Department of Transportation; amending s. 337.175, F.S.; authorizing contractors to

substitute securities, certificates of deposit, or irrevocable letters of credit in lieu of retainage in contracts with the Department of Transportation; amending s. 337.185, F.S.; providing for arbitration by the State Arbitration Board, at the contractor's option, for certain contracts with the department; eliminating a restriction on consecutive terms on the board; providing a fee; amending s. 337.221, F.S.; providing for a claims settlement process; providing an effective date.

—was read the second time by title.

Senator Beard moved the following amendments which were adopted:

Amendment 1 (with Title Amendment)—On page 1, line 26, through page 2, line 15, strike all of said lines and insert:

337.108 Hazardous materials; pollutants; indemnification.—

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

(a) "Contractor" means any person or firm that has a contract for rendering services to the department relating to the construction or maintenance of a transportation facility. The term does not include persons or firms performing hazardous material or pollutant response, containment, disposal, or cleanup services.

(b) "Hazardous material" has the meaning provided in s. 768.128(1)(a).

(c) "Pollutant" has the meaning provided in s. 376.031(13).

(2) The department may agree to hold harmless and indemnify a contractor for damages when the contractor discovers or encounters hazardous materials or pollutants during the performance of services for the department if the presence of such hazardous materials or pollutants was unknown or not reasonably discoverable. Such an indemnification agreement is effective only if the contractor immediately stops work and notifies the department of the hazardous materials or pollutants.

(3) Such an indemnification agreement may not indemnify the contractor for damages resulting from any willful, wanton, or intentional conduct of the contractor.

And the title is amended as follows:

In title, on page 1, lines 5 and 6, strike "substances or pollution" and insert: materials or pollutants

Amendment 2—On page 2, strike all of lines 28-30 and insert: s. 255.052, to substitute, certificates of deposit that have been approved by the department comptroller, or to substitute irrevocable letters of credit that have been approved by the department comptroller, in lieu of retainage.

Senator Weinstein moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 7, between lines 12 and 13, insert:

Section 5. The Department of Transportation may not expend any funds for Work Program 1785 on the proposed North Broward General Aviation Airport and the department shall, to the extent possible, reprogram any money from line item 4820184 of the department's Five Year Work Program for other general aviation needs in Broward County.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 19, after the semicolon (;) insert: prohibiting the Department of Transportation from expending funds for Work Program 1785 on the proposed North Broward General Aviation Airport; requiring the department to reprogram money from line item 4820184 of the department's Five Year Work Program for other general aviation needs in Broward County;

Senator Bruner moved the following amendment which was adopted:

Amendment 4 (with Title Amendment)—On page 7, between lines 12 and 13, insert:

Section 5. The Department of Transportation shall institute a system under which any person who wishes to purchase an annual permit allowing unlimited passage over the Bryant Grady Patton Bridge in Franklin

County by the motor vehicle for which it is issued may do so at an annual cost of \$100. The department shall institute the system no later than July 1, 1992.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 19, after the semicolon (;) insert: requiring the Department of Transportation to institute an annual permitting system for motor vehicles using the Bryant Grady Patton Bridge in Franklin County;

On motion by Senator Beard, by two-thirds vote **CS for SB 968** 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

CS for SB 1316—A bill to be entitled An act relating to corporate income tax; creating s. 220.191, F.S.; providing a credit against the tax for certain businesses that establish a workforce education pilot program; providing requirements and limitations; providing for expiration; providing for rules; amending s. 220.02, F.S.; providing for the order of application of the workforce education pilot program tax credit; providing an effective date.

—was read the second time by title. On motion by Senator Forman, by two-thirds vote **CS for SB 1316** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

CS for SB 1476—A bill to be entitled An act relating to wildlife; amending s. 372.87, F.S.; increasing the fee for a license or permit for the possession or exhibition of a poisonous or venomous reptile; amending s. 372.921, F.S.; increasing the fees for the possession of wildlife for the purpose of sale or display; deleting required notice of unsatisfactory conditions prior to the confiscation of captive wildlife by the Game and Fresh Water Fish Commission; amending s. 372.922, F.S.; creating a classification for wildlife; providing for an application fee; providing for a permit fee; providing for disposition of fees; providing an effective date.

—was read the second time by title.

Senator Gardner moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Section 372.87, Florida Statutes, is amended to read:

372.87 License fee; renewal, revocation.—The Florida Game and Fresh Water Fish Commission is hereby authorized and empowered to issue a license or permit for the keeping, possessing or exhibiting of poisonous or venomous reptiles, upon payment of an annual fee of \$25, \$10 of which is a nonrefundable application fee, \$5 and upon assurance that all of the provisions of ss. 372.86-372.91 and such other reasonable rules and regulations as said commission may prescribe will be fully complied with in all respects. Such permit may be revoked by the Florida Game and Fresh Water Fish Commission upon violation of any of the provisions of ss. 372.86-372.91 or upon violation of any of the rules and regulations prescribed by said commission relating to the keeping, possessing and exhibiting of any poisonous and venomous reptiles. Such permits or licenses shall be for an annual period to be prescribed by the said commission and shall be renewable from year to year upon the payment of said \$5 fee and shall be subject to the same conditions, limitations and restrictions as herein set forth.

Section 2. Section 372.921, Florida Statutes, is amended to read:

372.921 Exhibition of wildlife.—

(1) In order to provide humane treatment and sanitary surroundings for wild animals kept in captivity, no person, firm, corporation, or association shall have, or be in possession of, in captivity for the purpose of public display with or without charge or for public sale any wildlife, specifically birds, mammals, and reptiles, whether indigenous to Florida or not, without having first secured a permit from the Game and Fresh Water Fish Commission authorizing such person, firm, or corporation to have in its possession in captivity the species and number of wildlife specified within such permit; however, this section does not apply to any wildlife not protected by law and the regulations of the Game and Fresh Water Fish Commission.

(2) The fees to be paid for the issuance of permits required by subsection (1) shall be as follows:

(a) For not more than 10 *Class I* or *Class II* individual specimens in the aggregate of all species, as designated by the Game and Fresh Water Fish Commission, the sum of \$100 \$5 per annum.

(b) For over 10 *Class I* or *Class II* individual specimens in the aggregate of all species, as designated by the Game and Fresh Water Fish Commission, the sum of \$250 \$25 per annum.

(c) For any number of *Class III* individual specimens in the aggregate of all species, the sum of \$25 per annum.

(d) For each permit application, the nonrefundable sum of \$10, which is included in the annual fee.

The fees prescribed by this section shall be submitted to the Game and Fresh Water Fish Commission with the application for permit required by subsection (1) and shall be deposited in the State Game Fund.

(3) An applicant for a permit shall be required to include in his application a statement showing the place, number, and species of wildlife to be held in captivity by him and shall be required upon request by the Game and Fresh Water Fish Commission to show when, where, and in what manner he came into possession of any wildlife acquired subsequent to the effective date of this act. The source of acquisition of such wildlife shall not be divulged by the commission except in connection with a violation of this section or a regulation of the commission in which information as to source of wildlife is required as evidence in the prosecution of such violation.

(4) Permits issued pursuant to this section and places where wildlife is kept or held in captivity shall be subject to inspection by officers of the Game and Fresh Water Fish Commission at all times. The commission shall have the power to release or confiscate any specimens of any wildlife, specifically birds, mammals, or reptiles, whether indigenous to the state or not, when it is found that conditions under which they are being confined are unsanitary, or unsafe to the public in any manner, or that the species of wildlife are being maltreated, mistreated, or neglected or kept in any manner contrary to the provisions of chapter 828, any such permit to the contrary notwithstanding. Before any such wildlife is ~~confiscated or released by the commission~~ under the authority of this section, ~~the owner thereof shall have been advised in writing of the existence of such unsatisfactory conditions; the owner shall have been given 30 days in which to correct such conditions; the owner shall have failed to correct such conditions; the owner shall have had an opportunity for a proceeding pursuant to chapter 120; and the commission shall have ordered such confiscation or release after careful consideration of all evidence in the particular case in question. The final order of the commission shall constitute final agency action.~~

Section 3. Section 372.922, Florida Statutes, is amended to read:

372.922 Personal possession of wildlife.—

(1) It is unlawful for any person or persons to possess any wildlife as defined in this act, whether indigenous to Florida or not, until he has obtained a permit as provided by this section from the Game and Fresh Water Fish Commission.

(2) The classifications of types of wildlife and fees to be paid for the issuance of permits shall be as follows:

(a) *Class I*—Wildlife which, because of its nature, habits, or status, shall not be possessed as a personal pet.

(b) *Class II*—Wildlife considered to present a real or potential threat to human safety, the sum of \$100 per annum.

(c) *Class III* - the sum of \$25.

(d) For each permit application the nonrefundable sum of \$10, which is included in the annual fee.

(3) The commission shall promulgate regulations defining *Class I*, *and II*, *and III* types of wildlife. The commission shall also establish regulations and requirements necessary to ensure that permits are granted only to persons qualified to possess and care properly for wildlife and that permitted wildlife possessed as personal pets will be maintained in sanitary surroundings and appropriate neighborhoods.

(4) An applicant for a permit shall be required to include in his application a statement showing the place, number, and species of wildlife to be held in captivity by him and shall be required upon request by the Game and Fresh Water Fish Commission to show when, where, and in what manner he came into possession of any wildlife acquired subsequent to the effective date of this act. The source of acquisition of such wildlife shall not be divulged by the commission except in connection with a violation of this section or a regulation of the commission in which information as to source of wildlife is required as evidence in the prosecution of such violation.

(5) Permits issued pursuant to this section and places where wildlife is kept or held in captivity shall be subject to inspection by officers of the Game and Fresh Water Fish Commission at all times. The commission shall have the power to release or confiscate any specimens of any wildlife, specifically birds, mammals, or reptiles, whether indigenous to the state or not, when it is found that conditions under which they are being confined are unsanitary, or unsafe to the public in any manner, or that the species of wildlife are being maltreated, mistreated, or neglected or kept in any manner contrary to the provisions of chapter 828, any such permit to the contrary notwithstanding. Before any such wildlife is released by the commission under the authority of this section, the owner shall have failed to correct such conditions; the owner shall have had an opportunity for a proceeding pursuant to chapter 120; and the commission shall have ordered such confiscation or release after careful consideration of all evidence in the particular case in question. The final order of the commission shall constitute final agency action.

(6)(4) Any person, firm, corporation, or association exhibiting or selling wildlife and being duly permitted as provided by s. 372.921 shall be exempt from the requirement to obtain a permit under the provisions of this section.

(7)(5) Persons in violation of this section shall be punishable as provided in s. 372.83.

Section 4. This act shall take effect June 1, 1992.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to poisonous or venomous reptiles; amending s. 372.87, F.S.; raising the license fee and requiring an application fee; amending ss. 372.921, 372.922, F.S.; raising exhibition and personal possession permit fees and revising provisions relating to confiscation and release; providing an effective date.

On motion by Senator Gardner, by two-thirds vote CS for SB 1476 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—1

SB 2160—A bill to be entitled An act relating to the local option sales taxes; amending s. 125.0104, F.S.; authorizing certain counties that impose a tourist development tax on leases and rentals to impose an additional tax on the sale of food, beverages, or alcoholic beverages in hotels and motels only or in hotels, motels, and certain establishments; providing exemptions; requiring a certified copy of the ordinance that authorizes the additional tax to be furnished to the Department of Revenue within a certain period of time; deleting certain exemptions; reallocating the proceeds of the additional tax; exempting the additional tax from certain procedures; providing an effective date.

—was read the second time by title.

The Committee on Finance, Taxation and Claims recommended the following amendment which was moved by Senator Meek:

Amendment 1 (with Title Amendment)—On page 7, line 6, after “majority” insert: *plus two*

And the title is amended as follows:

In title, on page 1, line 9, after “establishments;” insert: requiring the ordinance be adopted by a majority plus two vote;

Senator Plummer moved the following substitute amendment:

Amendment 2 (with Title Amendment)—On page 7, strike line 6 and insert: adopted by a majority vote of the *registered electors within the county governing body*, at the rate

And the title is amended as follows:

In title, on page 1, line 5, after “impose” insert: , by vote of the electors,

On motion by Senator Meek, further consideration of **SB 2160** with pending **Amendment 2** was deferred.

RECESS

On motion by Senator Thomas, the Senate recessed at 12:04 p.m. to reconvene at 2:00 p.m.

AFTERNOON SESSION

The Senate was called to order by the President at 2:00 p.m. A quorum present—33:

Madam President	Dantzler	Jennings	Plummer
Bankhead	Davis	Johnson	Scott
Beard	Diaz-Balart	Kiser	Souto
Bruner	Dudley	Kurth	Thurman
Burt	Forman	Langley	Wexler
Casas	Gardner	Malchon	Yancey
Childers	Grant	McKay	
Crenshaw	Grizzle	Meek	
Crotty	Jenne	Myers	

SPECIAL ORDER, continued

Consideration of **CS for SB 2390** and **SB 1646** was deferred.

CS for SB 1730—A bill to be entitled An act relating to disability insurance policies; providing that a health care practitioner whose practice is restricted under certain circumstances because of his testing positive for human immunodeficiency virus has a disability for purposes of health insurance policies delivered in this state; providing an effective date.

—was read the second time by title.

Senator Myers moved the following amendment which was adopted:

Amendment 1—On page 1, line 20, after the period (.) insert: The provisions of this section do not require payment of disability income benefits under any policy without the insured experiencing an actual loss of income as may be required under the terms of the policy as a condition of receiving such benefits.

On motion by Senator Myers, by two-thirds vote **CS for SB 1730** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—25 Nays—None

MOTION

On motion by Senator Myers, the rules were waived and **CS for SB 1730** was ordered immediately certified to the House.

The Senate resumed consideration of—

SB 972—A bill to be entitled An act relating to private construction contracts; creating the Construction Contract Prompt Payment Law; providing for applicability; providing definitions; requiring payment of such contracts within certain time periods and requiring accrual of interest; providing an exception; providing an effective date.

—which had been previously considered this day with pending **Amendment 3**, by Senator Dudley, as amended.

On motion by Senator Langley, the Senate reconsidered the vote by which **Amendment 3B** was adopted.

On motion by Senator Dudley, further consideration of **SB 972** with pending **Amendment 3B** was deferred.

CS for SB 2390—A bill to be entitled An act relating to group health insurance; creating s. 627.6699, F.S.; creating the “Employee Health Care Access Act”; providing purpose and intent; providing definitions; providing for application; providing for availability of coverage; providing procedures for electing to become a risk-assuming carrier; providing for a standard health benefit plan and a basic health benefit plan to be offered to all small employers; restricting the use of exclusions for preexisting conditions; establishing a health reinsurance program for small employers; providing for assessment of small employer carriers under the program; providing standards for marketing health care plans; providing for applicability of other state laws; authorizing the Department of Insurance to adopt rules for implementing and administering the act; requiring small employers to file with the department certain premium information relating to a certain time period; providing severability; providing an effective date.

—was read the second time by title.

Senator Jenne moved the following amendment:

Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Section 627.6699, Florida Statutes, is created to read:
627.6699 Employee Health Care Access Act.—

(1) **SHORT TITLE**.—This section may be cited as the “Employee Health Care Access Act.”

(2) **PURPOSE AND INTENT**.—The purpose and intent of this section is to promote the availability of health insurance coverage to small employers regardless of their claims experience or their employees’ health status, to establish rules regarding renewability of that coverage, to establish limitations on the use of exclusions for preexisting conditions, to provide for development of a standard health benefit plan and a basic health benefit plan to be offered to all small employers, to provide for establishment of a reinsurance program for coverage of small employers, and to improve the overall fairness and efficiency of the small group health insurance market.

(3) **DEFINITIONS**.—As used in this section:

(a) “Basic health benefit plan” and “standard health benefit plan” mean low-cost health care plans developed pursuant to subsection (9).

(b) “Board” means the board of directors of the program.

(c) “Carrier” means a person who provides health benefit plans in this state, including an authorized insurer, a health maintenance organization, a multiple-employer welfare arrangement, or any other person providing a health benefit plan that is subject to insurance regulation in this state.

(d) “Case management program” means the specific supervision and management of the medical care provided or prescribed for a specific individual, which may include the use of health care providers designated by the carrier.

(e) “Dependent” means the spouse or child of an eligible employee, subject to the applicable terms of the health benefit plan covering that employee.

(f) “Eligible employee” means an employee who works full time, having a normal work week of 30 or more hours, and who has met any applicable waiting-period requirements. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include a part-time, temporary, or substitute employee.

(g) “Established geographic area” means the county or counties, or any portion of a county or counties, within which the carrier provides or arranges for health care services to be available to its insureds, members, or subscribers.

(h) “Health benefit plan” means any hospital or medical expense-incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract. The term does not include accident-only, individual specified disease, individual hospital indemnity, credit, dental-only, vision-only, Medicare-supplement, long-term care, or disability income insurance; coverage issued as a supple-

ment to liability insurance; workers' compensation or similar insurance; or automobile medical-payment insurance.

(i) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer after the initial enrollment period provided under the terms of the plan has ended. However, an eligible employee or dependent is not considered a late enrollee if the enrollee:

1. Was covered under another employer health benefit plan at the time the individual was eligible to enroll; lost coverage under that plan as a result of termination of employment, the termination of the other plan's coverage, the death of a spouse, or divorce; and requests enrollment within 30 days after coverage under that plan was terminated;

2. The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

3. A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(j) "Limited benefit policy or contract" means a policy or contract that provides coverage for each person insured under the policy for a specifically named disease or diseases, a specifically named accident, or a specifically named limited market that fulfills an experimental or reasonable need, such as the small group market.

(k) "Participating carrier" means any carrier that issues health benefit plans in this state except a small employer carrier that elects to be a risk-assuming carrier.

(l) "Plan of operation" means the plan of operation of the program, including articles, bylaws, and operating rules, adopted by the board pursuant to subsection (8).

(m) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to:

1. A condition that, during a specified period immediately preceding the effective date of coverage, had manifested itself in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received as to that condition; or

2. Pregnancy existing on the effective date of coverage.

(n) "Program" means the Florida Small Employer Carrier Reinsurance Program created under subsection (8).

(o) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:

1. An employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health plan; or

2. An individual health insurance policy, including coverage issued by a health maintenance organization, a fraternal benefit society, or a multiple employer welfare arrangement, that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that such policy has been in effect for a period of at least 1 year.

(p) "Reinsuring carrier" means a small employer carrier that elects to comply with the requirements set forth in subsection (8).

(q) "Risk-assuming carrier" means a small employer carrier that elects to comply with the requirements set forth in subsection (7).

(r) "Small employer" means any person, firm, corporation, partnership, or association that is actively engaged in business and that, on at least 50 percent of its working days during the preceding calendar quarter, employed at least 3, but not more than 25, eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, may be considered a single employer.

(s) "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one or more small employers.

(4) APPLICABILITY AND SCOPE.—

(a) This section applies to a health benefit plan that provides coverage to a small employer in this state if:

1. Any portion of the premium or benefits is paid by a small employer;

2. Any covered individual is reimbursed, whether through wage adjustments or otherwise, by a small employer for any portion of the premium; or

3. The plan is treated by the employer or any of the covered individuals as part of a plan or program for the purposes of s. 106, s. 125, or s. 162 of the United States Internal Revenue Code.

(b) With respect to a group of affiliated carriers or a group of carriers that is eligible to file a consolidated tax return, any restrictions, limitations, or requirements of this section that apply to one of the carriers applies to all of the carriers as if they were one carrier. However, with respect to affiliated companies, all of which are in existence and affiliated on January 1, 1992, the group of affiliated companies is considered one carrier only after one member of the group transfers any small employer business to another member of the group.

(c) An affiliated carrier that is a health maintenance organization having a certificate of authority under part I of chapter 641 may be considered a separate carrier for the purposes of this section.

(5) AVAILABILITY OF COVERAGE.—

(a) Beginning January 1, 1993, every small employer carrier issuing new health benefit plans to small employers in this state must, as a condition of transacting business in this state, offer to eligible small employers a standard health benefit plan and a basic health benefit plan. Such a small employer carrier shall issue a standard health benefit plan or a basic health benefit plan to every eligible small employer that elects to be covered under such plan, agrees to make the required premium payments under such plan and to satisfy the other provisions of the plan.

(b) In the case of a small employer carrier that establishes more than one class of business, the small employer carrier shall offer, upon request, and issue to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each class of business so established. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

1. The criteria are not intended to discourage or prevent acceptance of small employers from applying for a basic or standard health benefit plan.

2. The criteria are not related to the health status or claim experience of the small employer.

3. The criteria are applied consistently to all small employers applying for coverage in the class of business.

4. The small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(c) A small employer carrier must file with the department, in a format and manner prescribed by the board, a standard health care plan and a basic health care plan to be used by the carrier. A plan filed pursuant to this section may be used by the small employer carrier beginning 30 days after it is filed, unless the department disapproves its use.

(d) The department at any time may, after providing notice and an opportunity for a hearing, disapprove the continued use by the small employer carrier of the standard or basic health benefit plan on the grounds that such plan does not meet the requirements of this section.

(e) A health care plan covering small employers must comply with the following provisions:

1. Preexisting condition provisions must not exclude coverage for a period beyond 12 months following the individual's effective date of coverage and may only relate to:

a. Conditions that, during the 6-month period immediately preceding the effective date of coverage, had manifested themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received; or

b. A pregnancy existing on the effective date of coverage.

2. In determining whether a preexisting condition provision applies to an eligible employee or dependent, credit must be given for the time the person was covered under qualifying previous coverage if the previous coverage was continuous to a date not more than 30 days prior to the effective date of the new coverage, exclusive of any applicable waiting period under the plan.

3. Late enrollees may be excluded from coverage only for the greater of 18 months or the period of an 18-month preexisting condition exclusion; however, if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months after the effective date of coverage.

4. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

5.a. Except as provided in sub-subparagraph b., in applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met.

b. With respect to a small employer with 10 or fewer eligible employees, a small employer carrier may consider employees or dependents who have coverage under another health benefit plan sponsored by such small employer in applying minimum participation requirements.

6. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

7. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

8. A small employer carrier shall not modify a standard or basic health benefit plan with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the standard or basic health benefit plan.

9. An initial enrollment period of at least 30 days must be provided.

(f)1. A small employer carrier need not offer coverage or accept applications pursuant to paragraph (a):

a. To a small employer if the small employer is not physically located in an established geographic service area of the small employer carrier;

b. To an employee if the employee does not work or reside within an established geographic service area of the small employer carrier; or

c. To a small employer group within an area in which the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the department, that it cannot, within its network of providers, deliver service adequately to the members of such groups because of obligations to existing group contract holders and enrollees.

2. A small employer carrier that cannot offer coverage pursuant to sub-subparagraph 1.c. may not offer coverage in the applicable area to new cases of employer groups having more than 25 eligible employees or small employer groups until the later of 180 days following each such refusal or the date on which the carrier notifies the department that it has regained its ability to deliver services to small employer groups.

3.a. The department shall, by rule, require each small employer carrier to report, along with its annual statement for calendar year 1992, its gross annual premiums for health benefit plans issued to small employers during calendar year 1992, including both new and renewal business. No later than April 1, 1993, the department shall calculate each carrier's percentage of all small employer carrier premiums for calendar year 1992.

b. During calendar year 1993, a small employer carrier may elect to not offer coverage or accept applications pursuant to paragraph (a):

(I) After its gross annual premiums for all small employer group health benefit plans written or renewed for that year, excluding blocks of business assumed from other carriers, exceeds 25 percent of the total of all small employer carrier premiums for calendar year 1992; or

(II) After its gross annual premiums for small employer group health benefit plans written or renewed for that year, excluding blocks of business assumed from other carriers, exceeds three times that carrier's gross annual premiums for small employer group health benefit plans written or renewed during calendar year 1992, if its share of small employer carrier business for calendar year 1992 calculated under sub-subparagraph a. exceeds 2 percent.

c. The election under sub-subparagraph b. is effective upon filing of a notice of election with the department. The department may, within 30 days after the filing of the notice, disapprove the election if it finds that the carrier does not meet the criteria of sub-subparagraph b. If the department disapproves the election, the carrier is subject to paragraph (a), effective on the date of such disapproval.

d. An election under sub-subparagraph b. expires on December 31, 1993, or upon revocation, whichever occurs earlier.

e. A carrier may file with the department a notice revoking its election under sub-subparagraph b. after the election has been in effect for at least 3 months. Such revocation of an election takes effect on the first day of the calendar quarter following the filing of such notice with the department and subjects the carrier to all requirements of paragraph (a).

f. While a carrier's election under sub-subparagraph b. is in effect, the carrier may not write any further small employer group health benefit plans.

g. A carrier may not make an election under sub-subparagraph b. more than once.

4.a. Beginning in 1994, the department shall, by rule, require each small employer carrier to report, on or before March 1 of each year, its gross annual premiums for all health benefit plans issued to small employers during the previous calendar year, and also to report its gross annual premiums for new, but not renewal, standard and basic health benefit plans subject to this section issued during the previous calendar year. No later than April 1 of each year, the department shall calculate each carrier's percentage of all small employer group health premiums for the previous calendar year and shall calculate the aggregate gross annual premiums for new, but not renewal, standard and basic health benefit plans for the previous calendar year.

b. Beginning with calendar year 1994, a small employer carrier may elect to not offer coverage or accept applications pursuant to paragraph (a):

(I) After its gross annual premiums for new, but not renewal, standard and basic health benefit plans subject to this section for that year, excluding blocks of business assumed from other carriers, exceeds 25 percent of the aggregate gross annual premiums for new, but not renewal, standard and basic health benefit plans subject to this section for the previous calendar year as determined under sub-subparagraph a.; or

(II) After its gross annual premiums for new, but not renewal, standard and basic health benefit plans subject to this section, excluding blocks of business assumed from other carriers, exceeds three times the carrier's percentage of all small employer group premiums for the previous calendar year as determined under sub-subparagraph a., multiplied by the aggregate gross annual premiums for new standard and basic health benefit plans for the previous year as determined under sub-subparagraph a. A carrier may not exercise this option unless its percentage of all small employer group premiums for the previous calendar year as determined under sub-subparagraph a. exceeds 2 percent.

c. The election under sub-subparagraph b. is effective upon filing of a notice of election with the department. The department may, within 30 days after the filing of the notice, disapprove the election if it finds that the carrier does not meet the criteria of sub-subparagraph b. If the

department disapproves the election, the carrier is subject to paragraph (a), effective on the date of such disapproval.

d. An election under sub-subparagraph b. expires on December 31 of the year in which the election was made or upon revocation, whichever occurs earlier.

e. A carrier may file with the department a notice revoking its election under sub-subparagraph b. after the election has been in effect for at least 3 months. Such revocation of an election takes effect on the first day of the calendar quarter following the filing of such notice with the department and subjects the carrier to all requirements of paragraph (a).

f. While a carrier's election under sub-subparagraph b. is in effect, the carrier may not write any further new small employer group health benefit plans during the remainder of the calendar year.

g. A carrier may not make an election under sub-subparagraph b. more than once in any calendar year.

(g) A small employer carrier may not offer coverage or accept applications pursuant to paragraph (a) if the department finds that the acceptance of an application or applications would endanger the financial condition of the small employer carrier or endanger the interests of the small employer carrier's insureds.

(6) SMALL EMPLOYER CARRIER'S ELECTION TO BECOME A RISK-ASSUMING CARRIER OR A REINSURING CARRIER.—

(a) A small employer carrier must elect to become either a risk-assuming carrier or a reinsuring carrier. The election is binding for a 5-year period, except that the carrier's initial election must be made no later than October 31, 1992, and is binding for 2 years. Any carrier that is not a small employer carrier on October 31, 1992, and intends to become a small employer carrier after October 31, 1992, must file its designation when it files the forms and rates it intends to use for small employer group health insurance; such designation shall be binding for 2 years after the date of approval of the forms and rates, and any subsequent designation is binding for 5 years. The department may permit a carrier to modify its election at any time for good cause shown, after a hearing.

(b) The department shall establish an application process for small employer carriers seeking to change their status under this subsection.

(c) An election to become a risk-assuming carrier is subject to approval under subsection (7).

(d) A small employer carrier that elects to cease participating as a reinsuring carrier and to become a risk-assuming carrier is prohibited from reinsuring or continuing to reinsure any small employer health benefits plan pursuant to subsection (8) as soon as the carrier becomes a risk-assuming carrier and must pay a prorated assessment based upon business issued as a reinsuring carrier for any portion of the year that the business was reinsured. A small employer carrier that elects to cease participating as a risk-assuming carrier and to become a reinsuring carrier is permitted to reinsure small employer health benefit plans under the terms set forth in subsection (8) and must pay a prorated assessment based upon business issued as a reinsuring carrier for any portion of the year that the business was reinsured.

(7) ELECTION PROCESS TO BECOME A RISK-ASSUMING CARRIER.—

(a)1. A small employer carrier may become a risk-assuming carrier by filing with the department a designation of election under subsection (6) in a format and manner prescribed by the department. The department shall approve the election of a small employer carrier to become a risk-assuming carrier if the department finds that the carrier is capable of assuming that status pursuant to the criteria set forth in paragraph (b).

2. The department must approve or disapprove any designation as a risk-assuming carrier within 60 days after filing.

(b) In determining whether to approve an application by a small employer carrier to become a risk-assuming carrier, the department shall consider:

1. The carrier's financial ability to support the assumption of the risk of small employer groups.

2. The carrier's history of rating and underwriting small employer groups.

3. The carrier's commitment to market fairly to all small employers in the state or its service area, as applicable.

4. The carrier's ability to assume and manage the risk of enrolling small employer groups without the protection of the reinsurance program provided in subsection (8).

(c) A small employer carrier that becomes a risk-assuming carrier pursuant to this subsection is not subject to the assessment provisions of subsection (8).

(d) The department shall provide public notice of a small employer carrier's designation of election under subsection (6) to become a risk-assuming carrier and shall provide at least a 21-day period for public comment prior to making a decision on the election. The department shall hold a hearing on the election at the request of the carrier.

(e) The department may rescind the approval granted to a risk-assuming carrier under this subsection if the department finds that the carrier no longer meets the criteria of paragraph (b).

(f) A risk-assuming carrier shall make available to all small employers in this state, throughout the year and without regard to the health status or industry of the eligible employees and dependents of the small employers, health benefit plans that provide at least that coverage provided by a standard health benefit plan and a basic health benefit plan complying with subsection (9).

(8) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.—

(a) There is created a nonprofit entity to be known as the "Florida Small Employer Health Reinsurance Program."

(b)1. The program shall operate subject to the supervision and control of the board.

2. Until December 31, 1993, the board shall consist of the commissioner or his designee, who shall serve as chairman, and seven additional members appointed by the commissioner on or before May 1, 1992, as follows:

a. One member shall be a representative of the largest health insurer in the state, as determined by market share as of December 31, 1991.

b. One member shall be a representative of the largest health maintenance organization in the state, as determined by market share as of December 31, 1991.

c. Three members shall be selected from a list of individuals recommended by the Health Insurance Association of America.

d. Two members shall be selected from a list of individuals recommended by the Florida Insurance Council.

The terms of members appointed under this subparagraph expire on December 31, 1993. The appointment of a member under this subparagraph does not preclude the commissioner from appointing the same person to serve as a member under subparagraph 3.

3. Beginning January 1, 1994, the board shall consist of the commissioner or his designee, who shall serve as chairman, and eight additional members who shall be appointed by the commissioner and serve as follows:

a. The commissioner shall include representatives of small employer carriers subject to assessment under this subsection. At least five members shall be selected from individuals recommended by small employer carriers pursuant to procedures provided by rule of the department.

b. A member appointed under this subparagraph shall serve a term of 4 years and shall continue in office until the member's successor takes office, except that, in order to provide for staggered terms, the commissioner shall designate two of the initial appointees under this subpara-

graph to serve terms of 2 years and shall designate three of the initial appointees under this subparagraph to serve terms of 3 years.

4. The commissioner may remove a member for cause.
5. Vacancies on the board shall be filled in the same manner as the original appointment for the unexpired portion of the term.
6. The commissioner may require an entity that recommends persons for appointment to submit additional lists of recommended appointees.

(c)1.a. No later than August 15, 1992, the board shall submit to the department a plan of operation to assure the fair, reasonable, and equitable administration of the program. The board may at any time submit to the department any amendments to the plan that the board finds to be necessary or suitable.

b. No later than September 15, 1992, the department shall, after notice and hearing, approve the plan of operation if it determines that the plan submitted by the board is suitable to assure the fair, reasonable, and equitable administration of the program and provides for the sharing of program gains and losses equitably and proportionately in accordance with paragraph (j).

c. The plan of operation, or any amendment thereto, becomes effective upon written approval of the department.

2. If the board fails to submit a suitable plan of operation by August 15, 1992, the department shall, after notice and hearing, adopt a temporary plan of operation by September 15, 1992. The department shall amend or rescind the temporary plan of operation, as appropriate, after it approves a suitable plan of operation submitted by the board.

(d) The plan of operation must, among other things:

1. Establish procedures for handling and accounting for program assets and moneys and for an annual fiscal reporting to the department.
2. Establish procedures for selecting an administering carrier and set forth the powers and duties of the administering carrier.
3. Establish procedures for reinsuring risks.
4. Establish procedures for collecting assessments from participating carriers to provide for claims reinsured by the program and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.
5. Provide for any additional matters at the discretion of the board.

(e) The board shall:

1. Recommend to the department market conduct requirements and other requirements for carriers and agents, including requirements relating to:

- a. Registration by each carrier with the department of its intention to be a small employer carrier under this section;
- b. Publication by the department of a list of all small employer carriers, including a requirement applicable to agents and carriers that a health benefit plan may not be sold by a carrier that is not identified as a small employer carrier;
- c. The availability of a broadly publicized, toll-free telephone number for access by small employers to information concerning this section;
- d. Periodic reports by carriers and agents concerning health benefit plans issued; and
- e. Methods concerning periodic demonstration by small employer carriers and agents that they are marketing or issuing health benefit plans to small employers.

2. No later than October 1, 1995, the board shall conduct a study of the effectiveness of this section and may recommend, to the department, improvements to achieve greater rate stability, accessibility, and affordability in the small employer marketplace.

(f) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue

health benefit plans directly to groups or individuals. In addition thereto, the program has specific authority to:

1. Enter into contracts as necessary or proper to carry out the provisions and purposes of this act, including the authority to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions.
2. Sue or be sued, including taking any legal action necessary or proper for recovering any assessments and penalties for, on behalf of, or against the program or any carrier.
3. Take any legal action necessary to avoid the payment of improper claims against the program.
4. Issue reinsurance policies, in accordance with the requirements of this act.
5. Establish rules, conditions, and procedures for reinsurance risks under the program participation.
6. Establish actuarial functions as appropriate for the operation of the program.
7. Assess participating carriers in accordance with paragraph (j), and make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year.

8. Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, and in any other function within the authority of the program.

9. Borrow money to effect the purposes of the program. Any notes or other evidences of indebtedness of the program which are not in default constitute legal investments for carriers and may be carried as admitted assets.

10. To the extent necessary, increase the \$5,000 deductible reinsurance requirement to adjust for the effects of inflation.

(g) A reinsuring carrier may reinsure with the program coverage of an eligible employee of a small employer, or any dependent of such an employee, subject to each of the following provisions:

1. With respect to a standard and basic health care plan, the program must reinsure the level of coverage provided; and, with respect to any other plan, the program must reinsure the coverage up to, but not exceeding, the level of coverage provided under the standard and basic health care plan.
2. Except in the case of a late enrollee, a reinsuring carrier may reinsure an eligible employee or dependent within 60 days after the commencement of the coverage of the small employer. A newly employed eligible employee or dependent of a reinsured small employer may be reinsured within 60 days after the commencement of his coverage.
3. A small employer carrier may reinsure an entire employer group within 60 days after the commencement of the group's coverage under the plan. The carrier may choose to reinsure newly eligible employees and dependents of the reinsured group pursuant to subparagraph 1.
4. The program may not reimburse a participating carrier with respect to the claims of a reinsured employee or dependent until the carrier has paid incurred claims of at least \$5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for 10 percent of incurred claims during a calendar year and the program shall reinsure the remainder.
5. The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the Department of Labor, unless the board proposes and the department approves a lower adjustment factor.
6. A small employer carrier may terminate reinsurance for all reinsured employees or dependents on any plan anniversary.

7. The premium rate charged for reinsurance by the program to a health maintenance organization that is approved by the Secretary of Health and Human Services as a federally qualified health maintenance organization pursuant to 42 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to requirements that limit the amount of risk that may be ceded to the program, which requirements are more restrictive than subparagraph 4., shall be reduced by an amount equal to that portion of the risk, if any, which exceeds the amount set forth in subparagraph 4. which may not be ceded to the program.

8. The board may consider adjustments to the premium rates charged for reinsurance by the program for carriers that use effective cost-containment measures, including high-cost case management, as defined by the board.

9. A reinsuring carrier shall apply its case-management and claims-handling techniques, including, but not limited to, utilization review, individual case management, preferred provider provisions, other managed-care provisions or methods of operation, consistently with both reinsured business and nonreinsured business.

(h)1. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of basic reinsurance premium rates, which shall be multiplied by the factors set for them in this paragraph to determine the premium rates for the program. The basic reinsurance premium rates shall be established by the board, subject to the approval of the department, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard and basic health benefit plan. The premium rates set by the board may vary by geographical territory to reflect differences in cost. The multiplying factors shall be established as follows:

a. The entire group may be reinsured for a rate that is 1.5 times the rate established by the board.

b. An eligible employee or dependent may be reinsured for a rate that is 5 times the rate established by the board.

2. The board periodically shall review the methodology established, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the rates which shall be subject to the approval of the department.

(i) If a health benefit plan for a small employer issued in accordance with this subsection is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must be consistent with the requirements relating to premium rates set forth in s. 627.4106.

(j)1. Prior to March 1 of each calendar year, the board shall determine and report to the department the program net loss for the previous year, including administrative expenses for that year, and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

2. Any net loss for the year shall be recouped by assessment of the carriers, as follows:

a. The operating losses of the program shall be assessed in the following order subject to the specified limitations. The first tier of assessments shall be made against reinsuring carriers in an amount which shall not exceed 5 percent of each reinsuring carrier's premiums from health benefit plans covering small employers. If such assessments have been collected and additional moneys are needed, the board shall make a second tier of assessments in an amount which shall not exceed .5 percent of each carrier's health benefit plan premiums. Risk assuming carriers are exempt from all assessments authorized pursuant to this section. The amount paid by a reinsuring carrier for the first tier of assessment shall be credited against any additional assessments made.

b. The board shall equitably assess carriers based on market share. The board shall annually assess each insurer a portion of the operating losses of the plan. The first tier of assessments shall be determined by multiplying the operating losses by a fraction, the numerator of which

equals the reinsuring insurer's earned premium pertaining to direct writings of small employer health benefit plans in the state during the calendar year preceding that for which the assessment is levied, and the denominator of which equals the total of all such premiums earned by reinsuring insurers in the state during that calendar year. The second tier of assessments shall be based on the premiums that all carriers, except risk-assuming carriers, earned on all health benefit plans written in this state. The board may levy interim assessments against insurers to ensure the financial ability of the plan to cover claims expenses and administrative expenses paid or estimated to be paid in the operation of the plan for the calendar year prior to the association's anticipated receipt of annual assessments for that calendar year. Any interim assessment is due and payable within 30 days after receipt by an insurer of the interim assessment notice. Interim assessment payments shall be credited against the insurer's annual assessment. Health benefit plan premiums and benefits paid by a carrier that are less than an amount determined by the board to justify the cost of collection may not be considered for purposes of determining assessments.

c. Subject to the approval of the department, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved as federally qualified health maintenance organizations by the Secretary of Health and Human Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

3. Prior to March 1 of each year, the board shall determine and file with the department an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

4. If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph 2., the board shall evaluate the operation of the program and reports its findings, including any recommendations for changes to the plan of operation, to the department within 90 days following the end of the calendar year in which the losses were incurred. The evaluation shall include an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged and the level of insurer retention under the program, and the costs of coverage for small employers. If the board fails to file report with the department within 90 days following the end of the applicable calendar year, the department may evaluate the operations of the program and implement such amendments to the plan of operation the department deems necessary to reduce future losses and assessments.

5. If assessments exceed the amount of the actual losses and administrative expenses of the program, the excess shall be held as interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, the term "future losses" includes reserves for incurred but not reported claims.

6. Each carrier's proportion of the assessment shall be determined annually by the board, based on annual statements and other reports considered necessary by the board and filed by the carriers with the board.

7. Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of an assessment.

8. A carrier may seek, from the commissioner, a deferment, in whole or in part, from any assessment made by the board. The department may defer, in whole or in part, the assessment of a carrier if, in the opinion of the department, the payment of the assessment would place the carrier in a financially impaired condition. If an assessment against a carrier is deferred, in whole or in part, the amount by which the assessment is deferred may be assessed against the other carriers in a manner consistent with the basis for assessment set forth in this section. The carrier receiving such deferment remains liable to the program for the amount deferred and is prohibited from reinsuring any individuals or groups in the program if it fails to pay assessments.

(k) Neither the participation in the program as reinsuring carriers, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this act, may be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its carriers either jointly or separately.

(l) The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to agents for the sale of basic and standard health benefit plans. In estab-

lishing such standards, the board shall take into the consideration: the need to assure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide on-going service to the small employer, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(9) STANDARD, BASIC, AND LIMITED HEALTH BENEFIT PLANS.—

(a)1. No later than May 15, 1992, the commissioner shall appoint a health benefit plan committee composed of four representatives of carriers, two representatives of small employers, and one employee of a small employer. The carrier members shall be selected from a list of individuals recommended by the board. The commissioner may require the board to submit additional recommendations of individuals for appointment.

2. The committee shall develop the form and level of coverages for the standard health benefit plan and the basic health benefit plan, and shall submit the forms and levels of coverages to the department by July 1, 1992. The department must approve such forms and levels of coverages by August 1, 1992, and may return the submissions to the committee for modification on a schedule that allows the department to grant final approval by August 1, 1992. The committee ceases to exist upon the granting of such final approval.

3. The plans shall comply with all of the requirements of this subsection.

4. The plans must be filed with and approved by the department prior to issuance or delivery by any small employer carrier.

5. After approval of the standard health benefit plan and the basic health benefit plan, if the department determines that modifications to a plan might be appropriate, the commissioner shall appoint a new health benefit plan committee in the manner provided in subparagraph 1. to submit recommended modifications to the department for approval.

(b)1. Each small employer carrier shall issue to any small employer, upon request, a standard health benefit plan and a basic health benefit plan that meets the criteria set forth in this section.

2. For purposes of this subsection, the terms "standard health benefit plan" and "basic health benefit plan" mean policies or contracts that a small employer carrier offers to eligible small employers that contain:

a. An exclusion for services that are not medically necessary or that are not covered preventive health services; and

b. A procedure for preauthorization by the small employer carrier, or its designees.

3. A small employer carrier may include the following managed-care provisions in the policy or contract to control costs:

a. A preferred provider arrangement or exclusive provider organization or any combination thereof, in which a small employer carrier enters into a written agreement with the provider to provide services at specified levels of reimbursement or to provide reimbursement to specified providers. Any such written agreement between a provider and a small employer carrier must contain a provision under which the parties agree that the insured individual or covered member has no obligation to make payment for any medical service rendered by the provider which is determined not to be medically necessary.

b. A procedure for utilization review by the small employer carrier or its designees.

This subparagraph does not prohibit a small employer carrier from including in its policy or contract additional managed-care and cost-containment provisions, subject to the approval of the department, which have potential for controlling costs in a manner that does not result in inequitable treatment of insureds or subscribers.

4. The standard health benefit plan must provide a level of benefits whereby the small employer carrier agrees to pay 80 percent of the covered costs incurred by the insured, subscriber, or dependent, during the policy or contract year, after the deductible has been satisfied, for the first \$10,000 of covered benefits, after which the carrier shall pay 90 percent of the covered costs incurred by such person in the policy year. However, if the insured, subscriber, or dependent is under a case management program of the small employer carrier, the carrier shall pay 100 percent of the covered costs incurred by such person in the policy year.

5. The standard health benefit plan shall include:

a. Coverage for inpatient hospitalization;

b. Coverage for outpatient services;

c. Routine physicals covered as any other outpatient benefit;

d. Coverage for newborn children pursuant to s. 627.6575;

e. Coverage for child care supervision services pursuant to s. 627.6579;

f. Coverage for adopted children upon placement in the residence pursuant to s. 627.6578;

g. Coverage for mammograms pursuant to s. 627.6613;

h. Coverage for handicapped children pursuant to s. 627.6615; and

i. Emergency or urgent care out of the geographic service area.

6. The standard health benefit plan and the basic health benefit plan may include a schedule of benefit limitations for specified services and procedures. If the committee develops such a schedule of benefits limitation for the standard health benefit plan or the basic health benefit plan, a small employer carrier offering the plan must offer the employer an option for increasing the benefit schedule amounts by 4 percent annually.

7. The basic health benefit plan shall include all of the benefits specified in subparagraph 5.; however, the basic health benefit plan shall place additional restrictions on the benefits and utilization and may also impose additional cost containment measures.

8. Sections 627.419(2), (3), and (4), 627.6574, 627.6616, 627.6618, and 627.668 apply to the standard health benefit plan and to the basic health benefit plan. However, notwithstanding said provisions, the plans may specify limits on the number of authorized treatments, if such limits are reasonable and do not discriminate against any type of provider.

9. Each insurer that provides for inpatient and outpatient services by allopathic hospitals may provide as an option of the insured similar inpatient and outpatient services by hospitals accredited by the American Osteopathic Association when such services are available and the osteopathic hospital agrees to provide the service.

(c) If a small employer rejects, in writing, the standard health benefit plan and the basic health benefit plan, the small employer carrier may offer the small employer a limited benefit policy or contract.

(d)1. Upon offering coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract for any small employer, the small employer carrier shall provide such employer group with a written statement that contains, at a minimum:

a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;

b. An explanation of the managed-care and cost-control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and

c. An explanation of the primary and preventive care features of the policy or contract.

Such disclosure statement must be presented in a clear and understandable form and format and must be separate from the policy or certificate or evidence of coverage provided to the employer group.

2. Before a small employer carrier issues a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, it must obtain from the prospective policyholder a signed written statement in which the prospective policyholder:

a. Certifies as to eligibility for coverage under the standard health benefit plan, basic health benefit plan, or limited benefit policy or contract;

b. Acknowledges the limited nature of the coverage and an understanding of the managed-care and cost-control features of the policy or contract;

c. Acknowledges that if misrepresentations are made regarding eligibility for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the person making such misrepresentations forfeits coverage provided by the policy or contract; and

d. Acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase a standard health benefit plan and a basic health benefit plan and that the prospective policyholder had rejected that coverage.

A copy of such written statement shall be provided to the prospective policyholder no later than at the time of delivery of the policy or contract, and the original of such written statement shall be retained in the files of the small employer carrier for the period of time that the policy or contract remains in effect or for 5 years, whichever period is longer.

3. Any material statement made by an applicant for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract which falsely certifies as to the applicant's eligibility for coverage serves as the basis for terminating coverage under the policy or contract.

4. Each marketing communication that is intended to be used in the marketing of a standard health benefit plan, a basic health benefit plan or a limited benefit policy or contract in this state must be submitted for review by the department prior to use and must contain the disclosures stated in this subsection.

(e)1. A small employer carrier may not use any policy, contract, form, or rate under this section, including applications, enrollment forms, policies, contracts, certificates, evidences of coverage, riders, amendments, endorsements, and disclosure forms, until the insurer has filed it with the department and the department has approved it under ss. 627.410, 627.411, and 627.4106.

2. A small employer carrier must file with the department no later than September 15, 1992, the standard health benefit plan and basic health benefit plan that it intends to initially use to comply with this subsection during calendar year 1993, together with the rates therefor, and the department must approve the submissions no later than November 1, 1992.

(10) STANDARDS TO ASSURE FAIR MARKETING.—

(a) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan.

(b) No small employer carrier or agent shall, directly or indirectly, engage in the following activities:

1. Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.

2. Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(c) The provisions of paragraph (a) shall not apply with respect to information provided by a small employer carrier or agent to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(d) No small employer carrier shall, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for or results in the compensation paid to an agent for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer except if the compensation arrangement provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

(e) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent, if any, for the sale of a basic or standard health benefit plan.

(f) No small employer carrier shall terminate, fail to renew, or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation, or geographic

location of the small employers placed by the agent with the small employer carrier unless agent consistently engages in practices that violate this section or s. 626.9541.

(g) No small employer carrier or agent shall induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(h) Denial by a small employer carrier of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.

(i) The department may establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(j) A violation of this section by a small employer carrier or an agent shall be an unfair trade practice under s. 626.9541.

(k) If a small employer carrier enters into a contract, agreement or other arrangement with a third-party administrator to provide administrative, marketing or other services relating to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to this section.

(11) APPLICABILITY OF OTHER STATE LAWS.—

(a) Except as expressly provided in this section, a law requiring coverage for a specific health care service or benefit, or a law requiring reimbursement, utilization, or consideration of a specific category of licensed health care practitioner, does not apply to a standard or basic health benefit plan policy or contract or a limited benefit policy or contract offered or delivered to a small employer unless that law is made expressly applicable to such policies or contracts.

(b) Except as provided in this section, a standard or basic health benefit plan policy or contract or limited benefit policy or contract offered to a small employer is not subject to any provision of this code which:

1. Inhibits a small employer carrier from contracting with providers or groups of providers with respect to health care services or benefits;

2. Imposes any restriction on a small employer carrier's ability to negotiate with providers regarding the level or method of reimbursing care or services provided under a health benefit plan; or

3. Requires a small employer carrier to either include a specific provider or class of providers when contracting for health care services or benefits or to exclude any class of providers that is generally authorized by statute to provide such care

(c) Any second tier assessment paid by a carrier pursuant to paragraph (8)(j) may be credited against assessments levied against the carrier pursuant to s. 627.6494.

(d) Notwithstanding chapter 641, a health maintenance organization is authorized to issue contracts providing benefits equal to the standard health benefit plan, the basic health benefit plan, and the limited benefit policy authorized by this act.

(12) RULEMAKING AUTHORITY.—The department may adopt rules for the implementation and administration of this section, including compliance by small employer carriers and small employers.

Section 2. Filing of net health insurance premium derived from small employer carriers required.—No later than November 30, 1992, each small employer carrier, as defined in section 1, shall make a filing with the Department of Insurance containing the carrier's net health insurance premium derived from health benefit plans issued in this state in the previous calendar year to small employers, as defined in section 1.

Section 3. Severability.—If any provision of this act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 4. This act shall take effect upon becoming a law.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to group health insurance; creating s.

627.6699, F.S.; creating the "Employee Health Care Access Act"; providing purpose and intent; providing definitions; providing for application; providing for availability of coverage; providing for reports; providing for elections not to offer coverage; providing procedures for electing to become a risk-assuming carrier; providing for standard, basic, and limited health benefit plans to be offered to all small employers; restricting the use of exclusions for preexisting conditions; establishing a health reinsurance program for small employers; providing for assessment of small employer carriers under the program; providing standards for marketing health care plans; providing for applicability of other state laws; authorizing the Department of Insurance to adopt rules for implementing and administering the act; requiring small employers to file with the department certain premium information relating to a certain time period; providing severability; providing an effective date.

On motion by Senator Jenne, further consideration of **CS for SB 2390** with pending **Amendment 1** was deferred.

Consideration of **SB 332**, **CS for SB 1688** and **CS for CS for SB 1614** was deferred.

CS for CS for SB 1078—A bill to be entitled An act relating to the Florida Retirement System; amending s. 112.363, F.S.; increasing the retirees' health insurance subsidy rate; increasing the employer contribution rate; amending ss. 121.052, 121.055, 121.071, 121.40, F.S.; revising contribution rates applicable to members of the Elected State and County Officers' Class, the Senior Management Service Class, and the Regular, Special Risk, and Special Risk Administrative Support Classes of the Florida Retirement System and the contribution rate applicable to the supplemental retirement plan for the Institute of Food and Agricultural Sciences of the University of Florida; amending ss. 121.091, 122.09, 238.07, F.S.; revising disability provisions to comply with federal law; providing legislative intent with respect to contribution rates; providing legislative findings; providing an effective date.

—was read the second time by title.

Senator Wexler moved the following amendments which were adopted:

Amendment 1 (with Title Amendment)—On page 16, between lines 2 and 3, insert:

Section 9. Subsection (3) is added to section 112.665, Florida Statutes, to read:

112.665 Duties of Division of Retirement.—

(3)(a) *There is hereby created a trust fund in the State Treasury to be entitled the Florida Protection of Public Employees' Retirement Benefits Trust Fund, out of which the cost of administering this part shall be annually appropriated. The Division of Retirement is authorized to assess each local pension plan covered by this part an equitable share of the division's cost of administering this part, which assessment shall be deposited in the trust fund. The assessments authorized herein shall be collected annually.*

(b) *The Division of Retirement is authorized to establish, by rule, an equitable formula whereby each local defined benefit pension plan covered by this part is assessed its share of the division's cost of administering this part. Each such local pension plan shall pay its assessment upon notice by the division, and all such assessments shall be deposited in the Florida Protection of Public Employees' Retirement Benefits Trust Fund established pursuant to this subsection.*

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 18, after the semicolon (;) insert: amending s. 112.665, F.S.; providing for creation of the Florida Protection of Public Employees' Retirement Benefits Trust Fund; providing for annual assessment and payment by participating employers;

Amendment 2 (with Title Amendment)—On page 17, between lines 15 and 16, insert:

Section 11. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with section 11.611, Florida Statutes, sections 121.22-121.24, Florida Statutes, shall not stand repealed on October 1, 1992, and shall continue in full force and effect.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 21, after the semicolon (;) insert: saving ss. 121.22-121.24, F.S., from Sundown repeal; removing the requirements for future legislative review and repeal;

On motion by Senator Childers, by two-thirds vote **CS for CS for SB 1078** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—32 Nays—None

MOTION

On motion by Senator Childers, the rules were waived and **CS for CS for SB 1078** was ordered immediately certified to the House.

Consideration of **CS for SB 336** was deferred.

SB 700—A bill to be entitled An act relating to criminal sentencing; amending s. 921.187, F.S.; authorizing the court to require an offender on community control, probation, or probation following incarceration to make a good-faith effort toward completion of basic or functional literacy skills or a high school equivalency diploma; providing a definition; providing an effective date.

—was read the second time by title.

Senator McKay moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 5, between lines 6 and 7, insert:

Section 2. At the time a sentence of imprisonment is imposed, the court shall state the defendant's projected release date. The Department of Corrections shall provide information for each court to use in determining projected release dates.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 9, after the semicolon (;) insert: requiring courts to state the dates projected for defendants to be released based upon information provided by the Department of Corrections;

On motion by Senator Bruner, by two-thirds vote **SB 700** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—26 Nays—None

Consideration of **CS for CS for SB 294** was deferred.

SB 706—A bill to be entitled An act relating to sales taxes; specifying the manner for calculating the tax on items sold in vending machines; providing an effective date.

—was read the second time by title.

Senator Davis moved the following amendment:

Amendment 1 (with Title Amendment)—On page 1, strike all of lines 8-28 and insert:

Section 1. Subsections (2) and (5) of section 212.0515, Florida Statutes, are amended to read:

212.0515 Sales from vending machines; sales to vending machine operators; special provisions; registration; quarterly reports; penalties.—

(2) Notwithstanding any other provision of law, beginning January 1, 1992, the amount of the tax to be paid on food and beverage items that are sold in vending machines shall be calculated by dividing the gross receipts from such sales for the applicable reporting period by a divisor, determined as provided in this subsection, to compute gross taxable sales, and then subtracting gross taxable sales from gross receipts to arrive at the amount of tax due. The divisor shall be equal to the sum of 1.0665 for beverage items, or 1.0645 for food items, plus any applicable local option tax authorized by this part, expressed as a decimal. *However, the amount of the tax to be paid on natural fluid milk, homogenized milk, pasteurized milk, whole milk, chocolate milk, or similar milk products, natural*

fruit juices, or natural vegetable juices shall be calculated using the divisor that is specified for food items.

(5)(a) Any person who sells food or beverages to operators for resale through vending machines shall submit to the department on or before the 20th day of the month following the close of each calendar quarter a report which identifies by dealer registration number each operator who has purchased such items from said person and states the gross dollar amount of purchases made by each operator from said person. ~~The report shall first be filed for the quarter ending December 31, 1991.~~ In addition, the report shall also include the purchaser's name, dealer registration number, and sales price for any tax-free sale for resale of canned soft drinks of 50 cases or more.

(b) Each dealer or operator purchasing food or beverages for resale in vending machines shall annually provide to the dealer from whom the items are purchased a certificate on a form prescribed and issued by the department. The certificate must affirmatively state that whether or not the purchaser is a vending machine operator. The certificate shall initially be provided by November 1, 1991, or upon the first transaction between the parties, whichever is later, and by November 1 of each year thereafter.

(c) A penalty of \$250 is imposed on any person who is required to file the quarterly report required by this subsection who fails to do so or who files false information. A penalty of \$5,000 is imposed on any operator who fails to comply with the requirements of this subsection or who provides the dealer with false information. ~~A penalty of \$250 for such failure shall apply to other dealers who are not operators of vending machines. The~~ Such penalties shall accrue interest as provided for delinquent taxes under this part and shall apply in addition to all other applicable taxes, interest, and penalties.

(d) The department is authorized to adopt rules regarding the form in which the quarterly report required by this subsection is to be submitted, which form may include magnetic tape or other means of electronic transmission.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 4, after the semicolon (;) insert: revising reporting requirements; providing an additional penalty;

Senator Davis moved the following amendments to **Amendment 1** which were adopted:

Amendment 1A—On page 2, line 23, after the period (.) insert: *The operator shall send a copy of such certificate to the department.*

Amendment 1B—On page 2, line 7, after "operator" insert: *described in paragraph (b)*

Amendment 1 as amended was adopted.

Senator Childers moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 1, between lines 28 and 29, insert:

Section 2. Paragraph (bb) is added to subsection (7) of section 212.08, Florida Statutes, 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) *Community cemeteries.—Also exempt are purchases by any nonprofit corporation that has qualified under s. 501(c)(13) of the Internal Revenue Code of 1986, as amended, and is operated for the purpose of maintaining a cemetery that was donated to the community by deed.*

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 4, after the semicolon (;) insert: amending s. 212.08, F.S.; exempting qualified nonprofit corporations operated for the purpose of maintaining community cemeteries from the payment of sales and use tax;

On motion by Senator Davis, by two-thirds vote **SB 706** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—29 Nays—None

MOTION

On motion by Senator Davis, the rules were waived and **SB 706** was ordered immediately certified to the House.

SB 750—A bill to be entitled An act relating to personnel of the school system; creating s. 231.3605, F.S.; providing for employment of educational support employees; providing definitions; providing for probationary status and continued employment; providing for suspension of an employee and for a notice and appeals process; providing for review and repeal; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendment which was moved by Senator Thurman and adopted:

Amendment 1 (with Title Amendment)—On page 2, strike all of lines 21-23

And the title is amended as follows:

In title, on page 1, lines 8 and 9, strike the language after the semicolon (;) on line 8 through the semicolon (;) on line 9

POINT OF ORDER

Senator Langley raised a point of order that pursuant to Rule 4.8 the bill should be referred to the Committee on Appropriations.

On motion by Senator Thurman, further consideration of **SB 750** as amended was deferred.

On motions by Senator Malchon, by two-thirds vote **CS for HB 417** was withdrawn from the Committees on Criminal Justice and Appropriations.

On motion by Senator Malchon—

CS for HB 417—A bill to be entitled An act relating to weapons and firearms; amending s. 790.31, F.S.; expanding provisions which prohibit the manufacture, sale, delivery, and possession of armor-piercing or exploding ammunition to include "dragon's breath" shotgun shells, "bolo shells," and "flechette shells"; providing penalties; revising applicability provisions; providing an effective date.

—a companion measure, was substituted for **CS for SB 782** and read the second time by title.

Senator Malchon moved the following amendment which was adopted:

Amendment 1—On page 2, line 25, strike "shotgun" and insert: *firearm*

On motion by Senator Malchon, by two-thirds vote **CS for HB 417** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—29 Nays—None

CS for SB 90—A bill to be entitled An act relating to concealed weapons or firearms; amending s. 790.06, F.S.; exempting a certified correctional probation officer from the licensing requirements for carrying a concealed weapon or firearm; further exempting such an officer from the required license fees and background investigation for 1 year after retirement as a correctional probation officer; providing an effective date.

—was read the second time by title.

Senator Grant moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 2, between lines 14 and 15, insert:

Section 2. Section 843.025, Florida Statutes, is amended to read:

843.025 Depriving officer of means of protection or communication.—It is unlawful for any person to deprive a law enforcement officer as defined in s. 943.10(1), a correctional officer as defined in s. 943.10(2),

or a correctional probation officer as defined in s. 943.10(3) of his weapon or radio or to otherwise deprive him of the means to defend himself or summon assistance. Any person who violates 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.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 9, after the semicolon (;) insert: amending s. 843.025, F.S.; providing that it is unlawful for any person to deprive a correctional officer or correctional probation officer of his weapon or radio;

On motion by Senator Grant, by two-thirds vote **CS for SB 90** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—32 Nays—None

SB 896—A bill to be entitled An act relating to public school personnel; amending s. 231.15, F.S.; deleting exception from unemployment compensation eligibility; providing for payment of unemployment compensation for previous unemployment when ineligibility resulted from such exception; providing an effective date.

—was read the second time by title. On motion by Senator Walker, by two-thirds vote **SB 896** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—24 Nays—5

SB 1094—A bill to be entitled An act relating to the Orlando-Orange County Expressway Authority; authorizing the authority to construct a portion of the Western Beltway known as the Northwest Beltway Part A; providing for funding; providing that any portion of the Western Beltway financed by certain revenue bonds shall not be part of the Florida Turnpike; providing an effective date.

—was read the second time by title.

The Committee on Transportation recommended the following amendment which was moved by Senator Jennings and failed:

Amendment 1 (with Title Amendment)—On page 1, line 11, strike everything after the enacting clause and insert:

Section 1. Pursuant to section 11(e), Article VII of the State Constitution, the Legislature hereby approves the project or any portion of the project, of the Orlando-Orange County Expressway Authority known as the Western Beltway, a 55.0 mile, limited access highway originating at I-4 in the vicinity of C.R. 46A in Seminole County and extending westerly and southeasterly through Orange and Osceola Counties to an interchange with I-4 near the Osceola-Polk County line. This approval is subject to approval of interlocal agreements with those counties within which the Western Beltway will be located, and subject to an affirmative vote by the Orlando-Orange County Expressway Authority on each portion of the project to be constructed.

Section 2. Paragraphs (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x) of subsection (3) of section 338.2275, F.S., are amended to read:

338.2275 Approved turnpike projects.—Pursuant to s. 11(e), Art. VII of the State Constitution, the Legislature hereby approves:

(3) Subject to verification of economic feasibility by the department, determination that such projects are consistent, to the maximum extent feasible, with approved local government comprehensive plans of the local government jurisdiction in which such projects are located, and completion of a statement of environmental feasibility in accordance with s. 338.221(8) and (10), respectively, the following projects are approved:

~~(i) Western Beltway, a 55.0 mile, four lane, limited access highway originating at I-4 in the vicinity of C.R. 46A in Seminole County and extending westerly and southerly through Orange and Osceola Counties to an interchange with I-4 near the Osceola-Polk county line. The department is authorized to utilize up to \$636.8 million for this project.~~

(i)(g) Atlantic Boulevard Interchange in Broward County.

(j)(k) N.W. 37th Avenue Interchange in Broward County.

(k)(l) S.R. 80/Southern Boulevard Interchange in Palm Beach County.

(l)(m) Forest Hill Boulevard Interchange in Palm Beach County.

(m)(n) N.W. 45th Street Interchange in Palm Beach County.

(n)(o) Lake Worth Road Interchange in Palm Beach County.

(o)(p) East/West Expressway Interchange in Orange County.

(p)(q) Southern Connector Interchange in Orange County.

(q)(r) S.R. 50 Interchange in Orange County.

(r)(s) Dart Boulevard Interchange in Osceola County.

(s)(t) N.W. 74th Street Interchange in Dade County.

(t)(u) Allapattah Road Interchange in Dade County.

(u)(v) Tallahassee Road Interchange in Dade County.

(v)(w) Biscayne Drive Interchange in Dade County.

(w)(x) Campbell Drive Interchange in Dade County.

A maximum of up to \$1.1 billion of bonds may be issued to fund the projects contained in this subsection. The department is authorized to utilize turnpike revenues, the State Transportation Trust Fund moneys allocated for turnpike projects pursuant to s. 338.001, and bond proceeds for the above projects, and shall use the most cost-efficient combination of such funds in developing a financial plan for funding the projects. Up to 10 percent of the total amount of the approved costs of all of the above projects may be set aside as a contingency amount, from which the department may allocate funds for a project that exceeds the cost approved above, but in no event shall the funds allocated from this contingency amount exceed 15 percent of the project's approved cost. Verification of economic feasibility and statements of environmental feasibility for individual projects shall be based on the entire project as approved. Statements of environmental feasibility shall not be required for those projects set forth in this subsection on which the Project Development and Environmental Reports have been completed by July 1, 1990. All required environmental permits shall be obtained before the department may advertise for bids for contracts for the construction of any turnpike project.

Section 3. Section 338.2276, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 1992.

And the title is amended as follows:

In title, on page 1, strike all of lines 4-9 and insert: to construct the Western Beltway or any portion thereof; providing requirements relating to such authorization; amending s. 338.2275, F.S., to delete the Western Beltway from the list of eligible Turnpike projects; repealing s. 338.2278, F.S.; providing an effective date.

Senator Jennings moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 1, between lines 26 and 27, insert:

Section 2. Pursuant to section 11(e), Article VII of the State Constitution, the Legislature hereby approves for bond financing by the Orlando-Orange County Expressway Authority improvements to toll collection facilities, interchanges to the legislatively approved expressway system and any other facility appurtenant, necessary, or incidental to the approved system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such financing may be in whole or in part by revenue bonds currently issued, issued in the future, or by a combination of such bonds.

And the title is amended as follows:

In title, on page 1, line 9, after the semicolon (;) insert: authorizing the Orlando-Orange County Expressway Authority to construct certain improvements and facilities incidental to the expressway system;

On motion by Senator Jennings, by two-thirds vote **SB 1094** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—32 Nays—None

Consideration of CS for SB 1686 was deferred.

CS for SB 1688—A bill to be entitled An act relating to crimes against the elderly; creating s. 775.0848, F.S.; providing increased penalties for persons convicted of theft, larceny, or fraudulent practices committed against certain persons 65 years of age or older; providing an effective date.

—was read the second time by title. On motion by Senator McKay, by two-thirds vote **CS for SB 1688** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—None

CS for SB 1864—A bill to be entitled An act relating to fiscal matters; amending s. 27.702, F.S.; requiring the capital collateral representative to file certain motions for compensation and reimbursement and providing for deposit of funds into a trust fund; repealing s. 27.3455(9), F.S., relating to the future repeal of provisions regarding additional court costs; amending ss. 27.38, 27.60, F.S.; authorizing expenditure of appropriated state funds for items enumerated in s. 27.34 or s. 27.54, F.S.; providing for reporting requirements; providing an effective date.

—was read the second time by title.

Senator Weinstein moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 5, between lines 13 and 14, insert:

Section 5. Present subsections (2), (3), (4), (5), and (6) of section 125.31, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), and (8), respectively; and subsection (1) of that section is amended, and new subsections (2) and (3) are added to that section, to read:

125.31 Investment of surplus public funds; regulations.—

(1) Unless otherwise authorized by law or by ordinance, the board of county commissioners shall, by resolution to be adopted from time to time, *authorize investment invest and reinvestment of reinvest* any surplus public funds in its control or possession in:

- (a) The Local Government Surplus Funds Trust Fund;
- (b) Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;
- (c) Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;

(d) Obligations of the federal farm credit banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks or obligations guaranteed by the Government National Mortgage Association;

(e) Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association; or

(f) 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. ss. 80a-1 et seq., as amended from time to time, provided 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 such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian;

(g) Dollar-denominated money market mutual funds registered with the United States Securities and Exchange Commission;

(h) Shares of a fund specified in s. 18.10(2)(n), provided that:

1. Such fund is registered with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940 or supervised by the Office of the Comptroller of the Currency; and

2. Either the average weighted maturity of the portfolio of such fund is no greater than 7 years or has a duration of no greater than 5 years, whichever is greater, or the interest rates on substantially all of such fund's portfolio securities are expected to be adjusted at least annually;

(i) Repurchase agreements fully collateralized by United States Government obligations, provided the county takes delivery of the collateral either directly or through an authorized custodian; or

(j) Such other investments specified from time to time in s. 18.10(2) which the board of county commissioners, by resolution, deems prudent; provided, however, that such other investments may be made only in compliance with a written investment policy developed by the county investment staff, which policy must address diversification and maturity limitations suitable to the county.

(2) The board of county commissioners may, by resolution, authorize the county clerk of the circuit court, in performing the duties set forth in s. 28.33, to enter into intergovernmental investment pools authorized pursuant to the Florida Interlocal Cooperation Act, s. 163.01, or to retain the services of an independent investment adviser to purchase, sell, and otherwise manage the investments specified in subsection (1), subject to the board's supervision. The board may pay such adviser's fees directly from investment earnings.

(3) Any investments made by the board of county commissioners pursuant to this section must be held by:

(a) The board of county commissioners, either directly or through a third-party trustee or custodian;

(b) The intergovernmental investment pool, mutual fund, or investment company in which the board of county commissioners is investing; or

(c) The third-party trustee or custodian of the investment pool, mutual fund, or investment company in which the board of county commissioners is investing,

unless such investments are made in the Local Government Surplus Funds Trust Fund.

Section 6. Present subsections (2), (3), (4), (5), and (6) of section 166.261, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), and (8), respectively; and paragraphs (e) and (f) of subsection (1) of that section are amended, new paragraphs (g), (h), (i), and (j) are added to subsection (1) of that section, and new subsections (2) and (3) are added to that section, to read:

166.261 Municipalities; investments.—

(1) Unless otherwise authorized by law or by ordinance, the governing body of each municipality shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

(e) Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association; or

(f) 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. ss. 80a-1 et seq., as amended from time to time, provided 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 such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian;

(g) Dollar-denominated money market mutual funds registered with the United States Securities and Exchange Commission;

(h) Shares of a fund specified in s. 18.10(2)(n), provided that:

1. Such fund is registered with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940 or supervised by the Office of the Comptroller of the Currency; and

2. Either the average weighted maturity of the portfolio of such fund is no greater than 7 years or has a duration of no greater than 5 years, whichever is greater, or the interest rates on substantially all of such fund's portfolio securities are expected to be adjusted at least annually;

(i) Repurchase agreements fully collateralized by United States Government obligations, provided the municipality takes delivery of the collateral either directly or through an authorized custodian; or

(j) Such other investments specified from time to time in s. 18.10(2) which the governing body of the municipality, by resolution, deems prudent; provided, however, that such other investments may be made only in compliance with a written investment policy developed by the investment staff of the municipality, which policy must address diversification and maturity limitations suitable to the municipality.

(2) The governing body of a municipality may, by resolution, enter into intergovernmental investment pools authorized pursuant to the Florida Interlocal Cooperation Act, s. 163.01, or retain the services of an independent investment adviser to purchase, sell, and otherwise manage the investments specified in subsection (1), subject to the governing body's supervision. The governing body may pay such adviser's fees directly from investment earnings.

(3) Any investments made by the governing body of the municipality pursuant to this section must be held by:

(a) The governing body of the municipality, either directly or through a third-party trustee or custodian;

(b) The intergovernmental investment pool, mutual fund, or investment company in which the governing body of the municipality is investing; or

(c) The third-party trustee or custodian of the investment pool, mutual fund, or investment company in which the governing body of the municipality is investing,

unless such investments are made in the Local Government Surplus Funds Trust Fund.

Section 7. Present subsections (2), (3), (4), (5), and (6) of section 218.345, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), and (8), respectively; and paragraphs (d) and (e) of subsection (1) of that section are amended, new paragraphs (f), (g), (h), and (i) are added to subsection (1) of that section, and new subsections (2) and (3) are added to that section, to read:

218.345 Special districts; investments.—

(1) The governing body of each special district shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

(d) Obligations of the Federal Farm Credit Banks, Federal Home Loan Mortgage Corporation, or Federal Home Loan Bank or its district banks, including Federal Home Loan Mortgage Corporation participation certificates, or obligations guaranteed by the Government National Mortgage Association; or

(e) 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. ss. 80a-1 et seq., as amended from time to time, provided 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 such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian;

(f) Dollar-denominated money market mutual funds registered with the United States Securities and Exchange Commission;

(g) Shares of a fund specified in s. 18.10(2)(n), provided that:

1. Such fund is registered with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940 or supervised by the Office of the Comptroller of the Currency; and

2. Either the average weighted maturity of the portfolio of such fund is no greater than 7 years or has a duration of no greater than 5 years, whichever is greater, or the interest rates on substantially all of such fund's portfolio securities are expected to be adjusted at least annually;

(h) Repurchase agreements fully collateralized by United States Government obligations, provided the special district takes delivery of the collateral either directly or through an authorized custodian; or

(i) Such other investments specified from time to time in s. 18.10(2) which the governing body of each special district, by resolution, deems prudent; provided, however, that such other investments may be made only in compliance with a written investment policy developed by the investment staff, which policy must address diversification and maturity limitations suitable to the special district.

(2) The governing body of each special district may, by resolution, enter into intergovernmental investment pools authorized pursuant to the Florida Interlocal Cooperation Act, s. 163.01, or retain the services of an independent investment adviser to purchase, sell, and otherwise manage the investments specified in subsection (1), subject to the governing body's supervision. The governing body may pay such adviser's fees directly from investment earnings.

(3) Any investments made by the governing body of the special district pursuant to this section must be held by:

(a) The governing body of the special district, either directly or through a third-party trustee or custodian;

(b) The intergovernmental investment pool, mutual fund, or investment company in which the governing body of the special district is investing; or

(c) The third-party trustee or custodian of the investment pool, mutual fund, or investment company in which the governing body of the special district is investing,

unless such investments are made in the Local Government Surplus Funds Trust Fund.

Section 8. Present subsections (2) and (3) of section 219.075, Florida Statutes, are renumbered as subsections (4) and (5), respectively; and paragraph (a) of subsection (1) of that section is amended, and new subsections (2) and (3) are added to that section, to read:

219.075 Investment of surplus funds by county officers.—

(1)(a) Except when another procedure is prescribed by law or by ordinance as to particular funds, a tax collector or any other county officer having, receiving, or collecting any money, either for his office or on behalf of and subject to subsequent distribution to another officer of state or local government, while such money is surplus to current needs of his office or is pending distribution, shall invest such money, without limitation, in:

1. The Local Government Surplus Funds Trust Fund, as created by s. 218.405;

2. Bonds, notes, or other obligations of the United States guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends;

3. Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law; or

4. 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. ss. 80a-1 et seq., as amended from time to time, provided 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 such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian;

5. Dollar-denominated money market mutual funds registered with the United States Securities and Exchange Commission;

6. Shares of a fund specified in s. 18.10(2)(n), provided that:

a. Such fund is registered with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940 or supervised by the Office of the Comptroller of the Currency; and

b. *Either the average weighted maturity of the portfolio of such fund is no greater than 7 years or has a duration of no greater than 5 years, whichever is greater, or the interest rates on substantially all of such fund's portfolio securities are expected to be adjusted at least annually;*

7. *Repurchase agreements fully collateralized by United States Government obligations, provided the county takes delivery of the collateral either directly or through an authorized custodian; or*

8. *Such other investments specified from time to time in s. 18.10(2) which the tax collector or other county officer deems prudent; provided, however, that such other investments may be made only in compliance with a written investment policy developed by the tax collector's or other county officer's investment staff, which policy must address diversification and maturity limitations suitable to the county.*

(2) *The tax collector or other county officer may authorize the county clerk of the circuit court, in performing the duties set forth in s. 28.33, to enter into intergovernmental investment pools authorized pursuant to the Florida Interlocal Cooperation Act, s. 163.01, or to retain the services of an independent investment adviser to purchase, sell, and otherwise manage the investments specified in subsection (1), subject to the tax collector's or other county officer's supervision. The tax collector or other county officer may pay such adviser's fees directly from investment earnings.*

(3) *Any investments made by the tax collector or other county officer pursuant to this section must be held by:*

(a) *The tax collector or other county officer, either directly or through a third-party trustee or custodian;*

(b) *The intergovernmental investment pool, mutual fund, or investment company in which the tax collector or other county officer is investing; or*

(c) *The third-party trustee or custodian of the investment pool, mutual fund, or investment company in which the tax collector or other county officer is investing,*

unless such investments are made in the Local Government Surplus Funds Trust Fund.

(5)(3) *The State Board of Administration may establish a schedule and guidelines to be followed by tax collectors making deposits and investments under the provisions of subsection (4)(2).*

Section 9. Subsection (4) of section 197.222, Florida Statutes, is amended to read:

197.222 Prepayment of estimated tax by installment method.—

(4) *The moneys collected under this section shall be placed in an interest-earning escrow account. The taxes collected shall be distributed as provided in s. 197.383. The interest earned on this account shall be distributed as provided in s. 197.383 or, at the option of the tax collector, as provided in s. 219.075(4)(2).*

Section 10. Present subsection (3) of section 236.24, Florida Statutes, is renumbered as subsection (5); and paragraph (a) of subsection (2) of that section is amended, and new subsections (3) and (4) are added to that section, to read:

236.24 Sources of district school fund.—

(2)(a) *Unless otherwise authorized by law or by ordinance, each school board shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:*

1. *The Local Government Surplus Funds Trust Fund;*

2. *Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;*

3. *Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;*

4. *Obligations of the federal farm credit banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks or obligations guaranteed by the Government National Mortgage Association;*

5. *Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association; or*

6. *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. ss. 80a-1 et seq., as amended from time to time, provided 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 such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian;*

7. *Dollar-denominated money market mutual funds registered with the United States Securities and Exchange Commission;*

8. *Shares of a fund specified in s. 18.10(2)(n), provided that:*

a. *Such fund is registered with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940 or supervised by the Office of the Comptroller of the Currency; and*

b. *Either the average weighted maturity of the portfolio of such fund is no greater than 7 years or has a duration of no greater than 5 years, whichever is greater, or the interest rates on substantially all of such fund's portfolio securities are expected to be adjusted at least annually;*

9. *Repurchase agreements fully collateralized by United States Government obligations, provided the school board takes delivery of the collateral either directly or through the intergovernmental investment pool in which the board is investing, or by a third-party custodian or trustee under contract as agent to the board or intergovernmental investment pool; or*

10. *Such other investments specified from time to time in s. 18.10(2) which the school board shall, by resolution, policy, or ordinance, deem prudent; provided, however, that such other investments shall be made only in compliance with a written investment policy developed by the school board's investment staff, which policy must address diversification and maturity limitations suitable to the school district.*

(3) *Each school board may, by resolution, policy, or ordinance, enter into intergovernmental investment pools authorized pursuant to the Florida Interlocal Cooperation Act, s. 163.01, or retain the services of an independent investment adviser to purchase, sell, and otherwise manage the investments specified in subsection (2), subject to the school board's supervision. The school board may pay such adviser's fees directly from investment earnings.*

(4) *Any investments made by the school board pursuant to this section must be held by:*

(a) *The school board, either directly or through a third-party trustee or custodian;*

(b) *The intergovernmental investment pool, mutual fund, or investment company in which the school board is investing; or*

(c) *The third-party trustee or custodian of the investment pool, mutual fund, or investment company in which the school board is investing,*

unless such investments are made in the Local Government Surplus Funds Trust Fund.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 13, after the semicolon (;) insert: amending ss. 125.31, 166.261, 218.345, 219.075, 236.24, F.S.; providing for specified investments by boards of county commissioners, municipalities, special districts, county officers, and district school boards; providing for the retaining of an investment adviser; providing for the holding of investments; amending s. 197.222, F.S.; conforming a cross-reference;

On motion by Senator Malchon, by two-thirds vote **CS for SB 1864** 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

SB 1806—A bill to be entitled An act relating to state-owned parking facilities; amending s. 272.161, F.S.; eliminating the Paid Parking Trust Fund; providing for the deposit of funds in the Florida Facilities Pool Clearing Fund; providing for the expenditure and administration of funds; providing an effective date.

—was read the second time by title.

The Committee on Appropriations recommended the following amendment which was moved by Senator Malchon and adopted:

Amendment 1—On page 1, lines 28 and 29, strike “upon becoming a law” and insert: July 1, 1992

On motion by Senator Malchon, by two-thirds vote **SB 1806** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—31 Nays—None

Consideration of **SB 516** was deferred.

On motion by Senator Souto, by two-thirds vote **CS for HB 287** was withdrawn from the Committee on Professional Regulation.

On motion by Senator Souto—

CS for HB 287—A bill to be entitled An act relating to medical practice; amending s. 458.311, F.S.; extending the time period for certain applicants for licensure who were or are citizens of the country of Nicaragua; deleting certain restrictions on such licenses; providing an effective date.

—a companion measure, was substituted for **SB 746** and read the second time by title. On motion by Senator Souto, by two-thirds vote **CS for HB 287** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—None

CS for SB 602—A bill to be entitled An act relating to motor vehicle sales warranties; amending s. 681.102, F.S.; providing definitions; amending s. 681.103, F.S.; requiring manufacturers to provide notice of certified dispute settlement procedures; amending s. 681.104, F.S.; revising certain consumer remedies if a manufacturer fails to repair a nonconformity; amending s. 681.106, F.S.; deleting a provision that provides that a consumer acts in bad faith if he files a claim which lacks a justiciable issue of law or fact; amending s. 681.108, F.S.; providing for dispute settlement procedures; creating s. 681.1085, F.S.; providing operating guidelines for certified procedures; amending s. 681.109, F.S.; revising certain provisions relating to the eligibility of disputes filed with the Florida New Motor Vehicle Arbitration Board; amending s. 681.1095, F.S.; revising the composition of the Florida New Motor Vehicle Arbitration Board; providing for the Division of Consumer Services of the Department of Agriculture and Consumer Services to determine the eligibility of certain disputes presented to the board; authorizing the board to administer oaths; revising certain provisions relating to the appeal of board decisions; amending s. 681.114, F.S.; requiring the Department of Legal Affairs to notify the Department of Highway Safety and Motor Vehicles of certain vehicles returned pursuant to ch. 681, F.S., and requiring such information to be noted on a vehicle's registration; amending s. 681.115, F.S.; providing that certain waiver agreements are void; providing for applicability to previously purchased or leased vehicles; providing an effective date.

—was read the second time by title.

Senator Forman moved the following amendment:

Amendment 1 (with Title Amendment)—On page 2, line 10, strike everything after the enacting clause and insert:

Section 1. Section 319.14, Florida Statutes, is amended to read:

319.14 Sale of motor vehicles registered or used as taxicabs, police vehicles, lease vehicles, or rebuilt vehicles.—

(1)(a) No person shall knowingly offer for sale, sell, or exchange any vehicle that has been licensed, registered, or used as a taxicab, police

vehicle, or lease vehicle which will no longer be in lease service after April 29, 1990, until the department has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle. If the certificate of title or duplicate was not so stamped upon initial issuance thereof or if, subsequent to initial issuance of the title, the use of the vehicle is changed to a use requiring the notation provided for in this section, the owner or lienholder of the vehicle shall surrender the certificate of title or duplicate to the department prior to offering the vehicle for sale, and the department shall stamp the certificate or duplicate as required herein.

(b) No person shall knowingly offer for sale, sell, or exchange a rebuilt vehicle until the department has stamped in a conspicuous place on the certificate of title for the vehicle words stating that the vehicle has been rebuilt, unless proper application for a certificate of title for a rebuilt vehicle has been made to the department in accordance with this chapter and the department has conducted the physical examination of the vehicle to assure the identity of the vehicle.

(c) As used in this section:

1. “Police vehicle” means a motor vehicle owned or leased by the state or a county or municipality and used in law enforcement.

2. “Lease vehicle” means a motor vehicle leased without a driver and under a written agreement to one person for a period of 12 months or longer or to one or more persons from time to time for a period of less than 12 months.

3. “Rebuilt vehicle” means a motor vehicle or mobile home built from salvage or junk, as defined in s. 319.30(3)(a) ~~s. 319.30(2)(a)~~.

(2) No person shall knowingly sell, exchange, or transfer a vehicle referred to in subsection (1) without, prior to consummating the sale, exchange, or transfer, disclosing in writing to the purchaser, customer, or transferee the fact that the vehicle has previously been titled, registered, or used as a taxicab, police vehicle, or lease vehicle or is a rebuilt vehicle, as the case may be.

(3) Any person who, with intent to offer for sale or exchange any vehicle referred to in subsection (1), knowingly or intentionally advertises, publishes, disseminates, circulates, or places before the public in any communications medium, whether directly or indirectly, any offer to sell or exchange the vehicle shall clearly and precisely state in each such offer that the vehicle has previously been titled, registered, or used as a taxicab, police vehicle, or lease vehicle or that the vehicle or mobile home is a rebuilt vehicle, as the case may be. Any person who violates this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) When a certificate of title, including a foreign certificate, is branded to reflect a condition or prior use of the titled vehicle, the brand must be noted on the registration certificate of the vehicle and such brand shall be carried forward on all subsequent certificates of title and registration certificates issued for the life of the vehicle.

(5) Any person who knowingly sells, exchanges, or offers to sell or exchange a motor vehicle or mobile home contrary to the provisions of this section or any officer, agent, or employee of a person who knowingly authorizes, directs, aids in, or consents to the sale, exchange, or offer to sell or exchange a motor vehicle or mobile home contrary to the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) This section applies to a mobile home, travel trailer, camping trailer, truck camper, or fifth-wheel recreation trailer only when such mobile home or vehicle is a rebuilt vehicle.

(7) No person shall be liable or accountable in any civil action arising out of a violation of this section if the designation of the previous use of the motor vehicle is not noted on the certificate of title and registration certificate of the vehicle which was received by, or delivered to, such person, unless such person has actively concealed the prior use of the vehicle from the purchaser.

(8) Subsections (1) and (2) do not apply to the transfer of ownership of a motor vehicle after the motor vehicle has ceased to be used as a lease vehicle and the ownership has been transferred to an owner for private use. Such owner, as shown on the title certificate, may request the department to issue a corrected certificate of title that does not contain the statement of the previous use of the vehicle as a lease vehicle.

Section 2. Section 681.102, Florida Statutes, is amended to read:

681.102 Definitions.—As used in this chapter, the term:

(1) *“Authorized service agent”* means any person, including a franchised motor vehicle dealer, who is authorized by the manufacturer to service motor vehicles. The term does not include a rental car company authorized to repair rental vehicles.

(2)(1) *“Board”* means the Florida New Motor Vehicle Arbitration Board.

(3)(2) *“Collateral charges”* means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, and title charges.

(4)(3) *“Consumer”* means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle primarily used for personal, family, or household purposes; any person to whom such motor vehicle is transferred for the same purposes during the duration of the Lemon Law rights period; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.

(5) *“Days”* means calendar days.

(6)(4) *“Division”* means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

(7)(5) *“Incidental charges”* means those reasonable costs to the consumer which are directly caused by the nonconformity of the motor vehicle.

(8)(6) *“Lease price”* means the aggregate of:

- (a) Lessor's actual purchase costs.
- (b) Collateral charges, if applicable.
- (c) Any fee paid to another to obtain the lease.
- (d) Any insurance or other costs expended by the lessor for the benefit of the lessee.
- (e) An amount equal to state and local sales taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was initially purchased.
- (f) An amount equal to 5 percent of (a).

(9)(7) *“Lemon Law rights period”* means the period ending 18 months 1-year after the date of the original delivery of a motor vehicle to a consumer or the first 24,000 12,000 miles of operation, whichever occurs first.

(10)(8) *“Lessee”* means any consumer who leases a motor vehicle for 1 year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle or any consumer who leases a motor vehicle pursuant to a lease-purchase agreement.

(11)(9) *“Lessee cost”* means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less a reasonable offset for the lessee's use of the vehicle.

(12) *“Lessor”* means a person who holds title to a motor vehicle that is leased to a lessee under a written lease agreement or who holds the lessor's rights under such agreement.

(13)(10) *“Manufacturer”* means a manufacturer as defined in s. 320.60(9), a distributor as defined in s. 320.60(5), or an importer as defined in s. 320.60(7). A dealer as defined in s. 320.60(11)(a) shall not be deemed to be a manufacturer, distributor, or importer as provided in this section. ~~The dealer or authorized service agent of the manufacturer, as referred to under this chapter, means a motor vehicle dealer licensed pursuant to s. 320.27(1)(e).~~

(14)(11) *“Motor vehicle”* means a new vehicle, propelled by power other than muscular power, which is sold in this state and is primarily operated over the public streets and highways of this state to transport persons or property, and includes a vehicle used as a demonstrator or leased vehicle if a manufacturer's warranty was issued as a condition of sale, or the lessee is responsible for repairs, but does not include vehicles run only upon tracks, off-road vehicles, trucks over 10,000 pounds gross vehicle weight, the living facilities of recreational vehicles, motorcycles, or mopeds.

(15)(12) *“Nonconformity”* means a defect or condition that substantially impairs the use, value, or safety of a motor vehicle, but does not include a defect or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

(16) *“Procedure”* means an informal dispute-settlement procedure established by a manufacturer to mediate and arbitrate motor vehicle warranty disputes.

(17)(13) *“Purchase price”* means the cash price as defined in s. 520.31(1), inclusive of any allowance for a trade-in vehicle.

(18)(14) *“Reasonable offset for use”* means the number of miles attributable to a consumer up to the date of the third repair attempt of the same nonconformity or the 20th cumulative calendar day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle and divided by 120,000.

(19)(15) *“Replacement motor vehicle”* means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of acquisition.

(20)(16) *“Warranty”* means any written warranty issued by the manufacturer, or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale of a motor vehicle to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance.

Section 3. Section 681.103, Florida Statutes, is amended to read:

681.103 Duty of manufacturer to conform a motor vehicle to the warranty —

(1)(a) If a motor vehicle does not conform to the warranty and the consumer first reports the problem ~~nonconformity~~ to the manufacturer, or its authorized service agent, during the first 12 months or 12,000 miles, whichever occurs first, of the Lemon Law rights period, the manufacturer, or its authorized service agent, shall, at no cost to the consumer, make such repairs as are necessary to conform the vehicle to the warranty, irrespective of whether such repairs are made after the expiration of the Lemon Law rights period.

(b) If a motor vehicle does not conform to the warranty and the consumer first reports the problem to the manufacturer or its authorized service agent after the first 12 months or 12,000 miles, whichever occurs first, of the Lemon Law rights period, the manufacturer or its authorized service agent shall make such repairs as are necessary to conform the vehicle to the warranty, irrespective of whether such repairs are made after the expiration of the Lemon Law rights period. The manufacturer may charge for such repairs if the warranty so provides.

(2) Each manufacturer shall provide to its consumers conspicuous notice of the address ~~a list of addresses~~ and phone number ~~numbers~~ for its zone, district, or regional office offices for this state in the written warranty or owner's manual. By January 1 of each year, each manufacturer shall forward to the Department of Legal Affairs a copy of the owner's manual and any written warranty for each make and model of motor vehicle that it sells in this state.

(3) At the time of acquisition, the manufacturer shall inform the consumer clearly and conspicuously in writing how and where to file a claim with a certified ~~informal dispute-settlement~~ procedure if such procedure has been established by the manufacturer pursuant to s. 681.108 and shall provide to the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the division that the consumer can contact to obtain information regarding the consumer's rights and obligations under this chapter or to commence arbitration.

(4) A manufacturer, through its authorized service agent, shall provide to the consumer, each time the consumer's his motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any test drive performed and the approximate length of the test drive, any diagnosis made, and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the motor vehicle was submitted for examination or repair, and the date when the repair or examination was completed.

Section 4. Section 681.104, Florida Statutes, is amended to read:

681.104 Nonconformity of motor vehicles.—

(1)(a) After three attempts have been made to repair the same nonconformity or a motor vehicle has been out of service by reason of repair of one or more nonconformities for 20 cumulative calendar days, the consumer shall give written notification, by registered or express mail to the manufacturer, of the need to for repair the of a nonconformity or nonconformities, in order to allow the manufacturer a final attempt to cure the nonconformity or nonconformities. If three attempts have been made to repair the same nonconformity, The manufacturer shall have, within 10 7 calendar days, commencing upon after receipt of such notification, to respond and give the consumer the opportunity to have the motor vehicle repaired at, notify the consumer of a reasonably accessible repair facility within a reasonable time after the consumer's receipt of the response. The manufacturer shall have 10 days, commencing upon the and after delivery of the motor vehicle to the designated repair facility by the consumer, to, the manufacturer shall, within 14 calendar days, conform the motor vehicle to the warranty. If such notification pertains to 20 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, the manufacturer has 10 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, commencing upon the date such notification is received, to conform the motor vehicle to the warranty. If the manufacturer fails to respond to notify the consumer and give the consumer the opportunity to have the motor vehicle repaired at of a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity or nonconformities does not apply.

(b) If the motor vehicle is out of service by reason of repair of one or more nonconformities by the manufacturer or its authorized service agent for a cumulative total of 15 or more days, exclusive of down time for routine maintenance prescribed by the owner's manual, the consumer shall so notify the manufacturer in writing by registered or express mail to give the manufacturer or its authorized service agent an opportunity to inspect or repair the vehicle.

(2)(a) If the manufacturer, or its authorized service agent, cannot conform the motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within 40 calendar days, shall repurchase the motor vehicle and refund the full purchase price to the consumer, less a reasonable offset for use, or, in consideration of its receipt of payment from the consumer of a reasonable offset for use, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer. The refund or replacement must include, or repurchase the motor vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral and incidental charges, less a reasonable offset for use. However, the consumer has an unconditional right to choose a refund rather than a replacement. Upon receipt of such refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the motor vehicle.

(b) Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear. If applicable, refunds shall be made to the lessor and lessee as their interests may appear on the records of ownership kept by the Department of Highway Safety and Motor Vehicles, as follows: the lessee shall receive the lessee cost and the lessor shall receive the lease price less the lessee cost aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. A penalty for early lease termination may not be assessed against a lessee who receives a replacement motor vehicle or refund under this chapter. The Department of Revenue shall refund to the manufacturer any sales tax which the manufacturer refunded to the consumer, lienholder lessee, or lessor under this section, if the manufacturer provides to the department a written request for a refund and evidence that the sales tax was paid when the vehicle was purchased and that the manufacturer refunded the sales tax to the consumer, lienholder lessee, or lessor.

(3)(a) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if, during the Lemon Law rights period, either:

1. The same nonconformity has been subject to repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in paragraph (1)(a) subsection (1), and such nonconformity continues to exist; or

2. The motor vehicle has been out of service by reason of repair of one or more nonconformities by the manufacturer, or its authorized service agent, for a cumulative total of 30 or more calendar days, exclusive of down time for routine maintenance prescribed by the owner's manual. The manufacturer or its authorized service agent must have had at least one opportunity to inspect or repair the vehicle following receipt of the notification as provided in paragraph (1)(b). The 30-day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster.

(b) The terms of paragraph (a) may be extended for a period of 6 months after the expiration of the Lemon Law rights period if a nonconformity has been reported but has not been cured by the manufacturer, or its authorized service agent, by the expiration of the Lemon Law rights period.

(4) It is an affirmative defense to any claim under this chapter that:

(a) The alleged nonconformity does not substantially impair the use, value, or safety of the motor vehicle;

(b) The nonconformity is the result of an accident, abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by persons other than the manufacturer or its authorized service agent; or

(c) The claim by the consumer was not filed in good faith.

Any other affirmative defense allowed by law may be raised against the claim.

Section 5. Section 681.108, Florida Statutes, is amended to read:

681.108 ~~Dispute-settlement procedures~~ Informal dispute settlement procedure.—

(1) If a manufacturer has established a an informal dispute settlement procedure, which the division has certified as substantially complying with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, and with the provisions of this chapter and the rules adopted under this chapter, and has informed the consumer how and where to file a claim with such procedure pursuant to s. 681.103(3), the provisions of s. 681.104(2) do not apply to the any consumer only if the consumer who has not first resorted to such procedure. The decisionmakers for a certified informal dispute settlement procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty; the rights and remedies conferred under Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983; the provisions of this chapter; and any other equitable considerations appropriate under the circumstances. Decisionmakers and staff of a procedure shall be trained in the provisions of this chapter and in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983. In an action brought by a consumer concerning an alleged nonconformity, the decision that results from of a certified informal dispute settlement procedure is admissible in evidence.

(2) A manufacturer may apply to the division for certification of its procedure. After receipt and evaluation of the application, the division shall certify the procedure or notify the manufacturer of any deficiencies in the application or the procedure. Where the informal dispute settlement procedure involves a panel, at least one member of such panel may be designated by the division. Members of an informal dispute settlement procedure shall be trained in the provisions of this chapter and in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983.

(3) A certified procedure or a The informal dispute settlement procedure of an applicant seeking certification shall submit to the division a copy of each settlement approved by the procedure or decision made by a decisionmaker member or panel within 30 days after the settlement is reached or the decision is rendered. The decision or settlement must shall contain at a minimum the:

(a) Name and address of the consumer;

(b) Name of the manufacturer and address of the dealership from which the motor vehicle was purchased;

(c) Date the claim complaint was received and the location of the procedure office that handled the claim;

(d) Relief requested by the consumer;

- (e) Name of each ~~decisionmaker member of the informal dispute settlement panel~~ rendering the decision or person approving the settlement;
- (f) Statement of the terms of the settlement or decision of a ~~member or panel~~;
- (g) Date of the settlement or decision; and
- (h) Statement of whether the decision was accepted or rejected by the consumer; and
- (i) ~~Statement of whether the decision was accepted or rejected by the manufacturer.~~

(4) Any manufacturer establishing or applying to establish a ~~certified informal dispute settlement~~ procedure must shall file with the division a copy of the annual audit required under the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

(5) The division shall review each certified procedure at least annually, prepare an annual report evaluating the operation of ~~certified informal dispute settlement~~ procedures established by motor vehicle manufacturers and procedures of applicants seeking certification, and, for a period not to exceed 1 year, shall grant certification issue a certificate of approval to, or renew certification for, those manufacturers whose ~~settlement~~ procedures substantially comply with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, and with the provisions of this chapter and rules adopted under this chapter. If certification is revoked or denied, the division shall state the reasons for such action. The reports ~~report~~ and records of actions taken with respect to certification shall be public records.

(6) A manufacturer whose certification is denied or revoked is entitled to a hearing pursuant to chapter 120.

(7) If federal preemption of state authority to regulate procedures occurs, the provisions of subsection (1) concerning prior resort do not apply.

(8) The division shall adopt rules to implement this section.

Section 6. Section 681.109, Florida Statutes, is amended to read:

681.109 Florida New Motor Vehicle Arbitration Board; dispute eligibility.—

(1) If a consumer files resorts to a claim with a manufacturer's certified ~~informal dispute settlement~~ procedure within 6 months after the expiration of the Lemon Law rights period and a decision is not rendered or performed within 40 days the time designated in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, the consumer may apply to the division to have the dispute removed to the board for arbitration.

(2) A consumer who files resorts to a claim with a certified ~~manufacturer's informal dispute settlement~~ procedure within 6 months after the expiration of the Lemon Law rights period and is not satisfied with the decision or the manufacturer's compliance therewith reached may apply to the division to have the dispute submitted to the board for arbitration. A No manufacturer may not seek review of a decision made under of its ~~informal dispute settlement~~ procedure.

(3) If a manufacturer has no certified ~~informal dispute settlement~~ procedure or if a certified procedure does not have jurisdiction to resolve the dispute, a consumer may apply directly to the division to have the dispute submitted to the board for arbitration.

(4) A consumer must request arbitration before the board within 6 months after the expiration of the Lemon Law rights period, or within 30 days after the final action of a certified procedure, whichever date occurs later.

(5)(4) The division shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the Department of Legal Affairs. The division shall forward to the board all disputes that the division determines are potentially entitled to relief under this chapter.

(6)(5) The division may reject a dispute that it determines to be fraudulent or outside the scope of the board's authority. Any dispute deemed by the division to be ineligible for arbitration by the board due to insufficient evidence may be reconsidered upon the submission of new information regarding the dispute. Following a second review, the division may reject a dispute if the evidence is clearly insufficient to qualify for relief. Any dispute rejected by the division shall be forwarded to the Department of Legal Affairs and a copy shall be sent by registered mail to the consumer and the manufacturer, containing a brief explanation as to the reason for rejection.

(7)(6) If the division rejects a dispute, the consumer may file a lawsuit to enforce the remedies provided under this chapter. In any civil action arising under this chapter and relating to a matter considered by the division, any determination made to reject a dispute is admissible in evidence.

Section 7. Section 681.1095, Florida Statutes, is amended to read:

681.1095 Florida New Motor Vehicle Arbitration Board; creation and function.—

(1) There is established within the Department of Legal Affairs, the Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed for additional terms of 2 years. Each board member is accountable to the Attorney General for the performance of the member's duties and is exempt from civil liability for any act or omission which occurs while acting in the member's official capacity. The Department of Legal Affairs shall defend a member in any action against the member or the board which arises from any such act or omission. The Attorney General may establish as many boards as necessary to carry out the provisions of this chapter.

(2) The boards shall hear cases in various locations throughout the state so any consumer whose dispute is approved for arbitration by the division may attend an arbitration hearing at a reasonably convenient location and present a dispute orally. Arbitration proceedings under this section shall be open to the public on reasonable and nondiscriminatory terms.

(3) Each board shall consist of six ~~three permanent members and three alternate~~ members. The Attorney General may appoint two additional members to each board if necessary. The members of the board shall construe and apply the provisions of this chapter, and rules adopted thereunder, in making their decisions. An administrator and a secretary shall be assigned to each board by the Department of Legal Affairs. At least one member of each board must shall be a person with expertise in motor vehicle mechanics. A member must not be an automotive technical expert who is not employed by a manufacturer or; a franchised motor vehicle dealer, or be staff, a decisionmaker, or a consultant for a procedure the consumer. Board members shall be trained in the application of this chapter and any rules adopted under this chapter, and shall be reimbursed for travel expenses pursuant to s. 112.061, and shall be compensated at a rate or wage prescribed by the Attorney General.

(4) Before filing a civil action on a matter subject to s. 681.104, the consumer must first submit the dispute to the division, and to the board if such dispute is deemed eligible for arbitration.

(5) All Manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer within 30 calendar days following the final action of a certified informal dispute settlement procedure or within 1 year following the expiration of the Lemon Law rights period and the dispute is deemed eligible for arbitration by the division pursuant to s. 681.109.

(6) ~~Each consumer whose dispute is approved for arbitration shall be subject to a \$50 filing fee, refundable if he withdraws the dispute from arbitration prior to the hearing. The manufacturer, upon notification that a dispute has been approved, shall pay a \$50 filing fee, refundable if the consumer withdraws the dispute from arbitration prior to the hearing. All fees shall be paid to the Florida New Motor Vehicle Arbitration Fund, which shall be used for the purposes of this section.~~

(6)(7) The Department of Legal Affairs, at the board's request, may investigate disputes; subpoena records, documents, and other evidence; and compel the attendance of witnesses before the board.

(7)(8) At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dis-

pute, cross-examine witnesses, and be represented by counsel. The board may administer oaths or affirmations to witnesses and also inspect the vehicle if requested by a party or if the board deems such inspection appropriate.

(8)(9) The board shall grant relief, if a reasonable number of attempts have been undertaken to correct a nonconformity or nonconformities.

(9)(10) The board shall hear the dispute within 40 calendar days and render a decision within 60 days after the date the request for arbitration is approved. If the board determines that additional information is necessary, it may continue the arbitration proceeding on a subsequent date within 15 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the division approves the consumer's request for arbitration. The decision of the board shall be sent by registered mail to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence. The failure of the board to hear a dispute or render a decision within the prescribed periods 40 calendar days or render a decision within 60 calendar days does not invalidate the decision.

(10)(11) A decision is final unless appealed by either party. A petition to the circuit court to appeal a decision must be made within 30 calendar days after receipt of the decision. Within 7 calendar days after the petition has been filed, the appealing party must send, by registered or express mail, a copy of the petition to the Department of Legal Affairs board. If the department does not receive board receives no notice of such petition within 40 calendar days after the manufacturer's receipt of a decision in favor of the consumer, and the manufacturer has neither complied with, nor has petitioned to appeal such decision, the Department of Legal Affairs may apply to the circuit court to seek imposition of a fine up to \$1,000 per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the Department of Legal Affairs shall initiate proceedings against the manufacturer for failure to pay such fine. The proceeds from the fine herein imposed shall be placed in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs for implementation and enforcement of this chapter. If the manufacturer fails to comply with the provisions of this subsection, the court shall affirm the award upon application by the consumer.

(11)(12) All provisions in this section pertaining to compulsory arbitration before the board, the proceedings and decisions of the board, and any appeals thereof, are exempt from the provisions of chapter 120.

(12)(13) An appeal of a decision by the board to the circuit court by a consumer or a manufacturer shall be by trial de novo. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal.

(13)(14) If a decision of the board in favor of the consumer is upheld by the court, recovery by the consumer shall include, if applicable, the pecuniary value of the award, attorney's fees incurred in obtaining confirmation of the award, and all costs and continuing damages in the amount of \$25 per day for each day all days beyond the 40-day 40-calendar-day period following the manufacturer's receipt of the board's decision. If a court determines that the manufacturer acted in bad faith in bringing the appeal or brought the appeal solely for the purpose of harassment or in complete absence of a justiciable issue of law or fact, the court shall double, and may triple, the amount of the total award.

(14)(15) When a judgment affirms a decision by the board in favor of a the consumer, appellate review may be conditioned upon payment by the manufacturer of the consumer's attorney's fees and giving security for costs and expenses resulting from the review period.

(15)(16) The Department of Legal Affairs shall maintain records of each dispute submitted to the board, including an index of motor vehicles by year, make, and model, and shall compile aggregate annual statistics

for all disputes submitted to, and decided by, the board, as well as annual statistics for each manufacturer that include, but are not limited to, the value, if applicable, and the number and percent of:

- (a) Replacement motor vehicle requests;
- (b) Purchase price refund requests;
- (c) Replacement motor vehicles obtained in prehearing settlements;
- (d) Purchase price refunds obtained in prehearing settlements;
- (e) Replacement motor vehicles awarded in arbitration;
- (f) Purchase price refunds awarded in arbitration;
- (g) Board decisions neither complied with in 40 calendar days nor petitioned for appeal within 30 calendar days;
- (h) Board decisions appealed;
- (i) Appeals affirmed by the court; and
- (j) Appeals found by the court to be brought in bad faith or solely for the purpose of harassment.

The statistics compiled under this subsection are statistical compilations shall be public information.

(16) When requested by the Department of Legal Affairs, a manufacturer must verify the settlement terms for disputes that are approved for arbitration but are not decided by the board.

Section 8. Section 681.114, Florida Statutes, is amended to read:

681.114 Resale of returned vehicles.—

(1) A manufacturer who accepts the return of a motor vehicle by reason of a settlement, determination, or decision pursuant to this chapter shall notify the Department of Legal Affairs and report the vehicle identification number of that motor vehicle within 10 calendar days after such acceptance.

(2) A No person shall not knowingly lease, sell, either at wholesale or retail, or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to this chapter or similar statute of another any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer, and the manufacturer warrants to correct such nonconformity for a term of 1 year or 12,000 miles, whichever occurs first. The Department of Legal Affairs shall prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

(3) As used in this section, the term "settlement" means an agreement entered into between a manufacturer and consumer that occurs after a dispute is submitted to a procedure or is approved for arbitration before the board.

Section 9. Section 681.115, Florida Statutes, is amended to read:

681.115 Certain agreements void.—Any agreement entered into by a consumer for the purchase of a motor vehicle that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy. The rights set forth in this chapter shall extend to a subsequent transferee of such motor vehicle.

Section 10. This act applies to motor vehicles purchased or leased in this state on or after January 1, 1989.

Section 11. This act shall take effect July 1, 1992.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to motor vehicle title certificates and sales warranties; amending s. 319.14, F.S., relating to the sale of motor vehicles used as lease vehicles; providing that under certain circumstances a certificate of title may be issued that does not contain the statement of the previous lease use of a motor vehicle; updating a cross-reference; amending s. 681.102, F.S.; providing definitions; extending the Lemon Law rights period; amending s. 681.103, F.S.; requiring consumers to report problems; requiring manufacturers to provide notice of certified dispute-settlement procedures; amending s. 681.104, F.S.; revising certain consumer remedies if a manufacturer fails to repair a nonconformity; requiring consumers to report certain nonconformities; amending s. 681.108,

F.S.; providing for dispute-settlement procedures; amending s. 681.109, F.S.; revising certain provisions and time periods relating to the eligibility of disputes filed with the Florida New Motor Vehicle Arbitration Board; amending s. 681.1095, F.S.; altering and increasing the composition of the Florida New Motor Vehicle Arbitration Board; eliminating a \$50 filing fee required of consumers and manufacturers; authorizing the board to administer oaths; revising certain provisions relating to the appeal of board decisions; requiring manufacturers to provide certain information when requested by the Department of Legal Affairs; amending s. 681.114, F.S.; requiring disclosure upon resale of certain vehicles returned pursuant to ch. 681, F.S.; defining the term "settlement"; amending s. 681.115, F.S.; providing that certain waiver agreements are void; providing for applicability to previously purchased or leased motor vehicles; providing an effective date.

Senator Bruner moved the following amendment to **Amendment 1** which was adopted:

Amendment 1A—On page 10, line 24, insert: *, or in complete absence of a justiciable issue of either law or fact raised by the consumer,*

Amendment 1 as amended was adopted.

On motion by Senator Forman, by two-thirds vote **CS for SB 602** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—36 Nays—None

Consideration of **CS for SB 120** and **SB 100** was deferred.

SB 814—A bill to be entitled An act relating to jurisdictional declaratory statements; amending s. 403.914, F.S.; providing for publishing in certain newspapers notice of proposed agency action; providing an effective date.

—was read the second time by title.

Senators Kirkpatrick and Dantzler offered the following amendment which was moved by Senator Kirkpatrick:

Amendment 1 (with Title Amendment)—On page 1, line 9, strike everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 403.914, Florida Statutes, is amended to read:

403.914 Jurisdictional declaratory statements.—

(1) Before applying for a permit to dredge or fill, a property owner, an entity which has the power of eminent domain, or another person with a legal or equitable interest in property may petition the department for a declaratory statement of the dredge and fill jurisdiction of the department. The department shall, by rule, specify information which must be provided and may require authorization to enter upon the property. The department may require a fee of at least \$250 and not more than \$10,000 to cover the direct costs of acting upon the petition. The fee shall be based, by rule, upon the size and environmental complexity of the site for which the jurisdictional declaratory statement is sought.

(a) Within 30 days of the receipt of a petition for a jurisdictional declaratory statement, the department shall notify the applicant of any additional information which may be necessary. The department shall complete the assessment and issue notice of the proposed agency action within 60 days of receipt of a complete petition. *Notwithstanding any provision of s. 120.60, the department may publish or by rule may require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, the notice of the proposed agency action. The notice shall be published by the petitioner in the Florida Administrative Weekly.* The provisions of ss. 120.57 and 120.59 are applicable to declaratory statements under this section. Any person whose substantial interests will be affected may petition for a hearing within 14 days of the publication of notice. If no petition for a hearing is filed, the department shall issue the jurisdictional declaratory statement within 10 days.

Section 2. Paragraph (b) of subsection (2) of section 403.918, Florida Statutes, is amended and subsection (5) is added to said section to read:

403.918 Criteria for granting or denying permits.—

(2) A permit may not be issued under ss. 403.91-403.929 unless the applicant provides the department with reasonable assurance that the project is not contrary to the public interest. However, for a project which significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the project will be clearly in the public interest.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects which may be caused by the project. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. ~~Reclamation and restoration programs conducted pursuant to s. 211.32 may be considered as mitigation to the extent that they restore or improve the water quality and the type, nature, and function of biological systems present at the site prior to the commencement of mining activities. The department shall conduct a study of ongoing mitigation measures imposed on individual permitted activities. The study shall indicate the acreage of wetlands statewide permitted to be created or enhanced and shall include an analysis of a representative number of different types of mitigation sites. The study shall indicate the effectiveness of each type of mitigation, the reasons observed for the success or failure of the mitigation, and any need for improvement of the existing permitting, compliance, and enforcement process that would require additional legislation to protect the state's wetlands. Recommendations for legislation shall also include proposed funding sources. The study, including proposed funding sources, shall be completed, and a copy shall be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate, by January 15, 1991.~~

(5) **PERMITS FOR MINING ACTIVITIES** —

(a) *The Legislature recognizes that some mining activities that may occur in waters of the state must leave a deep pit as part of the reclamation. Such deep pits may not meet the established water quality standard for dissolved oxygen below the surficial layers. Where such mining activities otherwise meet the permitting criteria contained in this statute, these activities may be eligible for a variance from the established water quality standard for dissolved oxygen within the lower layers of the reclaimed pit.*

(b) *Wetlands reclamation activities for phosphate and heavy minerals mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this chapter and part IV of chapter 373, if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities.*

(c) *Wetlands reclamation activities for fuller's earth mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this chapter and part IV of chapter 373, if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities, unless the site features make such reclamation impracticable, in which case the reclamation must offset the project's adverse impacts on surface waters, including wetlands.*

(d) *On-site reclamation of the mine pit for limerock and sand mining shall be conducted in accordance with the requirements of chapter 378.*

1. *Mitigation activities must offset the project's adverse impacts on surface waters. Mitigation activities shall be located on-site, unless on-site mitigation activities are not feasible, then off-site mitigation as close to the activities as possible shall be required. Mitigation banking may be an acceptable form of off-site mitigation, as judged on a case-by-case basis.*

2. *The ratio of mitigation to wetlands loss shall be determined on a case-by-case basis, and shall be based on the quality of the wetland to be impacted and the type of mitigation proposed.*

Section 3. (1) The Legislature recognizes that deposits of limestone and sand suitable for production of construction aggregates, cement, and road base materials are located in limited areas of the state.

(2) The Legislature recognizes that the deposit of limestone available in South Florida is limited due to urbanization to the east and the Everglades to the west, and that the area generally bounded by the Florida Turnpike to the east, the Dade-Broward County line to the north, Krome Avenue to the west and Tamiami Trail to the south is one of the few remaining high-quality deposits in the state available for recovery of limestone, and that the Dade County 1985 Northwest Wellfield Protection Plan encourages limestone quarrying activity in lieu of urban development in this area.

(3) The Northwest Dade County Freshwater Lake Plan Implementation Committee shall be appointed by the governing board of the South Florida Water Management District to develop a strategy for the design and implementation of the Northwest Dade County Freshwater Lake Plan. The committee shall be comprised of 13 members, consisting of the chairman of the governing board or his designee of the South Florida Water Management District, who shall serve as chair of the committee, the policy director of Environmental and Growth Management in the Office of the Governor, the secretary or his designee of the Department of Environmental Regulation, the director of the Division of Resource Management of the Department of Natural Resources, the director of the Department of Environmental Resource Management of Dade County, the Director of Planning in Dade County, a representative of the Friends of the Everglades, a representative of the Florida Audubon Society, a representative of the Florida chapter of the Sierra Club, and four representatives from the limestone mining industry to be appointed by the governing board of the South Florida Water Management District.

(4) The committee shall develop a plan which (1) enhances the water supply for Dade County and the Everglades, (2) maximizes efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment, and (3) educates various groups and the general public of the benefits of the plan.

(5) The committee shall report to the governing board of the South Florida Water Management District four times per year. The plan shall be presented to the board for public hearing by December 31, 1993. The plan shall include the committee's recommendations for legislative and regulatory revisions. By December 31, 1992, the committee shall present an interim report of its activities and findings to the Legislature. The report shall contain a recommendation on whether to extend the exemption under s. 403.913(8), Florida Statutes, setting out the environmental, economic, and other considerations on which the recommendation is based.

(6) After completion of the plan, the committee shall continue to assist in its implementation and shall report to the governing board of the South Florida Water Management District semiannually.

(7) In carrying out its work, the committee shall solicit comments from scientific and economic advisors and governmental, public, and private interests. The committee shall provide meeting notes, reports, and the strategy document in a timely manner for public comment.

(8) The committee is authorized to seek from the agencies or entities represented on the committee any grants or funds necessary to enable it to carry out its charge.

(9) This section is repealed January 1, 1996.

Section 4. Subsection (12) is added to section 403.021, Florida Statutes, to read:

(12) It shall be the intent of the Legislature that there be no further net loss of wetlands within the state. Applicants for a permit from the department shall, to the maximum extent practicable, avoid or minimize adverse impacts on wetlands.

Section 5. This act shall take effect July 1, 1992.

And the title is amended as follows:

In title, on page 1, strike all of lines 2-6 and insert: An act relating to environmental resources; amending s. 403.914, F.S.; providing for publishing in certain newspapers notice of proposed agency action relating to jurisdictional declaratory statements; amending s. 403.918, F.S.; providing special considerations for permitting and mitigation of certain mining activities; providing a mechanism to assist in the coordinated development of the Northwest Dade County Freshwater Lake Plan; providing an effective date.

Senators Dantzler, Johnson and Myers offered the following amendment to **Amendment 1** which was moved by Senator Dantzler and adopted:

Amendment 1A (with Title Amendment)—On page 7, strike all of lines 10-14 and insert:

(12) It shall be the intent of the Legislature that there be no further loss of wetland functions resulting from permitted activities within the state. It is further the intent of the Legislature that permitted activities within the state minimize, to the maximum extent practicable, adverse impacts on wetlands. The Legislature finds that the establishment of mitigation banks is a valuable means of offsetting adverse impacts to functional wetlands resulting from dredge and fill and surface water management construction activities. Mitigation banks can be an effective means of achieving no further net loss of wetland functions from permitted construction activities within the state.

And the title is amended as follows:

In title, on page 8, line 7, after the semicolon (;) insert: providing legislative intent relating to loss of wetlands and the need for mitigation banking;

Senators Dantzler and Johnson offered the following amendments to **Amendment 1** which were moved by Senator Dantzler and adopted:

Amendment 1B—On page 7, between lines 14 and 15, insert:

Section 5. The Legislature encourages and directs the Department of Environmental Regulation to adopt rules by December 1, 1992 providing for the establishment of a mitigation banks program as a means of offsetting adverse impacts from construction activities in wetlands. Such rules shall provide for the procedures for implementing a mitigation banks program and provide for mitigation bank agreements and, at a minimum, provide for the participation by water management districts as well as the department for projects requiring permits from chapter 403, Florida Statutes; or part IV of chapter 373, Florida Statutes. Furthermore, such rules shall provide for mitigation banking to be an acceptable form of off-site mitigation as close to the permitted activities as possible.

Amendment 1C—In title, on page 1, line 5, after the semicolon (;) insert: providing for the establishment of a mitigation banks program;

Amendment 1 as amended was adopted.

On motion by Senator Walker, by two-thirds vote **SB 814** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—34 Nays—None

CS for CS for SB 1614—A bill to be entitled An act relating to state-administered retirement systems; amending s. 121.011, F.S.; clarifying language relating to local retirement systems and transfer of functions, consolidation, or merger of governments; amending s. 121.021, F.S.; modifying definitions of "compensation," "average final compensation," and "beneficiary"; defining "plan year"; amending s. 121.031, F.S.; clarifying use of the term "valuations"; providing an exemption from confidentiality of names and addresses of retirees; amending s. 121.052, F.S.; providing retirement membership options to elected state and county officers upon dual employment; deleting obsolete language on deposit of contributions; amending s. 121.053, F.S.; allowing certain 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 s. 121.081, F.S.; conforming language relating to transfer of functions, consolidation, or merger of governments; amending ss. 121.091, 122.09, 238.07, F.S.; clarifying effective date of retirement versus when benefits are paid; revising disability provisions to comply with federal law; revising death benefit provisions to remove limitation on remarriage; clarifying reemployment provisions; amending s. 121.122, F.S., clarifying provisions relating to renewed membership in the Florida Retirement System; providing for modified contributions; modifying service credit requirements; providing for additional credit toward the maximum health insurance subsidy; amending ss. 121.125, 122.03, 238.06, F.S.; limiting retirement credit for workers' compensation payment periods; amending s. 121.35, F.S.; modifying membership options for the State University System Optional Retirement Program; eliminating full-time status as a condition of the Optional Retirement Program; clarifying vesting provisions; amending ss. 121.40, 122.16, 321.203, F.S.;

providing for payment of full retirement contributions for certain retired persons returning to employment, effective July 1, 1991; amending s. 122.07, F.S.; clarifying provisions relating to credit for seasonal state employment; 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.

—was read the second time by title. On motion by Senator Crenshaw, by two-thirds vote **CS for CS for SB 1614** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

MOTION

On motion by Senator Crenshaw, the rules were waived and **CS for CS for SB 1614** was ordered immediately certified to the House.

CS for SB 336—A bill to be entitled An act relating to the Governor; creating s. 14.27, F.S.; creating the Office of the Chief Inspector General within the Executive Office of the Governor; providing for the appointment of the Chief Inspector General; providing powers and duties; providing an effective date.

—was read the second time by title. On motion by Senator Kirkpatrick, by two-thirds vote **CS for SB 336** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—None

SB 1646—A bill to be entitled An act relating to hazardous waste; amending s. 376.319, F.S.; providing for indemnification of sureties who issue bonds for response action contractors; amending ss. 376.308, 403.727, F.S.; limiting the liability of sureties who issue bonds in connection with construction activities where hazardous substances exist or are discovered; providing an effective date.

—was read the second time by title. On motion by Senator Kirkpatrick, by two-thirds vote **SB 1646** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

The Senate resumed consideration of—

SB 750—A bill to be entitled An act relating to personnel of the school system; creating s. 231.3605, F.S.; providing for employment of educational support employees, providing definitions; providing for probationary status and continued employment; providing for suspension of an employee and for a notice and appeals process; providing for review and repeal; providing an effective date.

—with pending Point of Order by Senator Langley.

RULING ON POINT OF ORDER

On recommendation of Senator Gardner, Chairman of the Committee on Appropriations, the President ruled the point not well taken.

Senator Bruner moved the following amendments which were adopted:

Amendment 2—On page 2, between lines 20 and 21, insert:

Section 2. Section 231.434, Florida Statutes, is amended to read:

231.434 Annual leave.—District school boards are authorized to adopt rules that provide for the earning of annual leave by employees, including educational support employees, who are employed for 12 calendar months a year.

Amendment 3—On page 1, line 9, after the semicolon (;) insert: amending s. 231.434, F.S.; specifying that certain educational support employees shall earn annual leave;

On motion by Senator Thurman, by two-thirds vote **SB 750** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—30 Nays—1

RECONSIDERATION

On motion by Senator Malchon, the rules were waived and the Senate reconsidered the vote by which—

CS for SB 1864—A bill to be entitled An act relating to fiscal matters; amending s. 27.702, F.S.; requiring the capital collateral representative to file certain motions for compensation and reimbursement and providing for deposit of funds into a trust fund; repealing s. 27.3455(9), F.S., relating to the future repeal of provisions regarding additional court costs; amending ss. 27.38, 27.60, F.S.; authorizing expenditure of appropriated state funds for items enumerated in s. 27.34 or s. 27.54, F.S.; providing for reporting requirements; providing an effective date.

—passed as amended this day.

On motion by Senator Malchon, by two-thirds vote the Senate reconsidered the vote by which **CS for SB 1864** was read the third time.

On motion by Senator Malchon, the Senate reconsidered the vote by which **Amendment 1** was adopted. **Amendment 1** failed.

On motion by Senator Malchon, by two-thirds vote **CS for SB 1864** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—None

SB 1824—A bill to be entitled An act relating to electrolysis; providing a short title; providing legislative intent; providing definitions; creating the Electrolysis Council under the Board of Medicine within the Department of Professional Regulation; providing for rules, membership, terms, organization, meetings, and quorum thereof; providing regulatory powers and duties of the board; providing for the licensure of electrologists by examination and endorsement; providing for temporary permits; restricting use of certain titles and abbreviations; providing for license renewal; providing for automatic reversion to inactive status and expiration; providing continuing education requirements; providing for the adoption of rules; providing for fees; providing grounds for disciplinary action; providing administrative penalties; providing criminal penalties; providing exemptions; providing for future review and repeal; providing an effective date.

—was read the second time by title.

The Committee on Professional Regulation recommended the following amendment which was moved by Senator Malchon and failed:

Amendment 1 (with Title Amendment)—On page 13, strike all of lines 25-28 and renumber subsequent sections.

And the title is amended as follows:

In title, on page 1, line 21, after the semicolon (;), strike “providing for future review and repeal;”

Senator Malchon moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. This act may be cited as the “Electrolysis Practice Act.”

Section 2. Purpose and intent.—The purpose of this act is to provide for the licensure of persons who deliver electrolysis services and to ensure that they meet certain requirements. It is the finding of the Legislature that the practice of electrolysis by unskilled or incompetent persons presents a danger to the public health and safety. Because it is difficult for the public to make informed choices related to electrolysis services and since the consequences of wrong choices can harm the public health and safety, it is the intent of the Legislature to prohibit the delivery of electrolysis services by persons who do not possess the necessary skills or who otherwise present a danger to the public. However, restrictions may be imposed only to the extent necessary to protect the public and in a manner that will not unreasonably affect the competitive market for the delivery of such services.

Section 3. Definitions.—As used in this act, the term:

- (1) “Board” means the Board of Medicine.
- (2) “Council” means the Electrolysis Council.

(3) "Department" means the Department of Professional Regulation.

(4) "Electrologist" means a person who engages in the practice of electrolysis.

(5) "Electrolysis or electrology" means the permanent removal of hair by introducing, into and beneath the skin, ionizing (galvanic current) or nonionizing radiation (thermolysis or high-frequency current) to destroy the hair-producing cells of the skin and vascular system, using needle-type epilation devices that are registered with the United States Food and Drug Administration and used pursuant to protocols approved by the council and the board.

Section 4. Board of Medicine; powers and duties.—

(1) The board, with the assistance of the Electrolysis Council, is authorized to establish minimum standards for the delivery of electrolysis services and to adopt rules necessary to administer the provisions of this act.

(2) The board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties under this act.

(3) The board may delegate such powers and duties to the council as it may deem proper.

(4) The board, in consultation with the council, shall recommend proposed rules and the board shall adopt rules for a code of ethics for electrologists and rules related to the curriculum and approval of electrolysis training programs, sanitary guidelines, the delivery of electrolysis services, continuing education requirements, and any other area related to the practice of electrology.

Section 5. Electrolysis Council; creation; function; powers and duties.—

(1) There is created the Electrolysis Council under the supervision of the board.

(2)(a) The council shall consist of three members, appointed by the board, who are licensed electrologists actively engaged in the delivery of electrolysis services in this state for at least 4 consecutive years prior to their appointment, and who are not affiliated with an electrolysis school or manufacturer or supplier of electrolysis equipment or supplies.

(b) Initial council members shall be eligible for licensure at the time of their appointment and shall be licensed by October 1, 1993, to remain on the council. Members appointed after October 1, 1996, shall have been licensed in this state for at least 3 years prior to their appointment.

(3)(a) The term of office for each council member shall be 4 years. No member shall serve more than 2 consecutive terms. Anytime there is a vacancy to be filled on the council, any licensed electrologist may recommend one person to fill the vacancy and any professional organization dealing with electrolysis, incorporated within the state as not for profit, which registers its interest with the board shall recommend at least twice as many persons to fill the vacancy as the number of vacancies to be filled, and the board, in its discretion, may appoint from the submitted names any of those person so recommended. The board shall, insofar as possible, appoint persons from different geographic areas.

(b) In order to achieve staggering of terms, by December 1, 1992, the board shall appoint the members of the council as follows:

1. One member shall be appointed for a term of 2 years.
2. One member shall be appointed for a term of 3 years.
3. One member shall be appointed for a term of 4 years.

(4)(a) The council shall annually elect from among its members a chairman and vice chairman.

(b) The council shall meet at least twice a year and shall hold such additional meetings as are deemed necessary by the board. Two members of the council constitute a quorum.

(c) Unless otherwise provided by law, a council member shall be compensated \$50 for each day the member attends an official meeting of the council and for each day the member participates in official council business. A council member shall also be entitled to reimbursement for expenses pursuant to s. 112.061, Florida Statutes. Travel out of state shall require the prior approval of the secretary of the department.

Section 6. Requirements for licensure.—

(1) An applicant applying for licensure as an electrologist shall file a written application, accompanied by the application for licensure fee prescribed in section 16, on a form provided by the board, showing to the satisfaction of the board that the applicant:

(a) Is at least 18 years old.

(b) Is of good moral character.

(c) Is a resident of the state.

(d) Possesses a high school diploma or a graduate equivalency diploma.

(e) Has not committed an act in any jurisdiction which would constitute grounds for disciplining an electrologist in this state.

(f)1. Has successfully completed the academic requirements of an electrolysis training program, not to exceed 120 hours, and the practical application thereof as approved by the board; or

2. Was engaged in the practice of electrology prior to October 1, 1991, and filed an application for licensure within 90 days of the date established by the board or by October 1, 1993, whichever comes last.

(2) Each applicant for licensure shall successfully pass a written examination developed by the department or a national examination, both of which have been approved by the board. The examinations shall test the applicant's knowledge relating to the practice of electrology, including the applicant's professional skills and judgment in the use of electrolysis techniques and methods, and any other subjects which are useful to determine the applicant's fitness to practice.

(3) The department, upon approval of the board, may adopt the American Electrology Association examination or any other national examination in lieu of any part of the examination required by this section. The board, with the assistance of the council, shall establish standards for acceptable performance.

(4) The department shall issue a license to practice electrology to any applicant who passes the examination, pays the licensure fee as set forth in section 16, and otherwise meets the requirements of this act.

(5) The department shall conduct licensure examinations at least biannually at locations set by the board. However, such examinations may be conducted at least three times each year through 1995. The board shall give public notice of the time and place of each examination at least 60 days before it is administered and shall mail notice of such examination to each applicant whose application is timely filed, pursuant to board rule.

(6) The department may not issue a license to any applicant who is under investigation in another jurisdiction for an offense which would be a violation of this act, until such investigation is complete. Upon completion of such investigation, if the applicant is found guilty of such offense, the board shall apply the applicable provisions of section 13.

Section 7. Temporary permits.—

(1) If the executive director of the board determines that an applicant is qualified to be licensed under section 6, the board may issue the applicant a temporary permit to practice electrology until the next board meeting at which license applications are to be considered, but not for a longer period of time. Only one temporary permit shall be issued to an applicant, and it shall not be renewable.

(2)(a) If the executive director of the board determines that an applicant is qualified for licensure by examination except for passage of the examination and has applied for the next scheduled examination, the executive director may issue the applicant a nonrenewable temporary permit to practice electrology under the supervision of a licensed electrologist until notification of the results of the examination.

(b) The temporary permit of a person who fails such examination is automatically revoked upon notification of the examination results, and the applicant shall cease the practice of electrology immediately upon receipt of such notice.

(c) An applicant with a temporary permit who passes such examination may continue to practice under such temporary permit until the next meeting of the board at which license applications are to be considered.

(3) As used in subsection (2), "supervision" means responsible control by a licensed electrologist who provides the initial direction in developing a treatment plan and also periodically inspects the permittee's implementation of such plan, which plan may not be altered by the permittee without the prior consultation and approval of the supervisor. A supervisor shall be available to consult with and direct a permittee in an emergency, although the supervisor does not have to be on the premises while the permittee is delivering electrolysis services.

Section 8. Licensure by endorsement.—The department shall issue a license by endorsement to any applicant who submits an application and the required fees as set forth in section 16 and who the board certifies has met the qualifications of subsection (1) of section 6 or who holds an active license or other authority to practice electrology in a jurisdiction whose licensure requirements are determined by the board to be equivalent to the requirements for licensure in this state.

Section 9. Assumption of title and use of abbreviations.—Only persons who are licensed under this act may use the title "Electrologist," "Registered Electrologist," or the abbreviation "RE."

Section 10. License required.—

(1) No person may practice electrology or hold himself out as an electrologist in this state unless the person has been issued a license by the department and holds an active license pursuant to the requirements of this act.

(2) A licensee shall display his license in a conspicuous location in his place of practice and provide it to the department or the board upon request.

Section 11. Renewal of license; inactive status; expiration; address notification; continuing education requirements.—

(1) The department shall provide, by rule, a method for biennial license renewal at fees set forth in section 16.

(2) A license which is not renewed at the end of the biennium prescribed by the department automatically reverts to inactive status. The board shall adopt rules establishing procedures, criteria, and fees as set forth in section 16 for reactivation of an inactive license.

(3) Sixty days prior to the end of the biennium, the department shall mail a renewal notice to each licensee at the last known address on file.

(4) An inactive license which has not been reactivated within 4 years automatically expires. Once a license expires, it becomes null and void without further action by the board or the department.

(5) One year prior to the date an inactive license is scheduled to become null and void, the department shall mail a notice to the licensee at the last known address on file, which notice advises the individual that his license is on inactive status and will automatically become null and void if it is not reactivated within the prescribed time.

(6) A licensee shall file with the department the address of his primary place of practice within the state prior to engaging in practice and shall notify the department of any change in such address prior to the change.

(7)(a) An application for license renewal shall be accompanied by proof of the successful completion of 20 hours of continuing education courses or proof of successfully passing a reexamination for licensure within the immediately preceding biennium which meets the criteria established by the board. Both the continuing education and reexamination shall contain education on blood borne diseases.

(b) The board, with the assistance of the council, shall, approve criteria for, and content of, electrolysis training programs and continuing education courses required for licensure and renewal as set forth in this act.

(c) Continuing education programs shall be approved by the board. Applications for approval shall be submitted to the board not less than 60 days nor more than 360 days before they are held.

(8) The board, with the assistance of the council, shall adopt rules relating to license expiration, providing for reinstatement of expired licenses, and the relicensure of persons whose licenses have become void.

Section 12. Electrology facilities; requisites; facility licensure; inspection.—

(1) No electrology facility shall be permitted to operate without a facility license issued by the department.

(2) The facility license shall be displayed in a conspicuous place within the facility and shall be made available upon request of the department or board.

(3) The board shall adopt rules governing the licensure and operations of such facilities, personnel, safety and sanitary requirements, and the licensure application and granting process.

(4) Any person, firm, or corporation desiring to operate an electrology facility in the state shall submit to the department an application and the necessary application fee as set forth in section 16.

(5) Upon receiving the application, the department may cause an investigation to be made of the proposed electrology facility.

(6) When an applicant fails to meet all the requirements provided in this section, the department shall deny the application in writing and shall list the specific requirements not met. No applicant denied licensure because of failure to meet the requirements shall be precluded from reapplying for licensure.

(7) When the department determines that the proposed electrology facility has met the requirements set forth in this section, the department shall grant the license upon payment of the initial licensure fee.

(8) An initial inspection of a licensed facility shall be conducted within 60 days of initial licensure.

(9) A renewal inspection of a licensed facility shall be conducted not less than once per biennium or as deemed required by the department.

(10) No license for operation of an electrology facility may be transferred from the name of the original licensee to another. It may be transferred from one location to another only upon approval by the department, which approval shall not be unreasonably withheld.

(11) Renewal of license registration for electrology facilities shall be accomplished pursuant to rules adopted by the board.

Section 13. Disciplinary proceedings.—

(1) The following acts are grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Obtaining or attempting to obtain a license by bribery, fraud, or knowing misrepresentation.

(b) Having a license or other authority to deliver electrolysis services revoked, suspended, or otherwise acted against, including denial of licensure, in another jurisdiction.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime, in any jurisdiction, which directly relates to the practice of electrology.

(d) Willfully making or filing a false report or record, willfully failing to file a report or record required for electrologists, or willfully impeding or obstructing the filing of a report or record required by this act or inducing another person to do so.

(e) Circulating false, misleading, or deceptive advertising.

(f) Unprofessional conduct, including any departure from, or failure to conform to, acceptable standards related to the delivery of electrolysis services.

(g) Engaging or attempting to engage in the illegal possession, sale, or distribution of any illegal or controlled substance.

(h) Willfully failing to report any known violation of this act.

(i) Willfully or repeatedly violating a rule adopted under this act, or an order of the board or department previously entered in a disciplinary hearing.

(j) Engaging in the delivery of electrolysis services without an active license.

(k) Employing an unlicensed person to practice electrology.

(l) Failing to perform any statutory or legal obligation placed upon an electrologist.

(m) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he is not competent to perform.

(n) Delegating professional responsibilities to a person the licensee knows, or has reason to know, is unqualified by training, experience, or licensure to perform.

(o) Gross or repeated malpractice or the inability to practice electrology with reasonable skill and safety.

(p) Judicially determined mental incompetency.

(q) Practicing or attempting to practice electrology under a name other than his own.

(r) Being unable to practice electrology with reasonable skill and safety because of a mental or physical condition or illness, or the use of alcohol, controlled substances, or any other substance which impairs one's ability to practice.

1. The department may, upon probable cause, compel a licensee to submit to a mental or physical examination by physicians designated by the department. The cost of an examination shall be borne by the licensee, and his failure to submit to such an examination constitutes an admission of the allegations against him, consequent upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond his control.

2. A licensee who is disciplined under this paragraph shall, at reasonable intervals, be afforded an opportunity to demonstrate that he can resume the practice of electrology with reasonable skill and safety.

3. In any proceeding under this paragraph, the record of proceedings or the orders entered by the board may not be used against a licensee in any other proceeding.

(s) Disclosing the identity of or information about a patient without written permission, except for information which does not identify a patient and which is used for training purposes in an approved electrolysis training program.

(t) Practicing or attempting to practice any permanent hair removal except as described in subsection (5) of section 3.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), including conduct that would constitute a substantial violation of subsection (1) which occurred prior to licensure, it may enter an order imposing one or more of the following penalties:

(a) Deny the application for licensure.

(b) Revoke or suspend the license.

(c) Impose an administrative fine not to exceed \$5,000 for each count or separate offense.

(d) Place the licensee on probation for a specified time and subject the licensee to such conditions as the board determines necessary, including requiring treatment, continuing education courses, reexamination, or working under the supervision of another licensee.

(e) Issue a reprimand to the licensee.

(f) Restriction of a licensee's practice.

(3) The board may not issue or reinstate a license to a person it has deemed unqualified, until it is satisfied that such person has complied with the terms and conditions of the final order and that the licensee can safely practice electrology.

(4) The board, with the assistance of the council, may, by rule, establish guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of supervision on probation, or conditions upon probation or reissuance of a license.

Section 14. Penalty for violations.—It is a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083, Florida Statutes, to:

(1) Practice or attempt to practice electrology or hold oneself out to be an electrologist without holding an active license.

(2) Practice or attempt to practice electrology under a name other than one's own.

(3) Use or attempt to use a revoked or suspended license or the license of another.

(4) Obtain or attempt to obtain a license by bribery, fraud, or knowing misrepresentation.

(5) Employ an unlicensed person to practice electrology.

(6) Practice or attempt to practice any permanent hair removal except as described in subsection (5) of section 3.

Section 15. Exemptions.—This act does not apply to the delivery of electrolysis services by:

(1) A physician licensed under chapter 458, Florida Statutes, or an osteopathic physician licensed under chapter 459, Florida Statutes; or

(2) A student delivering electrolysis services to another in an approved electrolysis training program.

Section 16. Fees; facility; disposition.—

(1) The board shall establish by rule the collection of fees for the following purposes:

(a) License application fee: a fee not to exceed \$100.

(b) Examination fee: a fee not to exceed \$300.

(c) Initial licensure fee: a fee not to exceed \$100.

(d) Renewal fee: a fee not to exceed \$100 biennially.

(e) Reactivation fee: a fee not to exceed \$100.

(f) Inspection fee for facility: a fee not to exceed \$100 biennially.

(2) In no case shall the department charge more than the actual cost incurred for the implementation of this act.

Section 17. This act shall take effect October 1, 1992.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to electrolysis; providing a short title; providing legislative intent; providing definitions; providing powers and duties of the Board of Medicine; creating the Electrolysis Council under board supervision; providing for membership, terms, organization, meetings, and quorum thereof; providing requirements for licensure; providing for temporary permits; providing for licensure by endorsement; restricting use of certain titles and abbreviations; requiring a license to practice; providing for license renewal; providing for automatic reversion to inactive status and expiration; providing continuing education requirements; providing for the adoption of rules; requiring an electrology facility license and specifying requirements related thereto; providing grounds for disciplinary action; providing administrative penalties; providing criminal penalties; providing exemptions; providing for fees; providing an effective date.

On motion by Senator Malchon, by two-thirds vote **SB 1824** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—31 Nays—None

RECONSIDERATION

On motion by Senator Grant, the rules were waived and the Senate reconsidered the vote by which—

CS for SB 90—A bill to be entitled An act relating to concealed weapons or firearms; amending s. 790.06, F.S.; exempting a certified correctional probation officer from the licensing requirements for carrying a concealed weapon or firearm; further exempting such an officer from the required license fees and background investigation for 1 year after retirement as a correctional probation officer; providing an effective date.

—passed as amended this day.

Pending further consideration of **CS for SB 90** as amended, on motions by Senator Grant, by two-thirds vote **CS for HB 271** was withdrawn from the Committees on Corrections, Probation and Parole; Criminal Justice; and Appropriations.

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

CS for HB 271—A bill to be entitled An act relating to firearms; amending s. 790.06, F.S.; authorizing correctional probation officer exemption from concealed weapons licensing; exempting correctional probation officers from required fees and background investigations for one year after retirement; amending s. 843.025, F.S.; providing that it is unlawful for any person to deprive a correctional officer or correctional probation officer of his weapon or radio; providing an effective date.

—a companion measure, was substituted for **CS for SB 90** and read the second time by title. On motion by Senator Grant, by two-thirds vote **CS for HB 271** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—28 Nays—None

RECONSIDERATION

On motion by Senator Forman, the rules were waived and the Senate reconsidered the vote by which—

CS for SB 602—A bill to be entitled An act relating to motor vehicle sales warranties; amending s. 681.102, F.S.; providing definitions; amending s. 681.103, F.S.; requiring manufacturers to provide notice of certified dispute settlement procedures; amending s. 681.104, F.S.; revising certain consumer remedies if a manufacturer fails to repair a nonconformity; amending s. 681.106, F.S.; deleting a provision that provides that a consumer acts in bad faith if he files a claim which lacks a justiciable issue of law or fact; amending s. 681.108, F.S.; providing for dispute settlement procedures; creating s. 681.1085, F.S.; providing operating guidelines for certified procedures; amending s. 681.109, F.S.; revising certain provisions relating to the eligibility of disputes filed with the Florida New Motor Vehicle Arbitration Board; amending s. 681.1095, F.S.; revising the composition of the Florida New Motor Vehicle Arbitration Board; providing for the Division of Consumer Services of the Department of Agriculture and Consumer Services to determine the eligibility of certain disputes presented to the board; authorizing the board to administer oaths; revising certain provisions relating to the appeal of board decisions; amending s. 681.114, F.S.; requiring the Department of Legal Affairs to notify the Department of Highway Safety and Motor Vehicles of certain vehicles returned pursuant to ch. 681, F.S., and requiring such information to be noted on a vehicle's registration; amending s. 681.115, F.S.; providing that certain waiver agreements are void; providing for applicability to previously purchased or leased vehicles; providing an effective date.

—passed as amended this day.

On motion by Senator Forman, by two-thirds vote the Senate reconsidered the vote by which **CS for SB 602** was read the third time.

On motion by Senator Forman, the Senate reconsidered the vote by which **Amendment 1** as amended was adopted.

Senator Forman moved the following amendment to **Amendment 1** which was adopted:

Amendment 1B—On page 4, line 4, after "(2)" insert: and (3)

Amendment 1 as amended was adopted.

On motion by Senator Forman, by two-thirds vote **CS for SB 602** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—32 Nays—None

CS for CS for SB 294—A bill to be entitled An act relating to medical transportation services; creating s. 401.2101, F.S.; providing a short title; amending s. 401.211, F.S.; expanding legislative intent to reflect the scope and nature of laws governing the provision of emergency medical services; amending s. 401.23, F.S.; providing definitions; amending s. 401.24, F.S.; specifying contents of the state emergency medical services plan; amending s. 401.25, F.S.; providing licensure requirements for persons and entities that provide emergency medical services; amending s. 401.252, F.S.; regulating transfers between facilities; specifying conditions for direct medical director and treating physician involvement in certain patient transfers; amending s. 401.26, F.S.; providing for vehicle permits; amending s. 401.265, F.S.; requiring a basic life support transportation service or advanced life support service to have a medical director and recognizing quality assurance activities as part of medical director functions; amending s. 401.27, F.S.; specifying paramedic training

requirements; authorizing the issuance of temporary certificates and limited certificates; authorizing an inactive status for certificateholders; specifying period within which out-of-state trained certificate applicants must become certified; requiring a standard state insignia for certificateholders who wear an insignia; amending s. 401.281, F.S.; prescribing qualifications for drivers; amending s. 401.291, F.S.; imposing a reporting requirement for limited use of automatic external defibrillators; amending s. 401.30, F.S.; expanding access to patient records for certain purposes; amending s. 401.31, F.S.; specifying applicable vehicle safety requirements that are subject to inspection; imposing a requirement regarding inspection corrective action statements; amending s. 401.321, F.S.; increasing the license transfer fee; amending s. 401.33, F.S.; providing exemptions from regulation; amending s. 401.34, F.S.; increasing fees and authorizing fees for duplicate and replacement certificates, licenses, and permits; providing for same-day examination grading, walk-in eligibility determination and examination, and examination review, and prescribing the fees therefor; creating s. 401.345, F.S.; creating the Emergency Medical Services Trust Fund and providing for deposit of revenues; amending s. 401.35, F.S.; providing by rule the circumstances and procedures under which emergency medical technicians and paramedics may honor physician orders not to resuscitate; amending s. 401.38, F.S.; expanding the scope and nature of federal funding directives; amending s. 401.41, F.S.; providing prohibited acts and penalties involving emergency medical services; amending s. 401.411, F.S.; providing for disciplinary actions against licensees, permit holders, and certificateholders; amending s. 401.414, F.S.; providing for complaints and investigations of violations; amending s. 401.421, F.S.; providing for enforcement, including cease and desist orders, civil penalties, attorney's fees, and court costs; creating s. 401.435, F.S.; providing training requirements for first responder agencies; requiring a letter of agreement between the emergency medical services licensees and first responder agencies; amending s. 401.445, F.S.; providing for examination and treatment of incapacitated persons; amending s. 401.45, F.S.; specifying circumstances under which a person may not be denied emergency treatment and providing limitation on liability for denial of emergency treatment under certain circumstances; providing immunity of liability for the honoring of physician orders not to resuscitate; providing emergency medical services personnel with "Good Samaritan" immunity when acting in good faith in their official capacity; amending s. 401.48, F.S.; providing licensure requirements for air ambulance service; amending s. 401.107, F.S.; amending definitions and specifying activities that constitute emergency medical services; amending s. 401.113, F.S.; specifying use of funds deposited into the Emergency Medical Services Trust Fund; amending ss. 316.061, 316.192, 316.193, 320.0801, F.S.; specifying moneys to be deposited into the Emergency Medical Services Trust Fund; exempting, from the Florida Insurance Code, prepaid ambulance coverage by a political subdivision of this state which was operating such service as of October 1, 1991; repealing s. 25 of ch. 82-402, s. 13 of ch. 83-196, s. 1 of ch. 85-65, Laws of Florida; abrogating the repeal of part III of ch. 401, F.S., relating to emergency medical services, notwithstanding repeal of that part scheduled under the Regulatory Sunset Act; repealing ss. 401.43, 401.44, 401.481, F.S., which provide penalties for fraud involving emergency services and for turning in false alarms and which provide for air ambulance inspections; providing an effective date.

—was read the second time by title.

Senator Weinstock moved the following amendments which were adopted:

Amendment 1—On page 6, lines 9 and 21, strike "who may need" and insert: *requiring or likely to require who may need*

Amendment 2—On page 7, line 8, strike "license" and insert: *license*

Amendment 3—On page 28, lines 2 and 3, strike "*The department must adopt rules that define critical incident stress debriefing.*"

Amendment 4 (with Title Amendment)—On page 44, strike all of lines 3-29 and insert:

Section 24. Effective July 1, 1993, section 401.435, Florida Statutes, is created to read:

401.435 First responder agencies and training.—

(1) The department must adopt by rule the United States Department of Transportation Emergency Medical Services: First Responder Training Course as the minimum standard for first responder training. In

addition, the department must adopt rules establishing minimum first responder instructor qualifications. For purposes of this section, a first responder includes any individual who receives training to render initial care to an ill or injured person but who does not have the primary responsibility of treating and transporting ill or injured persons.

(2) Each first responder agency must take all reasonable efforts to enter into a memorandum of understanding with the emergency medical services licensee within whose territory the agency operates in order to coordinate emergency services at an emergency scene. The department must provide a model memorandum of understanding for this purpose. The memorandum of understanding should include dispatch protocols, the roles and responsibilities of first responder personnel at an emergency scene, and the documentation required for patient care rendered. For purposes of this section, the term "first responder agency" includes a law enforcement agency, a fire service agency not licensed under this part, a lifeguard agency, and a volunteer organization that renders, as part of its routine functions, on-scene patient care before emergency medical technicians or paramedics arrive.

And the title is amended as follows:

In title, on page 3, line 12, strike "letter of agreement" and insert: memorandum of understanding

Amendment 5 (with Title Amendment)—On page 55, between lines 2 and 3, insert:

Section 34. The Office of Emergency Medical Services, in conjunction with the Emergency Medical Services Advisory Council, shall, within existing resources, study whether there is a need to establish regulation of lifeguards and lifeguard agencies. This study is to include whether the regulation is needed and, if so, what level of regulation is needed, whether the regulation should include examinations, continuing education requirements, recordkeeping requirements, requirements related to notification of exposure to infectious diseases similar to the requirements in section 395.0147, Florida Statutes, equipment and facilities requirements, protocols, and what those requirements should be. The study is to seek and consider all recommendations made by lifeguards, lifeguard agencies, and any other persons who have an interest in the issue. The study is to include findings, conclusions, recommendations, and potential fiscal impact of any recommendations, and shall be made to the Legislature prior to November 1, 1993.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, line 5, after the semicolon (;) insert: requiring the Office of Emergency Medical Services to study the need for regulation of lifeguards and lifeguard agencies;

On motion by Senator Malchon, by two-thirds vote **CS for CS for SB 294** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—30 Nays—None

MOTION

On motion by Senator Malchon, the rules were waived and **CS for CS for SB 294** was ordered immediately certified to the House.

SB 516—A bill to be entitled An act relating to worthless checks; amending s. 832.07, F.S.; providing for the use of a driver's license number to establish prima facie evidence of a person's identity; deleting a requirement that information regarding a person's race be obtained for purposes of establishing such prima facie evidence; providing an effective date.

—was read the second time by title.

The Committee on Judiciary recommended the following amendment which was moved by Senator Grant and adopted:

Amendment 1 (with Title Amendment)—On page 2, strike line 2 and insert: height, and race. ~~This information shall be written upon the~~

And the title is amended as follows:

In title, on page 1, strike all of lines 5-8 and insert: facie evidence of a person's identity;

On motion by Senator Grant, by two-thirds vote **SB 516** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—26 Nays—None

CS for SB 120—A bill to be entitled An act relating to criminal history records; amending s. 943.058, F.S.; revising procedures for sealing or expunging criminal history records; providing a fee; providing for disposition of the proceeds of the fee; providing an effective date.

—was read the second time by title.

The Committee on Judiciary recommended the following amendment which was moved by Senator Grant and failed:

Amendment 1—On page 3, line 23; on page 6, lines 26 and 28; and on page 7, line 4, strike "(10)" and insert: (11)

Senator Grant moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Section 943.045, Florida Statutes, is amended to read:

943.045 Definitions.—The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(1) "Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal justice information.

(2) "Administration of criminal justice" means performing functions of detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies.

(3) "Criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information. The term shall not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term shall not include criminal intelligence information or criminal investigative information.

(4) "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as fingerprint records, if the information does not indicate involvement of the person in the criminal justice system.

(5) "Criminal intelligence information" means information collected by a criminal justice agency with respect to an identifiable person or group in an effort to anticipate, prevent, or monitor possible criminal activity.

(6) "Criminal investigative information" means information about an identifiable person or group, compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators, informants, or any type of surveillance.

(7) "Record" means any and all documents, writings, computer memory, and microfilm, and any other form in which facts are memorialized, irrespective of whether such record is an official record, public record, or admissible record or is merely a copy thereof.

(8) "Comparable ordinance violation" means a violation of an ordinance having all the essential elements of a statutory misdemeanor or felony.

(9) "Disposition" means details relating to the termination of an individual criminal defendant's relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions.

(10) "Criminal justice agency" means:

(a) A court; or

(b) The department; or

(c) Any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

(11) "Dissemination" means the transmission of information, whether orally or in writing.

(12) "Research or statistical project" means any program, project, or component the purpose of which is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. The term does not include intelligence, investigative, or other information-gathering activities in which information is obtained for purposes directly related to enforcement of the criminal laws.

(13) "Expunction of a criminal history record" means the court-ordered act of physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. ~~The process of expunction extends to all records, the continued existence of which would be contrary to the purpose of the expunction.~~

(14) "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.

(15) "Adjudicated guilty" means that a person has been found guilty and that the court has not withheld an adjudication of guilt.

(16) "Criminal intelligence information system" means a system, including the equipment, facilities, procedures, agreement, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal intelligence information.

(17) "Criminal investigative information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal investigative information.

(18) "Criminal history record" means any nonjudicial record maintained by a criminal justice agency containing criminal history information.

Section 2. Section 943.0581, Florida Statutes, is created to read:

943.0581 Administrative expunction.—Notwithstanding provisions of statutory law dealing generally with the preservation and destruction of public records, the department may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any nonjudicial record of arrest made contrary to law or by mistake.

Section 3. Section 943.0585, Florida Statutes, is created to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information. Any court of competent jurisdiction may order a criminal justice agency to expunge a

criminal history record, provided that the person who is the subject of the record complies with the requirements of this section; however, a criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041, where the defendant was found or pled guilty, without regard to whether adjudication was withheld, may not be expunged. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. Nothing in this section prevents the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any provision of statutory law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation.

2. Has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such an expunction to the best of his knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record provided that such person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment or information was not filed in the case.

2. That an indictment or information, if filed in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction.

3. That the criminal history record does not relate to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041, where the defendant was found or pled guilty without regard to whether adjudication was withheld.

(b) Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

(d) Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation.

(e) Has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.

(f) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.

(g) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(h) Is not required due to:

1. An indictment or information not having been filed by the appropriate state attorney or statewide prosecutor;

2. An indictment or information having been dismissed or nolle prosequi by the appropriate state attorney or statewide prosecutor; or

3. An indictment or information having been dismissed by a court of competent jurisdiction

to wait a minimum of 10 years prior to being eligible for an expunction of such record. Otherwise, such criminal history record must be sealed under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for at least 10 years before such record is eligible for expunction.

(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to expunge entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of an order to expunge which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to expunge. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. A cause of action does not arise against any criminal justice agency for failure to comply with an order to expunge when such order does not comply with the requirements of this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record that is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the

department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the events covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Health and Rehabilitative Services or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 39.076, s. 110.1127(3), s. 393.063(3), s. 394.455(20), s. 396.032(8), s. 397.021(8), s. 402.302(8), s. 402.313(3), s. 409.175(2)(h), s. 415.102(4), s. 415.103, or chapter 400; or

6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity which licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(c) It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Section 943.059, Florida Statutes, is created to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information. Any court of competent jurisdiction may order a criminal justice agency to seal a criminal history record, provided that the person who is the subject of the record complies with the requirements of this section; however, a criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041, where the defendant was found or pled guilty, without regard to whether adjudication was withheld, may not be sealed. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. Nothing in this section prevents the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any provision of statutory law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each petition to a court to seal a criminal history record is complete only when accompanied by:

- (a) A certificate of eligibility for sealing issued by the department pursuant to subsection (2).
- (b) The petitioner's sworn statement attesting that the petitioner:
 1. Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation.
 2. Has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the petition pertains.
 3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.
 4. Is eligible for such a sealing to the best of his knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

- (a) Has submitted to the department a certified copy of the disposition of the charge to which the petition to seal pertains.
- (b) Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.
- (c) Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation.
- (d) Has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the petition to seal pertains.
- (e) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.
- (f) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

(3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

- (a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.
- (b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to seal to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.
- (c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate

state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to seal entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. A cause of action does not arise against any criminal justice agency for failure to comply with an order to seal when such order does not comply with the requirements of this section.

(e) An order sealing a criminal history record pursuant to this section does not require that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record that is ordered sealed by a court of competent jurisdiction pursuant to this section is a nonpublic record available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., (a)4., (a)5., and (a)6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the events covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Health and Rehabilitative Services or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 39.076, s. 110.1127(3), s. 393.063(3), s. 394.455(20), s. 396.032(8), s. 397.021(8), s. 402.302(8), s. 402.313(3), s. 409.175(2)(h), s. 415.102(4), s. 415.103, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity which licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record.

(c) It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Section 943.058, Florida Statutes, as amended by chapter 90-208, Laws of Florida, is hereby repealed.

Section 6. This act shall take effect July 1, 1992.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to criminal history records; amending s. 943.045, F.S.; revising definitions; creating s. 943.0581, F.S.; revising provisions relating to administrative expunction of certain records; creating ss. 943.0585 and 943.059, F.S.; providing procedures for the court-ordered expunction and court-ordered sealing of criminal history records; prohibiting the court-ordered expunction and court-ordered sealing of certain criminal history records; providing for an application fee; providing penalties; repealing s. 943.058, F.S., relating to criminal history record expunction or sealing; providing an effective date.

On motion by Senator Grant, by two-thirds vote **CS for SB 120** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—27 Nays—3

RECONSIDERATION

On motion by Senator Johnson, the rules were waived and the Senate reconsidered the vote by which—

SB 814—A bill to be entitled An act relating to jurisdictional declaratory statements; amending s. 403.914, F.S.; providing for publishing in certain newspapers notice of proposed agency action; providing an effective date.

—passed as amended this day.

On motion by Senator Johnson, by two-thirds vote the Senate reconsidered the vote by which **SB 814** was read the third time.

On motion by Senator Johnson, the Senate reconsidered the vote by which **Amendment 1** as amended was adopted.

On motion by Senator Johnson, the Senate reconsidered the vote by which **Amendment 1A** was adopted.

Amendment 1A was withdrawn.

Senators Dantzler, Johnson and Myers offered the following amendment to **Amendment 1** which was moved by Senator Johnson and adopted:

Amendment 1D (with Title Amendment)—On page 7, strike all of lines 10-14 and insert:

(12) It shall be the intent of the Legislature that there be no further net loss of wetland functions resulting from permitted activities within the state. It is further the intent of the Legislature that permitted activities within the state minimize, to the maximum extent practicable, adverse impacts on wetlands. The Legislature finds that the establishment of mitigation banks is a valuable means of offsetting adverse impacts to functional wetlands resulting from dredge and fill and surface water management construction activities. Mitigation banks can be an effective means of achieving no further net loss of wetland functions from permitted construction activities within the state.

And the title is amended as follows:

In title, on page 8, line 7, after the semicolon (;) insert: providing legislative intent relating to loss of wetlands and the need for mitigation banking;

Amendment 1 as amended was adopted.

On motion by Senator Johnson, by two-thirds vote **SB 814** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—32 Nays—None

CS for SB 1686—A bill to be entitled An act relating to public assistance; providing for establishment of an electronic benefit transfer program; providing duties of the Department of Health and Rehabilitative Services; amending s. 409.325, F.S.; revising provisions and penalties relating to public assistance fraud; reenacting and amending s. 11.50, F.S., relating to the Division of Public Assistance Fraud, to incorporate the amendment to s. 409.325, F.S., in references thereto and to conform said section to the amendment; reenacting ss. 772.102(1)(a)2. and 895.02(1)(a)3., relating to criminal activity and racketeering activity, to incorporate the amendment to s. 409.325, F.S., in references thereto; creating s. 409.326, F.S.; providing administrative penalties, including dis-

qualification, for certain violations of the food stamp program by a recipient; providing procedure; creating s. 409.327, F.S.; providing administrative penalties, including license revocation, fines, and specified disqualifications for retailers engaging in a pattern of fraud in violation of the food stamp program; creating s. 409.328, F.S.; requiring specified annual reporting; providing for federal waivers; providing effective dates.

—was read the second time by title.

Senator McKay moved the following amendment:

Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. (1) The Department of Health and Rehabilitative Services shall establish, in one or more areas of the state, an electronic benefit transfer program for the dissemination of food stamp purchase authorization. The program may include authorization for other benefits as determined by the department.

(2) The department shall, in accordance with applicable federal laws and regulations, develop minimum program requirements and other policy initiatives for the electronic benefit transfer program, and shall submit to the U.S. Department of Health and Human Services and the U.S. Department of Agriculture the planning document for the implementation of the electronic benefit transfer program no later than December 31, 1992.

(3) To procure the necessary electronic equipment and technical support for the electronic benefit transfer program, the department shall, upon federal approval of the planning document pursuant to subsection (2), issue a request for proposal specifying the minimum components of the program.

Section 2. Effective October 1, 1992, section 409.325, Florida Statutes, is amended to read:

409.325 Fraud.—

(1) Any person who knowingly:

(a) Fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive aid or benefits under any state or federally funded assistance program, or

(b) Fails to disclose a change in circumstances in order to obtain or continue to receive under any such program aid or benefits to which he is not entitled or in an amount larger than that to which he is entitled,

or who knowingly aids and abets another person in the commission of any such act is guilty of a crime and shall be punished as provided in subsection (5).

(2) Any person who knowingly:

(a) Uses, transfers, acquires, traffics, alters, forges, or possesses, or

(b) Attempts to use, transfer, acquire, traffic, alter, forge, or possess, or

(c) Aids and abets another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of,

a food stamp, a food stamp identification card, an authorization, *including, but not limited to, an electronic authorization*, for the purchase of food stamps, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law is guilty of a crime and shall be punished as provided in subsection (5). For the purposes of this section, the value of an authorization to purchase food stamps shall be the difference between the coupon allotment and the amount paid by the recipient for that allotment.

(3) Any person having duties in the administration of a state or federally funded assistance program or in the distribution of benefits, or authorizations or identifications to obtain benefits, under a state or federally funded assistance program and who:

(a) Fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of, a food stamp, an authorization for food stamps, a food stamp identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or assistance from any other state or federally funded program with which he has been entrusted or of which he has gained possession by virtue of his position, or who knowingly fails to disclose any such fraudulent activity, or

(b) Knowingly misappropriates, attempts to misappropriate, or aids or abets in the misappropriation of, funds given in exchange for food stamps or for any form of food stamp benefits authorization,

is guilty of a crime and shall be punished as provided in subsection (5).

(4) Any person who:

(a) Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of benefits under any state or federally funded assistance program for services which were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or knowingly bills the recipient of benefits under such a program, or his family, for an amount in excess of that provided for by law or regulation, or

(b) Knowingly fails to credit the state or its agent for payments received from social security, insurance, or other sources, or

(c) In any way knowingly receives, attempts to receive, or aids and abets in the receipt of, unauthorized payment or other benefit or authorization or identification to obtain benefits as provided herein,

is guilty of a crime and shall be punished as provided in subsection (5).

(5)(a) If the value of the assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the value of the assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more in any 12 consecutive months, such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

(c) As used in this subsection, the value of a food stamp authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act committed in violation of this section.

(d) As used in this section, "fraud" includes the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the intentional or deliberate alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets.

(e) In addition to the penalties in paragraphs (a) and (b), violations of this section are punishable under ss. 409.326 and 409.327.

(6) Any person providing service for which compensation is paid under any state or federally funded assistance program who solicits, requests, or receives, either actually or constructively, any payment or contribution through a payment, assessment, gift, devise, bequest or other means, whether directly or indirectly, from either a recipient of assistance from such assistance program or from the family of such a recipient shall notify the Department of Health and Rehabilitative Services, on a form provided by the department, of the amount of such payment or contribution and of such other information as specified by the department, within 10 days after the receipt of such payment or contribution or, if said payment or contribution is to become effective at some time in the future, within 10 days of the consummation of the agreement to make such payment or contribution. Failure to notify the department within the time prescribed is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Repayment of assistance or services or return of authorization or identification wrongfully obtained shall not constitute a defense to, or ground for dismissal of, criminal charges brought under this section.

(8)(a) The introduction into evidence of a paid state warrant made to the order of the defendant shall be prima facie evidence that the defendant did receive assistance from the state.

(b) The introduction into evidence of a bar-coded receipt establishing a purchase by electronic benefit transfer withdrawal is prima facie evidence that the identified recipient received assistance from the state.

(9) All records relating to investigations of public assistance fraud in the custody of the Department of Health and Rehabilitative Services are available for examination by the Division of Public Assistance Fraud of the office of the Auditor General pursuant to s. 11.50 and are admissible into evidence in proceedings brought under this section as business records within the meaning of s. 90.803(6) 92.36.

Section 3. Section 11.50, Florida Statutes, is reenacted and amended to read:

11.50 Division of Public Assistance Fraud.—

(1)(a) The Auditor General shall investigate, on his own initiative or when required by the Legislative Auditing Committee, public assistance made under the provisions of chapter 409. In the course of such investigation the Auditor General shall examine all records, including electronic benefits transfer records and make inquiry of all persons who may have knowledge as to any irregularity incidental to the disbursement of public moneys, food stamps, or other items or benefits authorizations to recipients.

(b) All public assistance recipients, as a condition precedent to qualification for assistance under the provisions of chapter 409, shall first give in writing, to the Department of Health and Rehabilitative Services and to the Division of Public Assistance Fraud, consent to make inquiry of past or present employers and records, financial or otherwise.

(2) In the conduct of such investigation the Auditor General may employ persons having such qualifications as are useful in the performance of this duty, and those individuals shall be assigned to the Division of Public Assistance Fraud which is hereby created within the office of the Auditor General.

(3) The results of such investigation shall be reported by the Auditor General to the Legislative Auditing Committee and the Department of Health and Rehabilitative Services and to such others as that committee or the Auditor General may determine.

(4) The Department of Health and Rehabilitative Services shall report to the Auditor General the final disposition of all cases wherein action has been taken pursuant to s. 409.325, based upon information furnished by the Division of Public Assistance Fraud.

(5) All lawful fees and expenses of officers and witnesses, expenses incident to taking testimony and transcripts of testimony and proceedings requested by the Legislative Auditing Committee or the Auditor General shall be a proper charge to the appropriation of the Auditor General. All payments for these purposes shall be on vouchers approved by the Auditor General.

(6) The provisions of this section shall be liberally construed in order to carry out effectively the purposes of this section in the interest of protecting public moneys and other public property.

Section 4. For the purpose of incorporating the amendment to section 409.325, Florida Statutes, in references thereto, the subdivisions of Florida Statutes set forth below are reenacted to read:

772.102 Definitions.—As used in this chapter, the term:

(1) "Criminal 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:

2. Section 409.325, relating to public assistance fraud.

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:

3. Section 409.325, relating to public assistance fraud.

Section 5. Section 409.326, Florida Statutes, is created to read:

409.326 Violation of food stamp program by recipient; administrative penalties.—

(1) The department shall establish, in accordance with federal laws and regulations, procedures for referral to the Office of the Auditor General, Division of Public Assistance Fraud, of any case involving violation of federal or state laws, rules, or regulations governing the administration of the food stamp program.

(2) A person who violates s. 409.325 or who otherwise violates the requirements of the food stamp program by knowingly and intentionally:

- (a) Exchanging a food stamp or food stamp benefit authorization for currency;
- (b) Exchanging a food stamp or food stamp benefit authorization for an alcoholic beverage;
- (c) Exchanging a food stamp or food stamp benefit authorization for a nonfood item;
- (d) Exchanging a food stamp or food stamp benefit authorization for a controlled substance, counterfeit controlled substance, or controlled substance analog;
- (e) Exchanging a food stamp or food stamp benefit authorization to engage in gambling;
- (f) Exchanging a food stamp or food stamp benefit authorization for the procurement of a prostitute; or
- (g) Exchanging a food stamp or food stamp benefit authorization for any other unauthorized purpose as defined by federal or state law, rule, or regulation,

is, in addition to any criminal penalties which may be imposed, disqualified from participating in the food stamp program for a minimum of 5 years and a maximum of 20 years.

(3)(a) Pursuant to an administrative proceeding conducted in accordance with chapter 120, s. 409.285, and applicable federal regulation, the department must issue and serve a complaint stating charges upon any person who the department has reasonable cause to believe is engaging or has engaged in conduct that is a violation of any provision of this section or s. 409.325.

(b) A final order of administrative disqualification pursuant to this section is subject to judicial review in accordance with s. 120.68.

Section 6. Section 409.327, Florida Statutes, is created to read:

409.327 Violation of food stamp program by retail food store; administrative penalties.—

(1) In accordance with federal law and regulations, the department shall establish procedures to notify the Food and Nutrition Service of the U.S. Department of Agriculture and the appropriate state regulatory agencies of failure by a retail food store to comply with the provisions of the Food Stamp Act and applicable federal regulations.

(2) Upon receipt of notification from the department, pursuant to subsection (1), of a retailer's failure to comply with the Food Stamp Act, the appropriate state regulatory agency shall, if it determines that a pattern of fraud exists, institute proceedings for the suspension or revocation of the retailer's license or permit to do business, and any applicable contract held by the retailer, as well as for the imposition of allowable fines. "Pattern of fraud," as used in this section, means at least two incidents of fraud that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, if the last of such incidents occurred within 5 years after a prior incident of fraud. The term "activity" does not include two or more incidents of fraudulent conduct arising out of a single episode or transaction against one or more related persons.

(3) A retailer determined by an administrative proceeding or court of appropriate jurisdiction to have engaged in a pattern of fraud is prohibited for a period of not less than 10 years from:

- (a) Securing a food permit;
- (b) Selling or promoting lottery tickets; or
- (c) Securing a license to sell or distribute alcoholic beverages.

Section 7. Section 409.328, Florida Statutes, is created to read:

409.328 Annual report concerning administrative complaints and disciplinary actions involving food stamp program violations.—The department is directed to prepare and submit a report to the President of the Senate, the Speaker of the House of Representatives, the chairs of the legislative Health and Rehabilitative Services committees, and the Division of Public Assistance Fraud by January 1 of each year, beginning in 1993. In addition to any other information the Legislature may require, the report must include statistics and relevant information detailing:

- (1) The number of complaints received and investigated.
- (2) The number of findings of probable cause made.
- (3) The number of findings of no probable cause made.
- (4) The number of administrative complaints filed.
- (5) The disposition of all administrative complaints.
- (6) The number of criminal complaints brought under s. 409.325, and their disposition.
- (7) The status of the development and implementation of rules governing the electronic benefits transfer program, including any recommendations for statutory changes.

Section 8. The Department of Health and Rehabilitative Services may request federal waivers as necessary to implement any provision of this act.

Section 9. It is cause for dismissal of an employee of the Department of Health and Rehabilitative Services if the employee knowingly and willfully allows an ineligible person to obtain public assistance.

Section 10. The Department of Health and Rehabilitative Services may, by rule, determine retail items not purchasable with food stamp coupons or access cards.

Section 11. Except as otherwise provided herein, this act shall take effect upon becoming a law.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to public assistance; providing for establishment of an electronic benefit transfer program; providing duties of the Department of Health and Rehabilitative Services; amending s. 409.325, F.S.; revising provisions and penalties relating to public assistance fraud; reenacting and amending s. 11.50, F.S., relating to the Division of Public Assistance Fraud, to incorporate the amendment to s. 409.325, F.S., in references thereto and to conform said section to the amendment; reenacting ss. 772.102(1)(a)2. and 895.02(1)(a)3., relating to criminal activity and racketeering activity, to incorporate the amendment to s. 409.325, F.S., in references thereto; creating s. 409.326, F.S.; providing administrative penalties, including disqualification, for certain violations of the food stamp program by a recipient; providing procedure; creating s. 409.327, F.S.; providing administrative penalties, including license revocation, fines, and specified disqualifications for retailers engaging in a pattern of fraud in violation of the food stamp program; creating s. 409.328, F.S.; requiring specified annual reporting; providing for federal waivers; providing that it is cause for dismissal of department employees knowingly to allow ineligible persons to obtain public assistance; authorizing the department to determine by rule retail items not purchasable with food stamp coupons or access cards; providing effective dates.

WHEREAS, the Department of Health and Rehabilitative Services and the Auditor General have identified \$4.5 million in false applications for food stamps in Florida, and

WHEREAS, current penalties do not deter the illegal trading and selling of food stamps for inappropriate goods and services, and

WHEREAS, government agencies are exploring an alternative access and delivery method called electronic benefit transfer (EBT) for delivering cash benefits, whereby recipients use automated teller machines (ATMs), point-of-sale (POS) terminals, and other electronic devices to withdraw their benefits, gaining access to the benefits by using a combination of a plastic access card with a magnetic stripe and a personal identification number (PIN), and

WHEREAS, electronic delivery of food stamp benefits enables eligible recipients, using electronic point-of-sale terminals at participating grocery stores, to shop with an electronic benefit transfer card instead of with coupons, and the Congress recently authorized the United States Department of Agriculture to offer state agencies electronic benefit transfer systems as an alternative method for delivering food stamp benefits, and

WHEREAS, an electronic benefit transfer system offers opportunities for improving the delivery service to recipients, maximizing the efficiency of operations at state agencies, and minimizing costs for all parties, while at the same time improving accountability and reducing fraud, and

WHEREAS, an electronic benefit transfer system is at the forefront of a rapidly changing technology and has tremendous potential for transforming a cumbersome paper-based system into a modern, less costly, and truly streamlined system, and

WHEREAS, in electronic benefit transfer programs that replace food stamp coupons with electronic delivery, depository institutions no longer have to be involved in the redemption of coupons and there is reduced need for check-cashing services and, thus, less risk of loss from fraud and stolen checks, and

WHEREAS, an eligible food stamp recipient's access card with personal identification number may also carry a photograph of the recipient and a signature panel, allowing the benefits terminal to communicate with an authorization center to ascertain that the recipient is eligible for benefits, that the card has not been reported lost or stolen, and that benefits are available, and to obtain authorization for food stamp benefits for food purchases, thus reducing benefits line congestion and fraudulent exchanges, and

WHEREAS, the electronic benefit transfer program for the distribution of food stamps and other benefits has, in areas where it has been implemented, proven to be popular with both benefits recipients and grocery retailers and a cost-effective approach to reducing the food stamp error rate as well as fraud, and

WHEREAS, it is the intent of the Legislature to reduce food stamp fraud by imposing penalties that are effective in deterring illegal uses of food stamps and to obtain the advantages of an electronic benefit transfer program to more efficiently and effectively distribute food stamps, NOW, THEREFORE,

Senator Bruner moved the following amendment to **Amendment 1** which was adopted:

Amendment 1A—On page 15, line 6, strike "may" and insert: shall

Senator Davis moved the following amendment to **Amendment 1** which was adopted:

Amendment 1B—On page 12, between lines 11 and 12, insert:

Section 9. The Department of Health and Rehabilitative Services shall implement electronic eligibility verification and adjudication of Medicaid pharmacy claims by October 1, 1992. If the department has not begun processing such transactions electronically by October 1, 1992, a written report documenting a plan of action to implement the program within 60 days shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(Renumber subsequent sections.)

Amendment 1 as amended was adopted.

On motion by Senator McKay, by two-thirds vote **CS for SB 1686** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—32 Nays—None

MOTION

On motion by Senator McKay, the rules were waived and **CS for SB 1686** was ordered immediately certified to the House.

SB 1770—A bill to be entitled An act relating to the H. Lee Moffitt Cancer Center and Research Institute; amending s. 240.512, F.S.; adding physicians to the representation on the council of scientific advisors for the center director; allowing council member to be reappointed; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendment which was moved by Senator Grant:

Amendment 1 (with Title Amendment)—On page 1, between lines 27 and 28, insert:

(7)(a) *Notwithstanding the provisions of s. 458.3145, a medical faculty certificate may be issued without examination to an individual who:*

1. *Is a graduate of an accredited medical school or its equivalent;*

3. *Meets the requirements of s. 458.311 (1)(a)-(f).*

(b) *The certificate shall authorize the holder to practice only in conjunction with his faculty position at the H. Lee Moffitt Cancer Center and Research Institute. Such certificate shall automatically expire at the end of two years unless extended after review by the Florida Board of Medicine and the Board of Regents.*

(c) *The recipient of a certificate may engage in the practice of medicine to the extent that such practice is a necessary part of his duties in connection with his position with the H. Lee Moffitt Cancer Center and Research Institute.*

(d) *The maximum number of certificateholders in any year may not exceed fifteen persons.*

And the title is amended as follows:

In title, on page 1, line 7, after the semicolon (;) insert: providing for the issuance of a medical faculty certificate to faculty at the H. Lee Moffitt Cancer Center and Research Institute; providing for the practice of medicine only in conjunction with duties at the center; limiting the number of persons at the center who may hold a medical faculty certificate to fifteen;

Senator Grant moved the following amendment to **Amendment 1** which was adopted:

Amendment 1A—On page 1, between lines 16 and 17, insert:

2. *Holds a valid, current license to practice medicine in another jurisdiction in the United States; and*

Amendment 1 as amended was adopted.

Senator Grant moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 1, between lines 27 and 28, insert:

Section 2. Section 385.201, Florida Statutes, is transferred, renumbered as section 240.5121, Florida Statutes, and is amended to read:

240.5121 ~~385.201~~ Cancer control and research.—

(1) **SHORT TITLE.**—This section shall be known and may be cited as the "Cancer Control and Research Act."

(2) **LEGISLATIVE INTENT.**—It is the finding of the Legislature that:

(a) Advances in scientific knowledge have led to the development of preventive and therapeutic capabilities in the control of cancer. Such knowledge and therapy must be made available to all citizens of this state through educational and therapeutic programs.

(b) The present state of our knowledge concerning the prevalence, cause or associated factors, and treatment of cancer have resulted primarily from a vast federal investment into basic and clinical research, some of which is expended in this state. These research activities must continue, but programs must be established to extend this knowledge in preventive measures and patient treatment throughout the state.

(c) Research in cancer has implicated the environment as a causal factor for many types of cancer, i.e. sunshine, X rays, diet, smoking, etc., and programs are needed to further document such cause and effect relationships. Proven causes of cancer should be publicized and be the subject of educational programs for the prevention of cancer.

(d) An effective cancer control program would mobilize the scientific, educational, and medical resources that presently exist into an intense attack against this dread disease.

(3) **DEFINITIONS.**—The following words and phrases when used in this section have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

(a) "Cancer" means all malignant neoplasms, regardless of the tissue of origin, including lymphoma and leukemia.

(b) "Council" means the Florida Cancer Control and Research Advisory Council, which is an advisory body appointed to function on a continuing basis for the study of cancer and which recommends solutions and policy alternatives to the *Board of Regents and the secretary* and which is established by this section.

(c) "Department" means the Department of Health and Rehabilitative Services.

(d)(e) "Fund" means the Florida Cancer Control and Research Fund established by this section.

(e)(d) "Qualified nonprofit association" means any association, incorporated or unincorporated, that has received tax-exempt status from the Internal Revenue Service.

(f)(e) "Secretary" means the Secretary of Health and Rehabilitative Services.

(4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL; CREATION; COMPOSITION.—

(a) There is created within the *H. Lee Moffitt Cancer Center and Research Institute* ~~Department of Health and Rehabilitative Services~~ the Florida Cancer Control and Research Advisory Council. The council shall consist of 29 ~~28~~ members, which includes the chairperson, all of whom must be residents of this state. All members except those appointed by the Speaker of the House of Representatives and the President of the Senate must be appointed by the Governor. At least one of the members appointed by the Governor must be 60 years of age or older. One member must be a representative of the American Cancer Society; one member must be a representative of the Florida Tumor Registrars Association; one member must be a representative of the *Sylvester Papanicolaou Comprehensive Cancer Center of the University of Miami State of Florida*; one member must be a representative of the Department of Health and Rehabilitative Services; one member must be a representative of the Florida Nurses Association; one member must be a representative of the Florida Osteopathic Medical Association; one member must be a representative of the American College of Surgeons; one member must be a representative of the School of Medicine of the University of Miami; one member must be a representative of the College of Medicine of the University of Florida; one member must be a representative of Southeastern College of Osteopathic Medicine; one member must be a representative of the College of Medicine of the University of South Florida; *one member must be a representative of the College of Public Health of the University of South Florida*; one member must be a representative of the Florida Society of Clinical Oncology; one member must be a representative of the Florida Obstetric and Gynecologic Society who has had training in the specialty of gynecologic oncology; one member must be a representative of the Florida Medical Association; one member must be a member of the Florida Pediatric Society; one member must be a representative of the Florida Radiological Society; one member must be a representative of the Florida Society of Pathologists; one member must be a representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; three members must be representatives of the general public acting as consumer advocates; one member must be a member of the House of Representatives appointed by the Speaker of the House; one member must be a member of the Senate appointed by the President of the Senate; one member must be a representative of the Department of Education; one member must be a representative of the Florida Dental Association; one member must be a representative of the Florida Hospital Association; one member must be a representative of the Association of Community Cancer Centers; and one member must be a representative of the Florida Association of Pediatric Tumor Programs, Inc.

(b) The terms of the members shall be 4 years from their respective dates of appointment.

(c) A chairperson shall be appointed by the Governor for a term of 2 years. The chairperson shall appoint an executive committee of no fewer than three persons to serve at the pleasure of the chairperson. This committee will prepare material for the council but make no final decisions.

(d) The council shall meet no less than semiannually at the call of the chairperson or, in his absence or incapacity, at the call of the secretary. Fourteen members constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present is sufficient for all actions of the council.

(e) The council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members shall be entitled to be reimbursed for per diem and travel expenses.

(f) No member of the council shall participate in any discussion or decision to recommend grants or contracts to any qualified nonprofit association or to any agency of this state or its political subdivisions with

which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.

(g) The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.

(h) The council shall advise *the Board of Regents*, the secretary, and the Legislature with respect to cancer control and research in this state.

(i) The council shall approve each year a program for cancer control and research to be known as the "Florida Cancer Plan" which shall be consistent with the State Health Plan developed by the Statewide Health Council and integrated and coordinated with existing programs in this state.

(j) The council shall formulate and recommend to the secretary a plan for the care and treatment of persons suffering from cancer and recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in this state. The council may recommend to the *Board of Regents and the secretary* the designation of cancer units following a survey of the needs and facilities for treatment of cancer in the various localities throughout the state. The secretary shall consider the plan in developing departmental priorities and funding priorities and standards under chapter 395.

(k) The council is responsible for including in the Florida Cancer Plan recommendations for the coordination and integration of medical, nursing, paramedical, lay, and other plans concerned with cancer control and research. Committees shall be formed by the council so that the following areas will be established as entities for actions:

1. Cancer plan evaluation: tumor registry, data retrieval systems, and epidemiology of cancer in the state and its relation to other areas.
2. Cancer prevention.
3. Cancer detection.
4. Cancer patient management: treatment, rehabilitation, terminal care, and other patient-oriented activities.
5. Cancer education: lay and professional.
6. Unproven methods of cancer therapy: quackery and unorthodox therapies.
7. Investigator-initiated project research.

(l) In order to implement in whole or in part the Florida Cancer Plan, the council shall recommend to the *Board of Regents or the secretary* the awarding of grants and contracts to qualified profit or nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.

(m) The council shall develop and prepare a standardized written summary, written in layman's terms and in language easily understood by the average adult patient, informing actual and high-risk breast cancer patients of the medically viable treatment alternatives available to them in the effective management of breast cancer; describing such treatment alternatives; and explaining the relative advantages, disadvantages, and risks associated therewith. Such summary, upon its completion, shall be printed in the form of a pamphlet or booklet and made continuously available to physicians and surgeons in this state for their use in accordance with s. 458.324 and to osteopathic physicians in this state for their use in accordance with s. 459.0125. The council shall periodically update the pamphlet to reflect current standards of medical practice in the treatment of breast cancer. The council shall develop and implement an educational program, including distribution of the pamphlet or booklet developed under this paragraph, to inform citizen groups, associations, and voluntary organizations about early detection and treatment of breast cancer.

(n) The council shall have the responsibility to advise the *Board of Regents and the secretary* on methods of enforcing and implementing laws already enacted and concerned with cancer control, research, and education.

(o) The council may recommend to the *Board of Regents or the secretary* rules not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of this section.

(p) The council shall formulate and put into effect a continuing educational program for the prevention of cancer and its early diagnosis and disseminate to hospitals, cancer patients, and the public information concerning the proper treatment of cancer.

(q) *The council shall be physically located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., at the University of South Florida.*

(r)(q) On February 15 of each year, the council shall report to the Governor and to the Legislature.

(5) RESPONSIBILITIES OF THE BOARD OF REGENTS, THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, AND THE SECRETARY.—

(a) The *Board of Regents or the secretary*, after consultation with the council, shall award grants and contracts to qualified nonprofit associations and governmental agencies in order to plan, establish, or conduct programs in cancer control and prevention, cancer education and training, and cancer research.

(b) The *H. Lee Moffitt Cancer Center and Research Institute secretary* shall provide such staff, information, and other assistance as the ~~secretary may deem~~ necessary for the completion of the responsibilities of the council.

(c) The *Board of Regents or the secretary*, after consultation with the council, may adopt rules necessary for the implementation of this section.

(d) The secretary, after consultation with the council, shall make rules specifying to what extent and on what terms and conditions cancer patients of the state may receive financial aid for the diagnosis and treatment of cancer in any hospital or clinic selected. The department may furnish to citizens of this state who are afflicted with cancer financial aid to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and may make arrangements with hospitals, laboratories, or clinics to afford proper care and treatment for cancer patients in this state.

(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.—

(a) There is created the Florida Cancer Control and Research Fund consisting of funds appropriated therefor from the General Revenue Fund and any gifts, grants, or funds received from other sources.

(b) The fund shall be used exclusively for grants and contracts to qualified nonprofit associations or governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of this section and the programs funded through the grants and contracts authorized by the *Board of Regents secretary*.

Section 3. The Department of Health and Rehabilitative Services shall provide for the orderly transfer of all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Florida Cancer Control and Research Advisory Council from the department to the H. Lee Moffitt Cancer Center and Research Institute, pursuant to section 20.06, Florida Statutes. It is the intent of the Legislature to preserve the integrity of the council's mission with respect to cancer control and epidemiology, including the statutory powers and duties of the council pursuant to section 240.5121, Florida Statutes.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 7, after the semicolon, insert: amending and renumbering s. 385.201, F.S.; providing for transfer of the Florida Cancer Control and Research Advisory Council from the department to the H. Lee Moffitt Cancer Center and Research Institute; adding a member to the council; providing for physical location of the council; providing legislative intent to preserve the mission of the council;

On motion by Senator Grant, by two-thirds vote **SB 1770** 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

MOTION

On motion by Senator Grant, the rules were waived and **SB 1770** was ordered immediately certified to the House.

REPORTS OF COMMITTEES

The Committee on Rules and Calendar submits the following bills to be placed on the Special Order Calendar for Thursday, March 5, 1992: CS for SB 610, SB 814, SB 972, CS for SB 2334, SB 444, CS for SB 1580, CS for SB 262, CS for HB 1925, SB 1816, CS for SB 1650, SB 1692, SB 1778, SB 1770, CS for SB 1766, SB 1762, SB 1790, SB 1582, SB 64, SB 348, CS for SB 968, CS for SB 1316, CS for SB 1476, SB 2160, CS for SB 2390, SB 1646, CS for SB 1730, SB 332, CS for SB 1688, CS for CS for SB 1614, CS for CS for SB 1078, CS for SB 336, SB 700, CS for CS for SB 294, SB 706, SB 750, CS for SB 782, CS for SB 90, SB 896, SB 1094, CS for SB 1686, CS for SB 1864, SB 1806, SB 516, SB 746, CS for SB 602, CS for SB 120, SB 100, SB 1824

Respectfully submitted,
Pat Thomas, Chairman

The Committee on Finance, Taxation and Claims recommends the following pass: CS for HB 91, SB 1108, CS for SB 1296 with 1 amendment, SB 2336 with 1 amendment

The bills were referred to the Committee on Appropriations under the original reference.

The Committee on Appropriations recommends the following pass: SB 1390 with 5 amendments

The bill was referred to the Committee on Rules and Calendar under the original reference.

The Committee on Appropriations recommends the following pass: CS for SB 376, SB 542, CS for SB 586, SB 764, CS for SB 820 with 1 amendment, CS for CS for SB 1014 with 5 amendments, SB 1098 with 1 amendment, SB 1274, SB 1314, CS for SB's 1342 and 920 with 4 amendments, CS for SB 1536 with 1 amendment, CS for SB 2026 with 1 amendment, CS for SB 2030, CS for SB 2056 with 6 amendments, SB 2224 with 4 amendments, CS for SB 2416 with 2 amendments

The Committee on Finance, Taxation and Claims recommends the following pass: CS for HB 89, CS for HB 601, CS for HB 1011, HB 1065, CS for HB 1111, CS for HB 1419 with 1 amendment, HB 2203, HB 2219, CS for SB 1736, SB 2178, SB 2226

The bills contained in the foregoing reports were placed on the calendar.

The Committee on Professional Regulation recommends committee substitutes for the following: SB 1444, SB 1988

The bills with committee substitutes attached were referred to the Committee on Appropriations under the original reference.

The Committee on Professional Regulation recommends a committee substitute for the following: Senate Bills 264 and 2276

The bills with committee substitute attached were referred to the Committee on Health and Rehabilitative Services under the original reference.

The Committee on Professional Regulation recommends a committee substitute for the following: SB 642

The bill with committee substitute attached was placed on the calendar.

INTRODUCTION AND REFERENCE OF BILLS

FIRST READING

SR 2508 was introduced out of order and adopted March 3.

SB 2510 was introduced out of order and referenced March 4.

SB 2512 was introduced out of order and referenced March 4.

By Senator Langley—

SB 2514—A bill to be entitled An act relating to Lake County; providing for liens in favor of operators of hospitals in that county, or in favor of governmental agencies paying for hospital charges or medical treatment of individuals in that county, upon causes of actions, suits, claims, counterclaims, and demands accruing to patients therein, or their legal representatives, and upon judgments, settlements, and settlement agreements, on account of illnesses or injuries of such patients, for all reasonable charges for hospital care, treatment, and maintenance necessitated by such illnesses or injuries; providing a method of perfecting and enforcing such liens; providing for recovery of costs, including attorney's fees, and where suits thereon may be maintained; requiring claims of lien to be recorded; providing for fees for the recording of claims of lien; providing that a release or satisfaction is not valid against the lien unless the lienholder joins therein or executes a release thereof; providing that acceptance of a release or satisfaction of any cause of action, suit, claim, counterclaim, demand, or judgment and any settlement, in the absence of a release or satisfaction of lien, prima facie constitutes impairment of such lien, and giving the lienholder a right of action for damages on account of such impairment, and providing for recovery from one accepting release or satisfaction or making settlement; prohibiting recovery of damages for hospital care, treatment, and maintenance unless the claimant therefor has paid the costs thereof except in certain cases; providing for intervention by the lienholder and verdict and judgment in favor of the lienholder in certain cases; exempting from provisions of this act matters within the purview of the Workers' Compensation Law; providing severability; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

COMMITTEE SUBSTITUTES

FIRST READING

By the Committee on Professional Regulation and Senators Weinstein, Forman, Thurman, Weinstock and Wexler—

CS for SB's 264 and 2276—A bill to be entitled An act relating to Medicare beneficiaries; specifying that certain treatment providers may refuse to treat a Medicare beneficiary; requiring treatment providers to accept Medicare assignment for certain emergencies; requiring the acceptance of assignment for a beneficiary referred by a primary physician who accepts assignment for that beneficiary, unless the beneficiary otherwise consents in writing; restricting the amount of payment a physician who accepts such referral may attempt to collect from the beneficiary; providing an effective date.

By the Committee on Judiciary and Senator Gardner—

CS for SB 452—A bill to be entitled An act relating to dependent children; amending s. 39.01, F.S.; revising the definition of the term "abandoned" for the purposes of proceedings relating to juveniles; providing an effective date.

By the Committee on Professional Regulation and Senator Souto—

CS for SB 642—A bill to be entitled An act relating to secondary metals recyclers; amending s. 538.26, F.S.; prohibiting a secondary metals recycler from purchasing regulated metals property unless the seller meets specified criteria; amending s. 538.23, F.S.; providing a penalty for a secondary metals recycler who purchases regulated metals property when the seller does not meet specified criteria; providing an effective date.

By the Committee on Professional Regulation and Senator Thurman—

CS for SB 1444—A bill to be entitled An act relating to consumer protection; creating s. 501.143, F.S.; creating the "Dance Studio Act"; providing definitions; providing for the registration of ballroom dance studios with the Department of Agriculture and Consumer Services; providing fees; providing contract requirements; providing bonding requirements; providing for prohibited practices; providing penalties and remedies; providing criminal penalties; providing for payments into the Consumer Protection Trust Fund; providing for enforcement by the customer; providing exemptions; providing for rules; creating s. 570.5441, F.S.; creating the Consumer Protection Trust Fund in the Division of Consumer Services; specifying moneys to be deposited into the fund and its uses; providing an effective date.

By the Committee on Professional Regulation and Senator Kirkpatrick—

CS for SB 1988—A bill to be entitled An act relating to professional regulation; amending s. 458.311, F.S.; modifying and continuing requirements for licensure of foreign medical graduates by examination; amending ss. 458.313, 458.317, F.S.; revising requirements for licensure by endorsement and limited licenses to practice medicine; amending s. 458.3145, F.S.; revising requirements for a medical faculty certificate; amending s. 458.327, F.S.; clarifying penalties for practicing medicine without a license or with an inactive license; amending s. 458.345, F.S., relating to registration of resident physicians, interns, and fellows; creating ss. 458.3095, 459.0051, F.S.; directing the Board of Medicine to provide, by rule, that out-of-state licensed physicians and osteopathic physicians employed or designated by sports entities visiting for specific events in the state be exempt from the state's licensing requirements under certain circumstances; amending s. 459.003, F.S.; renaming the Board of Osteopathic Medical Examiners as the Board of Osteopathic Medicine; amending ss. 20.30, 395.012, 395.1015, 440.37, 455.213, 458.335, 459.004, 459.0075, 465.186, 766.314, 817.234, F.S., to conform; amending ss. 459.006, 459.007, 459.0092, F.S.; updating the name of the National Board of Osteopathic Medical Examiners; amending s. 459.021, F.S.; requiring registration of resident osteopathic physicians, interns, and fellows; providing a fee; providing for annual renewal; providing for termination upon issuance of a license to practice osteopathic medicine; requiring hospitals to furnish a list of employees; providing penalties; amending s. 459.022, F.S.; extending the period for notification of employment as an osteopathic physician assistant; amending s. 460.406, F.S.; modifying procedures for licensure of chiropractors by examination; amending s. 460.413, F.S.; revising a ground for disciplinary action by the Board of Chiropractic; amending s. 464.008, F.S.; deleting a requirement relating to licensure by examination; amending s. 465.0276, F.S.; increasing the registration fee for a practitioner who dispenses medicinal drugs; amending s. 466.004, F.S.; providing for meetings of the Council on Dental Hygiene; amending s. 466.007, F.S.; providing for examination of certain dental hygienists; creating s. 466.008, F.S.; providing procedure for certification of certain foreign dental schools; providing for fees and for costs and expenses; amending s. 466.025, F.S.; authorizing the department to issue temporary certificates to dentists to practice in certain facilities; amending s. 468.1125, F.S.; modifying definition of "direct supervision" in the practice of speech-language pathology and audiology; amending s. 468.1155, F.S.; modifying requirements for provisional licenses; amending s. 468.1175, F.S.; amending provisions relating to examination; amending s. 468.1225, F.S.; revising provisions relating to procedures and equipment used in such practice; amending s. 468.1245, F.S.; requiring a contract in the purchase of a hearing aid; amending s. 468.1265, F.S., relating to sale of hearing aids through the mail; amending s. 468.203, F.S.; correcting terminology; amending s. 474.203, F.S.; revising provisions relating to exemptions; amending s. 474.217, F.S.; revising provisions relating to licensure by endorsement; amending s. 490.005, F.S.; increasing the maximum fee for licensure as a psychologist by examination; amending s. 490.007, F.S.; increasing the maximum license renewal fee for a psychologist or school psychologist; amending s. 490.0085, F.S.; increasing the maximum fee for approval of continuing education providers; amending s. 490.009, F.S., and creating s. 490.0148, F.S.; clarifying provisions relating to discipline, and establishing recordkeeping requirements, for psychologists and school psychologists; amending s. 490.012, F.S.; revising provisions relating to psychologists and school psychologists; amending s. 490.014, F.S.; revising provisions relating to exemption from licensure; amending s. 490.0121, F.S.; providing for private-sector practice by licensed school psychologists under certain circumstances; amending ss. 490.0141, 491.0141, F.S., relating to the practice of hypnosis by psychologists and psychotherapists; amending s. 491.012, F.S.; revising provisions relating to unlawful practice of clinical social work, marriage and family therapy, and mental health counseling; amending s. 491.014, F.S.; revising provisions relating to exemption from licensure; amending s. 491.035, F.S.; revising experience requirement for certain applicants; amending s. 877.04, F.S.; providing an exception to the prohibition against tattooing; providing consent requirements for tattooing certain persons; directing the Health Care Cost Containment Board to conduct a study of drug prices; requiring a report; repealing ss. 458.322, 459.0095, 460.4095, 461.0074, 499.037, F.S., relating to Medicare assignments, participation in the Medicare program, and manufacture, distribution, delivery, possession, sale, use, regulation, and inspection of laetrile; providing effective dates.

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 as amended CS for HB 1711 and requests the concurrence of the Senate.

John B. Phelps, Clerk

By the Committee on Insurance and Representatives C. F. Jones and Mims—

CS for HB 1711—A bill to be entitled An act relating to continuing care facilities; amending s. 651.085, F.S.; revising provisions pertaining to quarterly meetings between the residents of such a facility and the governing body or designated representative of the facility; providing for representation of the residents of such a facility before the governing body of the provider by a resident elected by the residents; amending s. 651.022, F.S.; deleting certain requirements of feasibility studies for provisional certificates of authority; amending s. 651.023, F.S.; requiring an independent feasibility study from holders of provisional certificates of authority; amending s. 651.026, F.S.; requiring certain financial information in certain annual statements; requiring the Department of Insurance to adopt certain financial viability measures by rule; requiring the department to provide certain information as to provider financial statements; amending s. 651.095, F.S.; revising certain provisions relating to advertisements for continuing care contracts; amending s. 651.119, F.S.; limiting the department's authority to levy pro rata assessments against providers for certain moving expenses; amending s. 651.121, F.S.; specifying qualifications of certain members of the Continuing Care Advisory Council; amending s. 651.125, F.S.; providing for application of certain enforcement provisions to applicants for provisional certificates of authority; repealing s. 651.055(8), F.S., relating to exemptions for continuing care contracts; repealing s. 651.119(8), F.S., relating to repeal of s. 651.119, F.S., by a date certain; providing penalties; providing an effective date.

—was referred to the Committee on Health and Rehabilitative Services.

RETURNING MESSAGES ON SENATE BILLS

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 SB 208, with an additional amendment, and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 208—A bill to be entitled An act relating to probation; amending s. 948.04, F.S.; providing for defendants placed on probation or community control for committing sexual battery or child abuse to be subject to the maximum level of supervision for the full term of probation or community control; providing an effective date.

House Amendment 2 (with Title Amendment)—On page 1, between lines 25-26, insert:

Section 2. Subsection (2) of section 944.605, Florida Statutes, is amended to read:

944.605 Inmate release; notice by Department of Corrections, Control Release Authority, or Parole Commission.—

(2) Within 120 days 90 days prior to the anticipated release of an inmate under subsection (1), *except for an inmate pursuant to s. 944.606*, an exit photo of the inmate to be released shall be taken and placed in the inmate's file.

Section 3. Section 944.606, Florida Statutes, is created to read:

944.606 Sex offender; notification upon release.—

(1) The Legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. Persons found to have committed a sex offense described in subsection (2) have a reduced expectation of privacy

because of the public's interest in public safety and in the effective operation of government. Release of information about sexual offenders described in subsection (2) to public agencies will further the governmental interests of public safety.

(2)(a) The department, the Parole Commission, and the Control Release Authority shall submit the information about any sex offender as provided by this section to the sheriff of the county from which the person was sentenced, to the sheriff of the county in which the person plans to reside and, if applicable, to the chief of police of the municipality in which the inmate plans to reside. The information shall be submitted for any sex offender who is being released after having served one or more sentences for a felony conviction of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, or a prior conviction for a similar offense in this state or another jurisdiction if such prior conviction information is contained in department records.

(b) The information shall include, but not be limited to: the offender's name, social security number, race, sex, date of birth, height, weight, and hair and eye color; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints and a photograph taken within 90 days of release; and the offender's intended residence address, if known. The department, the Parole Commission, or the Control Release Authority shall release this information within 6 months prior to the discharge from the custody of the department.

Section 4. Subsection (2) of section 947.177, Florida Statutes, is amended to read:

947.177 Inmate release; notice by Department of Corrections, Control Release Authority, or Parole Commission.—

(2) Within 120 days 90 days prior to the anticipated release of an inmate, *except for an inmate pursuant to s. 944.606, on parole*, an exit photo of the inmate to be released shall be taken and placed in the inmate's file.

(Renumber subsequent section.)

And the title is amended as follows:

On page 1, line 8, after the “;” insert: amending s. 944.605, F.S., relating to exit photos; providing an exception; creating s. 944.606, F.S.; providing legislative findings; providing for release of certain information to law enforcement officers within 6 months prior to release of sex offenders; amending s. 947.177, F.S.; providing for an exit photo within a certain time period;

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

SB 208 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—22 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 1148 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1148—A bill to be entitled An act relating to the Carrie P. Meek Florida Women's Hall of Fame; providing intent; providing establishment and location; providing for reinstatement of original members and for selection of new members; providing an effective date.

House Amendment 1—On page 1, in the title, line 2, strike “Carrie P. Meek”

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

CS for SB 1148 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

RETURNING MESSAGES—FINAL ACTION

The Honorable Gwen Margolis, President

I am directed to inform the Senate that the House of Representatives has passed SB 1572.

John B. Phelps, Clerk

The bill contained in the foregoing message was ordered enrolled.

ROLL CALLS ON SENATE BILLS

SB 64

Yeas—35

Madam President	Dantzler	Jenne	Scott
Bankhead	Davis	Jennings	Souto
Beard	Diaz-Balart	Johnson	Thomas
Bruner	Dudley	Kirkpatrick	Thurman
Burt	Forman	Kurth	Walker
Casas	Gardner	Langley	Weinstock
Childers	Gordon	McKay	Wexler
Crenshaw	Grant	Meek	Yancey
Crotty	Grizzle	Myers	

Nays—None

Vote after roll call:

Yea—Kiser, Malchon

CS for SB 90

Yeas—32

Madam President	Crotty	Grant	McKay
Bankhead	Dantzler	Grizzle	Meek
Beard	Davis	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Scott
Burt	Dudley	Kiser	Souto
Casas	Forman	Kurth	Thomas
Childers	Gardner	Langley	Thurman
Crenshaw	Gordon	Malchon	Walker

Nays—None

Vote after roll call:

Yea—Kirkpatrick, Plummer, Yancey

CS for SB 120

Yeas—27

Madam President	Crotty	Jennings	Meek
Bankhead	Davis	Kirkpatrick	Plummer
Bruner	Diaz-Balart	Kiser	Thomas
Burt	Dudley	Kurth	Thurman
Casas	Gardner	Langley	Walker
Childers	Grant	Malchon	Yancey
Crenshaw	Grizzle	McKay	

Nays—3

Beard	Johnson	Souto
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Vote after roll call:

Yea—Myers

Nay to Yea—Souto

SB 208

Yeas—22

Madam President	Dantzler	Kurth	Plummer
Beard	Diaz-Balart	Langley	Scott
Bruner	Dudley	Malchon	Souto
Burt	Grizzle	McKay	Thurman
Childers	Jennings	Meek	
Crotty	Johnson	Myers	

Nays—None

Vote after roll call:

Yea—Bankhead, Grant, Kirkpatrick

CS for SB 262—Amendment 4

Yeas—24

Bankhead	Crenshaw	Grant	Scott
Beard	Davis	Jennings	Souto
Bruner	Diaz-Balart	Kirkpatrick	Thomas
Burt	Dudley	Langley	Thurman
Casas	Gardner	McKay	Walker
Childers	Girardeau	Myers	Yancey

Nays—10

Madam President	Jenne	Plummer	Wexler
Dantzler	Johnson	Weinstein	
Forman	Meek	Weinstock	

Vote after roll call:

Yea—Kurth

Nay—Malchon

CS for SB 262

Yeas—17

Bankhead	Dudley	Kiser	Walker
Beard	Gardner	Langley	Yancey
Bruner	Girardeau	McKay	
Crenshaw	Jennings	Plummer	
Crotty	Kirkpatrick	Thomas	

Nays—20

Madam President	Davis	Johnson	Souto
Burt	Diaz-Balart	Kurth	Thurman
Casas	Forman	Meek	Weinstein
Childers	Grant	Myers	Weinstock
Dantzler	Jenne	Scott	Wexler

Vote after roll call:

Nay—Malchon

Yea to Nay—Dudley

SB 268

Yeas—36

Madam President	Davis	Jennings	Plummer
Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Bruner	Forman	Kiser	Thomas
Burt	Gardner	Kurth	Thurman
Casas	Girardeau	Langley	Walker
Childers	Grant	Malchon	Weinstock
Crotty	Grizzle	McKay	Wexler
Dantzler	Jenne	Myers	Yancey

Nays—None

CS for CS for SB 294

Yeas—30

Madam President	Diaz-Balart	Kiser	Souto
Beard	Dudley	Kurth	Thomas
Bruner	Forman	Malchon	Thurman
Burt	Gardner	McKay	Walker
Casas	Grant	Meek	Weinstein
Childers	Grizzle	Myers	Yancey
Crotty	Johnson	Plummer	
Davis	Kirkpatrick	Scott	

Nays—None

Vote after roll call:

Yea—Langley

CS for SB 336

Yeas—34

Madam President	Davis	Johnson	Scott
Bankhead	Diaz-Balart	Kirkpatrick	Souto
Beard	Dudley	Kiser	Thomas
Bruner	Forman	Kurth	Thurman
Burt	Gardner	Langley	Walker
Casas	Grant	Malchon	Weinstein
Childers	Grizzle	Meek	Yancey
Crenshaw	Jenne	Myers	
Crotty	Jennings	Plummer	

Nays—None

SB 444

Yeas—37

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

Nays—None

SB 516

Yeas—26

Madam President	Diaz-Balart	Kiser	Souto
Beard	Dudley	Kurth	Thomas
Bruner	Forman	Malchon	Walker
Burt	Grant	McKay	Weinstein
Casas	Grizzle	Meek	Yancey
Crotty	Johnson	Myers	
Davis	Kirkpatrick	Scott	

Nays—None

Vote after roll call:

Yea—Childers, Langley, Plummer

CS for SB 602

Yeas—36

Madam President	Davis	Jennings	Myers
Bankhead	Diaz-Balart	Johnson	Plummer
Beard	Dudley	Kirkpatrick	Scott
Bruner	Forman	Kiser	Souto
Burt	Gardner	Kurth	Thomas
Casas	Gordon	Langley	Thurman
Childers	Grant	Malchon	Walker
Crenshaw	Grizzle	McKay	Weinstein
Crotty	Jenne	Meek	Yancey

Nays—None

CS for SB 602—After Reconsideration

Yeas—32

Madam President	Davis	Jennings	Myers
Beard	Diaz-Balart	Johnson	Plummer
Bruner	Dudley	Kirkpatrick	Scott
Burt	Forman	Kiser	Souto
Casas	Gardner	Kurth	Thomas
Childers	Gordon	Malchon	Thurman
Crenshaw	Grant	McKay	Walker
Crotty	Grizzle	Meek	Yancey

Nays—None

Vote after roll call:

Yea—Langley, Plummer

SB 700

Yeas—26

Madam President	Dantzler	Jennings	Scott
Bankhead	Davis	Johnson	Souto
Beard	Diaz-Balart	Kurth	Thurman
Bruner	Dudley	Langley	Walker
Burt	Forman	McKay	Yancey
Casas	Gardner	Meek	
Crotty	Grizzle	Plummer	

Nays—None

Vote after roll call:

Yea—Childers, Grant, Kirkpatrick

SB 706

Yeas—29

Madam President	Dantzler	Johnson	Scott
Bankhead	Davis	Kurth	Souto
Beard	Diaz-Balart	Langley	Thurman
Bruner	Dudley	Malchon	Walker
Burt	Forman	McKay	Yancey
Casas	Gardner	Meek	
Childers	Grizzle	Myers	
Crotty	Jennings	Plummer	

Nays—None

Vote after roll call:

Yea—Grant, Kirkpatrick, Thomas

SB 750

Yeas—30

Madam President	Davis	Jennings	Plummer
Bankhead	Diaz-Balart	Johnson	Souto
Beard	Dudley	Kiser	Thurman
Bruner	Forman	Kurth	Walker
Burt	Gardner	Malchon	Weinstein
Casas	Gordon	McKay	Yancey
Childers	Grant	Meek	
Crotty	Grizzle	Myers	

Nays—1

Langley

Vote after roll call:

Yea—Kirkpatrick

SB 814

Yeas—34

Madam President	Dantzler	Johnson	Plummer
Bankhead	Davis	Kirkpatrick	Scott
Beard	Diaz-Balart	Kiser	Souto
Bruner	Dudley	Kurth	Thomas
Burt	Forman	Langley	Thurman
Casas	Gardner	Malchon	Walker
Childers	Grant	McKay	Yancey
Crenshaw	Grizzle	Meek	
Crotty	Jennings	Myers	

Nays—None

SB 814—After Reconsideration

Yeas—32

Madam President	Crotty	Jennings	Meek
Bankhead	Davis	Johnson	Myers
Beard	Diaz-Balart	Kirkpatrick	Scott
Bruner	Dudley	Kiser	Souto
Burt	Forman	Kurth	Thomas
Casas	Gardner	Langley	Thurman
Childers	Grant	Malchon	Walker
Crenshaw	Grizzle	McKay	Yancey

Nays—None

Vote after roll call:

Yea—Plummer

SB 896

Yeas—24

Madam President	Davis	Grizzle	Myers
Burt	Diaz-Balart	Jennings	Plummer
Casas	Dudley	Johnson	Souto
Childers	Gardner	Kurth	Thomas
Crenshaw	Gordon	Malchon	Thurman
Crotty	Grant	Meek	Walker

Nays—5

Bankhead	Bruner	McKay
Beard	Dantzler	

Vote after roll call:

Yea—Kiser, Yancey

CS for SB 968

Yeas—40

Madam President	Davis	Jennings	Plummer
Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Bruner	Forman	Kiser	Thomas
Burt	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

CS for CS for SB 1078

Yeas—32

Madam President	Dantzler	Johnson	Plummer
Bankhead	Davis	Kiser	Scott
Beard	Diaz-Balart	Kurth	Souto
Bruner	Dudley	Langley	Thomas
Burt	Gardner	Malchon	Thurman
Casas	Grizzle	McKay	Walker
Childers	Jenne	Meek	Wexler
Crotty	Jennings	Myers	Yancey

Nays—None

Vote after roll call:

Yea—Grant, Kirkpatrick

SB 1094

Yeas—32

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

Nays—None

Vote after roll call:

Yea—Kirkpatrick

CS for SB 1148

Yeas—34

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

Nays—None

Vote after roll call:

Yea—Kirkpatrick, Weinstein

CS for SB 1316

Yeas—39

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

Nays—None

CS for SB 1476

Yeas—33

Madam President	Davis	Kurth	Thurman
Bankhead	Dudley	Malchon	Walker
Beard	Gardner	McKay	Weinstein
Bruner	Gordon	Meek	Weinstock
Burt	Grizzle	Myers	Wexler
Casas	Jenne	Plummer	Yancey
Childers	Jennings	Scott	
Crenshaw	Kirkpatrick	Souto	
Crotty	Kiser	Thomas	

Nays—1

Johnson

Vote after roll call:

Yea—Grant, Langley

CS for SB 1580

Yeas—35

Madam President	Diaz-Balart	Johnson	Scott
Bankhead	Dudley	Kiser	Souto
Beard	Forman	Kurth	Thomas
Bruner	Gardner	Langley	Thurman
Burt	Girardeau	Malchon	Walker
Casas	Grant	McKay	Weinstock
Crotty	Grizzle	Meek	Wexler
Dantzler	Jenne	Myers	Yancey
Davis	Jennings	Plummer	

Nays—None

Vote after roll call:

Yea—Childers, Kirkpatrick, Weinstein

SB 1582

Yeas—35

Madam President	Davis	Jenne
Beard	Diaz-Balart	Jennings
Bruner	Dudley	Johnson
Burt	Forman	Kirkpatrick
Casas	Gardner	Kurth
Childers	Girardeau	Langley
Crenshaw	Gordon	Meek
Crotty	Grant	Myers
Dantzler	Grizzle	Scott

Nays—None

Vote after roll call:

Yea—Kiser, McKay

SB 1608

Yeas—29

Madam President	Diaz-Balart	Kiser	Thurman
Bankhead	Dudley	Langley	Walker
Bruner	Forman	Malchon	Weinstock
Casas	Girardeau	McKay	Wexler
Childers	Grizzle	Meek	Yancey
Crotty	Jenne	Myers	
Dantzler	Jennings	Souto	
Davis	Johnson	Thomas	

Nays—None

Vote after roll call:

Yea—Kirkpatrick, Weinstein

CS for CS for SB 1614

Yeas—36

Madam President	Davis	Jennings	Myers
Bankhead	Diaz-Balart	Johnson	Plummer
Beard	Dudley	Kirkpatrick	Scott
Bruner	Forman	Kiser	Souto
Burt	Gardner	Kurth	Thomas
Casas	Gordon	Langley	Thurman
Childers	Grant	Malchon	Walker
Crenshaw	Grizzle	McKay	Weinstein
Crotty	Jenne	Meek	Yancey

Nays—None

SB 1646

Yeas—35

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

Nays—None

CS for SB 1650

Yeas—35

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

Nays—None

Vote after roll call:

Yea—Jenne, Meek

CS for SB 1686

Yeas—32

Madam President	Crotty	Johnson	Myers
Bankhead	Davis	Kirkpatrick	Plummer
Beard	Diaz-Balart	Kiser	Scott
Bruner	Dudley	Kurth	Souto
Burt	Gardner	Langley	Thomas
Casas	Grant	Malchon	Thurman
Childers	Grizzle	McKay	Walker
Crenshaw	Jennings	Meek	Yancey

Nays—None

CS for SB 1688

Yeas—31

Madam President	Dantzler	Johnson	Plummer
Bankhead	Davis	Kiser	Scott
Beard	Dudley	Kurth	Souto
Bruner	Gardner	Langley	Thomas
Burt	Gordon	Malchon	Thurman
Casas	Grant	McKay	Walker
Childers	Grizzle	Meek	Yancey
Crotty	Jennings	Myers	

Nays—None

Vote after roll call:

Yea—Kirkpatrick

CS for SB 1730

Yeas—25

Madam President	Dantzler	Langley	Souto
Beard	Diaz-Balart	Malchon	Thurman
Bruner	Dudley	McKay	Weinstein
Burt	Grizzle	Meek	Yancey
Casas	Jennings	Myers	
Childers	Johnson	Plummer	
Crotty	Kurth	Scott	

Nays—None

Vote after roll call:

Yea—Bankhead, Grant, Kirkpatrick

SB 1762

Yeas—35

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

Nays—None

CS for SB 1766

Yeas—37

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

Nays—None

SB 1770

Yeas—33

Madam President	Davis	Kirkpatrick	Scott
Bankhead	Diaz-Balart	Kiser	Souto
Beard	Dudley	Kurth	Thomas
Bruner	Forman	Langley	Thurman
Burt	Gardner	Malchon	Walker
Casas	Grant	McKay	Yancey
Childers	Grizzle	Meek	
Crenshaw	Jennings	Myers	
Crotty	Johnson	Plummer	

Nays—None

SB 1778

Yeas—34

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

Nays—None

Vote after roll call:

Yea—Burt, McKay

SB 1790

Yeas—38

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

Nays—None

SB 1806

Yeas—31

Madam President	Crotty	Johnson	Plummer
Bankhead	Dantzler	Kiser	Scott
Beard	Davis	Kurth	Souto
Bruner	Dudley	Langley	Thomas
Burt	Gardner	Malchon	Thurman
Casas	Grant	McKay	Walker
Childers	Grizzle	Meek	Yancey
Crenshaw	Jennings	Myers	

Nays—None

Vote after roll call:

Yea—Kirkpatrick

SB 1824

Yeas—31

Madam President	Diaz-Balart	Johnson	Plummer
Beard	Dudley	Kirkpatrick	Scott
Bruner	Forman	Kiser	Souto
Burt	Gardner	Kurth	Thomas
Casas	Gordon	Malchon	Thurman
Crenshaw	Grant	McKay	Walker
Crotty	Grizzle	Meek	Yancey
Davis	Jennings	Myers	

Nays—None

Vote after roll call:

Yea—Childers

CS for SB 1864

Yeas—33

Madam President	Dantzler	Kiser	Souto
Bankhead	Davis	Kurth	Thomas
Beard	Dudley	Langley	Thurman
Bruner	Gardner	Malchon	Walker
Burt	Gordon	McKay	Weinstein
Casas	Grant	Meek	Yancey
Childers	Grizzle	Myers	
Crenshaw	Jennings	Plummer	
Crotty	Johnson	Scott	

Nays—None

Vote after roll call:

Yea—Kirkpatrick

CS for SB 1864—After Reconsideration

Yeas—33

Madam President	Davis	Kirkpatrick	Scott
Bankhead	Diaz-Balart	Kiser	Souto
Beard	Dudley	Kurth	Thomas
Bruner	Forman	Langley	Thurman
Burt	Gardner	Malchon	Walker
Casas	Grant	McKay	Yancey
Childers	Grizzle	Meek	
Crenshaw	Jennings	Myers	
Crotty	Johnson	Plummer	

Nays—None

ROLL CALLS ON HOUSE BILLS

CS for HB 271

Yeas—28

Madam President	Davis	Grizzle	Myers
Beard	Diaz-Balart	Johnson	Scott
Bruner	Dudley	Kirkpatrick	Souto
Burt	Forman	Kurth	Thomas
Casas	Gardner	Malchon	Thurman
Childers	Gordon	McKay	Walker
Crotty	Grant	Meek	Yancey

Nays—None

CS for HB 287

Yeas—33

Bankhead	Davis	Kirkpatrick	Scott
Beard	Diaz-Balart	Kiser	Souto
Bruner	Dudley	Kurth	Thomas
Burt	Gardner	Langley	Thurman
Casas	Gordon	Malchon	Walker
Childers	Grant	McKay	Yancey
Crenshaw	Grizzle	Meek	
Crotty	Jennings	Myers	
Dantzler	Johnson	Plummer	

Nays—None

CS for HB 417

Yeas—29

Madam President	Dantzler	Johnson	Scott
Beard	Davis	Kurth	Souto
Bruner	Diaz-Balart	Langley	Thurman
Burt	Dudley	Malchon	Walker
Casas	Forman	McKay	Yancey
Childers	Grant	Meek	
Crenshaw	Grizzle	Myers	
Crotty	Jennings	Plummer	

Nays—None

Vote after roll call:

CS for HB 1925

Yea—Kirkpatrick

Yeas—26

CS for HB 837

Yeas—36

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

Madam President	Forman	Kiser	Souto
Beard	Girardeau	Kurth	Thurman
Burt	Gordon	Malchon	Weinstein
Casas	Grant	Meek	Weinstock
Crenshaw	Grizzle	Myers	Yancey
Davis	Jennings	Plummer	
Diaz-Balart	Kirkpatrick	Scott	

Nays—6

Bankhead	Dantzler	Langley
Bruner	Dudley	Wexler

Vote after roll call:

Yea—Crotty

Nays—None

Vote after roll call:

Yea—Malchon

CORRECTION AND APPROVAL OF JOURNAL

CS for HB 1711

The Journal of March 4 was corrected and approved.

Yeas—39

Bankhead	Diaz-Balart	Johnson	Scott
Beard	Dudley	Kirkpatrick	Souto
Bruner	Forman	Kiser	Thomas
Burt	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

VOTES RECORDED

Senator Grant was recorded as voting yea on the following which were considered March 4: CS for SB 268, Senate Bills 1594, 1596, CS for SB 1598, Senate Bills 1600, 1602, 1604, 1606, 1608, 1610, 1612, CS for HB 223, CS for HB 2101, CS for HB 2103; and was recorded as voting nay on: SB 1608—Amendment 2.

RECESS

On motion by Senator Thomas, the Senate recessed at 3:57 p.m. for the purpose of holding committee meetings and conducting other Senate business until 9:30 a.m., Monday, March 9 or upon call of the President.